



## CHAPTER 11

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# ‘The Free Action of the Collective Power of Individuals’: Vernacular Democracy and the Sovereign People

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In her study of revolution, philosopher Hannah Arendt suggests—almost in passing—that the true boon of the American founding was not a gift from the fabled Founders. Rather, the real treasure came in the fact of a political society founded in and actively practising the arts of political self-governing.<sup>1</sup> She elaborates on this widely overlooked phenomenon:

The astounding fact that the Declaration of Independence was preceded, accompanied, and followed by constitution-making in all thirteen colonies revealed all of the sudden to what extent an entirely new concept of power and authority, an entirely novel idea of what was of prime importance in the political realm had already developed in the New World ... Those who

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<sup>1</sup> Hannah Arendt, *On Revolution* (New York: Penguin, 1973), 165.

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received the power to constitute, to frame constitutions ... received their authority from below, and when they held fast to the Roman principle that the seat of power lay in the people, they did not think in terms of a fiction and an absolute, the nation above all authority and absolved from all laws, but in terms of a working reality, the organized multitude whose power was exerted in accordance with laws and limited by them... These bodies, moreover, were not conceived as governments, strictly speaking; they did not imply rule and the division of the people into rulers and ruled... These new bodies politic really were 'political societies' and their great importance for the future lay in the formation of a political realm that enjoyed power and was entitled to claim rights without possessing or claiming sovereignty.<sup>2</sup>

Her observation (buried in the middle of a paragraph) runs counter to customary understandings of the United States' founding. Popular sovereignty is certainly remembered as the most radical democratic boon of the American revolution. But it is remembered as the *Framer's gift* to politically inexperienced colonists, something that rolls out from their classically educated, well-deliberated, and temperate political vision, and the Constitution they resultingly built. As historian Edmund Morgan explains in his magisterial account of the rise of popular sovereignty, *Inventing the People*, the so-called power of the people is an effect of formal government. If it sounds bottom-up, that's simply a generous trick of words. He reminds us that British political representatives—lords—invented the fiction to bolster their own power against the king. Political power for ordinary people does not, in Morgan's account, exist in any degree until it is named, codified, and framed by a constitution: the US Federal Constitution of 1789. In this familiar understanding of America's democratic founding, the Framers envisioned and built a constitutional structure for popular sovereignty, and thus fostered the emergence of the power of ordinary citizens in the developing politics of citizenship in the early United States. Schooled along these lines, Americans understand the development of democratic political practice among ordinary citizens as something organized *by* the Constitution, developing in the wake of its passage.<sup>3</sup>

<sup>2</sup> Ibid., 166, 168.

<sup>3</sup> Edmund Morgan, *Inventing the People: The Rise of Popular Sovereignty in England and America* (New York: Norton, 1999).

Arendt's observation cues us towards something fundamentally different. Her aside suggests that political society in the late British colonies was already a working democratic reality during the Revolution. Ordinary citizens already were participants and creators in public affairs, freely, as she puts it, enjoying power and claiming rights. The questions she raises about the practice of democratic society and power prior to the 1789 Constitution's description of popular sovereignty are at once historical and theoretical. Taking into account new historical understandings of the Patriot movement, this essay asks whether those early democratic practices were in fact accurately represented, codified, or protected by the Constitution's institutionalization of and its official understanding of the people's sovereignty. The Framers' scepticism about and even hostility towards democracy has long been acknowledged. Little attention has been paid, until recently, to the ground-level democratic practices of ordinary folk in the late colonies and early nation, let alone their ideas about the powers of the people. But recent scholarship has begun to flesh out those practices, principles, and commitments, enabling us to raise some worthwhile questions about what they might mean for understanding historically, and theorizing, democratic power, as well as for historians' ability to perceive and appreciate vernacular or extra-institutional practices.

In this essay, I first explore more fully the historical entailments of Arendt's observations about a working political society in the British American colonies and early United States, arguing that this society did not arise *sui generis*, but in fact emerged from well-established vernacular practices—practices that had been conditioned by the politics of enclosure in England and also by traditions of the commons transported by ordinary European settlers to the British colonies. I argue that what we might loosely think of as vernacular democracy—practices of local self-governing—preceded and, though they were partially compatible with, existed in fact apart from the forms of republican or liberal representative democracy we familiarly refer to in our discussions of early US democratic political practice (for good and for ill: the Patriot movement and the social order it supported could be notably illiberal in ways intolerable today). I suggest, drawing on recent historical work (including my own), that over the course of Revolution the Framers developed reservations about these widespread practices of the people's political powers and aimed to 'tame' them in their framing of 'popular sovereignty'. This essay shows why we

should take vernacular democracy seriously: both for our historical understanding of how democracy emerges and develops in the United States, as well as for what it can tell us about the formation and maintenance of collective experiences of political society.

### FROM NOTHING TO START, INTO BEING

Vernacular democracy in the British American colonies had roots in several cultural strands—in the forces of Reformation and the waves of Calvinists, Anabaptists, Quakers, Methodists, and Baptists who came to the colonies, with modern social-contract theory, in the extra-legal traditions of the British Common Law, especially as they developed in British North America, and also with the customs of the commons. The last influence has received little attention in British colonial and early US history, not least because of the tradition of American exceptionalism that Arendt herself forwards: the notion that the British colonies did not suffer from the stark wealth disparities between commoners and aristocrats that characterized class relations in Europe during the colonial era. America is, in this familiar account, the ‘land of the common man’. But it is also true that, as historian Allan Kulikoff details, many of the early British settlers in the colonies—commoners who voyaged on their own dime as well as the many who came under indenture—came steeped in commoning traditions. These traditions concerned the sharing and management not just of natural resources like firewood and pastures but also domestic, cultural, and civic resources. Moreover, they came with a political sensibility tempered by enclosure and efforts to resist it in England.<sup>4</sup>

The history and traditions of commoning in Europe are complex and remain poorly understood. In her study of commoners and common right in eighteenth- and early nineteenth-century England, historian J. M. Neeson describes commoning as ‘possession without ownership’.<sup>5</sup> Legal historian Stuart Banner alternately describes it as a ‘third form’ of ownership, existing as a category somewhere between public and private. Neeson notes that ‘we know relatively little about common right and less

<sup>4</sup> Allan Kulikoff, *From British Peasants to Colonial American Farmer* (Chapel Hill: University of North Carolina Press, 2000).

<sup>5</sup> J. M. Neeson, *Commoners: Common Right, Enclosure and Social Change in England, 1700–1820* (London: Cambridge University Press, 1993), 3.

about commoners', and points, like Banner, to the imaginative constraints that come from 'an age such as ours when land is owned exclusively and when enterprise is understood to be essentially individual, not cooperative'.<sup>6</sup> Another block to historical study comes in the fact that commoners didn't amass libraries, nor did they leave extensive personal writings to libraries. Thus historians interested in commoners depend crucially on contemporary accounts of their *adversaries*, people trying to enclose them out of newly private lands, who saw them as impediments to 'progress', the antithesis to individual enterprise: as poor, dirty, lazy, and primitive. These opponents—members of elite property-holding classes benefitting from enclosure—came to hate commoners with what Neeson describes as an 'almost xenophobic intensity', frequently characterizing former commoners as something like a race apart, beyond the pale of modern politics and economic progress.<sup>7</sup>

In her sympathetic account, Neeson argues that for eighteenth-century commoners, the traditions and practice of commoning fostered alternative economic, social, and political outlooks among its practitioners, based not on individual accumulation and surplus, but on familial and community sufficiency. Common rights of pasturage and forage offered employment to some and subsistence for many. It was a 'vital part of the economy of women and children' and could significantly increase a family's resources and income.<sup>8</sup> The sharing of common natural and cultural resources encouraged frugality, collaboration, and mutuality: 'Time spent searching for wild strawberries, mushrooms, whortle berries and cranberries for the vicar, or catching wheatears for the gentry, was time well spent not only in the senses of earning money but also in the sense of establishing connection' both with landscapes and within social orders.<sup>9</sup> Commoning cultivated intimacy with natural resources and networks satisfied mutual needs in the larger community. An economy grounded in gifts and exchange, it could serve in crucial ways as insurance for poorer folk, a back-up resource when other avenues failed. Neeson asks us to consider how the collectivism of commoning created what she describes

<sup>6</sup> Ibid., 6–7.

<sup>7</sup> Stuart Banner, 'The Political Function of the Commons: Changing Conceptions of Property and Sovereignty in Missouri, 1750–1850', *American Journal of Legal History* 41:1 (1997), 61–93.

<sup>8</sup> Neeson, *Commoners*, 177.

<sup>9</sup> Ibid., 181.

as a ‘social efficiency’—a realm of value too easily overlooked by historians trained by modern capitalism’s emphasis on economic efficiency and growth.<sup>10</sup> Alongside Neeson’s emphasis on how commoning creates social value, Banner emphasizes the political value it creates among its practitioners, who gain meaningful experiences of self-governing as they participate in negotiating community resource allocation. Thus enclosure changed the physical landscape of the countryside with fences and hedges even as it transformed the social and political order of communities that had coexisted in common, erecting barriers between ‘haves’ and ‘have-nots’, fragmenting commoners into smallholders, cottagers, dependents, beggars, vagrants, and criminals.

Many early settlers came to the British colonies seeking access to a livelihood and way of life no longer accessible to them in England. They brought with them the informal practices and traditions of commoning they had been raised in and some had fought to save. British commoners were not alone in this endeavour: Banner emphasizes that ‘the earliest European colonizers in many parts of the present-day United States held much of their productive land in common. They farmed in common fields, grazed their animals in common pastures, and gathered wood and other natural resources from common wasteland’.<sup>11</sup> Indeed, to this day holders of private land must post ‘do not trespass’ signs if they don’t want people hunting on their property—so deep and nevertheless hidden is the assumption of commoning in US law.<sup>12</sup>

In the British colonies, Plymouth Plantation famously demonstrated its commitment to equalitarian self-governing by instituting rules for both common labour and store, drawing on elements of the open-field system of England before enclosure, where the area of settlement was administrated as a communal good, shared by all. Just as famously, the colony formally abandoned its ‘Common Course and Condition’ three years later, redressing its chronic lack of food stores by assigning private plots and letting each family provision itself. As William Bradford summarizes, this decision ‘had very good success, for it made all hands very industrious, so as much more corn was planted than otherwise would have been by any means the Government or any other could use... The

<sup>10</sup> *Ibid.*, 321.

<sup>11</sup> *Ibid.*, 65.

<sup>12</sup> Banner, ‘The Political Function of the Commons’.

women now went willingly into the field, and took their little ones with them to set corn; which before would allege weakness and inability; whom to have compelled would have been thought great tyranny and oppression'. For Bradford, Plymouth's experiment repudiated Plato's advocacy for communistic society in *The Republic*. Plymouth's early rejection of common fields has long served as evidence in a nutshell that British colonists set off early down the modern liberal path towards private property and accumulation.<sup>13</sup>

Perhaps conditioned by Plymouth's early abandonment of open-field cropping, New England historians who have considered commoning practices have tied their investigations largely to agricultural and grazing practices (see, e.g., Innes and Lockridge).<sup>14</sup> One could reframe the question, though, by noting that the Plymouth colonists didn't reject commoning per se, they rejected a single practice—common-field cropping. It's roughly unimaginable that Plymouth and other early British colonists didn't continue to exercise loose forms of common right in wetlands, coastal areas, and forests, rivers and oceans. The continuing conservative economic framing of Plymouth's rejection of common-field cropping as an early rejection of socialism asks modern liberal readers to take for granted something that is factually untrue: that commoning couldn't exist *alongside* practices of private property, as though these two notions of ownership are somehow mutually exclusive. It also asks readers to understand commoning as *primitive*, as though logics of commoning could not evolve as times moved forward. If we consider a broader swath of commoning practices, it's impossible to ignore the historical sway of commoning in early America. Indeed, readers get a vivid register of ongoing commoning practices in the British Colonies a century and a half later from Hector St. John de Crèvecoeur, whose *Letters from An American Farmer* and *Eighteenth-Century Sketches* document the broad *ongoing* practices and sensibilities of commoning, practices he frames as contributing to a unique American sensibility and commonwealth. We could thumbnail those practices as a combination of self-provisioning and mutual support. Crèvecoeur shows how colonists routinely shared

<sup>13</sup> William Bradford, *Of Plymouth Plantation, 1620–1647*, Samuel Eliot Morison ed. (New York: Modern Library, 1967).

<sup>14</sup> Stephen Innes, *Creating the Commonwealth: The Economic Culture of Puritan New England* (New York: Norton, 1995); and Kenneth Lockridge, *A New England Town: The First Hundred Years: Dedham, Massachusetts, 1636–1736* (New York: Norton, 1985).

natural resources (like seeds, firewood, herbal remedies) as well as labour and creative resources (like traditional folk ballads, or sharing beds and fires with strangers, barn- and house-raising, local traditions for peace-keeping and fairness, or serving in militia). His description of the customs of commoning in the British American colonies also usefully documents a dimension that historian Barbara Smith has highlighted as central to the advance of Patriot goals during the Revolution, in her terms a practice of ‘neighboring’.<sup>15</sup>

### DECLARING INTERDEPENDENCE

Smith’s important book, *Freedoms We Lost: Consent and Resistance in Revolutionary America*, details the practices and mobilizing theories of the democratic participation that Arendt highlights as so radically important. Smith’s account tackles an historical commonplace that long has structured accounts of the revolution—the long-supposed political powerlessness of ordinary colonists. Carefully acknowledging the forms of deference that structured colonial politics, she grants that actual commoners had very little opportunity to participate in formal British government. But, she argues, they had distinctive and important *informal* practices of local participation (shaped by such institutions as ‘household, neighborhood and congregation’)<sup>16</sup> that served as a powerful common ground of practice and common knowledge. This common sense was informed by ‘the Bible; the history of Oliver Cromwell; the liberties secured by the Magna Carta, and the more recent Glorious Revolution against James; the dangers of Jacobin plots; the tyranny of popes’.<sup>17</sup> Ordinary colonists shared memories and politics shaped by the encroachments of and resistance to enclosure.<sup>18</sup> Especially in the more remote colonies, non-elite actors regularly spent time at court days and also at taverns, ‘an important source of knowledge from the inside of a given neighborhood, a

<sup>15</sup> Hector St. John de Crèvecoeur, *Letters from an American Farmer and Sketches of Eighteenth-Century America* (New York: Penguin, 1963); and Barbara Smith, *The Freedoms We Lost: Consent and Resistance in Revolutionary America* (New York: New Press, 2010).

<sup>16</sup> Smith, *Freedoms We Lost*, xii.

<sup>17</sup> *Ibid.*, 16–17.

<sup>18</sup> *Ibid.*, 50–55.



site for local conversation, local news and gossip, and local opinion'.<sup>19</sup> In addition to their participation in voting, ordinary people importantly made their political consent and dissent felt through their participation 'out of doors'—enforcing, executing, or protesting laws. These practices combined powerfully in the colonial context.

Smith highlights two key ethical practices that blossomed in the British colonies, combining to motor the Patriot movement. First, 'migration to North America often put a premium on social connections that could help people weather the challenges of a new environment'.<sup>20</sup> Puritans arrived in New England aspiring to be 'knit together' in a covenantal community. Quakers came to the eastern seaboard, Pennsylvania and New Jersey in particular, as a Society of Friends. And high mortality rates caused colonists to innovate new practices of interconnection that effectively replaced kin lost to death. Intriguingly, too (something Smith does not note), settlers from rural northern Holland may well have brought to America a set of beliefs, and a word, 'naoberschap', that described the mutual responsibility of neighbours for organizing life events like weddings and funerals. These practices of 'neighboring' made local social interconnections, as Smith argues, a fabric of life, an active practice that spanned the colonies regardless of geographic and cultural differences.<sup>21</sup>

The other key principle, in Smith's view, comes in middling colonists' aspiration towards an economic competence. This economic principle crucially shaped 'colonial ideas of right and fairness, wrong and oppression'.<sup>22</sup> Competence has long conjured the drive towards the fabled independence of American revolution—colonists breaking free from the shackles of dependency. But Smith points out we've lost from our collective memory a key component of competency's aim: 'while possession of a competency suggested an experience of nondependence, it was not truly an experience of independence, if by that we mean self-sufficiency or a construction of one's identity as somehow "self-made". The goal of a competency did not suggest or even allow independence from one's neighbors or the commercial market'.<sup>23</sup> Colonists certainly, even

<sup>19</sup> Ibid., 17.

<sup>20</sup> Ibid., 56.

<sup>21</sup> Smith, *Freedoms We Lost*.

<sup>22</sup> Ibid., 58.

<sup>23</sup> Ibid., 59.

eagerly, participated in the growing market economy alongside their more informal local economies. But as Smith points out, their aim at financial security—competency—was precisely to enable them to participate in the market while being able to avoid its coercive conditions and effects.<sup>24</sup>

Neighbouring and competency guided British colonists towards their Declaration of Independence from England in ways that also made it, Smith underscores, a declaration of American interdependence. For these middling and ordinary colonists:

the ideal of competence helped mitigate conflicts between the practices of neighboring and the pursuit of a household's own particular interests ... maintaining one's status as a neighbor in good standing was a valuable resource for personal and household well-being. Neighbors might lay claim on others' assistance in times of difficulty, appeal for debts to be forgiven or at least payment to be postponed, and count on one another to be witnesses of character, supporters of reputation, and 'evidence' of property boundaries and the history of dealings. Equally, the practice of neighboring provided ground for unity over and against powerful men. This is to argue that concrete social institutions underlay the sense of location that allowed colonists to transform an abstraction ('the people') into something concrete (the presence of the people of this place in this moment).<sup>25</sup>

As Smith notes, 'Patriots created networks by drawing on people's capacities for cooperating, judging exchanges, tolerating negotiation, settling disputes, coming to a broad consensus about fairness and coming to terms with one another'.<sup>26</sup> These informal practices and guiding beliefs about neighbouring, economic competency, and people's local rights to adjudicate and enforce fairness combined powerfully during the Revolutionary era, both in the run-up to Revolution and in the immediate formation of state Constitutions and early political practices.

Smith's account dismisses the supposed political powerlessness of ordinary colonists in relation to the elite classes either in Britain or the Colonies. Their locally based collective powers propelled the political elite into supporting, and their energies drove, the Revolution, as Holton

<sup>24</sup> Ibid., 60.

<sup>25</sup> Ibid.

<sup>26</sup> Ibid., 113.

details in his *Forced Founders*. This power authorized and was recognized by the Articles of Confederation and by early state constitutions as we'll see below. We have long and justly celebrated the ideals of political equality and popular sovereignty—of democracy—that fund the American Revolution, even if we've largely assumed those ideals were invented by the political elite. At the same time we've roughly ignored the Patriots' strong insistence that political equality could be maintained only through equalitarian economic and banking policies. The political elite, as Bouton details in *Taming Democracy*, supported the interdependence of economic and political equality in the run-up to Revolution. Importantly, though, they began pulling back from policies supporting economic equalitarianism in the 1780s. Once it seemed the newly created United States would prevail in its war for Independence, many (like Hamilton) aspired to create an economy that would vault the new nation into international prominence. Bouton and Holton (in *Unruly Americans*) have detailed how the Framers thus began enacting the very kinds of taxes and economic policies that the Patriots had revolted against England for imposing in the 1760s and 70s. In response, ordinary Patriots protested these new policies across the nation, most famously in Massachusetts's so-called Shays rebellion. In the face of popular push-back, the political elite sought to reassure foreign creditors that popular government would not be a threat to their investments, searching for ways to erect what they described as 'barriers against democracy'. The new Federal Constitution, creating structures of representation in place of direct political participation, was one important manoeuvre in this developing strategy.<sup>27</sup>

## WE THE PEOPLE

The Philadelphia Convention was summoned by the Continental Congress in February of 1787 'to devise such further provisions as shall appear to them necessary to render the constitution of the Federal Government adequate to the exigencies of the Union'—that is, to remedy the Articles of Confederation. The fact that the Framers jettisoned the

<sup>27</sup> Terry Bouton, *Taming Democracy: 'The People', The Founders, and the Troubled Ending of the American Revolution* (New York: Oxford University Press, 2007); Woody Holton, *Forced Founders. Indians, Debtors, Slaves and the Making of the American Revolution* (Chapel Hill: UNC Press, 1999); and Woody Holton, *Unruly Americans and the Origins of the Constitution* (New York: Hill and Wang, 2008).

Articles and engineered an entirely new government suggests just how thoroughly conscious they were of the political realities being generated by collective democratic practices across the early nation, many of which concerned fiscal policy and tax collection. Holton's history of the Constitution's creation and design, *Unruly Americans*, outlines what he ultimately castigates as the Framers' deceitfulness in the Convention, which by its very secrecy prohibited its delegates from receiving input from 'the people'. Delegates understood they needed to appease demands for the maintenance and enhancement of democratic institutions and practices even as they worked to corral them. Their implicit aim was to make American finance more stable and attractive for international investors (widespread revolts against tax collection don't advertise for fiscal solvency). In drafting their Constitution, the Framers, in Holton's assessment, worked hard to disguise their developing hostility to democracy: they 'never approved an inflammatory proposal if they could accomplish the same objective using a mechanism their fellows would find easier to swallow'.<sup>28</sup> Though they created a governing structure that was, in Holton's words, 'considerably less democratic than even the most conservative state constitution', the Framers took rhetorical care to assuage concerns about the Constitution's apparent respect for the people's actual political power.<sup>29</sup> Thus they engineered a new federal government which advertised democratic access to participatory and collectively generated civic power that it actually aimed to curtail.

One key strategy used by the Framers was rhetorically to harness the legitimacy of popular sovereignty to what had long been understood as the aristocratic practice of representative government. Here, it's worth reviewing terms. US students of American founding learn, as I have mentioned, that popular sovereignty was the Framers' invention, an ideal originating with and enshrined in the Federal Constitution. They also learn that the Framers did not build a 'democracy' but instead a *constitutional republic*: a form of representative democratic government authorized by popular sovereignty. In this story, America's sturdy democracy is also the Framers' bequest: a healthy development presciently seat-belted by and fostered within the Constitution's structures of political representation. Both these stories, about popular sovereignty and

<sup>28</sup> Holton, *Unruly Americans*, 184.

<sup>29</sup> *Ibid.*, 211.

democracy as the Framers' gifts, are, significantly, victors' tales. And as such, they appreciably misrepresent debates about good government in the early United States. As I suggested at the outset, even Arendt—hardly an historian—understood that ordinary American colonists *cum* citizens were practising the arts of self-governance robustly and regularly before the 1789 constitution. And as political theorist Danielle Allen pointedly notes, 'the question of whether the United States is best understood as a republic or a democracy... can seem a real question only if the compromises that secured the early American polity are obscured'.<sup>30</sup> In the run-up to and early days of Revolution, as Allen highlights, 'plenty of Founders invoked the ideal of democracy as the goal of their pursuit'.<sup>31</sup> In the 1780s, what was being debated was not whether good government should be democratic but rather *how* popular the new American government should actually be. While Madison, in *Federalist* 10 and 14, was famously at pains to distinguish between a republic, with its aristocratic structures of representation, and a democracy, which he argued was unstable (opposing ancient Athenian democracy to the more aristocratically tempered, or mixed, Roman form), elsewhere he as well as Hamilton actually worked to *blur* the distinction, as for instance in *Federalist* 63, where the author points out that even Athens practised forms of political representation. Allen details how elsewhere, Hamilton laboured to dissociate 'republic' from its aristocratic associations and link it instead to democracy, describing the Constitutional design for the New York ratifying convention as 'a representative democracy'. In this way, she argues, the Federalists worked to associate the legitimacy of direct democracy and its full-throated investment in the wide distribution of political power with the more aristocratic approach modeled in the Federal Constitution. The Federalists worked to create strategic confusion about categories and terms. As Allen summarizes, the effect was that, '[p]lenty of people probably voted for the Constitution because it created a "republic", but plenty of others probably did because they thought it forged a "representative democracy"'.<sup>32</sup>

<sup>30</sup> Danielle Allen, 'A Democracy, If You Can Keep It', *J-19: The Journal of Nineteenth-Century Americanists* 5: 2 (2017), 368–374, there 368–369.

<sup>31</sup> *Ibid.*, 369.

<sup>32</sup> *Ibid.*, 373.

Some, however, protested the Framers' *leger-de-main* manoeuvres. To take one example, in 1788, at Virginia's ratification convention, Patrick Henry famously complained: 'Who authorized them to speak the language of "We the People", instead of "We the States?"'.<sup>33</sup> His complaint has received little notice (not least since the states in fact were the signatories to Ratification, making his outrage look misplaced!). But his comment, understood more carefully in the context in which he presented it, gives us a glimpse into the value even elite political actors in the early nation placed on local practices of popular democratic power. In his June 4th speech and subsequent ones, Henry warns fellow citizens in Virginia against the 'perilous innovation' of the draft Constitution, begging them to think hard about how it reconfigures not just government but also *political society*. 'If States be not the agents of this compact, it must be one great consolidated National Government of the people of all the States', he warns.<sup>34</sup> The 'new system' of the federal constitution, Henry warned, structures political power as something other than the revolutionary and freedom-generating power crafted and experienced through participation in local self-forming collectives, a power loaned on careful terms to representative government by the state constitutions of the early nation. 'Rulers are the servants and agents of the people—The people are their masters—Does the new Constitution acknowledge this principle?' he queries.<sup>35</sup> Insisting its opening bid—'We the People, in Order to form a more perfect Union'—was a rhetorical feint along the very lines Danielle Allen argues, Henry outlines how the federal Constitution *opposes* the democratic power it seemingly invokes and installs. Sovereignty, as he notes, is not a power *superior* to government in the federal Constitution. In fact, Henry documents how the Constitution in fact casualizes (to use a contemporary term) the power of 'the people'. 'The People gave them no power to use their name', he warns, later elaborating<sup>36</sup>:

<sup>33</sup> Henry Patrick, *The Debate on the Constitution*, Bernard Bailyn ed., Part Two (New York: Library of America, 1993), 596.

<sup>34</sup> *Ibid.*, 597.

<sup>35</sup> *Ibid.*, 684.

<sup>36</sup> *Ibid.*, 597.

The stile of the Government (we the people) was introduced perhaps to recommend it to the people at large, to those citizens who are to be levelled [sic] and degraded to the lowest degree; who are likened to a *herd*; and who by the operation of this *blessed* system are to be transformed from respectable independent citizens, to abject dependent subjects.<sup>37</sup>

Henry draws a straight line from the Constitution's remaking of citizenship to its aim for that individualization, the power of direct taxation: 'If money be the vitals of Congress, is it not precious for those individuals from whom it is to be taken? Must I give my soul—my lungs, to Congress?' In Henry's metaphor, the individualizing political 'power' granted by the Constitution actually serves to disempower ordinary citizens by gutting the *collective* powers of citizenship.

Henry insists on a political community's independent powers and cautions: 'This political solecism will never tend to the benefit of community... We are *giving* power, they are *getting* power'.<sup>38</sup> In essence, Henry insists, the nationalizing aims of the Constitution's popular sovereignty run counter to real democratic power. Political theorist Joshua Miller elaborates on the *leger-de-main* that so incensed Henry:

The pseudodemocratic rhetoric of the Federalists is best understood when seen in the historical context of the genuinely democratic or political culture of eighteenth-century America. Essential elements of this early democratic culture included small, participatory communities; simple local and state governments, the latter dominated by one-house legislatures; democratic state 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 popular participation, which included constitutional conventions, committees of correspondence, town meetings, actions by crowds, and a people's army. This was the political order that the Antifederalists sought to protect.<sup>39</sup>

The Constitution's resonant 'We the People' conceals fundamental differences between the agency offered by its version of representative popular

<sup>37</sup> Ibid., 634.

<sup>38</sup> Ibid., 635.

<sup>39</sup> Joshua Miller, 'The Ghostly Body Politic: The Federalist Papers and Popular Sovereignty', *Political Theory* 16: 1 (1988), 99–119, there 100.

sovereignty and collective practices of vernacular democracy. As Miller summarizes, the Constitution's popular sovereignty, 'unlike direct democracy, does not require the ongoing and active political participation of the people'. Indeed, they represent two distinct notions of political power: 'democracy tries to limit governmental power so that ordinary people can understand and wield it, whereas popular sovereignty creates enormous power for the central government'.<sup>40</sup>

Others (political theorists like Suzette Hemberger and historians like Holton, Bouton, and Smith) have detailed how the Federal Constitution of 1789 defies the governing structures and authority marked out by the revolutionary era state constitutions, whose references to 'the people' attach the ideal insistently to such terms as neighbourhood, community, commonwealth, public, society, the body politic or, in Hemberger's summary, 'other collective nouns that attribute to the people a corporate existence independent of government'.<sup>41</sup> In these documents, the practices from which they emerged, and the institutions they authorized, 'the people' denominated a civic agency that was understood as collective, not individual, and constituted outside government, not by it. Here, democratic power was grounded in obligation and mutual commitment. It was understood and practised as local, collaborative, co-creative, and, crucially, not dependent on or beholden to government for its practice or authority. Citizen power came through socio-political and affective attachment to fellow citizens: it could not be experienced individually.<sup>42</sup>

The Constitution promised, as Henry indicated, to restructure citizens' relation to each other and thus political subjectivity itself. The federal political subject would be oriented away from neighbouring co-citizens, and turned instead towards national belonging. In the years leading up to and the decade after the Declaration of Independence, citizens practised and developed institutions for citizen power. Henry's argument against the Constitution's 'We, the People' echoes and underscores Arendt's passing observation about democratic collectives operating without seeking or claiming sovereignty. Henry seemingly doesn't want anything to do with the sovereignty on offer in the Constitution.

<sup>40</sup> Ibid., 99.

<sup>41</sup> Suzette Hemberger, 'A Government Based on Representations', *Studies in American Political Development* 10: 2 (1996), 289–332, there 298.

<sup>42</sup> Bouton, *Taming Democracy*; Holton, *Forced Founders*; Holton, *Unruly Americans*; Hemberger, 'Government Based on Representations'; Smith, *Freedoms We Lost*.



His concern is how people experience political power: as agents or as spectators. As Hemberger neatly summarizes the point: “‘We the People’ marks not the people’s domestication (through law) of the government, but the government’s domestication of the people’.”<sup>43</sup> It does so with an appealing bribe: the agentic autonomy and freedom of sovereignty that seemingly super-sizes citizenship by nationalizing and ‘unifying’ it (‘a more perfect union’), while dust-binning the rights and practices of locally cooperative self-determination.<sup>44</sup>

Arendt ultimately faults the Framers for failing to provide for institutions that would ensure the maintenance of the democratic society that drove the Revolution, founded the democratic nation, and mobilized Henry. She calls this set of practices—these citizen habits and the democratic vitality they produced—the ‘lost treasure’ of revolution. The Framers undeniably aimed to contain democratic power: many routinely expressed their impatience and even contempt for the ‘rage for democracy’. But it’s fair to consider, though, that while Framers did aim to brake, they arguably did not actually intend to *break* the democratic energies of citizens. It’s possible that they didn’t imagine this could even be possible, any more than they imagined what they denominated alternately the ‘first’ and the ‘Democratic’ branch of government (that is, Congress) would be displaced over the course of the twentieth century by the executive branch (such that—as political scientists note—we now have Presidential government, rather than the Congressional government the Framers themselves intended). In other words (and all our hagiographic/demonizing habits to the contrary notwithstanding), the Framers’ checking-and-balancing machine has some design flaws. Most fundamentally, they couldn’t see the future.

## MOBS IN MYRIAD

The *leger-de-main* that Henry complained of—that ‘We the People’ hat tip towards existing practices of democratic power—succeeded, and so much so that we barely remember political power for the people as anything other than the Constitution’s representative claiming of popular sovereignty. A companion manoeuvre for ‘taming’ democracy would also

<sup>43</sup> Hemberger, ‘Government Based on Representations’, 291.

<sup>44</sup> Patrick, *Debate on the Constitution*.

be rhetorical: an escalating effort to portray vernacular democratic practices—the very practices for protesting draconian economic policies and ones that had mobilized the Revolution itself—as pre-political, primitive, even savage: a danger to, and not the boon of, the new self-governing nation. For example, in the months before the Constitutional Convention in 1787, a group of Yale-educated New Englanders known as the ‘Hartford’ or ‘Connecticut Wits’—David Humphreys, Joel Barlow, John Trumbull, and Lemuel Hopkins—published a mock-epic poem skewering the protests of post-Revolutionary Patriots. *The Anarchiad*, which appeared in the *New Haven Gazette* in twelve installments from October 1786 to September 1787, warns of a ‘darkness’ that threatens to overwhelm the ‘new-born state’ and describes the dangers posed by badly dressed ‘mobs in myriad’ who ‘blacken all the way’, ‘shade with rags the plain’, and ‘*discord* spread’.<sup>45</sup> The poem vilifies two key actors in the Shays protest, Daniel Shays and Job Shattuck, as demonic and evil: criminally lawless. The Wits don’t bother with the protestors’ specific complaints about aggressive foreclosure and regressive taxation policies that they believed were benefitting wealthy speculators to the disadvantage of ordinary people (many of them veterans of the Revolution whose livelihoods had suffered specifically because of their military service). Instead, they characterize the protest as a battle between savagery and civilization. The poem’s happy ending comes when Hesper (who manifests Venus, the ‘bringer of light’) confronts the filthy and badly dressed mob, summoning sages to assemble in Philadelphia and rescue the nation from the lawless rabble (and their poor taste in clothes).<sup>46</sup>

Insofar as historians note the battles between vernacular democratic practices and the Framers’ attempts to contain them, they have tended to assume that the Ratification of the Federal Constitution closes the chapter on vernacular democracy in the United States. It doesn’t. Ordinary citizens continued relying on their local practices of democratic commoning well into the early years of nationhood, operating under the notion that they were completely capable of self-governing, seemingly assuming that vernacular democratic practices were fully compatible with Federal Constitutional order. One of the earliest clear expressions of ongoing

<sup>45</sup> David Humphries et al., *The Anarchiad: A New England Poem, 1786–87*, Luther G. Riggs ed. (edited in 1861, Gainesville, FL: Scholars’ Facsimilies and Reprints, 1967), 6.

<sup>46</sup> Henry, *Debate on the Constitution*.

local vernacular democratic association came in the immediate aftermath of Ratification, when Alexander Hamilton ushered through Congress the first federal tax, on whiskey, which he promised would provide revenue to offset the Revolution's war-bond debt and help with foreign creditors. Western Pennsylvania—where President Washington first aimed to begin collecting the tax—fought it because of the particular hardship it imposed on the region's poorest inhabitants. There, whiskey was not just a drink; it was a fundamental means of self-finance. Wheat was expensive to transport across the mountains, but even poor tenant farmers could convert grain to profit by distilling and transporting whiskey. As historian William Hogeland summarizes, 'a liquid commodity both literally and figuratively, the drink democratized local economies'. He observes that whiskey 'connected popular finance theories with small-scale commercial development that, though marginal, had the potential to free rural people of debt and dependency'.<sup>47</sup> Large producers could pay the tax upfront and still make money, but tenuously solvent smallholders couldn't. Without that income, they feared having to sell their lands to large landholders. And so, they resisted the excise. When legal means failed, they organized extra-legally, as a 'regulation', a protest of the people against unfair government.

To put down what Hamilton enduringly characterized as a 'rebellion', Washington called up more militia troops than he had commanded during the Revolution, a force of almost thirteen thousand men. The rebellion was over before the troops arrived, with key agitators heading even further west to avoid arrest. The spectacle of a federal militia squashing a local tax protest, with US citizens formally designated as *enemies* of the United States, was yet another part of the political elite's manoeuvring to 'tame' vernacular democracy. If regional inhabitants had imagined that vernacular and representative democratic practices could be mutually constitutive in the newly federalized nation, the message of Washington's militia offered a forceful negative. The spectacle Hamilton engineered via the Whiskey 'Rebellion' fundamentally reset the terms for understanding vernacular democracy in the new nation. Henceforth these practices were officially described as primitive, illegal behaviours located largely in the

<sup>47</sup> William Hogeland, *The Whiskey Rebellion: George Washington, Alexander Hamilton, and the Frontier Rebels Who Challenged America's Newfound Sovereignty* (New York: Simon and Schuster, 2010), 67.

nation's backcountries and frontiers, uncivilized activities that demanded federal policing for the good of the nation.<sup>48</sup>

Rhetoric didn't vanquish practice, at least not immediately. Indeed, the ongoing prominence of vernacular democratic practice was something Tocqueville emphasized two generations later in his study of US political society, *Democracy in America*. As he puts it, 'though townships are coeval with humanity, local freedom is a rare and fragile thing... the strength of free people resides in the local community. Local institutions are to liberty what primary schools are to science; they put it within the people's reach; they teach people to appreciate its peaceful enjoyment and accustom them to make use of it. Without local institutions a nation may give itself a free government but it has not got the spirit of liberty'.<sup>49</sup> The spirit of liberty, Tocqueville repeatedly emphasizes, is what most distinguishes the character of US democratic practice. He describes it as being nurtured by practices of civic commoning and problem-solving that have, quite literally, nothing to do with formal institutions of government:

The inhabitant of the United States learns from birth that he must rely on himself to combat the ills and trials of life; he is restless and defiant in his outlook toward the authority of society and appeals to its power only when he cannot do without it. The beginnings of this attitude first appear in school, where the children even in their games, submit to rules settled by themselves and punish offenses which they have defined themselves. The same attitude turns up again in all the affairs of social life. If some obstacle blocks the public road halting the circulation of traffic, the neighbors at once form a deliberative body; this improvised assembly produces an executive authority which remedies the trouble before anyone has thought of the possibility of some previously constituted authority beyond that of those concerned. Where enjoyment is concerned, people associate to make the festivities grander and more orderly. Finally, associations are formed to combat exclusively moral troubles: intemperance is fought in common. Public security, trade and industry, and morals and religion all provide the aims for associations in the United States. There

<sup>48</sup> Hogeland, *Whiskey Rebellion*.

<sup>49</sup> Alexis de Tocqueville, George Lawrence (translator), *Democracy in America*, vol. 1, Part 1, Jacob-Peter Mayor ed. (New York: Harper and Row, 1969), chapter 5, 62–63.

is no end which the human will despairs of attaining by the free action of the collective power of individuals.<sup>50</sup>

Tocqueville described the United States in the 1830s not as a democratic political system, but, as a democratic *society*, where the social experience of every person was shaped and moulded by collective practices of democratic power, public happiness, in Arendt's terms, all the way down.

Without pretending to overlook the unfairness of early US political and social culture towards women, African Americans and Native Americans, we can still retrieve some worthwhile insights from the limited—and forgotten—accomplishments of US democratic society. As Tocqueville understood, these vernacular practices of democracy still rooted in US practices of community in the 1830s offered ordinary citizens pathways for experiencing and becoming agents of democratic power. Crucially, this agency depended not on citizen independence, but on communally generated experiences of *interdependence*. The *naoberschap*, the collective work or craft of mutual support fostered within the vernacular democratic commons, is neither described nor preserved by the Constitution's popular sovereignty, nor has it been usefully supported by the nation's nominally democratic institutions. Over time, in the wake of social, political, economic, and technological developments reaching far beyond the Framers' vision, these communally crafted democratic arts, treasured by Henry and Tocqueville, have withered. To think of democratic practice in the terms of the craft of neighbouring is a real challenge for us today—as practitioners, as theorists, and as historians of democracy. Working to recover the robust contentious and nevertheless neighbourly dimensions of the vernacular democratic practices of the late British colonies and early United States—practices, as I have argued, that find their roots in European forms of localist commoning—offers a more dimensional history of how democracy developed in America as well as a more robust toolkit for theorizing (and perhaps revitalizing) democratic practice today.

<sup>50</sup> Alexis de Tocqueville, George Lawrence (translator), *Democracy in America*, vol. 1, Part 2, Jacob-Peter Mayor ed. (New York: Harper and Row, 1969), chapter 4, 189–190.

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