

THE DEMOCRACY, STRAIGHT-UP! PROJECT

The Democratic Ownership of Law

Legislative Alienation, Political Agency, and Equal Sovereignty

— CHAPTER THREE —

A Genealogy of Sovereignty and Representation

Dahlia Hart

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Manuscript note: This draft contains Chapter Three only. The book's general introduction and overview are intentionally deferred until the substantive chapters have been completed and the full argument can be stated in light of what they establish.

CHAPTER THREE

A Genealogy of Sovereignty and Representation

3.1 Why a genealogy is necessary

The relation between democracy and representation now appears so familiar that the two terms are often joined without friction. A democracy is presumed to be a political system in which citizens elect representatives. A free election is treated as the moment at which the people exercise sovereignty. The legislature then acts in their name, and its decisions are described as decisions of the people even though the people do not possess the legislative vote. This arrangement is so deeply embedded in modern political language that the distinction between choosing lawmakers and making law can sound less like an analytical distinction than an attack upon democracy itself.

That familiarity is historically recent. For much of the history examined in this chapter, democracy and representation were not synonyms. Democracy referred to rule by the citizens themselves, while representative institutions belonged to monarchies, estates, corporations, parliaments, and other arrangements in which some persons acted for others. The constitutional founders of the eighteenth century did not simply discover that representation was democracy adapted to a larger territory. Many understood representative government as a distinct form, and sometimes as an alternative to democracy. Only over time, especially as suffrage expanded and political parties organized mass electorates, did *representative democracy* become the normal name for a system in which the people authorize but do not ordinarily exercise legislative power (Manin 1997; Urbinati 2006).

A genealogy is necessary because the present theory challenges that identification. It does not deny that elections, representation, accountability, civil liberty, public debate, and peaceful alternation in office are democratic achievements. Nor does it imagine that large political communities can govern without specialists, spokespersons, negotiators, administrators, or persons authorized to perform public work. Its narrower claim is that these functions do not by themselves answer the question of legislative ownership. A system can make rulers accountable to the people while still locating the legislative decision-right in the rulers. It can describe the people as sovereign while limiting their ordinary political action to selecting among candidates. It can represent interests, identities, judgments, and opinions while leaving the final legislative vote beyond the reach of those represented.

The purpose of this chapter is therefore not to produce a complete history of Western political thought. It follows one conceptual line: the changing relation among consent, popular sovereignty, self-government, and representation. The central question is how the people came to be treated simultaneously as the source of public authority and as persons who ordinarily do not exercise that authority. The answer is not that one theorist made a single mistake later repeated by everyone else. The modern settlement emerged from genuine problems: the need to escape civil war, limit arbitrary monarchy, preserve legal continuity, govern extensive territories, divide complex labor, protect minorities, and make public decisions under conditions of disagreement. Representation addressed many of these problems. It also became the institutional location at which popular authorization was converted into independent governing power.

The history is therefore neither a morality play nor a simple decline from direct rule to oligarchy. Hobbes provided an extraordinarily clear theory of authorization. Locke transformed political power into a limited trust.

Rousseau insisted that sovereignty could not be represented. Kant connected rightful government to freedom under public law while defending republican representation. Burke articulated the representative's independent judgment. Madison made representation both a solution to scale and a filter upon public opinion. Sieyès and Paine helped join representation to popular sovereignty in revolutionary constitutionalism. Mill treated representative government as both a means of public control and an instrument of civic development. Each contributed something indispensable to modern constitutional thought. Each also helps reveal how the language of self-government can survive the institutional transfer of the legislative decision.

The genealogy matters for another reason. If representation is treated as a single thing, criticism of representative ownership appears to demand the abolition of representation altogether. That conclusion does not follow. Representation can communicate, advocate, symbolize, deliberate, coordinate, and perform delegated labor. The object of criticism is not making persons, interests, and judgments present in public institutions. It is the fusion of those valuable functions with independent possession of the final legislative decision-right.

The history of representative government is not the history of a useless institution. It is the history of how indispensable political functions became joined to the alienation of legislative authority.

3.2 Four concepts that must be separated

The genealogy begins by separating four concepts that modern democratic language routinely compresses.

Consent concerns the grounds upon which one person or institution may exercise authority over another. Consent may be express or tacit, individual or collective, original or recurring. It may authorize a particular act, establish an office, ratify a constitution, or accept the jurisdiction of an existing order. Consent can make authority non-usurpatory without giving the consenter continuing control over every exercise of the authority. A patient may consent to treatment without performing the surgery. A client may authorize an attorney without arguing the case. A population may consent to a constitution that places ordinary lawmaking in institutions beyond its direct control. Consent therefore bears upon legitimacy, but it does not by itself establish self-government.

Popular sovereignty identifies the people as the ultimate source or bearer of political authority. Yet the phrase supports several different institutional meanings. It may mean that the people possess constituent power to establish a constitution. It may mean that officials derive their offices from election. It may mean that governmental acts are legally attributed to the people. It may mean that public opinion can remove rulers. Or it may mean that citizens retain an operative role in making the laws. These meanings are compatible only if the route from source to exercise is specified. A people can be described as sovereign in constitutional theory while remaining politically dormant between rare moments of ratification or election.

Self-government is stronger than either consent or popular sovereignty understood merely as source. It concerns an ongoing relationship between the governed and the authority that governs them. A self-governing person or public need not perform every task directly. It must, however, remain institutionally capable of directing, recovering, and revising the authority exercised in its name. The distinction is not between doing everything oneself and relying on no one. It is between assistance that remains subordinate to the principal and authority that has become independently possessed by an agent.

Representation is the most multivalent term of all. It can refer to authorization, accountability, resemblance, symbolic embodiment, advocacy, responsiveness, judgment, or acting for another. A legislature may be representative because its members were elected, because its social composition resembles the population, because it

articulates public interests, because it symbolizes the nation, or because it acts in ways that advance constituents' concerns. None of these meanings necessarily determines who owns the final decision-right.

The modern formula *representative democracy* can conceal these distinctions. Consent is treated as popular sovereignty; popular sovereignty is treated as self-government; self-government is treated as representation; and representation is treated as authorization of rulers through elections. The steps are understandable, but none is conceptually automatic.

This chapter does not argue that consent, elections, or representation are politically unimportant. It argues that they answer different questions. Consent asks why authority may be exercised. Elections ask how officeholders are selected and sanctioned. Representation asks how absent persons or interests are made present. Legislative ownership asks who retains the final decision-right. A democratic theory becomes unclear when an answer to one question is allowed to stand in for all the others.

3.3 Hobbes: authorization and the creation of an independent sovereign

Thomas Hobbes provides the clearest starting point because he did not assume that representation was democratic. He developed representation as a general theory of political personhood and authorization. In *Leviathan*, a person is one whose words or actions are considered either as their own or as representing those of another. The person who performs the action is the actor; the one who owns or authorizes it is the author. Authority is the right of acting conferred by the author upon the actor (Hobbes 1996, chap. 16).

This framework contains an insight the present theory retains. Political action must be attributed. An institution cannot act merely because it has a name or a building. Someone must possess authority to speak, decide, command, sign, or vote. Representation creates a relation in which an actor's deed counts as the deed of another. Hobbes thereby separates physical performance from normative authorship. The actor may do the work while the authority of the act derives from the author.

The decisive move occurs when Hobbes applies this structure to the commonwealth. A multitude becomes one political person when its members authorize a single man or assembly to represent them. Each covenants with each to own the acts of the sovereign representative, provided the others do the same. Political unity is not discovered in a preexisting collective will. It is produced through common authorization. The sovereign can then act as the person of the commonwealth because the subjects have made themselves authors of the sovereign's actions (Hobbes 1996, chaps. 17-18).

The price of this unity is the transfer of ordinary decision authority. The sovereign is not a party to the covenant among the subjects and therefore cannot breach it in the way one covenanting party breaches an agreement with another. Subjects cannot complain of injury by the sovereign in the ordinary sense because they have authorized the sovereign's acts. Their authorship legitimates a power they no longer control. The sovereign may be a monarch, assembly, or other bearer of undivided authority; what matters is that the final public decision cannot remain dispersed among private judgments without, in Hobbes's view, returning the community to conflict.

Hobbes thus exposes a structure that later democratic language often softens. Authorization can be the mechanism through which persons become authors of actions over which they possess no continuing direction. To authorize is not necessarily to retain authority. Indeed, Hobbes's political construction depends upon the opposite. The subjects authorize the sovereign so thoroughly that resistance to the sovereign becomes resistance to an act attributed to themselves.

This is not a contradiction within Hobbes's theory. It is the theory's solution to the problem of civil war. Hobbes seeks a publicly identifiable will capable of ending rival claims to judgment. If subjects retained a standing right to recover the sovereign's authority whenever they disagreed, the commonwealth would lack the finality for

which it was created. The stability of rule requires the political author to remain present as a source of attribution but absent as a competing decision-maker.

The distinction between authorization and continuing ownership emerges here with unusual sharpness. Hobbes gives the people a constitutive role: without their authorization there is no artificial person of the state. Yet once constituted, the sovereign exercises the public decision-right independently. The multitude becomes a people through representation, and that representative unity simultaneously prevents the members from acting as a rival sovereign body.

This structure has an enduring afterlife. Modern representative systems reject Hobbesian absolutism. They divide powers, protect rights, limit terms, hold elections, and permit criticism. But they often retain the basic representational grammar: public acts are treated as acts of the people because authorized officeholders perform them. The difference is that authorization is periodic and contestable rather than permanent and absolute. That difference is morally and institutionally enormous. It does not, however, eliminate the underlying question. Between elections, who owns the legislative decision?

The present theory adopts Hobbes's distinction between actor and author but rejects the conclusion that authorship requires alienation. The actor can draft, deliberate, negotiate, and cast a delegated vote while the author retains a recoverable decision-right. Public unity need not depend upon making authorization irrevocable or converting an agent into an independent owner. Hobbes's framework is therefore both an ancestor and an adversary: it supplies the conceptual clarity with which legislative alienation can be described, even as it treats that alienation as necessary to political order.

3.4 Locke: consent, trust, and the people in reserve

John Locke transforms the Hobbesian problem by placing political power under natural law, consent, and fiduciary limitation. Political society begins when individuals consent to form one community and submit to majority decision. The majority receives the power of the whole because a political body must be able to move in one direction. Government is therefore neither the natural possession of a monarch nor the product of mere conquest. It arises from the consent of persons who are naturally free and equal (Locke 1988, Second Treatise, secs. 95-99).

For Locke, the legislative is the supreme power of the commonwealth because it establishes the standing rules under which public force is used. Yet legislative supremacy is not unlimited sovereignty. The legislature must govern by promulgated laws, pursue the public good, respect property, and avoid transferring the lawmaking power to hands not authorized by the people. It holds power as a trust for the purposes for which political society was formed (Locke 1988, secs. 134-142).

This fiduciary conception is a major advance. The legislature does not own political society. Its power is conditional, purposive, and answerable to the community. When rulers attempt to destroy or enslave the people, alter the legislative without authority, or act contrary to the trust placed in them, power returns to the people. Locke can therefore say that the community retains a supreme power to remove or alter the legislative when the trust is violated, even though the legislative is supreme while government continues in its ordinary course (Locke 1988, secs. 149, 212-243).

The people remain sovereign, but generally in reserve. They constitute the political society, authorize the legislature, and retain a right of resistance or reconstitution. They do not ordinarily function as a continuing legislature. The right that remains active is less a bill-level decision-right than a constituent and revolutionary power: the authority to judge that government has dissolved itself or breached its trust severely enough to justify replacement.

This distinction matters because the language of trust can be mistaken for continuing ownership. A trustee does not own the beneficiary's interest for private use, but a trust may still give the trustee considerable independent discretion. Locke's legislature makes ordinary law. The people authorize, judge at intervals, and may ultimately reclaim power when institutional betrayal becomes intolerable. Their sovereignty is real, but its ordinary exercise is displaced.

Locke's theory thereby establishes a pattern central to liberal constitutionalism. The people are the source of authority and the final safeguard against tyranny. Government is limited and accountable. Yet popular control is activated primarily at the boundaries of the regime: formation, election, resistance, dissolution, and reconstitution. The people stand behind the legislature rather than continuously within the legislative act.

The distinction between consent and ownership can be seen most clearly here. Consent explains why a legislative body may make binding laws. It does not imply that each citizen retains a direct path into each legislative decision. Nor does the right to remove a government after a breach mean that the people possessed the government's decisions while they were being made. Ex post correction is not identical to continuing control.

This is not a reason to dismiss Locke's contribution. Limited government, majority authorization, legal regularity, and the right of resistance are essential protections against arbitrary rule. The present theory inherits all four. Its departure lies in normalizing what Locke reserves for extraordinary breakdown. The public should not need to wait until abuse justifies dissolution before recovering its legislative authority. Recoverability can be built into ordinary delegation rather than appearing only as the last resort of a betrayed people.

Locke thus moves beyond Hobbes without fully crossing into legislative self-government. The sovereign people no longer disappear into an absolute representative, but neither do they remain continuously operative. They are the authors of the constitutional trust, the judges of its ultimate breach, and the latent power behind the legislature. They are not yet the standing owners of the legislative decision-right.

3.5 Rousseau: sovereignty cannot be represented

Jean-Jacques Rousseau states the objection to representative sovereignty in its classical form. Sovereignty is the exercise of the general will. Because a will cannot be alienated without ceasing to be the will of the person or body whose will it is, sovereignty cannot be transferred to another. Power may be delegated; will may not. The sovereign, understood as the collective body of citizens, can be represented only by itself (Rousseau 1997, book II, chap. 1).

The argument becomes even sharper in Rousseau's discussion of deputies. Representatives may serve as commissioners, but they cannot enact definitive laws in the sovereign's place. A measure becomes law only through the people's ratification. Rousseau's famous attack on the English constitution follows from this premise: the English people imagine themselves free, but their freedom appears only during the election of members of Parliament; once the election is over, they return to dependence (Rousseau 1997, book III, chap. 15).

The present theory agrees with Rousseau on the central point. A public does not retain sovereignty merely because it selects the persons who will possess the legislative vote. If the people's will is replaced by the independent will of officeholders, electoral authorization has not preserved legislative ownership. Representatives may investigate, formulate, advise, and execute. They cannot become the final source of law without changing the relation from self-government to government by representatives.

Rousseau also provides a critical distinction between sovereignty and government. The sovereign makes law; government executes and administers it. The executive may be entrusted to magistrates because execution is a function performed under law. Legislative sovereignty remains with the citizens. This distinction anticipates the separation developed in the present theory between ownership of authority and division of political labor.

Yet the agreement is not complete. Rousseau's sovereign is a collective being whose general will is not simply the sum of private preferences. The concept is designed to distinguish willing the common good from aggregating sectional interests. It also creates interpretive dangers. A leader, party, or institution may claim to know the general will better than the empirical citizens who compose the sovereign. Rousseau himself rejects representation of the sovereign, but later political movements have used the language of an underlying popular will to justify institutions that speak for the people without giving people operative control.

The present theory therefore grounds collective sovereignty differently. It begins with the equal standing of identifiable members and requires the collective decision to remain traceable to their consequential and recoverable decision-rights. It does not posit a will of the whole that can be known independently of procedures through which members act. The public becomes capable of legislation through organized relations among political equals, not through the discovery of a metaphysical unity prior to those relations.

A second difference concerns scale and delegation. Rousseau doubted that freedom could be preserved in large states and associated genuine popular sovereignty with recurring citizen assemblies. He also feared partial associations that could substitute organized interests for the general will (Rousseau 1997, book II, chap. 3; book III, chap. 15). The present theory accepts the problem of scale but does not treat it as a reason to transfer sovereignty. It seeks to organize citizens through voluntary human-scale associations, layered aggregation, and revocable delegation while preserving direct access to the final decision. Association becomes part of the constitutional machinery of self-rule rather than an inevitable corruption of a unified public will.

A third difference concerns the meaning of delegation. Rousseau's language can suggest a stark choice between the people acting in person and officials performing merely ministerial functions. The present theory gives delegated political labor a larger role. Delegates may deliberate, exercise judgment, negotiate, specialize, and cast votes. What they may not acquire is an unrecoverable entitlement to substitute their authority for that of the members. The relevant line is not between mechanical obedience and independent thought. It is between judgment exercised as a revocable service and judgment established as a separate title to rule.

Rousseau's enduring contribution is to reveal the inadequacy of electoral moments as a complete account of freedom. His limitation is not that he took sovereignty too seriously. It is that he did not provide an institutional architecture capable of preserving non-alienated sovereignty across extensive, differentiated, and continuously operating political communities. The present theory begins from his prohibition and asks how it can be made operational rather than abandoned as impractical.

3.6 Kant: autonomy, republicanism, and representative form

Immanuel Kant appears at first to offer a direct bridge from moral autonomy to democratic self-legislation. A rightful political order is one in which external freedom can coexist under universal law. Public law must be capable of being willed by all, and citizens are not merely objects of a ruler's private purposes. The idea of an original contract functions as a standard of public right: laws must be such that a united people could have consented to them, even when no historical contract occurred (Kant 1996, 8:289-297; 6:311-314).

Yet Kant does not derive direct democracy from this standard. He distinguishes the form of sovereignty—whether rule is held by one, several, or all—from the form of government, which may be republican or despotic. Republican government requires the separation of legislative and executive power and a representative system. In *Toward Perpetual Peace*, Kant describes democracy in the strict, direct sense as despotic because the same collective that makes the law also executes it against dissenting individuals. His objection concerns the absence of institutional differentiation: all decide and execute against one, so those who act as government are not separated from those who legislate as sovereign (Kant 1996, 8:351-352).

Kant's argument is frequently summarized as a rejection of democracy, but the structure is more instructive than the label. He fears the collapse of public law into the immediate will of an acting majority. Representation, on this account, is not merely a response to population size. It is a constitutional form that separates the universal standpoint of legislation from the particular exercise of executive power. A republic must prevent the ruler from treating public authority as private will.

This concern remains valid. Democratic ownership cannot mean that a temporary majority personally administers coercion without due process, offices, courts, or general rules. The present theory also rejects the idea that the same undifferentiated body should legislate, execute, investigate, adjudicate, and punish. Equal legislative sovereignty is compatible with extensive functional separation.

The point of departure lies elsewhere. Kant's citizens are treated as co-legislators at the level of rightful justification, but actual legislation is ordinarily representative. The original contract is an idea of reason rather than a recurring act of popular decision. Citizens must be able to regard the law as consistent with their freedom, yet they do not necessarily retain the institutional decision-right through which the law is made.

This creates a gap between normative authorship and operational authorship. A law may be legitimate because it could arise from the united will of a people, while the empirical people do not vote upon it. The people function as the standpoint from which law is justified, not necessarily as the body that determines the legislative act. Kant thereby supplies a powerful theory of public right without making the public continuously sovereign in institutional practice.

The gap is widened by Kant's distinction between active and passive citizens. Although all persons possess juridical personality, he limited independent political citizenship to those who were economically and socially independent in specified ways, excluding many workers, women, and dependents from the active franchise (Kant 1996, 6:314-315). The tension is revealing. Universal moral status did not automatically yield equal political agency. The capacity to be represented under public law was broader than the capacity to participate in making it.

The present theory adopts Kant's insistence that freedom requires a rightful public order and that legislative, executive, and adjudicative functions must not collapse into a single acting will. It rejects the inference that representation must therefore own the legislative decision. Separation of functions can occur inside a voter-sovereign system. Citizens can retain the final legislative decision-right while delegating drafting, administration, investigation, and judgment to differentiated institutions.

Kant's contribution is thus double. He shows why popular power must be constitutional rather than immediate and why self-legislation cannot be identified with the unmediated action of a majority. He also demonstrates how easily the language of autonomy can become a regulative attribution rather than an actual distribution of authority. The people are treated as authors in principle while representatives remain authors in operation.

3.7 Burke: judgment as a representative trust

Edmund Burke's speech to the electors of Bristol offers the canonical defense of independent representative judgment. Parliament, Burke argued, was not a congress of ambassadors carrying binding instructions from separate constituencies. It was a deliberative assembly of one nation, concerned with the general good. A representative owed constituents not only effort but judgment and would betray them by sacrificing that judgment to their opinions (Burke 1774/1999).

Burke's argument addresses a real danger. A legislature cannot govern a complex polity if each member is merely a courier for fixed local demands. Public decisions require information, deliberation, negotiation, attention to distant consequences, and judgments that may change as evidence changes. Representatives must consider the

whole, not simply transmit the loudest instruction received from a district. A theory that treats judgment itself as illegitimate would make collective learning impossible.

The present theory does not reject Burkean judgment. It rejects the fusion of judgment with independent possession of the final vote.

The distinction is easiest to see outside politics. An attorney may exercise sophisticated judgment, advise against a client's preferred strategy, and refuse unlawful instructions. A physician may recommend treatment on the basis of expertise. An engineer may reject an unsafe design. None of these relationships implies that the professional acquires general ownership of the principal's ends. The principal's authority is constrained by law and fact, but professional judgment remains a service rendered within a defined relationship.

Political representation can be organized similarly. A delegate may study an issue, develop an informed recommendation, revise that recommendation through deliberation, and explain why the members' initial view is mistaken. The value of the representative lies partly in bringing new judgment into the public process. The question is what happens when the principal, after receiving the advice, decides otherwise. Burke's trustee model gives the representative an independent title to cast the legislative vote according to the representative's own judgment. Democratic ownership gives the representative every opportunity to persuade but leaves the final authority recoverable by the members.

Burke's theory also illustrates the ambiguity of *trust*. In one sense, trust means confidence placed in an agent who acts for others. In another, it describes an office whose holder possesses discretion insulated from direct instruction. The former is compatible with voter sovereignty; the latter can become legislative alienation. Calling an office a trust does not decide which party retains the decision-right.

The trustee model is often contrasted with a delegate model in which representatives simply follow constituents' preferences. That binary is too crude. It equates retained popular authority with mechanical obedience and independent officeholder authority with thoughtful deliberation. A recoverable-delegation model permits judgment without ownership. Representatives can lead, advise, organize, and sometimes act under delegated discretion. Their authority remains conditional because those represented retain a direct path to the decision.

Burke therefore identifies a function that a voter-sovereign system must preserve: independent thought. He does not establish that independent thought requires independent sovereignty. The mature judgment of a representative is an argument entitled to attention, not a property title in the legislative will of others.

3.8 Madison: representation as scale, filtration, and republican legitimacy

James Madison gives representative government its most influential American defense. In *Federalist No. 10*, he distinguishes a republic from a pure democracy by the delegation of government to a small number of citizens elected by the rest. Representation is not presented merely as an unfortunate necessity imposed by territory. It is expected to "refine and enlarge" public views by passing them through a chosen body whose members may better discern the country's interests (Madison 1787/2003, *Federalist No. 10*).

The extended republic serves two connected purposes. It makes government possible across a large territory, and it reduces the danger that a faction will easily coordinate a majority around unjust or partial aims. A larger population produces more interests and makes oppressive combinations harder to form. Representatives filter public opinion, ideally transforming immediate passions into more stable judgments of the common good.

In *Federalist No. 39*, Madison defines a republic as a government deriving all its powers directly or indirectly from the great body of the people and administered by persons holding office for limited periods or during good behavior. The democratic character of the system lies in derivation, selection, and dependence. Officials do not

inherit authority from a dynasty or possess it by natural rank. Their power comes from the people, and most must periodically return to the people for renewal (Madison 1788/2003, Federalist No. 39).

This is a decisive transformation in the concept of popular sovereignty. The people rule because officeholders derive authority from them, not because the people retain the ordinary legislative vote. Republican legitimacy is established by the source and tenure of office. The people are sovereign at the moment of constitutional authorization and through recurring elections; representatives govern during the interval.

Madison's theory should not be caricatured as a simple attempt to suppress the public. The House was designed to remain dependent upon the people through frequent elections. Public opinion mattered. The Constitution divided and checked authority rather than concentrating it in a single ruling body. The representative system sought to make power responsive while avoiding both hereditary domination and unstable direct action.

Nevertheless, representation also served an explicitly epistemic and social filtering function. The people would select persons whose wisdom and patriotism might improve upon immediate public views. The scale of the republic increased the number of candidates and the difficulty of unworthy persons winning office, at least in the theory. The elected would be distinct from the electorate not merely by function but by presumed capacity.

The resulting architecture contains two democratic moments and one alienating interval. The people authorize the constitutional system and select officeholders. Officeholders then possess the legal decision-right over legislation. Citizens may petition, assemble, publish, organize, and vote at the next election, but the legislative disposition belongs to the chosen body.

Madison thereby joins two claims that have remained central to representative democracy:

- representation is necessary to organize an extensive republic;
- representation improves political judgment by filtering public opinion.

The present theory accepts the first problem and treats the second as a hypothesis rather than an entitlement. Large populations require organization, layered communication, specialized labor, and procedures capable of producing final decisions. It does not follow that the persons performing those functions must independently own the decision. Similarly, representatives may often develop better-informed judgments. It does not follow that presumed superiority gives them a greater share of sovereignty.

The Madisonian achievement was to replace inherited rulers with rulers derived from the people and constrained by constitutional structure. The unresolved question is whether derivation is enough. A stream may arise from a source and still flow beyond the source's control. The present theory seeks an architecture in which authority not only originates with the people but remains recoverable by them throughout its exercise.

3.9 Sieyès, Paine, and the invention of representative democracy

The revolutionary period made the relation between popular sovereignty and representation newly explicit. The nation displaced the monarch as the source of constitutional authority. Yet the practical meaning of national sovereignty remained contested. Would the people legislate, ratify, instruct, elect, or simply authorize representatives who would speak as the nation?

Emmanuel-Joseph Sieyès was central to this transformation. In *What Is the Third Estate?*, he argued that the nation exists prior to constitutional forms and possesses the authority to establish them. The constituted powers of government derive from a constituent nation that cannot be bound by forms it did not authorize. This doctrine helped destroy the claim that political order belonged to privileged estates or a monarch by inheritance (Sieyès 1789/2003).

At the same time, Sieyès defended representative government as a division of political labor suited to a commercial society. Citizens need not continuously make laws themselves. They choose persons to perform the

public function on their behalf. Representation was not simply a device for reproducing direct democracy at a greater scale; it was a distinct system in which the nation acts through representatives. Manin emphasizes that the founders of representative institutions consciously differentiated their design from democracy understood as citizens exercising office and lawmaking directly (Manin 1997, 94-131).

The 1789 Declaration of the Rights of Man and of the Citizen captures the ambiguity in a single provision. Law is declared to be the expression of the general will, and citizens have a right to participate in its formation “personally, or through their representatives.” The two routes are placed side by side without resolving whether representation transmits a continuing decision-right or substitutes an authorized officeholder for the citizen (Declaration of the Rights of Man and of the Citizen 1789, art. 6).

Thomas Paine offered the more explicitly democratic synthesis. In *Rights of Man*, he described the American system as “representation ingrafted upon democracy.” Representation allowed the democratic principle to extend across territory and population. What Athens achieved in miniature, America could achieve on a continental scale through secondary means (Paine 1792/1995, part II, chap. 3).

Paine’s formula marks an important linguistic and conceptual turn. Representation had long existed in institutions not regarded as democratic. Democracy had referred to the people acting in assembly. By grafting the two, theorists could preserve the normative claim of popular rule while replacing the direct institutional form. Representation ceased to be merely a way interests, places, or estates appeared before a ruler. It became the means through which the people themselves were said to govern.

The graft was not fraudulent. Elections abolished hereditary title, opened office to competition, and made rulers dependent upon public support. Representative institutions could coordinate large territories, protect deliberation, and make political conflict less violent. Paine was right that representation could democratize government dramatically when compared with monarchy and aristocracy.

Yet the metaphor of grafting also invites a question: which element controls the resulting organism? If representation carries democratic authority outward while leaving legislative decisions in representatives, democracy has expanded as a principle of authorization without expanding as a retained decision-right. The people are present through the persons they select, but their presence is juridical and symbolic rather than operative on each law.

Sieyès and Paine therefore illuminate two paths by which popular sovereignty entered representative government. Sieyès emphasized the nation as constituent source and the representative division of labor. Paine emphasized democratic scale and the continuing legitimacy of the elected system. Together they helped establish the modern assumption that a people governs whenever it chooses the persons who govern.

The present theory accepts representation as a scaling mechanism but denies that scale requires the graft to consume the root. Representation can extend democratic capacity only if the authority carried through the representative remains attributable and recoverable at the member level. Otherwise the system enlarges electoral authorization while leaving legislative sovereignty concentrated.

3.10 Mill: participation, competence, and the educative representative state

John Stuart Mill develops the most sophisticated nineteenth-century attempt to reconcile popular participation with representative competence. Government must be judged not only by the quality of its decisions but by its effects upon the character and capacities of the governed. Institutions educate. Participation can enlarge intelligence, public spirit, and concern for common affairs. A people excluded from political responsibility is unlikely to develop the capacities required for freedom (Mill 1861/1991, chaps. 2-3).

This developmental insight is deeply important to the present theory. Political capacities are not fixed traits that institutions merely discover. People learn by performing consequential roles. Responsibility, attention, and efficacy change when action matters. Mill thereby challenges the claim that citizens must already possess perfect competence before they may participate.

Yet Mill's preferred institutional form remains representative government. In a large community, the people cannot all conduct public business directly. The ideal system is one in which the whole people, or a substantial portion, exercise ultimate control through deputies periodically elected by them (Mill 1861/1991, chap. 3). Participation gives citizens a role in selecting, criticizing, and sometimes serving within government, but ordinary legislative work remains concentrated.

Mill also draws a sharp distinction between control and administration. A representative assembly should publicize grievances, debate principles, scrutinize officials, and serve as a "Congress of Opinions." It is poorly suited to the detailed professional work of administration and, in Mill's account, even to the technical drafting of legislation. Specialized commissions should prepare laws, while the representative body accepts, rejects, or sends proposals back for revision (Mill 1861/1991, chap. 5).

This division of labor is compatible with democratic ownership up to a point. The public need not draft statutes collectively. A legislature need not administer programs. Experts can formulate options. The decisive question remains where the final decision is located. For Mill, the representative body exercises ultimate control on behalf of the people. For the present theory, ultimate legislative control must remain accessible to the people themselves, even when representatives and commissions perform nearly all of the labor.

Mill's treatment of competence also reveals the limits of his egalitarianism. He supported broad suffrage but defended plural voting that would give additional votes to persons with greater education or demonstrated intellectual qualification. He hoped to prevent numerical majorities from overwhelming cultivated judgment while preserving participation by all (Mill 1861/1991, chap. 8).

This proposal makes explicit a tension that remains pervasive in democracy reform. Participation is valued because it improves citizens, but unequal competence is used to justify unequal political weight while the improvement is incomplete. The citizen is invited to develop through participation but enters the process under a constitutional judgment that some voices deserve more authority.

The present theory takes the developmental side of Mill's argument and rejects the rank-ordering conclusion. Unequal knowledge justifies differentiated epistemic roles, not unequal ownership of the legislative decision. Experts and highly engaged citizens should be given serious channels to investigate, explain, and persuade. Their contribution can be larger without their sovereignty becoming larger.

Mill also helps explain why "improve the voters first" thinking can coexist with democratic aspiration. The reformer need not despise citizens. The reformer may genuinely hope to cultivate them. Yet when political power is withheld or weighted until cultivation succeeds, the institution empowered to judge improvement remains superior to the persons being improved. Education becomes a condition of equality rather than a consequence of exercising it.

Mill stands at an important transition. He treats representative government as the ideal form of democracy while preserving a robust account of participation's transformative effects. The present theory radicalizes that account. If political agency develops through consequential practice, citizens should not be confined to choosing the persons who exercise the consequential decision. Freedom cannot educate fully when the decisive act remains someone else's.

3.11 From representative government to representative democracy

By the twentieth century, the phrase *representative democracy* no longer appeared paradoxical. Universal or near-universal adult suffrage, competitive parties, regular elections, civil liberties, organized opposition, and mass political communication transformed representative institutions. Offices once restricted by property, sex, race, religion, or status became at least formally accessible to a broad citizenry. Governments could be removed without revolution. These changes democratized representation in ways that early representative regimes did not anticipate.

Political theory adjusted accordingly. Joseph Schumpeter rejected the classical idea that democracy expresses a unified common will and defined the democratic method through competition among leaders for the people's vote (Schumpeter 1942, 250-283). Robert Dahl's account of polyarchy emphasized contestation, participation, elected officials, free and fair elections, inclusive suffrage, freedom of expression, alternative information, and associational autonomy (Dahl 1971; 1989). Democracy became institutionally associated with open competition and public control over the selection of rulers.

These accounts captured genuine differences between constitutional democracy and authoritarian rule. Elections are not empty rituals when they permit opposition to organize, information to circulate, citizens to participate, and governments to lose. The ability to dismiss rulers, form parties, criticize policy, and contest office is a major distribution of political power.

But the democratization of selection did not necessarily democratize the legislative decision-right. Universal suffrage changed who could authorize representatives and who representatives had reason to heed. It did not change the legal fact that representatives cast the legislative votes. Parties organized public demands, but party leaders and legislators translated those demands into law. Civil liberties expanded influence and contestation, but influence remained distinct from final authority.

The central conceptual shift was therefore not simply that representation became more democratic. It was that the democratic elements of representative government came to define democracy as a whole. Because rulers were selected by the people, dependent upon public support, and constrained by rights, the system was described as rule by the people. The interval between elections receded from the definition.

Bernard Manin argues that representative government retains both democratic and non-democratic elements. Elections give citizens equal votes and permit rulers to be removed, but the selection of candidates also produces distinction: voters choose persons who stand out, and representatives retain independence in office. Public opinion remains free, and decisions are subjected to discussion, yet representatives are not legally bound by instructions (Manin 1997).

This duality is more accurate than either celebration or denunciation. Representative democracy is not merely oligarchy wearing democratic language. Nor is it equivalent to the people legislating through convenient agents. It is a hybrid arrangement in which citizens possess significant powers of authorization, contestation, and sanction while officeholders possess the legislative decision-right.

The concept of legislative alienation identifies the non-democratic element without denying the democratic ones. A person may possess equal suffrage, free speech, associational liberty, and meaningful electoral choice while remaining separated from the final legislative act. The system can be liberal, competitive, responsive, and preferable to dictatorship. It can still withhold continuing legislative sovereignty.

The distinction is essential because otherwise every improvement in representation is treated as a complete answer to the ownership problem. More proportional elections, fairer districts, public financing, open primaries, and stronger ethics rules may improve responsiveness and equality of influence. They do not by themselves return the legislative decision-right to citizens. They reform the selection and conduct of decision owners.

3.12 The people as source, audience, and absent author

Modern constitutional language often places the people everywhere except at the point of decision. The people found the constitution, authorize offices, elect representatives, form public opinion, receive justifications, and judge government retrospectively. Laws are enacted in their name. The people are the source, audience, and attributed author of public power. Yet they are institutionally absent from the vote that gives a bill legal force.

This arrangement depends upon several forms of political presence.

First, the people appear as *constituent power*. They are imagined as prior to the constitution and capable of authorizing or replacing it. Written constitutions beginning with “We the People” make this authorship explicit. Constituent sovereignty may be exercised through conventions, ratification, referenda, revolution, or a retrospective constitutional narrative (Morgan 1988; Tuck 2016).

Second, the people appear as *electoral power*. Citizens select among candidates and parties. The election produces an authorization that is both legal and symbolic. Winners claim a mandate; losers are bound by the result because the procedure was open to all.

Third, the people appear as *public opinion*. Polls, protests, journalism, movements, associations, and ordinary communication surround officeholders with signals about preferences and legitimacy. Representatives act under an expectation of future judgment.

Fourth, the people appear as *the represented whole*. Legislators do not merely represent the persons who voted for them. They act in the name of districts, states, nations, and future generations. The legislature becomes the institutional body in which the absent public is said to be present.

Each form is politically important. None is identical to continuing legislative ownership.

Constituent power may sleep for generations. Electoral power selects bundles of persons and programs rather than deciding discrete future laws. Public opinion influences but does not command. Representational attribution makes officeholders' acts count as public acts but does not give members direct control over those acts.

The phrase *the people have spoken* illustrates the compression. After an election, the public is said to have endorsed a government even when voters chose among imperfect alternatives for many different reasons. The winning officeholders then decide issues that were not raised, could not have been predicted, or divide the winning coalition. Electoral victory supplies a general title to decide. The public's highly aggregated act is treated as authorship of later particular acts.

Accountability does not fully close the gap. Retrospective elections allow citizens to sanction a record, but many decisions are irreversible or difficult to disentangle. Prospective campaigns allow candidates to make promises, but promises are incomplete and often unenforceable. An election can remove a representative who cast an unwanted vote. It cannot convert the citizen into a co-owner of the vote at the moment it was cast.

The people therefore occupy a peculiar constitutional position. They are indispensable to legitimacy yet intermittent in operation. Their sovereignty is invoked to authorize institutions whose defining feature is that ordinary citizens do not legislate. The public remains the author in the grammar of the regime, while representatives are the authors in the procedure.

This is the precise point at which the present theory introduces legislative alienation. Alienation does not mean that the public is wholly powerless or that representation is fictitious. It means that the connection between attributed authorship and operative control has been severed. Citizens are treated as authors of law because they authorized the persons who independently decide it.

3.13 Representation disaggregated

The concept of representation is too rich to be accepted or rejected as a whole. Hanna Pitkin's classic analysis distinguishes formal authorization and accountability from descriptive, symbolic, and substantive forms of representation. A representative may possess authority to act, resemble those represented, stand for them symbolically, or act in their interests. Pitkin's broader formulation—that representation makes present what is absent—captures the common structure while leaving open the standard by which the presence should be judged (Pitkin 1967).

Later scholarship has multiplied the forms. Jane Mansbridge distinguishes promissory representation, in which representatives are judged against campaign commitments, from anticipatory representation, in which they act with future electoral reactions in view; gyroscopic representation, in which voters choose persons whose internal commitments they trust; and surrogate representation, in which officials speak for persons outside their electoral constituency (Mansbridge 2003). Nadia Urbinati emphasizes representation as a continuing political process connecting judgment and opinion in society with decision-making institutions rather than a simple contractual transfer (Urbinati 2006). Michael Saward analyzes representative claims through which actors present themselves as speaking for constituencies that are partly constituted through the claim itself (Saward 2010).

These theories show why representation cannot be reduced to a principal issuing instructions to an agent. Political representatives interpret constituencies, construct issues, articulate neglected interests, and participate in a public exchange that changes both representatives and represented. Representation can extend voice beyond territorial districts and make perspectives visible that would otherwise be excluded.

The present theory has no reason to deny these functions. It requires a sharper separation among them.

Representation as communication carries information between members and institutions. Representatives explain proposals, report concerns, translate technical language, and maintain channels across a large system.

Representation as advocacy argues for interests, values, experiences, or groups. An advocate may make a constituency politically visible without possessing authority to decide for it.

Representation as description or embodiment makes institutions resemble the population or places members with relevant experience in positions where their perspectives can alter deliberation.

Representation as symbolic presence allows a person or institution to stand for the polity, commemorate shared commitments, or express collective identity.

Representation as judgment and deliberation assigns persons the labor of studying, reasoning, negotiating, and recommending courses of action.

Representation as coordination enables bargaining among groups, sequencing of proposals, coalition formation, and the creation of coherent alternatives.

Representation as delegated performance authorizes an agent to cast a vote or perform another act under conditions set by the principal.

Representation as independent decision ownership gives the representative the final and non-recoverable authority to decide during the term of office.

The first seven functions can exist within democratic ownership. The eighth produces legislative alienation when it displaces the member's decision-right.

This taxonomy avoids the sterile choice between direct democracy and representation. A voter-sovereign system will be densely representative. Most members will rely on others for communication, advocacy, analysis, negotiation, and often the casting of delegated votes. What changes is the constitutional status of the relationship. Representation becomes a way members exercise and extend their authority rather than the moment at which they surrender it.

The distinction also explains why accountability is insufficient. A representative may be highly accountable in the sense of facing removal, transparency, and public criticism. If the member cannot recover the decision-right before or during a legislative decision, the representative remains the owner of that decision for the duration of the mandate. Accountability disciplines ownership; it does not necessarily dissolve it.

Similarly, descriptive representation can improve knowledge and justice without altering sovereignty. A legislature may mirror the population more closely and still monopolize legislative authority. Symbolic representation may deepen belonging while leaving citizens outside the decision. Substantive representation may produce excellent outcomes while preserving a relation in which some decide for others.

The critique of legislative alienation is therefore compatible with strong commitments to inclusive and plural representation. It asks only that the functions of representation be detached from a presumed entitlement to own the final vote.

3.14 Consent is not continuing ownership

The genealogy can now return to consent. Modern representative government often treats the election as an act through which citizens authorize future decisions. Because the representative was chosen through equal suffrage, the representative's later votes are attributed to the electorate. The citizen remains free because the citizen consented to the procedure and can participate in replacing the officeholder.

This argument establishes something important but limited. Electoral consent can distinguish legitimate office from usurpation. It can impose procedures, terms, jurisdictions, and duties. It can make the officeholder answerable to the electorate. It does not necessarily leave the electorate in possession of the authority exercised.

Authorization varies along several dimensions:

- *scope*: whether the agent may perform one act or a broad class of acts;
- *duration*: whether authority lasts for a moment, a term, or indefinitely;
- *specificity*: whether instructions are precise or discretionary;
- *revocability*: whether the principal can withdraw authority before the act;
- *transparency*: whether the principal can observe how authority is used;
- *subdelegation*: whether the agent may pass authority to others;
- *override*: whether the principal may intervene directly in a particular decision.

An ordinary election grants broad, durable, discretionary authority over issues known and unknown. Revocation is usually unavailable until the next election, and even then citizens choose among candidates rather than reclaiming a discrete legislative decision. Transparency may reveal what the representative did, but observation occurs after ownership has been exercised. The mandate is therefore closer to a temporary transfer of decision authority than to a continuously controlled agency.

This conclusion does not depend upon a private-law analogy. Political authority cannot be reduced to a contract among isolated individuals. Elections are collective, offices are constitutional, and representatives owe duties to a public extending beyond particular voters. The dimensions of authorization remain analytically useful because they reveal what electoral consent does and does not preserve.

A person can voluntarily consent to a hierarchical relationship. Consent may make that relationship legitimate for some purposes without making it self-government. Employees consent to employers' workplace authority; clients consent to professionals' discretion; residents consent to rules of associations. The question of democratic ownership is not merely whether authority originated in consent. It is whether the persons subject to the authority retain equal standing within its continuing exercise.

This is why periodic removal, though essential, is not equivalent to retained ownership. A tenant may be able to change property managers without owning the property. A shareholder may replace directors without participating in ordinary operational decisions. A patient may choose another physician after treatment without having controlled the treatment decision. Analogies are imperfect, but they show the conceptual difference between selecting an agent and retaining a decision-right.

Democratic ownership requires more than consent at the entrance to the relation. It requires a standing institutional path through which members can vote directly, delegate conditionally, recover authority, inspect its use, and revise the procedures by which it is organized. Participation may remain episodic. Most decisions may still be made through trusted delegates. The difference lies in the persistence of the right beneath the delegation.

3.15 The inheritance and the departure

The genealogy does not produce a single villain. It reveals a sequence of partial achievements and unresolved transfers.

From Hobbes, the present theory inherits the distinction between actor and author and the insight that public action requires institutional attribution. It rejects the irrevocable authorization through which the author becomes unable to direct the actor.

From Locke, it inherits consent, limited legislative power, fiduciary duty, majority decision, and the people's right to reclaim authority from a violated trust. It seeks to make reclamation ordinary and continuous rather than principally revolutionary.

From Rousseau, it inherits the claim that sovereignty cannot be represented as an independent will and the distinction between legislation and government. It replaces the unitary general will with a traceable organization of equal member decision-rights and develops delegation rather than treating extensive political scale as fatal.

From Kant, it inherits the idea that freedom requires public law, generality, and separation of functions. It rejects the gap between the people as hypothetical co-legislators and representatives as operative legislators.

From Burke, it inherits the value of independent judgment, national perspective, and deliberation. It treats judgment as politically indispensable labor but not as a title to own another person's final vote.

From Madison, it inherits constitutional structure, extended coordination, checks, and the need to transform dispersed public views into governable decisions. It rejects the assumption that filtration requires the transfer of sovereignty to a chosen class.

From Sieyès and Paine, it inherits the revolutionary assertion that public authority originates in the people and that representation can carry political capacity across scale. It insists that the representative graft remain subordinate to the democratic root.

From Mill, it inherits the developmental power of participation, the division between political control and specialized administration, and the need to combine expertise with public judgment. It rejects competence-weighted sovereignty and the postponement of equality until citizens have been sufficiently improved.

The resulting position is not anti-representative. It is a proposal to reconstitutionalize representation.

Representatives remain necessary wherever persons, interests, experiences, and judgments must be made present across distance and complexity. Delegates remain necessary wherever political labor must be distributed. Experts remain necessary wherever decisions depend upon specialized knowledge. Leaders remain necessary wherever coordination, initiative, and persuasion matter. None of these functions requires a separate class to own the legislative decision-right.

The genealogy therefore changes the question. The relevant choice is not between a romantic assembly of everyone and a modern representative state. It is between two constitutional relations:

- representation through which the represented authorize another to possess the final legislative decision;
 - representation through which the represented extend their capacity while retaining a recoverable decision-right.
- The first is representative ownership. The second is democratic ownership.

3.16 Conclusion: when the people rule in name

The modern doctrine of popular sovereignty accomplished a profound reversal. Political authority no longer belonged naturally to monarchs, dynasties, estates, or hereditary ranks. Government had to be justified through the people. Constitutions were made in their name. Offices were opened to election. Rulers became temporary, accountable, and removable.

But the reversal stopped short of the legislative act.

Hobbes made subjects authors of a sovereign they could not control. Locke made the people creators and ultimate judges of a legislative trust they did not ordinarily exercise. Rousseau identified the resulting alienation and refused to call elected lawmaking sovereignty, but offered no durable architecture for extensive modern states. Kant made the united will of the people the standard of rightful law while assigning operative government to representative institutions. Burke elevated independent representative judgment. Madison turned representation into the defining mechanism of an extended republic. Sieyès and Paine joined national sovereignty to representative government. Mill made that government participatory and educative without returning the final vote to citizens.

The result was not false democracy. It was incomplete democracy.

Citizens gained meaningful powers of authorization, contestation, communication, and sanction. Those powers transformed government and remain indispensable. Yet the language of popular rule came to cover a narrower institutional fact: the people choose who will exercise legislative sovereignty. The act of selection was asked to bear the entire meaning of self-government.

The present theory refuses that compression. Consent is not continuing ownership. Popular sovereignty as source is not popular sovereignty in operation. Representation is not a single institution that must be either celebrated or abolished. Its communicative, deliberative, descriptive, symbolic, advocative, coordinative, and labor-performing functions can all be retained. What must be reconsidered is the independent ownership of the legislative vote.

A people does not govern merely because every ruler can trace a chain of authorization back to it. A people governs when the authority moving through that chain remains recoverable at its source.

The next chapter develops the pathology produced when that recoverability is absent. Legislative alienation is not simply bad representation, weak accountability, low participation, or unpopular policy. It is the institutional separation of the governed from the final authority through which law is made.

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