

The Matter of Opinion
Popular Sovereignty and the Constitution of Social Reality

Daniel Hind

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Abstract

This thesis sets out to clarify the concept of sovereignty in order to clear the way towards a better understanding of how state design might better promote popular sovereignty. After an analysis of the different accounts of sovereignty as they appear in modern and contemporary political theory, the first chapter sets out a revised conception that seeks to establish, or re-establish, it as an attribute of natural persons. The aim here is to better capture the core features of sovereignty while avoiding both theoretical incoherence and empirical implausibility. Chapter Two brings this alternative conception into dialogue with Thomas Hobbes's canonical treatment of sovereignty in *Leviathan*. The central two chapters go on to explore how recent and contemporary work in the fields of social ontology and social epistemology, most notably that of Amie Thomasson, John Searle, Margaret Gilbert and Miranda Fricker, might help us to think more clearly about sovereignty in general and popular sovereignty in particular.

Chapter Five provides an analysis of the contemporary state form that seeks to establish the historical origins, current location, and distinctive features of sovereignty as found in contemporary Anglo-America. The idea is to show how sovereignty in our revised, and by now hopefully clarified, sense could be mobilised in the reform of this existing state. Chapter Six sets out the principles, derived from the preceding discussion, that might underpin a state form characterised by a tendency or bias towards popular sovereignty. It concludes by sketching some of the institutional forms that might help realise those principles in the day-to-day conduct of politics.

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Author's Declaration

I declare that this thesis is a presentation of original work and that I am the sole author. This work has not previously been presented for a degree or other qualification at this University or elsewhere. All sources are acknowledged as references.

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Chapter One: Introduction

1.1 The Problem of Sovereignty

The idea of sovereignty is inextricably bound up with the rise of the state to its current position as the preeminent political institution in the global system. And from the very beginning of the state's ascendancy the same word was being used for different purposes, in different contexts, and in ways that retain a contemporary currency. In 1576 the French philosopher Jean Bodin described sovereignty as 'the absolute and perpetual power of a commonwealth, which the Latins call *maiestas*; the Greeks *akra exousia*, *kurion arche*, and *kurion politeuma*; and the Italians *segnioria*, a word they use for private persons as well as for those who have full control of the state, while the Hebrews call it *tomech shevet* - that is, the highest power of command.' (Bodin, 1992, p.1) After a discussion of Roman history he went on to claim that 'the first prerogative (*marque*) of a sovereign prince is to give law to all in general and each in particular.' (Bodin, 1992, p.56) A decade later Bodin translated the definition into Latin as '*Maiestas est summa in cives ac subditos legibusque soluta potestas*': 'Sovereignty is supreme power over citizens and subjects, unchecked by the laws.' (ibid.) The phrase *legibus soluta* is a principle of Roman imperial legal theory associated with the third century jurist Ulpian that asserts the emperor's supremacy over the law. Bodin's sovereign was a unitary and absolute authority located in what one of his editors, Julian Franklin, calls 'the ordinary agencies of government.' (Bodin, 1992, p.xiii) This, as Franklin puts it, was 'a theory of ruler sovereignty.' (ibid.)

The Dutch philosopher Hugo Grotius argued in a 1604 treatise that, to the contrary, 'every right of the magistrate comes from the commonwealth ... public power is constituted by collective consent.' (Quoted in Gelderen, 2003, p.85) In Grotius' account sovereignty belonged irrevocably to the community that instituted government, and any particular organisation of government could be altered or replaced as that community wished. No ruler, however mighty, stood above the people. For all its immediate utility to the Dutch in their struggle against Hapsburg rule this was a doctrine that could also claim for itself the authority of classical antiquity, one of whose historians was happy to describe how, when monarchy 'had degenerated into lawless tyranny', the Romans 'altered their form of government and appointed two rulers with annual powers, thinking that this device would prevent men's minds from becoming arrogant through unlimited authority.' (Sallust, 1921, p.12.)

The incompatibility of Bodin-like claims about sovereignty and the Grotian alternative becomes particularly vivid at the trial of Charles I in 1649. The King insisted that he ruled by divine right: 'I

have a trust committed to me by God.’ (Jackson, 2007, p.59) As such no earthly authority could pass judgment on his actions. The prosecution retorted that there was ‘a contract and a bargain made between the King and his people.’ The King owed the people ‘the bond of protection’ just as the people owed him ‘the bond of subjection.’ The King had broken the terms of their bargain, and had therefore forfeited his claim to his people’s obedience: ‘Sir, if this bond be once broken, farewell sovereignty!’ (Jackson, 2007, p.60)

On the one hand Bodin and his followers’ definition of sovereignty informed the development of absolute monarchy in France and beyond, and provided a language with which to establish a post-imperial and post-papal European order after the Thirty Years War. On the other hand, Grotius and those who worked with him provided a justification for Holland’s mixed constitution, and for its, ultimately successful, rebellion against Spanish rule. Both families of ideas went on to inform how the British Parliament and their rebellious colonists in North America understood what was at stake in their conflict, as well as the terms on which those same colonists established their own state.

If the profusion of mutually incompatible attempts to make productive use of sovereignty, from the Dutch Revolt to the present day, is not daunting enough there are also sustained efforts to eliminate the term from our political language altogether. Emanuel Sieyès, one of the leading constitutional theorists of the French Revolution, thought sovereignty was a relic of *ancien régime*: ‘this word only looms so large in our imagination because the spirit of the French, full of royal superstitions, felt under an obligation to endow it with all the heritage of pomp and absolute power which made the usurped sovereignties shine.’ (Quoted in Tuck, 2016, p.255) The idea that sovereignty is an outmoded irrelevance is a recurrent theme in contemporary political theory. Don Herzog in *Sovereignty RIP* glosses sovereignty as ‘unlimited, undivided, and unaccountable authority, with exalted dignity and law as sovereign command trailing along in the wake of these constituent commitments.’ (Herzog, 2020, p.33) He speaks for an important strand of opinion when he argues that we ‘can get by just fine with the concepts of *state*, *jurisdiction*, and *authority*. None of them will trip us up with the strangely maximalist commitments of sovereignty.’ (op. cit., p.290)

There have been more subtle attempts to eliminate sovereignty. David Hume’s *Treatise of Human Nature* can be read as an attempt to dispense with the language of sovereignty altogether, and to sidestep the question of the ultimate grounds on which legitimate authority rests. (Sagar, 2018) Government is justified in terms of the overwhelming benefits it confers. If it fails to confer those benefits, there is no defending it: ‘[...] as government is a mere human invention for mutual advantage and security, it no longer imposes any obligation, either natural or moral, when once it

ceases to have that tendency.’ (Hume, 1969, p.614)¹ We are guided by our interests, and we come to understand our interests through the operations of opinion. Our shared opinion as to the benefits conferred by government is its only foundation: ‘[...] there is a moral obligation to submit to government, because every one thinks so [...]’ (Hume, 1969, p.598) And we can be said to enjoy the right to resist tyrannical and abusive government for the same reason: ‘The general opinion of mankind has some authority in all cases: but in this of morals ’tis perfectly infallible.’ (Hume, 1969, p.603) A little after the publication of the *Treatise* Hume reiterated the point in one of his *Essays, Moral and Political*, ‘Of the First Principles of Government’. There he wrote that ‘[...] as Force is always on the side of the governed, the governors have nothing to support them but opinion.’ (Hume, 2008), p.24) To complicate matters those who recognise the force of this argument sometimes reintroduce the language of sovereignty to make it, as when Ernest Barker writes in *Political Thought in England* that the operations of the British parliament must submit finally to what he calls ‘the sovereignty of social thought.’ (Barker, 1963, p.214-5)

Sovereignty has come under pressure from other directions. The left’s determination to discover the economic imperatives that drive political mobilisation finds canonical expression in Karl Marx’s claim that ‘[a] whole superstructure of different and specifically formed feelings, illusions, modes of thought and views of life arises on the basis of the different forms of property, of the social conditions of existence.’ (Marx, 2010, p.173) Those in the 1850s in France who claimed, perhaps sincerely, that they were partisans for one of the two claimants to Bourbon sovereignty were in fact something else entirely: ‘Each side wanted to secure the *restoration* of its *own* royal house against the other; this had no other meaning than that each of the *two great interests* into which the bourgeoisie is divided — landed property and capital — was endeavouring to restore its own supremacy and the subordination of the other interest.’ (Marx, 2010, p.174) In this tradition terms like sovereignty take their place in the rhetorical arsenal, and resources for self-deception, of those seeking mastery over the material conditions of life. Or, more cryptically, they are terms through which different forms of property contend with one another in the discourse they generate.

There might be yet another reason why, for all its practical significance as a defining feature of the contemporary state, the theoretical discussion of sovereignty has sometimes been stilted. On the very first page of his 1922 book *Politische Theologie* Carl Schmitt declared that ‘Sovereign is he who decides on the exception.’ (Schmitt, 2005, p.5) At the time Germany’s new republic faced threats of violent overthrow from both the left and the right. The second edition of the book appeared with

¹ This reading leaves Hume looking more, rather than less, Hobbesian.

the text unchanged in November 1933, months after President Hindenburg signed the Reichstag Fire Decree, which led directly to the destruction of that republic and the establishment of a fascist dictatorship. Hindenburg's decision on the exception, Schmitt's definitive occasion of sovereignty, had swept away the liberal and democratic institutions of Weimar. At the time Schmitt, now perhaps the most influential (and quotable) theorist of sovereignty in the twentieth century, was angling to become the leading jurist of National Socialism in Germany. (Vinx, 2019) If sovereignty isn't an obsolete relic, or a cover for the dynamics of class struggle, then, perhaps it is a name for the ever-present potential of modern states to collapse into arbitrary and personal rule.

Given how much weight a widely accepted account of sovereignty, whether positive or negative, will bear, and hence how much of a difference such an account can make in the world, it is hardly surprising that the word has become a site for endless controversy. We might be tempted to agree with Martti Koskenniemi (2010, p.239) that 'there is no analysis of sovereignty that remains unaffected by the polemical intentions of its author.' But there are good reasons for engaging with the term. If we are interested in individual flourishing or collective survival, we cannot afford to ignore the 'supreme' or 'absolute' authority in a given territory or political community. Some person, or some coalition of persons, will preside over the course of events in a place. If we are concerned about the identity of this person or coalition, and the terms on which they preside over the social space they share with us, we are concerned with sovereignty. The language of sovereignty gives us the means to talk about the system of rule we currently inhabit, and about the system of rule we might want. As R.G. Collingwood says, 'sovereignty is merely a name for political activity and those who would banish sovereignty as an outworn fiction are really only trying to shirk the whole problem of politics.'² (Collingwood, 1989, p.107)

The continuing significance of sovereignty as 'a name for political activity' came into much sharper focus after 2008, when the indispensable role of the territorial state in maintaining economic stability, in maintaining economic exchange as such, became impossible to ignore. In the generation before the financial crisis. The idea of globalisation had been deployed in efforts to downplay the importance of national sovereignty. Transnational capital flows and the diffusion of rights-based norms seemed to be undermining the supremacy of the territorially bounded nation state in both the global economy and its moral universe. (The distinction between the two was sometimes obscured in influential accounts of the time.)² The globalisation discourse drew on a much longer history in which the logic of state sovereignty co-existed, more or less uneasily, with the logic of

² See Fukuyama, 1992, Friedman, 1999, Friedman, 2005, and Wolf, 2004, for a sample of the genre.

economic 'laws'. (Hont, 2005) But at the moment of crisis, the so-called 'double truth' of this co-existence was exposed. (Mirowski, 2013) Markets, especially financial markets, which had been presented to the public as outgrowths of our natural propensity to barter and exchange, suddenly became available to thought as creatures of state power. Central banks, which had acted as the buckle connecting the political to a particular articulation of the economic since their creation in the early modern era, now did so in plain view. (Vogl, 2017; Tooze, 2019)

1.2 The Conventional Definition of Sovereignty

Reflecting on the long and contentious history of sovereignty, Daniel Philpott acknowledges that 'some scholars have doubted whether a stable, essential notion of sovereignty exists.' But he insists that 'there is in fact a definition that captures what sovereignty came to mean in early modern Europe and of which most subsequent definitions are a variant: supreme authority within a territory.' (Philpott, 2020) In his survey of the concept, Robert Jackson offers a somewhat similar account and adds a further condition of sovereignty: 'A sovereign state can be defined as an authority that is supreme in relation to all other authorities in the same territorial jurisdiction, and that is independent of all foreign authorities.' (Jackson, p.10) The sovereign is Janus-faced: supreme at home, independent in the world at large.

Embedded in this account is a legitimacy requirement: sovereignty is not mere force or power. It is a recognised right to command, and a symmetrical duty to obey. The claimants to this supreme and legitimate authority have justified themselves on terms that vary over time: 'A holder of sovereignty derives authority from some mutually acknowledged source of legitimacy — natural law, a divine mandate, hereditary law, a constitution, even international law. In the contemporary era, some body of law is ubiquitously the source of sovereignty.' (Philpott, 2020) Furthermore, 'in constitutional government, it is the people ruling through a body of law that is sovereign. That is the version that commands legitimacy most commonly in the world today.' (ibid.)

Already we can see ambiguities creeping in. The sovereign is the supreme authority in a territory, But the sovereign derives their authority 'from some mutually acknowledged source of legitimacy.' So which is supreme? The authority or the source of its legitimacy? Sometimes supreme authority seems to reside in the state. Sometimes it seems to reside in a body of law. Sometimes it seems to reside in the people, who are distinct from the state and do not plausibly constitute 'a body of law'. The contemporary formulation, and its attendant ambiguity, is forcefully expressed by one of the

architects of the American constitution, Alexander Hamilton, when he wrote in defence of judicial review in *Federalist 78*:

There is no position which depends on clearer principles, than that every act of a delegated authority, contrary to the tenor of the commission under which it is exercised, is void. No legislative act, therefore, contrary to the Constitution, can be valid. To deny this, would be to affirm, that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves; that men acting by virtue of powers, may do not only what their powers do not authorize, but what they forbid. (Madison et al., 1987, p.438)

Hamilton says that ‘the representatives of the people’ are not supreme over ‘the people’, they are merely its servants. But in his account it is the constitution, presumably as interpreted by judges, (‘some body of law’ in Philpott’s terms), not ‘the people’, that sets practical limits to what these representatives can do. This can only be reconciled with the supremacy of ‘the people’ if ‘the people’ can somehow be identified with the provisions of the constitution, and if those provisions are themselves capable of exercising supreme authority. But neither of these conditions holds. The people are emphatically not the same thing as the constitution, and the constitution is only supreme when taken up and animated by constitutionally recognised authorities in the courts. Through a kind of alchemy in reverse the vast majesty of popular sovereignty is transformed into the caprice of a handful of Supreme Court justices.

The conventional account of sovereignty often locates it in an account of the state derived from what Bob Jessop calls ‘[...] the continental European tradition of general state theory (*allgemeine Staatstheorie*)’, which ascribes three features to the state:

‘[...] (1) a clearly demarcated core territory under the more or less uncontested and continuous control of the state apparatus; (2) a politically organized coercive, administrative, and symbolic apparatus endowed with both general and specific powers; and (3) a permanent or stable population that is subject to the state’s political authority, which is regarded, at least by that apparatus, if not its subjects, as binding. (Jessop, 2018, p.46)

Sovereignty is a feature of the state defined as ‘that political community which (successfully) lays claim to the monopoly of legitimate physical violence within a certain territory, this “territory” being another of the defining characteristics of the state.’ (Weber, 1994, p.310-11) Within the state

there is a clear point, or clear points, at which sovereignty as supreme authority is concentrated. Weber himself claimed that ‘in the modern state the power to command the entire apparatus of political organisation is in fact concentrated in a single pinnacle of power [...]’ (Weber, 1994, p.315) Even if we qualify this somewhat to acknowledge the fact that governmental powers can be divided and balanced against one another, the provisions of the constitution are taken to provide that single pinnacle. Treaty-writing and trade deals, and all the material and human transformations they structure, rest on this account of sovereignty. In their dealings with one another each state is understood to speak with one voice.

In this stable and widely accepted sense, sovereignty is defined in terms of legitimate authority, and in relation to a formally constituted state. Sovereignty is to be found at a determinate point, or constellation of points, in the state. Nowadays in most states this location is thought to be set out in the relevant documents of constitutional law. Rather than simple power, sovereignty implies legality and legitimacy as well. But as Schmitt’s notorious apophthegm makes clear, sovereignty can also be construed as something that exceeds law, that gives substance to law, and as such cannot be bound by it, except by its autonomous choice. This is a point that Thomas Hobbes repeatedly stresses: all of the social world, from weights and measures, to property relations and the law, is subordinate to the sovereign. (Hobbes, 1994: Hobbes, 2017) Sovereignty in this sense is not limited *by* the law, any more than it is found *in* the law. Frederic Maitland insisted that it is precisely the supremacy of the sovereign over the law that differentiates sovereignty from earlier ways of thinking about political authority: ‘the men of the thirteenth century had no notion of sovereignty, had not clearly marked off legal as distinct from moral and religious duties, had not therefore conceived that in every state there must be some man or some body of men above all law.’ (Maitland, 1909, p.101) Bodin’s use of the phrase *legibus soluta* in the Latin version of *The Six Books of the Commonwealth* corroborates the point: the sovereign substantiates the law, the law does not substantiate the sovereign.

If Collingwood’s ‘whole problem of politics’ is to be found in sovereignty, ‘the fundamental problem of the concept of sovereignty’, is, as Schmitt says, ‘the connection of actual power with the legally highest power’. (Schmitt, 2005, p.18) After all, ‘the legally highest power’ is always in danger of being hollowed out, whether in plain view or surreptitiously, by the operations of ‘actual power.’ This hollowing out can be effected by an internal minority seeking selfish factional advantage, or by a people righteously mobilised against a tyrannical government, or by some confusing combination of the two. It can also be the consequence of intervention by actors outside the territory altogether: As one analyst of political power points out ‘[t]he rulers of more powerful states have used their resources to pressure or compel their weaker counterparts to accept unwanted domestic institutional

arrangements.’ (Krasner, 1999, p.224) Since 1945 the powerful have coerced the weak while insisting that their victims are sovereigns, who are acting freely when they submit to their demands. External compulsion can take the form of military intervention or economic sanctions, or the threat of one or both. It can also take the form of collaboration with internal factions, including those that present themselves as embodying the interests of ‘the people.’

1.3 Vindicating Popular Sovereignty in the Conventional Definition

Here then are two problems implicit in the contemporary account of sovereignty that enjoys the most widespread acceptance. Firstly, the formal sovereign is not always, or even often, a convincing bearer of supreme power. It is often, and obviously, true that both external and internal actors are able to overawe or otherwise direct the nominally supreme authority in a jurisdiction. Secondly, the relationship between the formal sovereign — Weber’s ‘single pinnacle of command’ — and the supposedly sovereign people is deeply mysterious. On the one hand sovereignty is a property of the state: it is ‘the absolute and perpetual power of a commonwealth’, in Jean Bodin’s words. Sovereign states meet in international institutions to sign treaties and trade agreements. They send each other diplomats. On the other hand their claims to sovereignty derive their legitimacy from something outside the state: ‘the people ruling through a body of law’ in the formulation offered by Philpott. We are supposed to be able to reconcile the day-to-day supremacy of state institutions with the ultimate supremacy of the political community. But if supremacy belongs to the people, how can the state, or any element within it, be supreme?

One way to solve this second problem is set out by Richard Tuck in *The Sleeping Sovereign*. (Tuck, 2016). Tuck argues that ‘the appearance of a clear conceptual distinction between sovereignty and government was a necessary precondition for the emergence of a distinctively modern idea of democracy, in which the mass of the citizens could genuinely participate in politics as long as their participation was limited to a set of fundamental acts of legislation.’ (Tuck, 2016, p.249) Tuck traces this ‘clear conceptual distinction’ back to Jean-Jacques Rousseau, who had sought in *The Social Contract* and later in his *Letters from the Mountain* to devise a form of popular government compatible with modernity. The problem, as Rousseau saw it, was that, while the Romans and the Spartans had the leisure required to busy themselves with government, their equivalents in Geneva ‘are Merchants, Artisans, Bourgeois, always occupied with their private interests, with their work, with their trafficking, with their gain: people for whom even liberty is only a means of acquiring without obstacle and for possessing in safety.’ (Quoted in Tuck, 2016, p.2)

In Tuck's telling, Rousseau reconciled popular sovereignty and commercial modernity by making two moves. First, he distinguished between the sovereign as founding legislator and the government as administrator of public business. Second, Rousseau claimed that popular sovereignty could do without the time-consuming collective deliberation that he imagined characterised ancient democracy. Once in place, these ideas made possible a theory of democracy in which a sovereign people exert their will only at foundational moments. Between these moments, the people *qua* 'the people' are constitutionally inert, or 'sleeping.' This, Tuck (2016, p.3) suggests, 'corresponds to what has become the default constitutional structure of most states.'

Tuck's claim sits awkwardly with Rousseau's proposal that the sovereign people assemble at times '[...] fixed at regular intervals, which nothing can abolish or postpone [...]' and his recommendation that '[...] the greater the strength of the government, the more frequently the sovereign should make himself visible.' (Rousseau, 1994, p.123) Besides, there are more plausible origins of the idea that the vote should be privileged over general discussion in contemporary constitutional forms. In *Federalist 10* James Madison warns that 'a pure democracy, by which I mean a society consisting of a small number of citizens, who assemble and administer the government in person, can admit of no cure for the mischiefs of faction.' And this is because, as he warns, 'a communication and a concert results from the form of the government itself'. (Madison et al., 1987, p.126) As a result, Madison concludes, general assembly provides the venue for discussion in which the rights of minorities are bound to be trampled. It is precisely by means of the vote that the threat posed by communication between civic equals can be headed off. But the vote is not on specific proposals, but on the choice of representative: 'A republic, by which I mean a government in which the scheme of representation takes place, opens a different prospect and promises the cure for which we are seeking.' (ibid.)

It is worth noting that assemblies of the like-minded, what Rousseau would have called 'partial associations', tend to become more vehement in their beliefs as they confer with one another. (Sunstein, 2000, p.74: 'In brief, group polarization means that members of a deliberating group predictably move toward a more extreme point in the direction indicated by the members' predeliberation tendencies.') Assemblies that mimic the general population through random selection typically do not have strong tendencies in any particular direction across a range of issues, and are not therefore likely to follow a predictable line of radicalisation. (See Curato et al., 2017: Fishkin, 2009) By concentrating the successfully ambitious in a deliberative assembly all of their

own, Madison's 'scheme of representation' creates a kind of 'winners' enclosure' in which a drift towards antisocial extremism seems far more likely than in the general assembly that he found so terrifying.

There is now a substantial literature on the behaviour of those with high status that suggests that they are more likely to be selfish, aggressive, and greedy than the general population. (For a summary of this research,, see Cislak et al., 2018) It also seems to be the case that people tend to look down on those over whom they wield power. One famous study found that '[...] the subjects with power thought less of their subordinates' performance, viewed them as objects of manipulation, and expressed the desire to maintain social distance from them.' (Kipnis, 1972, p.40: See also Rind and Kipnis, 1999) And then there is the sense of superiority that accrues to those with inside information. Daniel Ellsberg writes eloquently in his memoir *Secrets* about the condescension bordering on contempt he felt for those who lacked his 'higher than top secret' level of security clearance, and hence based their opinions on less rarefied information:

The danger is, you'll become something like a moron. You'll become incapable of learning from most people in the world, no matter how much experience they may have in their particular areas that may be much greater than yours. (Ellsberg, 2002, p.237-9)

If all this is true, and if Sunstein is correct about the tendency for like-minded groups to become more extreme, it would be miraculous if a representative assembly didn't descend into outright contempt for the citizenry, given how much power politicians exercise over the electorate in successful election campaigns, and how much inside information elected officials have as compared with their constituents.

It is also difficult to enlist Rousseau as an advocate for electoralism over assembly democracy when we recall his insistence in *Letters from the Mountain* that government 'should be instituted in such a way that it might be easier for you to see its intrigues and provide for abuses.' Given that our commercial preoccupations take up so much time and energy, Rousseau insists that 'every public effort that your interest demands ought to be made all the easier for you to fulfil since it is an effort that costs you and that you do not make willingly.' (Quoted in Tuck, 2016, p. 3) Yet in our 'default constitutional structure' communication between all citizens, the only means by which the intrigues of elected rulers might become generally visible, has become, to all intents and purposes, impossible. Meanwhile communication within sectarian associations is trivially easy to conduct and conceal. If Rousseau did provide the template for our 'default constitutional structure' then he would have been

horrified by the results. But as we have already noted, and will explore in greater detail in Chapter Five, there are other, more plausible, candidates, if we are looking for the theoretical origins of this structure.

In Tuck's reading of Rousseau, popular sovereignty need only be exercised at foundational moments, when the people collectively embody the state and discover the general will. Between those moments, the people are constitutionally inert, or 'sleeping.' In this way, the modern form of life, in which we busy ourselves in private matters, is made consistent with demands for democratic legitimacy. Governments come and go and, while they *appear* to act as sovereigns when they sign treaties or declare states of emergency, sovereignty itself eludes them and remains with the people. For, as Tuck (2016, p.141) points out, in most modern states 'fundamental laws are prescribed through plebiscites or referenda rather than representative bodies' and 'the distinction between a sovereign democratic legislator and a representative government is the basic fact of modern politics.' On the one hand, the constituent power of the people, on the other, the constituted power of the state.³

It would certainly be a brave President or Prime Minister who openly sought to establish a new constitution without seeking ratification directly from the citizen body as a whole. Even in the United Kingdom, which in Tuck's taxonomy (2016, p.250) retains a premodern fusion of government and sovereignty in its Parliament, it has become conventional to put questions generally considered to be fundamental to adult citizens through referenda. But not all moments of profound change are billed as such. They are more likely to be presented as restorations of normality, or as temporary measures, than as fundamental breaks with the existing constitution. Margaret Thatcher's time in office marked the end of the post-war constitutional settlement in the United Kingdom, and the imposition of an entirely different economic and ethical order on the population. This was consciously devised and carefully sequenced project that brought profound change to the structure of the state.⁴ It is a matter for historians to judge whether this project ever loomed larger in the minds of the electorate than military success in the South Atlantic, or concerns about the supposed impact of Labour's fiscal proposals. But it is transparently the case that the process of constitutional re-foundation took place through the operations of representative government, rather

³ Tuck is quite right that the asserted presence of the whole people ('in their collective capacity' as it were) in constitutional preambles is standard in modern practice.

⁴ The ending of local government's financial independence is perhaps the most glaring example of change to the distribution of power in the state. (Mount, 2012, p.10) But civil service reform and privatisation were at least as significant.

than of democratic legislation. Even far less ambitious British Prime Ministers treat longstanding constitutional norms with a casualness bordering on contempt, when they think they can get away with it. Tony Blair gave the Bank of England the power to set interest rates without consulting his Cabinet or Parliament, never mind ‘the people’. When asked by Robin Butler, the Head of the Home Civil Service, whether he ought to wait at least until other ministers could discuss the move he replied that ‘I’m sure they’ll all agree.’ (Rawnsley, 2000, p.33)

Nor does a written constitution serve as a reliable protection against re-foundation from above. Franklin Roosevelt brought about profound alterations to the activities undertaken by the US state, while relying on the ordinary powers of government. (Feinig, 2022) Such was the change from between 1932 and 1944 that it is no exaggeration to call the New Deal ‘a fundamental change in the structure of American government.’ (Wilson, 2010) And it is quite conventional to speak in terms of the New Deal’s ‘constitutional revolution.’ (Kessler, 2016) But at no point were the American people asked to ratify this constitutional moment through the formal process of amendment established by Madison and his colleagues. The only amendment passed during Roosevelt’s time in office concerned the legality of alcoholic drinks. Somewhat similarly, Stefan Eich and Adam Tooze have described the Thatcher-Reagan project in the early eighties as a ‘refounding of the constitution of capitalist democracy.’ (Eich and Tooze, 2016, p.180) Yet during Reagan’s two transformative terms no constitutional amendments took place.

Those who speak regularly in political discussion — elected officials, and a sub-set of journalists — rarely mention the people as sovereign legislator as a potential factor in political controversies. Consider, for example, the proposal to establish universal healthcare in the United States. While it formed the centrepiece of Bernie Sanders’ campaign in 2020, and while that campaign was happy to embrace the language of a ‘political revolution’, it never seems to have occurred to anyone to suggest that this policy goal, or his wider ‘revolution’, would have to be secured through a sovereign moment of democratic legislation, through referenda or constitutional amendments. The supposedly sovereign right of the people to remake the organisation of government at will scarcely ever appears as an object of thought in our day-to-day discussions of politics. How plausible is it to ascribe supreme authority to something that has scarcely any presence in the minds of the individuals who are supposed to constitute it? Even in the case of Britain’s referendum on EU membership, the decision to take the issue to the people was made wholly at the discretion of the UK Parliament. Indeed, the British people were summoned to decide on the future of their relationship with their continental neighbours in order to fend off an electoral challenge to the

Conservative party from rightwing Anglo-British nationalists. It is a strange sort of sovereign that only wakes up when someone else decides to rouse them, for reasons of their own.

And how are a supposedly sovereign people supposed to ensure that they are fully awake at these critical moments? Consider the hypothetical case of a ‘sleeping sovereign’ who is woken automatically once every twenty-five years to revise its constitution.⁵ An elaborate system of checks and balances was put in place at the last review, in 1999. This was intended to limit the ability of elected representatives, bureaucrats or magnates to capture the process of constitutional deliberation. In particular, the 1999 constitution established strict rules on impartiality and pluralism in the mass media. Every reasonable effort was made to ensure that the next constitutional review would be open and fair. But since then the technology of communications has been through a period of profound change. A media regime characterised by a mix of nationally based broadcast and print institutions has been substantially replaced by one organised via a handful of global digital platforms. Elected officials and media executives kept quiet about the implications of this change for ordinarily self-interested reasons. And now, the guardians of the constitution lack the formal powers they need to preserve tolerable pluralism and accuracy in the online fora where most political discussion and persuasion take place. In such a scenario it is a simple enough matter for a US-aligned plutocracy to step in and capture the people’s constituent power. Again, it is a strange kind of sovereign that wakes up, groggy after years of sleep, into a world it does not understand and cannot grasp without help from strangers.

Tuck is correct that the account of sovereignty as popular, occasional and foundational is reflected in the constitutional practice of many states that describe themselves as democratic. The absence of ‘the people’ in government is excused since ‘the people’ were present at the founding, and signed off on the constitution. But this not the only way in which the idea that ‘the politics of a society’ must be ‘controllable from a single and specific site’ (Tuck, 2016, p.257) has been reconciled with democracy. Indeed many people would be surprised to learn that ‘democracy’ only happens when a constitution is ratified, or amended, or when a decision is made by a national referendum.

Representative government of the kind familiar to us and popular sovereignty are also thought to be compatible because the people can direct their governments through the ballot box. Regular elections mean that, while the government acts as the site of day-to-day decision, the people remains in effective control. As Robert Dahl puts it, ‘whenever policy choices are perceived to exist, the

⁵ Most constitutions do not encode regular moment of popular wakefulness in their provisions, of course, although the possibility was famously entertained by Thomas Jefferson. (See Breslin, 2021)

alternative selected and enforced is the alternative most preferred by the members [of the relevant political community.]’ (Quoted in Achen and Bartels, 2016, p.21: the text in square brackets is their form of words.)

This way of thinking about popular sovereignty runs into devastating problems when we move from theory to practice. Whatever work elections do, they emphatically do not ensure that the people exercise control over policy choices. After an exhaustive analysis of 1,779 national surveys about proposed policy changes, in which the income of respondents was also recorded, Martin Gilens and Benjamin I. Page (2014, p.576) concluded that:

In the United States, our findings indicate, the majority does *not* rule — at least not in the causal sense of actually determining policy outcomes. When a majority of citizens disagrees with economic elites or with organised interests, they generally lose. Moreover, because of the strong status quo bias built into the US political system, even when fairly large majorities of Americans favor policy change, they generally do not get it.

Some researchers have sought to challenge Gilens and Page’s classic paper, albeit inconclusively. (See Bashir, 2015) But there is ample evidence for the weaker claims that when stable majorities favour highly consequential policies that run counter to elite preferences they often have little or no purchase on state conduct. President Clinton, who was sometimes berated for his excessive deference to public opinion, drove through a free trade agreement with Canada and Mexico that was wildly unpopular with most Americans at the time. (Page and Bouton, 2006, p.309) Meanwhile there has been strong support in the United States for a ‘single payer’ system of healthcare provision, and overwhelming support for a ‘public option’ for decades. (Hind, 2010, p.123-4) In the United Kingdom one recent poll puts support for nationalisation of the water infrastructure at 68%, a policy that none of the major political parties in England in the recent election supported. (Gye, 2023) There is an even more serious problem with the conventional account of popular sovereignty. It is not only that elected representatives regularly, indeed consistently, ignore ‘the alternative most preferred’ by the population. Elected representatives enjoy a vast discretion in determining which ‘policy choices are perceived to exist’ in the first place. So long as they can limit the terms of political discourse and electoral competition to matters that do not impinge on their own interests, which is to say, as long as they can maintain a working partnership with those who control the channels of communication, it is possible to organise public issues in such a way that the population at large is unaware that they have even a notional power to select between alternatives. Vast areas of

social reality, from foreign policy to monetary policy, from healthcare's relationship with the life sciences to the land value and bank credit system, are organised out of political discussion in the service of very particular political interests.

As a result public deliberation often takes place on radically misleading terms. Many British voters have been persuaded to understand the economy in terms of a 'pot of money.' (Killick, 2020: Mosse, 2021) and so believe that cuts to government programmes are an unavoidable necessity, rather than a policy choice.⁶ Somewhat similarly, for many years the existence of Britain's offshore system went more or less unremarked in the main circuits of publicity. The discussion of fiscal policy, one of the few areas where politicians acknowledge a role for political debate over competing options, took place after the financial crisis in a discursive environment that had been stripped of relevant information. It is hard to explain this in terms of a lack of knowledge among political elites when the Prime Minister between 2010 and 2016 was the son of one of the architects of modern tax avoidance through the use of offshore jurisdictions. (Garside, 2016) It is more likely that politicians were exploiting a deficiency in the shared account of the monetary-fiscal system to pursue their own ends. Meanwhile contemporary debates about Britain's long-ignored housing crisis take place without referencing the postwar planning regime, in which development land had been effectively nationalised — a policy that was arguably more consequential than the nationalisation of coal, steel and the railways. (Calafati, et al., 2023, p.225)⁷

1.4 Another Conception of Sovereignty

The conventional account of sovereignty, which locates it in states organised by a constitution ratified by the people, is empirically indefensible and theoretically incoherent. The idea that a state or a body of law can bear the supreme authority in a society collapses when one considers that neither a state nor a body of law can do anything, except by misleading analogy. People act, not the institutions that they create. And the idea that, despite its theoretical shortcomings, the current state form, which describes itself in terms of popular sovereignty, delivers anything like supreme authority to the people is, if anything, even less persuasive. The evidence is clear that 'the people' in

⁶ This looks like an example of what we might call constitutive ignorance, in which widespread misunderstanding of a state of affairs is a necessary condition for its preservation.

⁷ This is not to say that large popular constituencies in the existing state form are *never* able to assert themselves successfully in matters of fundamental importance. And there are doubtless many areas of policy where elite decision-makers must take into account the implicit veto power that 'the people' broadly defined possess. (See Harold Laski's example, set out on page 28 of this thesis.)

regimes that are supposed to be characterised by popular sovereignty often have little or no control over the actions of their rulers.

We are presented with a choice. We can either continue to multiply what Willard Quine called ‘reports upon usage’, or we can set out a stipulative or ‘explicative’ definition of sovereignty that makes it possible to think about the concept more, rather than less, clearly. As Quine explains, ‘[i]n explication the purpose is not merely to paraphrase the definiendum into an outright synonym, but actually to improve upon the definiendum by refining or supplementing its meaning.’ (Quine, 1980, p.25) Here the intention is to refine the concept of sovereignty, to capture its core features. Once this stipulative-explicative conception has been set out, the task of the remainder of the thesis will be to explore its strengths and shortcomings, put it into dialogue with other approaches to the question of political power, and to set out its implications for what we variously and indifferently call democracy and popular sovereignty.

How then are we to gloss sovereignty? What am I seeking to describe, in order to then describe in a specifically popular form? A preliminary account looks like this: The sovereign is that singular or plural agent, or coalition of plural agents, whose claims as to the meaning of a shared present and the organisation of a shared future prevail at a given point in time, over a given population, in a given space. The sovereign says what is, and what should be, and has their assertions regarding both accepted, to the extent necessary to secure their aims and preserve their supremacy. The sovereign does not necessarily persuade. But their claims are accepted in at least the minimal sense that they are not subject to successful challenge.

The sovereign presents a description of the present to those over whom they rule. Acceptance of this description entails a future course of action. The meaning of now is, in the context of sovereignty, what must happen next. This assertion of sovereignty has the quality that Ronald Syme ascribes to Julius Caesar. It is a ‘conscious mastery’ of both people and events. (Syme, 2002, p.53) There is a knowledge condition to sovereignty. The sovereign cannot be the unwitting instrument of another’s will, or captive to beliefs whose origins are not accessible to their own, autonomous, inquiry. A complete and unqualified sovereign achieves exactly the articulation of the present they aim for, and no new knowledge or supplementary conceptual resource would have changed what they aimed for.

Immediately we confront an objection. Sovereignty as defined here looks identical to the successful exercise of power in a particular domain. On this we have no choice but to bite the bullet. In what

follows sovereignty means the successful exercise of power in a given set of circumstances. It might also be argued that sovereignty pertains more narrowly to the state, and specifically to the legislative power of the state. After all, Jean Bodin (1992, p.1) likened it to Roman *maiestas*, called it ‘[...] the absolute and perpetual power of a commonwealth [...]’ and stressed that ‘the first prerogative of a sovereign prince is to give law to all in general and each in particular.’ (Bodin, 1992, p.56) But it is necessary to dispense with this narrower conception in what follows, even if it means being vulnerable to charges of idiosyncrasy, or even eccentricity. To repeat, for our purposes sovereignty is the successful exercise of power in a particular context, whether it can be traced to the institutions or officeholders of a state or not. Seeking to tie sovereignty to particular institutions, practices or domains leads to the same theoretical incoherence and empirical implausibility that dogs the conventional conception.⁸

It is certainly true that the word sovereignty is mostly used in Bodin’s narrower sense. But in earlier English usage the word can be found describing the supremacy of a husband over a wife, of the leader of a religious order over their initiates, or of a mayor over a town. (Jackson, 2007, p.20) Sovereignty appeared at every link of the medieval and early modern ‘great chain of being’ and each of its instantiations echoed and clarified the others. So when Shakespeare’s Aufidius describes how Coriolanus will treat Rome he warns that:

I think he’ll be to Rome
As is the asprey to the fish, who takes it
By sovereignty of nature. (Quoted in Tillyard, 1998)

Enumerations of use can never be decisive. There is a more pressing reason to define sovereignty as we do here, as the successful exercise of power. We might like to think that sovereignty as power successfully exercised is to be found reliably in the state, and in the legislative activity of the state in particular. But it is not. In the current dispensation, in what we might call the capitalist constitution, the supreme power to determine the course of events is often very far removed from the institutions of state power. Nominally sovereign legislatures are daunted by the extra-legal and informal powers of financial markets, media magnates, and by foreign powers. Legislative power is not always, or even often, decisive, especially when we take into account the role that the courts play in interpreting the written law in their operations. (Pistor, 2019) We can restrict our use of the word to describe institutions that are far from consistently able to shape their circumstances, or we can use it

⁸ Notice, too, that there is no appeal here to any notion of supremacy, which on this account looks like a figment of the monarchical imagination.

in our attempts to map the actual distribution of power. While it might be comforting to believe that we can always find the decisive shaper of events in constitutional provisions or legislative assemblies, this is not so.

In what follows we are mostly concerned with sovereignty at scale, and therefore with its relationship with the state, with Schmitt's connection between 'actual power' and 'the legally highest power'. (Schmitt, 2005, p.18) This is because we live in a world of states and the state is, or tends to be, as Martin Loughlin says, 'the way we conceive the political unity of a people'. (Loughlin, 2013, p.12. But note the discussion of the state in Chapter 2.3 below: we do not now think of ourselves as constituent elements of that state.) The social existence of states, their broadly accepted status as repositories of legitimate authority, means that they are sites of enormous collective consequence. But, as Collingwood (1989, p.106) noted, '[...] sovereignty does not belong to any determinate organization. It belongs only to that political life which is shared by all human beings.' But it as well to be honest about what this commits us to. Sovereignty in this sense is at work in many situations that are far removed from the state. An advertiser who successfully converts a passerby into a customer for their client partakes in sovereignty. A baby crocodile, we might say, is still a crocodile.

Already it is clear that sovereignty is a condition that is always attended by intense anxiety and uncertainty, since it is never impossible to exclude the possibility that the apparent point of decision has been subverted, such that sovereignty is not where it appears. On the other hand, sovereignty belongs to natural persons and even when more than one person partakes in it, on terms that are obscure or complicated or contested, it is still possible to inquire retrospectively into its distribution at particular moments. Here then we see the limits of Schmitt's declaration that 'Sovereign is he who decides on the exception.' (Schmitt, 2005, p.5) President Hindenburg signed the Reichstag Decree. But no amount of theory can determine whether the decision was entirely his own.

Sovereignty is emphatically not a working out of material forces of production, economic laws or historical trends. All those things might important. But they are not sovereign in the sense that interests us here. Nor is sovereignty a property of constitutional law or of 'state structures'. Sovereignty in the sense outlined here cannot be reliably discovered in, any more than it can be ascribed to, a body of law. Who the law says should prevail, and who does prevail, are not necessarily, or even often, the same thing. Plenty of laws, including plenty of constitutional provisions, are dead letters. Active laws are assertions of sovereignty in a particular context. In monarchies, they are what the king successfully commands. In democracies active laws are what a people successfully commands. (Schmitt, 2008, p.187) In the constitutional form that predominates in Europe and North America, what we will later call Madisonian republics, the true authors of

active law, and the bearers of sovereignty in other respects, are obscure. Elected representatives are involved but are not necessarily in sole command. ‘The people’ are implicated, but they are by no means in control. We discuss what it might mean to talk of ‘state structures’ in Chapter Three. For now it is enough to say that structures cannot *do* anything without the assistance of natural persons, which makes them unlikely candidates for sovereignty in the sense outlined.

Sovereignty need not be in the exclusive possession of state officeholders though some officeholders almost always have some share in sovereignty. In ordinary times the meaning of the state as the preeminent institution in society is accepted to an extent that secures them this share. A revolution, we might say, is a separation of a state’s officeholders from sovereignty. But even in the course of ordinary administration state officeholders rarely, if ever, establish a complete sovereignty over the people they rule. Their ability to secure their own interests, or the interests of anyone else, will always require them to take into account the desires and plans of other actors, within and outside their jurisdiction. Sometimes they will be forced to concede something to others to secure some fraction of what they want, whether openly or not.

The fully realised sovereign cannot be overpowered or frustrated, since whatever is overpowered or frustrated is not fully sovereign. At the same time, efforts to establish the meaning of a moment are often qualified, conditional and limited. Claims that those seeking to do so are not subject to external limits and qualifications are usually stratagems within a play of contending rhetorics when they are not expressions of Neronian delusion. The nominally supreme power in a state is always sovereign only in virtue of decisions made by others, that lie beyond its immediate control. William Blackstone famously claimed that the British Parliament ‘can do everything that is not naturally impossible: and, therefore, some have not scrupled to call its power, by a figure rather too bold, the omnipotence of Parliament.’ (Blackstone, 1876, p.129) But consider Harold Laski’s observation that ‘if, for example, Parliament chose to enact that no Englishman should be a Roman Catholic, it would certainly fail to carry the statute into effect.’ (Laski, 1917, p.12) Louis XIV achieved an unparalleled supremacy over the people of France. But he did so through relentless attention to detail and the minutely calibrated use of threats and favours, not through some solar effulgence of innate power. Much of the time it is helpful to think in terms of a sovereign ensemble comprised of elements that advertise their status, and elements that do not.

Consider, too, the success of the central banks during the financial crisis in establishing the meaning of events, and hence in securing the course of action this meaning entailed. They were not free to impose any meaning whatsoever on the collapse in global credit markets. They depended on a much

larger group to confirm the appropriateness and necessity of their decisions. Had they attempted some other course of action, threatening to the prerogatives of the very rich and politically active, the people we sometimes call ‘the financial sector’, they might well have found themselves unable to establish their account of the present and the future this account entailed. That central banks are independent is an article of faith in the catechism of contemporary ‘state sovereignty’. But they are not independent of everyone. Again, it makes sense here to think in terms of a sovereign ensemble, a coalition of plural and individual subjects who together broker the terms on which the present is understood.⁹

Even if all the members of a social body take part in the creation and maintenance of a sovereign collective agent on terms of strict equality, even if each individual has an equal share of sovereignty in the sense described here, sovereignty would only survive in virtue of decisions made by those members *as individuals*. The constituent individuals can always drift away, become distracted, or defect. Sovereignty in the sense outlined here is always fragile, always alienable. But we can begin to make a distinction between pure and compound sovereignty. An individual or group that can only be limited by itself or its own members is distinct from one that must take others into account. In the former case we might say that the sovereign is unmixed, in the latter mixed. And immediately we can see how unmixed sovereignty recedes from practical politics. We all act at the end of the chains of causation that constituted us as actors and we arrive with incomplete knowledge and incomplete conceptual resources. We cannot hope to achieve omniscience, and so omnipotence always elude us.

A critic might complain that sovereignty here is personalised, when it is generally agreed that in our times sovereignty is understood as a quality of impersonal states, given form by a body of constitutional law authored by ‘the people’. But, as we have already seen, no depersonalised account of sovereignty can be sustained in either theory or practice, no matter how widespread it is. To repeat, states do not act. Unless we wish to say that the possession of supreme power requires no action, states cannot be sovereign. It is at best a misleading *précis* to speak as though they can be, at worst a dangerous mystification. And unless we wish to say that ‘the people’ are sovereign, even

⁹ This coalition must meet the specific conditions of plural subjectivity set out in Chapter Three. (See 3.7 in particular.)

though the great majority of living, breathing people can independently secure almost nothing that they want, while being blamed for almost everything that goes wrong, much the same applies.

A critic might also object that this definition misses something important inasmuch as it says nothing about legitimacy. Sovereignty cannot be nothing more than the successful exercise of naked power, the objection might go. It is not whichever agent happens to prevail in a given context. Sovereignty entails legitimate authority and authority 'is legitimate when it is rooted in law, tradition, consent or divine command, and when those living under it generally endorse this notion.' (Philpott, 1995, p.355) But this is to confuse cause and effect. Whoever secures the meaning of the present usually does secure some degree of legitimacy in the minds of others. But this is a consequence of the ability to shape understandings over time, and of the usual and ordinary responses to that ability. It is not a precondition of sovereignty in the sense that interests us. If anyone, anywhere, has been sovereign, the social coalition that traded as the Roman republic was sovereign in its recently conquered provinces. But its new subjects might not, when speaking in secret, have eagerly endorsed whatever pretexts Rome had used to justify invasion and occupation. A generation later, when the baths, the property rights and the exemplary punishments had done their work, there might well have been a broad acceptance of Rome's legitimacy. Indeed Rome's expansion seems to have depended on both its extraordinary violence and its extraordinary willingness to absorb whoever survived into ever closer communion with *Romanitas*. Both Bodin and Hobbes had no problem with the idea that sovereignty does not depend on legitimacy: '[...] the name of Tyranny signifieth nothing more nor less than the name of sovereignty, be it in one or many men, saving that they that use the former word, are understood to bee angry with them they call Tyrants [...]' (Hobbes, 2017, p.591)

One advantage of the definition offered here is its ability to make sense of the fact that in everyday use the word sovereignty is often used to invoke the thing that is purportedly being described. When politicians speak of 'Parliamentary sovereignty' or 'popular sovereignty' they are deploying the concepts in order to secure some purchase on events for themselves and their allies. To the extent that their speech is plausible, these speakers take their place in the sovereign ensemble that converges on the state. But the question whether the people, or a parliament of representatives, or some faction or coalition of factions, is actually sovereign at a given moment and in a given context, in the sense that interests us, remains open. Another advantage of this approach is that sovereignty becomes a feature of identifiable individuals and groups. We can explore how these individuals and groups relate to various features of social reality without resorting to mysticism or, its isotope,

abstraction. This in turn means that we can begin to discern what it would be to talk about popular sovereignty, the question at the heart of this thesis.

1.5 Conclusion

There are two ways to argue that the current state form is characterised by popular sovereignty. One is to claim that, while in ordinary times decision-making excludes the people as such, moments of fundamental change are authorised by a sovereign people. The other is to claim that elections subordinate representatives to the will of a sovereign people. Both of these claims seem respectable enough until we look for anything resembling an evidential base. It is an irresistible conclusion of historical research that fundamental change happens regularly, even routinely, in the absence of a constituent people. And the best available data from the United States, which provides the template for the contemporary state form, makes it clear that the preferences of large majorities have no independent claim on political decision-making. Any account of sovereignty that glosses it as something like ‘supreme authority in a territorial state’ must concede that popular sovereignty does not exist in the current state form.

To return to our revised conception, sovereignty consists in the conscious control of events. There is no reason to believe that sovereignty cannot be the possession of the great majority of the population convened and articulated as a public. That is, it is possible for large numbers of people to constitute themselves as a plural subject, and to decide on a course of action together, on terms that are broadly transparent, generally accepted, and consistent with their status as a plural subject. Sovereignty in these circumstances is no more undivided, absolute or final than in a monarchy or representative assembly. Trans-temporal or trans-spatial unity of will is neither possible nor necessary. It must only be the case that one’s existence as a member of a political community guarantees possession of powers sufficient to ensure that one is present as an active and informed element in a plural subject whose decision-making stands supreme over the social order. To be able to act is not necessarily to prevail, and to prevail is not necessarily to act. As long as the possession of powers is equal between citizens, and understood as such, there is good reason to claim that something like a popular sovereign exists.¹⁰

¹⁰ See Klein, 2022, for a useful discussion of collective power.

Quite what we mean by a 'plural subject' has yet to be established. And quite what these 'powers sufficient' are will, for the moment, remain mysterious. But we can already see that they will have something to do with the cognitive or epistemic status of the sovereign, with meeting sovereignty's knowledge conditions. With that in mind we turn now to the perhaps the most influential theorist of sovereignty in the Anglo-American tradition, Thomas Hobbes.

Hobbes matters for my account, since his *Leviathan* allows us to see the early modern sovereign in full, as the unchecked arbiter of social reality. Once we have discussed Hobbes' account of sovereignty and pointed out some of its implications for both contemporary political theory and for the revised conception of sovereignty offered here we turn to contemporary social ontology and social epistemology. The idea is to clarify further what it would mean for a population to be sovereign over its own shared conditions of life, and to identify some of the collective and individual dangers that a population aspiring to sovereignty would inevitably face. The penultimate chapter steps back to consider the current state form from the perspective of America's federal constitution, to understand more fully what thorough-going democratic reform is up against, what it must overcome in current political imagination. America is taken as the paradigmatic case for two reasons. Firstly, in the Philadelphia debates the guiding insights and impulses of Anglophone ruling elites are made explicit and stripped of their feudal camouflage: as they attempt to reconcile the supremacy of the opulent minority with the ideal of popular rule Madison and Hamilton are compelled to say out loud what their British contemporaries were able to obscure in talk of ancestral arrangements, divine providence and the duty to maintain the civil peace. Secondly, America's constitutional model broadly understood has become the institutional default in that country's extensive sphere of influence. To put it bluntly, those that stray too far from the lines drawn by Madison become fit objects for intervention and correction.

The final chapter tries to convert the various arguments of principle, observation and theory in the earlier chapters into a set of institutional proposals. In doing so the thesis turns away from the synthetic commercial republic called the United States to its ailing, apparently organic, prototype, Great Britain. The reason for the shift is arbitrary: I know Britain better than America and am better able to parse how institutional changes might interact with the existing systems of government. If I am right about the broad constitutional homogeneity of the American-based order then much of what I say will be applicable in the concentric circles of that order, from the 'Five Eyes' core to the Asian and European periphery. Although somewhat different institutional settlements will be required to secure popular sovereignty at the scale of North America, or of what was formerly known as Christendom, they will not be entirely different.

Chapter Two: Hobbes and State Sovereignty

2.1 Introduction

Chapter One set out something of the complexity of sovereignty as it features in political theory and practice, and outlined a conventional definition of the concept. It then explored this conventional definition and began to make the case for rejecting it on the grounds of theoretical incoherence and empirical implausibility. In brief, the standard account of sovereignty ascribes supreme power to something — either ‘the state’ or ‘the people ruling through a body of law’ — that cannot exercise it. Sovereignty, goes our argument, is a quality we can only ascribe to subjects, to what Hobbes would have called ‘natural persons’. Neither a state or a body of law achieves subjectivity in the required sense. And in the current constitutional order ‘the people’ do not, as a matter of fact, exist as a subject. We will revisit these problems with the conventional definition of sovereignty. As it stands, the defenders of the current order of signification already have a case to answer. Chapter One also offered a revised conception of the sovereign as that individual or group that independently and consciously secures the meaning of the present in a given context and over a given domain.

This chapter revisits this conception of sovereignty and compares it with the account of offered by Hobbes in *Leviathan*. Hobbes’ account of how sovereignty is generated, and of its rights and duties, provides useful points of reference in our attempts to clarify how sovereignty in this sense relates to the state considered in the abstract (what is sometimes, not entirely helpfully, called the Hobbesian state), how we should understand the existing state form as found in Anglo-America and much of the rest of the world, and what reform might look like. The chapter begins by outlining what we might call the substance of sovereignty in Hobbes, and sketches some of the implications of his account for contemporary political theory in general, and for one influential strand of the republican revival in particular.

2.2 Hobbes’ Account of the Origins of Sovereignty in *Leviathan*

In Chapter 17 of *Leviathan*, Hobbes sets out the means by which a sovereign is created ‘by institution’. He explains that, in order to ‘erect a Common Power’ able to protect them from one another and from foreign invasion, each individual must ‘appoint one man, or Assembly of men, to

bear their Person.’ (Hobbes, 2017, p.140) And it is the fact of being represented by ‘one Man, or one Person’ that unites a multitude of individuals into a Commonwealth:

A Multitude of men, are made *One* Person, when they are by one man, or one Person, Represented; so that it be done with the consent of every one of that Multitude in particular. For it is the *Unity* of the Representer, not the *Unity* of the Represented, that maketh the Person *One*. And it is the Representer that beareth the Person, and but one Person: And *Unity*, cannot otherwise be understood in Multitude. (Hobbes, 2017, p.134)

The sovereign, says Hobbes, is the ‘person’, whether an individual or a group of people acting as a rule-bound unity, that ‘carryeth’ the Commonwealth: ‘And he that carryeth this Person, is called SOVERAIGNE, and said to have Sovereigne Power; and every one besides, his SUBJECT.’ (Hobbes, 2017, p.140) In Hobbes’ account in Chapter 17 ‘one man, or Assembly of men’ is appointed by the mutual agreement of all the individuals in a multitude to ‘beare’ the Commonwealth. (Hobbes, 2017, p.140) The agreement is not made between the people and the bearer of the Commonwealth that they establish, but rather between themselves as individuals. He offers a form of words for this process of mutual agreement: *‘I Authorise and give up my Right of Governing my selfe, to this Man, or to this Assembly of Men, on this condition, that thou give up thy Right to him and Authorise all his Actions in like manner.’* (Hobbes, 2017, p.140) This conditional agreement between individuals that assigns authority to a ‘Man’ or ‘Assembly of Men’ brings them into a unity: ‘This done, the Multitude so united in one Person, is called a COMMON-WEALTH, in Latine CIVITAS.’ The people-as-multitude only become a *civitas* when they are subjected to a structure of obligations, enforced by the overwhelming power of the sovereign: ‘[...] Covenants, without the Sword, are but Words, and of no strength to secure a man at all.’ (Hobbes, 2017, p.136)

It is worth pausing to consider how plausible Hobbes’ account in Chapter 17 is. He wants us to believe that a divided and competitive multitude — a ‘heap’ that ‘cannot be said to demand or have right to anything’, is how Hobbes (1996, p.124) describes it in *The Elements of Law* — can somehow establish a sovereign who will then bear their unity, and reconstitute them as a commonwealth. A multitude of individuals in a state of nature settles unanimously on a sovereign before it becomes a unity. One is reminded of the joke about contemporary physicists who ask for one miracle, the Big Bang, and promise to give a reasonable explanation for everything else.

Sure enough in Chapter 18 Hobbes gives up on the story he has just told. Instead of relying on a miracle of simultaneous and unanimous mutual agreement, Hobbes explains that:

A Common-wealth is said to be Instituted, when a Multitude of men do Agree and Covenant, every one with every one, that to whatsoever Man, or Assembly of Men, shall be given by the major part, the Right to Present the Person of them all, (that is to say, to be their representative;) everyone, as well as he that Voted for it, as he that Voted against it, shall Authorise all the actions and Judgements, of that Man, or Assembly of men, in the same manner, as if they were his own, to the end, to live peaceably amongst themselves, and be protected against other men. (Hobbes, 2017, p.141)

The individuals in a multitude, it turns out, *can* covenant with each other to deliberate in accordance with procedural rules that establish the legitimacy of the final decision, and make it binding on the minority who did not secure their preferred outcome: ‘[...] everyone, as well as he that Voted for it, as he that Voted against it, shall Authorise all the actions and Judgements, of that Man, or Assembly of men [...]’ The multitude is capable of collective action, insofar as it imposes a decision-making mechanism (majority vote) on its members, before it is represented by a sovereign. So much for the heap that cannot be said to have a right to anything until it is united by a sovereign representative.

According to Hobbes, to establish a sovereign, whether monarchical, aristocratic or democratic, is to become subject to an absolute power, distinct from the multitude. He writes that ‘when an Assembly of men is made Sovereigne; then no man is so dull as to say, for example, the people of Rome made a covenant with the Romans, to hold sovereignty over them on such and such conditions; which, not performed, the Romans might lawfully depose the Roman people.’ (Hobbes, 2017, p.143-4) A whole people (the adult, male and free fraction of that people, in the case of Rome) can belong to a sovereign assembly. But once a sovereign of any kind is created its individual members must necessarily submit to it unconditionally and absolutely. From this he concludes that the freedom is the same, whether one is ruled by a monarch or any kind of assembly. (Hobbes, 2017, p.144; Hobbes, 2017, p.176) But there is an important difference between a democratic assembly and both aristocratic assembly and monarchy. The identity of subject and sovereign — or the degree of overlap — in a democratic assembly means that there is no incentive for a democratic sovereign as such to secure an information edge over their subjects. Indeed, a sovereign that secured such an edge would cease to be democratic. If the epistemic conditions in which we form opinions and make decisions affect our liberty, then the form of government becomes highly consequential.

2.3 Hobbes Account of the Sovereign as Person in Historical Context

In Hobbes' account the sovereign must be either a natural person, or an assembly of natural persons. He is at pains to stress that '[...] Covenants being but words, and breath, have no force to oblige, contain, constrain, or protect any man, but what it has from the publique Sword; that is from the untied hands of that Man, or Assembly of Men that hath the Sovereignty, and whose actions are avouched by them all, and performed by the strength of them all, in him united.' (Hobbes, 2017, p.143) There is in Hobbes no attempt to assign agency to 'words, and breath.' In the process by which the sovereign is supposedly instituted, the sovereign is prior to the state. The state derives from the institution of a sovereign, the sovereign does not derive from the institution of a state. This has led some to argue that 'Ultimately, Hobbes' theory is not of state sovereignty but — depending on the form — of royal, aristocratic, or popular sovereignty.' (Abizadeh, 2015, p.410) This is at odds with one conventional reading of Hobbes, which sees him as pointing to 'a simpler and more abstract vision of sovereignty as the property of an impersonal agency, a vision that has remained with us ever since and has come to be embodied in the use of such terms as *état*, *stato*, *Staat* and state.' (Skinner, 2002, p.368-9)¹¹

We have become very used to talking about such things as 'sovereign states', 'national sovereignty', and 'the sovereignty of law'. But the idea that the possessor of the supreme power in a state could be something straightforwardly impersonal and abstract does not appear in Hobbes. Sovereigns were, and had to be, people. The state does not bear sovereignty: sovereignty bears the state. Meanwhile Hobbes' *civitas* is recognisably drawn from, and belongs to, an older tradition in which the state is a species of *universitas*, a rule-bound collective that includes all the citizenry, even if it cannot be reduced to them. In the modern conception of the state as 'an impersonal agency', the citizens are distinct and separate from the state, and most of us would be puzzled by the suggestion that we are each one of its constituent elements. Meanwhile Hobbes would have been astonished by the idea that flesh and blood rulers can be meaningfully subordinated to the 'words and breath' of constitutional law, which is a widely accepted feature of the contemporary conception of a properly functioning state.

¹¹ Elsewhere Skinner has argued that 'Hobbes' theory of representation issues in the conclusion that to speak of the sovereign is to refer to a natural person (or persons) authorised to discharge the role of representing the person "by Fiction" of the state.' (Skinner, 2018a, p.341)

Still, Hobbes' account is sufficiently ambiguous to lend some credence to the idea that he is pointing to Skinner's 'simpler and more abstract vision.' In *De Cive* he writes that '(however it seem a paradox) the king is the people.' (Hobbes, 1949, p.135) The representative becomes the represented, and so if the representative is the sovereign, the represented unity of the commonwealth appears to be sovereign, too. In *Leviathan*, after he describes the mutual covenant of the multitude Hobbes writes that 'This done, the Multitude so united in one Person, is called a COMMON-WEALTH, in Latine CIVITAS.' (Hobbes, 2017, p.140) Again, the representative and the represented seem to become one. In Chapter 26 his language comes close to ascribing power to the state in the abstract when he writes that 'And as for Civill Law, it addeth only the name of the person commanding, which is *Persona Civitatis*, the Person of the Common-wealth.' (Hobbes, 2017, p.217) But almost immediately he explains that '[...] the Common-wealth is no Person, nor has capacity to do any thing, but by representative, (that is, the Sovereign;) and therefore the Sovereign is the sole legislator.' (Hobbes, 2017, p.218) Later in *Leviathan* Hobbes again speaks in a way that encourages the sense that the state itself has a kind of life. In chapter 44 he describes the law as '[...] the Will and Appetite of the State [...]' (Hobbes, 2017, p.568-9) But there is still no positive assertion of the claim that the state has agency beyond that exercised on its behalf by an exclusive and exhaustive sovereign.

On the very first page *Leviathan* Hobbes had declared that 'the *Sovereignty* is an Artificiall *Soul*, as giving life and motion to the whole body [of the state].' (Hobbes, 2017, p.7) One natural reading here is that the sovereign is part of the state, inasmuch as the soul is part of the living body, and so we can say that Hobbes does locate sovereignty in the state, and identifies it with the state, to the extent that we identify the soul and the flesh and blood to which the soul gives life and motion. The elision of sovereign and state is perhaps deliberate. Hobbes after all speaks of the state as a '*Mortall God*, to which we owe under the *Immortall God*, our peace and defence.' (Hobbes, 2017, p.140) And the impression that his ambition in *Leviathan* is partly theological is reinforced by his claim in the introduction to *Leviathan* that '[...] the *Pacts and Covenants*, by which the parts of the Body Politique were at first made, set together, and united, resemble that *Fiat*, or the *Let us make man*, pronounced by God in the Creation.' (Hobbes, 2017, p.8) The threefold unity of multitude, *civitas* and sovereign would have been familiar with readers steeped in trinitarian Christianity and Hobbes would not have been disappointed if his fiction inspired a religious awe in those it was intended to bind to a civil peace. Hobbes invoked a mortal god and we should not be surprised that we have come to ascribe to it a power it cannot have, and have come to be ruled by our faith, which is to say, by our opinion.

There is a danger of mystification here. In *The Handover: How We Gave Control of Our Lives to Corporations, States and AIs* David Runciman (2023, p.23) tells us that ‘[...] the state is an artificial agent. It exists to act in the world.’ He goes on to explain that ‘It is because of this ability to act in its own right that Hobbes called the state an ‘artificial person’. Its superpower is superagency.’ In a similar register Philip Pettit writes in *On the People’s Terms* that ‘The State is an agent or agency that espouses any of a variety of purposes and pursues those purposes according to reliably maintained representations of the opportunities and means at its disposal.’ (Pettit, 2012, p.133) But as Pierre Bourdieu (2020, p.95) points out, ‘[...] you will see, in books with a “theoretical pretension”, that a fantastic number of sentences have the state as their subject. This kind of hypostatizing of the word “state” is everyday theology.’ And this is hardly surprising if, as Schmitt claims, ‘All significant concepts of the modern theory of the state are secularized theological concepts [...]’ (Schmitt, 2005, p.36)

Setting aside Hobbes’ rhetorical tactics, we must always bear in mind that sovereignty, agency itself, belongs only to living and breathing persons. However useful the figure of the mortal god might be in maintaining a general truce, it can never be more than a figment of words. When we talk about reason of state, we are talking about the calculations of nameable individuals and identifiable groups. When we talk about such apparently foundational and durable concepts as ‘public debt’, in which Skinner (2018b) sees the state taking on obligations that persist long after the representatives responsible have left the scene, we are still talking about a contrivance of persons. A great solemnity of learned foolishness surrounds discussions of the currency. But ministers and officials can dispense with the gold standard, or autophagise government spending through quantitative easing at a moment’s notice, immemorial undertakings notwithstanding.

The word *civitas* can be a little confusing in this context. Medieval Italian jurists had been moved by their circumstances to develop a sophisticated account of the relationship between the Holy Roman Emperors and cities like Florence and Perugia, leading to Bartolus’ famous claim that *civitas sibi princeps*. (Kirshner, 1973, p.711) This is often given an impersonal gloss by being translated as ‘the city is its own emperor.’ (Köpke, 2021, p.126) But *civitas* does not usually mean ‘city’. In classical Latin it means citizenship and so, by metaphor, ‘the citizens united in a community, the body politic, the state.’ It is only rarely used to refer to the city ‘as a collection of houses.’ (Smith, 1933, p.116) In medieval legal Latin, much as in classical Latin, it means a multitude or collection of people, living under the law: *civitas est hominum multitudo seu collectio ad iure vivendum*. (A phrase attributed to Giovanni Bassiano and found in Azo’s *Summa in Pandectas*. See the discussion in Kirshner, 1973, p.700) As such, according to Bartolus a *civitas* is a kind of *universitas*, and like all *universitates* it has a dual nature.

(Skinner, 2018a, p.30) It is both a collection of living, breathing human beings and a *persona representata*, which cannot be reduced to its members.¹² (Skinner, 2018a, p.28-29) After all, Bartolus argues, ‘even if all the scholars leave and are replaced by others, the university remains the same, just as when all those who make up a people die and are replaced by others, it remains the same people.’ (Quoted in Skinner, 2018a, p.29)

The *civitas* as a *persona representata* could only act because human beings acted on its behalf. In the context of Italy’s oligarchic city republics, this often meant that magistrates represented the citizen bodies that they ruled and administered. But the citizens who constitute the *civitas* at a given moment might also be capable of acting on their own behalf and as representatives of what Magnus Ryan has called ‘the city taken as an abstraction’. (Ryan, 2000, p.83) At moments of election or popular legislation in republican Rome the *civitas* would be both an assembly of embodied citizens acting in accordance with agreed procedures, and the single, fictitious, person that they represented.

We should bear in mind that many of the extant authorities on republican government from Cicero onwards were partisans for aristocratic rule. The idea that an officeholder ‘bears the person’¹³ of the state would have been very appealing to Roman magistrates and Florentine *grandi*, just as it no doubt is to elected representatives today. But we don’t really know the extent to which the citizens of the Renaissance city-states, like the citizens of the Roman Republic, accepted this characterisation uncritically. Nor do we know to what extent they conceived of themselves a body politic in and of themselves, in a way that did not rely on representation by office holders but expressed itself through a general assembly under the law, and in sight of the gods (or God).

Each instance of popular assembly was a collection of natural persons who claimed to act as the representative of the *civitas*. Such an assembly might have *felt* like the body politic entire. It is hard to imagine the intensities of feeling, the vivid sense of living in historical time, that these events would have generated. And yet even as they acted, citizens would have known that they were not quite the *civitas* complete. Those who were there would have known citizens in good standing whose private business or public service kept them from attending. The sense that the *universi* — all of us here — were not the same as the *universitas* would have been reinforced by the religious content of proceedings, and by the display of masks (*imagines*) to represent illustrious ancestors at public

¹² Notably, Bartolus writes in the same work that the *universitas* both represents *unam personam* and is itself a *persona representata*. (Skinner, 2018a, p.29)

¹³ In Latin ‘wears the mask’, *gerit personam*.

funerals and in the entrance halls of aristocratic houses. (See Flower, 1998, p.65-9; Polybius, 2010, p.409-10) The civic afterlife of the dead through the *imagines* in particular would have reminded the citizenry of the gap between *universi* and *universitas*, even as it seemed to bridge it.¹⁴

Hobbes' account in *Leviathan* does break with standard assumptions in treating sovereignty as a purely political phenomenon, and defining it strictly in terms of its relationship to the state. As noted in Chapter One, earlier English usage had used the term more broadly. Part of Hobbes' radicalism lies in his attempt to concentrate and unify supreme power, and to strip away all other independent claims to rightful authority. If civil discord is to be avoided everyone had to be made equal through their subjection to an all-powerful and unitary sovereign, and any subsidiary authority they held would derive from this unitary sovereign, and could be revoked by sovereign *fiat*. (Hobbes, 2017, p.147, p.149) The sovereign was to have no analogue, in nature or in heaven.

2.4 The Rights and Duties of the Sovereign in Hobbes

Contemporary scholarship tends to focus on Hobbes's account of the state, rather than of the sovereign. As Russell Hardin (1991, p.157) has pointed out, Hobbes' 'discussion is more or less equally about the creation and maintenance of sovereign government. His overriding actual concern was surely the maintenance of sovereign government in the face of revolutionary fervor and turmoil. But his discussion of creation has provoked more commentary by far.' More recently the distinction between the state as 'purely artificial person' (Skinner, 1999, p.19) and as 'person by fiction' (Runciman, 2000, p.268) has loomed large in debates about Hobbes' civil science and its continuing relevance. The treatment of this subject in *Leviathan* is complicated, and even contradictory, in itself, and made more so when one tries to reconcile it with what Hobbes writes in *De Cive* and in the Latin version of *Leviathan*. What is clear is that Hobbes is determined to establish that the state is only ever one thing. There might be different regimes — monarchy, aristocracy, or democracy, depending on who holds sovereignty — but the state is the same in all instances. It might well be the case that Hobbes' emphasis on the impersonal nature of the state — his abstraction from multitude to *civitas* — forms part of the genealogy of the contemporary state form. (Hont, 2005) It plausibly helps concepts like 'civil service' to take their place in the apparatus of social organisation that constitutes our politics, for example. But it might also be true that Hobbes' account of what is required for the 'maintenance of sovereign government' (Hardin, 1991, p.157)

¹⁴ To borrow some jargon prematurely from the next chapter, we should take care to distinguish between the plural subject of the sovereign and its social object, the state.

now has more to tell us than his account of its origins, about both the content of our politics, and about how we might think of political change.

When Hobbes sets out to enumerate ‘the Rights of Sovereignes by Institution’ in Chapter 18 of the *Leviathan* he begins with an extended discussion of the claims that the supreme political authority can rightfully make against its subjects. These are, in Hobbes view, entailed by the covenant that establishes a sovereign and so secures a general truce. It is only after this preamble that Hobbes turns to the sovereign’s rightful sphere of action; what the sovereign can, and must, insist on doing. Here he begins by declaring that ‘because the End of this Institution is the Peace and Defence of them all’ the sovereign has the right ‘to be Judge both of the meanes of Peace and Defence; and also of the hindrances, and disturbances of the same; and to do whatsoever he shall think necessary to be done, both before hand, for the preserving of Peace and Security, by Prevention of Discord at home, and Hostility from abroad; and, when Peace and Security are lost, for the recovery of the same.’ (Hobbes, 2017, p.145)

Hobbes does not begin his discussion of ‘the meanes of Peace and Defence’ with the obvious sources of martial power: money and soldiers. He begins instead with the sovereign’s right ‘to be Judge of what Opinions and Doctrines are averse, and what conducing to Peace; and consequently, on what occasions, how farre, and what, men are to be trusted withall, in speaking to Multitudes of people; and who shall examine the Doctrines of all books before they be published.’ The crucial point follows: ‘For the Actions of men proceed from their Opinions; and in the wel governing of mens Opinions, consisteth the well governing of mens Actions, in order to their peace and concord.’ (ibid.) Civil peace is only possible if the subjects’ opinions are governed by the sovereign power.

For Hobbes the oversight of doctrines, and hence of opinions in this broad sense, is absolutely fundamental to the practice of rule. At the end of Chapter 18 he reinforces the point when he comes to discuss the distinction between separable and inseparable powers. There are some things that the sovereign can entrust to others. But others must be retained as the sole preserve of sovereignty:

The Power to coyn Mony; to dispose of the estate and persons of Infant heires; to have praeemption in Markets; and all other Statute Praerogatives, may be transferred by the Sovereign; and yet the Power to protect his Subjects be retained. But if he transferre the

Militia, he retains the Judicature in vain, for want of execution of the Lawes: Or if he grant away the Power of raising Mony; the *Militia* is in vain: or if he give away the government of Doctrines, men will be frighted into rebellion with the fear of Spirits. (Hobbes, 2017, p.148)

The 'government of Doctrines' features in Hobbes' argument as the culminating example of an 'incommunicable, and inseparable' right. Along with the ability to raise money and to enforce the laws, it constitutes 'the Essence of Sovereignty'. (Hobbes, 2017, p.148) Absent any one of these three, 'the holding of all the rest, will produce no effect, in the conservation of peace and justice, the end for which all Common-wealths are Instituted.' (Hobbes, 2017, p.148) The sovereign's right to govern opinion is both *alpha* and *omega* in Hobbes' account of sovereign right. And it cannot be otherwise if, as Hobbes himself says, 'Reputation of power, is Power.' (Hobbes, 2017, p.70)

It is not at all surprising that for Hobbes sovereignty is inextricably tied up with opinion formation, since it is opinion that ultimately determines our actions. In *The Elements of Law* he had written that:

Forasmuch as will to do is appetite, and will to omit, fear; the causes of appetite and of fear are the causes also of our will. But the propounding of benefits and harms, that is to say, of reward and punishment, is the cause of our appetite and of our fears, and therefore also of our wills, so far forth as we believe that such rewards and benefits, as are propounded, shall arrive to us. And consequently, our wills follow our opinions, as our actions follow our wills. In which sense they say truly and properly that say the world is governed by opinion. (Hobbes, 1994, p.72)

The formation of our opinions about benefits and harms is prior to, and causative of, our wills, and hence of our actions. If the sovereign intervenes to shape our beliefs concerning the benefits and harms attached to different courses of action, we remain free in his definition, since to be free is to be unimpeded in actions that we can do, and 'have a will' to do: '[...] a FREE-MAN is he, that in those things, which by his strength and wit he is able to do, is not hindered to doe *what he has a will to do.*' (Hobbes, 2017, p.171, emphasis added) Without will there is no movement and without movement there is no restraint, and no abridgement of freedom: 'that which is not subject to movement is not subject to impediment.' (Hobbes, 2017, p.172) This is at the very heart of Hobbes' project to divorce the concepts of liberty and sovereignty, and thereby establish a kind of regime agnosticism.

When Hobbes discusses punishments in Chapter 28 of *Leviathan*, he similarly explains that they are all 'ordained ... to the forming of mens wils to the observation of the Law.' (Hobbes, 2017, p.260). It is through the operations of opinion that punishments work their effects on conduct. In *The Elements of Law* he had clarified how rewards and punishments shaped opinions and hence actions. After arguing that it 'is the general law for sovereigns; that they procure, to the uttermost of their endeavour, the good of the people' he explains that this consists in 'the establishing of all such doctrines and rules, and the commanding of all such actions, as in their conscience they believe to be the true way thereunto.' (Hobbes, 1994, p.173) A ruler who can credibly attach penalties and rewards to certain behaviours will thereby shape first our opinions and then our actions. This is the marvel of subjection in *Leviathan*: the sovereign makes our desires consistent with the needs of civil peace without abridgement of our freedom.

It is the effect of the prospect of punishment on the opinions, and hence the desires and actions, of those who are not necessarily being punished that matters. In Chapter 30 of *Leviathan* Hobbes stresses that 'terroure of legal punishment' must be supplemented by the teaching of the 'grounds, and reasons' (Hobbes, 2017, p.276) of the sovereign's rights. But we should not narrow our understanding of the government of opinion in Hobbes to education as such. The scaffold and the stocks also serve as important media of communication. Through them subjects come to believe that particular actions, and particular failures to act, bring about particular harms. The amendment of our opinions amends our appetites, and so our wills, since 'the last Appetite in Deliberation, is called the Will.' (Hobbes, 2017, p.53) We do not wish to do what we might otherwise have done.

In Chapter 30 Hobbes turns to 'the OFFICE of the Sovereign', which is 'the procuration of the safety of the people.' (Hobbes, 2017, p.275) Once again the matter of opinion is central to his concerns. He tells us that if 'the essential rights of Sovereignty' are divided or alienated, 'the Common-wealth is thereby dissolved, and every man returneth into the condition, and calamity of a warre with every other man.' (Hobbes, 2017, p.276) It is therefore against the office (in the sense of duty, or responsibility) of the Sovereign, says Hobbes, to do two things. The first of these is 'to transferre to another' any of these 'essential Rights'. These essential rights are familiar to us from Chapter Eighteen: the sovereign must assert their supremacy over the laws, their right to make war and peace, to raise money and soldiers, and to appoint ministers. At the end of the list of essential

rights of sovereignty he adds the power 'of appointing Teachers, and examining what Doctrines are conformable, or contrary to the Defence, Peace and Good of the people.' (Hobbes, 2017, p.276)

The second thing that the sovereign must not do, on pain of losing sovereignty, is 'to let the people be ignorant, or misinformed of the grounds, and reasons of those his essentiall Rights; because thereby men are easie to be seduced, and drawn to resist him, when the Common-wealth shall require their use and exercise.' (ibid.) The message could not be clearer: hand over to others the power to govern opinion and you are no longer sovereign; neglect to use this power to establish a permanent programme of indoctrination and you will not be sovereign long. We should note the structure of what is being said here. It is not only that the government of doctrines is one of the 'essentiall' rights of the sovereign, which must be kept 'incommunicable, and inseparable'; the neglect of this particular right is one of the two things that are contrary to the duty of the sovereign. Hobbes is going out of his way to confer equal weight on this one 'essentiall' right, as compared with all the whole body of these 'essentially rights' combined.

In what follows Hobbes tries to establish that there are 'Principles of Reason' that underpin stable constitutional orders and that the 'Common people' can 'be made to understand' these Principles of Reason. He goes on to 'descend to particulars' and sets out the substance of this civic education. Notably, the People are to be taught that their happiness depends not on the particular form of government to which they are subject, but on 'the Obedience and Concord of the Subjects.'. They are therefore to be taught not to grant anyone else honours that belong to the sovereign and not to speak ill of the sovereign. They are also to be given a recognisably Christian programme of ethical instruction. And they are to be convened regularly to learn these lessons, and to hear 'the Positive Lawes, such as generally concern them all.' (Hobbes, 2017, p.277-83) Regular exercises in collective political education are to serve as another medium of communication for the sovereign.

Hobbes then turns to 'the Means, and Conduits' by which these 'particulars' will reach the common people. Reflecting on how false doctrines had embedded themselves in England in the years before the Civil War, Hobbes sets out a brief political sociology of knowledge. Most men are too busy working to attend to questions of 'Naturall Justice'. Most of those who don't need to work are too busy amusing themselves to engage in 'deep meditation'. So 'the greatest part of Man-kind ... receive their Notions of their duty, chiefly from the Divines in the Pulpit, and partly from such of

their Neighbours, or familiar acquaintance, as having the Faculty of discoursing readily, and plausibly, seem wiser and better learned in cases of Law, and Conscience than themselves.' The priests and everyone else who seems 'wiser and better learned' derive their knowledge and authority 'from the Universities, and from the Schooles of Law, or from the Books, which by men eminent in those Schooles, and Universities have been published.' From this it follows that 'the Instruction of the people, dependeth wholly, on the right teaching of Youth in the Universities.' (Hobbes, 2017, p.283) 'Notions of their duty' flow from Oxford and Cambridge to both labourers and the idle rich. And so when Hobbes discusses the practical implications of his philosophy in *Leviathan* his sole concrete policy proposal is to recommend that the book be taught in the universities. (Hobbes, 2017, p.597; see also the discussion in Bejan, 2010)

Even at the core of Hobbes' 'true philosophy', in the notion of covenant, there is no escaping the operations of opinion. Mere victory does not confer 'the right of dominion' on a conqueror. Only the agreement of the defeated can do so: 'It is not therefore the Victory, that giveth the right of Dominion over the Vanquished, but his own Covenant.' (Hobbes, 2017, p.166) In the 'Review and Conclusion' of *Leviathan* Hobbes reiterates that sovereignty, whether by acquisition or institution, can only ever be established by the promise of its subjects. Until a defeated people agree to submit, there is no sovereign, only an enemy: 'he that upon promise of Obedience, hath his Life and Liberty allowed him, is then Conquered, and a Subject; and not before.' (Hobbes, 2017, p.590) As Kinch Hoekstra points out, 'though he strives to minimize its role, Hobbes must recognize that private judgment is ineliminable. The very feet of his great Leviathan are of mortal clay.' (Hoekstra, 2001, p.438) It is hard to escape the force of Stephen Holmes claim that in Hobbes the 'ultimate source of political authority is not coercion of the body, but captivation of the mind.' (Quoted in Abizadeh, 2013, p.116)

Throughout *Leviathan* Hobbes is interested in the regulation of opinion, rather than of knowledge. Sovereigns cannot overwrite the pages of 'true philosophy'. But they can determine who is to be permitted to propound it, when, and how: 'disobedience may lawfully be punished in them, that against the Laws teach even true philosophy.' (Hobbes, 2017, p.574) A handful might be able to discover the axioms of this civil science independently, as Hobbes had. But for everyone else it is for the sovereign to determine who believes what, and to what extent. Again, note what this implies. Monarchies and aristocracies can treat this fundamental aspect of the civil science on a need-to-

know basis and retain sovereignty. But a democracy cannot keep secrets from itself. Its democratic nature depends on a general understanding of, and participation in, the rights and offices of the sovereign. The universal right to shape social meanings is what gives a sovereign a democratic character. A mystified citizenry cannot be sovereign.

In Hobbes' discussion of rewards and punishments he is less interested in providing subjects with an accurate sense of how likely they are to be punished than he is in conforming their opinions, and thence their appetites, and thence their actions, to the needs of the social order. To borrow a distinction from *The Elements of Law* (Hobbes, 1994, p.73), we do not *learn* from a body in a gibbet, but we are *persuaded*. The implication, left unsaid, does seem to be that the sovereign can rightfully propound false doctrines, if doing so is necessary for the general peace. After all, it is the sovereign's right to 'do whatsoever he shall think necessary to be done' in order to preserve 'Peace and Security'. (Hobbes, 2017, p.145) The potential exists for the sovereign to understand more, and see further, than the great majority of his subjects. It might even be necessary for a prudent ruler to ensure that this is so. Again, this points to a great difference between monarchy and aristocratic assembly on the one hand and democratic assembly on the other.

In *Behemoth* Hobbes' emphasis on opinion as the basis of rule is every bit as explicit as in *Leviathan*. One of the interlocutors there is made to say that 'the power of the mighty hath no foundation but in the opinion and belief of the people.' (Hobbes, 1899, p.16) Hobbes here is keen to establish the primacy of opinion formation over military power: 'For if men know not their duty, what is there that can force them to obey the laws? An army, you will say. But what shall force the army? Were not the trained bands an army? Were they not the janissaries, that not very long ago slew Osman in his own palace at Constantinople?' (Hobbes, 1899, p.59) From this both speakers conclude that, once the universities are brought into line with the needs of a 'lasting peace', every rank in society will be made safe, and by the same combination of religious and secular authority described in *Leviathan*: '[...] men may be brought to a love of obedience by preachers and gentlemen that imbibe good principles in their youth at the Universities [...]' (Hobbes, 1899, p.59)

2.5 Hobbes and the Contemporary State Form

It is instructive to consider the modern state form in the light of Hobbes' remarks on the government of doctrines and the other essential rights of the Sovereign. Those who preside over the

modern state still aspire to maintain a monopoly on the legitimate use of violence. But they have transferred the right to raise money to private institutions that enjoy an amphibious status through the participation of their once and future employees in the governance of the central banks, and through their role as indispensable auxiliaries to the state. It is a commonplace for contemporary politicians to declare that this or that desirable social programme is impossible because as the British Labour MP Lucy Powell put it in July 2023: ‘to coin a phrase, there just, frankly, is no money left.’ (Morrison, 2023) The ability to raise money was a sovereign prerogative in the Hobbesian state and has become an uncertain outcome of the sentiments of actors in the private economy, referred to in appropriately impersonal terms as ‘the financial market’. The elected officers of the contemporary state appear helpless when presented with the threats and demands of these ‘markets’. This prompts a kind of grim hilarity when we learn that actions to preserve us from ecological collapse cannot be implemented because they might undermine the confidence of the traders in government debt.

But the crucial dereliction of duty of officeholders from a Hobbesian perspective is their formal and avowed abstention from the government of doctrines. After all it is their decision to leave the generally accepted account of money and finance in the hands of private institutions that permits the private control of money to become naturalised in the minds of those subject to it. And across the social field the doctrine of a free press permits another, related, group of private individuals an enormous freedom to control the processes through which opinions shape desires, and desires play out as actions. They aspire to act as arbiters of both the ends we desire, and the means through which we seek those ends. Indeed, it is the scale and significance of their aspiration, and their demonstrable, albeit obscure successes, that prompt the move to separate sovereignty from the state in our conception. There is no coherent way to describe the contemporary state’s officeholders as sovereign in Hobbes’ sense, unless we redraw the limits of the state to encompass their collaboration with nominally private magnates. Those who own and manage large media and financial enterprises have captured for themselves powers that belong to the Hobbesian sovereign. This is true even, or especially, in jurisdictions that enjoy titanic power relative to others. But to repeat, and as Hobbes is at pains to stress, it is the ‘government of doctrines’ that is the keystone of this actually existing sovereignty.

The scope for formal civic participation has expanded since Hobbes was writing. Almost all the adult population in Anglophone countries can vote for the members of the legislative assembly, for example. This is the substance of what we sometimes called popular sovereignty, more often ‘representative democracy’. For the most part we vote freely, in the sense that we are not hindered in

placing our mark on the ballot paper where we have a will. But the act of voting takes place at the end of a chain of deliberation that begins elsewhere, into which we have little individual insight, and over which we exercise no collective control. National elections are the outcome of a government of doctrines that is no less decisive for being unmentioned, indeed is decisive because it is unmentioned. If we are interested in 'state sovereignty' we have to concern ourselves with the actors that compete and collaborate to shape the distribution of opinions that precede, and determine, electoral outcomes.

On the face of it Hobbes seems like an unlikely inspiration for the contemporary condition. Where he had argued for the explicit and centralised control of opinions by an activist state we have instead a maddening terrain of unacknowledged and uncertainly successful attempts to shape the opinions of citizens in order to guide their actions and reconcile them to conditions, and a regime of rule, that they at best dimly understand. But there are grounds for believing that Hobbes plays a crucial role in the creation of this regime of rule. As we noted earlier Hobbes made his point about the supremacy of opinion over military force in *Behemoth* with a reference to the janissaries, slave-soldiers of the Ottoman emperors. (Hobbes, 1899, p.59) His language is echoed suggestively in the work of a very different philosopher.

In one of the last detailed discussions of the relationship between state power and opinion formation in canonical English language philosophy David Hume famously wrote that 'as Force is always on the side of the governed, the governors have nothing to support them but opinion. It is, therefore, on opinion only that government is founded.' (Hume, 2008, p.24) As we have already seen, the notion that the world is governed by opinion was a commonplace a century before Hume was writing. (Hobbes, 1994, p.72:) But the essay moves on from a restatement of this 'well-traveled dictum' (Gunn, 1989, p.248) to make a subtler point. Hume writes that this maxim 'extends to the most despotic and most military governments, as well as to the most free and most popular.' He then illustrates the point with a couple of historical examples:

The soldan of EGYPT, or the emperor of ROME, might drive his harmless subjects, like brute beasts, against their sentiments and inclination. But he must, at least, have led his *mamalukes* or *praetorian bands*, like men, by their opinion. (Hume, 1996, p.25)

Here the phrasing is inescapably similar to that of Hobbes in *Behemoth*. Hobbes' 'trained bands' is partially repeated in Hume's 'praetorian bands.' That might be a coincidence, but Hume's other example, 'mamalukes', is similar to the point of being decisive. *Mamluks*¹⁵ were slave-soldiers who served as elite troops in the Arabic-speaking empires established after the death of Muhammed. The *janissaries* that Hobbes refers to in *Behemoth* were slave-soldiers who served as elite troops in the Ottoman Empire. The Caliphs took *mamluks* as tribute from mostly Turkic-speaking regions. Enslaved at the age of thirteen and forced to convert to Islam, these *mamluks* were subject to intense indoctrination and rigorous training in *Furisiyya* (horsemanship, or chivalry). Fresh levies replaced those who died or reached pensionable age, since the children of *mamluks* were born into freedom, and were therefore not permitted to serve in the same units. At all times the *mamluks* were subject to rigid discipline and close regulation of conduct. (Stowasser, 1984) The *janissaries* were taken as children from mostly Christian tribute peoples in the Balkans, enslaved and converted by the Ottomans, and brought up in a similar programme of military and ideological indoctrination. (Benesch, 2006)

The combination of their intensive training and their status as slaves was supposed to make these soldiers safe for their rulers. If men could be made reflexively obedient through deracination and relentless discipline then the *mamluks* and the *janissaries* would have been reflexively obedient. But in both cases, as Hobbes' and Hume's readers well knew, they had rebelled, and rebelled successfully, against rulers that had sought to turn them into the perfect instruments of their power. In the case of the *mamluks* they not only replaced the Egyptian sultanate, they created an independent state that lasted for centuries. Indeed, they went on to defeat both Frankish crusaders and Mongol armies and established themselves as a front rank power in the Eastern Mediterranean.

Short of outright quotation, it is hard to see how Hume could have come closer to Hobbes in making substantially the same, far from commonplace, point: rulers who would have been bywords for absolute power had been overthrown by a relatively small number of soldiers who had been raised since childhood to be bywords for perfect loyalty. The mere existence of a militia, even a militia as objectively impressive as the *mamluks* or *janissaries*, is no guarantee of political stability. Sovereignty depends on the subjective decisions of the soldiery, no matter how much a ruler might want to instil unthinking obedience. This is the point that both Hobbes and Hume want to make. Not only does it seem that Hume had read *Behemoth*, he is seeking to make the connection, and the

¹⁵ This is the more common contemporary rendering of the Arabic word.

contribution Hobbes is making to his argument, explicit to his intended readership, at least some of whom who would have been familiar with the earlier work.

Hume is not simply reprising Hobbes. Hobbes believed that civic and military obedience could be ensured through centralised control of the ‘government of doctrines’ by an undivided and properly attentive sovereign. Opinion formation could, and should, be monopolised. Hume is apparently more circumspect. Soldiers, he points out, must be led ‘like men, by their opinion.’ And there are two kinds of opinion: ‘opinion of INTEREST, and opinion of RIGHT’. The first is a combination of ‘the sense of general advantage which is reaped from government’ and ‘the persuasion, that the particular government which is established is equally advantageous with any other that could easily be settled.’ (Hume, 1996, p.25)

Hume does not elaborate on the form that this ‘persuasion’ takes, or specify who might be doing the persuading. But later in the same essay he refers to the rulers’ ‘separate influence over the opinion of mankind’, by which he means influence distinct from the promise or prospect of rewards to individuals. (Hume, 1996, p.26) Opinion, insofar as it concerns ‘public justice’, is not solely generated by subjects according to their own experience and self-interested calculations; the rulers have some degree of ‘influence’ on the form it takes in the ruled. The ‘opinion of INTEREST’ that contributes to the stability of government derives in part from autonomous assessment of, and reflection on, the circumstances in which the citizenry find themselves, and in part from the ‘persuasion’ of rulers, from elite indoctrination in other words.

The other kind of opinion that acts as a support for government, ‘opinion of RIGHT’, includes both opinion of ‘right to POWER’ and opinion of ‘right to PROPERTY.’ (Hume, 1996, p.25) As concerns the first, whatever has been established, especially if it has been long established, tends to recommend itself through the bare fact of its existence. This, Hume tells us, ‘may be easily understood, by observing the attachment which all nations have to their ancient government, and even to those names which have had the sanction of antiquity.’ Hume goes on to say that for this reason people will be ‘prodigal both of blood and treasure in the maintenance of public justice.’ (ibid.)¹⁶ The final element of ‘opinion of RIGHT’ is the opinion of ‘right to PROPERTY.’ Here Hume has little to add, since ‘it is sufficiently understood that the opinion of right to property is of moment in all matters of government.’ (ibid.) He doesn’t think that ‘property is the foundation

¹⁶ There is a suggestive resemblance between Hume’s remarks on our tendency to favour the familiar and long-established over the novel and untried and his comments on induction.

of all government' since that would be 'carrying the matter too far.' But he acknowledges that it 'has a great influence in this subject.' (ibid.)

In *A Treatise of Human Nature* Hume fleshes out the account in 'On the First Principles of Government'. Explicitly rejecting the Hobbesian state of nature (1969, p.450), he sets out to explain how a limited sociability, rooted in narrow self-interest, can generate the conditions of first social and then political life. The account is allusive and reticent, as though Hume is reluctant to spell out the full implications of the story he is telling. But it is clear that, here too, top down persuasion has a role in stabilising political organisation. When explaining the process by which convention and education embed and naturalise the artificial virtue of justice, he explains:

Tho' this progress of the sentiments be natural, and even necessary, tis certain, that it is here forwarded by the artifice of politicians, who, in order to govern men more easily, and preserve peace in human society, have endeavour'd to produce an esteem for justice, and an abhorrence of injustice. (Hume, 1969, p.551)

Political scheming can only go so far: 'the utmost politicians can perform, is, to extend the natural sentiments beyond their original bounds' (Hume, 1969, p.551) But this is by no means an insignificant power and it contributes particularly to the difference in the powers of bare 'society' and fully achieved 'government' that Hume elaborates later in the *Treatise*. While the former permits peaceful co-existence between materially poor 'American tribes' living 'in concord and amity' (Hume, 1969, p.591), the latter provides the means by which 'bridges are built, harbours open'd, ramparts raised; canals form'd; fleets equip'd; and armies disciplin'd every where, by the care of government, which, tho' compos'd of men subject to all human infirmities, becomes, by one of the finest and most subtle inventions imaginable, a composition, which is, in some measure, exempted from all these infirmities.' (Hume, 1969, p.590)

In the phrase 'the artifice of politicians' Hume is happy to store away out of sight almost all of Hobbes' 'government of doctrines.' The later thinker has no interest in setting out a programme of general indoctrination. Nor does he want to venture a theory of sovereignty as legitimate or 'rightful' state authority that would give substance to such a programme. Hume is utterly unimpressed by attempts to ground political authority on the idea of an original contract but he seems to think that no theory of sovereignty can be made intellectually respectable, even if guileful politicians might be able to give it an air of plausibility. Artifice, however salutary, is an embarrassing subject for a philosopher.

In 'Whether the British Government Inclines More to Absolute Monarchy, or to a Republic' Hume writes that 'though men be much governed by interest, yet even interest itself, and all human affairs, are entirely governed by *opinion*.' (Hume, 1994, p.119) The justification for any particular regime can only be found in the benefits it secures, *and it is understood to secure*, for its subjects. And these benefits of government are so overwhelming that the absence of a firm theoretical basis for any particular regime need not worry us in ordinary times. If the stability of rule can be enhanced by political schemers, then so be it. But notice the implication: opinion governs human affairs, and opinion is the product, at least in part, and to a limited degree, of elite artifice.

What emerges from Hume's account is a kind of mixed constitution of rule, in which interest, experience, convention, education, political artifice and custom cohere under the ultimate authority of opinion. The picture becomes clearer when he turns to his critique of original contract. Here he observes that 'no nation, that ever cou'd find any remedy, ever yet suffer'd the cruel ravages of a tyrant, or were blam'd for their resistance.' (Hume, 1969, p.603) The recognition of the right to resist tyranny is rather like the propensity to value antique politics arrangements noted in 'On the First Principles of Government' and the *Treatise* (Hume, 1969, p.607). It is so widespread as to be practically universal:

'Tis certain, therefore, that in all our notions of morals we never entertain such an absurdity as that of passive obedience, but make allowances for resistance in the more flagrant instances of tyranny and oppression. The general opinion of mankind has some authority in all cases, but in this of morals it is perfectly infallible. (Hume, 1969, p.603)

Between the overwhelming advantages of government and the ineradicable right to resist there is ample space for political society to realise itself. But everything ultimately rests on the outcome of an uncertain, emphatically not unitary, process, in which 'the artifice of politicians' combines with the their subjects' self-interested reasoning and experience to create 'the general opinion of mankind.' Whether political authority is justified depends on this general opinion. Indeed whether political authority, even at its most despotic, exists at all rests on the same foundation. There is no need in Hume's system for Hobbes' marmoreal contraption, union through covenant, except insofar as politicians might find it useful for their purposes.

A generation after the publication of Hume's *Treatise*, Adam Smith was preparing the text of *The Wealth of Nations*. In an early draft Smith provides us with some telling insights into the way he

thought that opinion and opinion formation function in commercial society. Smith argues that the very different characters of people occupied in different trades is ‘not so much the cause as the consequence of the division of labour.’ Young children are ‘pretty much alike’ but after the age of about five or six ‘they come to be employed in very different occupations.’ As a result by the time they reach adulthood a philosopher and a ‘Common Porter’ will come to seem so different that ‘the vanity of the philosopher is scarce willing to acknowledge any resemblance.’ (Scott, 1937, p.341-2) Given this extreme divergence in ‘habit custom and education’ (ibid.), it is hardly surprising that ‘[i]n opulent and commercial societies to think or to reason comes to be, like every other employment, a particular business, which is carried out by a very few people, who furnish the public with all the thought and reason possessed by the vast multitudes that labour.’ (Scott, 1937, p.344-5. See also the discussion in Outram, 2005)

He goes on to say that only a very little of what an ‘ordinary person’ thinks and knows is the result of their own ‘observations and reflections:

All the rest has been purchased, in the same manner as his shoes or stockings, from those whose business it is to make up and prepare for the market that particular species of goods. It is in this manner that he has acquired all his general ideas concerning the great subjects of Religion, morals and government, concerning his own happiness or that of his country. (ibid.)

The passage quoted seems to respond directly to, even rebuke, a passage in the *Treatise* in which Hume claims ‘the skin, pores, muscles, and nerves of a day-labourer are different from those of a man of quality.’ (Hume, 1969, p.450) There is also perhaps a faint echo of Hobbes’ sociology of knowledge at work. (Hobbes, 2017, p.283). The labouring many cannot themselves engage in ‘deep meditation’ and so are reliant on a learned few. But the difference from Hobbes’ account in *Leviathan* is very stark. Hobbes had placed the organisation of opinion at the centre of his account of sovereignty in action. Even Hume had granted the artifice of politicians some limited role in shaping the opinions of those they rule. Now Smith treats opinion formation, even as it pertains to ‘morals and government’, as a ‘particular business’ in which an ordinary person acquires ‘almost everything he knows ... in the same manner as his shoes or stockings.’ (Scott, 1937, p.344-5)

Smith decided against including his remarks on opinion in the published version of *The Wealth of Nations*. Just as Hobbes’ sovereign power of raising money had been transferred to the Bank of England and its private investors, his ‘government of doctrines’ had been transferred to profit-

seeking traders in thought and opinion. And far from occupying a central position in our understanding of sovereignty, as it does in Hobbes 'civil science', after Smith it vanishes almost entirely from political philosophy.

2.6 Contemporary Sovereignty

We have outsourced key aspects of Hobbesian state-sovereignty. Most notably we have handed the effective control of money creation and of the major avenues of communication to wealthy magnates who sit outside the formal apparatus of, and loudly assert their independence from, the state. These magnates exercise enormous power over the ways in which the present is described and understood, and enjoy a corresponding power to shape the course of events. In the explicative sense that we are fleshing out, sovereignty can never be the possession of a state. But we should note how much of what Hobbes thought belonged to his sovereign is no longer understood in general discussion of the political as the concern of office holders in the formal apparatus of the state.

If we do not exercise the kind of control over our information environment that Hobbes describes as essential to the rights, and central to the offices, of the sovereign, we become intensely vulnerable to a kind of cognitive subordination. Our desires can become disordered by the promotion of outright untruths or through the suppression of relevant truths. Information that could have changed our opinions, and thereby change our desires, and thence our actions, can be kept from us, or artfully undermined. (Michaels, 2008; Oreskes and Conway, 2012) And we can be drawn towards actions we would not otherwise have chosen through rhetorical techniques that build subjectivities through the use of visual as well as verbal cues. (Wimberley, 2022) If this seems unlikely we need only consider how many people have been induced to convert their health into corporate profit by images of James Dean or the Marlboro Man. Indeed the regularities of social life themselves constitute a kind of instruction. Calendars, timetables, contracts of employment, all contribute to some forms of subjectivity and raise the costs of others. Generations of republican agitators have worried in particular about the ways in which inequalities of power in the workplace might affect the character and capacity of workers. (White, 2011; Sandel, 1995) The 'servility' that haunts republicans does not have to be consciously chosen by its victims: it might emerge as an apparently natural, even desirable, form of subjectivity in conditions in which domination runs rampant. The evidence suggests that it is plausible, even likely, that some kind of surreptitious 'government of doctrines' is in place. We can say for sure that many of us believe many things that are not true. (For evidence of widespread errors and gaps in the public's knowledge of politics, see Schudson, 2000:

Gilens, 2001: Paige, 2013: Brennan, 2016) And we can also say that massive sums of money are spent on efforts to shape our beliefs for instrumental reasons. (Carey, 1995: Stauber and Rampton, 2004: Lewis, 2013: Cave and Rowell, 2014: Mayer, 2016) Meanwhile the great majority of us have no purchase on either the medium of exchange or the media of communication. Indeed, the idea that money creation via the banking system and opinion formation via the media are core concerns of sovereignty would strike many of us as a kind of category error: money belongs in the realm of the economic, the media in the realm of civil society. To put things as soberly as possible, the current distribution of Hobbesian sovereignty makes possible the partial organisation of popular opinions, desires and actions by means that might not be generally understood and are certainly not widely discussed.

The dread that emerges is that, as things stand, we are the victims of hidden despots, who, by controlling the terrain of opinion are able to shape what we desire, and so determine our actions in ways that strike at the heart of what it is to be a person. These hidden dominators might be malicious or, more likely perhaps, they might simply want to render us into instruments for the prosecution of their own projects. At any event, as long as we are in their coils we are unable to form life purposes or even build a self that is truly our own. Once the work of subject and context formation is complete, any amount of freedom of action, of thought, or expression will become evacuated of content as freedom. We will be negotiating a habitat designed by someone else, using cognitive resources derived from elsewhere, which we are not equipped to assess independently. In such conditions our status as free subjects looks much less secure and the notion that we live in regimes characterised by ‘popular sovereignty’ starts to seem absurd.

2.7 Countering the Threat of Hidden Despotism

In one family of accounts of liberty the figure of the hidden despot holds no particular terrors. In Hobbes’ words, ‘Liberty, or Freedom, signifieth (properly) the absence of Opposition (by Opposition I mean externall Impediments of motion); and may be applied no less to Irrational and Inanimate creatures than to Rationall.’ From this it follows that ‘a FREE-MAN is he, that in those things, which by his strength and wit he is able to do, is not hindered to doe what he has a will to do.’ (Hobbes, 2017, p.171) There is no room here to worry that our freedom is compromised if we are dissuaded from doing something because we believe it to be impossible or undesirable, any more than if we are frightened into doing something else. Hobbes is explicit on this latter point: ‘Fear and

Liberty are consistent: as when a man throweth his goods into the Sea, for *feare* the ship should sink, he doth it nevertheless very willingly, and may refuse to do it if he will.' (Hobbes, 2017, p.172)

Similarly, a victim of manipulation is always free to refuse to do what the manipulator wants and will be able to do so if they have sufficient wit.

Hobbes is sometimes said to have established, or at least preempted, the modern conception of liberty. In 'Two Concepts of Liberty' Isaiah Berlin defines 'negative liberty' in this way: 'The wider the area of non-interference the wider my freedom.' According to Berlin this is 'what the classical English political philosophers meant' by freedom and he refers to *Leviathan* in a corroborating footnote. (Berlin, 1998, p.195) Quentin Skinner (2016, p.249) claims that 'Hobbes's counter-revolutionary challenge eventually won the day' and says that 'his basic line of argument' was taken up by 'David Hume, Jeremy Bentham, to some extent by John Stuart Mill, and even more closely (Berlin might have added) by Henry Sidgwick.' Philip Pettit takes a similar view, claiming that 'the notion of freedom deployed in most contemporary liberal circles is one that was shaped in the first place by the most prominent of all absolutist thinkers.' (Pettit, 2008, p.140)

A degree of caution is warranted here. Different conceptions of liberty remain in play throughout the modern era, and contemporary liberal theorists have almost always been intensely aware of the limits of a Hobbesian account of liberty as the absence of physical impediments. Judith Shklar speaks for many when she points out that 'no theory that gives public authorities the unconditional right to impose beliefs and even a vocabulary as they see fit on a citizenry can be described as even remotely liberal.' (Shklar, 1998, p.2) Nevertheless in recent years Hobbes' account has provided a useful foil for what is sometimes called the republican revival in political thought. According to the neo-republicans liberty is not the mere absence of interference but rather the absence of domination. One person dominates another when they '1. have the capacity to interfere 2. on an arbitrary basis 3. in certain choices that the other person is in a position to make.' (Pettit, 1997, p.52) I do not have to interfere in order to make you less free, I need only have the capacity to do so, and to do so arbitrarily.

Philip Pettit's work on neo-republicanism is too voluminous and too varied to epitomise here. But he is perhaps the doctrine's most influential exponent and so his claims about the nature of domination, and about the remedies for it, deserve careful consideration. In his 1997 book *Republicanism: A Theory of Freedom and Government* Pettit acknowledges that domination can take the form of 'agenda-fixing, the deceptive or non-rational shaping of people's beliefs or desires, or the

rigging of the consequences of people's actions.' (Pettit, 1997, p. 53) In other words, unlike Hobbes, Pettit recognises that the hidden dominator is a threat to individual liberty. But elsewhere in the same text he frames this threat as exceptional: '[...] domination or subjugation usually becomes a matter of common knowledge among those who are party to the relationship ... the exception will be the case where resources of covert manipulation are used to make people incapable of registering, for example, that others deprive them of certain options.' (Pettit, 1997, p.70)

This framing is unhelpful if the capacity to interfere through manipulation is as pervasive as we have good reason to suspect. We necessarily rely on intermediaries when we seek to understand the world beyond our direct experience and as it stands many of us hold wildly inaccurate beliefs about this mediated world. These inaccurate beliefs might be the result of innocent error, but they might be result of deliberate deceit. Given how devastating a successful deceiver, or more realistically, a successful group of cooperating and competing deceivers, would be to our status as free subjects, let alone to our pretensions to a share in sovereignty, it seems rash to proceed on the assumption that manipulative domination in the current context is exceptional and that domination is 'usually' a matter of common knowledge. Indeed it seems that Pettit is acknowledging an exception that annihilates his rule.

Pettit's treatment of manipulative domination has important consequences when he sets out to describe the kind of state form that would secure citizens from the domination. Pettit argues for a state in which power is divided and dispersed. He recommends bicameral legislatures and constitutional limits on the power of legislators, including the adoption of a bill of rights. (Pettit, 1997, p.181) And he recommends giving responsibility for certain policy areas and public activities to independent bodies rather than elected politicians. (Pettit, 2012, p.232) He cites as examples the British Columbia Citizens' Assembly and independent central banks and suggests 'having similar bodies make recommendations, and effectively constrain policy, on issues of energy and the environment and on matters of criminal sentencing.' (Pettit, 2012, p.233) The picture that emerges is of a highly complex arrangement of cross-cutting and mutually opposed institutions, whose complexity is part of the point. He quotes Frederic Maitland approvingly: 'The exercise of arbitrary power is least possible, not in a democracy, but in a very complicated form of government.' (Pettit, 1997, p.174) But complexity cuts both ways. It can make it more difficult for state officeholders to dominate us but it can also create new avenues for domination. Complex arrangements multiply opportunities for manipulative collusion between elite groupings if they are not accompanied by an institutional array that acts as a robust counterweight to this. Citizens' assemblies show some promise as a way to challenge collusion between elected representatives and their partners in the

media, and we shall revisit them. But independent banks provide an extremely problematic model, given their catastrophic practical failings and theoretical incoherence, as well as their role in reframing political choices as economic necessities. (Thomas, 2023: Wansleben, 2023: Leonard, 2022.)

Pettit also advocates for what he calls ‘contestability’, the principle that individuals and groups outside the state should be able to review and challenge its decisions: ‘Every interest and every idea that guides the action of a state must be open to challenge from every corner of the society; and where there is dissent, then appropriate remedies must be taken.’ (Pettit, 1997, p.56) Pettit thinks that collapsing the distinction between ruler and ruled is an unattainable ideal and that ‘the engagement that is required to make popular influence robust is rather the activity of the radical social movements that offer an account of common concerns, articulate a suite of popular demands, and challenge government for its failures to recognize or reflect those demands in its policies.’ (Pettit, 2012, p.227) In other words, the state is to be challenged from outside, by individuals and groups that have no formal standing within it, except perhaps the bare status of citizenship.

Pettit puts his trust in a lively civil society that enjoys robust constitutional protections. He does recognise significant threats to this contestatory civil society. He worries that there has been an erosion of public spaces where citizens can meet one another and maintain a realistic sense of ‘what is a matter of general belief and expectation in that society.’ (Pettit, 1997, p.167) And he worries that a marketised media system is depicting both society and public opinion in ways that are highly misleading. (Pettit, 1997, p.167-8) But his response to these threats is to suggest some policies that the state should adopt to address them, rather than a reformation of the state form as such. In my view we have policy recommendations where constitutional principles should be.

Pettit’s combination of a division of powers in government, civil rights and a contestatory civil society is not enough to remove the suspicion that we might have fallen into the hands of a hidden dominator, or a more or less coordinated group of hidden dominators. The dominator might be able flood the channels of communication with vexatious and mendacious forms of dissent. And they might be able to ensure that only disagreements that serve the interests of the regime are permitted to achieve the condition of general publicity. If they are successful the general population will be left divided, confused, and cynical about the potential for civic change through public contestation. Contestation can only do the work that Pettit assigns to it if the channels of communication are open to sincere, good faith dissenters, who really are seeking to challenge the interests of those who really do wield dominating power.

As noted, Pettit recommends some policies to address the danger that our understanding of one another and of the social order might become severely distorted. But these recommendations do not remove, even if they attenuate, the danger he describes. A pluralist media system supplemented by an independent public broadcaster (Pettit, 1997, p.168-70) might well be more difficult for an oligarchic faction to manipulate. But it would still be vulnerable to manipulation. A determined faction that was able to capture state power could use its powers of patronage to suborn the public broadcaster while offering the owners of private media every inducement to ally with them. Indeed a faction seeking to subvert the constitution and able to capture the state would, in all likelihood, do so through an alliance with these owners. If an unusually conscientious and suspicious citizen or group of citizens identified a real threat along these lines, they have no good reason to think that the ‘channels of challenge’ Pettit (2012, p.233) proposes will give them the means to trigger an effective response to it. Pettit suggests that these ‘channels of challenge’ should be created by appointment. These appointees will be addressed by individuals outside the state, who will try to persuade them that the constitution, which has served them very well, has become the plaything of a dominating power. I am inclined to the view that Pettit’s measures to address domination in general will not suffice to counter manipulative domination in particular.

We can go further. Determining exactly how the state of our beliefs, and the efforts expended to shape those beliefs, relate to one another is beyond the scope of this work. But everything we know, and everything we don’t know, should incline us to believe that it is quite unlikely that domination ‘generally’ presents itself to us transparently and intelligibly in interactions with despotic husbands, employers, teachers, prison warders and the like. (Pettit, 1997, p.57) Indeed, it is much more likely that even domination of the kind that meets Pettit’s status of common knowledge will be mixed with manipulation in ways that are necessarily opaque to the dominated. For example, abusive partners often try to persuade their victims that the abuse is somehow justified, and can be successful for quite long periods. And to speak hypothetically, if a criminal gang were to capture the ‘sovereign’ power to create money, and use it to impose debt bondage on everyone else through the inflation of land values, their domination might well not present itself as such to its victims. Indeed the racket only works if the victims misunderstand what is going on. Interference might be a matter of common knowledge but its arbitrary nature — and hence its status as domination — might well remain opaque — and hence safe from effective contestation. In such circumstances, it is reasonable to suspect that successful manipulation, far from being rare or exceptional, is a regular, even commonplace, feature of actually existing domination.

Only activity organised inside the state is plausibly equal to the threat to individual freedom and public liberty posed by highly skilled and lavishly funded factions consisting of individuals organised across supposedly distinct, and even antagonistic, domains. Consider a scenario in which the two leading political parties in a representative system collude with one another and the media to promote policies harmful to the majority. Unlikely though it sounds, it is even more unlikely that any contestatory movement in civil society will be able to challenge this dominating coalition. We should not entice individuals of modest means, special interest groups or social movements to engage in a struggle with these factions that they are almost certain to lose. Only the venues and material resources of the state are plausibly equal to the power of those who dispose of great wealth and their allies. This implies the need for new, or revived, constitutional forms that provide a venue for popular organisation within the formal apparatus of the state. One way to think of this is as a substantial de-privatisation of the Habermasian public sphere (Habermas, 1989): the cause of individual liberty calls for a reformation of the state that casts each citizen as an active superintendent over both opinion formation and the distribution of material resources through financial mediation.

Despite the relative silence that now surrounds the matter of opinion formation in political philosophy, critics of the current state form have good reason to suspect that elements within it have worked with private magnates to shape informational contexts and individual subjectivities in ways that secure a kind of occluded sovereignty over core domains of our shared life. And even if we are not personally inclined to what has been called ‘the paranoid style’ (Hofstadter, 2008) in political reasoning, we should not tolerate the debilitating possibility, however remote, that some secret coalition is managing the terrain of opinion formation in such a way as to manage our ‘beliefs or desires’, and hence direct our conduct. More to the point, we should not tolerate the much less remote possibility that someone, or group, or some ensemble of groups harbours the potential to interfere in this way. After all, as Pettit himself has argued, our proper task is to render unjustifiable impairments to our liberty ‘inaccessible’, not merely ‘improbable.’ (Pettit, 1997, p.74)

It might be objected that this fear of a surreptitious government of doctrine is overblown. Many researchers will tell us that we are far better able to assess the veracity of claims than is sometimes thought. We were not, as one example of the genre has it, ‘born yesterday.’ (Mercier, 2020) But the evidence for our innate epistemic competence, and the stories about evolved capacities that it generates, is overwhelmingly drawn from studies that tell us very little about our ability to make sense of events that take place outside our direct experience. The psychologist Hugo Mercier points out that workplace rumours tend to be extremely accurate, ‘generally above 80 percent and often

100 percent.’ (Mercier, 2020, p.149) But he also has to acknowledge that ‘[g]lobal rumors — about politicians, celebrities, major events — tend to be false [...]’ (Mercier, 2020, p.263) It may well be true that we have evolved to be sophisticated assessors of the epistemic worth of our friends, neighbours and co-workers. But this is entirely consistent with our being much less competent once we move from the close up milieu of known interlocutors and familiar patterns of self-interest to the panoramas of mediated structural description. There is ample evidence, to which Mercier refers, of a widely shared inability to make sense of the world beyond our immediate experience that should make us doubt that proficiency in everyday life tells us much about proficiency in the realm of abstraction. Indeed one of the central figures in American social science argued that ‘the sociological imagination’, the supreme virtue of the discipline, is to be found in the ability to ‘shift from one perspective to another’, from the troubles of milieu to the problems of structure. (Mills, 1959, p.211)

There remains a danger of overreach, even paranoia, in all this. We should always be wary of succumbing to something akin to what Charles Pierce called ‘paper doubts.’ (Meyers, 1967) After all, perfect knowledge is not possible, for individuals or for groups. But the question of what constitutes a paper doubt, one that we can acknowledge in our reflections but can leave unresolved, and what constitutes a substantial doubt, one that should alter our behaviour, always has to be settled somehow, and by someone. Whoever is in a position to make that determination in matters of fundamental social organisation is sovereign, and sovereign in a domain that affects the liberty of every individual within it. If I belong to a body that can render *any* suspicion that inadvertent error or deliberate manipulation is encroaching unnecessarily on individual freedom or public liberty into a matter of public concern then I belong to a body that is sovereign precisely because it can decide on the content of public concerns. The sovereign as that individual or group that establishes the meaning of the present is the final arbiter of what constitutes a meaningful or substantial threat to the freedom of its members. It is up to the sovereign to decide whether covert domination and the resulting hollowing out of popular rule has been rendered inaccessible, and there can be no outsourcing of the task.

2.8 Conclusion

Hobbes is preoccupied with the relationship between sovereignty and what we would now call information management. His sovereign is intensely interested in both the gathering of information through counsel and the organisation of opinion through the government of doctrines. The idea,

expressed in our conception, that sovereignty consists in successfully establishing the meaning of a given moment in such a way as to determine what happens next is very close to his own conception of the sovereign as the supplier of ‘right reason’, the arbiter ‘of what is to be called right, what good, what virtue, what much, what little, what *meum* and *tuum*, what a pound, a quart, etc.’ (Hobbes, 1994, p.180) The sovereign in Hobbes is also a natural person or an assembly of natural persons. Hobbes is sometimes said to be the progenitor of the idea of the impersonal state, as well as of the modern conception of liberty. But here too there are reasons to be sceptical. He is committed to the idea that the sovereign is an individual or a rule-bound collective of persons and his state looks much more like a classical body politic than does ours.

There are important differences between Hobbes’ account of sovereignty and our revised conception. Hobbes defines sovereignty in relationship to the state, and seeks to establish it as a unique and undivided agency that enjoys overwhelming supremacy over the entirety of the social field. As we have seen this is at odds both with previous uses of the term, and with contemporary reality. The idea that an impersonal state, or its representatives, or a ‘people’ governing through law, or any other formulation of state authority, exercises exclusive or conclusive control over the social field seems wildly unlikely. It is particularly implausible in the context of opinion formation, where so much of what Hobbes would consider essential to sovereignty has been put into the hands of nominally non-state actors. Rather than the austere unity of social power proposed by Hobbes in *Leviathan* we find instead an almost medieval confusion of overlapping jurisdictions.

There are two points to make before we move on. Firstly, given that opinion formation is at the core of Hobbes’ account of political authority it is striking that so little attention is paid in contemporary political philosophy and theory to the means through which opinions — and through opinions both desires and actions — are shaped in contemporary society. Both corporate and state personnel take a lively interest in this business of opinion formation. But their activities are rarely considered to be matters of *constitutional* significance in academic disciplines that concern themselves with questions of state legitimacy. The universities themselves, which functioned as the headwaters of Hobbes’ hydrology of knowledge/power, are barely discussed when we discuss the structure of the state. Even if we might occasionally notice in passing that many British politicians have been subjected to the very particular curriculum of Politics, Philosophy and Economics at Oxford, the content of this educational background, and its implications for the ruling culture, largely escape our consideration. Hobbes is widely considered to be the founder of modern political philosophy and he continues to exert an enormous influence, not least through the ancient universities that he once longed to

reform. But his remarks on the government of doctrines are no longer considered of prime importance, in spite of his own insistence on their centrality.

Hobbes' true originality might lie precisely in his account of the rights and duties of the sovereign, in which he made it clear that the government of doctrines is a matter of cardinal importance to anyone seeking to secure a conscious control over people and events. David Hume a century later registers the point as forcefully as he can. But in the years that followed the insight ceased to feature prominently in English language political philosophy. It only reemerges in academic social science in the discipline of media studies, which sits at the base of a hierarchy of prestige presided over by economics. In what we might call practical philosophy it appears under the sign of 'public relations.' But in both political philosophy and political journalism it is scarcely to be seen.

Such is this marginalisation that Martin Loughlin, described by Richard Tuck as 'the principal English constitutional theorist of our time' (Tuck, 2016, p.256), can write that '[a] blend of principle and efficacy ensures that the modern state withdraws from the region of truth and belief (matters of private conviction) to concern itself solely with questions of public conduct.' (Loughlin, 2010a, p.230) While it might be true that 'the state' does not interfere in matters of truth and belief, those who aspire to control the state from inside or out think of little else besides how they might tighten their grip on the 'government of doctrines'. Meanwhile, attempts to analyse the political power of the media and communications conglomerates, or to explore the ways in which they might be said to partake in sovereignty, are more or less inadmissible in the main circuits of publicity. No sooner had Hobbes described the monster of sovereignty than it began to sink beneath the waves.

The second point to register concerns the scope or extent of sovereignty. We have already argued that there is an analytical clarity to be gained from making a distinction between sovereignty as supremacy over a particular social field, as in our stipulative-explicative conception of the term, and sovereignty as the formal site of supreme political power in a territory. This clarity become particularly useful when we attempt to understand the contemporary state form. But there is an important similarity. In both cases we are talking about the successful exercise of what Arash Abizadeh calls 'conventional or *symbolic* power — the power that arises out of what philosophers today call collective intentionality.' (Abizadeh, 2013, p.148) Sovereignty in the conventional sense is one instance of a more general phenomenon, the way in which humans beings inscribe meaning on the world through the assertion and shared acceptance of claims. It is to this phenomenon to which we now turn.

Chapter Three: The Ontology of the State and ‘State Sovereignty’

3.1 Introduction

In Chapter One we set out a conventional account of sovereignty, centred on the concept of supreme and legitimate authority in the ‘structures’ of a territorially bounded state. We then compared this conventional account with an explicative-stipulative alternative, which understands it as the successful exercise of power in a particular context. Unlike the conventional account this alternative doesn’t attempt to locate sovereignty in an impersonal state. It is rather a feature, or possession, of natural persons. Nor is it predicated on some notion of legitimacy. In Chapter Two we contrasted sovereignty in this sense with the account of sovereignty set out in Hobbes’ *Leviathan*.

We are still some way from an understanding of what we might mean by ‘popular sovereignty’. We must now think through how our explicative-stipulative conception of sovereignty relates to the state, if the two concepts aren’t bound together in virtue of the meaning of the words, as in Hobbes. Recall that Hobbes defines the sovereign as that person who represents the state. The relationship between sovereign and state is logical in the strict sense of the word: each entails the other. But as already discussed sovereignty in the sense that interests us is not necessarily the exclusive possession of the officeholders of a contemporary state. We need to set out another way of understanding how sovereignty relates to the state. That in turn requires that we clear away some of the confusion that bedevils our understanding of social entities in general, and of the state in particular. We also need to clarify how more than one person can qualify as a sovereign in the sense that interests us, especially in relation to the state. Once we have completed this task we will be in a better position to understand threats to sovereignty in the sense outlined above, and to devise protections against them in the context of a specifically popular sovereignty, the subject of Chapter Four.

We are turning now from a reading of canonical political philosophy to draw on developments in contemporary research into the nature of the social and the dynamics of collective sense-making. In Chapter Five we will shift to a historical register to discuss the American founding before concluding the thesis with a set of proposals for reform of the British state. This mixture of registers is perhaps disconcerting. But it is to be hoped that the juxtapositions that result will bear fruit. The implications of recent findings in social ontology and social epistemology for state design are very wide-ranging and have only begun to be discussed. Similarly, despite recent efforts to trace the common themes in the eighteenth century Anglophone diaspora, the deep affinities between the

British and American constitutional orders are less prominent in political thought than they might be. This kind of eclecticism might seem reckless. But to attempt to sketch an institutional scheme for popular sovereignty without it would be worse.

For much of the twentieth century philosophy did not concern itself much with the ontology of the social world. Indeed in a 1990 lecture Pierre Bourdieu was moved to complain that ‘[i]f the social is conceived so poorly, it is because the weighty and pedestrian modes of thought normally associated with the philosophical, the uttermost depth, are not applied to it.’ (Bourdieu, 2020, p.53) The lack of interest extends into adjacent disciplines. At the outset of Schmitt’s *The Concept of the Political* we learn that ‘It may be left open what the state is in its essence — a machine or an organism, a person or an institution, a society or a community, an enterprise or a beehive, or perhaps even a basic procedural order.’ (Schmitt, 2007, p.19) More recently David Runciman noted that ‘[i]t is rare to encounter a direct attempt to answer either the question “What is money?” or “What is the state?” in recent works of political or economic theory; more often the answer to the question is assumed, and assumed to be irrelevant to the task in hand [...] it is generally thought to be more interesting and more important to ask what money can do, or what the state is for, than to ask what either of them are in themselves.’ (Runciman, 2003, p.30)

In this chapter, I will set out the outlines of an approach to social ontology that captures tolerably well what we are referring to when we talk about such things as states and other features of social reality. I will then address one particular aspect of social reality, plural agency. Once we have an account of social ontology and of the place of plural agency within it, we will proceed to consider the implications of this account for the study and the practice of politics. We end with some remarks on how this approach to social ontology informs our account of sovereignty in general, and of popular sovereignty in particular. The idea is to prepare the way for the next chapter, in which threats to sovereignty, in this now hopefully clarified sense, are explored.

3.2 Searle’s Account of Social Reality

Only a few years after Bourdieu’s complaint about the philosophers’ indifference to the social an exponent of the dominant tradition in Anglo-American philosophy, John Searle (1996), published *The Construction of Social Reality*. Searle begins the book with a materialist ontology of ‘brute facts’ and asks how this organisation of particles and forces can give rise to ‘social’ and ‘institutional’ facts — screwdrivers, money, governments and so on. Searle approaches the question from the

perspective of Austin's philosophy of language. (Austin, 1962) Not surprisingly, as Ian Hacking notes, Searle argues that 'social facts of any interest demand human language.' (Hacking, 1997, p.89) Searle himself puts it like this: 'In order that something can be money, property, marriage, or government, people have to have appropriate thoughts about it. But in order that they have these appropriate thoughts, they have to have the devices for thinking those thoughts, and those are essentially symbolic, or linguistic devices.' (Searle, 2008) Searle writes here along lines that remind us of Hobbes. In *Leviathan* Hobbes had written that without 'SPEECH, consisting of *Names* or *Appellations*, and their Connexion [...] there had been amongst men, neither commonwealth, nor society, nor contract, nor peace, no more than among Lyons, Bears, and Wolves.' (Hobbes, 2017, p.25) Hobbes and Searle would agree that language is what makes society possible. The question that preoccupies them both is *how*.

Searle argues in *The Construction of Social Reality* that the ordinary use of language encourages us to think that when we talk about the state, the rule of law, sovereignty, and so on, we are talking about things that have a prelinguistic existence — things to which the words we use refer. But as Searle points out, 'symbols do not create cats and dogs and evening stars; they create only the possibility of referring to cats, dogs and evening stars in a publicly accessible way. But symbolization creates the very ontological categories of money, property, points scored in games and political offices, as well as the categories of words, and speech acts.' (Searle, 1996, p.75) It's a kind of magic, and like many of the most consequential forms of magic it appears so unremarkable that it often escapes our notice.

Searle initially claimed that there is a class of facts, which he calls 'social', that are always and only brought into existence through 'the assignment of function' and 'collective intentionality.' He formalises this process as 'X counts as Y in context C.' (Searle, 1996, p.28): something is assigned a status above and beyond its physical properties, in virtue of a collective agreement. An agreement to treat something, someone, some form of words, or event as something else *creates* the something else: 'Physically X and Y are exactly the same thing. The only difference is that we have imposed a status on the X element, and this new status needs *markers*, because, empirically speaking, there isn't anything else there.' (Searle, 1996, p.69) It is our shared mental attitude towards a claim about some physical marker or other that creates a social fact.

A subset of social facts, which Searle calls 'institutional', add an extra element to 'the assignment of function' and 'collective intentionality', namely 'constitutive rules.' These rules 'provide reasons for

action that are independent of our natural inclinations.’ Institutional facts are therefore inextricably bound up with questions of power. As Barry Smith (2003, p.20) puts it ‘The structure of institutional reality is [...] a structure of power.’ The difference that institutional facts make in the world plays out through the way our beliefs about them affect our actions. Each institutional fact ‘only exists if people believe it exists, and the reasons function only if people accept them as reasons.’ (Searle, 1996, p.69)

Note that the creation of social reality does not necessarily derive from an unbroken chain of orderly authorisations. The United States’ federal constitution was famously drafted by a convention empowered to propose revisions to the existing articles of confederation, not to replace them wholesale. Not only that, only a small fraction of the population were permitted to vote on its ratification. Landless men, women and the enslaved, not to mention the indigenous population, in other words, the great majority of the people living in the former British colonies, had no opportunity to accept or reject the constitution under which they would live. But it would be reckless for a lawyer to recommend that their client refuse to recognise the authority of the courts on the grounds that the federal constitution was not prepared by a properly authorised convention, and was not adopted through what we would now consider a democratically legitimate process. The structure of social reality is the result of a bewildering number of acts of ‘symbolization’, some of which can plausibly claim to be authorised, some of which are made respectable through being accepted, and made to seem venerable through the passage of time. Perhaps this helps account for ‘[...] the attachment which all nations have to their ancient government, and even to those names which have had the sanction of antiquity.’ (Hume, 1996, p.25)

There is something uncanny in this feature of language. The claims we make about the structures of social reality become true or false in virtue of how others respond to them. This can be put in terms familiar from Hyman Minsky’s point about money: ‘everyone can create money; the problem is to get it accepted.’ (Minsky, 1986, p.228) Similarly, anyone can declare themselves emperor, the problem is to get other people to take the declaration seriously. Of course even when the required consensus is in place, there are important limits to what this consensus can achieve. Caligula was able to secure divine status through the offices of Roman religious authority. He was, as a matter of institutional fact, a god. (Suetonius, 1989, p.163-4) But that couldn’t stop him from being killed, must less dying.

3.3 Thomasson's Revision of Searle

Searle's original account in *The Construction of Social Reality* requires there to be something that serves as a material point of reference for this process of construction — a person, an object, or an event that provides a 'marker' for the institutional fact in question. Early critics of his approach pointed out that many institutional facts don't map directly onto the physical in the way he describes. It is hard to find a one-to-one relationship between, say, a state and a 'brute' feature of reality. Louis XIV's apocryphal insistence that *'l'état, c'est moi'* is memorable for much the same reason as Caligula's claim to divinity is: they both seem wildly unlikely.

In 2003 Amie Thomasson revised Searle's social ontology to account for institutional facts that exist without a material marker. She argued that, while the original examples Searle presented were plausible, 'only a small sub-class of those social and institutional entities we concern ourselves with in daily life and study in the social sciences can really be understood as material objects overlaid with new functions.' (Thomasson, 2003, p.273) Thomasson gives the example of the US constitution and points out that, 'even if the original document in the Archives were destroyed, we certainly would not declare that the United States was a nation without a constitution.' (ibid.) We can take issue with the Thomasson's claim that 'only a small sub-class' of 'institutional and social entities' have a material marker. Human beings become persons in virtue of their integration with an arrangement of status functions and constitutive rules, after all. But the point still stands. Much of the social world does not rely on a physical ('brute') substrate on which social content is then superimposed.

Thomasson develops a fuller account of the intentional processes by which 'institutional and social entities' are brought into existence. Her procedural account goes like this. There are 'Singular Rules' that take the following form: '(Of *a*) We collectively accept: *Sa* (where "S" names a social feature)'. (Thomasson, 2003, p.280-2) For example, two people might collectively accept that pile of stones *a* is to act as boundary marker *S* between their properties. There are 'Universal Rules' that take the following form: 'For all *x*, we collectively accept that (if *x* meets all conditions in *C*, then *Sx*)'. (ibid.) For example, a faith group might collectively accept that if a priest of their religion has performed certain rites over a piece of land, that piece of land becomes sacred. And there are 'Existential Rules' that take the following form: 'We collectively accept that (if all conditions *C* obtain, then there is some *x* such that *Sx*.)' (ibid.) Thomasson calls this final class of rules 'existential' because they 'seem to ensure the creation of new social objects. For example, we collectively accept that, if a

majority of members of congress vote to approve a certain bill, then a law is created.’ (Thomasson, 2003, p.283)

Thomasson’s idea of an ‘existential rule’ explains how we can create institutional facts that have no physical placeholder, that are abstract — artificial persons such as corporations, for example. If the correct forms have been filled in and the relevant fees have been paid by qualified persons then in certain contexts it just is the case that a corporation has been created. As Thomasson puts it, ‘[...] for some social concept S, collective agreement that things meeting certain conditions count as S, combined with the fact that these conditions hold, is necessary and sufficient for the creation of things of that kind.’ (Thomasson, 2003, p.286-7)¹⁷

It is not quite right that the collectively agreed conditions for the existence of a kind of social entity must hold in order for an instance of that entity to be created. If we collectively accept that something meets the conditions for existence then it exists as a feature of social reality, even if it doesn’t *really* meet those conditions. Consider a materially perfect counterfeit dollar bill. I can sell something for it, and buy something else with it. It takes its place in social reality, even though we would be wrong if we said ‘this is a dollar bill.’ And if through some unlikely chain of events, perhaps involving ergot poisoning, America’s elected representatives, their staff and the Washington press corps all became convinced that a majority of members of Congress had voted to approve a certain bill when they hadn’t, the law would have just the same social power as if they had. Like the fake dollar bill it might be vulnerable to challenge. But absent that challenge it still exists.

Important features of social reality can have this quality. Early trade unionists in the United Kingdom agitated for an eight hour day on the grounds that they were calling for recognition of a law to that effect passed by Alfred the Great. The Ancestral Constitution was very real in the minds of many of the Chartists, even though documentary evidence for it was often non-existent. Nor are the ways in which social reality can be based on error peripheral or exceptional. It seems self-evident that religions have a social existence. But if different religions secure collective acceptance in part on the grounds that ‘their’ God exists as a matter of objective fact then it is at least possible that not all the conditions for their existence hold.

Institutional features of social reality are not always created with reference to constitutive rules that are generally accessible and generally authoritative. Indeed, while corporations and government

¹⁷ In his 2010 book *Making the Social World* Searle revises his earlier claim that institutional facts always require a physical placeholder and sets out instead substantially the same tripartite account as Thomasson.

agencies depend for their existence on a cat's cradle of public corroboration, plenty of 'institutions' come into being in virtue of the collective acceptance of their members, but do not rely on any kind of external recognition. Informal sports teams, organised crime 'crews', street gangs and some secret societies are examples. Sometimes these entities are short-lived but sometimes they can persist for long periods, and act in ways that are extremely consequential. Nor are they necessarily smaller than those that have a public character. Quite large informal groups can operate as rule-bound collectives that reject or overrule other social claims made on their members. A criminal gang operating secretly in a number of legally recognised institutions like banks and government regulators would be one example. Meanwhile a legally recognised corporation might only have one owner and no employees.

A full account of the social has to account for how these informal, 'un-public', social entities interact with the state and institutional cascade over which it presides. For the moment it is enough for us to note that many features of the social world evade publicity in the sense that their constitutive rules, the identity of their members, sometimes even their existence, do not feature in generally accessible accounts of that social world. The reason for this is simple. They do not want to feature in generally accessible accounts of the social world, and are able to ensure that they do not.

3.4 Theoretical and Practical Implications of Searle-Thomasson's Social Ontology

What changes if we bring Searle and Thomasson's social ontology into our account of politics? Searle himself is keen to stress its importance for the organisation of social science: 'A consequence of the investigation is that all of human social-institutional reality has a common underlying structure. Now if this is right, it is a mistake to treat different branches of the social sciences, such as sociology and economics, for example, as if they dealt with fundamentally different subject matters.' (Searle, 2010, p.201-2) Indeed, we can say that conventional taxonomies in the social science begin to look somewhat blurry once we grasp the implications of this approach to social ontology. The distinction between 'the state' and 'civil society', which looms so large in political theory, loses some of its definition when we register the extent to which they share Searle's 'common underlying structure.' (ibid.)

But the implications go beyond disciplinary divisions. At the core of their account is a recognition that much of the social world is brought into existence through a two-sided process. There are assertions, and there is the collective acceptance of those assertions. Sometimes collective

acceptance will be secured when those doing the accepting have no idea what is going on, or are radically wrong about what is going on. Nor does acceptance have to achieve the status of an agreement. We can accept claims that we don't agree with, that we would very much like to reject. We can also accept claims that we don't realise are claims. Much of the practical business of politics amounts to efforts to persuade others that the products of consequential speech are artefacts of nature or history, rather than achievements of rhetoric broadly defined.

Recognition of this two-sidedness has important implications for the analysis of politics. It pushes us to consider the conditions for successful assertion, which include the existence of a shared language or symbolic schema but go far beyond it. It leads us to ask how particular organisations of speech, and of the rules governing speech, affect both who can make particular claims about the constitution of social reality, and the likelihood that these claimants will be successful in changing their audiences beliefs and mental commitments in such a way as to change the patterns of their behaviour — who is able to take the lead in the process through which social reality is constructed. So we have to pay attention to speakers: to their self-presentation, their posture, the language they use, their accent and speed of speaking, as well as what they say. We also have to pay attention to their relationship with other speakers, and to the ways in which they engaging with the structures of rights and duties that constitute so much of social reality — either to shore these structures up, or to undermine them. Trust plays an important role here. Questions like 'Who is able to confer an air of trustworthiness on speakers?' and 'Who is able to discredit them?' become much more salient, when we appreciate fully the role that persuasive speech plays in creating the social world. We also have to pay attention to audiences: the extent to which they like and trust particular speakers, and why they do, the quality of the background beliefs they will use to assess claims about the structure of social reality.

Above all, we have to pay attention to the ways in which speech that seeks to establish, maintain or revise the content of social reality reaches audiences. What are the rules that determine who can speak to large audiences in ways that might affect social reality in consequential ways? How do these rules impact on the likelihood of success in particular contexts? Who is a legitimate actor in public debates, and who is an interloper or a distraction? Claims about the distribution of rights and duties, about the structure of social reality, only succeed if the claimant is able to reach sufficiently large or influential audiences to shift the pattern of collective acceptance in the relevant community, if they are received favourably, or favourably enough, and if the content of what they say persuades, in light of what audiences already believe. If the relationship between speakers and audiences is the

space in which social reality is constructed, then the people and technologies mediating between them take on a central importance in our attempts to think clearly about the social world.

Once we take seriously Searle and Thomasson's account of how social reality is constituted new approaches to political action as well as as analysis open up. If the construction of social reality is a matter of implicit or explicit claims about the structure of social reality and their acceptance, both the distribution of opportunities to make claims about social reality, and the factors that influence whether these claims are acceptable in the relevant collectives, become matters of cardinal importance.¹⁸ As theorists we can begin to see why Hobbes attaches so much importance to the government of doctrines. As would-be democrats we can begin to see why media reform should be brought closer to the centre of our concerns.

Rather than focussing exclusively on the sites and rule-like procedures of political decision-making, reformers that take this social ontology seriously will be motivated to concentrate at least as much on the opinions that sustain those sites, and the means by which those opinions are established, maintained and revised. They will pay particular attention to the fora in which consequential speech takes place and the explicit and implicit rules that determine who is able to speak, and who is likely to be able to speak effectively. If they don't it is not clear what kind of purchase they can hope to have on events. The danger is that they will be reduced to using formal sites of decisions, legislative assemblies, say, or meetings of the executive, along lines already pre-determined, for fear that any deviation will be declared illegitimate by speakers who are able to appeal an established pattern of collective acceptance that they have assiduously cultivated, and over which the reformers have no influence.

This has long been obvious to those who seek to make significant changes in the realm of political economy. Writing in 1922, Norman Angell asked his readers to:

Imagine a Labour government coming into power, attempting to put into effect even part of its programme. The preliminary dislocation would certainly be very considerable. The story of what that new social order was accomplishing would be told to the nation by groups determined to destroy it [...] In such conditions, with nineteen twentieths of the Press in the hands of capitalists, a few months or a few years, at most, of steady misrepresentation of the

¹⁸ This is not the place to rehearse all of the theoretical implications of Searle and Thomasson's discursive social ontology. But it is worth noting in passing how peculiar it is to imagine that a contraption of words like a corporation could be the bearer of rights in the same way as a natural person.

Labour Government would suffice to make its position quite untenable. (Angell, 1922, p.90-1)

As it turned out, Labour's predicament in government a few years later was even worse. In 1931 the party was torn apart by its attempts to manage the effects of a global economic slump while remaining faithful to the governing orthodoxy in monetary policy. The Chancellor at the time, Philip Snowden, had already told his fellow MPs that 'in the control of credit and currency, the administration of the control must be kept free from political influences [...] Parliament is not a competent body to deal with the administration of such highly delicate and intricate matters.' (Elliott, 1993, p.43) When Snowden's Conservative successor took Britain off the gold standard, Tom Johnston, Labour's former Lord Privy Seal, was reduced to complaining that 'nobody told us we could do that.' (Eichengreen and Temin, 2000, p.202) Britain's second socialist government had been deprived of policy options to which their opponents could help themselves, such was their estrangement from the dynamics that gave social structures their apparent solidity. The gold standard, which they understood to be the foundation of sound money, of civilisation itself, stood revealed, too late, as just another artefact of collective acceptance.

Politicians, media workers and media owners still reserve for themselves a jealously guarded power to determine what kinds of claims about the social reach large audiences through the communicative assets that they own and regulate. They also have overwhelming power to assign credibility to claims from the circuits of technocratic speech. They can decide who is qualified to speak to large publics about 'highly delicate and intricate matters.' Together these groups have resources and skills that are often decisive in securing collective acceptance for claims they promote, and in suppressing or discrediting claims they wish to degrade. Not surprisingly the composition and shared interests of these groups, and the ways in which they compete and cooperate, do not feature prominently in the speech production over which they preside. Indeed, it is rare to find any reference to them at all. But any attempt to secure control of the state through electoral representation that does not accept the conditions that these groups impose must first secure the means to do without them in the field of speech production. After all, a reforming administration cannot hope to get very far when, as one financier put it before the 2008 crisis broke, 'the national financial press are written for the City by the City.' (Davis, 2011)

The organisation of collectively accepted rights and duties — the institutional forms — that determine what speech we hear (and don't hear) matter, since it is so often persuasive speech that brings the social world into existence. And once we are out of earshot of one another none of us

can speak for ourselves. Many professional politicians would no doubt make a great show of being horrified at the idea of constitutionalised political communication, in the sense of a rules-based system for organising the central venues of civic speech — the media organisations preeminently. There are few bugbears more fearsome than ‘state media’, after all. But they would be genuinely horrified if they were forced to communicate among themselves only via unaccountable intermediaries, the situation in which the vast majority of us find ourselves when we seek to access, let alone contribute to, speech whose acceptance brings social reality into being. The means through which collective acceptance is secured lie beyond the reach of almost everyone who is governed by them. Even if we understand those means, which is itself not easy, given how much energy and skill goes into obscuring them, almost all of us have no practical purchase on them.

3.5 Beyond Assertion and Acceptance

While one of the mainsprings of social reality is this two-sided process of assertion and acceptance, it does not follow that the process provides us with a complete account of the social world. The sum of collective acceptance, the patterns of participation and non-participation, ignorance and understanding that help to shape our behaviour, can generate consequences that are by no means self-evident, and might even remain unknown to everyone involved. As Thomasson puts it, ‘once a social world is constructed, there will be all sorts of interesting patterns and causal relations within it — economic cycles, patterns of human settlement and property use, of human behaviour, of distribution of goods and status, and so on ... While these relevant patterns and relations could not exist without the social world and the collective intentions that construct it, they can exist quite well without anyone having any thoughts about or recognition of those patterns as such.’ (Thomasson, 2003, p.288) Once an organisation of rights and duties (‘deontic powers’) has been brought into existence, it will often, if not necessarily, generate consequences that, far from being collectively accepted, can be overlooked entirely.

These non-obvious social consequences matter a great deal, not least because they form the context in which new features of social reality are created. Indeed, they provide the raw material for those who specialise in creating them. As it stands, the relationship between arrangements based on collective acceptance or intentionality and the social phenomena that they generate is obscure when it is not hidden altogether. Many of us are uncertain as to how the products of collective intentionality, institutions both formal and informal, interact to produce phenomena such as inflation, unemployment, crime and banking collapses. As a result many of us can be satisfied with

explanations that are either vague to the point of uselessness or outright deceptive. Meanwhile other people can have a much clearer understanding of these phenomena, and use this to secure other advantages. Some aspects of social reality are generally obscure, some are generally legible. Some, perhaps most, are obscure to some and legible to others.

The then unusual combination of recession and inflation in the 1970s provided a justification for far-reaching changes in the structure of social reality that weakened state regulation of the wealthy. The financial crisis of 2007-8, on the other hand, triggered no such revision in the distribution of rights and rewards. Many of us were persuaded that its origins could be found in the provisions of the 1977 Community Reinvestment Act. (Carney, 2009; Caldwell, 2020) Many more were persuaded that it was down to some combination or other of ‘stupidity’ and ‘greed’. (Wharton, 2009; Reuters, 2012) Other widely accepted explanations took a meteorological turn. The crisis was a once-in-a-century ‘storm.’ (Blanchard, 2008) Alan Greenspan, who presided over the crisis as Chairman of the Federal Reserve, told Congress that it was ‘a once-in-a-century credit tsunami.’ (Knowlton and Grynbaum, 2008) It remains just about possible to describe how individuals working in formal and informal institutions generated the crisis through endemic fraud and corruption. This sets the explanation at the appropriate scale, as the consequence of actions by nameable individuals, who were competing and cooperating in social structures that are themselves bound up with others, and that have a history.

There is no way we can make sense of what happened in 2007-8 if we fail to register the role played senior managers in major financial institutions and their partners in the political directorate, who together created informal criminal organisations that operated throughout the sector, secured vast sums, and protected themselves from legal consequences. (Black, 2021) But for all of its explanatory merits, such a description is inert for the simple reason that hardly anyone is familiar with it. It has not been accepted into the circuits of speech that are decisive in the creation and maintenance of collective acceptance, and hence of social reality. Absent collective acceptance of the relevant entities, attempts to make collective sense of the events themselves founder. Those attempting to connect the facts of social organisation to the events they cause in this context will struggle to make themselves understood. They will deal in concepts that are already thoroughly confused in the minds of their interlocutors. And even if they are able to persuade an individual of their case, everyone involved will have to acknowledge that in the decisive zones of mediated speech, the entities they posit *do not exist*. To talk about the financial crisis as an event in the history of organised crime might be historically accurate and analytically useful. But it makes about as much sense in the circuits of consequential speech, in those spaces where the structures of financial sector regulation

are proposed and integrated with the broader architecture of social reality, as the idea that fairies and sprites were responsible.

Nevertheless it is the financial crisis that exists as a social fact in the circuits of consequential speech that is a kind of fantasy, since it is detached from any serious attempt to ascribe causation. And this is not an isolated example, as the discourses around global warming, macro-economics, international relations and many others show. Our inability to draw clear lines from our institutional arrangements and their deontic powers to the events that those who accept them generate is so pervasive as to seem like a principle of governance. This is, at least in part, because we have lacked a theory of sovereignty that adequately distinguishes the process through which social reality is created from its most impressive creations, the state above all.

The speech regime, and hence the institutions, that surround us instil a sense of what constitutes 'social nature', what is abnormal and abnormal, practical and impractical. This institutional array creates a picture of the social that will influence, when it does not determine, how we converge on answers to questions about what is and isn't worth discussing, what is and isn't 'politics', and so on. Consider a term like 'representative democracy'. It is now used to describe states that are not democratic on widely accepted definitions of the word before about 1800. The decision to use the word democracy as our contemporaries use it enables us to say all kinds of things. It might even give us admission to those circuits of speech in which consequential discussion of politics takes place. But the decision comes at a price. In order to become intelligible, and therefore effective, we might find ourselves contributing to a much broader misunderstanding. We can say something similar about the divisions between 'state' and 'economy' and between 'state' and 'civil society'.

Thomasson and Searle's approach to the construction of social reality has wide-ranging implications for both the theory and practice of politics. It gives us a way to understand more precisely what we are talking about when we talk about such things as money, laws and governments. It also gives us a way to understand the state as a feature of social reality created, like football teams and church congregations, through the assertion and acceptance of claims about what things exist, and of what those things demand of us, and of what we can demand of them. A state is the product of assertions-accepted that apply across multiple domains and that then take their place in a range of other instances of social reality construction. The acceptance of the state, in the weak sense of an acceptance of the demands, and a recognition of the rights, that its existence would entail, is required for the acceptance of much of the rest of social reality. It is in this sense that we can say that the state stands supreme over the social field in a given territory. It is the name we give to the

product of speech-accepted that is accepted as standing supreme over the social for a given population in a given territory. The nature of any given state will depend on the ways in which it is accepted as being supreme. It is striking that the contemporary state form is generally described as 'sovereign' while its elected officeholders lack much of what Hobbes had considered sovereign. Collective acceptance of the state's preeminence in, say, matters of 'law and order' combined with a collective acceptance of the autonomy of 'the economy' or 'civil society' is going to affect what it means to talk about the state. And, of course, any given organisation of deontic claims, whether described as sovereign or not, is dependent on overarching dynamics of social reality construction. Indeed, the successful assertion of claims about the nature of the social is essential to sovereignty.

The state helps to secure acceptance for many of the other interlocking claims that constitute social reality. The state is invoked in the speech that brings governments, money, laws and much else into existence. It is the starting point of an institutional cascade that includes officeholders, citizens, districts, money, and borders. But always we must remind ourselves that the state does not act in the sense that a natural person, or group of natural persons, acts. It is an organisation of language and language-like assertions (communiqués, press releases, uniforms, calendars, broadcast schedules, and rituals) that generate mentalities and patterns of activity and inactivity in people. To talk about 'the sovereign state' and the like is to risk mystifying ourselves and each other. The state is created by the same mechanism as the rest of social reality. It does not create social reality. We cannot ascribe sovereignty to a verbal contraption, to an instance of what Hobbes called 'words and breath', even one that appears to enlist persons to act in its name. Some person, or some group of people, is always going to be responsible for asserting the claims about the state that are accepted, and that then give form to so much of the social world. We need to be a little more precise about this person or these persons.

3.6 Gilbert and Plural Subjects

In Thomasson's and Searle's approach social reality is brought into existence by the collective acceptance of claims about social reality. There is a great deal of flexibility and variety on both sides of the process. A claim about social reality might be made by one person, or by many. It might be accepted by one person, or by many. Each member of a group that accepts this assertion might know the other members, or they might not.

Sometimes we might have very detailed and correct beliefs about the processes of construction involved, and about the products of this process. When some friends pick sides for a game of football in the park, it is likely that everyone knows exactly what is happening, and what the implications of our actions are. Sometimes we might only have a loose sense that something ‘social’ is happening at all. I might have only a vague understanding that the company I work for has a legal existence, that there is more to it than the sum of the people, buildings and equipment I find when I go to work. But I don’t have to know very much about social reality to take my place in it, and contribute to its existence.

There are other ways of construing social groups. In *On Social Facts* Margaret Gilbert identifies social groups with ‘plural subjects’: ‘[...] a set of people constitute a social group if and only if they constitute a plural subject ... A social group is a plural subject.’ (Gilbert, 1992, p.204-5) Our beliefs play an important part in the formation of plural subjects, and hence of social groups in the sense that Gilbert sets out. In forming a plural subject ‘each volunteers his will for a “pool” of wills dedicated to a certain end under certain circumstances. Each understands that when his so volunteering is matched by that of the others, and this is common knowledge, the pool is set up.’ (Gilbert, 1992, p.204-5) And again, ‘Human beings X, Y, and Z constitute a collectivity (social group) if and only if each correctly thinks of himself and the others, taken together, as ‘us*’ or ‘we*’ (Gilbert, 1992, p.147) Gilbert uses asterisks here because she believes there is ‘a central sense of “we” in English in terms of which it makes good sense to define social groups.’ (ibid.) This central sense is glossed as follows: “‘We’ refers to a set of people each of whom shares with oneself in some action, belief, attitude, or some other attribute.’ (Gilbert, 1992, p.201)

Gilbert is clear that identifying social groups with plural subjects has implications for the shared beliefs of their members: ‘a social group’s existence is basically a matter of the members of a set of people being conscious that they are linked by a certain special tie.’ (Gilbert, 1992, p.148-9) The mere fact that each member of a group considers themselves to belong to a group doesn’t create a group: ‘It is not enough that each views each one as linked to every other in some way, but not in the same way.’ (Gilbert, 1992, p.149). We have to view ourselves as being linked by the same ‘special tie’. So, according to Gilbert, if we are to be said to belong to social group, we can only do so if we have certain correct beliefs: ‘One nice result of an account of social groups in terms of plural subjects will be that groups will always have a kind of “self-knowledge.” That is, the members of any group (plural subject) will all properly think of themselves as “us*”.’ (Gilbert, 1992, p.205)

It follows from this that I do not form a plural subject of the kind that Gilbert is describing if I believe that I am linked by ‘certain special tie’ and the people I think I form a plural subject with don’t have the same belief. If I think that the ‘special’ tie’ that I share with a group of people is that we are all members of the same church while Jim Jones, the charismatic leader of the congregation, and many of his lieutenants in fact share the special tie of taking part in a mind control experiment, I don’t plausibly form a plural subject with them on the basis of the special tie I have in mind. If I say things like ‘we are all equal in the Peoples Temple’ it looks like I am getting something important wrong even if it still seems possible for us to act together in important respects.

To identify plural subjects with social groups as such leads to a very restrictive account of the latter. Many groups that are importantly ‘social’ exist without the shared organisation of pooled wills and correct beliefs that Gilbert claims is characteristic of all of them. Most obviously, a group that is coerced into action doesn’t pool the wills of its members in the way that she describes. Gilbert herself is willing to accept this. She writes that ‘[t]here may be some cases in which the individual members of a certain population do the bidding of some individual or small group of individuals out of fear and nothing else.’ (Gilbert, 1992, p.206) There are circumstances in which the members of such a population ‘[...] would not constitute a social group or collectivity at all.’ (Gilbert, 1992, p.206)¹⁹ Somewhat similarly, a large and sprawling company in which there is ‘a Kafkaesque sense of disconnection in everyone’s mind [...]’ would not qualify as a social group in Gilbert's sense: ‘My feeling is that once the details of this particular organisation are spelled out, it is not intuitively that clear that it is a social group or human collectivity.’ (Gilbert, 1992, p.231) People might think a company is paradigmatically a social group but only because some of them achieve the condition of plural subjectivity, and this confuses us:

There are firms in which it would be natural enough for members overall to refer to what “we” do in referring to the organization. I could argue, therefore, that it is this aspect of some organisation and firms which could lead organizations in general to be put on some lists of social groups.’ (ibid.)

Other groups that act together, and that we can reasonably say have a social existence, are not necessarily constituted by individuals who have pooled their wills in the way that Gilbert describes.

¹⁹ Elsewhere Gilbert seems to say that individuals can be compelled into becoming part of a plural subject: ‘Clearly people may be pressured into joining a particular conversation, into getting married, into fighting in a particular war. The type of “volunteering” at issue, then, is such that it is possible to be coerced into it.’ (Gilbert, 1992, p.410)

This becomes clearer when we think about how individuals might have false beliefs about the ‘special tie’ that binds them together. To take up the Peoples Temple example again, the great majority of the people involved thought they were engaged in a shared project to transcend racial division through the fusion of Christianity and socialism. A minority seem to have had a very different ‘special tie’. But the Peoples Temple owned property, imposed duties and conferred rights on its members. It was in many respects, and for most of its existence, a commonplace feature of social reality, for all that it contained more than one plural subject in Gilbert’s sense. It seems that one can be part of a social group without necessarily knowing what its ‘true’ purpose is, and without necessarily being accountable for what it does. Consider, for example, a spy network in which everyone in the field is reporting to a double agent. The great majority of those involved think that they doing the polar opposite of what they are doing. But they still seem to qualify as a social group, albeit one that has a somewhat unusual character.

Indeed we would surely want to say that other collections of people have a social existence, even when they look even less like the plural subjects Gilbert describes. Consider, for example, the algorithmically assembled target populations sold by Facebook to their advertising clients. It seems reasonable to say that Facebook create a ‘social group’ when they assemble the accounts of 40-42 year old boating enthusiasts with high incomes and a fondness for single malt, so that a team of marketers at Pernod Ricard can try to sell them Glenlivet branded waterproofs. These marketers will have to act in certain ways if they want to make their quarterly sales targets once they become aware of this demographic category. Yet this effect in the world — this re-organisation of deontic powers — can happen without the individuals who make up the targeted group becoming aware of each other. One can go on. Economic classes, nations, ethnicities, races, and any number of other entities can be said to have a social existence, independent of the beliefs of their members. I am a Virgo and a Pig according to two popular schemes of social classification, and I would be whether I knew it or not.

3.7 Social Ontology and the Sovereign as Plural Subject

Plural subjects in Gilbert’s sense of the word look like the creations of ‘singular rules’ of the kind we find in Thomasson’s taxonomy. Five people collectively accept that they are a five-a-side football team. That is, each agrees that, if the others agree, they are a team for the purposes of the game they are about to play. They have pooled their wills on the basis of correct beliefs about the ‘special tie’ they share. Each would be speaking intelligibly if they said things like ‘we have to mark their

centre half more closely.’ But plural subjects have agency in a way that is not true of all social entities. This is very obvious in cases like the pile of stones that forms a boundary marker in our earlier example. Clearly the stones are not capable of doing anything much, except in virtue of the functions we ascribe to them. It is less obvious in cases like ‘the state’, where flesh-and-blood persons, including many plural subjects, are somehow much more closely implicated in, or more easily confused with, what constitutes the social entity in question. But here too it is extravagant to expect every individual and group that is employed by, or acts in the name of, the state to belong to a single plural subject. It might be possible, and the sense in which it might be possible is one to which we will return. But for the moment it is clear that a state does not have to be identical to a plural subject in order to exist as a feature, a supremely important feature, of social reality.

We can talk meaningfully about ‘social groups’ when the conditions for Gilbert’s ‘fully-fledged’ plural subjectivity are absent. (Gilbert, 1992, p.233) I don’t have to know what is really going on when you propose, and I accept, the existence of a social entity, whether it’s an pentecostal church or espionage operation. The quality of my beliefs about a social group, about the ‘real’ purpose you have in mind, for example, does not determine whether the entity in question exists. A social entity exists because more than one person believes that it exists, not because all of our beliefs about it are correct and aligned. The Peoples Temple existed, even though it wasn’t what many of its members thought it was.

But there is something distinctive and useful about a social group that meets the stricter conditions of plural subjectivity in Gilbert’s sense, and the notion of a plural subject has important implications for our account of sovereignty. Recall that in Chapter One we set our explicative-stipulative definition of the sovereign:

The sovereign is that singular or plural agent, or coalition of plural agents, whose claims as to the meaning of a shared present and the organisation of a shared future prevail at a given point in time, over a given population, in a given space. The sovereign says what is, and what should be, and has their assertions regarding both accepted, to the extent necessary to secure their aims and preserve their supremacy.

We can now say more clearly what we mean by a ‘plural agent’ in this definition. It is a ‘plural subject’ of the kind that Gilbert wants to identify with social groups as such: the sovereign belongs to that subset of social groups whose members are ‘jointly ready for action’ of a certain kind in certain circumstances. In this case, the members of a sovereign plural subject are ‘jointly ready’ to establish

the meaning of their shared present, and are able to secure the future this meaning entails. They rule over the circumstances that they have jointly agreed to rule over, and in the ways they have jointly agreed. In the case of sovereignty, it is also vindicated by events: a plural subject that does not succeed in its actions is not sovereign.

An individual who is wrong about the terms on which they act with others, who is wrong about how they relate to the rest of social reality, and who therefore doesn't know what they are doing or saying, doesn't plausibly participate in sovereignty in our sense of the term. The members of a sovereign plural subject all have to have correct beliefs about what it is that they share with each other. They must believe, correctly, that they are engaged with others in the collective formulation of claims as to the meaning of a shared present and the organisation of a shared future. If they are being manipulated or coerced they do not plausibly form part of a sovereign plural subject. While plural subjectivity in Gilbert's strong sense isn't necessary for the existence of social groups in general, or even of social actors in particular, it is indispensable to social groups if they are to qualify as sovereign in the way that interests us.

Taken together Gilbert's notion of plural subjectivity and the Searle-Thomasson account of how social reality is brought into existence through the acceptance of language claims and language-like claims give us a better sense of what we mean when we talk about both 'sovereignty' in the explicative-stipulative sense offered here and 'state sovereignty' in the conventional sense. Crucially Gilbert and Searle-Thomasson help us to see that they are not identical. To be sovereign is to preside successfully over the creation, maintenance and alteration of social reality. What we usually call a 'sovereign state', in the conventional sense of sovereign, is a particular feature of that social reality. Here we can see the outlines of a political project: to bring sovereignty in these two senses into a closer alignment.

The Searle-Thomasson approach to social ontology and Gilbert's account of plural agency also help us to think more clearly about political speech in general and propaganda in particular. In two recent pieces Megan Hyska has decisively refuted the widely held view that propaganda 'is a kind of signal the characteristic effect of which (E) has something to do with audience-side irrationality.' (Hyska, 2023, p.305) As she points out there are types of propaganda that do not depend on the implantation of irrationality in their audiences and indeed 'make essential use of their audiences rationality.' (Hyska, 2023, p.313) Her examples include the 'hard propaganda' of totalitarian regimes, the 'propaganda of the deed' that was characteristic of revolutionary anarchism in the late nineteenth century, and efforts by managers to prevent unionisation. She

argues instead that propaganda should be understood as speech that seeks alteration to 'the group agency landscape.' (Hyska, 2021, p.230) Considering this in light of Searle, Thomasson and Gilbert we can be a little more precise. There are forms of propaganda that leave Gilbertian group agency untouched, while still seeking alterations to the structures of social reality. For example, a commercial propagandist might want to create demand for a product without creating, altering, or repressing a plural subject. The advertisement really did speak to Philip Larkin as an individual when it invited him to sunny Prestatyn, and its success did not depend on his deciding to visit with someone else. (Larkin, 1988, p.149) A political propagandist might seek to persuade millions of individuals to vote for or against a referendum proposal without angling to create or frustrate a Gilbertian plural subject. As a matter of fact competent propagandists will almost always be intensely aware of our social nature, and this awareness will inform their techniques. But we need not conclude that they must always seek alterations at the level of a plural subjectivity, even if changes in social reality, inasmuch as they are changes to the composition of collective acceptance, always take place through changes to what Hyska calls 'the group agency landscape.'

The claims whose acceptance bring the 'sovereign state' of ordinary usage into existence, that maintain it, and that alter it, are made and accepted in multiple spaces and speech communities. Individuals and plural subjects are constantly seeking to shape beliefs about the state in ways that serve their interests or meet their needs in some other way. The state itself, understood as the sum of these claims and the actions generated by the acceptance of these claims, cannot be the site of sovereignty in the way that we have stipulated. The state is a contraption of words. In many places and times the processes through which the state is brought into existence are far from unified. Instead a shifting multitude, made up of distinct subjects, both individual and plural, seek to make their account of the state part of the effective meaning of the word.

Rather than seeking a single 'pinnacle of command' from which the whole landscape of the state can be surveyed and rendered intelligible, we are forced to reckon with multiple sovereigns, whose local efforts to secure the meaning of a particular moment, the better to shape a particular future, affect the sum of rights and duties that we call the state. The contraption of words known as the state is generally thought to be supreme in a territory, to possess a monopoly on the legitimate use of violence in that territory, and so on. It is also generally thought to have an institutional structure in which something called sovereignty is contained and organised, even if contemporary sovereignty as an attribute of the state lacks much that Hobbes took to be essential to the concept. But these are claims whose acceptance generates effectual demands on our behaviour. They are not instantiations of sovereignty in the sense I have stipulated. 'State sovereignty' is an achievement of individual and

plural subjects who are able to make persuasive assertions of particular kinds, including assertions pertaining to core questions of social organisation. This leaves the meaning of 'state sovereignty' necessarily indistinct, since the meaning of the state is the product of an ongoing and competitive process of claim-making. As an abstraction that is purported to be the site of legitimate authority, the state is at the centre of a struggle over the meaning of the word 'state'. This shouldn't be particularly surprising. The struggle for power is often precisely a struggle over the meaning of words. And here perhaps we can close in on a clearer definition of political propaganda as speech that aims to alter the structure of the state by altering the terrain of collective acceptance, without necessarily targeting plural agency directly.

So far we have set out an account of how 'we' establish the contents of social reality, and what 'we' means in this context. This has allowed us to revisit our earlier account of sovereignty, and to say something about 'state sovereignty' in its conventional sense. But what does this account imply for 'popular sovereignty'? What does a popular sovereign look like? A 'popular sovereign' is, on this account, going to be a plural subject in Gilbert's sense of the term. As such those who together constitute a popular sovereign will have to meet quite demanding knowledge conditions. The individuals who constitute the 'we' of the popular sovereign will each have to know what they have in common with the rest, and will have to know, or at least have good grounds for believing, that the rest also know this. That is, what this 'we' shares will have to be a matter of 'common knowledge.' And this thing held in common, and known in common, is a shared task: that of crafting and accepting the contents of social reality. A social group that does not know that it has this particular thing 'in common' might be many things. It might be very powerful. But it is not sovereign.

A popular sovereign is not only a plural subject. It is a plural subject whose members consist of all the individuals in a population, whose shared object is the organisation of social reality, which they pursue in conditions of perfect equality. The popular sovereign must be universal by definition. And its members must be equal if it is to be universal. In conditions of communicative inequality it is almost trivially easy to ensure that at least some people have no sure grasp of their conditions, and can be organised by others into kinds of conduct that they would reject if they understood those conditions more fully. The constituents of a popular sovereign must also share an understanding of the means by which they rule, otherwise they will fail to achieve the condition of plural subjectivity discussed earlier. A team is plausibly a team only if its members understand the rules of the game they are playing. Similarly, a popular sovereign only sustains itself as such for as long as its members

each understand the terms on which they each partake in rule.²⁰ The ‘special tie’ shared by the members of a sovereign body consists of an shared sphere of activity and as shared set of procedures for the execution of that activity.

Popular sovereignty appeals as an form of government inasmuch its pursuit requires us to take seriously the epistemic conditions of individual liberty: what we need to know if we are not to be ensnared by the conscious wiles of others, or by unexamined assumptions that we have picked up and pass on. In conditions of popular sovereignty the dynamics of assertion and collective acceptance of claims about the state, its nature and limits, are made identical with the shared actions of the plural agent consisting of the population of a place. The constituents of this plural agent have in common the ‘special tie’ of this work of social construction: each of us knows what it is to rule. And all the constituents of the sovereign plural subject accept the binding nature or deontic powers of the social structures that they use to establish the meaning of the present and to secure the future it entails. When popular sovereignty is fully realised there is perfect and universal fidelity to the constitutional order.

We can immediately see that we are describing an ideal type. Once a group exceeds a quite small number of members no actually existing plural subject can be comprised of all those members acting in conditions of strict equality and unanimity. Decisions will not be made in conditions of strict equality because the constituent members will have different levels of interest in particular issues, different levels of aptitude in discerning their own interests and the interests of the collective, different levels of public-spiritedness when it comes to choosing between those individual and collective interests. Decisions will not always, even often, be made in conditions of strict unanimity because there will be frequent conflicts over what to do that cannot be resolved through better information. Sometimes interests clash and some faction or other must lose out if others are to win. Everyone in the relevant population will want to challenge some of the social structures in place. Some will want to corrupt or subvert the popular character of the sovereign by changing the constitutional order itself.

It is impossible to design a state in which everyone partakes in sovereignty, let alone one in which sovereignty is distributed equally. But we can design a state in which everyone enjoys defined and equal rights to take part in consequential speech concerning the contents of social reality. As Elliot Bulmer and Stuart White note, ‘[i]f some exert less influence, where all have equal opportunity to

²⁰ Note that we are talking here about popular sovereignty as an ideal type, not as a regime that we can expect to see fully realised in practice. See the discussion immediately below.

participate, this is not necessarily undemocratic.’ Following them, and Joshua Cohen, we can say that our goal can only be to ensure that all citizens ‘[...] should have substantive (not merely formal) *equality of opportunity for political influence.*’ (Bulmer and White, 2023, p.275)

We can design institutions that allow everyone to access to the broadest range of possible descriptions of what exists, and of what might exist instead. Further, we can establish conditions that secure an equal opportunity for all to engage in the discussions in which candidate claims about the future structure of social reality are made.²¹ We can design a state in which plural subjects consisting of anything from a marginalised minority to a bare majority to a perfect unity can secure and maintain access to the mainsprings of social reality. Our interest is in establishing an institutional framework that creates avenues through which actually existing plural subjects and individuals can come closer to the ideal type of the popular sovereign. To repeat, institutions cannot bear sovereignty in the sense that interests us. But through the pattern of duties and rights that they impose on those who accept them they can make the creation of plural subjects that approach the ideal of popular sovereignty more or less likely.

3.8 Inequality in the Work of the Construction of Social Reality

This clarifies matters, inasmuch as it allows us to see how far we are from popular sovereignty. Bourdieu (2020, p.331) notes that ‘the work of the construction of social reality is a collective work, but not everyone contributes to the same degree.’ And when E. E. Schattschneider assessed the totality of ‘organised special-interest groups’ (1960, p.29) in the United States of the 1950s he estimated that ‘probably 90 per cent of the people cannot get into the pressure system.’ (1960, p.35) To the extent that individuals outside of the state coordinate to change the structure of social reality through legislation, they do so ‘with a strong upper class accent.’ (ibid.):

The notion that the pressure system is automatically representative of the whole community is a myth fostered by the universalizing tendency of modern group theories. *Pressure politics is a selective process ill designed to serve diffuse interests.* The system is skewed, loaded and unbalanced in favor of a fraction of a minority. (ibid.)

²¹ How we might aim to make this opportunity *substantive* — especially in the case of disparaged or structurally disadvantaged groups — is a question we address in Chapter Six.

There are reasons to think that the United States had become more unequal in some ways in the decades directly before Schattschneider was writing. In earlier generations large membership organisations organised in national federations had multiplied opportunities for people to assert claims about the nature of the social and to secure collective acceptance for them. Theda Skocpol (2003) argues these organisations had been important drivers of policy change up until the Second World War. Similarly, a fragmented press system had allowed thousands of owner-editors to intervene in struggles over the nature of social. (McChesney and Nichols, 2010) But by the middle of the twentieth century a nationally integrated print-broadcast media system characterised by local monopoly, centralised oversight and integration with the state was already in place. (Williams and Carpini, 2012) Meanwhile the Cold War in general and McCarthyism in particular imposed tight constraints on all the institutions of civil society, especially in matters of political economy. Those who sought further change to the structures of social reality along lines suggested by the New Deal now risked professional ruin. (Wolin, 2008, p.37-40)

Schattschneider (1960, p.140) concluded his 'realist's view of democracy in America' by arguing that it is political organisations that permit widespread participation. More precisely, 'it is the competition of political organizations that provides the people with the opportunity to make a choice. Without this opportunity popular sovereignty amounts to nothing.' But in Schattschneider's account, the choices presented the voting public, and so the different structures of social reality on offer, are produced by a handful of party leaders who are themselves compelled to take seriously the organised interests of only a fraction of a minority of the population.

In recent years political theorists influenced by Bourdieu and other social constructivists have paid close attention to the division of labour found in the creation of social entities. Their findings present an important challenge to the idea that democratic politics as currently conducted is a matter of representing preferences that are formed outside of the political process itself: 'The last quarter century of research on opinion formation makes crystal clear that citizens do not have the fixed and exogenous preferences assumed by scholars of responsiveness. The media, elites and political events shape preferences in substantial ways ... Exposure to news media coverage and elite rhetoric fundamentally shapes all aspects of preferences.' (Druckman, 2014, p.469) Indeed, 'democratic political representation neither simply reflects nor transmits demands; it creates them as it actively recruits constituencies.' (Disch, 2011, p.102)

The influence of media and political elites goes further than preference formation. Our tendency to treat nations, ethnicities, economic classes and other groups as 'substantial entities to which interests

and agency can be attributed' (Brubaker, 2002, p.164) can lead us to overlook the extent to which these groups are created as social entities by processes of mobilisation that are consciously directed by political entrepreneurs. Rather than seeing group formation as a spontaneous response to processes such as industrialisation, deflation or military defeat it is more accurate to treat it as the end result of attempts by political parties and other technicians of collective acceptance to bring new kinds of social entities into existence; voters usually, insurrectionists sometimes. As David R. Cameron put it (1974, p.145) 'social change per se has no political meaning and no political impact.' Indeed, 'social and structural change and strain, even on a very large scale, may have only a minimal effect in and of themselves, and may, in fact, work to increase traditional patterns of behaviour and inertia, thereby making mobilisation more difficult.' (Cameron, 1974, p.150)

Rather than impersonal processes that create new forms of subjectivity, new kinds of people, that in turn put pressure on the political process through spontaneous organisation, we often find a relatively small number of actors who seek, through the staging of events, the production of propaganda and so on, to create new subjectivities, and through these new subjectivities secure acceptance for new articulations of social reality. The totality of what happens to happen is not a causal factor in itself. Events are invoked and put to use in speech and meaningful action in the present by those who aspire to control the future. The point is well made by David Cameron in his discussion of the rapid increase in the NSDAP's vote share in Germany between 1928 and 1933. He quotes Theodore Abel's argument that 'it is wrong to account for its successes in terms of unemployment, Versailles, etc. The spread of the Nazi movement depended largely on adequate promotion ... the way in which it presented the issue, made the ideology attractive, and manipulated the technique of propaganda and organization.' (Cameron, 1974, p.152)

For example, in rural areas the Nazis organised 'meetings and village associations to prevent the forced sale of property' and in so doing 'transformed the party into a reference group which was evaluated positively and seen as the only effective defender of the interests of the farmers and lower-middle classes of the villages.' (Cameron, 1974, p.152) Farmers and small business owners were not transformed into Nazis by events and experiences that somehow spoke for themselves. Rather, the party, operating 'as if a crucial election was being held every day of the year' (Rudolf Heberle, quoted in Cameron, 1974, p.152) used those events and experiences, along with compatible features of existing social organisation and individual subjectivity, to mass produce Nazis through the conscious reorganisation of social reality. None of this is explicable without reference to the Nazis' constant expenditure of effort on the production of acceptable speech about the conditions in which Germans found themselves in the first years of the global economic collapse. Nor is it explicable

without reference to the vast material resources that were mobilised to generate that speech, not to mention the even vaster resources that had previously helped to create subjects who were receptive to the speech the Nazis generated..

The work of social construction does not only work outwards. Elites are constantly creating and formalising opportunities to socialise, to share their assessment of current and future conditions and to develop mutually beneficial strategies. Schattschneider's 'pressure system' of organised special interest groups persists and is complemented by looser associations in which frank talk is possible and group cohesion can be developed through companionship — the breaking of bread together — and the accumulation of minor and not-so-minor complicities. Aptitude is recognised and developed and individuals are assigned functions and statuses on the basis of close observation.²² Plural subjectivities become more effective as people become more confident of their status as a full member of group whose purposes they perceive correctly.

A highly sophisticated set of speech conventions and rules of confidentiality have been developed to facilitate these operations, from outright secrecy to Chatham House rules. Elites are also actively engaged in the creation and maintenance of group identities that maintain their status by creating authority and licence to act across different domains. Manners and clothing are used to regulate membership. And specialised language also contributes to this process of group formation. Davis (2017, p.597) describes how 'neoclassical economics has become the modern lingua franca that unites disparate elites, both within and across sectors and institutions.' This shared fluency contributes to group cohesion and helps establish their right to speak authoritatively in public debates. Professionals of speech who have been taught to respect those who speak this 'lingua franca' fluently reach out reflexively to them when they want to make sense of 'the economy.' Possession of a body of knowledge confers status. The content of that body of knowledge is difficult for outsiders to grasp but its form is impressive. Economists produce internally consistent theorems that may or may not be based on wildly unrealistic premises. The ancient Greek alphabet is pressed into service in economics as Latin once was in the Catholic Church: to daunt the uninitiated.

3.9 Conclusion

²² Features of social reality are refashioned through intra-elite processes of collective acceptance. Opponents are recast as 'threats to security', for example.

Searle notes (2010, p.107), that people do not typically ‘think of private property, and the institutions for allocating private property, or human rights, or governments as human creations.’ Indeed, we might go further and say that most people do not seem to understand the fundamentals of social reality. Both the state and its money are generally thought of not as particular declarative arrangements but as an uneasy mixture of nature and history. It is worth asking how important this this misunderstanding is. Could our current social structures survive being generally understood along the lines that Searle and Thomasson propose? Searle’s own attitude is ambiguous. He writes (2010, p.107) that ‘I am not at all sure that a general understanding of how institutions are created and function would actually facilitate their functioning.’ We could ask whether institutions whose existence depends on not being understood by those whose actions they organise deserve to exist.

It might be objected here that we don’t *all* have to understand social reality. It is perfectly possible to live, and flourish, while having wildly incorrect beliefs about all sorts of things. I can be an excellent cake maker while having no idea about the molecular structure of the ingredients, or the physics of temperature change. But there is an important difference between the quality of our understanding of physical objects and of the objects that constitute social reality. To put it bluntly, governments and money and property only exist because we think they do: they change as our beliefs about them change in a way that is not true of flour, eggs and butter. Indeed, an institution only changes when the sum of beliefs about it changes. An institution misunderstood by its constituent members is different from an institution fully understood.

Not only that. The quality of general beliefs about social reality affects me and my capacities for action, my opportunities for self-realisation, my chances of survival, even, in ways that are not true of general beliefs about physical reality. My cake will be delicious, whether or not I or anyone else knows that eggs come from chickens. But my civic prospects might very well depend on what I think democracy is, or on what you think democracy means. This is an issue to which we will return. For now it is worth repeating that the processes through collective acceptance is secured for the structures of social reality, and the ways in which these processes affect our general beliefs, scarcely feature in authoritative speech about these structures that reaches large audiences.

The idea that there is no need for philosophers to concern themselves with social ontology in this sense, the idea that such things as the state are not philosophically interesting, has enormous political significance. Indeed, widespread indifference to the processes through which elements of social reality are brought into being, maintained, altered, and destroyed is a constituent element in those processes. Without it these processes, and hence social reality itself, might look very different.

Institutions change in light of how they are thought about, in ways that are not true of, say, atoms, cats, or stars. One member of a collective can call into question the usefulness or fittingness of a social entity, or of an entire framework of social entities, without posing a serious threat, so long as their scepticism is not shared by others. Many members of a collective can harbour doubts in private while the patterns of activity that social entities organise remain intact. But if sufficient numbers cooperate in establishing a body of institutional facts that motivate challenges to some other body of institutional facts, the consequences can become be very significant.

Gilbert insists that a group that aspires to plural subjectivity must have correct beliefs about what they have in common, about the ‘special tie’ that binds them together. This stress on the need for *correct* beliefs among the members of a social group that aspires to plural subjectivity gives us a way to theorise how it might be possible for the population of a territory to more closely approximate ‘popular sovereignty’ in the sense that interests us. The focus shifts to the conditions of speech that are required if plural subjectivity at scale is to be established and sustained. After all, the members of a group cannot partake in sovereignty if they do not each share a conception of what they are doing together, or if the conceptions that they do share are not sustainable in the light of a process of inquiry in which they cooperate as equals. Absent a shared conception of what it means to rule and a shared acceptance of the means through which rule is to be conducted over time, these members cannot aspire to any share of sovereignty, with all that that implies for their individual liberty. It is to the conditions and conduct of speech, then, to which we now turn.

Chapter Four: Epistemic Harms and Popular Sovereignty

4.1 Introduction

In the previous chapter we saw more clearly what we mean when we talk about sovereignty and when we talk about sovereignty in the context of the state. What emerged is an ideal type of popular sovereignty. Popular sovereignty over the state exists in its complete form when the population of a territory constitute a plural subject whose shared object is the creation, maintenance and alteration of social reality. A popular sovereign can be said to exist when a ‘we’, in the strong sense Margaret Gilbert outlines, presides over the assertions whose acceptance constitute the state.

This is an ideal type because there is no plausible way in which the whole population beyond a quite small size and narrow uniformity could durably preside over the business of the state as a plural subject. Some inhabitants will refuse to pay attention, and busy themselves in private life. Some will be newly born, others will be nearly dead. Some will not understand what is going on, and no amount of civic education or social pressure will make them into dutiful partakers in the sovereign power. Above all the interests of citizens will diverge. Some will want to structure social reality in ways that favour Machiavelli’s nobles, those ‘who, in a state of idleness, live luxuriously off the revenue from their properties without paying any attention whatsoever either to the cultivation of the land or to any other exertion necessary to make a living.’ (Machiavelli, 2008,p.136) Others will seek to favour the multitude who labour. Sometimes these conflicts can be resolved by applying the rules that constitute the state. Perhaps a majority will impose its will over minority opposition. Perhaps an interested minority will secure its objectives against a background of general indifference. Sometimes one faction or more will seek to subvert the constitutive rules of the state through force or fraud. In all these situations there is no reason to pretend that we are witnessing the operations of a unanimous plural subject.

But we can begin to outline the minimal conditions for a state characterised by a tendency to promote popular sovereignty. The inhabitants of a territory — or the overwhelming majority of them — must achieve plural subjectivity to the extent that they hold in conditions of common knowledge the shared project of self-government, where self-government is understood as the creation, maintenance and alteration of social reality. These inhabitants— or the overwhelming majority of them — must share this conception of what it is to rule, and to rule as equals. There

must be a degree and quality of collective acceptance sufficient to confer deontic power on a set of institutions that make the construction of social reality accessible to broad publics. The citizens must understand what the state is, understand how it relates to the conduct of self-government and they must accept the legitimacy of its current form, and of the means by which it is altered. The pursuit of popular sovereignty requires institutions that are authoritative but that remain available to review.

Each individual, or sufficient numbers of them,²³ must know what rights and duties they have and share with others, and they must be willing to act in ways consonant with them. That is to say, they must accept the structure of social reality to the extent necessary to substantiate it in matters that concern the population as a whole, and they must be confident, and have reason to be confident, that others also accept it. Each individual must have reliable access to information about the world beyond their unmediated experience, including information about their own cognitive infirmities, and information about the beliefs and wishes of other citizens. This need for reliable information in turn requires some degree of insight into the dynamics of mediation; more precisely, the majority must be conscious of the dangers posed by irresponsible or vicious mediation. If they are oblivious to this danger then any claim they have to sovereignty will soon be evacuated.

Finally, and perhaps most crucially, popular sovereignty requires that the overwhelming majority understand how particular individual rights and their institutional expressions relate to the general possession of rule. Sovereignty can only ever be self-limiting, and absent a broad and deep understanding of the balance between the individual citizen and the plural subject of sovereignty, a regime aspiring to sovereignty of a popular character is bound to destroy itself sooner or later through a series of exclusions and expulsions. A regime biased towards popular sovereignty therefore makes epistemic demands — imposes epistemic offices, we might say in a Hobbesian register — on citizens that other regime types can, and perhaps should, avoid.

Sovereignty is always qualified, partial, and uncertain. It certainly cannot be preserved in constitutional amber. As the introduction to a collection on radical republicanism notes, '[t]here is no purely, narrowly "institutional" solution to the challenge of realizing genuine popular sovereignty.' (Leipold et al, 2020, p.10) Not that this is a frailty unique to the popular sovereign. Even in the case of an absolute monarch there can be no guarantee that a court favourite is not exercising arcane control over events. And there is certainly no way to ensure that a population will assert itself as sovereign in any particular instance, let alone across the entirety of the social field.

²³ The vagueness here is unavoidable: we are not speaking about constitutional procedures but about the quality of collective intentionality that brings such procedures into operation in the first place.

Our interest is in establishing and maintaining conditions that allow us to approach the ideal of popular sovereignty, even if we do not expect to durably or reliably attain it. Given inequalities of aptitude and opportunity, and conflicts of interest, we have to try to create a structure of duties and obligations that tends to preserve, rather than destroy, a plural subject consisting of the population as a whole, a plural subject capable of determining the meaning of the state, and hence the nature of the political. This plural subject cannot be compelled to apply itself to every item of public business. It can only be provided with opportunities to constitute and reconstitute itself, for purposes very broadly understood and accepted, in institutional forms that enjoy very broad and deep support.

We should always bear in mind the educational role that the exercise of power over social reality plays. The current distribution of power, which excludes us from a great deal that belongs to sovereignty, whether understood as control over the meaning of the present and over the future this meaning entails, or as the rights and duties of the state's sovereign representative as in *Leviathan*, tells us that we are political marginal and that our rational ambitions in public life must be tightly constrained. For all that it provides no final guarantees, a different structure of social reality, in the shape of a different array of state institutions securing generally accepted rights, will open up new possibilities for action and hence will provide us with new kinds of knowledge. Aristotle remarked in the *Ethics* that '[...] it is political science that prescribes what subjects are to be taught in states, and which of these the different sections of the community are to learn, and up to what point.' (Aristotle, 1976, p.64) In a state characterised by a bias towards popular sovereignty, all sections of the community must learn the fundamentals of rule, including the epistemic demands that it makes on us, to the full extent of our capacities. And this knowledge is to be acquired through the ordinary conduct of public business. It is through the collective alteration of the objects of collective acceptance that we come to grasp the nature of social reality itself. One aspect of an enlightened maturity of mind is the recognition that the social order is, and can only ever be, an achievement of living, breathing people.

One way to think about how to organise a structure of duties and rights conducive to popular sovereignty would be to ask ourselves what would tend to subvert or destroy such a plural subject. What would increase the distance between the ideal form and the reality? What would deprive a population of the minimum required to substantiate a claim of popular sovereignty? Some of the threats to the plural sovereign subject are easy enough to see. If some superior power can impose a state form on the territory that the population would not choose for themselves, it seems clear that the population are not sovereign. It would be a Hobbesian sophistry to claim that a population

terrified into accepting a tyrannical ruler is somehow making a free choice as to the conditions of its shared life. Other threats are less obvious. If some fraction of the whole, or some external agent, can estrange the population from the means or ends of sovereignty then it will soon lose any claim to it.

In order to preserve itself as sovereign a plural subject must, above all, preserve its status as a plural subject. Once transformed from a subject of social action into an object of manipulation no group can be said to preside over the construction of social reality. It becomes instead one feature of a social ensemble whose originating authors reside elsewhere, and have a different composition. How then is a plural subject to defend itself from this kind of cognitive capture? In order to prevent the destruction of popular sovereignty by an internal fraction each individual must enjoy an equal claim on the fora in which claims about the structures of social reality are proposed and accepted. If a few can speak in socially consequential ways while many are unable to do so, that few will soon be able to shape socially consequential speech in ways that obscure the shared object of sovereignty from the many: the organisation of rights and obligations established through this socially consequential speech.

The substance of rule is control over the processes through which social reality is constructed, and social reality is constructed through the assertion and acceptance of claims. Therefore each equal member of a sovereign body must enjoy equality in the assertion and acceptance of claims that affect their status as member of a sovereign body, and that determine the sovereign's course of action. Let's call this epistemic equality. Every equal member of a sovereign plural subject must enjoy this epistemic equality if they are to retain their status as such. That is, each must have an equal power, whether they exercise it or not, to create and assess the descriptions and conceptual resources on which decisions about social reality are based, equal access to those descriptions and conceptual resources, and equal purchase on the processes of deliberation through which these decisions take place. If not a state aspiring to a popular character will soon be hollowed out. Once some individual or group has been denied epistemic standing in the processes through which the state is spoken into existence, the possibility of popular sovereignty is extinguished and oligarchy replaces it. To be clear, epistemic equality is not an equality of credibility or epistemic prestige. It is equal standing in epistemic fora, and equal exposure to equally applied epistemic criteria.

General and equal access to socially consequential speech, to speech pertinent to the sovereign, as both speaker and audience, is valuable to the individual. It allows each citizen of a regime designed to promote popular sovereignty to identify threats to, and to articulate a defence of, their interests. It

allows each citizen to promote their interests and to find allies with whom to collaborate, the better to develop an understanding of those interests, and an agenda for securing them. But the individual and sectional interests of this equal access are inextricably linked to the benefits that accrue to the collective as a whole. Universal access to the production and reception of socially consequential speech protects the sovereign plural subject itself, by publicising threats to it, and by aiding the consolidation of diverse groups who are motivated to protect it. Each and every attempt to deprive a member or a faction of full epistemic standing is a threat to the popular sovereign, and so long as the minimal conditions for popular sovereignty survive each and every member and faction is able to warn the sovereign of these threats.

4.2 Fricker and the Speaker's Right to a Fair Hearing

Recently Anglo-American political philosophers have begun to take a keener interest in the epistemic dimensions of political life. Miranda Fricker's 2007 book *Epistemic Injustice: Power and the Ethics of Knowing* marks an important moment in the discipline's effort to take account of the ways in which speakers in particular can be unfairly deprived of epistemic standing. In that book Fricker focuses on two classes of 'epistemic injustice', two ways in which it is possible to be 'wronged in one's capacity as a knower.' (Fricker, 2007, p.45) The first she calls 'testimonial injustice', the second 'hermeneutical injustice'. Testimonial injustice occurs when a speaker experiences a 'prejudicial credibility deficit' (2007, p.27). That is, the reliability of what they say is undermined or discounted because of the workings of prejudice in the minds of their audience. This form of injustice can be either 'incidental' or 'systematic.' When it is systematic the prejudice at work is one of those 'that track the subject through different dimensions of social activity - economic, educational, professional, sexual, legal, political, religious and so on.' (Fricker, 2007, p.27) She goes on to say that 'the main (the only?) type of prejudice that tracks people in this way is prejudice relating to social identity', which she calls 'identity prejudice.' This leads her to locate the 'central' or 'systematic' case of testimonial injustice in 'identity-prejudicial credibility deficit.' (p.28) She explains that 'it is central from the point of view of a guiding interest in how epistemic injustice fits into the broader pattern of social injustice.' (p.27)

Fricker's hermeneutical injustice is not inflicted on us by a particular agent. It is a consequence of the organisation of epistemic resources in a given context. In general terms, it is 'the injustice of having some significant area of one's experience obscured from collective understanding due to hermeneutical marginalisation.' (Fricker, 2007, p.158) Again, Fricker distinguishes between

incidental and systematic forms. In its systematic form hermeneutical marginalisation takes place because of ‘a structural identity prejudice in the collective hermeneutical resource.’ (Fricker, 2007, p.155) One example offered is of a female worker who was driven from her employment by the unwanted sexualised behaviour of a male co-worker but struggled to articulate the wrong she had experienced because the concept of sexual harassment was not available in the collective hermeneutical resource. (Fricker, 2007, p.149-52) This deficiency in the shared stock of descriptions and explanations was not something that just happened to exist. Rather it was caused by women’s ‘marked social powerlessness’ that ‘prevented women from participating on equal terms with men in those practices by which collective social meanings are generated.’ (Fricker, 2007, p.152)

4.3 Prejudice Against Kinds of Testimony

Fricker recognises that testimonial injustice can occur for reasons unrelated to the speaker’s social identity. When the injustice doesn’t derive from identity prejudice but from some other kind of prejudice, the effects can be devastating for the individual concerned, but the harm done does not have the same ‘structural social significance.’ (p.27) To illustrate the point Fricker presents a hypothetical case of ‘a panel of referees on a science journal’ that harbours ‘a dogmatic prejudice against a certain research method.’ (ibid.) An author submitting a paper might suffer an epistemic injustice because of this prejudice. While this might impact severely on the aspirant contributor, ‘the prejudice in question (against a certain scientific method) does not render the subject vulnerable to other kinds of injustice (legal, economic, political). Let us say that the testimonial injustice here is incidental.’ (ibid.)

But prejudice against certain kinds of testimony can have important systematic effects at the level of the individual *and* at the level of the collective organisation of knowledge. Imagine that the author submitting a paper to an academic journal is a development economist working in the late 1940s in the United States, and has used a Marxist methodology in her article. Here the epistemic prejudice in question might well make her vulnerable to a much broader spectrum of legal, economic and political injustice. Indeed the style of testimony might itself generate an identity prejudice in audiences that ‘tracks’ the subject ‘through different dimensions of social activity.’

That is, the *kind* of speech used in a particular instance can lead to the imposition of a prejudicial identity on the speaker. The once promising young woman in the economics department might be labeled ‘a communist’ or even ‘an agent of an enemy power’ in virtue of how what she writes

happens to connect with the broader social context. This prejudicial identity label might very well be the lens through which people who have no particular insight into the methodological controversy encounter the individual affected. This new, prejudicial, identity label could well track her across the whole range of her social experience in a way that could reasonably be called 'systematic.' Her views on a variety of topics, from university administration to the design of the teaching syllabus, might well be unfairly discounted as a result. She might be denied a promotion that was rightfully hers. Her local store might refuse her credit. Her neighbours might cease to involve her in social occasions. She might even be targeted for investigation and harassment by the FBI.

The imposition of a prejudicial identity label on those who offer a certain style of testimony is often how prejudice against that style 'tracks.' But the prejudice against the kind of testimony is prior. It applies to the testimonial style and it is systematic inasmuch as it will unfairly deflate the epistemic authority of all speakers. Anyone who adopts this style of speech is vulnerable to the prejudice against it, and risks being given a disparaging identity description. Anyone who takes care to avoid this style can avoid the disparaging identity description.

If they are loyal to their methodological commitments there is likely to be a snowballing effect, where existing social prejudices provide a kind of corroboration. A female Marxist will become the target of reflexive misogyny, a working class Marxist will become an avatar of the 'bolshy' lower orders, and so on. When a speaker benefits from identity privilege, the figure of the naive, effete or treacherous sophisticate can be superimposed on them. We can see that the exponent of certain kinds of testimony might suffer systemically, through unfair credibility deflation and in other ways. But notice, too, that the styles of testimony themselves can also be suppressed, either by audiences who are primed to take the testimony less seriously than is warranted, or by speakers, who learn to avoid the style or register of speech, in order to avoid being stigmatised. As a result, we are put at a loss through the systematic suppression of these genres of testimony from what Fricker (2007, p.152) calls 'those practices in which collective social meanings are generated.' Prejudice against types of speech seems to generate both testimonial and hermeneutical injustice, and to do so systematically.

We can perhaps see the relationship between a style of testimony and the imposition of a prejudicial identity most clearly in the context of 'conspiracy theories.' As David Coady points out '[w]hen someone asserts that a conspiracy has taken place (especially when it is a conspiracy by a Western government) that person's word is automatically given less credence than it should because of an irrational prejudice associated with the pejorative connotations of these terms.' (Coady, 2018, p.11)

As he notes, the result, ‘borrowing Miranda Fricker’s terminology’ is a kind of testimonial injustice (Coady, 2018, p.10)

The testimonial injustice here looks systematic. If someone attempts to make sense of a public event with reference to a conspiracy of some kind, they can quite quickly become a ‘conspiracy theorist’ in the eyes of others, and as such become subject to an ‘identity-prejudicial credibility deficit’ across a much wider range of topics. And the identity ascribed to them on the basis of their testimony can certainly track them ‘through different dimensions of social activity.’ We are all familiar with the idea that conspiracy theorists are losers seeking consolation in the existence of an evil plot against goodness, that they live in their parents’ basement, that they are unhealthy, unwashed and unattractive.

As Alfred Moore (2018, p.111) notes, ‘both in social science and in the wider public sphere [...] conspiracy theories are often defined as beliefs that are (among other things) untrue, or unwarranted or unfalsifiable.’ Not surprisingly a substantial academic literature has accumulated that explains the popularity of conspiracy theories with reference to the cognitive biases and psychological infirmities of those who believe in them. As a simple matter of fact world history after 1945 has been an almost uninterrupted chain of conspiracies. Secret plots (by Western governments) helped bring down the governments of Iran, Iraq, Guatemala, the Republic of the Congo, the Central African Republic, Brazil, Chile, Argentina, and Indonesia, to name only a few. (Blum, 2022; Chomsky, 1992) The United States’ role in the various conspiracies that preceded these coups is poorly documented, but in many instances it is nevertheless impossible to deny. (Bevins, 2020) The War on Terror began as the result of a conspiracy whose exact nature is still obscure, and took the form it did in part as a result of further conspiracies, including those undertaken by the governments of the United States and the United Kingdom in the months before the invasion of Iraq in 2003. As discussed, the economic collapse of 2007-8 was the result of pervasive criminal conspiracies within the financial sector, which were secret then, and are obscure now. It doesn’t follow from this that the various conspirators in banks and brokerages were consciously seeking to cause a global financial crisis. Conspiracies can be highly significant for reasons that do not cross the minds of the protagonists. The recognition that conspiracies are important doesn’t have to lead to a quasi-theological belief in the existence of a single, all-powerful and purposive conspiracy against humanity. It can lead to the much more modest conclusion that one of the tasks of a mature social science ought to be to explore the intended and unintended consequences of activities planned and executed in secret.

The sheer number of conspiracies, and their explanatory significance in events as diverse as the 2003 invasion of Iraq and the financial crisis of 2007-8, somehow do not stop us from despising those who take the existence of conspiracies seriously as a feature of social reality. In our current conceptual regime conspiracies are rare and inconsequential, no matter how often they take place, and how consequential they are. If an academic researcher begins from the, entirely plausible, premise that the intended and unintended consequences of conspiracies are important, and as such should be treated as an important field of study in the social sciences, they may well find that they suffer from testimonial injustice triggered in the first instance not by their social identity but by the genre of their speech. They will risk being treated like people who believe things that are ‘untrue, or unwarranted or unfalsifiable’, with all that that implies for their career prospects. After all, who wants to spend time with someone who has embarked on what Steve Clarke calls ‘a degenerating research programme.’ (Quoted in Husting and Orr, 2007, p.141)

Prejudice against ‘conspiratorial’ testimony in one context can have wide-ranging effects across a range of epistemic domains, and harm the efforts of individuals and collectivities to understand their circumstances. If a publication, or a group of publications, or a whole sector of knowledge production, is highly influential, any number of media outlets and journalists might adopt its methodological prejudice wittingly, or reproduce its effects by remaining unaware of the existence of a research methodology that is unfairly subject to ‘credibility deflation’ and denied an appropriate level of epistemic authority and publicity. Ignorance and error will work their way through the knowledge system and the quality of our shared hermeneutical resources will be diminished. If the unfair deflation of testimony regarding conspiracies diminishes our shared stock of social descriptions and conceptual resources the injustice begins to look systematic in hermeneutical, as well testimonial, terms.

We can generalise from the prejudice against Marxist and conspiratorial registers of speech and say that a genre of speech exposes those who adopt it to testimonial injustice when it threatens the settled understandings of their audience. This is particularly true when a style of speech does not accept the governing assumptions and frames of reference of what are generally accepted to be ‘*properly constituted epistemic authorities.*’ (Levy, 2007, p.187, emphasis in the original) Assessing such speech on its evidential and logical merits might be epistemically virtuous but it might also carry very high costs. We need to be able to trust others in order to make sense of the world, and we are reluctant to break with the knowledge communities to which we belong. Furthermore, while the benefits of treating disruptive but warranted speech fairly are likely to be modest at best, the penalties for believing such speech when it is unwarranted might well be very serious indeed.

We can see some support for the idea that it is the challenge it poses to established beliefs that makes speech vulnerable to deflation in the way that the term ‘conspiracy theorist’ is used to describe people who are not in fact positing the existence of conspiracies. (Husting and Orr, 2007, p.135) Indeed, the tendency to dismiss unwelcome claims about the political as ‘conspiracy theories’ is so pronounced that Matthew Shields (2023, p.469) has argued that the label ‘[...] is an effective tool for stigmatizing and marginalising views that are outside of or challenge those advocated by dominant institutions and figures.’ Meanwhile when ‘dominant institutions and figures’ themselves promote baseless conspiracy theories this is not necessarily seen as a reason for epistemic demotion. One widely cited academic paper acknowledges that governments sometimes promote conspiracy theories. But the authors still seem comfortable recommending that the same governments be given responsibility for combating conspiratorial thought in civil society and go so far as to recommend ‘cognitive infiltration’ to break up groups in the grip of ‘crippled epistemologies’. (Sunstein and Vermeule, 2009, p.211-17) Some people are paranoid and unreliable, while others make honest mistakes that should not be taken as evidence of a broader intellectual incompetence or mendacity. The different ways we treat speakers are not determined purely from the bare generic features of their speech, or from their social identity. Rather we react to how styles of speech and social identities interact with an established constitution of opinion and its associated distribution of social power. President Kennedy could claim during the Cold War that communism was ‘a monolithic and ruthless conspiracy’ operating at a global scale, without any ill effects to his epistemic standing. (Kennedy, 1961) Apocalyptic conspiracy theorists who are US Presidents aren’t necessarily treated as such.

Prejudice against testimonial styles might lead to a whole set of material harms in the economic and political spheres. If certain kinds of testimony are unfairly suppressed enormous amounts of unnecessary suffering might be accepted as inevitable, or even lauded as praiseworthy, by people who have been denied access to the best available information. And conspiratorial and Marxist rhetorics are by no means the only candidates for epistemic deflation via attacks on the character of those presenting them. The foremost advocate of monetary reform in the late nineteenth century, William Jennings Bryan, presciently argued against the need to peg the dollar to gold. For his pains he was depicted in one contemporary cartoon as ‘a bright-red Satan, complete with horns, bat wings, and a pointy tail.’ In another his face ‘was a mask, behind which lurked a hideous howling “Anarchy” in a boar’s hide and a bat’s wings.’ (Frank, 2020, p.67-8) In the 1896 presidential election the guardians of the financial common sense warned that his policies would ruin the economy. When the gold standard collapsed in the 1930s, the Biblical disaster confidently predicted by the

‘properly constituted epistemic authorities’ on Wall Street and in the City of London did not transpire. The result was not a revolution in the public understanding of monetary policy but another round of mystification. The management of the currency was preserved as a technocratic matter that could safely be left in the hands of accredited experts.

William Jennings Bryan is long gone. But it is reasonable to suspect that the aggression directed against those who question the monetary orthodoxy, and the kinds of language they use, has retarded research into the nature and function of money and finance, with grave and long-lasting consequences for our shared hermeneutical resources. If critics of the monetary orthodoxy weren’t routinely denounced as satanic wreckers or paranoid cranks it would make it more difficult for politicians to offer up baby talk in place of reasoned economic arguments when trying to reconcile their electorates to the need for continued austerity. (Morrison, 2023)

The disrepute that surrounds the term ‘conspiracy theory’ seems to have had a marked impact on the conduct of social science. An October 2023 University of York library search for articles and books containing the word ‘local government’, filtered by subject, returned 174,556 results, a search for ‘Freemasons’ filtered by subject returned 1,446 results, and a search for ‘Freemasons local government’ filtered by subject returned zero results. (University of York library search, 2023)²⁴ This is a distribution of attention that would surprise many journalists covering local government in the UK, to put things at their mildest. But we can see why academic sociologists, who seek to base their claims on documentary evidence and reliable testimony, are likely to find the topic of conspiracy unpromising. Conspirators are not reliable minute takers or narrators. Meanwhile journalists have every reason to present individual instances of criminal conspiracy as sensational departures from the normally transparent conduct of public business. And above all of these considerations hovers, the entirely reasonable, fear that, were one to start asking questions about the role of freemasons in local planning decisions, eyebrows might soon be raised in the faculty. Nevertheless sociology’s shying away from secret coordination as a practice to be studied, rather than as a manic suspicion to be diagnosed or dispelled, would surely have puzzled one of the founders of the discipline, Georg Simmel, whose 1906 article ‘The Sociology of Secrecy and Secret Societies’ was an entirely sober attempt to give an account of its relationship with the rest of the social order. (Simmel, 1906)

To recap, Fricker describes a situation where prejudice relating to social identity causes audiences to deflate unfairly the credibility of speakers. And she wants us to see this as the central case of

²⁴ For comparison, a subject search for ‘planning local government’ returned 20,940 results.

testimonial injustice, since ‘it is central from the point of view go how epistemic injustice fits into the broader pattern of social injustice.’ (Fricker, 2007, p.27) Identity prejudice leads to systematic hermeneutical injustice, since it excludes some kinds of people from full participation in ‘those practices by which collective meanings are generated.’ (Fricker, 2007, p.152) In cases like those that Fricker highlights prejudice against the speaker’s identity vitiates their speech. But prejudice against particular *forms of speech* can also vitiate the speaker — and in more or less subtle ways. This prejudice against forms of speech can also have systematic hermeneutical effects, and can fit ‘into the broader pattern social injustice.’ (Fricker, 2007, p.27) The unwarranted deflation of claims about conspiracies by the powerful, for example, and the marginalisation of those who makes such claims, seems likely to help those who want to conspire.

As noted people who in other respects might be expected to enjoy a credibility surplus because of their identity can experience social penalties if what they say is inconvenient or unwelcome to those in a position to confer epistemic authority. The author Thomas Frank has described how media outlets that had been happy to host him to discuss his previous books proved less receptive when he published a book about the history and afterlife of American Populism.(Gray, B. and Texas, V., 2021) Frank is a straight, white, middle-aged male with an advanced degree and a proven critical and commercial track record as an author. But the thesis of his latest book, that the Populists of the late nineteenth century were not all violent racists, and that many of their opponents in the Democratic Party were, is at odds with the prevailing consensus among elite commentators, if not among academic historians. (Frank, 2020) Another theme of the book, the idea that the contemporary Democratic Party has abandoned working class voters and adopted a moralising and exclusionary elitism, is perhaps even less appealing to the editors and producers whose patronage Frank seeks.

Patronage relationships are disreputable in liberal societies, in which free individuals are expected to compete on their merits in various marketplaces, including the marketplace of ideas. But patronage is nevertheless an important, sometimes decisive, factor at play in the current epistemic regime, as it is in many others. Opportunities to compete constitute a scarce good, and in the media outlets that make the world of ideas available to large audiences they are arbitrarily controlled by a few people, who are surrounded by people who would love to do their job. Editors and producers combine vast and unaccountable power with intense vulnerability, a condition that closely resembles that of courtiers in a monarchy. The similarity should not surprise us, given the media’s close proximity to, and precarious participation in, the substance of sovereignty in the sense that interests us here: the power to establish the meaning of the present. Everyone involved in the commission of public

speech for any length of time will learn which kinds of testimony are going to be received as a kind of benign background hum, and which will trigger testy memos from superiors, advertising boycotts or worse.

As with identity-based prejudice, those who treat certain forms of testimony unfairly, and those whose testimony is unfairly treated, need not be consciously aware that prejudice is in play. Fricker herself (2018) stresses the ‘non-deliberative nature’ of both testimonial and hermeneutical injustice in her conception of the terms. In the examples she discusses no one sets out at a particular moment to doubt a witness unfairly, or to deprive them of the means to make sense of their circumstances. The prejudicial conditions in which communication takes place, or fails to take place, corrupt the processes of both articulation and evaluation. But sometimes agents know very well that they are unfairly reducing the salience or credibility of certain kinds of testimony, as well as certain kinds of witness. They might do so enthusiastically or out of a reluctant recognition of the role they must play in a given institutional context. The open-eyed, if unenthusiastic, promotion of ignorance is easily overlooked but it is every bit as important as the righteously foolish, or enthusiastically malicious, versions. Indeed it is by no means obvious that our current epistemic regime could survive without this brand of dejected professionalism.

Nor should we doubt that there is widespread and consequential hostility to certain forms of explanation, certain styles or genres of social description, because we only rarely come across the suggestion that this hostility might be a factor in judgments about what is worth publicising. Most people who feel that they have been unfairly excluded from opportunities for publicity do not rush to complain publicly. There is always the next time. And even if they do want to object, how are their complaints to become effectively public? Besides, most authors don’t appear on television to promote their books, whatever they are saying. Thomas Frank is unusual, in that his epistemic demotion has been so pronounced and unambiguous, and he no longer seems to be interested in restoring his former status. At any event, as with identity-based prejudice, prejudice against certain kinds of testimony can have systematic effects besides those visited on a particular speaker. It can deny us all access to the full range of epistemic resources that would be available if all claims were treated fairly in the relevant institutional settings.

The giving and receiving of testimony are themselves ways in which identity prejudices are formed. Consider how this process might be at work in the patriarchal domination of women. The testimony of women who describe accurately how they are treated under patriarchy presents men with an appalling challenge. They can either believe what they are told, or find some way to dismiss it. If

they believe it, then they have to choose between giving up the social goods they enjoy — the deference and obedience of women, the reputation for manly virtue that attaches to someone who can keep ‘their’ women in line, and so on — or continuing to enjoy these social goods in the clear-eyed knowledge that they are moral monsters. Some other option, almost any other option, would be preferable.

Deciding that women, or certain kinds of women, are morally different from men, that they should not be understood as epistemic equals, is a way to keep hold of power without having to look too closely at the thing in the mirror. In such circumstances the kinds of things people *say* become the basis for discovering the kinds of things they *are*. Hence, perhaps, the profusion of words for women who refuse to accept the regulation of their speech — shrew, scold, nag, and so on. It is their speech that fixes their social identity. Meanwhile, women who want to avoid the worst excesses of misogyny need only restrict themselves to topics and rhetorics that flatter patriarchal audiences.

If plain speaking by the powerless provokes a sufficiently violent response by the powerful, it is hardly surprising if the powerless tend to avoid plain speaking. And such is their predicament that this itself will become the basis for yet another identity prejudice. Women subject to male domination become reviled for their ‘unreliability’ or ‘insincerity’, since they cannot tell the truth without risking terrifying reprisals. When speaking to men they might well avoid definitive claims, use hedging qualifications, resort to ‘feminine wiles’ and otherwise behave in ways that seem to betray a lack of candour or competence, and hence reliability.

Meanwhile the powerful become epistemically impressive (among themselves and among those who aspire to join them, at least) because they are used to being listened to, and taken into account. They don’t shy away from saying what they think, because they have a long history of having been believed. Ironically, this might make it easier for the powerful to lie, to themselves as well as to others. After all, it is easy to mistake self-confidence for candour. Here, then, we find the twin figures of imperial Britain, from the inside John Bull, the plain-speaking enforcer of fair dealing; from the outside, Perfidious Albion, the machinery of violent dissimulation that articulated the fantasy of John Bull.

In a similar vein, Anderson (2012, p.169-70) suggests that ethnocentrism, the tendency for members of social groups to favour one another over non-members can become a source of testimonial injustice if the groups’ members are called upon to assess the relative credibility of ‘one of their own’ and an ‘outsider.’ If the groups themselves are constituted along lines that derive from pre-

existing social injustices this sharpens the point. A team made up exclusively of white men will have a 'neutral' tendency to favour the testimony of group members that will play out in many contexts as an unfair downgrading of testimony from people who have different identities, experiences and insights:

If different groups engaged in inquiry are segregated along lines that are also the basis of systematic unjust group inequalities, then ethnocentrism will cause the advantaged groups to discount the testimony of disadvantaged groups and damage the epistemic standing of their members. Ethnocentrism thereby causes a form of structural testimonial injustice. (ibid)

Anderson also notes that 'individuals who interact frequently' tend 'to converge in their perspectives on and judgements about the world.' Anderson points out that this tendency, the 'shared reality bias', can be a source of hermeneutical, as well as testimonial, injustice if 'groups of inquirers are segregated along the same lines that define group inequalities.' (Anderson, 2012, p.170) Powerful insiders might not be able to make sense of what less powerful outsiders are saying, so alien is it to their shared view of the world. As Anderson (ibid.) notes, this means that those who have managed to overcome various obstacles to make sense of their life experience still might not be understood to privileged interlocutors.

The prejudice against *types* of testimony discussed above gives us another way to see how the 'collective hermeneutical resource' might be skewed in ways that leave us unable to understand our predicament, perhaps even unable to understand that there might be something to understand. And if certain *types* of testimony are systematically and unfairly downgraded by those who exercise power in communicative contexts then individuals will either be unaware of the existence of those types, or hesitate to apply them in their own reasoning.

'Ethnocentrism', understood as a shared commitment to a body of knowledge and the genres of speech it warrants, shades into a 'shared reality bias.' The combination will plausibly play out as a tendency to dismiss or devalue unfairly ideas, information and insights that threaten the integrity and self-understanding of powerful groups. This unjust deflation of testimony will feel justified since these threatening ideas and insights will arrive without hermeneutical standing: they will be unfamiliar when they are not downright disreputable. Meanwhile those presenting the ideas will suffer from the credibility deficit to which outsiders are always vulnerable. The geographer Daniel Darling tells a story about economists that helps illustrate the point. Joseph Stiglitz was once talking to a colleague about another economist, Paul Volcker. Stiglitz was heard to ask, 'But is he smart like

us?’ (Dorling, 2012, p.5) Smart people are people whose testimony is worth paying attention to. But whether a group decide someone is smart or not depends to a very considerable degree on how likeable they are. And being liked, as the word suggests, has something to do with how much they resemble us, what we have in common with them. We even call people we get on with *agreeable*. There is a danger that people, especially newcomers, will be deemed smart to the extent that they accept the group’s governing assumptions and work with them, and will be unfairly dismissed if they reject some or all of those governing assumptions.

An objective-sounding criterion like ‘smartness’ can often be a cover for something much more like ‘similarity to us’. If we are intellectually self-confident we consider others intellectually impressive to the extent that they excel in ways that we can appreciate — because we excel in the same way, even if the excellence in question isn’t relevant to the task in hand. If a group enjoys epistemic authority its members will tend to discount testimony systematically when it does not accept the group’s terms of reference, and therefore appears to be beside the point, not ‘smart’. And the group will do so even if the epistemic authority its members enjoy is based on a disordered distribution of prestige. Indeed, they are more likely to dismiss alternative points of view if that is the case. This phenomenon will be familiar to geographers, like Dorling, when they have dealings with Ivy League economists, like Stiglitz. And it can work the other way round. If we lack intellectual self-confidence, we can come to consider others intellectually impressive to the extent that that seem different from us. It often takes working class students some time to realise that the confidence and poise of their middle class peers is no guarantee of epistemic virtue.

There are other powerful dynamics at work in our discursive life that will, if left unexamined, tend to corrupt our shared understanding. For example, we tend to ascribe to speakers the virtues and vices that they describe in others. This ‘spontaneous trait transference’ might plausibly create a bias against challenges to an existing order of epistemic prestige and status, even when they are warranted. (Skowronski et al, 1998) We also tend to overvalue familiar testimony (Ecker et al., 2022, p.14) and we are powerfully motivated to conform, at least outwardly, with the beliefs of the social groups to which we belong. Indeed such is the desire for conformity that ‘a substantial minority’ of us will profess the consensus view, even when evidence to the contrary is directly available. (Asch, 1951, p.190) This tendency to epistemic deference towards existing groups is not surprising. Recent research in cognitive science indicates that dissent is associated with ‘negative emotional states’, to the point where one paper talks of ‘the pain of independence’. (Berns, et al., 2005, p.252) Meanwhile a wealth of data supports the idea that social isolation exacts a heavy toll on both mental and physical health. (Leigh-Hunt, et al., 2017) Indeed, ‘evidence suggests that some of the same

neural machinery recruited in the experience of physical pain may also be involved in the experience of pain associated with social separation or rejection.’ (Eisenberger, et al., 2003, p.290-1. See also Weir, 2012) If, as seems likely, we are more likely to be rejected by a group if we reject its shared beliefs, we have good reason to suppress any doubts we might have about beliefs that appear to be widely accepted. The pain of independence warns us away from the greater pain of isolation. The organisation of beliefs in a society maps onto a distribution of pleasure and pain, a picture that would be no more surprising to Thomas Hobbes than to the Marquis de Sade.²⁵

We might find ourselves at a loss due to absences or distortions in the general epistemic field that cannot be traced directly to the exclusion from collective sense-making of an existing social identity group. Indeed, some absences or distortions might make it more difficult for the very existence of social groups to become available at the level of the individual, in such a way as to inform an identity, to provide part of an answer to the question ‘who am I?’ The availability of social identities is not a given, it is partly an achievement of inquiry into the broader nature of the social, into its distribution of practices, beliefs and experiences, and into how these might be categorised. Prejudice against styles of speech can inhibit individuals as they seek to make sense of their place in society, who they identify with, and so on. As noted in the previous chapter, a vast material effort goes into the creation of social identities. Liberation movements have always had to contend with the ways in which people that they see as sharing certain interests have already become subjects with quite different self-understandings of those interests. The workers of the world already understand themselves nationally and in other ways that tend to obscure their shared interests as workers.

4.4 The Listener’s Right to a Fair Speaking

So far we have concentrated on epistemic harms inflicted on those who are seeking to make themselves intelligible to others: the speaker’s right to a fair hearing. Testimonial injustice affects us in our capacity ‘as a giver of knowledge’ and hermeneutical injustice affects us in our capacity ‘as a subject of social understanding.’ (Fricker, 2007, p.7) If we are to provide a full account of epistemic harms we need to consider how we can be wronged when we are spoken to — in our capacity as a receiver of testimony, as someone who tries to make sense of how particular pieces of testimony relate to the hermeneutical backdrop over which these pieces are overlaid, or as someone who is

²⁵ This is by no means an exhaustive list of the ways in ways our shared hermeneutical resources might already have been distorted, or of the ways in which we might continue to fall into more or less consistent patterns of error in the future.

interested more generally in using the sum of available descriptions to make sense of their own conditions of life, and to organise with others to change them. If we have a right to a fair hearing, we also have a right to a ‘fair speaking’.²⁶

We have good reason to believe that the harms we encounter in our capacity as receivers of testimony are more pervasive and harmful, at least in the context of public speech, than those we encounter as givers of testimony. After all, communicative opportunities are far from being evenly distributed. Most of us speak much less than we are spoken to. We have little experience of addressing audiences, of the different techniques appropriate at different scales, the demands of broadcast, and so on. And we often turn up quite unprepared to listen to speakers who are thoroughly rehearsed. The effects of this inequality are, if anything, even more pronounced when the setting and speech style are informal, or apparently unstructured. Today we spend much of our time in discursive environments online that appear as an anarchic ‘public square’, but that systematically favour some speakers over others, according to calculations that are not themselves public.

In print, broadcast and digital media it is disproportionately likely that we will hear from one of the privileged handful who regularly reach millions with their pronouncements. We only need to consider how many people a radio news presenter will speak to in a day, compared to the average number that the members of their audience will speak to. And as we have already noted, opportunities to reach large audiences are limited and closely supervised. This power to decide who speaks while millions listen is rarely discussed, but it is clearly of the utmost importance. The few who decide are privileged in the original sense of the word, in that their discursive eminence is subject to a regime of private legislation. The rest of us have little chance of accessing the processes through which speakers are vetted for inclusion in the various spheres of publicness, let alone of assessing their adequacy.

There are two kinds of evidence-giving that can cause epistemic harm to audiences. There is evidence-giving that naively denies audiences their due by reproducing untrue claims that originate elsewhere. This is especially problematic when the witness enjoys some kind of epistemic privilege, social authority derived from official status or identity, or expert status. Consider, for example, a politician who argues for austerity on the grounds that a state is very much like a household, and cannot spend money it hasn’t got. The speaker here doesn’t set out to deceive their audience. They

²⁶ Coady, 2010 and Fricker, 2017 both discuss this aspect of epistemic justice.

sincerely believe that states are relevantly similar to households. If people accept their claims and proceed from them, it seems reasonable to say that they have been subjected to harm that has an unavoidably epistemic dimension. It also seems clear that a political order in which a claim like this proliferates unchecked, and establishes itself as a kind of common sense, is defective in a way that calls for political intervention of some sort. We are dealing here with a public injustice, rather than an affair in private life.

There is also evidence-giving that is deliberately deceptive. Here the operative vice is not laziness or incuriosity but dishonesty. Some writers on epistemic vice pass over conscious dishonesty and concentrate on various kinds of unconscious bias or self-deception. For example, in his discussion of the 2003 invasion of Iraq, Quassim Cassam (2019, p.3) offers ‘a list of intellectual vices that contributed to the Iraq fiasco’ that includes ‘dogmatism, closed-mindedness, prejudice, wishful thinking, overconfidence, and gullibility’ but does not include mendacity. This seems like a very strange approach. If audiences are harmed in their capacity as thinkers when they are given poor information through the laziness, incuriosity or unconscious bias of the speaker, it is hard to argue that this is not the case when they are given poor information through deliberate dishonesty. Indeed, the harm might be more serious, for being a matter of conscious design. Besides, the conventional epistemic vices that Cassam discusses are often used by conscious manipulators to secure transmission of their message through the medium of fools. Someone who is dogmatic, overconfident and gullible might be of limited epistemic worth, but they are a highly valued resource for a competent propagandist.

It doesn't matter if the politician in our example above believes their claims about households and public spending or is using them as a cynical cover for a plan to shift resources towards the wealthiest sections of society. Indeed, they might not care either way. The story they are telling is useful, and that's enough to explain why they are telling it. The point is, if they are able to persuade their audience they are able to harm them and the harm they do is, at least in part, epistemic.

So a speaker might wrong us wittingly or unwittingly by conveying false information. They might also wrong us by wittingly or unwittingly suppressing information that would aid our decision-making. The suppression of information can have far-reaching and systematic effects. The historiography of the late Empire has been shaped far more comprehensively by the incineration of millions of official files than by the conscious or unconscious biases of academic researchers. (Cobain, 2017) Indeed, British history from the mid-nineteenth century to today has been written without full access to Foreign Office archives. The government still refuses to release them, despite a

legal obligation to do so. (Cobain, 2014) The hermeneutical implications of this deliberate suppression of an entire genre of speech — the candid internal communications of what Walter Lippmann (1997, p.240) in 1922 called ‘the best diplomatic service in the world’ — are truly global.

The limits of political action, and hence the list of things that can be discussed politically, are political matters. But those who control political agendas often have very good reasons to encourage the view that social issues of great collective importance are in some way beyond the reach of politics. Indeed they construct elaborate conceptual architectures to persuade the laity that this or that problem sits outside the realm of the political, being governed by ‘economic laws’ or falling under the mandate of the ‘independent central bank.’ The list of reasons why the public should refrain from collective attempts to address problems is endless and protean. The most pervasive justification for inaction by the state is that some aspect or other of the political and economic settlement is an inevitable consequence of human nature. Once this is established, all the resources of reactionary rhetoric can be employed to suppress any attempt to render political that which is, from an objective point of view, at least plausibly political. (Hirschmann, 1991) At any event, when a given conceptual architecture does its job, office holders can avoid discussing matters that might otherwise become matters of intense controversy. (Bachrach and Baratz, 1970) Some of them might know that elements of this architecture are deceptive. Some might know that the whole edifice is intended to confuse and constrain. But many others might be quite oblivious.

We should take care not to stop here, with a somewhat flat-footed account of what manipulative speakers can do, and of how what they do can work against our interests. Manipulation doesn’t necessarily rely on the promotion of untruths, or on the suppression of truths. Moti Gorin offers plausible examples of instances in which ‘[...] one agent may be manipulating another even when the only form of influence she uses is the provision of good reasons or sound arguments.’ (Gorin, 2014, p.51) Much of the epistemic harm that matters doesn’t come to us in a form that admits of truth or falsity at all. As Aristotle (2018, p.152) notes, ‘In political oratory narrative plays a minimal part, because there is no way to narrate future events.’ Claims about what will happen in the future are neither true or false when they are first made. They are vindicated by what happens, or they are not. And they ‘come true’ in part because of how they are received by their audiences. A politician can persuade people to embark on a disastrous course of action without uttering a single lie. And audiences can also be harmed through the cultivation of associations and connections in ways that do not resolve into claims at all. A political impresario who creates ‘Cathedrals of Light’ with anti-aircraft searchlights might be doing something more pernicious than lying.

While coercion works by making people do what the powerful want, whether they want to or not, manipulation works by making people want what the manipulator wants. Stephen Lukes (1974, p.23) puts it like this, ‘*A* may exercise power over *B* by getting him to do what he does not want to do, but he also exercises power over him by influencing, shaping or determining his very wants.’ Even the language of desire can lead us to think too narrowly. We can also be manipulated by the imposition of duties. Consider the car advertising of cars. Below the image of the smiling woman on the gleaming bonnet the copy might take it as read that a successful executive is expected to buy a new car with decent regularity. We want a new car in part because we want to avoid the stigma of driving last year’s model.

All this can amount to an attempt to re-engineer the subject, in which the manipulator seeks to organise the dispositions of his target in order to secure their own interests. At no point does the target register what is happening and they do not consciously choose to become the person they become. Indeed, successful manipulation induces the subject to identify with the organisation of desires and duties that it instills in them, *that establishes them as them*. This is not a matter of ‘false consciousness’, inasmuch as we do not need to assert the existence of a ‘true consciousness’ that would otherwise exist, and that we can know, if not for the wiles of the powerful. After all, where would this true consciousness reside? Rather, it is a matter of registering how these wiles extend to attempts at the creation of the self.

There is a substantial literature on the means by which compliance can be secured through actions that reorder the minds of those affected. But, as Cory Wimberley points out, discussions of the role of propaganda tend to overlook this testimony by practitioners. As he puts it (2017, p.110) ‘the understanding of propagandists and at least some of those outside propaganda was that they worked to create and govern subjects, even if that notion has not penetrated deeply most philosophical discourses on propaganda and public opinion.’ Perhaps the philosophers’ lack of interest in conscious dishonesty extends to the broader terrain of manipulation, in which control is the paramount concern and ‘lying is just one tactic to achieve larger strategic aims in governing the public.’ (Wimberley, 2017, p.111)

In his writing on the emerging field of ‘public relations’ Edward Bernays was particularly clear about the means by which the public’s behaviour might be altered without recourse to deception in any simple sense. When promoting a product Bernays took care to associate it with already existing ‘desires and instincts and basic tendencies.’ Through ‘skilful handling’ these ‘basic elements of human nature’ can be turned in an ‘infinite’ number of directions. (Quoted in Wimberly, 2017,

p.113) Bernays drew on contemporary social science to describe the ‘universal instincts’ that form the raw material with which the professional propagandist works. These include ‘self-preservation, which includes the desire for shelter, sex hunger and food hunger.’ (Bernays, 2019, p.167) The propagandist, Bernays explains (2019, p.169), ‘extracts from his clients’ causes ideas which will capitalise certain fundamental instincts in the people he is trying to reach, and then sets about to project these ideas to his public.’ Success in this endeavour means working with the press and here a reputation for dishonesty would be disastrous. Bernays (2019, p.198) stresses that ‘it is because he acts as the purveyor of truthful, accurate, and verifiable news to the press that the conscientious and successful counsel on public relations is looked upon with favor by the journalist.’

There are many ways to exercise power through the management of beliefs. But Bernays is clear that there is a more promising terrain for the would-be manipulator. It is one thing to deceive someone into acting as you wish, it is quite another to associate what you want them to do with what they already want. What matters here is the reorganisation of desire, a shift in the constitution of the self that does not estrange its object from their ‘true’ being, but that they did not consciously choose, and that they would perhaps reject, were it to become available to conscious thought.

Seen in this light, the harms done to the audience by manipulation multiply. Much is made of the importance of ‘fact-checking’ in current liberal discourse. Vast sums are spent trying to establish authoritative mechanisms for declaring this or that claim ‘fake news.’ But it is not only the establishment of false beliefs in the minds of targets that should cause concern, though it is important. The core of the issue is the prompting of our actions through the use of truth, fiction and the canalisation of desire to shape our subjectivities — all in the service of others. Once the modern propagandist has finished their work we are much less likely to be able to jettison false beliefs, no matter how compelling the contradictory evidence is: these false beliefs have become part of who we are, and how we maintain our ties with others. It is all too tempting to dismiss the puritanical fact checker and hold on to beliefs that mesh pleasurably with our beliefs about what the people we value believe, and with our sense of self.

Here the damage done is only rarely completely inadvertent. The practitioner has to understand the materials they are working with. (One need only compare the ‘centre right’ politician’s careful use of metaphors of ‘flooding’ and ‘swamping’ by immigrants with the ingenuously racist statements of the people to whom they are appealing.) The question we are left with is whether we want to become co-creators of our individual subjectivity, acting in conditions of equality, or whether we are happy

to leave subject-formation to others, and have it operate as a specialised field of corporate and state activity, whose methods and objectives for the most part elude our understanding.

4.5 A Taxonomy of Epistemic Harms

Our testimony can be unfairly deflated when we try to contribute to ‘the processes of collective sense-making’. This can happen because of who we are, or how we present to audiences. It can also happen because of what we say. Certain genres of speech in certain contexts excite unfair treatment of both messenger and message. Prejudice against types of speaker and genres of speech can also lead to systemic gaps in our shared hermeneutical resources, which further disadvantage some people. Once these defects in the hermeneutical field bed down certain kinds of speaker and genres of speech will tend to become less (or more) authoritative than is justified.

If some of us are unfairly excluded from epistemic goods like education and opportunities to participate in the processes of collective sense-making we will be less persuasive than we would otherwise be, less able to add relevant knowledge and pertinent conceptual resources to the store of generally accepted descriptions. If this exclusion is effected through the price mechanism epistemic prestige will tend to accrue to those who are able to afford education and other epistemic goods. The pool of people considered qualified to assess speech claims will tend towards a social homogeneity. Bluntly, accredited experts will tend to be wealthy. Relatedly, if those who have been spectacularly successful in their chosen field together determine the distribution of prestige within it, there is a live danger that they will tend to look more kindly than they should on those who speak in the same way, or have had the same career trajectory, as themselves. In such circumstances it is easy to see how ‘shared reality bias’, ‘ethnocentrism’, and other prejudices and cognitive blindspots might render the epistemic field increasingly closed to challenge.

We are not only exposed to epistemic harms when producing speech. We are also in danger when we receive it. Speakers can present us with untrue or misleading claims. They can present true claims in ways that prompt actions that we would not choose if we had access to more complete, or differently organised, information. They can, while refraining from dishonesty as such, seek to alter our subjectivity in ways that suit their purposes, even if this leads us to act, or to refrain from acting, in ways that harm us. Systematic defects in the shared stock of beliefs make it increasingly easy for speakers to deprive audiences of a ‘fair listening’ as these defects become embedded as

uncontroversial common sense, and attempts to challenge them become correspondingly disreputable, disconcerting, and unpleasant.

The infliction of epistemic harms can be deliberate as well as non-deliberate. Sometimes audiences unjustifiably inflate or deflate testimony because they have been ambushed by unexamined prejudices and biases. Sometimes they know exactly what they are doing. Similarly, speakers can negligently or innocently reproduce deceptive claims that come from elsewhere. But they can also set out to deceive. Deliberate deceit of others through the promotion of untruth, the suppression of truth, and the nurturing of useful doubts are not as interesting as the many varieties of self-deception and cognitive infirmity. But it is by far the most important threat to any attempt to establish a regime characterised by popular sovereignty. An adequate response has to take seriously the role of deceit in the construction, maintenance and alteration of social reality.

This need not lead us to fantasies about a regime of perfect truth. Epistemic harms are everywhere. But not all of them warrant a collective response, much less the attentions of the sovereign. It is one thing to tell the population of a medium-sized country that there is no alternative to austerity. It is quite another to tell the drinkers in a pub that a whale is not in fact a fish, but an insect. As Thomas Nagel (2002, p.3-26) and others have noted, social life is only tolerable at all because we fall far short of absolute openness and candour. Trying to eradicate every muddle or evasion would soon lead us into a nightmare. On the other hand, some evasions and muddles matter a great deal. We can leave questions about the uses and abuses of ordinary mendacity to one side here. We are concerned with epistemic harms that would tend to undermine or corrupt a regime aspiring to popular sovereignty.

It is as well to remember that the stakes here are very high. A sovereign plural subject stands supreme over the entirety of the relevant social field. It will be self-limiting in important respects but anyone who captures it stands to accrue almost limitless resources of power. We are denied membership of the sovereign subject when the epistemic resources available to us are not adequate to make sense of, let alone evaluate, particular claims. Consider the politician in the example above, and their tales of household budgets. Their claims about social reality are accepted because their audience lacks the means to check what they are saying against the best available account of the relationship between the monetary system, the state and the economy. And this is true whether the inadequacies of the background descriptions are consciously contrived or result from the playing out of structural inadequacies — whether there is an identifiable villain, or a coincidence of prejudices and blindspots that suppresses certain kinds of insight.

We can see all too clearly how a mixture of conscious and unconscious distortions of our shared hermeneutical resources can play out in contemporary politics. The organised destruction of colonial records by the Colonial Office noted above has denied us vital information about what the British Empire was, and how it operated. Absent this information right-wing media outlets can cultivate a useful sense of grievance and confusion by contrasting a widely accepted common sense about the Empire with the products of modern scholarship, which they can then dismiss as the libels of a decadently liberal, even traitorous, elite.

We are now in a position to set out a more complete taxonomy of epistemic harms, insofar as they tend to subvert or corrupt attempts to sustain conditions conducive to popular sovereignty. Figure 1 attempts to do this in a systematic way.

Epistemic Harms to the Speaker (Ways in which we are denied a ‘fair hearing’)	Epistemic Harms to the Audience (Ways in which we are denied a ‘fair speaking’)
Harm to the speaker caused by unconscious prejudice against the speaker on the part of their audience. (This prejudice being triggered either by the speaker’s social identity, or by the kind of testimony they offer.)	Harm to the audience caused by their own unconscious prejudice against, or deference towards, the speaker. (This prejudice - or deference - being triggered either by the speaker’s social identity, or by the kind of testimony they offer.)
Harm to the speaker caused by a defective hermeneutical context, that is a hermeneutical context unjustly deprived of relevant information and conceptual resources through the systematic prior exclusion from collective sense-making of social groups or of genres of testimony. This context makes it more difficult for speakers to make sense of their own experience. It also makes it more difficult for speakers to contribute to collective sense-making in the present, even when they understand their experience perfectly well.	Harm to the audience caused by a defective hermeneutical context, that is a hermeneutical context deprived of relevant information and conceptual resources through the systematic prior exclusion from collective sense-making of social groups or of genres of testimony - and though the systematic and unwarranted prior promotion of other social groups and genres of testimony. This context make it more difficult for audiences to evaluate testimony in the present, and to relate it to their interests.
Harm to the speaker caused by their unjust exclusion from epistemic goods such as education and opportunities to participate in collective sense-making. This exclusion makes the speaker less able to convert relevant knowledge into contributions to collective-making, and correspondingly less able to protect and promote their interests.	Harm to the audience caused by their unjust exclusion from epistemic goods such as education, from opportunities to participate in collective sense-making, and from access to relevant and reliable information and conceptual resources. This exclusion makes the audience less able to evaluate testimony, and relate it to their interests.
Harm to the speaker caused by the deliberate denigration of their testimony by members of their audience. This denigration can be triggered by hostility to the speaker’s identity, or to the genre of testimony being offered. This denigration can be straightforwardly self-interested, motivated by a desire to sustain a disordered distribution of prestige, or to avoid the effort required to assimilate unfamiliar ideas or to assess disconcerting information.	Harm caused to the audience caused by the deliberate deflation or inflation of testimony by some of its members, triggered by hostility or partiality to the speaker’s identity, or to the genre of testimony being offered. This unjustified treatment of testimony can be straightforwardly self-interested, motivated by a desire to sustain a disordered distribution of prestige, or to avoid the effort required to assimilate unfamiliar ideas or to assess disconcerting information.
	Harm to the audience caused by the speaker’s unwitting reproduction of untrue or misleading claims, and harm caused by the speaker’s deliberate deception. Both become more serious when the speaker is attractive, fluent, or apparently expert, and when what they say is familiar and coheres with the audience’s existing beliefs.

Fig. 1. Epistemic harms that tend to undermine a sovereign plural subject, a taxonomy

4.6 Responding to Epistemic Harms

One response to epistemic harms is ethical. We might stress the need for greater civic virtue: a greater attentiveness to how we can be prey to unexamined prejudices, and to how others might be seeking actively to distort the epistemic field. We might call for greater vigilance about the dangers posed by the accumulated effects of prejudice against certain kinds of speaker and certain kinds of speech. But Olúfẹmi Táíwò's remarks on standpoint epistemology are relevant here. As Táíwò (2022a, p.4) notes, if we are not careful the effort to include contributions from marginalised groups in spaces that have already been through a rigorous process of social filtration might 'only reliably serve "elite capture": the control over political agendas and resources by a group's most advantaged people.' There is ground to be gained by the exercise of epistemic virtue in seminar rooms, boardrooms, newsrooms and similar: 'The Black person in the elite room may well be better positioned than non-Black people in this space to think about policing and incarceration.' (Táíwò, 2022b, p.78) But we cannot collapse the distinction between the interests, experiences and insights of the individuals in these spaces and those of the identity groups that they are called on to represent.

In this as in every context we should bear in mind Machiavelli's warning that 'it is necessary for anyone who organizes a republic and establishes laws in it to take for granted that all men are evil and that they will always act according to the wickedness of their nature whenever they have the opportunity [...]' (Machiavelli, 2008, p.28) In a *Punch* cartoon from 1988 a comfortable-looking white man is seen saying 'That's an excellent suggestion, Miss Triggs. Perhaps one of the men would like to make it.' We can imagine situations in which the same white man might say 'That's an threatening idea for me and the organisation of power from which I benefit, Miss Triggs. Perhaps one of the other women would like to refute it.' An ethical solution is not likely on its own to prove equal to a political problem.

We are concerned here with the ways in which we can be deprived of epistemic equality in the discursive spaces where overarching claims about social reality are made. We should not have to depend on the ethical sensitivity of those who tend to predominate in consequential discursive spaces. Rather we should insist on creating spaces in which epistemic equality is designed in, and becomes the default in decisions about the structure of social reality. Epistemic equality matters because without it our capacity to partake in sovereignty is bound to be hollowed out. If individuals and genres of speech can be unduly demoted, or unduly promoted, in discussions about the

constitution of social reality, then the general participation in decision-making becomes increasingly difficult and a regime's tendency to promote popular sovereignty is impaired. If defects in our shared hermeneutical resources cannot be identified and remedied by all citizens, on terms of equality, some individuals, and a regime designed to secure a share of sovereignty for all, will be endangered. If we arrive in adulthood without a working understanding of the social world, and of the ways in which it can be shored up or altered, the same is true.

There is bound to be controversy about the limits of the political: the point where speech becomes a matter of concern to those who seek to preside over the social world. At some point someone has to decide what kinds of speech can be left in the wilds of private exchange and what kinds should be made subject to a consciously contrived structure of rights and duties, should be *institutionalised* in the state. And whoever decides where the political begins and ends partakes in sovereignty over the state. A citizenry aspiring to be sovereign must take care to ensure that the institutional forms it adopts tend to protect it from corruption and dissolution. As such it cannot afford to concede final responsibility for determining the rights and offices of those institutional forms, and hence for the definition of the political to anyone else, including those now dead.

Each constituent of the plural subject that creates and recreates social reality must enjoy an equal protection against the full spectrum of epistemic harms, of threats to our ability to produce and assess claims about the world that become part of the common stock of the plural subject's deliberations. Without this equal protection we are intensely vulnerable to epistemic demotion, from reasoning subject to object of manipulation. We should be concerned about how we arrange our institutions to preserve epistemic equality, even if the threats to it appear to us to be marginal or easily remedied. After all, how can we be sure that our confidence is justified, if we do not take every conceivable step to guard against these threats?

This implies the need for new institutions that constitutionalise our role as givers and takers of testimony and as guardians of our hermeneutical resources. By constitutionalise I mean citizens must have the power to censure negligent or deceptive speakers, and to commend faithful and candid speakers. Let us call this a power of invigilation. And citizens must have both material support and public standing when they form collectivities that seek to target gaps and deficiencies in our shared stock of concepts and descriptions. Let us call this a power of inquiry. Taken together these powers should be understood as providing a defence for both individuals and plural subjects against the full spectrum of epistemic harms. We shall return to these powers in Chapter Six.

4.7 Conclusion

A plural subject that cannot protect itself from epistemic harms cannot realistically aspire to sovereignty. One only has to consider a monarch unable to choose their advisors, and unable to sanction those who prove reckless or deceptive. Such a monarch is very far from being sovereign in the sense that interests us: they will have no purchase on the present, no independent means to establish its meaning or the future it entails. At the same time a plural subject that aspires to sovereignty of a popular character must maintain epistemic equality between its members if it is not to be rapidly subverted, since only epistemic equality can protect it from attempts to subordinate it to the will of a faction seeking sovereignty for itself.

A Parliament or Congress that prevented some elected representatives from reading the content of bills, making speeches, and hearing the speeches of others before they voted would not be a sovereign in which all of its members participated. Similarly, if some members of a popular assembly cannot make themselves heard in conversations about the content of social reality and cannot hear those conversations, their claims to sovereignty will soon become null. The same is true if some members of a population can be lied to, or treated with epistemic recklessness, with impunity. Popular sovereignty depends on epistemic equality, in the sense of equal capacities and powers to speak, and to secure access to reliable speech. We are brought to a new appreciation of Hobbes' insistence that the choosing of counsellors and the means to honour them both belong exclusively to the sovereign. (Hobbes, 2017, p.147-50)

Without epistemic equality the population will be like a prince who is unable to choose their advisors wisely:

For this is an infallible rule: a prince who is not himself wise cannot be well advised, unless he happens to put himself in the hands of one individual who looks after all his affairs and is an extremely shrewd man. In this case, he may well be given good advice, but he would not last long because the man who governs for him would soon deprive him of his state. (Machiavelli, 1999, p.77)

A sovereign must be able to secure reliable advice, and have the resources to act on that advice. In a state designed to promote popular sovereignty each citizen must be able to participate in both the production and the evaluation of advice. Neil Levy (2007) is surely correct to say that knowledge

production is deeply social, and that we have little choice as individuals but to accept the testimony of duly accredited experts if we wish to take our place in this collective endeavour. (Levy, 2007, p.189) After all we are capable of much less than we intuitively think if we are not taken for granted the testimony of ‘properly constituted epistemic authorities.’ (Levy, 2007, p.187) But this only sharpens the point: the means by which these epistemic authorities are constituted and maintained become matters of intense interest to anyone aspiring to a share in sovereignty. If we ignore these means we become acutely vulnerable to the threats that the, absolutely necessary and desirable, division of cognitive labour poses to each and all. As a non-expert public we have to bear in mind that prestigious discourse — money talk, media talk, etc. — can be captured by privileged groups who use epistemic status markers as cover for the witting or unwitting promotion of self-serving claims.

How we are to protect ourselves is a practical question to which we will return. For now we can frame the task in terms of individual rights. As both a speaker and as an audience member in a political order aspiring to popular sovereignty we have a right to the resources we need if we are to participate as an equal in those forms of speech through which candidate claims about the social are made. We each have an equal right to protect ourselves from false claims and from the reproduction and elaboration of a defective or incomplete hermeneutical field. This right to protect ourselves includes the right to appoint our counsellors and hold them to account through the distribution of material resources and prestige.

Let’s say that as individuals who desire to be free we have a right to a fair hearing, and a right to a fair speaking: a right to speak as equals in matters of shared concern, and a right to be treated as an equal when others speak to us. These rights do not entail equal claims to credibility. The principles that govern rational inquiry will still apply, if we wish them to. But they imply powers to guard against the unjust deflation and inflation of claims, and to repair damage to our shared hermeneutical resources. These powers will include the ability to examine the basis on which various actors claim epistemic authority.

Absent these rights we become acutely vulnerable to deception, and far less able to challenge deficiencies in the shared stock of beliefs and conceptual resources that bear on deliberations about the structure of social reality. If we can be denied a fair and substantial power to participate in discourse concerning the fundamentals of social reality, and can be treated as an object of manipulation in this discourse without penalty, it becomes very difficult to defend the notion that we retain personal autonomy. The opportunity space in which we make choices will be produced by

others, through mechanisms that are inaccessible at best, utterly obscure at worst. More than that, the person making the choices, which we call our self, might be, at least in part, the product of stratagems devised by others, about which we have only a vague understanding, and over which we have no leverage.

Exactly what these rights — the right to a fair hearing and the right to a fair speaking — entail in terms of the institutional apparatus of the state is the subject of the final chapter. It is already clear that we need institutions in which we can exercise our rights as equal epistemic subjects, as contributors to, and assessors of, socially important speech. The aim is not to eradicate manipulation, or any other kind of troublesome speech. The aim is to give each of us the means to contribute to the processes through which social reality is created on terms of equality. These means include the right to participate in making claims about the structure of social reality, and the right to challenge reckless or deceptive speech when it threatens our vital interests. Given those means, the struggle against manipulative or negligent speech takes its place in the ordinary, unending, business of politics.

As it stands our structures of speech promote a radical inequality among speakers and among audiences. Hardly anyone participates by right in the discourse through which claims about the social are made, revised, and accepted. Hardly anyone can plausibly demand candour and careful consideration from others in the conduct of that discourse. The next chapter explores the historical origins of this radical discursive inequality.

Chapter Five: The Contemporary State Form

5.1 Introduction

The discussion of social ontology in Chapter Three allows us to set out more clearly what it means to be sovereign. The sovereign establishes the structures of social reality; their claims about the distribution of rights and duties, rewards and penalties, powers and impediments, secure collective acceptance in a given context. The sovereign is supreme in a domain of social power, understood as leverage over the processes through which some aspect of social reality is brought into existence, altered and maintained. And in the two-sided process of assertion and acceptance, the sovereign is the subject that has the last word.

But we should stress that the process is two-sided. As long as the subject asserting the structure of social reality is not identical to the subject whose collective acceptance is required to make good on that structure, a would-be sovereign is always faced with the possibility of a veto. Notice the attempt to give this negative reserve power institutional form in the definitive plebeian, roughly speaking popular, office of republican Rome, the tribunate. Notice, too, that after the collapse of the Republic the Emperors claimed for themselves this *tribunicia potestas*. A.H.M. Jones (1951, p.115) assesses these tribunician powers as '[...] useful but neither very essential nor very adequate.' But Tacitus in the *Annales* described *tribunicia potestas* as a 'phrase for the supreme dignity', which Augustus used to indicate 'his pre-eminence over all other authorities.' (*Id summi fastigii vocabulum Augustus repperit, ne regis aut dictatoris nomen adsumeret ac tamen appellatione aliqua cetera imperia praemineret*: Tacitus, 1931, p.612-3) Jones (1951, p.116) suggests that this move by Augustus signalled his ongoing allegiance to the people against the magnates. But perhaps by claiming a lifelong power of veto Augustus was also seeking to achieve a symbolic unity of assertion and acceptance, of ruler and ruled.

No matter what the powerful do to conflate assertion and acceptance any attempt to assert a structure for social reality is forced to take the potential for refusal, for collective non-acceptance, into account, to some extent or another. Sometimes part of the rhetoric of the assertion is the pretence that resistance would bring about a catastrophe, and this might be true in some circumstances. But, as Hobbes noted, even the defeated can refuse to surrender. (Hobbes, 2017, p.590) The process of creating, sustaining and altering social reality, if it is not combined in one plural subject, will always depend on agents whose options extend beyond bare submission, and who

might coordinate with others to create new social forms. Even a sovereign that consists the entire population must contend with the possibility of defection by some fraction of the whole, and the disintegration of its plural subjectivity.

This division between assertion and acceptance can be mapped onto familiar political theory. On the other hand, we can talk about the summit of decision-making within a particular social order, what Max Weber called ‘the single pinnacle of power.’ (Weber, 1994, p.315) On the other hand we can talk about the foundation of government: the sum of beliefs, habits, suppositions and suspicions that make good on those decisions, what Hume called ‘opinion’. (Hume, 2008, p.24) What concerns us here is how the relationship between pinnacle and foundation plays out.

Opinion, or collective acceptance, stands outside any given structure of claims that aspires to generate the distribution of rights and obligations that we call the state. It is the support lent by opinion that stabilises this structure by generating the appearance of substance. In the contemporary state form the supreme political power, the speakers whose assertions secure acceptance, usually sit inside and alongside an identifiable structure of such claims and obligations. A body of opinion either supports this structure or it does not. Whereas a particular locus of sovereign authority depends on being accepted as, if not legitimate, then at least tolerable. A sovereign survives only for as long as it is able to fend off an effectual evacuation of the prescriptive content of its claims.

We might say that in the latter sense the supreme power is exposed to the political and ethical judgements it seeks to manage and control, exposed to opinion, and can only survive a certain amount of alteration in those judgments before it collapses. But opinion is constantly changing and contradicting itself. Both the composition of the opinions held by individuals and the individuals themselves are constantly being replaced. This mutability creates a variety of rhetorical opportunities. But it makes no difference to its foundational status. Any ruler or ruling coalition must maintain its hold over the opinions of those it seeks to rule. When opinion as the foundation of rule is successfully enlisted to the cause of a particular social order, that order achieves as much security as is possible in an uncertain world. And when an efficient opinion, that is, a body of opinion whose negative would be decisive, settles reliably on an account of legitimation, a story about what would make any particular regime tolerable, those who aspire to influence, let alone rule, have little choice but to adopt the rhetoric this account applies.

There is another sense in which the concept sovereignty must be treated with caution. It is commonly noted that opinion is not entirely independent of, or immune from, attempts to shape it by those who aspire to have their claims about the social accepted. But those who seek to assert these claims are themselves not independent from previous attempts to shape *their* opinion. Those who successfully wield power in particular social contexts will do so in line with their beliefs about what is practically possible, or morally acceptable, or constitutionally proper, or whatever else motivates them. We are all living with the consequences of previous efforts to shape the content of the social. It is hard to see how we could make sense of ourselves without them.

In Chapter Four we addressed the question of how a plural subject that aspires to sovereignty of a popular character can defend itself from dissolution. We concluded that its preservation depends on the epistemic equality of its constituent members, understood as an equal right to engage in both the assertion and assessment of claims about the structure of social reality. If any individual or group in a political community can be excluded from ‘conscious mastery’ of the processes through which such phenomena as money and the state are produced and reproduced, the possibility of a sovereign plural subject comprising of the population is ruled out. Maintaining the conditions in which popular sovereignty in this sense remains a possibility, however unlikely, is the practical object of democratic politics understood as a project to prevent oligarchic domination. This leads us to consider what these twin rights, to a ‘fair hearing’ and a ‘fair speaking’, entail in terms of forms of collective organisation. But before we do we should pause to consider how sovereignty, understood as the ability to shape social reality, plays out in the contemporary state form. This chapter begins by looking at the relationship between assertion and acceptance in this state form. It goes on to compare the picture that emerges with Istvan Hont’s ‘jealousy of trade’ thesis, the idea that the eighteenth century sees the creation of a state form in which key features of social are no longer governed by the formal apparatus of the state as such and are declared to be an autonomous zone governed by what will later be called ‘economic laws’. The focus now is on America’s revolutionary constitution. Often read as a democratic departure from the British system of rule, the federal constitution here is understood as a consciously devised adaptation of the British model, in which individual rights and democratic aspirations are made compatible with the preservation of oligarchic rule. The chapter concludes with some remarks on the implications of the preceding discussion for contemporary critics of what is standardly called ‘democracy’.

5.2 Pinnacle and Foundation

Weber was sufficiently immersed in *allgemeine Staatstheorie* (Jessop, 2018, p.46) to believe that it was possible to locate ‘a single pinnacle of command’ in contemporary German society. (Weber, 1994, p.315) But the Bismarckian Reich was an unusual state formation. Ordinarily the presence of competing social claimants is too obvious to ignore. Often it is possible to tell a plausible story about the influence of corporate controllers of vast private wealth, the bureaucracies of the labour movement, the institutions of local and regional government, and the operations of ‘public opinion’, or more precisely its spokespersons in the media, on the operations of governments. This usually forces some kind of recognition that even the foremost site of formal political authority in a given context is subject to pressures from elsewhere that will affect its conduct. The relationship between these different sources of social power is always unstable and uncertain. The relationship between formally instituted sources of social power and their foundations in embodied opinion is also always unstable, and depends on innumerable factors. To complicate matters further, the distinction between the competing assertors of social reality is always liable to break down. Rivals can be bargained with, manipulated, or threatened into accepting of some claim or other. And those who have previously been unable to make assertions that secure the relevant degree of acceptance can take advantage of changing circumstances to prevail in efforts to shape social reality.

It might be possible to sustain a military despotism with the assistance of a handful of highly trained fanatics. But as Hobbes and Hume both note, even here there are no guarantees. And if more than sullen acquiescence is sought from the mass of the population some broadly acceptable legitimating story becomes necessary. By the time that Hume was writing in the 1740s the escalating ideological and material demands of international military and commercial competition were already making the despotic option seem increasingly archaic. A certain level of what we would call economic development, and what Hume called ‘luxury’, was required to maintain ‘a kind of *storehouse* of labour, which in the exigencies of state, may be turned to the public service.’ (Hume, 2008, p.170) Once general enrichment reaches the point where ‘luxury nourishes commerce and industry’, both monarchical despotism and the petty tyrannies of landlords become impossible: ‘that middling rank of men, who are the best and firmest basis of public liberty’ gain ‘authority and consideration.’ (Hume, 2008, p.174) Hume goes on:

These submit not to slavery, like the peasants, from poverty and meanness of spirit; and, having no hopes of tyrannizing over others, like the barons, they are not tempted, for the sake of that gratification, to submit to the tyranny of their sovereign. They covet equal laws, which may secure their property, and preserve them from monarchical, as well as aristocratical tyranny. (ibid.)

A legitimating basis for rule that would appeal to this 'middling rank' was needed. During the American Revolution just such a durable and broadly accepted basis had become established in the minds of the rebel colonists. Writing in the 1780s Louis Otto, a French diplomat in North America, noted that: 'It was necessary to agree that all power ought to emanate only from the people: that everything was subject to its supreme will, and that the magistrates were only its servants.' (Quoted in Miller, 1988, p.108) Any attempt to govern such people would have to adopt an impeccably democratic register.

Sure enough, the framers of the federal constitution recognised, and worked with, this overwhelmingly democratic climate of opinion. They sought to establish a constitutional order in which 'the People' were established in the minds of the citizenry as the supreme and indispensable authorising agent. At the same time, and as a matter of conscious design, the government they created was protected from the people as such. Writing to defend the federal constitution from its opponents, Noah Webster complained in 1787 that '[...] your whole reasoning, and that of all the opposers of the Federal Government, is built on this *false principle*, that the *Federal Legislature* will be a body *distinct from* and *independent* of the people.' (Quoted in Spencer, 2005 p.195) But the Federal Legislature was intended precisely to stand distinct from and independent of the people. Large constituencies, long intervals between elections, the need for super-majorities to effect constitutional amendments, as well as institutions such as the Senate and the Electoral College, were all designed for this purpose.

As Joshua Miller puts it, 'Popular sovereignty would give the new government the support of the people, and, at the same time, insulate the national government from the actual activity of the people.' (1988, p.110) They were so successful in securing popular support for an undemocratic system that they changed the vocabulary of politics to the point where it can be difficult to grasp the extent of their artifice. In their hands 'representative democracy' was transformed from a laughable oxymoron into the single most important element of responsible and responsive government.

Such is the identification of politics as such with representation that it is now quite uncontroversial for political philosophers to describe moves to take decision-making powers away from elected representatives as 'depoliticisation'. (Pettit, 2004, p.55) But to take the management of monetary policy, for example, away from representative assemblies and place it in the hands of unelected appointees is not a 'de-politicisation' so much as a politicisation that drains parliaments and congresses of energy and agency while dignifying and promoting the interests of those who control

the discourse around monetary expertise, which in the current distribution of social power means the holders of gigantic financial wealth. Given the role interest rate policy plays in disciplining labour and thereby maintaining the dynamics of capitalist economic organisation, this is not a technical matter that can be left to neutral experts. This is before we consider the distributive effects of bank bailouts and of innovations like quantitative easing. The MIT economist Rudiger Dornbusch disparaged the postwar monetary-fiscal order in Western Europe and North America, which aimed at maintaining high levels of employment and hence a balance of interests between the working many and the investing few, as ‘democratic money’. (Tooze, 2022, p.5) But the alternative is not depoliticised money. It is oligarchic money.

The authors of, and advocates for, the new federal constitution achieved their aims by combining deference to ‘the People’ with another aspect of revolutionary opinion, the authority of written constitutions. In 1791 Tom Paine had summarised this latter current of thought when he wrote that ‘a constitution is not a thing in name only, but in fact. It has not an ideal but a real existence; and wherever it cannot be produced in visible form, there is none.’ (Paine, 2009, p.98) This ‘real’ constitution was ‘a thing antecedent to government, and a government is only the creature of the constitution.’ Furthermore, a constitution ‘is to government what the laws made by that government are to a court of judicature.’ (ibid.) This is a language that would have made perfect sense to the American colonists, who had become familiar with the idea that government could operate under the terms of an authoritative charter, albeit one issued by a distant monarch, rather than a sovereign people. Perhaps the emerging commercial culture of binding contracts also habituated people to the idea that they should be able to consult something more substantial than immemorial custom when seeking to understand their rights and duties.

According to Martin Loughlin (2010b, p.48) this conception of the constitution as ‘a written document establishing the main institutions of government, enumerating their powers, and specifying the norms that would regulate their relations’ was ‘linked to the promotion of a particular theory of government: based on contract, enumeration of powers, institutionalisation of checks over the exercise of powers, and protection of the individual’s basic rights, they were founded on a theory of limited government.’ Loughlin emphasises a distinction between what he calls modern constitutions and those that preceded them. Elsewhere he has explained that ‘in the traditional understanding of the term’:

[...] the constitution expresses a nation's culture, customs and values just as much as its system of government. The constitution is certainly not some dish that can be made from a recipe. It can no more be made than language is made: like language, the constitution evolves through usage. It expresses the ways in which we conceive of ourselves as a 'people' or a 'nation' or, when focusing on our governing arrangements, as a state. (Loughlin, 2013, p.8)²⁷

Loughlin takes as his guide to this 'traditional' constitution Edmund Burke, who described it as 'a partnership not only between those who are living, but between those who are living, those who are dead, and those who are to be born.' (Quoted in Loughlin, 2013, p.9) A state's constitution in this sense cannot be contained in a single, authoritative document, according to Loughlin. It is 'the manners, culture, and traditions of a people' that 'form the "real" constitution of the state.' This leads Loughlin to the view that 'the traditional and modern concepts have different objects: the modern constitution has as its object the office of government, while the traditional concept has that of the state.' (Loughlin, 2013, p.12)

But Loughlin exaggerates the novelty of modern constitutions. Classical states, and the later republics that took them as their model, were organised on terms laid out in authoritative documents. Aristotle's *Constitution of Athens* tries as best it can to piece together a succession of historical constitutions, understood as rules governing the government, before describing the one in operation at the time of writing. It is true that divine, or at least extremely illustrious, law-givers were given the credit for establishing the earlier constitutions. (Aristotle, 1984) But Athens' fourth century *politeia* was not a vague 'form of life', or an 'organic' partnership between past, present and future. The Athenians were very much concerned with 'the office of government.' Besides, as noted above, the idea of the constitution as an authoritative body of written, and re-writable, rules governing government was a common feature of public life in the American colonies long before the federal constitution was contemplated. In Britain, too, the idea that the constitution could be found, at least in part, in the contents of authoritative documents, the Bill of Rights, say, or Magna Carta, had also gained considerable ground. (Adams, 2014, p.197) The federal constitution's true novelty lies elsewhere, as we shall see.

²⁷ We don't, in fact, usually 'conceive of ourselves' as a state. See the discussion in 2.3.

Loughlin is right that a foundational document authorised by ‘the People’ has become the dominant frame for thinking about the relationship between the territorial state and its citizens. Indeed, as he says, ‘the theory of constitutionalism has exerted such an impact on the drafting of constitutional documents that it is often assumed to be synonymous with the modern concept of the constitution itself.’ (Loughlin, 2010b, p.55) But the distinctive challenge facing the framers of the US constitution wasn’t that of designing a constitution focussed on ‘the office of government’ rather than ‘the state’. The problem they set out to solve was how to reconcile limited government with the idea that everything should be subject to the supreme will of the people, with the idea of popular sovereignty, in other words. Economic development (Hume’s ‘luxury’) had created a broad-based desire for ‘equal laws’ and the preservation of property, and hence the protection of the individual rights holder. But revolution had created ‘the People’ as the cause for which Americans fought. Only this ‘the People’ could provide the requisite authority for government as such. What if ‘the People’ turned tyrant and trampled the rights of individuals?

The framers answered that ‘the People’ would ratify the draft constitution, and so establish its legitimacy as an expression of ‘the People’s’ will. But ‘the People’ as a collective, authorising agent would then withdraw from the operations of government, returning only as individuals to cast votes for their officiating magistrates, or to defend their rights in court. These individuals might organise with others and direct themselves to changing some detail of policy or another, through the representative channels of the constitution. Or, as was more likely, they might be organised into support for one group of responsible statesmen against another. But they would not together constitute so much as an element, let alone a branch, of the central state. Much like the deist god, the authorising people would take no part in the day to day operations of their creation, relying instead on a system of interlocking superior law to order the institutions of government: ‘We the People’ would create the mechanism of the constitution, and then leave it to run like clockwork. Part of the genius of this move was that it enlisted the support of property-owning (and keen to be rights-bearing) individuals for a system of government that stripped almost everyone, including almost all property owners, of a place in the day-to-day operations of government. This might seem to vindicate Richard Tuck’s (2016) account of modern constitutionalism in *The Sleeping Sovereign*, in which the people act as sovereign only in rare moments of wakefulness. But as we shall see, the declared intent of Madison and his associates was precisely to prevent any further moments of popular wakefulness.

In order to make this story work the framers had to establish the competence of the people to act as a unitary agent at the point of ratification, while ensuring that any such unitary agent would be

excluded from the operations of government as such. John Jay strives mightily to perform the first part of this operation in *Federalist 2*. There he writes that ‘Providence has been pleased to give this one connected country to one united people, a people descended from the same ancestors, speaking the same language, professing the same religion, attached to the same principles of government, very similar in their manners and customs ... a band of brethren, united to each other by the strongest ties, should never be split into a number of unsocial, jealous, and alien sovereignties.’ (Madison, et al, 1987, p.91) As Miller (1988, p.105) points out, Jay is glossing over important ethnic and confessional cleavages, not to mention sharp sectoral and class divisions, in the newly independent states, the better to conjure the image of a unitary people, capable of speaking into existence the reformed state proposed by the Federalists through ratification of the constitution. The federalists exaggerated the homogeneity of the inhabitants of the North American colonies to lend plausibility to their rhetorical figure, the authorising ‘the People’.

Meanwhile, the constitution that Jay and his colleagues drafted in the name of ‘the People’ was entirely without institutions that might have given this same authorising ‘the People’ a permanent place in government. In *Federalist 63* James Madison makes it clear that this was a matter of intentional design. As he recommends the new constitution to readers in the state of New York he explains the difference between ‘the most pure democracies’ of the ancient world and modern American governments. It is not that classical constitutions had no use for representation, as was sometimes claimed: ‘The true distinction between these and the American governments lies *in the total exclusion of the people in their collective capacity*, from any share in the *latter*, and not in the *total exclusion of the representatives of the people* from the administration of the *former*.’ (Madison, et al., 1987, p.373) This ‘total exclusion’ is not a stray phrase describing a point of antiquarian interest. It is an apt summary of the federal constitution’s institutional schema. Contrary to Loughlin’s account, the distinction between ‘ancient’ and ‘modern’ constitutions that motivates Madison, and that characterises the modern state form, is the eviction of the people as plural subject from the institutions of government.

Elsewhere Madison states plainly what he means by ‘pure democracy’. In *Federalist 10* he writes that it is ‘a society consisting of a small number of citizens, who assemble and administer the government in person.’ (Madison et al., 1987, p.126) He also gives us some idea as to why he and the other Federalists were so anxious to eliminate ‘pure democracy’ from the United States. Assemblies cannot be overridden, frustrated, or controlled: ‘A common passion or interest will, in almost every case, be felt by a majority of the whole; a communication and a concert results from the form of government itself; and there is nothing to check the inducements to sacrifice the weaker

party or an obnoxious individual.’ (ibid.) A republican scheme based on representation has two great advantages over democracy. It will ‘refine and enlarge the public views, by passing them through the medium of a chosen body of citizens, whose wisdom may best discern the true interest of their country and whose patriotism and love of justice will be least likely to sacrifice it to temporary or partial considerations.’ (ibid.) And it will permit government on a much larger scale than ‘government in person’. (ibid.)

Madison also makes some illuminating remarks about the kinds of policies that might emerge, were the people to be present in government ‘in their collective capacity’. We learn that the scale of representative republics makes them better able to resist ‘the influence of factious leaders’ and religious sects that degenerate into ‘political factions.’ Madison explains:

A rage for paper money, for an abolition of debts, for an equal division of property, or for any other wicked and improper project, will be less apt to pervade the whole body of the Union than a particular member of it, in the same proportion as such a malady is more likely to taint a particular county or district than an entire state. (Madison, et al., 1987, p.129)

Madison’s ‘total exclusion of the people in their collective capacity’ is at the very heart of the constitutionalism he and the other federalists were seeking to promote. And the reason is clear: a form of government in which the citizenry are able to form ‘a communication and a concert’ without ‘the medium of a chosen body of citizens’ is a form of government that is more likely to enact ‘wicked and improper’ policies that harm ‘the permanent and aggregate interests of the community.’ (Madison et al., 1987, p.123) It is noticeable that the ‘wicked and improper’ projects that worry Madison in *Federalist 10* are those that would favour the material interests of the majority over those of the minority. In other words, it is the distributive (and predistributive) potential of democracy that troubles him. This is the true novelty of the constitutional order created in Philadelphia, which now pervades so much of the world. It packages the annihilation of the people as a collective presence in government as ‘popular sovereignty.’

When it comes to the threat posed by minority factions, Madison is confident that ‘relief is supplied by the republican principle, which enables the majority to defeat its sinister views by regular vote.’ (Madison et al., 1987, p.125) Even at the time this confidence in elections struck many critics of the new constitution as naive. Speaking in 1788 Patrick Henry pointed out that ‘the preservation of our liberty depends on the single chance of men being virtuous enough to make laws to punish

themselves.’ (Ketcham, 2003, p.219) After all, if the legislators happened to be ‘wicked’ and set about to ruin the public, ‘they would act like fools indeed, were they to publish and divulge their iniquity, when they have it equally in their power to suppress and conceal it.’ (Ketcham, 2003, p.218)

It is striking that both the Federalists and their opponents are preoccupied with the distribution of knowledge in different institutional arrangements. The Federalists fret about popular assemblies that generate ‘a communication and a concert’. The Antifederalists worry about representative assemblies that have the power to ‘suppress or conceal’ evidence of their own iniquity. And this is hardly surprising. The political culture of North America in the years before the Revolution was characterised, in Joshua Miller’s words, by ‘small, participatory communities; simple local and state governments, the latter dominated by one-house legislatures; democratic constitutions that replaced undemocratic ones or arbitrary political rule; a political economy based on land banks, paper money, and debtor relief laws that tried to preserve a localist agrarian society; and forms of direct participation, which included constitutional conventions, committees of correspondence, town meetings, actions by crowds and a people’s army.’ (Miller 1988, p.100) We might add that annual elections helped electors maintain control of the elected by reducing the time between unpopular legislative decisions and the opportunity to remove those responsible. (Elliott, 2023, p.151; Klarman, 2016, p.76-7) Unlike the distant central authority proposed by Madison, the state governments were close at hand, and saturated by publicity.

The institutional simplicity of government and the resulting ability of living and breathing citizens to understand and direct its operations were particularly pronounced in matters of monetary policy. Writing about the colonial states Jakob Feinig notes that:

Under one roof lawmakers performed the functions of today’s central bank, the Treasury, fiscal policy makers, and the Bureau of Engraving and Printing — an institutional nondifferentiation that made the functioning of paper money visible to those involved in legislative work and the material process of creating currency, to those who had access to pamphlets and the assemblies’ publications, and to voters who elected and instructed representatives.’ (Feinig, 2022, p.37)

It is not simply that government was transparent, even in matters such as monetary policy, which have since then become hopelessly opaque and confused. (Leonard, 2022; Thomas, 2022; Turner, 2016) Governments were legible to citizens, who learned through ordinary public business that the rules constituting them could be rewritten. Money and property were accessible to politics, and were

understood to be. ‘Wicked and improper projects’ of the sort that haunted Madison were a permanent possibility.

Megan Hyska’s account of propaganda as communication that operates on ‘the group-agency landscape’ (Hyska, 2021, p.230) and aims to promote or degrade collective agency helps us to see more clearly what we might call the propagandicity of the Madisonian constitution. The document was, as a matter of conscious design, an attempt to prevent a plural subject constituted by the citizen body as a whole from emerging as the sovereign actor in the politics of the United States. The constitution shows, without saying, that the state consists of rule-bound institutions to which the citizenry relate as individuals. To borrow Hobbes’ distinction, we do not *learn* from the constitution but we are *persuaded*. Madison is explicit about the need to displace universal participation in government in favour of representation, and recommends the constitution on that basis. Each reader of the constitution is primed to experience their political marginalisation as a succession of choices, at the ballot box, as in the marketplace. The federal constitution asserts a social cosmos in which the people as sovereign plural subject do not exist, and whose absence is passed over in silence. The collective acceptance of this asserted social cosmos secures the permanent suppression of popular sovereignty by an oligarchy whose sovereignty extends to the language of democracy itself.

5.3 The Madisonian Constitution and the Jealousy of Trade Thesis

The impression we are left with is of a constitution in which sovereignty is alienated from the citizenry at the moment of its creation. The ability to make candidate claims about the content of social reality is taken from the authorising people and put into the hands of elected representatives and appointed judges. Miller (1988, p.107) is at pains to stress the Hobbesian nature of the federal constitution: ‘The Federalists said, as did Hobbes, that the power of the government flows from the people, but once the people have imparted their power to the national government, then they must refrain from attempting to govern themselves.’ But there is also ample evidence of Hume’s influence over their design. Sheehan (2004, p.411) describes Hamilton as ‘explicitly following Hume’ when he writes that self-interest is ‘the most powerful incentive to human action.’ And Hamilton strikes a distinctly Humean note when he writes that it is ‘[i]t is a known fact in human nature that its affections are commonly weak in proportion to the distance or diffusiveness of the object. Upon the principle that a man is more attached to his family than to his neighbourhood, to his neighbourhood than to the community at large, the people of each state would be apt to feel a stronger bias towards

their local governments than to the government of the Union.’ (Madison, et al., 1987, p.157, as compared with Hume, 1969, p.589: ‘Men are not able radically to cure, either in themselves or others, that narrowness of soul, which makes them prefer the present to the remote.’) Hamilton goes as far as to quote Hume approvingly in *Federalist 85*, at the climax of that long project of persuasion: ‘To balance any large state or society [says he], whether monarchical or republican, on general laws is a work of so great difficulty that no human genius, however comprehensive, is able, by mere dint of reason and reflection, to effect it.’ (Madison et al., 1987, p.486) Hamilton does not refer to Hume by name here or anywhere else in the *Federalist Papers*. Perhaps this reflects squeamishness about Hume, given his reputation as an atheist and a racist. (Spencer, 2005, p.189-90) Or perhaps it is related to a more general tendency in the *Federalist Papers* to downplay the influence of British sources, and of British institutional models. Nothing there comes close to Hamilton’s ‘private opinion’, expressed at the Constitutional Convention, that ‘he considered the British government to be the best in the world and doubted whether anything short of it would secure good government in America.’ (Sheehan, 2004, p.407. The wording here is Sheehan’s, not Hamilton’s.)

Madison was familiar with Hume’s writings, particularly the *Essays* and the *History of England*. The extent of the latter’s influence is not as clear. Douglass Adair influentially argued that, in Mark Spencer’s words, ‘Hume’s political essays provided the master key for unlocking the vault of Madison’s political thought.’ (Spencer, 2005, p.155) And there are grounds for agreeing. For example, in the *Treatise* Hume remarks that ‘tis a gross absurdity to suppose, in any government, a right without a remedy, or allow, that the supreme power is shared with the people, without allowing that, ’tis lawful for them to defend their share against every invader.’ (Hume, 1969, p.615) Meanwhile in *Federalist 43* Madison writes, more famously, that ‘[...] a right implies a remedy.’ (Madison, et al., 1987, p.281) Whether Hume and Madison were trading in the same proverbial stock, or the latter was drawing directly from the former, is uncertain. But the similarity is suggestive of a shared sensibility.

If Madison’s constitutional project drew on Hume’s historical sociology this would lend some credence to the idea, set out most influentially by István Hont (2005), that the modern state form, the ‘commercial republic’, is best understood as an amalgam of Hobbesian political sovereignty and the Humean modifications demanded by a interconnected world characterised by intense economic, as well as strategic, rivalry. The modern state needs a highly motivated and energetically self-regarding subject, secure in their claims to property. The constitutionalism developed in America posited just such a pre-existing subject, endowed them with rights, and used them as a justification for limited government. The individual, white, male, and property-owning subject must be protected

from the depredations of collective power through constitutionally guaranteed, and judicially enforceable, rights. The collective as such, meanwhile, must be deprived of any rights, and hence of any constitutional status at all.

Martin Loughlin (2010b) and Colleen Sheehan (2004) both argue that Madison and Hamilton were motivated by very different visions of how the constitution should function. There was certainly an important and urgent *political* difference between Madison and Hamilton in the post-revolutionary period. Hamilton wanted to resolve the question of American economic structure in a way that unambiguously favoured a centralised financial sector, organised around a national bank and tradable public debt. In order to do so he advocated consistently for the Presidency over Congress, and for federal over state government. Madison sought to maintain multiple sources of economic initiative, and hence of political power. But rather than concluding from this that ‘Hamilton is the chief American theorist of the modern commercial republic’, it seems rather than he was, when compared to Madison, merely more schematic, and as it turned out, premature, in his thinking on this crucial question. Madison could sound inspiring when he declared that ‘Public Opinion sets bounds to every government, and is the real sovereign in every free one.’ (Quoted in Sheehan, 2004, p.417) But public opinion was not something that could be left to the inquiries and resolutions of the public in its ‘collective capacity.’ It was something to be developed and refined by men such as himself and Hamilton. Seen in the light of the initial exclusion of ‘the people in their collective capacity’, and of the tactics later adopted or contemplated by Hamilton and Madison, the disagreements between these two architects of the federal constitution look less less fundamental ruptures, and more like matters of emphasis.

The shared victory of Madison and Hamilton not only establishes the institutional apparatus of the state and its relationship with both the authorising ‘the People’ and with individual citizens in America after the revolution. It also goes a long way to establish the dominant registers of opposition to the constitutionalism they championed. The framers of the federal constitution deliberately sought to demote the accessible and simple governments they saw in the states by establishing a superior government that was both inaccessible and complex. It is a measure of their success that we still tend to frame criticisms of their creation on terms that they themselves would have welcomed.

The Federalists stood for strong central government, the achievement of a commercial republic at continental scale, and the pursuit of greatness and modernity. Meanwhile, the Antifederalists stood for strong local and regional government, a political economy based primarily on agricultural

production, and the retardation of the same commercial-financial forces that the Federalists wanted to promote. In this telling, the telling of the winners, Federalism become the future, however regrettable some of its consequences might have been. Antifederalism, for all its desperate glory, becomes the past. To adopt these terms is to accept a structure of opinion that decisively favours the federalist *status quo*. If we aren't careful we will find ourselves advocating for a constitution of town-hall meetings and face-to-face deliberation that seems fantastical or downright unappealing in a modern context. Contemporary political scientists warn that '[...] increasing opportunities for greater participation may often perversely function to further empower existing elites and empowered groups rather than broadening access to power to marginalized groups.' (Elliott, 2023, p.72) (For the substantial literature on this so-called 'paradox of empowerment', see Elliott, 2023, p.72-80. The classic account of elite empowerment through participation is to be found in Mansbridge, 1980, chapters 9-11) The need for efficient and stable central authority ends up being contrasted with a somewhat irresponsible nostalgia for local wilfulness and diversity.

The 'pure democracy' that Madison rejects in *Federalist 10* makes for a similarly weak opponent. As he notes, assembly democracy never was a feature of North American political practice. If annual elections and regular constitutional conventions could be made to seem impracticable by the 1780s, how much more unlikely would a multiplicity of self-governing city-states have appeared. And to advocate for Athenian democracy today is to advocate for a fragmentation far more complete than that contemplated by the Antifederalists. But we do not have to choose between the Madisonian *status quo* and either pre-Revolutionary New England or classical Athens. The subordination of the constitutional order to plural subjects that approach the condition of popular sovereignty requires thought. It does not require miracles.

5.4 The Citizen in the Madisonian System

The overwhelming discursive success of the Federalists has had profound effects on the ways in which democracy is understood in the modern era. The 'total exclusion of the people in their collective capacity' shapes subjectivities across all domains, including the subjectivity of political theorists and activists, and this in turn shapes both pro-democratic and anti-democratic ideas. Bruce Ackerman, who is by no means an uncritical admirer of the Madisonian settlement, sets out a constitutional history of the United States in which reformers are compelled to channel their energies into an institutional schema that has been designed to retard and frustrate them. Rather than acting as a popular sovereign, the people feature only as amorphous and ambiguous 'social

movements' whose political organisations 'are in a race against time' to secure change before their leaders are corrupted and '[t]he broad popular movement for constitutional change inexorably becomes a memory.' (Ackerman, 2014, p.39-40) And yet campaigners have to accept the existing constitutional order and organise their campaigns on terms that respect its coordinates, including the primacy of representation. Such is the support that the constitution enjoys, so complete is its capture of the notion of legitimate government, that to frame attempts at reform in terms other than those of Madisonian constitutionalism would be to court disaster at the outset. For this reason among others, as Robert Dahl noted in 2002, '[p]ublic discussion that penetrates beyond the constitution as national icon is virtually nonexistent.' (Dahl, 2002, p.156) The pragmatic need of reformers to accept the federal constitution as an unchanging feature of social reality is bound to confine the views and constrain the ambitions of those they seek to mobilise. Social movements are compelled to remain silent over the institutional array that marginalises the great majority of the population. To repeat, the federal constitution is best understood as a particularly effective instance of oligarchic propaganda.²⁸

On the other hand, opponents of democracy draw on evidence for democracy's shortcomings that derives from a system of government that is not, and is designed not to be, democratic. A vast literature today luxuriates in the frivolity and incompetence of the citizenry, their hilarious unfitness for self-government. This contemporary rhetoric of popular incompetence has many progenitors but Walter Lippmann is a leading figure. In the years after the First World War Lippmann insisted that the bulk of the population could not be expected to engage in the impossible complexity and diversity of contemporary policymaking and should limit themselves to deciding, on the basis of information prepared for them by disinterested experts, whether to keep their representatives or install new ones: 'The public must be put in its place, so that it may exercise its own powers, but no less and perhaps even more so, so that each of us may live free of the trampling and the roar of a bewildered herd.' (Lippmann, 1993, p.145)

Lippmann strikes a recognisably Madisonian note here. All of us are vulnerable (or obnoxious as Madison put it) to the bewildered herd if the organisation of opinion is left unregulated.

²⁸ This is not to say that popular movements for social and political change are *always* and *inevitably* defeated in the American constitutional order. At times they have secured important victories at both state and federal level. (Ackerman, 1993: Ackerman, 2000: Ackerman, 2014: Levinson, 2012) And these victories were to some extent made possible by the regime of individual rights established in the constitution. But nevertheless they were secured in the face of a constitutional order that was designed to resist and frustrate them, and that has proved remarkably successful in one of its authors' stated ambition to protect the opulent minority from democracy. And it seems indisputable that anything approximating popular sovereignty as defined here is a very distant prospect in the contemporary United States.

Lippmann's fear of the public in its collective capacity was so intense that he advocated for a new, national system of knowledge creation, modelled on the British Foreign Office, which would supply 'governments, schools, newspapers and churches' with 'a reliable picture of the world.' (Lippmann, 1997, p.230) It is a policy prescription that finds a suggestive echo in the current literature on misinformation, in which it is assumed that the Madisonian state is able and willing to impose order on an otherwise chaotic and dangerous epistemic field. (Sunstein and Vermeule, 2009)

Jason Brennan is one of the most prominent contemporary exemplars of this enthusiastic dismissal of 'the People.' In his 2016 book, *Against Democracy*, Jason Brennan purports to assess whether we should increase or decrease the amount of participation in contemporary American politics. The answer, he claims, 'depends in part on what human beings are like, what democratic participation does to us, and what problems mass political participation is likely to solve—or *create*.' (Brennan, 2016, p.3) He goes on to say that 'we no longer have to speculate ... about what politics does to us', since we have decades of research from 'psychologists, sociologists, economists, and political scientists' to draw on. (ibid.) This vast body of data, according to Brennan, tells us that we can classify 'democratic citizens' into 'three broad types [...] hobbits, hooligans, and Vulcans.' Hobbits 'are mostly apathetic about politics', hooligans are 'rabid fans of politics' and vulcans 'think scientifically and rationally about politics.' (Brennan, 2016, p.4-5)

In *Democracy for Realists: Why Elections Do Not Produce Responsive Governments*, published in the same year, Christopher Achen and Larry Bartels suggest that most of us would qualify as hobbits in Brennan's taxonomy:

Numerous studies have demonstrated that most residents of democratic countries have little interest in politics and do not follow news of public affairs beyond browsing the headlines. They do not know the details of even salient policy debates, they do not have a firm understanding of what political parties stand for, and they often vote for parties whose long-standing positions are at odds with their own. (Achen and Bartels, 2016, p.299)

Brennan's classification of citizens as 'hobbits, hooligans, and vulcans' is deliberately provocative. But it becomes much less likely to provoke when we remember that the papers, surveys and polls on which he relies do not describe democratic citizens at all. They are rather a, no doubt meticulously conducted, record of what the *absence* of democracy does to political subjectivity, and to subjectivity more broadly. We have no idea what 'mass political participation' does to American citizens, for one

very good reason: the framers of the federal constitution went out of their way to ensure that no such thing would be possible in the institutions of national government.

Brennan has succumbed to a version of the fallacy of the court. General rules about human capacities cannot be drawn from particular social contexts. He wants to make the case for widespread political incompetence using evidence gathered in the narrowly circumscribed social context created by Madisonian constitutionalism on British imperial foundations. Deliberation about public business in this constitutional order has no political status unless it happens in government. And government offices are populated exclusively by aristocracies of election or appointment. Drawing conclusions about the quality of ‘democratic deliberation’ from the quality of deliberation outside of government is extremely reckless. Our defects in the practice of public deliberation *might* be intrinsic to us as a species. Or they might be as accidental, trivial and remediable as the defects of a hunter-gatherer in the practice of flying a helicopter.

Brennan quotes Joseph Schumpeter approvingly at the outset of *Against Democracy*: ‘The typical citizen drops down to a lower level of mental performance as soon as he enters the political field. He argues and analyzes in a way which he would readily recognize as infantile within the sphere of his real interests. He becomes a primitive again.’ (Quoted in Brennan, 2016, p.2) Note how Schumpeter distinguishes here between ‘the political field’ and the sphere of the typical citizen’s ‘real interests’. The idea that politics is distinct from the interests of the typical citizen, that it is space in which nothing is really at stake for most people, is perhaps the founding political artifice of the current moment, and lends Schumpeter what plausibility he has. But it only takes a moment’s thought to recognise that the political field is fraught with significance for everyone subject to it.²⁹

It is hard to grasp the extent to which what our infantilisation as political subjects has its roots in the constitutional order, and not in our own nature, until we appreciate the extent and uniformity of that order. It is sometimes said that the American constitutional model was not particularly influential in the rest of the world. Robert Dahl, for example, claimed in one of his last books that ‘[...] contrary to a belief widely held among Americans, our great and enduring gift to the world was not our Constitution, which was little imitated and indeed largely rejected as a model among the successful and enduring democratic countries that would emerge in the next century.’ (Dahl, 2002, p.176) But Madison’s primary exclusion, of the people as an active element in the state,

²⁹ Brennan’s remedy for the alleged shortcomings of democracy is rule by competent experts. But, as a substantial literature explores, such a regime is less easy to conceptualise than an anti-democrat might appreciate. (Friedman, 2019; Moore, 2021)

applied self-consciously for the United States from the British model, reproduces itself throughout the world. After the French Revolution a constitutional commission led by the Marquis de Condorcet did propose the creation a ‘popular branch’ consisting of thousands of local assemblies. This was defeated by the Jacobins and Condorcet himself died in jail. (Vergara, 2020, p.146-156) The plebiscitary elements of the European republics created after the Second World War have been expunged from the constitutional repertoire almost as completely, discredited by the antics of the elected officials who presided over them. (Bavaj, 2016)³⁰

The assembly does not exist as a constitutional form in any of the major states in the global system overseen by America. Rather than experience membership of a plural sovereign subject in the conduct of ordinary public business, citizens are forced to organise outside the state in ‘civil society’, a terrain dominated by private wealth and thoroughly infiltrated by the state. (The evidence for plutocratic ownership of the production of effectively public speech in the print and broadcast sectors is well summarised in Bagdikian, 2004. The manipulation of public speech in digital spaces by a few very large corporations is explored in Wakabayashi, 2017 and Doctorow, 2023, inter alia. Aspects of the state’s infiltration of civil society are explored in Saunders, 1999 and Wilford, 2009. Berry 2019 offers us a persuasive account of the UK financial sector’s control over economic discourse after the 2008 crash. An early account of the US state’s operational integration with private digital media can be found in Greenwald and MacAskill, 2013. Gellman, 2020 summarises the current situation.)

In such constitutional arrangements there are no grounds to believe that ‘opinion-formation inside parliamentary bodies’ will remain ‘sensitive to the results of a surrounding informal opinion-formation in autonomous public spheres.’ (Habermas, 1997, p.60) Habermas’ vision of a ‘desubstantialised’ popular sovereignty, which is ‘sublimated into the elusive interactions between culturally mobilized public spheres and a will-formation institutionalized according to the rule of law’ is surely a false hope. (Habermas, 1997, p.58-9) As Habermas acknowledges, ‘[n]ormative reasons can achieve an indirect steering effect only to the extent that the political system does not, for its part, steer the very production of those reasons.’ (Habermas, 1997, p.56) But there is ample evidence that an oligarchic political system, properly understood, is an abundant producer of reasons that successfully present themselves as the findings of ‘autonomous public spheres’.

³⁰ This is why it is reasonable to treat the United States as the prototypical ‘commercial republic’. None of the states of Western Europe or the Anglophone diaspora have departed in any significant way from the self-consciously ‘modern’ elimination of the people ‘in their collective capacity’ from the state celebrated by Madison in *Federalist 63*. This constitutional homogeneity speaks both to an internal tendency towards oligarchy in these states and to the military, diplomatic and ideological influence of the United States.

Billionaire-funded libertarian organisations in the United States were able to canalise popular discontent after the 2008 financial crisis into the so-called ‘Tea Party’ movement. (Mayer, 2016). In Britain campaigns by billionaire-funded media organisations have successfully directed anxiety and resentment caused by falling living standards after 2008 against welfare claimants, Muslims, Brussels bureaucrats, effete liberals, trans people, and Muslims again, to name only a few.

Looking for clues about our fitness for democracy in almost any contemporary liberal nation state almost always means looking where Madison’s ‘total exclusion’ has long been in place. And if the politics that emerges from this exclusion has nothing to do with what Schumpeter called our ‘real interests’, if politics presupposes that projects to improve the lot of the typical citizen, the contemporary analogues of paper money and the abolition of debts, are ‘wicked and improper’, then why should anyone treat it as seriously as they treat their work or family life?

But the position of the anti-democrat is bleaker. If we concede that research into the conduct of individuals and groups in an undemocratic, indeed intentionally anti-democratic, society will furnish us with useful evidence about the viability of a democratic society, the available evidence still gives us grounds for guarded optimism about our capacities as public actors. Even Brennan concedes that ‘deliberation works best on “matters of objective truth” — when citizens are debating easily verifiable facts and statistics, such as information one can find on the US Census Bureau’s website’. The problems in deliberation arise when we move away from simple facts to the complexities of values and theories: ‘During “other times” — when citizens debate morals, justice, or social scientific theories meant to evaluate those facts—“deliberation is likely to fail.”’ (Brennan, 2016, p.64, quoting Mendelberg, 2002, p.181) Brennan seems to believe that most of what matters politically is value-laden or abstruse, or both. But what John Adams called ‘that most dreaded and envied kind of knowledge’, knowledge of ‘the character and conduct’ of those who rule us, is neither. (Quoted in Karp, 1992, p.266)

It is a matter for empirical investigation whether an elected official is trustworthy or far-seeing, both, or neither. It is a matter for empirical investigation, too, whether those who own and work in media on which we rely are capable of fulfilling the high purpose to which they lay such a jealous claim. If politicians or their intermediaries have misled us, deliberately or through their foolishness and conceit, then this is something that can be uncovered through fair and patient investigation. Indeed, almost all of what matters politically can be organised much like the information one would find on a government website. If it is true that tax avoidance and evasion dwarfs benefit fraud, that the rich are meaner and more selfish than the poor, that universal healthcare delivers better treatment than

profit-driven alternatives, then these facts can be discussed reasonably dispassionately, even by averagely incurious and distracted citizens. And if these things are true, but do not become live and salient to us as constituents of politically consequential and autonomous collectives, the fault might not lie in our individual cognitive deficiencies, but in a constitutional context that has been designed to eliminate politically consequential and autonomous collectives.

5.5 Conclusion

Returning to the language of social ontology, ‘the People’ in the federalists’ constitutional project become a social object, rather than a social subject, existing as a term of rhetorical art, rather than as a persistent and active feature of the constitutional order. Enterprising politicians and journalists, especially those who enjoy plutocratic backing, can summon up a ‘the People’ according to their own specifications and needs., With sufficient artifice and a little luck this ‘the People’ can be used to convince settled majorities that their own views are outlandish and peculiar, while those of a relative handful are the standard against which everything ought to be judged in a democracy. ‘The People’ can be made to speak, and to speak in ways that play out powerfully in the realms of popular opinion and civic desire. But ‘the People’ cannot speak for themselves, since they do not, and cannot, become a self-conscious actor in the political field. And this is a matter of conscious design. The whole point of the federal constitution’s apparatus of elected officials and appointed judges is to deprive the population of a plural subjectivity as ‘the People’, while corralling opinion into support for an anti-democratic system through the constant invocation of ‘the People’. Opinion remains fundamental, how could it not? But it has been thoroughly sedated.

This, then, is the predicament of the individual in the contemporary constitutional order. We each face the settled powers of the state and its reinforcing auxiliary institutions alone, or in organisations that are kept outside that state. The only collectivities permitted within the state operate according to aristocratic, bureaucratic or technocratic logics that define themselves in terms of a rejection of popular sovereignty. We are left with the task of describing a constitutional order in which the individuals who inhabit a structure of rights and obligations, a given instantiation of social reality, have the collective powers they need to render this structure intelligible, and malleable in the light of reasoned deliberation regarding the means and ends of the political. It is to this task that we now turn.

Chapter Six: Constitutional Implications

6.1 Introduction

The current state form is best understood as a joint and simultaneous exclusion and intrusion. On the one hand this Madisonian state excludes the population ‘in their collective capacity’ from its structures. Political participation for the overwhelming majority is limited to the individuated power to elect representatives and to seek relief in the law courts. A small minority exert informal influence through more or less corrupt donations to political parties, through their ownership and control of consequential media and communications assets, or through their willingness to use economic power to secure political ends by other means. Those without great wealth must make do with extraordinary efforts of social coordination outside the state under intense corrupting pressure from both public and private magnates. (Ackerman, 2014, p.39-40)

On the other hand, in practice if not in theory, the state’s managers intrude extensively and intensively throughout institutions of civil society. They advance the interests of their favoured partners with public contracts and other subsidies. They shape the nominally private economy through these same contracts and subsidies. They work with, and where necessary coerce, private media and communications institutions in order to secure their ongoing control over the substance of social reality. Sovereignty is to be found in the ways in which tensions, rivalries and shared interests play out between the state’s managers and those few plural and individual subjects that insinuate themselves in, or impose themselves over, the decisive ensemble. Some of this working out of sovereignty is formally legal, some of it isn’t. The result is chaotic and fragmentary. The rights and offices of Hobbesian sovereignty are dispersed across multiple sites, only some of which formally belong to the state. Everything is surrounded by a very closely monitored and expensively maintained penumbra of comment and explanation that is integral to its content. And it can seem that this commentary is reliably unreliable, in the sense that it must mystify its audiences with talk of popular sovereignty in the service of oligarchic sovereignty if its practitioners are to earn their share of that oligarchic sovereignty. Sovereignty in the Madisonian state is inseparable from the successful evasion of widely available and accurate description.

So far we have set out an account of sovereignty and set that account into dialogue with Hobbesian state theory, with contemporary social ontology and social epistemology, and with the history of

eighteenth century North America. This chapter draws on all of these elements and attempts to combine them in a practical synthesis. It begins by considering again the relationship between sovereignty, popular sovereignty, and the state. It then sets out a programme of institutional innovation that aims to make possible widespread and routine participation in decisions about the creation, maintenance and alteration of social reality by large publics. It describes a regime biased towards popular sovereignty. A significant change in the distribution of power over the contents of social reality in favour of broad publics — a reformation of sovereignty — requires the end of both the Madisonian exclusion and the Madisonian intrusion. There will need to be new opportunities for people ‘in their collective capacity’ to participate in government, and to resist attempts to frustrate them as they work to cohere as clear-eyed and effective plural subjects. This requires a new state form.

6.2 Sovereignty, Popular Sovereignty and the State

We have already described the ideal type of the popular sovereign. It is a plural subject that has as its shared tie the creation, maintenance and alteration of social reality, that comprises the entire population of a place, and that is entirely successful in its endeavours. No such plural subject can exist for long as a matter of fact. When we are asleep, or falling in love, or walking the dog, we do not partake in sovereignty. A perfect unanimity is, for all practical purposes, impossible. We are too many and too various. The sovereignty at which we aim is a plural subject in which all the citizens of a territory have a constitutional right to take their place, with this right being a matter of common knowledge. This general right to partake in the plural subjectivity of the sovereign is given content by rights to participate in institutions designed to secure and protect this plural subject. This marks a departure from the Madisonian system in which the citizens’ rights ‘[...] are guaranteed almost entirely by imposing constitutional *limits* on the government.’ (Dahl, 2002, p.143) Here the citizens’ rights are guaranteed by the *expansion* of government to accommodate new instantiations of the people in their collective capacity. This calls for a succession of overlapping experiences of plural subjectivity that generate an account of social reality that can survive the popular scrutiny inherent in the processes that create, sustain and alter it. We are interested in creating institutions that make it possible for each citizen to say, and be justified in saying, that they are party to the decisions that will shape their lives, even if they do not always prevail.

A fully realised popular sovereign, in the sense of a single plural agent comprising of the entire population of a territory, is not the standard against which we can fairly be judged. Critics must ask

rather whether the institutions proposed in the rest of this chapter will make it more or less easy for the inhabitants of a place to approach the ideal of popular sovereignty, and in a manner consistent with individual liberty. There is no sure defence against the invasion of individual rights by sovereignty, whether it is a monarchical, oligarchic or democratic. But neither is there any escape from the fact of sovereignty. To attempt such an escape through constitutional checks and balances is to seek refuge in paper. Only the sovereign has the mean to substantiate rights and maintain structures of decision-making that secure it, since only the sovereign has the power to restrain the sovereign. And the sovereign can only ever be a more or less informed, egalitarian and articulate organisation of flesh and blood. The security of the individual can only rest on the opinions of those who prevail at moments when individual rights are in danger.

There is no final bridging of the distance between the sovereign as flesh-and-blood plural subject and the state as social object. There can therefore be no final institutional settlement. Any articulation of social reality will be open to challenge by individuals and plural subjects. But the distribution of rights and duties in an institutional settlement matter to the extent that they provide more or less compelling grounds for the population to believe that the direction of policy tends to take into account their individual wishes, and to meet their overriding collective needs. The Madisonian constitution persuades those subject to it. A democratic constitution would provide a different kind of persuasion.

Each citizen will want to reduce the distance between sovereignty and the state, and to resist attempts to increase it, if they think that by doing so they make more secure their status as a participant in the construction of social reality, and if they understand the dangers to which the loss of this status exposes them. They will pay attention to the constitutional structures of the state if they grasp that these structures will make them more or less able to take their place as a member of the subject that decides. The overwhelming priority of a state biased towards popular sovereignty is therefore the preservation of epistemic equality between citizens. The regime's survival requires that each individual has equal access to reliable counsel, and equal powers to contribute to the assertions whose acceptance give form and apparent substance to social reality. Only then will each citizen be able to protect themselves from the epistemic harms we discussed in Chapter Four. These powers include the means to challenge effectively the unfair deflation of speakers and of types of speech, the unwarranted inflation of the same, and to repair defects in the shared hermeneutical resource that derive from both. The individual catastrophe of epistemic subordination brings about the general disaster of popular sovereignty's irreversible subversion by oligarchy.

Hobbes's emphasis in *Leviathan* on the importance of governing the field of opinion strikes many readers today as an exoticism, in light of contemporary state officeholders' abstention from direct and explicit control of the media in most countries in the Madisonian constitutional settlement. But, to the extent that these officeholders are sovereign, they are sovereign in part in virtue of their usually unstated, and always under-reported, role in shaping the field of opinion through coercion of, and collaboration with, those who own, or work in, print, broadcast and, increasingly, digital media. While contemporary political theory stresses the importance of an independent civil society, and the role of social movements within it, much of what we ask of civil society belongs to the sovereign. The production of public opinion in particular, which we discuss as though it is the province of non-state actors, is best understood as a condominium between those who preside over the formal apparatus of the state and their favoured partners in a nominally private sector. And in many contexts this condominium enjoys a decisive power to shape the meaning of events, and to determine how social action plays out.³¹

Let us be clear about the implications. A citizenry that aspires to sovereignty must take responsibility for the related media of communications and money. The ways in which we come to understand the world ('the media'), and the ways in which we negotiate with others to change it materially ('money'), must be made fully accessible to a general and irresistible intelligence. There can be no seclusion of sovereign rights and offices in private or public obscurity. It is the business of a citizen who aspires to an equal share in sovereignty to ensure that all citizens have access to reliable counsel, and have the means to contribute to the processes through which the meaning of the present is brokered, whether these processes make use of words and images, or of balance sheets. The citizenry must exert itself to ensure the widest possible dissemination of the knowledge required for this work. The activities and operating assumptions of the news media, as much as those of the central bank, must be accessible to the unmediated curiosity of citizens. At the moment money and the media are surrounded by a thicket of prohibitions, inhibitions, sedative reassurances and outright mystifications. Where there should be clarity and precision there is a vagueness backed up by technocratic pretension and oligarchic power.

The creation of this overwhelming power to discover and describe requires a repudiation of the pervasive idea that we can meaningfully situate popular sovereignty in the interplay between 'opinion-formation inside parliamentary bodies' and 'informal opinion-formation in autonomous

³¹ This condominium has been compelled to operate more openly in the years after 2015 in the UK as the accumulating impacts of Thatcher's reforms began to generate substantial discontent. This has coincided with disruptions in the communicative regime caused by the widespread adoption of digital technologies.

public spheres’, where the sensitivity of the former to the latter secures ‘rational outcomes.’ (Habermas, 1997, p.60) If we accept a division between a formless public sphere and a legally structured state we reproduce the Madisonian exclusion of the people ‘in their collective capacity’ from government. There is simply no reason to believe that this exclusion will lead to anything other than an oligarchic riot in the all-important government of doctrines. A broader distribution of sovereign power will only establish itself through institutions within the state that both constitutionalise and operationalise plural subjects open to all, capable of exercising free inquiry across the entirety of the social field, up to the determination of its limits.

Habermas’ distinction between a legally structured state and a formless public sphere can also be found in the ‘deliberative’ turn in Anglophone democratic theory. For example, while Selen Ercan and John Dryzek (2015, p.241) acknowledge the need to put ‘[...] communication at the heart of politics [...]’ they do not advocate for the kind of constitutionalisation of communications that seems unavoidable if the objective is democracy. More broadly, while the mass media feature in deliberative democrats’ ‘systemic’ account of the political they do so as a feature of civil society: fit objects of state regulation, perhaps (Girard, 2015), but not as a failing substitute for a government of doctrines that can and must take place within the state. It is puzzling that there is so much reluctance on the part of deliberative democrats to end the exclusion of the people in their collective capacity from the communicative fora of the state given that, as Simone Chambers notes, ‘[h]uman life is indeed group life, but our groupishness is mediated through, and constituted by communication, not voting. It makes sense, then, to look to communication for answers to our present democratic dilemmas.’ (Chambers, 2018, p.45) The proper focus of democratic reform, including reform that targets deliberation, is not ‘the public sphere’ but, as the word ‘democratic’ surely implies, the state itself.

6.3 The Objectives of the Institutional Programme

A state characterised by an inclination towards popular sovereignty is one in which the population as a whole has a right to partake in the creation, maintenance and transformation of social reality on terms of equality. To make good on that right each citizen must be able claim a share in certain general powers. Such a state is certainly compatible with the continued use of elected representatives and appointed experts. Majority voting on binary decisions seems well suited for managing the so-called discursive dilemma. (Pettit, 2012, p.191-4) The interpretation of the law is a business that requires considerable expertise. But when powers are allocated by election or by appointment, it must be possible for each citizen to oversee the decisions and conduct of those who

exercise those powers, and, where necessary, to intervene in concert with others, in accordance with procedures that are generally accepted and understood. Our objective is to create and preserve to the greatest possible degree a plural subject, a collectivity that can rightly speak of itself as ‘we’ in the strong sense outlined by Gilbert as ‘members of a set of people [...] conscious that they are linked by a certain special tie’ (Gilbert, 1992, p.148-9), that has as its ‘special tie’ presiding over social reality, and that consists of the entire competent population.

To put this in terms familiar to one register in constitutional theory, the creation of a state form inclined towards popular sovereignty requires the establishment of a fourth branch of government alongside the legislature, the executive and the judiciary. The task of this branch is to give constitutional expression to Sieyès’ ‘third estate’. In 1789 Sieyès’ had divided France into the first estate of the aristocracy, the second estate of the church, and the third estate of the people and he complained that, while the people were ‘everything’, they had been ‘nothing’ in the political order up to that point. The first estate maps with unnerving neatness onto elected and appointed officials and the propertied in the Madisonian system. For the second estate we can substitute the experts that defend this contemporary aristocracy from challenge in the venues of opinion-formation. The third estate are those of us without authoritative expertise or distinction: the audience, the terrain of opinion over which the other estates fight. The task of our new branch of government is to ensure that this third estate become, as Sieyès demanded, ‘something’. (Sieyès, undated, p.1)

In this respect much of what follows echoes the efforts of the Marquis de Condorcet to devise a constitution in the immediate aftermath of the French Revolution that included a ‘popular branch.’ As already noted his 1793 draft constitution made provision for local assemblies that would have had ‘the power to elect, censor, and reconstitute the republic.’ (Vergara, 2020, p.146) Condorcet’s emphasis on popular oversight and control was motivated by the same fear that informs these proposals, that a Madisonian separation of powers is an uncertain defence against what he called the ‘slow and secret abuses’ of elite collusion. (Quoted in Vergara, 2020, p.148) After all, as Condorcet asked, ‘[w]hat becomes of public freedom if, instead of counterbalancing one another, these powers unite to attack it?’ (Quoted in Vergara, 2020, p.147) We might be tempted to call this popular branch ‘the Assembly’. But to avoid confusion it is perhaps better to stress its necessarily plural and synthetic nature and call it ‘the Institutions of the Assembly’ (IOTA). The Assembly as a universal and contemporaneous event cannot ever occur and does not have to. Plural subjectivity is not the same thing as a crowd. The Assembly can be constituted by a constellation of institutions that maintain a general overview of the contents of social reality, including the nature of sovereignty and of popular sovereignty. These institutions are to be formally co-equal with the other branches

of government. But they are intended to be the preeminent venues for the fundamental business of sovereignty: the creation and revision of opinion.

Instead of leaving this work of opinion and will formation to ‘civil society’, which is to say to a coalition of private magnates and officeholders in the legislature, executive and judiciary, the IOTA are intended to claim it as the province of the people as a plural subject. Their ideal object is the discursive sovereignty of the people: the supremacy of a plural subject open to all, over the speech whose acceptance brings social reality into existence. As such these institutions have two broad, though sometimes overlapping, tasks: the preservation of the people as plural subject in the sense outlined, and the preservation of this subject as sovereign. This requires general inquiry into the contents of social reality, and permanent invigilation of all of the state, combined with the powers necessary to praise or blame counsellors and ministers, and to refer questions of reward and punishment to competent bodies. It is not enough for people to know. We must be able to act on our knowledge if we are to determine the meaning of the moment in which we find ourselves.

As noted above, a state inclined towards popular sovereignty is compatible with the continued use of elected legislatures. The executive and judiciary can also be made compatible with it. Indeed electoral competition and judicial appointment can both be of considerable use. In the context of the United Kingdom some might want to make adjustments to the electoral system, or tidy up the second chamber. In America there might be a similar desire to reform the Senate and the Supreme Court, the Electoral College, and so on. There might be support in both countries for shorter terms of office. After all, as a number of recent publications have noted, the high water mark of popular responsiveness in America’s sub-federal states coincided with annual elections. (Feinig, 2022; Elliott, 2023) In other countries there are no doubt anomalies and anachronisms that trouble the reforming imagination. In Germany, for example, the Constitutional Court has argued that ‘[... the placement of monetary policy under the sovereign competence of an independent central bank, a competence that cannot be extended to other policy areas, complies with the constitutional conditions upon which the principle of democracy may be altered.’ (Quoted in Vogl, 2017, p.119) This sits uneasily with the conception of popular sovereignty that we have outlined. But these things can be considered, their appropriateness and desirability weighed, after the establishment of the Institutions of the Assembly. The creation of IOTA as a branch of government is the decisive step, since it will transform the terms on which the other branches operate.

6.4 The Limits of Elected Representation

Elected representatives sometimes justify their preeminence in the formal business of the state in Madisonian terms: they are able to ‘refine and enlarge the public views’ before they act. (Madison et al., 1987, p.126) But there is substantial evidence that they are very poorly informed about these ‘public views’. A study of American politicians published in 2018 found that ‘[o]n a broad set of controversial issues in contemporary American politics, US state political elites in 2012 and 2014 believed that much more of the public in their constituencies preferred conservative policies than actually did.’ (Broockman and Skovron, 2018, p.559) Researchers studying 866 politicians in Belgium, Canada, Germany and Switzerland found a similar tendency to overestimate the public’s support for conservative policies. (Pilet, et al., 2023, p.6) These researchers and their colleagues concluded that ‘politicians are quite inaccurate estimators of people’s preferences. They make large errors and even regularly misperceive what a majority of voters want.’ (Walgrave et al., 2023, p.209) Elected representatives seem to be busy refining and enlarging a public opinion that does not in fact exist. No doubt this helps explain why legislative decision-making is largely indifferent to what stable majorities want. (Gilens and Page, 2014; Page and Bouton, 2006)

Claims to a superior understanding in other respects seem equally dubious. Elected representatives are very poorly informed in matters of political economy, for example. The former Labour politician Bryan Gould once explained in an email to the editor of an underground magazine that ‘most of my colleagues had no knowledge of economics and either steered well clear of economic policy — preferring to concentrate on more general topics such as foreign or social policy — or else they swallowed whole the current orthodoxy since they had no capacity to take an independent view.’ (Ramsay, 2012) This seems to be borne out by survey data, which reveals that most British MPs have no idea how the monetary-financial system works. (Clarke, 2017)

The IOTA will promote the popular character of the sovereign by keeping avenues open through which each citizen can take their place in the practices through which social reality is created, maintained and altered. This will allow elected representatives to develop a much better understanding of public opinion. But it will also allow the public to develop a much better understanding of the character and conduct of elected representatives, and of the economic and political context in which they act. At the moment Anglo-American politicians in the parties that alternate in power do not seem very interested in what their constituents want, and do not seem to suffer electorally as a result. The IOTA is intended to change their incentives to the advantage of the majority who do not hold elected office. To be clear, this does not mean a dictatorship of public

opinion, no matter how refined. It means that citizens will have the powers they need to understand their circumstances, and to develop programmes of action that can be tested *in extremis* through the vote. But rather than acting as an adjudicator between options prepared out of sight, whose plausibility depends on the operations of an equally inaccessible government of opinion, the citizens as such will have the means to develop their own understandings and agendas without mediation by elites, whether of wealth, expertise, election or appointment.

6.5 The Office of General Inquiry

The first individual power that this implies is an equal share in the public funds used for the purpose of general information. A regime aiming at popular sovereignty could set aside a sum of money, sufficient to support an adequate number of researchers, investigators and analysts. Each citizen could then allocate their share of this fund to the individuals or collective bodies that they wish to support. This power captures something akin to the Athenian value of *isegoria*, or equality in public speech, a general right for citizens to attend and address the governing assembly, as well as a general eligibility to serve in offices populated by lot. (Ober, 2017) Most of us most of the time have neither the time nor the inclination to make interventions in public debate. Public debate in a medium-sized country would become impossibly congested if we tried. The annual allocation of a sum of money to news and current affairs media production provides all of us with an undemanding opportunity to secure some space in effectually public speech for those who are attentive to our interests.

In another register, we could describe this as making good on Hobbes's tenth right of sovereignty: 'Tenthly, is annexed to the Sovereignty, the choosing of all Counsellours, Ministers, Magistrates, and Officers, both in Peace and War.' (Hobbes, 2017, p.147) The people can appoint ministers, magistrates and officers indirectly through the franchise without vitiating its claims to sovereignty. But it cannot alienate the power to seek counsel for itself, since it will appoint and retain all other ministers and magistrates on the basis of said counsel. The establishment of this power will tend to satisfy a general appetite for information about the character, conduct and utility to the public good of legislators and executive officers, precisely what faithless, incompetent or underhand rulers will seek to suppress. This power will also provide the means through which unjustly disparaged groups can secure place in socially consequential speech. And it offer an opportunity to assemble counter-arguments when other groups have secured an unwarranted epistemic authority. The individuated power to shape the contents of public discourse helps us to secure both a fair hearing for ourselves

and a fair speaking from others. Here the sovereign resembles an octopus with numberless independent limbs, which each seek an ever more complete account of its surroundings.

An Office of General Inquiry (OGI) will administer these funds. In order to qualify organisations need only commit to make reasonable endeavours to report accurately, to respect the moral and material rights of their workers, and to correct errors promptly and with due prominence. I don't see any need to restrict or suppress privately owned media in conditions of popular sovereignty, or to restrict international information flows. Indeed, public subsidies would tend to support private media in the model I propose, and would plausibly expand opportunities to translate and promote foreign language content. That said, organisations that adopt a cooperative structure might be given preferential treatment, to reflect the public interest in building the sector. (Watkins, 2023)

Complaints about the conduct of publicly funded outlets will be considered by a jury appointed by general lot, which will be empowered to exclude them from subventions distributed by the OGI for a set period of time, if they consider them to be operating recklessly or maliciously.

Centralised decision-making, concentrated ownership, the dynamics of advertising and commercial competition in private media, as well as vulnerability to political pressure, have all created deep and persistent biases in media coverage. These biases would be remedied through the egalitarian allocation of funds. And the constant and annually revised provision of support is intended to shift the balance of power in favour of non-elite constituencies. Groups that are otherwise overlooked or marginalised — including very large groups — will be able to fund research and reporting operations that are able to persuade them that they will be attentive to their concerns and vigilant in matters that touch on their interests. The lavish exertions of effort that currently inform the very rich and their allies in the state will be replicated in the service of shifting coalitions of people without private economic advantages or political privilege. This is one of the ways in which the institutional programme will secure a broad epistemic equality for the members of minority social groups, and for those whose forms of address and methods of inquiry are unfairly discounted in Madisonian communications regimes.

The current media system is notoriously inattentive to the needs of, and hostile to, poorer citizens. (Jones, 2011, *inter alia*) It is also notoriously vulnerable to pressure from both private power and public officials. (Parry, 1992; Berry, 2019, *inter alia*) The advent of a digital-first media regime raises the prospect of a more complete subordination of public opinion to private, and even secret, interests. Social media platforms provide well resourced actors with the ability to simulate person-to-person communication using paid agents and artificial intelligence. Absent strenuous interventions,

more and more of us are going to be contained in curated silos, with little or no purchase on matters of common concern, while we experience a simulacrum of dis-intermediated exchange. (Hao, 2021, *inter alia*) Meanwhile, large and significant platforms are liable to be considered as national security assets and treated as such by the relevant agencies. Owners and managers will enjoy their privileges on condition that they accept the terms of their joint venture with state managers. (Greenwald and MacAskill, 2013)

Much like the political franchise, the system of media funding proposed here is egalitarian, and can be exercised casually or after long deliberation, according to taste, disposition and circumstance. It does not place unrealistic or unjust demands on the individual citizen. But it directly targets the processes of opinion formation, which constitute the essence of sovereignty. Rather than relying on market mechanisms, or the decisions of the political executive made at several removes from popular pressure via the ballot box, this approach ensures that funds flow into programmes of inquiry and analysis that enjoy support in the public understood as an assembly. Abraham Lincoln advised that '[a]llow all the governed an equal voice in government and that alone is self-government.' (Karp, 1993, p.167) Here the intention is to secure for the governed an equal voice in the formations of those opinions that both empower and constrain government, and that are the prime movers in the process of individual opinion, subject and will formation. When opinion, will and subject formation take place outside the polity in question, the scale and resources of the organisations funded by the OGI will be more than adequate to subject the outputs of these alien processes to detailed and energetic scrutiny. More generally, the OGI will permit the discussion of opinion, subject and will formation to take a properly prominent place in the effectively public speech. The argument for such an arrangement has been made a number of times. (Hind, 2010: McChesney, 2013) But it has yet to be adopted at state level, except for a brief pilot in Croatia. (Hind, 2014)

In the period before elections the OGI could also release funds for allocation by individual citizens to their favoured political parties and projects. (See Cagé, 2020) This would help smaller parties to compete. But independent funding of this sort would work in combination with the other Institutions of the Assembly to ensure that the settled will of the citizenry can impose itself on electoral candidates, or remove officeholders who stand in their way. For example, the IOTA could arrange for citizens' assemblies created by lot to interview all qualifying candidates for office in the period before national elections, and publish their findings. This would allow voters to know how well candidates fare when subject to detailed questioning by a well prepared body of citizens that

can plausibly stand in for the constituency as a whole. (This assumes first-past-the-post; a different approach could achieve the same objectives in a proportional system.)

6.6 The Senates

This brings us to the second cornerstone of organisational structure in the IOTA: the mini-assembly chosen by lot. These we will call Senates. Let us say that, in line with our concern to secure sound advice and maintain popular control over the government of doctrines, there should be two kinds of Senate: Senates of Inquiry and Senates of Invigilation. And let us say that some of these Senates could be permanent features of the state, while others could be temporary.

Permanent Senates of Invigilation might shadow each ministry in the national executive, each national judiciary, and each national legislature. Each group of senators-by-sortition could serve for a single year and be paid to work full-time at the mean UK wage. They could have powers to call witnesses and to question public officials and to publicise their findings. They could have powers to censure elected legislators and officials, and to initiate recall or impeachment proceedings for negligent or corrupt conduct if a supermajority approves. If first-past-the-past is retained this would mean sending articles of impeachment to the relevant constituency and asking for a verdict from the residents. If a purely proportional system is adopted the articles of impeachment would be sent to a constituency assembled at random that is roughly equal to the number of voters that the legislator represents.

Judicial Senates of Invigilation would establish a permanent presence for the public in the operations of the law. As Katharina Pistor and others have pointed out, ‘[...] a changing world will always leave even the most carefully crafted statutory or case law incomplete.’ (Pistor, 2019, p.210) The ability of lawyers to mould this incompleteness to the benefit of their clients means that it is not too much of an exaggeration to say that ‘Capital rules, and it rules by law.’ (Pistor, 2019, p.205) Whereas existing legal juries are subordinate to judges, the Senates proposed here would be partners with judges in assessing how the incompleteness of the law is filled out in practice. The reformed system of publicity already discussed would transmit their findings and concerns to broad publics.

Each unit of local government from district level up would be supplemented by a Senate of Invigilation tasked with oversight of elected and unelected officials. In this role they would be able to hear complaints and proposals from the general public, and they would be able to hear — in

confidence — from civil servants and elected representatives. They would also be empowered to interview council officers, senior police officers, NHS managers, university administrators and others working in their district, as appropriate. They would publish their proceedings and findings and write a letter to residents at the end of each term. Again a supermajority on each of these assemblies would also have the power to initiate impeachment and recall proceedings against elected officials within their jurisdiction at the end of their term. This decision to impeach, if confirmed by their successor, would result in an election in the relevant ward. They would also be able to commence impeachment of national legislators, with the agreement of their counterpart in that legislature.

The proceedings and publications of all the Senates of Invigilation would be protected by privilege. Employers would be required to make provision for employees selected for service. Attempts to discourage participation, or to exercise private influence over senators, would be punishable by law. Each Senate of Invigilation would also have powers to empanel temporary Senates of Inquiry, tasked with investigating, and reporting on, some particular matter. Their investigative and quasi-judicial capacity to praise and blame public and private magnates, coupled with the ability to commence recall or impeachment will give their members a sense of what it is to wield power as a member of a plural subject brought together not by affinity, interest or identity, but by the workings of chance. In this sense they, and all bodies created brought together by sortition provide an ongoing education in civic power that cuts against attempts to promote sectarian division.

The Senates of Invigilation would generate important kinds of new knowledge. But the constitution might also establish permanent Senates of Inquiry. These would be tasked with advising the public on matters of general concern and would be organised initially along lines that mirror the disciplinary divisions in the universities. There would be Senates of Inquiry for the natural sciences, for the life sciences, and for the social sciences and humanities.³² They would also be free to hear evidence from critics of the various disciplines and of the divisions between them. The purpose of these Senates would be to establish and maintain a dialogue between bodies of expert knowledge and the general public through regular publications and the production of audiovisual content, the better to ensure that citizens that aspire to a share in sovereignty have access to the best possible advice, and are not reliant on the good faith of unaccountable intermediaries when seeking to understand the natural and the social world, and the relationship between them. There need be no pretence that a particular distribution of curiosity had succeeded in ‘carving reality at the joints’.

³² These last could be tasked, among their other duties, with awarding prizes in the various arts, the idea here being to align creative innovation and excellence with the operations of the democracy.

Existing permanent Senates of Inquiry could be abolished, and new ones could be established, by a process of regular amendment, as set out in the constitution.

These Senates of Inquiry would not depend on a universal appetite for political deliberation ‘as a collaborative activity motivated by the possibility of agreement.’ (Shapiro, 2017, p.77) Participants would be able to abstain, and register their abstention, from publications and other forms of content. When intractable disagreements emerge dissidents would be able to produce their own minority reports. Conflicts in groups selected at random, especially when these conflicts do not reproduce the patterns of controversy in elite discourse, are likely to be *interesting* in a way that the rehearsal of partisan positions in the Madisonian order is not.³³ After all, these are people that, taken together, plausibly stand in for the rest of us. They do not seek preferment and cannot aspire to particular honour. They have a civic task and the resources they need to perform it. That said, the identity of jury members should not be publicised. Everyone involved should be free to reach conclusions, however prophetic or pigheaded, without fear of reprisals.

The public might also be able to petition for the creation of temporary Senates of Inquiry. If, say, 100,000 citizens called for an Senate of Inquiry on a particular matter it would be duly empanelled, composed on lines set out in the original petition. These temporary assemblies could become permanent by a process of regular amendment. The idea here is to ensure that the broader institutional apparatus of inquiry, which is intended to map onto the contours of knowledge production, does not become sclerotic but remains able to provide those seeking a share in sovereignty with the counsel they need.

These temporary Senates of Inquiry would provide the second avenue through which the interests and concerns of otherwise marginalised groups could find institutionalised and adequately funded expression. Ethnic minorities, socio-economic groups subject to marginalisation, and any number of other groups would be able to commission Senates of Inquiry that address matters of particular concern to them, and do so with the assistance of public resources. Groups might also be able to establish temporary senates drawn from a specified pool of eligible citizens. Young women will be able to empanel young women to inquire into a particular matter of concern, care home workers likewise, and so on. These temporary Senates of Inquiry could perform a useful role in the reform of existing communities of knowledge. When the numbers involved are small, the institutional

³³ This is not to say that partisan positions and talking points will feature in these assemblies. Doubtless they will, but they will do so alongside a much broader range of beliefs and preferences that cut across partisan divides, or that are obscured or downplayed in current organisation of representation and mediation.

model here would still provide a template for mini-assemblies that could be funded via the Office of General Inquiry.

Groups that cannot currently vote in national elections, children, or resident aliens, or prisoners, might also be able to establish Senates of Inquiry. Senates consisting of foreign citizens could be empanelled so that we would be able to see our arrangements as if with fresh eyes. Jürgen Habermas (2023, p.10) recently noted: ‘The more heterogeneous a society’s conditions of life, cultural forms of life and individual lifestyles are, the more the lack of an a fortiori *existing* background consensus must be counterbalanced by the commonality of public opinion and will *formation*.’ His mistake is to imagine that this commonality can be achieved while Madison’s total exclusion is in place.

Feminist theorists have long been alive to the danger that freedom might be undermined if the processes of opinion, subject and desire formation are left outside of our conscious collective sense-making. As Nancy Hirschmann (1996, p.51) points out, ‘the desires and preferences we have, our beliefs and values, our way of defining the world are all shaped by the particular constellation of personal and institutional social relationships that constitute our individual and collective histories.’ Not only that, ‘male domination is and has been an important part of that construction. This has resulted in laws, customs, and social rules that come from men and are imposed on women to restrict their opportunities, choices, actions and behaviours. Furthermore, these rules become constitutive not only of what women are allowed to do but what they are allowed to be as well: how women are able to think and conceive of themselves, what they can and should desire, what their preferences are.’ (Hirschmann, 1996, p.52) Hirschmann (1996, p.53) concludes from this that ‘the existing patriarchal context — not only its genderically inequalitarian customs and practices but also its language, conceptual framework, and epistemology — could be seen as a socially constructed external barrier to women’s freedom.’ This does not apply exclusively to women. If we leave ‘language, conceptual framework, and epistemology’ to be shaped by others acting in obscurity then we all become vulnerable to arbitrary interference. The choices available to us can be limited in ways that escape our notice if, for example, aspects of our social lives that could be altered through the exercise of collective agency are persuasively presented to us as immutable features of the physical world. The case for a constitutional right for citizens to organise against such a danger seems unanswerable.

Opportunities for enclave reasoning would help the citizenry to escape from the self-serving framing of issues by communicative institutions and state-based elites that currently bedevil public discourse.

(Disch, 2021) Topics, and indeed whole genres of speech and vocabularies, that are currently inadmissible in the major media, or appear in hopelessly distorted forms, could be addressed by official bodies that enjoy adequate material support and defined powers and rights to a place in the broader public discussion. This power to create these novel and autonomous state institutions is crucial if the citizenry is to enjoy as complete as possible a hermeneutical context for its decision-making, and if the individual citizen's right — a right necessary if the bias towards popular sovereignty is to survive — to make, and challenge, assertions of social consequence is not to be unjustly deflated by existing prejudices. (Fricker, 2007) Groups, including knowledge communities, that are currently treated unfairly would have the means to refine their own accounts of the social, and learn how to frame these accounts in ways that make sense to their fellow citizens. They would be free to use language that reflects their experience, that makes sense to them, without fear of being ruled beyond the pale by a prejudicial knowledge system. Once they have improved their accounts and developed their arguments they would be in a position to make their case to juries drawn from the general pool. And in this way, little by little, we can hope that, where prejudice or some other force has distorted our shared hermeneutical resources, a clearer picture would emerge.

Taken together the Senates and the individuated allocation of funds to support investigation and analysis would supplement the existing systems of knowledge production with a properly constitutionalised and broadly democratic civil science. Alongside the universities and the media created by and for market competition, this new civil science would furnish the citizenry with the information it needs to sustain itself as a body with good grounds to consider itself sovereign. The prestige of the popular branch in a government system aiming at popular sovereignty can be expected to have a powerful effect. Where powerful interests currently seek to shape the choice environment in ways that escape awareness altogether, or that avoid effective challenge, popular coalitions of understanding would be able to intervene to make this oligarchic organisation of knowledge visible and vulnerable to a reordering along lines that recommend themselves to particular interest groups first, and then to the body politic more generally. The relationship between expertise and democratic power would be brokered on new terms. (See Herzog, 2024, p.177-208)

This need not require a generalised appetite for disinterested inquiry. The observable *and widely publicised* effects of popular organisation on the content of the state and on the conduct of its representatives would give ordinary people a reason to make further efforts to pursue a more complete comprehension of the present, and of their desires for the future. The links between the material interests of citizens and the operations of the state would become easier to see, once it

becomes possible to challenge the account of political economy that predominates in the existing epistemic regime. We need not expect an immediate reformation of our understanding across multiple fields of study, so much as a gradually increasing amplitude of light.

The Senates would provide a non-trivial number citizens with the experience of government. If a thousand Senates are active each year then after twenty years around half a million people will have had experience of working as paid officials of the democratic state. And their work will provide the rest of the citizenry with a picture of government as a collaborative endeavour in which ordinary people take their place by ordinary right. Invigilating senates would possess specific powers to check the license and impudence of elected and unelected officials. Senates of Inquiry would possess general powers to contribute to the government of opinions and doctrines, including the power to rebuke and praise. These latter would not be merely 'advisory', in that their deliberations would be available to a media system that is itself substantially independent of elected and appointed officials, and attentive to the interests of the public broadly conceived. Their power would be manifest in the processes through which claims about the contents of social reality are made and assessed. All citizens selected by lot to serve in a Senate could decline, and would be entitled to nominate a surrogate. A senator that serves by nomination could not be nominated again for five years.

6.7 The Office of the Currency

The existing monetary regime in the UK and in the rest of the Madisonian global system leaves control over the allocation of credit-money in the hands of banks, nominally private institutions that in fact take their place in the country's sovereign ensemble. In recent years this this control has played out as a bidding up of prices for existing assets, rather than as investment that increases productivity and sustains high wage employment:

Textbook descriptions of banks usually assume that they lend money to businesses to finance new capital investment. Explanations of why financial deepening is valuable focus almost entirely on the beneficial impact better credit flow to businesses and entrepreneurs. But in most modern banking systems most credit does not finance new capital investment. Instead it funds the purchase of assets that already exist and, above all, existing real estate. (Turner, 2016, p.61)

The state-owned or state-affiliated central banks in the current monetary order see it as their role to preserve the large private institutions that generate credit for this bidding up of assets. During the financial crisis that began in earnest in 2008 the Bank of England, the Federal Reserve and their counterparts throughout the world reduced real interest rates below zero as part of a successful programme to revive and embolden these private institutions. Indeed, the emergency pushed them to go further and buy up financial assets for newly created cash in a process of winner-picking given the boring-sounding name of ‘quantitative easing.’ The decision to hand control of so much of our economic planning to private institutions is a political one and owes nothing to the operations of supply and demand. Clearly, the control of the currency is not, and can never be, the preserve of technocratic expertise. For all that there might be a need for expert means, the ends of monetary policy cannot be derived from those means. Some monetary operations will enrich Machiavelli’s nobles, who pay no attention ‘either to the cultivation of the land or to any other exertion necessary to make a living.’ (Machiavelli, 2008,p.136) Some will benefit those who work.

The choice between monetary policies is necessarily political. It therefore seems appropriate to establish an Office of the Currency alongside the Office of General Inquiry. We might not want to say that the government of money is co-equal with the government of opinion in the maintenance of control over social reality. After all, money is only a feature of that social reality, while opinion forms the enabling conditions of social reality as such. But as Keynes put it, money is ‘above all, a subtle device for linking the present to the future.’ (Quoted in Kirshner, 2003, p.646.) Money is how we distribute effective claims on resources, and is the point at which opinion achieves its most complete apparent materiality. As such it plays a central role in determining the meaning of the present and in establishing what that meaning entails for the future. It is essential to sovereignty. The current order can pretend otherwise. A popular regime has no choice but to acknowledge the facts of the matter.

This Office of the Currency could establish Senates to shadow the Treasury, the tax authorities and the private financial sector as well as the central bank. In Britain this might mean the creation of a Senate to invigilate the City of London. This Senate might have an immediate brief to inquire into the City’s management of the Gresham Bequest. The City of London’s social authority can be traced back to middle ages. But if it rests on a fraud, we all have a right to know. The Office of the Currency could also establish a network of public-cooperative investment banks to channel credit creation into productive and socially necessary projects. It could invest directly in assets that serve a strategic purpose in addressing the challenges of climate change. This might include a programme of land acquisition, the reorganisation of food production around small, cooperatively organised,

producers, and the restoration of both the terrestrial and maritime commons. Its immediate priority might be the de-privatisation of essential infrastructure and the establishment of public utilities that combine pools of highly motivated and expert labour with a system of governance based on IOTA principles. In the medium term the Office of the Currency would secure for popular constituencies a decisive voice in decisions about economic development.

A reformed Bank of England would form the core of this new institutional apparatus. The elected finance minister, however designated, would be given control over interest rate policy and responsibility for financial regulation. But a Senate would oversee their decisions and have powers to interview relevant actors. They would also enjoy the power to impeach ministers in the event that they felt that their policies or decisions were inimical to the general interest. The new central bank would open branches in the rest of the country and these branches would be required to provide advice and information to the various Senates in their areas. The formal mandate of the bank would be full employment in activities that are desirable to the sovereign people, as discovered through the constitutional apparatus of inquiry, invigilation, election and appointment. Again, the aim here is to remove control over investment decisions mediated through the state's monetary operations from private wealth and place it in the hands of a public power informed by permanent and intense deliberation by large numbers of people.

The Office of the Currency could establish a research and investigative apparatus governed by a Senates, which would provide the public with reliable information about economic and financial affairs in partnership with the Office of General Inquiry. It could also work with the Secretariat to ensure that anyone who wished to do so could acquire a thorough grounding in the principles of political economy. (See section 6.9 below) A job guarantee might include an option to take such a course, for example.

6.8 The British Digital Cooperative

As well as the Office of General Inquiry, the Office of the Currency, and the various Senates, a constitution aiming to enable popular sovereignty might also want to establish a number of executive agencies under the aegis of the IOTA. For example, a British Digital Cooperative (BDC) might be established to work alongside the Office of General Inquiry and the Senates. Its remit would include the provision of digital spaces in which the public are able to access the findings of the media outlets funded through the Office of General Inquiry and of other media, and to discuss

their significance. Rather than leaving different groups to develop their own account of the social, in this way the population as a whole will be able to benefit from insights and forms of knowledge generated everywhere in the body politic. This British Digital Cooperative will have a structure of governance based on the use of random selection, which mirrors the organisational default of the IOTA more generally. (Hind, 2019) Needless to say, a democratised BBC would be an important institutional partner. It is difficult to imagine that a public service broadcaster would ignore the deliberations and decisions of active and informed publics. But if there was some reluctance, the BDC could set up its own channels of publicity under the auspices of the IOTA. The aim would be to substantially re-order the mass media — that is, the media that most people see, and that forms the basis for general deliberation — in favour of popular sovereignty.

As well as providing digital venues for the discussion of public business, the BDC could be tasked with developing new technologies to assist the sovereign public, and to protect its status as sovereign. Its remit might include the creation and management of digital resources to assist democratic decision-making in the economy. This general access platform would run alongside private platforms like Amazon and retail banks and provide citizens the means to make informed decisions about their future expenditure, and about the broader direction of material production and service provision. The BDC could work alongside the Office of the Currency to develop this capacity for democratic planning in the economy.

The BDC might also be responsible for creating a suite of digital assets to help each citizen to situate themselves in their social and political context through mapping and visualisation tools, messaging and online payment platforms, and social media designed to maintain existing, and develop new, plural subjectivities around shared interests and activities. One of its duties would be to ensure that citizens are able to make the most of their vote at election time. In first-past-the-post systems this would mean providing resources to assist in collective decision-making in particular constituencies and districts. The broader mission of the BDC would be to assist in enhancing both the quality and inclusiveness of the plural subjectivities that oversee the operations of government.

In accordance with this mission the British Digital Cooperative would be empowered to create further cooperatives that embed the interests of workers and the wider public according to a formula specified in the constitution. In this way public funding for technological development will increase the share of the productive economy that is responsive to the needs and interests of the general population, and that distributes surplus in an egalitarian fashion, in line with real gains in productivity. In fast-growing economic sectors this will shift incentives away from the creation of a

small number of billionaires towards the creation of a large number of innovative enterprises, co-owned by well paid and secure employees. (Hind, 2018)

6.9 The Secretariat of the Assembly

All of these institutions could be served by a Secretariat of the Assembly, which would be tasked with the protection of the integrity and popular character of the sovereign plural subject. It would provide administrative support for each of the Senates and for other bodies created by the IOTA. Among its many tasks would be the preservation of the collective memory of the IOTA, so that insights and findings of previous Senates continue to feed into the deliberations of those in the present. In this way the performance of experts over time can be assessed in service of a democratised distribution of epistemic prestige. When individuals and schools of social or natural science fall short repeatedly that will be reflected in the way that they are treated by citizens tasked with the assessment of claims on behalf of the sovereign.

The Secretariat might take as its point of departure the Northcote-Trevelyan model of civil service, in which professional administrators are on hand to advise and assist but do not, as a point of professional pride, seek to manipulate. (Her Majesty's Government, 1854) But it would be structured along lines that recognise its peculiarly democratic commitments. Rather than seeking to install an aristocracy of public administrators, the Office of the Assembly might want to provide citizens with the means to acquire a diploma qualifying them as a Secretary to the Assembly, which would make them eligible to serve as an officer for the various Senates. Again, studying for this qualification might be an option in a job guarantee. A low bar to entry would ensure that many of its employees are drawn from the communities whose citizens they will then assist. It is inimical to democracy to dress up civil service as something beyond the wit of ordinary citizens. The need for expertise and rare intelligence is very real, but this does not extend to most matters of diligent administration.

The Secretariat of the Assembly would want to liaise with schools and the relevant ministries to help prepare a civics curriculum, in coordination with various of the relevant Senates, including some convened for this specific purpose. Citizens do not need to know very much to understand what is at stake in a regime biased towards popular sovereignty. But they do need to know some things, many of which are closely guarded secrets in the current organisation of government. In particular, we would all need to leave school having had a thorough grounding in the dynamics of assertion and acceptance that generate social reality, and a clear-eyed appreciation of the role that epistemic

equality plays in preserving the possibility of popular sovereignty. If any distribution of power is also a distribution of knowledge, then a bias towards popular sovereignty requires that each citizen understands this relationship between sovereignty and the structures of social reality when they begin their civic life. The internal organisation of schools might also be made to reproduce the democratic structures of the state in miniature. An under-appreciated feature of Britain's public schools is the way in which their combination of Victorian Gothic architecture and hypocrisy prepare their charges for the actually existing constitutional order.

Similarly, the Secretariat of the Assembly might want to build or refurbish libraries, to ensure that every citizen is able to access digital media, printed materials and public space, regardless of their private means. And it would be as well for the Secretariat of the Assembly to be based in buildings open to the public that reflect the dignity of the IOTA and its central place in the constitution. In Britain a Palace of the Assembly could also provide a temporary home for legislators, while their verminous and unsafe Palace of Westminster is finally renovated. The Palace of the Assembly could be built in a highly deprived area of the country, so that the public could see for themselves the difference that highly paid legislators and their support staff make to the local economy. The built environment and amenities demanded by legislators would then provide a model and benchmark for the buildings maintained by the IOTA.

The Secretariat of the Assembly would of course put sortition based mini-assemblies at the heart of its governance. Indeed, the egalitarian and universal aspirations of popular sovereignty would need to be reflected in all of its structures. There is a pressing need to ensure that technical assistance does not morph into the covert framing of issues and the closing down of debate. But here I think the notion of a separation of powers does useful work. So long as individual citizens have independent powers to mobilise and organise inquiry and analysis, they will be able to keep a close eye on the Secretariat's structures and operations. There will always be a tension between the expertise and professional *amour propre* of the permanent administration and the uneven, inconstant and divided energies of the people. But this tension is better put to productive use in regular public collaboration and occasional public disagreement than relegated to the private interactions of civil servants and elected representatives. In this respect the proposals here can be seen as building on Hélène Landemore's (2020, p.134-45) remarks on the principles underpinning her conception of 'open democracy'. In particular the embedding of inquiry and invigilation in a communicative order characterised by radical equality — by a mediated approximation of *isegoria* — enhances the transparency of government, which will otherwise soon be made opaque by those who are eager to reap the rewards of being able to feel their way through the murk.

The idea that we need to build a branch of government that has an avowedly popular character overlaps to some extent with the idea that we should create explicitly ‘plebeian’ institutional forms, These plebeian institutions, somewhat like the Roman tribunate, are intended to give political voice to the many who lack economic power while excluding the opulent few. (McCormick, 2011) Like these plebeian democrats I am keen to strengthen the hand of the many in their struggle against the few. But note the difference. The reforms here do not seek to inscribe a particular political sociology in the structures of the state.³⁴ Individuated powers to participate in public and mediated speech and institutions based on random selection will, it is to be hoped, overwhelmingly favour non-elite individuals and groups. But they will do so because at the moment most citizens are, relatively speaking, neither rich or powerful. Powers distributed equally and universally will greatly enhance the ability of most citizens to intervene in political discourse and decision-making, while adding almost nothing to the powers enjoyed by a relative handful of media magnates and politically active billionaires.

Wealthy individuals (and, more often, their intellectual adjutants, sidekicks and admirers) will occasionally be called to serve in one of the Senates. But they will, perhaps for the first time in their life, be surrounded by people who do not know who they are, and have nothing in particular to gain from their good opinion. Deliberation is improved by a range of experiences and perspectives, so the resulting cognitive diversity is itself to be welcomed. But, more importantly, the prestige and authority of the popular branch depends on its claims to speak not for a particular fraction of a statically segmented social and economic order, but for autonomous and self-constituting interests in a political community that claims for itself the right to interrogate, and where necessary, re-organise its social forms. This right to intervene in the structure of social reality must extend to the division between the financially embarrassed many and the opulent few that tribunician institutions would tend to naturalise in the minds of the citizenry. The decision to abolish billionaires, say, should not emerge as an expression of plebeian wishfulness or envy, but as the growing, and ultimately irresistible, conviction of the body politic as such.

³⁴ It is worth bearing in mind that the original Roman tribunate operated on the basis of a social distinction between the plebs and the patriciate that soon became obsolete as ‘plebeian’ families increasingly dominated the ranks of the senatorial nobility. Furthermore, the tribunes were conspicuously unsuccessful in their attempts to redistribute land in the face of elite violence and indeed, as noted in 5.1, *tribunicia potestas* become an honorific of the Roman emperors as they set about creating one of the most radically unequal social orders in world history. All this should, I think, give us pause. At least some advocates for the tribunate recommend using universal sortition. (Prinz and Westphal, 2024)

Chapter Four set out a taxonomy of epistemic harms. The idea there was that both individuals and a would-be sovereign collective need to be protected from unjustified instances of epistemic demotion. If speakers, or genres of speech, are unfairly discounted or given unwarranted authority then attempts to constitute a political order tending towards popular sovereignty will be subverted. The reforms proposed here are intended to reduce these harms in both constitutionally structured communications and in deliberative fora ‘in the wild.’

As noted above the opportunities for enclave reasoning afforded by temporary Senates will enable people who otherwise encounter epistemic prejudice to create and refine bodies of knowledge before they are exposed to hostile or prejudicial discursive spaces. Instead of relying on the fair-mindedness of the powerful, citizens will have opportunities to make their case to a widening circle of potential allies and in increasingly authoritative fora. Groups can confer and converge on strategies to counter the kinds of prejudice that novel or non-standard claims attract. Critics of the *status quo* can also find ways to reduce the effects of ‘spontaneous trait transference.’ (Skowronski, 1998) In this way relevant and useful information will, it is to be hoped, become more likely to take its place in the shared stock of hermeneutical resources.

Where this shared stock is currently depleted by prejudice against social groups or styles of testimony the individuated control of funds for inquiry and analysis will also have a salutary effect: a small number of editorial decision-makers will not be in a position to head off opportunities to enrich the hermeneutical field. When even quite small numbers of people feel that there are defects in the way that a particular issue is understood and discussed they will be able to organise to remedy them. Some individuals from unfairly disadvantaged groups, or with unfairly disadvantaged views, will be able to engage directly in constitutionally recognised public deliberation through the Senates. But it is also plausible to believe that many more will benefit from a more open and fluid discursive culture.

The reforms proposed here are also intended to push back against the unwarranted inflation of speakers and styles of testimony, and to uncover out pseudo-science and counterfeit expertise. By multiplying the number of decision-makers in inquiry and analysis the IOTA will, it is to be hoped, generate information and analysis that cuts against claims that tend to be favoured by the wealthy and socially (including epistemically) impressive. When these claims favoured can withstand more intense scrutiny nothing much will change, and no harm will have been done. But in a number of areas increased diversity in discursive decision-making might plausibly lead to very significant revisions to the complexion and organisation of collective acceptance on which all of our social

arrangements rest. Where currently it might be reasonable to fear that audiences are unduly swayed by the prestige of individuals or styles of testimony the Senates will also provide novel opportunities to cross-examine at length and to invite competing claimants for epistemic authority to offer contentious testimony. Even those who favour our current economic, political and social arrangements can hardly object to a structure of communications that subjects both these arrangements and proposed innovations to a more radically open-ended test.

This is not to imply that all of the epistemic harms discussed in Chapter Four can be remedied by the IOTA. Longstanding inequalities in access to epistemic goods such as education lie outside the scope of this thesis. But it is to be hoped that the reforms outlined here will have a significant impact on the discursive field by removing some of the barriers to effective general participation in public business, and by subjecting currently prestigious, but rationally or empirically dubious, claims to more stringent and persistent challenge.

6.10 Objections to the Institutional Programme

A number of objections present themselves to this programme. It is obviously the case that elected representatives will not give their support to reform proposals that threaten to break up the condominium they share with the most energetic and ruthless actors in the private economy. The exposure of their claims, their character, and their interests to general inquiry is much less appealing than decades of high living and high status, at the cost of occasional bouts of hypocrisy at election time. But we should always distinguish between what is possible and what is necessary. If we limit ourselves to reforms that those who are currently in charge will find acceptable we will be without a programme when the next crisis occurs. It's clear that our current arrangements threaten us with social and natural disaster if they are not changed soon. The only responsible course is to set out what is necessary if we are to avoid the worst of what is to come. Practicalities will, eventually, take care of themselves.

We should also note that we are talking here about the addition of new powers to the public. An incoming local or sub-federal administration could introduce some of the structures and practices proposed without the need for painstaking constitutional conventions or legislative changes. Even English district councils have an extraordinary freedom to innovate. Sometimes this translates into foolhardy investments. (Butler, 2023) But it could just as easily be used to build institutions that assist

in the formation of democratic publics. Sums currently spent on press relations and other forms of logrolling and chicanery could be redirected to fund them.

Elected representatives are absolutely central to our current system of government. As it stands they share an overwhelming interest in maintaining the *status quo*. Meanwhile a handful of very large political parties capture the great majority of elected offices. What is proposed here will, and is intended to, end the centrality of elected representation and break the effective monopoly of large political parties over political power. It is a revolutionary programme, and it will be treated as such by the pensioners and courtiers of the existing regime. It would be a shame if self-imposed limits on our understanding meant that democrats were disarmed while the unillusioned partisans for corporate and technocratic oligarchy were busy exploiting an institutional apparatus that was intended to be responsive to their wishes.

While it can be criticised for excessive radicalism what is proposed here could also be condemned on the grounds of timidity. After all, there is a growing body of opinion that proposes the complete replacement of elected representatives with jury deliberation and direct democracy. (Reybrouck, 2016) But elected representatives are compatible with popular sovereignty in the sense that interests us. Indeed it seems sensible to leave executive and legislative office in the hands of the highly motivated, plausible and ambitious people who tend to contest and win electoral competitions. The vital thing is to ensure that they, and the institutions that coalesce around elected office, always act in lively dread of the rest of the citizenry. The structures of information and surveillance proposed here make it a fact of their everyday existence, rather than a fiction of campaign rhetoric, that elected representatives work for the people, and serve at their pleasure. The point is not to introduce unmediated democracy but rather to improve and refine the means of mediation. If durable majorities later decide to limit the role of elected representatives, or to replace them altogether, that would be possible in the arrangements set out here, even if it would require the support of a majority of elected representatives. My concern is to establish conditions in which all representatives (and experts) know that their individual and collective demotion is a live possibility.

It is important to stress that the various institutional innovations proposed in this chapter do not require that the majority who are not directly involved in the work of invigilation and inquiry through the Senates adopt an attitude of 'blind deference' towards the minority who are. (Lafont, 2020) Those, like Cristina Lafont, who object to lottocracy on these grounds have nothing immediate to fear from the reforms set out here. Far from demanding passive acceptance from citizens, the senates and the rest of the IOTA are intended to provide precisely the informational

resources required for active citizenship. The Senates and the Office of General Inquiry would provide averagely engaged citizens with information that is very tightly controlled and narrowly distributed in the current constitutional order. They would also provide defined constituencies with occasions for judging the character and conduct of public officials. But the final decision to strip a representative of public office will take the same, electoral, form as their appointment.³⁵

The most challenging objection to the widespread use of deliberative bodies chosen by lot comes from those who argue that they cannot do the work that idealistic reformers ask of them. Kevin Elliott (2023) has recently presented some plausible arguments for limiting the use of non-elective institutions. He suggests that, while they might be useful as an auxiliary institutional form in electoral-representative democracies, they will have perverse effects if asked to do too much. Elliott points out that participatory institutions intended to empower the citizenry often tend to favour already favoured groups in society, leading to a tendency to favour the *status quo*. (Elliott, 2023, p.75) And, he notes, this is true even of some bodies created through sortition, including the citizens' assemblies conducted in British Columbia, Ontario and the Netherlands. (Elliott, p.75-6) And whereas participatory democracy makes significant demands on our time, voting is much less onerous and is therefore less forbidding to economically and socially disadvantaged individuals and groups. He concludes: 'Because of the paradox of empowerment, we know that some ostensibly democratic institutional reforms will reliably fail in the core task of democratic institutions, of rendering power more nearly equal.' (Elliott, 2023, p.77) Indeed, he warns: 'Time-intensive forms of participation erect a cost barrier to taking part in democratic processes that is effectively exclusionary in a similar way to Jim Crow poll taxes.' (Elliott, 2023, p.82)

Elliott suggests that the widespread use of mini-assemblies recruited through sortition is likely to have other perverse effects. If they are adopted on the scale needed to give large numbers of citizens a direct experience of serving on them, and if they possess significant powers, they will tend to make politics less, rather than more, accessible to the public by interfering with the work that competitive political parties do in simplifying and clarifying political choices:

Displacing the structural helpmates of democratic choice results in the mystification of politics and promises the demobilization of vast swathes of the population who simply

³⁵ Here I differ somewhat from H el ene Landemore's (2020) account of 'open democracy': I am not agnostic on the question of replacing elected legislatures with mini-publics chosen by lot, for reasons set out by Cristina Lafont (2020). I think it would be a bad idea, and would want to argue against it. But there is no escaping from the implications of popular sovereignty: if stable majorities pursue such a course in the institutional schema set out here there would be no stopping the move to lottocracy.

cannot keep up with politics' burdens while also giving other parts of their lives appropriate care and attention. (Elliott, 2023, p.194)

On the other hand if these mini-assemblies are merely advisory, then they will seem pointless to many potential participants, increasing the tendency of such bodies to over-represent already favoured groups. Trying to remedy this by making service on such bodies mandatory will, Elliot argues, probably reduce both the quality of their deliberations, and their educative effects on the citizen: 'Deliberation requires a carefully maintained atmosphere of mutual respect, civility, and staying on topic, among other things, and compelled participation could harm this atmosphere by gathering disgruntled spoilers who resent the imposition.' (Elliot, p.191) In a similar vein Ian Shapiro argues that if deliberation '[...]is purely consultative, it is not clear why anyone will or should pay attention to it. Yet if rules are created to give it real decision-making teeth, they can all too easily undermine political competition and empower people with leverage to appropriate them for their own purposes.' (Shapiro, 2017, p.80)

A number of responses can be made. As regards the issue of empowering already empowered groups, random selection does not necessarily lead to a skewing of participation in this way. The 2016-18 Citizens' Assembly in Ireland, for example, used weighted selection to ensure that the deliberating body indexed to socio-economic status. (Irish Citizens' Assembly website, undated) But if we want to retain 'pure' random selection, ensuring that attendance is well compensated, allowing those selected to appoint surrogates, and putting in place robust measures to protect employees will, taken together, plausibly reduce the costs of participation for many people, to the point that service becomes possible, even desirable, for people who currently believe, with good reason, that they are unwelcome in the circuits of public deliberation when they try to assert their own claims on the structures of social reality.

Similarly, mini-assemblies can be organised to meet the practical needs of participants, using digital technology where appropriate. Many of the Senates proposed above will be recruited from quite small geographical areas, so in-person meetings will not require long travel times. Senates drawn from national pools will be more challenging. But every effort should be made to ensure that service is enjoyable and pleasant. The National Trust maintains a large number of properties that could be used for democratic purposes. And I am sure that large environmental charities, I am thinking of the RSPB in particular, will leap at the chance to share their lavish culinary and architectural resources with deliberating publics tasked, among other things, with crafting a response to the climate emergency. The Secretariat will be on hand to assist those with particular requirements. If

individuals still choose not to attend, they will be able to appoint a proxy of whom they approve. This in itself is a valuable kind of agency, and creates a new kind of representative office. It isn't outlandish to imagine that someone nominated will keep their sponsor informed of proceedings.

Elliott is right to worry that the discourse about random selection can be far too blithely confident about its inevitably egalitarian character. It is vital to make provision for those who might otherwise be deterred from serving on sortition-based bodies. We should also bear in mind Shapiro's warning that powerful interests will seek to subvert these new institutions for their own purposes. The political culture proposed here will inevitably be one marked by very serious confrontations between partisans for popular sovereignty and their opponents. And these confrontations will be made more complicated by the difficulty everyone will have when trying to figure out who is a partisan for popular sovereignty, and who is an opponent. This underscores the need for a reformed apparatus of civic communication if the threat of appropriation flagged by Shapiro is to be avoided. Note then that the IOTA would administer universal and egalitarian communicative powers through the Office of General Inquiry. The exercise of these powers will be no more onerous or daunting than voting. And it is a little perverse to argue that assemblies populated by random selection will necessarily worsen the problem of political inequality, when the election of representatives currently allocates power with such ruthless efficiency to particularly ambitious fractions of the professional and plutocratic classes.

There are further grounds to be guardedly confident that the Senates will be able to resist subversion by organised oligarchic interests. In their reports the Senates will be free to both censure and praise those who give testimony. For this reason the Senates should enjoy something akin to parliamentary privilege: the individuals who draft senatorial findings will be protected against libel actions. Corporate lobbyists, whether acting openly or not, run a real risk of rapid epistemic demotion if they seek to mislead or otherwise undermine the institutions of inquiry and invigilation. Work to shape the discursive field that currently takes place in private conversations at sporting events and fine dining establishments will take place in full view of averagely partial and disinterested citizens. Not only that, the testimony of would-be subverters of public deliberation will be published and made available for assessment over time by a media system designed to safeguard disinterested investigation into matters of fact. Intellectuals and experts who advocate for privatisation, say, will be exposed to judgment in a way that is not possible in our current constitutional order. There is no doubt that lobbyists will adopt new, or revive old, rhetorical techniques in order to sway popular bodies. But the long run costs of trusting them will be open to ongoing investigation and dissemination. Something similar can be said about private media: outlets that mislead the public

will be exposed to an excruciating degree of disinterested scrutiny. Meanwhile, the Senates can be protected from direct attempts to corrupt their deliberations through bribery and intimidation in much the same way as juries in criminal trials are protected.

The Senates of Inquiry proposed here will not be ‘merely advisory’. (Elliott, 2023, p.191) Their findings, including their praise for, or censure of, elected and unelected officials and experts, would feed into an IOTA-funded communications system that will take an interest in the workings of the Senates and in the rest of the state proportionate to the citizenry’s wishes as expressed through the individuated distribution of funds. No doubt senatorial reports would create lively controversy from time to time. Corporate public relations departments might be kept busy trying to fend off their implications. But the task of advising the public is an important one, and is likely to prompt a high level of engagement in citizens if they have a firm grasp of its central importance in sustaining the popular character of the regime and are therefore confident that their work will be given due prominence in future public deliberations. Ireland’s 2012-14 Constitutional Convention and 2016-2018 Citizens’ Assembly both required that the Oireachtas respond to their findings though they did not have direct power to trigger a referendum, much less change policies unilaterally. But the Convention’s proposals for a suite of economic, social and cultural rights, including a universal right to housing, has not featured prominently in the Irish media.³⁶ (Irish Convention on the Constitution website, undated) This effective suppression of a senate’s findings would be less likely in the broader media environment created by the IOTA. Note, too, that the proceedings of the senatorial inquiries will plausibly tend to attract the attention of the wider citizenry to public business through staging a compelling spectacle: elected officials and experts will be put into situations in which what they say can be tested and re-tested by Senate members who are able to draw on a wide range of alternative points of view and competing knowledge claims. What more could one ask for from a media genre than this, the dramatic staging of elite jeopardy?

The idea that powerful Senates will disrupt the work of competitive political parties is troubling if, as Elliott suggests, the likely result will be to turn politics into ‘[...]a huge buzzing confusion that is cognitively intractable for most citizens, particularly busy ones.’ (Elliot, 2023, p.194) But while the state form described above does change the terms of electoral competition considerably it does not seek to do without it. And while both Senates of Inquiry and Senates of Invigilation will doubtless generate what Elliott (2023, p.190) calls a ‘[...] veritable tidal wave of outputs’, their findings will find their place in a system of communication that is intended precisely to make sense of them and

³⁶ An open search for ‘eighth report of the convention of the constitution right to housing’ on August 19, 2023 ‘did not match any news results’, according to Google.

their implications. Hélène Landemore (2020, p.89-93) points out that mini-assemblies appointed by lot play a representative role. In the case of the Senates they provide ‘a counterfactual representation of what the people *would* think, presumably under good conditions for thinking about the issues discussed.’ (Fishkin, 2018, p.71) But in the state form envisaged here we would not have to rely on the arbitrary decisions of unaccountable intermediaries in order to access this representative civil knowledge. Taken together the IOTA are intended to establish broad popular oversight over the entire contents of the social. The conceptual resources we use, the shared bodies of knowledge that we draw on, the entire substance of deliberation, will be more completely transparent and responsive to each and all. Those who claim particular authority to pronounce on matters pertinent to the sovereign will be subject to a disinterested and iterative test. A partnership between expertise and democracy, based on a publicly defensible distribution of epistemic prestige, will be developed over time. Elected officials will still pass laws and make executive decisions. But they will do so in a radically altered environment.

The Senates of Invigilation as described here will not wield direct powers to amend the national constitution, to trigger national referenda, or to change legislation. They will remain focussed to some degree on elected office, since *in extremis* their powers would send representatives back for judgment by relevant constituencies through recall. The aim is not to replace political parties or elected officials in their work organising legislative and executive decision-making. The aim is to prevent officials and parties from colluding with the media to create a choice environment that excludes anything these surreptitious partners in sovereignty deem ‘wicked or improper’, that is, anything that threatens their prerogatives and perks, either directly or indirectly. As it stands in systems dominated by elected office and unaccountable (‘private’) mediation the work of organisation that Elliott values often amounts to an organising out of issues from the sphere of political deliberation, agenda-setting and decision-making. All kinds of florid controversies bloom, so long as they do not disrupt the shared interests and undertakings of the elected, the rich and their lavishly paid functionaries. In such circumstances important items of public business are already ‘cognitively intractable’.

Once publicly available speech is no longer subject to this form of prior restraint, the distinction between politics and economic life will also tend to fade. Citizens will be motivated to engage in political activity because matters such as land use and the creation of credit-money, which are currently kept away from the main circuits of publicity, will once more be accessible to state action. The pleasures of an enhanced capacity for transformative action in the world, and the material benefits this action secures, will become better aligned with attention to public business. We do not

have to invoke the Athenian piety that active citizenship is a necessary element of the good life. In the institutional context proposed here there would be strong prudential reasons to take an active interest in the processes through which our rights and duties are brokered. This would mark an important departure from the current situation, in which indifference to matters of general concern can often be financially and socially advantageous.

Elliott is right to be worried about the ability of sortition-based assemblies on their own to replace elected representatives and the existing media system as a mechanism for making politics ‘cognitively tractable.’ But the organisation of political choice must always be understood as a condominium consisting of those who produce speech that targets the constitution of social reality, and those who provide contextualising media through which that speech reaches broad publics. The combination of Senates, civic funding for the media and for political parties, and executive agencies like the British Digital Cooperative is aimed to end the effective monopoly on speech that targets social reality enjoyed by elected representatives and their partners in the media, and to establish self-aware and inclusive plural subjects at the centre of agenda-setting and deliberation.

The institutions proposed here are not predicated on a natural tendency towards fair-minded deliberation, as against stubborn argumentativeness. Indeed the Senates must be designed to ensure that, where disagreements persist, these register through abstentions and minority reports. The Senates themselves are intended to prevent or frustrate elite collusion and the threat that it poses to popular sovereignty. This they do by discovering collusion through inquiry, and by punishing it through recall or censure. They are concerned with matters of fact: with the facts of social structure, and the facts of elite conduct and character. If we are, in general, incapable of this work of inquiry and invigilation, if we cannot in suitable conditions discover the relevant facts with tolerable reliability, then it is hard to see how we could possibly be competent to elect representatives, as is our responsibility in the current constitutional order. An additional benefit of the Senates will be to give non-trivial numbers of people direct experience of collective endeavour with people who come from different ethnic and economic backgrounds, and have different religious views and political preferences. This experience will tend to push back against efforts to divide people by asserting the supreme importance of civic collaboration for the protection and pursuit of individual self-interest.

There is not the space to address all the possible objections to these proposals that could be derived from the oligarchic tradition. But we should note one more. It is sometimes claimed that radical democratisation is only possible in conditions of ethnic and sectarian homogeneity. But it is equally plausible to claim that radical democracy along the lines sketched becomes more important as

societies become more diverse. Sortition-based institutions and a media system designed to support them lead us to encounter one another as civic subjects at the same time that we encounter one another as exemplars of existing social groups or stereotypes. We are able to form plural subjects that owe nothing to pre-existing social identities, as well as ones based on them. Religion, voting history, economic class, gender and ethnicity are relevant but they are not necessarily decisive when people come together in the shared work of inquiry and invigilation. Existing tendencies to enmity or benevolence will remain. But they will be refined by new information about the character and conduct of others that derives from this work.

At the moment there is no cause to think that the current organisation of the decision-making environment by political parties and their allies in the media and the private economy is remotely equal to the challenges we face. Indeed, it is more accurate to say that the oligopolistic provision of choices is close to the centre of our growing political distemper. The political parties in Britain that stand to compete for national power have set their face against a range of policies that are extremely popular with voters, for reasons that do not plausibly represent a superior understanding of the issues. (Shoben, 2022; Ramsay, 2012) Most worryingly, even an averagely attentive citizen can see that Europe will soon have to respond to many millions of climate refugees from Africa and Asia, and there is no serious discussion about how we should respond. A political system that depends on elected politicians to generate its choice environment seems to be incubating a moral catastrophe on a truly gigantic scale. Leviathan indeed.

6.11 Conclusion

There might be a more general scepticism about the plausibility of sovereignty at the scale of a national population. How realistic, after all, is it that the great majority of the population will be brought into a condition of plural subjectivity through consciousness of the ‘special tie’ of shared supervision over the construction, maintenance and alteration of social reality? Once we turn from what is the case to what could replace it, nothing is certain. But it doesn’t seem unrealistic to suppose that most of us have in common a desire not to be pushed about, either in plain view, or by covert means. Few of us want to live as the instruments of another’s will if we can avoid it. All of us, or nearly all of us, given the choice, would rather be free in this sense than not. Any unfamiliarity in the terms used here to describe the means by which to achieve that end should not trouble us unduly. If people want to be free they are more than capable of acquiring the conceptual resources required for their liberation.

Once we establish a clear account of popular sovereignty as universally accessible and egalitarian control over the contents of social reality we have a programme to democratise existing state forms. Such a programme has an opponent, in the form of the Madisonian state. And it has a utopian horizon, in the prospect of a plural agency capable of addressing problems at the level of the nation-state, and of coordinating regionally and globally on terms of mutual recognition and respect with partners capable of the same clarity of thought and the same constancy in action. But as well as a utopian destination it has an immediate point of departure. Anyone and everyone can take steps here and now to build the egalitarian and open plural subjects that are the only possible bearer of something approaching popular sovereignty. Whether the revised conception of popular sovereignty set out here will appeal to those they are intended help, or survive its many and ruthless enemies, is beyond the scope of this exercise.

We are not all civic heroes but we do not have to be to reduce substantially the danger that we can be moved about on a board of incentives and threats that we do not understand and cannot change. We only have to take our place in a subject, whose object is, and must be, the freedom of all. We don't have to adopt an 'Athenian' notion of human flourishing, in which politics takes a, if not the, central place. We need only have a 'Roman' concern to secure the conditions of our own freedom. Perhaps a few people really do have what Louis MacNeice called 'the slave-owner's mind'. (MacNeice, 1998, p.9) For them the thrill of domination will count for too much for them to exchange it for greater, and better founded, confidence that they are not themselves being dominated. They will feel sure that they will remain free in conditions that bind most of us, and expect to revel in their mastery over '[...] servants or houris ready to wince and flatter [...]' (ibid.) But for most of us, the overwhelming majority perhaps, giving up the prospect of dominating others in order to secure ourselves and those we love from being dominated is plausibly a trade we would be willing to make. And it is not a shameful one.

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