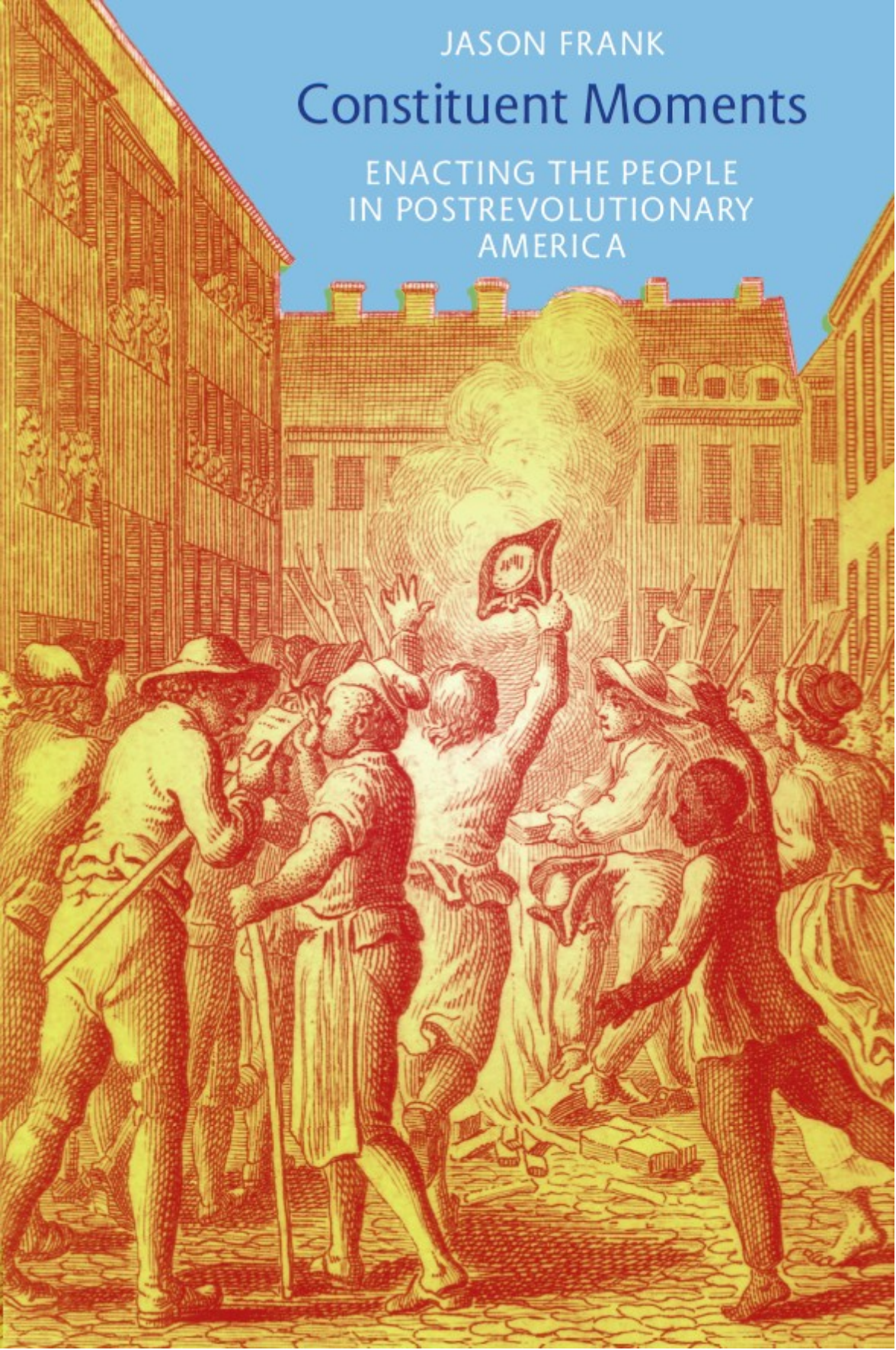
JASON FRANK

Constituent Moments

ENACTING THE PEOPLE IN POSTREVOLUTIONARY AMERICA



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Jason Frank

ENACTING THE PEOPLE IN POSTREVOLUTIONARY AMERICA

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To my parents, for everything

There is no voice of the people.
There are scattered voices and polemics
which in each instance divide the identity that they stage.
— JACQUES RANCIÈRE,
Les scènes du peuple

"Origins" never stop repeating themselves.
— JACQUES RANCIÈRE,
Dis-agreement: Politics and Philosophy

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Democracy inaugurates the experience of an ungraspable, uncontrollable society in which the people will be said to be sovereign, of course, but whose identity will constantly be open to question, whose identity will remain forever latent.
CLAUDE LEFORT, Democracy and Political Theory[1]

Introduction

Constituent Moments

Since the revolutionary period most Americans have agreed with John Adams that "in theory . . . the only moral foundation of government is the consent of the people." Subsequent political history has returned time and again to the question that followed: "But to what extent shall we carry out this principle?"[2] Adams asked this unsettling question in a letter to James Sullivan on 26 May 1776, eleven days after the Continental Congress had decreed that new state governments should be established "on the authority of the people," and just over a month before independence was officially declared "in the name and by the authority of the good people of these colonies." The question resonates over the long span of postrevolutionary American politics to the present day.

Sullivan, a prominent lawyer in Boston and a member of the provincial congress of Massachusetts, had suggested in an earlier letter to Adams

that the Continental Congress should consider altering existing property qualifications for voters, to better align them with the proclaimed principles of just or "actual" representation affirmed by the colonists in their decade-long struggle with Parliament and Crown.[3] Since all men live under law, Sullivan reasoned, all should be granted the right to vote. As the states prepared to replace their colonial charters and form new governments, Sullivan urged that they consider instituting universal male suffrage. At issue in Sullivan's letter was not simply how to more fully carry out the principle of consent—as in the progressive democratization of governing institutions celebrated in Whig histories of American political development from Lincoln to Rawls—nor how better to represent the various constituencies or their interests, but rather the logically prior and more painfully ambiguous question of *who* constitutes the authorizing and consenting people in the first place. While seeking "a more equal representation" based in "true republican principles," Sullivan also worried about the "levelling spirit" that accompanied these claims. Sullivan at once suggested and evaded this question in his letter, but in this he was far from alone. "How to decide who legitimately make up 'the people,'" Robert Dahl notes, "is a problem almost totally neglected by all the great political philosophers who write about democracy."[4] Yet the problem haunts all theories of democracy and continually vivifies democratic practice. Determining who constitutes the people is an inescapable yet democratically unanswerable dilemma; it is not a question the people can procedurally decide because the very question subverts the premises of its resolution.

In his response to Sullivan's suggestions, Adams prophesied the looming magnitude of this problem—the problem of the legitimacy of the people[5]—for postrevolutionary American politics: "Depend upon it, sir, it is dangerous to open so fruitful a Source of Controversy and Altercation . . . There would be no End of it. New Claims will arise. Women will demand a Vote. Lads from 12 to 21 will think their Rights not enough attended to, and every Man, who has not a farthing, will demand an Equal Voice with any other in all Acts of State. It tends to confound and destroy all Distinctions, and prostrate all Ranks, to one common Levell."[6] Adams's letter suggests that the people who are usually envisioned—in everyday political speech as well as in most democratic theory—as a prepolitical source of sovereign authority are actually the site of both extraor-

dinary and everyday acts of political contestation. Subsequent American political history has borne out his suggestion. While Adams focused on challenges to the vertical boundaries around the people—the "levelling" of "distinction" and "rank"—later challenges would be directed at the horizontal boundary as well—from the pressures and claims of "alien" constituencies. "To follow the career of the term the People," Daniel T. Rodgers has noted, "is to watch men invest a word with extraordinary meaning and then, losing hold of it to other claimants, scuttle from the consequences."[7] Political theorists opposed to the more radical iterations of popular politics, from Plato to Filmer, from Madison to de Maistre, have tirelessly pointed out the inherent instability of the people, and they have been right to do so.[8]

Both democratic history and democratic theory demonstrate that the people are a political *claim*, an act of political subjectification, not a pre-given, unified, or naturally bounded empirical entity.[9] In the United States the power of claims to speak in the people's name derives in part from a constitutive surplus inherited from the revolutionary era, from the fact that since the Revolution the people have been at once enacted through representation—how could it be otherwise?[10]—and in excess of any particular representation. This dilemma illuminates the significance and theological resonance of popular voice: *vox populi, vox Dei*. The authority of vox populi derives from its continually reiterated but never fully realized reference to the sovereign people beyond representation, beyond the law, the spirit beyond the letter, the Word beyond the words—the mystical foundations of authority.[11] The postrevolutionary people are at once enacted through representational claims and forever escaping the political and legal boundaries inscribed by those claims. This book explores political and cultural dilemmas that attended these postrevolutionary dramas of popular self-authorization—dilemmas arising from the people's revolutionary enthronement as the unlocatable ground of public authority—and the orienting power of these historical examples for contemporary democratic theory.

I

The people reign over the American political world as God rules over the universe. It is the cause and the end of all things; everything rises out of it and is absorbed back into it. ALEXIS DE TOCQUEVILLE, *Democracy in America*[12]

The people have been a remarkably potent symbol—and force—over the course of United States political history, and remain so still (albeit in a disconcertingly muted form). Many astute social and political thinkers nonetheless bridle at the vague indeterminacy of the term, at the way this "fiction" or "myth" is invoked in public discussion to obscure political realities or, even worse, as "a way of legitimating collective fantasy."[13] Many have agreed with the Marquis de Mirabeau's declaration that "the word people necessarily means too much or too little," that "it is a word open to any use."[14] Others believe it too ambiguous or dangerously populist to merit serious theoretical analysis.[15] Pierre Bourdieu, to take one prominent example, argues that political recourse to "the people," even in the "scientific" guise of public opinion polling, captivates subject populations through a "political metaphysics" that enthralls them to the rulers claiming to speak in their name.[16] From a very different methodological perspective, the social choice theorist William Riker argues that there is simply no knowable "voice of the people" aside from the often "inaccurate or meaningless amalgamations" of voting. For Riker this unavoidable epistemological deficit mandates rejecting "populism," and its "quasi mystical" claim to politically enact the people's voice, in favor of a resigned "liberalism," with democracy little more than an occasional, somewhat fumbling check on governmental power.[17] Political realists of all sorts, left and right, class analysts and methodological individualists, typically deride the supposed mystification attending political appeals to the people.

If the notion of the people is a fiction or mystification, it is one with a profound political efficacy, playing a complex but foundational role in the interweaving traditions of American political thought and culture. In the jeremiads of Puritan New England, the covenanted people were figured as a new Israel given "speciall Commission" to establish "a City upon a Hill" as a beacon of moral righteousness to the world.[18] The civic republican currents of American political thought and culture figure the

people as both a particular social class—the common, the poor—and the collective *populus* jealously guarding their liberties against the central government's always encroaching, corrupting power.[19] American populists took this collective opposition to "interests" and "élites" and placed it in the hands of laboring people alone.[20] Traditions of popular constitutionalism similarly construed the people as the defenders of the constitution and, when the need arose, the direct enforcers of constitutional norms.[21] Natural law liberalism, as transformed by postrevolutionary American constitutionalism, cast the people as the *makers* of the constitution, a constituent power enabling the contractual emergence from a state of nature into a new constitutional order. "The people," as James Wilson stated in the Pennsylvania ratifying convention of 1787, "possess, over our constitutions, control in *act*, as well as right."[22] Finally, in what Rogers Smith has recently called the "ideologies of ascriptive Americanism," the people—substantively figured as the race or the nation—have served to justify a history of racial and ethnic discrimination and violence, from draft riots against free blacks and the destruction of indigenous peoples to lynch mobs and anti-immigrant violence.[23] Despite historians' efforts to isolate and analytically distinguish these traditions, they have been inextricably commingled in American political thought and culture. These traditions have a common authorizing appeal to the people that remains an ambiguous and contested inheritance.

Each of these interweaving traditions figures the people as the "legitimate fountain of power," as a sovereign authority, but they differently construe how, when, where, and by whom this power is to be exercised. Remarkably diverse movements and policies, reforms and reactions, have invoked the sovereign authority of the people. The people have been used to justify popular revolution against colonial authorities and to found a constitutional order premised on "excluding the people in their collective capacity"; to embolden the states and to empower the union; to authorize vigilantism and to affirm the rule of law; to create a broad populist front against Gilded Age economic exploitation and to perpetuate some of the nation's worst racial atrocities; to increase the power of the presidency and to return power to the grassroots.

This book claims that the potency of vox populi in American history derives in part from its persistent latency or virtuality, from the paradoxical political reality that the people are forever a people that is not . . . yet. Thus claims made in the name of the people always transcend the

horizon of any given articulation, drawing their power from their own unrealized futurity. The legitimating vitality of the people, their "*coup de force*," derives from their constitutive surplus.[24] The inability of the people to speak in their own name does not simply mark a legitimation deficit for postrevolutionary democratic politics but also its ongoing condition of possibility.

The rhetorician Kenneth Burke recognized the virtual potency of "the people" in American political thought and culture in a speech, "Revolutionary Symbolism in America," that he delivered before the American Writers' Congress in 1935. Burke argued that the revolutionary left—the Congress was convened by the American Communist Party and Burke's audience was a who's who of *engagé* artists and intellectuals—should replace the divisive and limiting symbol of "the worker" or "the proletarian" with the universalizing ideal of "the people," which, Burke claimed, "rates highest in our hierarchy of symbols."[25] Importantly, and controversially for his audience, Burke saw neither "the people" nor "the worker" as a sociological entity but instead as a political or rhetorical construction. Burke based his strategic plea to lionize the people in socialist and communist propaganda in a general theory of symbolic action that emphasized how such symbols could capture the "subtle complex of emotions and attitudes" in a scheme of "polarizing social cooperation."[26] Echoing George Sorel (whom he had read) and Carl Schmitt (whom he had not), Burke argued that all political movements, whether conservative or revolutionary, are made of such polarizing "myths."

In a term that became central to his later thought on the relationship between political authority and tropes, Burke attributed to these myths the all-important power of "identification."[27] Because the idea of "the people" is a myth "closer to our [American] folkways" and draws on "spontaneous popular usage," Burke argued, it could tap the latent revolutionary potential of this "subtle complex of emotions and attitudes." "The people" could then be employed as a powerful tool of immanent critique, revealing how widely proclaimed commitments to a government of, by, and for the people are systematically undermined in practice. Moreover, as Burke insightfully noted, "since the symbol of 'the people' *contains connotations both of oppression and of unity*, it seems better than the exclusively proletarian one as a psychological bridge for linking the two conflicting aspects of a transitional revolutionary era, which is Janus-

faced, looking both forwards and back." Burke invokes here the "double inscription" of the people in a postrevolutionary era, that is, the persistence of the people as at once a source of public authority and a source of resistance to public authority.[28] Burke's attentiveness to a "Janus-faced" people also captures the reiterative logic of reenacted dramas of popular authorization made over a history of democratic claims making.

The audience's vehemently negative response to Burke's speech also exemplified this double inscription. Even the title of Burke's speech—"Revolutionary *Symbolism* in *America*"—was sure to antagonize many in a Marxist audience of materialist-internationalists, and yet the audience rejected not only Burke's general theory of symbolic efficacy and political identity formation—"We are not interested in the myth. We are interested in revealing the reality," one participant declared[29]—but also Burke's claims about the revolutionary potential of "the people," in particular his claim that "the people" is charged with a powerful political indeterminacy, his claim that it could operate as what Ernesto Laclau calls an "empty signifier" and be seized upon for radical democratic ends.[30] "We have a traitor among us!," shouted the American Communist Party leader Joe Freeman. The proletarian novelist Mike Gold dismissed Burke's invocation of "the people" as nothing more than the reactionary "abstractions of the bourgeoisie." Allen Porter reminded the audience that right-wing populists like Father Coughlin regularly invoked "the people" to deny social antagonism; it was the principal conveyor of the delusional exceptionalist myth that America was a classless society. Friedrich Wolf likened Burke's "people" to Hitler's *das Volk*, and noted that such falsely unifying terms had "historically . . . been a ruse for the exploiting class" to obscure the brutal realities of class domination.[31]

The debate that Burke's speech and the audience's critical response provoked transcends its immediate context, capturing the troubled double inscription of the people in American political thought and culture. Both Burke *and* his critics were right: the people have been a force of democratic unsettlement and of consolidation, of popular empowerment and retrenchment, of resistance and entrapment. The people are the entity in whose name the state governs, *and* a higher power that can resist the authority of the state. For reasons historically rooted in the American Revolution, the people both menace and ground the political order; they are at once a constituent and a constituted power.[32]

The people have been the central authorizing fiction in postrevolutionary American political culture and the figure that reveals its underlying contingency, its persistent exposure to transformative contestation and change.

This double inscription of the people enables what I call constituent moments, when the underauthorized—imposters, radicals, self-created entities—seize the mantle of authorization, changing the inherited rules of authorization in the process. At such times political claims to speak in the people's name are felicitous, even as they explicitly break from the established procedures or rules for representing popular voice. I refer to "felicity" to invoke J. L. Austin's theory of the performative utterance. However, in contrast to Austin's reliance on authoritative "felicity conditions" which secure the "uptake" of the performative utterance—the background contextual conditions that determine when the christening "really" christens, when the vows "really" marry, etc.—constituent moments dwell in a space where there is enacted felicity that nonetheless breaks from the conventions of authorized context—a felicitous infelicity. Constituent moments question the existence of such a unitary background context wholly separate from the utterances and *claims* that help constitute it.[33] In their enacted felicity, constituent claims effectively change the conditions and contexts through which they are heard and recognized *as claims*. Constituent moments invent a new political space and make apparent a people that are productively never at one with themselves. Like the broader category of civil disobedience, which can base resistance on appeal to any "higher" principle, constituent moments enact a political power that transcends the state's legal organization; unlike some instances of civil disobedience, however, constituent moments enact their claims wholly on the democratic authority of the people themselves: out of these enactments a new democratic subject emerges.

Constituent moments illuminate how in postrevolutionary contexts the people enact and then transcend their own self-representations. The remainder of this introduction outlines the emergence of this double inscription of the people during the revolutionary and postrevolutionary years, exploring how a widely recognized formal problem in contemporary democratic theory—sometimes called "the boundary problem," or the "dilemma of constituency"[34]—emerged as a practical political prob-

lem within late-eighteenth-century American political discourse and practice. In United States political history this double inscription is a discursive and practical legacy of the American Revolution. If Tocqueville is right that "peoples always bear some marks of their origin,"[35] a revolutionarily self-enacted people also remains forever haunted by the immanent source of its own transcendence. The tracing of the people's revolutionary origin undoes the purity of this origin, revealing how the revolutionary enactment of the people does not ground and perpetuate a political identity so much as it spurs its continual revision and transformation over a history of democratic claims making.

II

The instant formal government is abolished, society begins to act; a general association takes place . . . THOMAS PAINE, *The Rights of Man*[36]

"We have it in our power to begin the world over again," Thomas Paine wrote in *Common Sense* (1776), concluding with a stirring call to "unite in drawing a line, which, like an act of oblivion, shall bury in forgetfulness every former dissention."[37] Unifying acts of oblivion are endemic to revolutionary and founding moments—they mark an apparently consensual origin before the onslaught of postrevolutionary agonistic politics—but rarely are they so lucidly embraced or rhetorically ennobled as in Paine's text. Paine hoped that the political divisions among colonists in the decade-long march from resistance to revolution would be overcome by a common embrace of the self-creating power of the people themselves. "Independence," Paine wrote, "is the only *bond* that ties and keeps us together."[38] Paradoxically, what Paine calls *for* in *Common Sense*—the people's enacted independence—is also taken as its own binding precondition. Historians concur that the American people, far from being the unified subject behind the Revolution, were instead "an unexpected, impromptu, artificial, and therefore extremely fragile creation of the Revolution."[39] In a rhetorical move typical of the period's texts, and that Jacques Derrida illuminated in his well-known reading of Jefferson's *Declaration of Independence*, Paine's pamphlet both argued for the preexisting, natural independence of the American people and sought to elicit this politically enabled people from the unformed multitude of

his reading public.[40] While Paine and Jefferson are both frequently presented as naïve advocates of democratic voice—celebrators of the unbounded authority of the people's will—their most famous texts enact an aspirational people never present with itself. These founding texts of the American Revolution make legible a sovereign people that both requires and resists representation. In openly addressing the authority of the people themselves (rather than petitioning the already constituted authority of Parliament or the Crown, as had earlier pamphleteers) they seek to elicit and enact the very people on whose authority their claims are made; their texts draw authority from the future anterior, from the political horizon of what will have been.[41] It is these revolutionary texts' underauthorization that oddly grants them a higher authorization, their ability to enact claims that can only be retrospectively vindicated.

Paine's revolutionary "we" tapped the discursive resources of preindependence debates over representation and sovereignty and also aimed to transcend those debates' contentions. The "we" of Paine's "We have it in our power"—like that of Jefferson's "We hold these truths to be self evident" or the constitutional "We the people"—brings us to the heart of dilemmas surrounding popular sovereignty in the revolutionary and postrevolutionary years. It does so by showing that the people require representation in order to be enacted, yet this authorizing entity also—and by definition—resists the closure of representation. The voice of the people is a figure of impossible presence. Briefly sketching the emergence of this discourse and its accompanying political practices illuminates how the formal paradoxes and aporias of democratic theory surrounding "the legitimacy of the people" emerged from within the discursive praxis of revolutionary politics, while also anticipating these paradoxes' postrevolutionary political legacy as constituent moments.

It is widely accepted that the American Revolution profoundly changed the meaning and practice of popular sovereignty in the West, transforming the people from a source of power defensively appealed to in constitutional crises—as the people had been figured in the Anglophone world since the sixteenth century's religious wars—to an agent capable of ongoing, collective self-government and, when necessary, radical constitutional reform.[42] However, a government based in popular sovereignty was not the colonial rebels' initial goal. The colonists backed hesitantly into this revolutionary position, and postrevolutionary Americans have

been struggling with the conflicted inheritance of this apotheosis of the people ever since.

From the beginning of the Imperial Crisis, such colonial resistance leaders as Samuel Adams, Richard Henry Lee, and James Otis invoked the people to authorize political claims against their colonial governors. The people they invoked, however, were the corporate entity that civic republican or "country" discourse identified as the repository of uncorrupted virtue and the last line of constitutional defense against the scheming machinations of a corrupted court élite.[43] Under the customary constitution, as interpreted in the colonies, it was ultimately the people who decided constitutional controversies. During the initial agitations over the Sugar Act in 1764, and to a greatly amplified degree in the popular mobilizations against the Stamp Act in the following year, these leaders appealed to the assembled people as a constitutionally authorized force of direct resistance to the government's purportedly unconstitutional policies.[44]

The first organizations that led the resistance to Parliament's tax policies—self-created organizations collectively referred to as the "Sons of Liberty"—claimed to represent the people's interests against both the constituted authority of their colonial governors and the unconstitutional policies of Parliament itself. The colonists understood the Sons of Liberty and the crowds they organized to resist the Stamp Act as legitimate emergency enactments of the people's defensive power. "Whenever government used the authority delegated to it by the people so as to threaten the safety of society," Edmund Morgan writes, "it was said the people had a right to resist and reduce it within its proper bounds."[45] At such moments the people were proclaimed as a power higher than the constituted authorities, yet still within the bounds of constitutional law. The people were enacted as a "quasi-legal" defense of the constitutional order, but not formally mandated or procedurally enacted from within that order. As a circular published in the *Boston Gazette* in 1765 put it: "while they are thus collected, [the people] act as a supreme, uncontrollable Power, from which there is [no] Appeal, where Trial, Sentence, and Execution succeed each other almost simultaneously."[46] The Sons of Liberty, as well as the committees, congresses, conventions, crowds, and non-importation societies that followed them in the late 1760s and 1770s, did not claim to break with the constitution, to revert to the con-

tractual scenario of a natural state, but instead relied on the longstanding Whig discourse of popular resistance that figured the people as the ultimate defenders and enforcers of constitutional law. They were an American iteration of the tradition of popular constitutionalism, according to which, in the legal historian Larry Kramer's words, "constitutional limits [were] to be enforced through politics and by the people rather than in the courts."[47]

Just over twenty years later, during the debates over constitutional ratification in 1787–88, the people were quite differently figured, enthroned as the constitution's creators—what democratic theorists term a constituent power.[48] As James Wilson, a key theorist of this transformed conception of the people's sovereignty, said in his opening address to the Pennsylvania ratifying convention, the people must be understood as "a power paramount to every constitution, inalienable in its nature, and indefinite in its extent."[49] The people's discursive and practical transformation from a constitution-interpreting and constitution-enforcing power to a constituent power engaged in transformative acts of "higher lawmaking" unfolded gradually over two decades of political ferment.[50] Although the two traditions persisted side by side beyond the founding, Gordon Wood has described the conceptual transformation as "one of the most creative moments in the history of political thought."[51]

The revolutionary embrace of the people's constituent power, as already noted, was not the original principle animating colonial resistance but an unintended consequence of that resistance's discursive and practical negotiations. The sovereign people were not latently expressed in pre-independence struggles so much as they were enacted through these struggles—particularly those over political representation—and through the improvisational repertoires of resistance themselves. To say that popular sovereignty was implicit in these practices of resistance is to retrospectively posit an agent—the people—that is actually produced through them. The people of the American Revolution were not a unified identity awaiting expression but a virtual incipience awaiting enactment or dramatization. The people were enacted through the practical repertoires of the Revolution itself.

There is therefore a dynamic tension between what the rebelling colonists explicitly claimed and what they did, between the constitutionally defensive people they invoked to justify their resistance and the self-

authorizing people whom this resistance enacted. It was only in the rebellion's final stages, as royal governments collapsed in 1774 and 1775 and authority was transferred from the king to the Continental Congress said to represent the people, that the revolutionaries began to fully understand the scope of this change and the postrevolutionary dilemmas it would pose. The story of this transformation is subtle and complicated, and has been admirably detailed by Willi Paul Adams, Pauline Maier, Edmund Morgan, Gordon Wood, and others; I briefly recount its basic outlines here, in somewhat stylized form, to better clarify its theoretical stakes. The transformation emerged, first, from a dialectical unfolding of the arguments over representation and sovereignty between the colonists and their colonial governors, Parliament, and Crown, and, second, from a retrospectively principled vindication of the self-created governing practices that emerged from within the improvised repertoires of political resistance.

Parliament's passage of the Stamp Act in 1765 provoked a massive wave of resistance in the North American colonies, animated by the belief that taxation by the unrepresentative authority of Parliament was illegitimate. The ensuing debates concerning political representation reflected divergent understandings of constitutional law and the political inheritance of the Glorious Revolution of 1688. Parliament's unquestioned claims to sovereignty soon emerged as a necessarily related issue. The Imperial Crisis thus began over questions of political representation and concluded with debates over the ultimate location of sovereignty. As Edmund Morgan demonstrates, these two theoretical problematics were always mutually implied.[52] This mutual implication might explain why Gordon Wood can claim in one text that "of all the conceptions of political theory underlying the momentous developments of the American revolutionary era, none was more important than that of representation," and in another that sovereignty "was the single most important abstraction of politics in the entire revolutionary era."[53]

The colonists' central argument regarding Parliament's tax policies was that representatives must be more directly accountable to their constituencies (that is, actual people from particular locations rather than the abstractions of fixed social orders). Parliament, conversely, defended itself through what George Grenville's secretary, Thomas Whately, described as a theory of "virtual representation," according to which Parliament

represented not specific districts but a deliberative body through which all "the Commons of Great Britain are represented."[54] The doctrine of virtual representation allocated representatives to the "rotten boroughs," districts with few or no inhabitants (some literally under water), and denied representation to such growing districts as Manchester and Birmingham; it also had the practical virtue of blurring the precise outline of the represented constituencies. If Parliament represented the collective good of the realm, and this good was to be determined by what Edmund Burke later called "a deliberative assembly of one nation, with one interest, that of the whole,"[55] then nagging questions of direct correspondence to a given constituency need not arise. The people could remain a normative fiction shielded from inquiry into its precise constituents. The colonists' critique of virtual representation, and their embrace of "actual" representation, shifted authority, indirectly at first, from representatives to the represented, from governors to the governed. The colonists' theory of actual representation was a potent rhetorical tool against Parliament's claims, but as we shall see, it raised self-consuming questions about the nature of its authorizing subject.

As the colonists developed arguments concerning actual representation in the 1760s and 1770s they were compelled to articulate with more precision the nature of the constituency "actually" represented—the people. The more theoretical scrutiny was focused on this authorizing subject, the more the outline of that subject seemed to recede from clear view. The resulting "dilemma of constituency" ultimately laid bare to many postrevolutionary Americans the invariably political praxis of representation and the contestability of all representational claims, particularly those purporting to represent the ground of all public authority, those proclaimed in the people's name.[56] The revolutionary and postrevolutionary American context was charged with a heightened political awareness and suspicion of representational claims, but it was also a period marked by the proliferation of institutions making such claims. John Adams already remarked on this dynamic in his *Dissertation on the Canon and Feudal Law* (1765): "This dread of representation has had for a long time, in this province, effects very similar to what the physicians call hydrophobia, or dread of water. It has made us delirious; and we have rushed headlong into the water, till we are almost drowned, out of simple or phrensical fear of it."[57] Postrevolutionary American political culture was characterized by a perpetual crisis in representation.[58]

In addition to revealing the ambiguous contours of the people, colonial arguments about actual representation also indirectly endowed this ambiguous figure with increasing agency. Debates over representation and the precise role of representatives profoundly affected the understanding of the people so represented. These debates provide a case study in how a discursive contest around what is supposedly supplemental—in this instance the nature of political representation—comes to construct the object that it purportedly supplements: the people represented. In the decade before the Revolution the sovereign people emerged indirectly through debates over the nature of political representation, not the other way round. While colonists demanded political representation that more accurately reflected different constituencies' interests, tempers, and manners, their discourses actively constructed the constituencies' very sovereignty. These colonial debates, with their emphasis on direct accountability, set off one people from another—Americans from Britons—and also attributed growing agency to the represented people. The people went from a reserved, deferential, and passive body whose interests could be represented without their direct say to a demanding and "taking" people forever jealous of their governors' power.[59] In these prerevolutionary debates over political representation, the people became simultaneously more ambiguous and more powerful; the power attributed to the people expanded alongside their increasing unlocatability. This transformation established important conditions for postrevolutionary constituent moments.

If the colonists backed into their ultimately revolutionary position on popular sovereignty, they were also guided toward this position by the logic of British counterarguments concerning the location of sovereignty and by their improvisational practices of resistance themselves. Parliamentary sovereignty was taken as an essential component of the ancient constitution, theorized in Blackstone's *Commentaries on the Laws of England* and enacted by the Glorious Revolution. Many British defenders of Parliamentary sovereignty saw the colonists' initial appeal to the authority of the Crown above Parliament as dangerously reactionary and threatening to the rights secured in 1688. This seemingly reactionary appeal became dramatically radical, however, once the constitutional claim was no longer based in an appeal to the Crown but on the claimants' own authority. Drawing on influential arguments like those presented in Demophilus's *The Genuine Principles of the Ancient Saxon or*

English Constitution, during the 1760s Americans relied on increasingly divergent interpretations of the British Constitution that emphasized the enforcing and interpreting power of the people themselves as a continuing part of constitutional politics, rather than as something deployed solely at points of revolutionary rupture. The ubiquitous question "Who shall judge?" was unequivocally answered in these years by "the people," and the judgments were made regarding not only the application of law but also its content and constitutionality.[60]

The growing disparity between British and American readings of the ancient constitution around issues of representation repeatedly highlighted the need for a final court of appeal to adjudicate between these readings. For the colonists this disparity brought to the fore the question of sovereignty, which the British had emphasized since the beginning of the colonial dispute. The colonists' early reluctance to directly challenge Parliament's sovereign authority is reflected in both the nature of their claims and the deferential tone in which they made them. But as colonists attempted through nuanced and sometimes puzzling arguments to divide and disperse Parliament's centralized sovereign claims, they increasingly found themselves returning to the people's final authority. In other words, even as the logic of colonial arguments about actual representation was indirectly empowering the people, colonial invocations of the vox populi as the ultimate court of appeal for adjudicating constitutional conflicts were functioning similarly. The people petitioning Parliament in defense of the constitution slowly gave way to the people surpassing the Parliament's constitutional power altogether and proclaiming separate sovereignty. This radical position was first attributed to the colonists by British defenders of Parliamentary sovereignty, as they came to argue (rightly, as it turned out) that this treasonous position was the ultimate and inevitable consequence of the colonists' arguments and actions. The British subcabinet official William Knox stated the problem succinctly in 1769: "There is no alternative. Either the colonies are part of the community of Great Britain or they are in a state of nature with respect to her, and in no case can be subject to the jurisdiction of that legislative power which represents her community, which is the British Parliament."[61] As their debates over constitutional interpretation deadlocked, colonists repeatedly fell back on the ultimate authority of the separate American people.[62]

The colonial theory of actual representation and the discursive pressure to articulate a conceptually coherent position concerning the ultimate ground of public authority were not the only factors leading to the revolutionary enthronement of the sovereign people. This people had also been enacted in myriad improvisational institutions of political resistance that emerged in the decade before Revolution. Before Congress officially declared independence, and before the preceding enactment of smaller town-, county-, and state-level declarations of independence,[63] a dizzying array of self-created revolutionary institutions spoke for the people. "Beginning with the revolutionary movement," Gordon Wood summarizes, "(but with roots deep in American history) the American people came to rely more and more on their ability to organize themselves and to act 'out of doors,' whether as 'mobs,' as political clubs, or as conventions."[64] During the revolutionary and postrevolutionary years, "out of doors" came to signify not only "in the street" or "in the squares" but also collective action taken outside of established political channels. Committees, conventions, popular juries and crowds, however distinct their functions, however varied their political enactments, attempted to "gather power from outside the political system"; they were quasi-legal institutions that allowed the people to emerge and that made "possible a new actor collective in nature."[65]

The people acting through self-created institutions were initially invoked as defenders of constitutional liberties, and their "quasi-legal" forms of constitutional resistance had a long and constitutionally authorized pedigree. But in the decade before Revolution these emergency institutions slowly began to take over the duties of government itself. As James Morone summarizes, "they set the price of necessaries, boycotted colonial courts, formed alternative tribunals, examined the merchants' books, punished public offenders . . . regulated trade, intervened between debtors and creditors, issued licenses."[66] The transfer of power from Parliament to the people took place in practice before it was declared in principle. "Royal governors stood helpless as they watched para-governments grow up around them, a rapid piecing together from the bottom up of a hierarchy of committees and congresses that reached from the counties and towns through the provincial conventions to the Continental Congress."[67]

These self-created institutions claiming to act in the people's name

gave a practical dimension to emerging claims about popular sovereignty (later emphasized by Tocqueville),[68] but their improvisational quality also posed dilemmas to later attempts to codify the norm in postrevolutionary constitutional orders. These self-enactments of the people did not simply disappear into the constitutional orders proclaimed on the authority of "We the people": they persisted as an outside (but never wholly independent) court of appeal for and challenge to those orders. It was through participation in such varied resistance organizations that colonists enacted their popular constituent power *avant la lettre*, and that some later populists claimed to enact theirs against the "duly constituted" republican regime.[69]

Here too the practices of resistance to colonial government outpaced the explicit intention of its leading agents. Through the practical organization of these improvised popular committees, they became "seedbeds not just for a revolution against England, but for a repudiation of traditional models of government and political behavior."[70] This radical outcome, and the expansive articulation of the people that emerged from it, certainly derived from longstanding Whig theories of popular resistance, but in practice they also transformed those theories. This transformation's complicated history is too often overlooked by political theorists who look only to the period's dramatic conceptual change to account for its shifting understanding of the people. In emphasizing the spectral role of the people as a constitution-making constituent power (about which more below), political theorists too often neglect the myriad ways in which this conceptualization grew out of practical interpellations of the people as a constitution-interpreting and constitution-enforcing power. The seemingly spectral invocation of the people's constituent power, sometimes criticized by radical democratic theorists,[71] emerges from the practical enactments of the "people out of doors." And despite the frequent claims of both defenders and critics of the constitution, the people's revolutionary emergence is not resolved by the constitutional founding but continually reiterated in democratic claims-making practices that follow and that cannot be easily subsumed into a progressive history of constitutional development. The dilemmas of authorization that mark these iterations are what I characterize as constituent moments.

III

Democracy was and is the only political ideal that condemns its own denial of equality and inclusion. SHELDON WOLIN, "Transgression, Equality, Voice"[72]

The claims of revolutionary resistance organizations to speak in the people's name, as with claims made in the more official declarations of Congresses and conventions, were largely uncontested by patriots. So long as there was a unified "we" mobilized against a common British enemy, the "dilemma of constituency" did not emerge as an acute political problem. "The people as *event*," as Pierre Rosanvallon has put the point, "can seem to resolve, for a time, the constitutive aporia of representation."[73] The authenticity of the organizations' claims was ensured by their obvious superiority to the other contending institution: the British Parliament. In the wake of independence, however, this dilemma became live and salient, as diverse constituencies and purportedly representative institutions began making competing claims to speak in the people's name. "What do 'those who are continually declaiming about *the people*, *the people* . . . mean by the people?' it was asked in exasperation. No part of government, even their representatives, seemed capable of embodying them. By the 1780's the people had become simply the collective community standing outside the entire government—a final court of appeal to which every aggrieved group took its case."[74] In postrevolutionary contexts the people must be represented as the ground of public authority, yet cannot be represented with uncontroversial definitiveness. This impossible imperative need not be paralyzing, however, but can also be politically productive. It engendered the acute cultural pressures and dilemmas explored in the chapters that follow. Appeals to the people were no longer transcendent appeals to heaven that superseded politics—Paine's line of "oblivion"—but the motor of a distinct form of political contestation. The self-evident "we" of Jefferson and Paine became the subject of competing claims. Through this process of political contestation, the self-evidence of the revolutionary "we" was replaced by a growing awareness that this "we" is an important but always tentative achievement.[75]

Independence had clarified that the people were not Britons, but had left unresolved what representation of popular voice would become au-

thoritative. Who makes up the people? What are its territorial boundaries? How is popular voice to be politically enacted or institutionally embodied? As Marc Harris has written, while "the revolution professedly made the collective people sovereign, . . . it did not settle how the public will should be institutionalized nor which representations of that will carried greatest weight."[76] The political struggles over this issue helped inaugurate a crisis in authority and representation that was a central preoccupation of postrevolutionary American culture and politics.

This crisis of representation and authority—and the political contests that ensued—is represented and dramatized in a remarkable copperplate engraving made in 1784 by the Polish artist Daniel Nicolas Chodowiecki (figure 1). Chodowiecki's depiction of the burning of British stamps by a crowd in Boston in August 1765 makes legible postrevolutionary dilemmas of the representation of the peoples' voice, while also suggestively marking the continuity between questions of political and aesthetic representation.[77] The engraving retrospectively projects a postrevolutionary dilemma of constituency into the originary moment of revolutionary enactment, insofar as the event depicted—the popular mobilization against the Stamp Act—was already considered the historical origin of the events that had led to the Revolution and independence, as well as of post-independence forms of popular contention.

Chodowiecki chose to represent this originary scene—the engraving was the first of twelve illustrations accompanying M. C. Sprengel's engaging narrative of the Revolution and the War of Independence—by synecdochically associating the crowd in Boston with the revolutionary liberation of the people themselves. The crowd stood for a larger entity than the empirically gathered people—the normative people—and for their future independence. As such, the image also dramatizes the important historical transition described by Charles Tilly and George Rudé from the direct-action crowd—whose target was entirely local (the prosperous merchant, the adulterer, the constable)—to the representative crowd, authorized by broader normative claims of the people or the rights of man.[78] The engraving, like the text it accompanies, clearly depicts the pageantry of the American Revolution while transforming this pageantry into a sign of larger historical significance akin to Immanuel Kant's later reflections on the prophetic significance of the French Revolution to enlightenment and emancipation. "Who could not be moved,"

1. "Protest gegen die Stempelakte, 1764 [1765]." Copperplate engravings by Daniel Chodowiecki in "Allgemeines historisches Taschenbuch oder Abriß der merkwürdigsten neuen Welt-Begebenheit enthaltend für 1784 die Geschichte der Revolution von Nord-Amerika" ("General Historical Pocketbook or Outline of the Most Curious Occurrences in the New World containing for 1784 the History of the Revolution of North America"), by C. M. Sprengel, Berlin 1783. Courtesy of the Library of Congress.

as Sprengel writes, "to see how a people without long preparation and planning, reacting to a seemingly small and only remotely threatening danger, suddenly leaves its ploughs and starts fighting for something nobler than the reasons for which princes fight, not for glory, not for gain, but for the most holy rights of humanity."[79] Unlike the assuring spectatorial judgments of Kant's "wishful participants" in *The Conflict of the Faculties*, however, Chadowiecki's image suggests a complicated proximity to the events at hand, and a quite different dilemma from Kant's progressive unfolding of rights in history.[80] Chodowiecki's image dramatizes the indeterminate boundary around the people, and the enacted claims that this indeterminacy invites on multiple dimensions—vertical, horizontal, and temporal. The engraving conveys a powerful sense of the people's expansiveness and uncontainability: first, by dramatizing the boundary that translates the quantitative assemblage of individuals into the qualitative collective of a unified people; second, by dramatizing the boundary around who counts as a part of that authorizing entity; and third, by dramatizing an unfinished temporality that gestures to the horizon of what is yet to come, to a people that is not . . . yet. I will explore each point in turn.

Like the spectators filling the windows on the engraving's left side, their gazes fixed on the events unfolding in the square below, the viewer is a positioned observer of this unfolding crowd scene. However, unlike the distant spectators safely observing events from two or three stories above street level, the interpellated viewer is thrust at eye level into the action. At a remove of only a few feet, and propelled by the image's leaning figures toward its pictorial center—the four-cornered hat held in the patriot's outstretched arms—the viewer is an entering participant of the crowd action: one among many entering the pictorial plane from beyond the limits of its frame. While Chadowiecki gathers the assembled people within the walled perimeter of the public square, the assembly pointedly escapes the boundary's frame. Bodies are cut off on the left and right sides of the image; the crowd disappears behind the smoke from the burning stamps; the image enfolds the viewer and pushes past the image's foreground to the invisible space beyond.

Chadowiecki's composition suggests an inability to capture the assembled people definitively within a single representation; the mode of depiction attempts to represent the people's ultimate unrepresent-

ability.[81] The image graphically suggests that the people, while requiring an observable representation to be, also exceed the confines of any given representation. Chadowiecki depicts the ambivalence around who is included and who is excluded by the always fungible boundary frames around the people.

The pictorially unrepresentable character of Chadowiecki's assembled people is also conveyed by his choice to prominently feature two qualified people, to count the uncounted—the young African man and the white woman, who together seem to be rushing to join the assembled crowd from beyond the frame of the image's lower right corner, to make their claims on inclusion in this assembled people. Chadowiecki's pointed inclusion of two persons excluded from the official political life of Massachusetts—though not from the unofficial politics of the people out of doors—suggests the uncontainable quality of the people that so worried Adams. However, Chadowiecki's image replaces Adams's prophetic warning with a prophetic embrace. Chadowiecki's wry postrevolutionary appreciation of the future enactments already contained *in potentia* within the originary event of colonial resistance suggests that the engraving's central (white, male) figures and actors do not see the far-reaching consequences of their own authorizing appeal to the people once these appeals are taken up by other claimants: the patriots quite literally do not see what is going on behind their backs.

Particularly illuminating in this regard are the young African's gestures and the trajectory of his gaze, both important elements of an engraving completed by an eighteenth-century master of manner and sensibility, one known for his detailed portrayals of the manners of eighteenth-century bourgeois Prussian life. The young African in the image seems to be observing and modeling his actions on the image's central figures, thereby dramatizing an inaugural mimesis to be reiterated in subsequent claims as future imitations reopen and transform public space. Rather than directly facing the burning pyre as are most of the image's characters, the African youth is looking *away* from the fire and toward the two men in the left foreground who seem to be discussing the paper that one of them holds, most likely a circular denouncing the Stamp Act and advertising the public meeting. As the African youth directs his attention to these figures, his body mimics the theatrical gestures of the central figure holding his hat in his outstretched arms. The right arm

is similarly outstretched, and the right leg similarly lifted, as his body thrusts forward. Through this depiction of observation and modeling, Chadowiecki represents the educative and contagious environment that was (and still is) believed to attend crowd actions. He thereby dramatizes the period's popular trope of liberty's contagion. The movement of these figures depicts the unfinished temporality of the action, its gesture to an unfinished democracy, one still to come.

IV

All power indeed flows from the people; but the doctrine that the power, actually at all times, resides in the people, is subversive to all government and all law.
JUDGE ALEXANDER HANSON, *Maryland Journal*, 22 June 1787[82]

Two broad developments in postrevolutionary political thought responded to the dilemma of constituency resulting from the Revolution's enthronement of the people as the basis of public authority. The first was a continuation of the revolutionary tradition of popular constitutionalism, whereby the authorizing voice of the people was claimed by self-created associations—committees, conventions, popular juries, and crowds—alongside and sometimes against duly constituted—that is, republican—government. The second development, more widely discussed in the historical literature, is the eventual constitutionalization of the people in the form of conventions like the Massachusetts ratifying convention of 1780, and formal amendment procedures, like those elaborated in article V of the United States Constitution. Robert Cover has aptly described this as "the awesome [postrevolutionary] transition from revolutionaries to constitutionaries."[83] In the first tradition there is continued emphasis on direct action and figuring the people as an extragovernmental entity authorizing or regulating force; in the second there is a growing emphasis on constitutional organization and the necessarily formal mediation of popular voice. Benjamin Rush captured the latter sentiment, which became most pronounced in the debates over constitutional ratification, in an "Address to the People of the United States" (1787). "It is often said," Rush wrote, "that 'the sovereign and all other power is seated *in* the people.' This idea is unhappily expressed. It should be—'all power is derived *from* the people.' They possess it only on the