

also is unconvincing to anyone with even the most basic knowledge of America's democratic beginnings in which only a small percentage of the US populace was understood as having citizenship status and the rights that accompanied it. Notable, and embarrassingly, women and African Americans who together made up well over 50% of the population of the United States were excluded from citizenship, until their gradual inclusion with the citizenship clause of the XV Amendment in 1870 (US Constitution) and the enfranchisement of women in 1920 (Amendment IX of the US Constitution).

Moreover, what about numerous non-citizens who legally live and work within a given state, not just in America but also in other liberal democracies such as resident foreigners, children or the disenfranchised? (Hazlitt,1991,12). Should they be excluded from 'the people'? In an era of increasing immigration especially within the borders of the United States and the European Union, this ceases to be merely an academic question. Interestingly, Bruce Ackerman seems to offer something of a response, namely he presents 'a richly detailed story of the mechanisms by which the

Supreme Court eventually bends to the demands of social movements and changes its doctrines to accommodate legislation that the Court would previously have deemed unconstitutional...providing an incisive explanation of how constitutional law came to accommodate the exercise of legislative power, both state and federal, formerly considered at odds with the Constitution's text.' (Barnett, 2014, 2). Although Barnett agrees that Ackerman presents an accurate account of the evolution of constitutional law, he remains unconvinced that this evolution is a normatively legitimate expression of popular sovereignty.

However, even if the first issue were resolvable in the way Ackerman suggests and popular sovereignty were indeed malleable enough to admit changes in the constitution of 'the people' without any loss of legitimacy, a second question remains. While it is easy to understand how sovereign power and the decision-making authority that goes with it can be placed in the hands of the

one or the few, what does it mean for sovereign power to be in the hands of the many or indeed everyone? *Somebody* has to make actual laws and actual executive decisions, how can 'the people' as a collective do this? This is not a problem for democracy *per se* which talks in terms of the decisions of a majority based on regular, fair elections as well as occasional referenda and plebiscites. Is it not simply a pious fiction to think that 'the people' as a whole can have sovereign power, one that is ultimately no more helpful for actual politics than the concept of divine sovereignty which preceded it? Both the divine law-giver as well as 'the people' require some elite to first interpret their will and secondly, to do their bidding. Both tasks are, of course, easily open to manipulation.²

In his foundational essay on popular sovereignty, Harold Laski puts the matter quite succinctly and decisively: 'It is clear, in brief, that popular sovereignty if it means that the whole people, in all but executive detail, is to govern itself, is an impossible fiction' (Laski, 1919, 204). In other words, unlike the direct democracies of ancient Athens, we cannot avoid 'the device of representation' (Laski, 1919, 204). John F. Knutsen agrees with Laski that while popular sovereignty does not demand that the people directly influence decision making on every legislative issue. He believes that 'it is not possible to envision popular sovereignty without (at least) a form of semi-direct democracy' (Knutsen, 2011).³

Such a conception would naturally rule out the Hobbesian understanding of popular sovereignty, which can be thought of as merely a temporary affair. As

² That is why the Federalists insisted on a system of checks and balances in which the legislative, executive and judicial were pitted against each other, precisely in order to moderate excessive populism to which the legislative, as the most direct representative of the people would be prone. For more on this see Federalist 51 (Hamilton, 2003).

³ Knutsen defines semi-direct democracy as 'a combination of direct democracy and representative (also called indirect) democracy. A semi-direct system is characterized by the people having delegated legislative powers to a parliament or other representative body, but having made this delegation revocable and limited. In addition to the legislature there must also be a mechanism allowing for the people to express its will directly.'

for Locke there is an exchange of rights between individuals in the social contract, but once this contract has been drawn up there is a hand-over of sovereign power to an absolute ruler who henceforth makes all the rules according to his own wishes, with the single exception that he cannot endanger the lives of those who vested him with power (Hobbes, 1994). We may not like or indeed want Hobbes's form of popular sovereignty, but it is possible to envision it. Indeed there is nothing logically incoherent about his reasoning. What happens when popular sovereignty understood as 'the authority of the final word (which) resides in the political will or consent of the people of an independent state' (Jackson, 2010, 78) is not democratic? In other words, what happens when the people freely consent to hand over sovereignty to an absolute law-giver or elite? This is an issue to which we will return, as we look at some contemporary struggles for popular sovereignty especially in the Middle East.

In recent literature, a number of scholars have tried to resolve the aforementioned problem by offering a more complex understanding of popular sovereignty. One amongst these is Yale Professor Paulina Ochoa Espejo who argues in a recent publication that democratic political theory has long had an erroneous understanding of 'the people'. According to her, we are suffering under two misconceptions; the first is that 'the people' is a cultural, ethnic or national construct, the second is that 'the people' is simply the majority of citizens. She forcefully argues for a third alternative – namely that the people 'should be seen as a series of events, rather than a collection of individuals'. (Espejo, 2011, 13) Like Ackerman she believes in the malleability of the concept of 'the people', which is shaped over time and has a different meaning depending on the socio-cultural context.

Struggles for popular sovereignty in the new millennium: similarities and discontinuities.

Historically, of course, the relationship between popular sovereignty has always been one directional. As the notion of popular sovereignty has taken hold as a way of explaining and securing political legitimacy, so authoritarian or absolute forms of government have given way to democratic ones. If the people are the source and summit of political authority, this must be made manifest in their actual decision-making power, if not in the impractical form of direct democracy then at least in the form of representative or 'semi-direct' democracy, as Knutsen calls it. (Knutsen, 2011). This model was initiated with the American War of Independence, and has followed suite in Europe and increasing parts of the globe ever since. It has often been assumed therefore that this relationship could not be otherwise. Popular sovereignty and representative democracy must go hand in hand, in other words.

However, this is precisely what is being called into question today. If Espejo is correct that 'the people' is not just a fixed association of individuals but something that is constructed by social events and legal decisions, (Espejo, 2013) then it ought to be safe to assume that the desires of the people are also not fixed but they differ based on social, cultural and religious context. If this is true there is nothing at all to rule out the possibility of struggles for popular sovereignty, which will not end in a regime change towards liberal democracy with all the trappings of constitutionalism, but away from it. They could just as easily decide upon popular sovereignty of the Hobbesian sort, which ends in the mortal God of the Leviathan.

Take for example the uprisings of the Arab spring and the rise of fundamentalist Islam in the Middle East. Describing the fall of Mubarak's regime in Egypt, author Ege Ozyegin admits that these struggles for popular sovereignty have had a different outcome from the American and French

Revolutions that preceded them centuries ago. ‘These uprisings are not yet revolutions, but remain as “bottom — up mass movements” that demonstrate the power of the people. However, interestingly the uprisings also show how their power is constrained. Until recently, the countries in the Middle East have changed to stay the same’ (Ozyegin, 2015). Following Brownlee in his book *Democracy Prevention*, she seems to believe that the reason the popular uprisings that toppled the Egyptian dictator have ended in authoritarianism rather than democracy is that they this has served US foreign policy interests. The persistence of autocracy in the Middle East in other words, is largely due to America’s support of authoritarian rulers over democratic governments made up of former opposition leaders (Brownlee, 2012). Indeed nowhere is this truer than in Egypt, which has shared a long-standing alliance with the U.S. Indeed many prominent U.S. political leaders are officially moving away from the previously unanimous stance of supporting regime change that results from bids towards popular sovereignty. Indeed when it comes to the Middle East these days many are happier to support authoritarian dictators than popular mass-movements.

This is not because dictators promise the U.S. lower oil prices in exchange for their support, but because ‘recent history has shown that ...(this) opens the door for the kinds of chaos that sucks in American troops and creates problems worse than the ones the U.S. was trying to solve’ (Seib, 2015, 1). And ‘this worse problem’, not just for the U.S., is that of the radical Islam which has been able to take hold in the region after the popular uprisings. As Sen. Ted Cruz put it: ‘Assad is a bad man. Gadhafi was a bad man. Mubarak had a terrible human-rights record. But they were assisting us—at least Gadhafi and Mubarak—in fighting radical Islamic terrorists. And if we topple Assad, the result will be ISIS will take over Syria’ (Seib, 2015,1).

And what if the blame for this situation is not to be placed with the U.S. and other Western countries for propping up authoritarianism, but somewhere else

entirely, namely at the feet of a rather naïve liberal understanding of popular sovereignty which always results in an American-style constitutional democracy of the republican variety? What if, as has earlier been mentioned, ‘the people’ are not all the same? What if they are not all equality-loving democrats but ‘the general will’ really does desire the establishment of the caliphate and the radical execution of Sharia law? Adam Lupel is correct to argue that in today’s complex globalizing world we cannot take anything for granted, especially that what has been resulted in the context of Western liberal democracies, namely representative democracies that have resulted from the struggles of popular sovereignty, can be everywhere reproduced according to the same model. Indeed Lupel states that ‘*pace* Rousseau popular sovereignty has seldom if ever concerned the governance of unified societies, but rather struggles for power in divided societies (Lupel, 2009, 141).

His own response to this situation, following in the footsteps of Habermas and Held, is to develop some kind of transnational popular sovereignty, which is based on a cosmopolitan solidarity between peoples.⁴ Paradoxically however, it seems that the truest current manifestation of what we might call transnational popular sovereignty although admittedly in a pathological form is not, as Habermas, Held or Lupel would have it, to be found in the European Union but in the Islamic State (ISIS).

Conclusion

In conclusion, it seems that today’s struggles for popular sovereignty do not conform to the normal trajectory to which the Western world has grown accustomed. Of course we have focused only in a cursory way on the events in the Middle East, and not undertaken a comprehensive study in how regime change is occurring across the globe. However with that proviso in mind, enough has been said to at least undermine the previously thought

⁴ For more on this see my previous work on the subject matter (Olearnik-Szydłowska, 2015).

unshakeable relationship between popular sovereignty and liberal democracy. Moreover, as has also been shown the philosophical and social context in which the notion of popular sovereignty developed and was able to assert itself in actual political decision-making and institution-building was highly culturally specific and it that it necessarily follows the same pattern everywhere. Indeed, perhaps Hobbes's realism was correct after all, that in situations of grave insecurity popular sovereignty exists only for a moment in order to name an individual or group as sovereign who when has absolute power and is owed absolute obedience by all.

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