

“As God Rules the Universe”

Reflections on the People and the State in Early America

Ira Katznelson¹

This essay considers popular sovereignty as a philosophical and practical governing creed within the instructive irregularity of early America. On the understanding that “attention to the most burning and urgent of contemporary problems cannot be dissociated from the meticulous reconstruction of their origins,” I should like, to “tell the old story for modern times,” as the first stanza of *The Odyssey* proposes, by pursuing Homer’s advice, “Find the beginning.”²

To celebrate the bicentennial, the American Philosophical Society gathered eminent scholars to reflect on the country’s long-standing political order. The address by the historian Edmund Morgan, “The Problem of Popular Sovereignty,” considered inherent challenges when rule by the people becomes the dominant source of political authority.³

Morgan’s focus was not on the formation of “We the People.” Instead, looking inside out, he underscored endemic problems of political participation, including public rationality, electoral volatility, and the instability of opinion. Logically and historically, these significant concerns are preceded by the first theme of this essay regarding how a commanding American “people” was designed and established despite a remarkably diverse population.

¹ This essay originated in the Pitt Professor Inaugural Lecture I delivered on January 25, 2018, at the University of Cambridge. For their thoughtful suggestions based primarily on that text, I owe keen thanks to the three editors of this volume and to the participants in the SSRC Swarthmore College project conferences in which my views were rigorously tested. Particular appreciation, in that group, goes to Richard Boyd, my formal interlocutor, whose challenging comments led to much reconsideration. I also am in debt for reading and commenting to Bentley Allan, Hannah Dawson, François Furstenberg, Eric Foner, Gary Gerstle, Nicholas Guyatt, Robert Lieberman, David Runciman, Adam Sheingate, and Vesla Weaver.

² Rosanvallon, “Inaugural Lecture,” 39; Homer, *The Odyssey*, 105.

³ Morgan, “Problem of Popular Sovereignty.”

Popular sovereignty achieved a significant degree of steadiness in the United States based on a constellation of ideas, institutions, sectional agreements, and borderland arrangements. During the country's first half-century, inherent sources of moral and practical tension were managed with dexterity by compromises, practical and ethical, grounded in a significant lineage of political thought and institutional arrangements. The achievement did not last. Understanding when and how, from the late 1820s, the existing equilibrium dissolved and a new basis for balance proved to be out of reach comprises this essay's second theme, a subject that will return us to the range of questions posed by Morgan.

These considerations are motivated by the provocative claim Alexis de Tocqueville announced in the fourth chapter of *Democracy in America's* initial volume, published in France at a key point of inflection, in 1835: "*Le peuple règne sur le monde politique américain comme Dieu sur l'univers.*"

Unlike "countries in which a power in some sense external to the social body acts on it and forces it to march in a certain direction," he explained in a reference to monarchy and divine right, and unlike "other countries in which force is divided, being placed at once inside society and outside it," a reference to parliamentary sovereignty, "nothing of the kind exists in the United States." There, he wrote,⁴

society acts by itself and on itself. No power exists but within its bosom. Virtually no one is to be found who dares to conceive, much less to express, the idea of seeking power from another source ... It is fair to say that the people govern themselves. The people reign over the American political world as God rules over the universe. They are the cause and end of all things; everything proceeds from them, and to them, everything returns.

Tocqueville's recognition of popular sovereignty as America's "law of laws"⁵ had already become a rhetorical truism by the time the country marked its Jubilee on July 4, 1826, signifying a people sovereign over itself either directly, as with white men, or indirectly, as with white women, who were said to be represented in political life by their fathers and husbands. Of the many commemorative speeches marking the occasion, one of the most memorable was delivered by George Bancroft in Northampton, Massachusetts. Then just twenty-five years old, Bancroft had graduated Harvard College at age seventeen, and swiftly earned a doctorate in history from the University of Göttingen three years later. Not shy, he managed soon afterward to discuss politics and philosophy with Hegel and Schleiermacher, Humboldt, and Goethe, Manzoni and Constant. Bancroft later emerged, as it were, as America's Tocqueville:

⁴ Tocqueville, *Democracy in America* [Goldhammer edition], 64, 65.

⁵ Tocqueville, *Democracy in America* [Goldhammer edition], 63.

the author of a ten-volume epic *History of the United States*,⁶ the leader of diplomatic missions in London and Berlin, and the founder of the US Naval Academy at Annapolis during his service as President James Polk’s Secretary of the Navy.

At Northampton, Bancroft characterized the nation’s “festival of freedom” as “essentially radical.” About the circumstances of slaves and the indigenous population he said not a word. Rather, combining an analysis of the American regime with a vivid summary of the founding mythos of “We the People,” he identified a diverse (white) political family that had bonded within a Union framed by “self-evident truths” about human equality and rights, and he contrasted this American experience with how “the doctrine of the divine right has been revived” across the Atlantic. Noting that he could not be sure that “popular sovereignty will finally prevail in Europe,” Bancroft celebrated the United States for having “established a government on entirely liberal principles such as the world had never beheld in practice,” a system for which “the sovereignty of the people is the basis of the system. With the people,” he emphasized, “the power resides, both theoretically and practically,” adding that in America “we believe the sovereign power should reside equally among the people.” In terms that presaged Tocqueville, he averred that only “the people governs and solely; it does not divide its power with a hierarchy, a nobility, or a king,” and that “the popular voice is all powerful with us; this is our oracle; this, we acknowledge, is the voice of God.”⁷

Popular sovereignty as the core principle of constitutionalism was early America’s boundary condition; a term I use the way it was defined by the political scientist J. David Greenstone as “a set of relatively permanent features of a particular context that affect causal relationships within it.”⁸ “The United States,” the legal scholar Larry Kramer has written, “was then the only country in the world with a government founded explicitly on the consent of its people, given in a distinct and identifiable act, and the people who gave that consent were intensely, profoundly conscious of the fact. And proud.”⁹ There was nothing like it anywhere else, certainly not a population active politically at each of three distinct levels: as proper-named natural individuals with distinct identities, groupings, preferences, and mores, seeking influence or access; as citizens, the subset who qualify to participate as equals within the institutions of representative democracy; and as a majestic people – abstract and bodiless – authorized as the commanding source of political creativity and legitimacy.

⁶ Bancroft’s wide-ranging and influential *History of the United States, From the Discovery of the American Continent* was published across four decades, from the 1830s to 1870s.

⁷ Bancroft, *Oration Delivered on the Fourth of July 1826 at Northampton*, 9, 11, 22, 18–20.

⁸ Greenstone, *The Lincoln Persuasion*, 42.

⁹ Kramer, *The People Themselves*, 5, 54.

Characterizing the American Revolution in 1788 at Virginia's convention called to ratify the constitution, James Madison proclaimed about his country's popular sovereignty that "It is in a manner unprecedented. We cannot find one express example in the experience of the world."¹⁰ Fifteen years later, in an Appendix to *Blackstone's Commentaries*, St. George Tucker, a Virginia lawyer, judge, and academic scholar, celebrated "the new epoch in world history" fashioned in America by "an original compact formed by the free and deliberate voices of the individuals disposed to unite in the same social bonds." Rulers face limits that "cannot be transgressed without offending against the greater power from whom all authority among us, is derived; to wit, the PEOPLE."¹¹ No wonder Jonathan Israel's history of the Enlightenment considers America, from the eve of the Revolution to 1848, to have been "astonishingly" radical, as distinct from Bancroft's more accurate "essentially."¹²

Astonishing in another way as well, at the new country's frequently violent internal human and physical borderlands. This American feature is given extended treatment, often wry and dystopian, in the chapter that concluded *Democracy's* first volume, "Some Considerations on the Present State and Probable Future of the Three Races That Inhabit the Territory of the United States." Witnessing how "in one blow oppression has deprived the descendants of the Africans almost all the privileges of humanity," Tocqueville projected an ever-stronger North–South regional division, noting that slavery had nearly been brought to an end outside the South. With African slaves "held in a state near that of the brute, indigenous Americans," and with "the Europeans, having scattered the Indian tribes far into the wilderness, condemned them to a wandering vagabond life full of inexpressible afflictions," the "two unlucky races," slave and "savage," were deemed not qualified to enter the ken of popular sovereignty."¹³

Both Virginians thus might have underlined the acute encounters in early America between popular freedom and mass dispossession, both of persons and land. The excluded persons experienced popular sovereignty as nearly unlimited despotism. The justification for these barriers was understood by white Americans not just anthropologically as based on civilizational judgments, though more so for the indigenous population thought by some citizens to be potential rational Christians, but also biologically as racial. The era's blunt exclusions were much more impermeable than other extant divisions based on faith or status hierarchies. In or out, all or nothing. As Tocqueville

¹⁰ Madison, "General Defense."

¹¹ Cited in Kramer, *The People Themselves*, 6–7.

¹² Israel, *Expanding Blaze*, 15, 17, 21, 24, 76, 77. This regime model manifestly affected and motivated revolutionaries in France, Haiti, and across the Americas, where European settlers separated their colonies from Spain and Portugal. For a discussion, see Fernandez-Armesto, *The Americas*, 94–95; and the classic volume by Palmer, *The Age of the Democratic Revolution*.

¹³ Tocqueville, *Democracy in America* [Goldhammer edition], 316–18, 339.

observed, “Between the extreme inequality created by slavery and the complete equality to which independence naturally leads, there is no durable intermediate state.”¹⁴

“We the People” developed as an instrument of the common good inside these tightly policed boundaries, hardwired from the beginning. Not just Union nationalists talked of a godlike people. The country’s leading antebellum proslavery intellectual and political leader, John C. Calhoun, a person who found “not a word of truth in the whole proposition” that “all men are created equal,” similarly maintained how “The whole system ... has for its fundamental principle, the great cardinal maxim, that the people are the source of all power.”¹⁵ Among the free white population, such language became pervasive and uncontested. But, of course, not everyone intuited precisely the same meaning, certainly not strong opponents or proponents of slavery.¹⁶

Just the values advanced in the 1820s by Bancroft and summarized in the 1830s by Tocqueville were articulated by President Abraham Lincoln on November 19, 1863, nearly eleven months following the emancipation of the confederacy’s slaves and some four months following the Union success at Gettysburg on July 4. His three-minute speech at an uncertain moment for the contours and limits of popular sovereignty famously enunciated the expectation, indeed the faith “that government of the people by the people for the people, shall not perish from the earth.”

Unlike Bancroft, who celebrated popular sovereignty in a peaceful town at a moment of high prosperity, Lincoln consecrated the Gettysburg burial ground four and a half months after the Union’s pivotal Independence Day battlefield victory. Fully two-thirds of the recorded 3,155 dead from General George Gordon Meade’s Union Army of the Potomac and the 3,903 Confederate dead from General Robert E. Lee’s Army of Northern Virginia remained unburied on that blood-soaked Pennsylvania field. When General Lee surrendered at Appomattox in western Virginia some seventeen months later, in April 1865, the internecine war had cost no fewer than 650,000 lives, perhaps as many as

¹⁴ Tocqueville, *Democracy in America* [Goldhammer edition], 418. Similarly, Louis Hartz argued that in liberal societies the issue of race has a decisive character. As the inclusion of the racial other would “require full equality, during the era of slavery he is totally excluded by theories of either property or race,” which makes what he designated as “liberal slavery” especially harsh. Yet, “once humanity is conceded, the liberal ethic ... demands completely equal treatment.” Hartz, “Development of the New Societies,” 17.

¹⁵ Calhoun, *Works of John C. Calhoun*, 112, 508. Calhoun was still working on final revisions of “Discourse” when he died on March 31, 1850. Referring to “the people,” Calhoun continued “the governments of the several States and of the United States were created by them, and for them,” adding how the powers that were conferred by the people to these governments “are not surrendered but delegated; and, as such, are held in trust, and not absolutely,” 112.

¹⁶ For a powerful overview of the role of slavery in shaping tension within America’s civil traditions, see Furstenberg, “Freedom and Slavery.” For an important treatment of how disputes about popular sovereignty were, from the beginning, entwined with slavery and westward expansion, see Childers, *Failure of Popular Sovereignty*.

850,000, and had left more than 1,000,000 injured in a population recorded by the census of 1860 as some 31 million; a devastating record wrought in considerable measure by disputes about popular sovereignty.¹⁷

The haunting contrast between Northampton on July 4, 1826, and Gettysburg on July 4, 1863, and the disparity between Bancroft's silence about race and membership and Tocqueville's naming this field of tension for popular sovereignty orients my reflections about the construction of a people in the globe's first political regime to have transcended then more familiar bases for political and governing authority.

Popular sovereignty as we know it originated in the seventeenth century.¹⁸ To be sure, there is an older lineage that includes the Roman law tradition and aspects of medieval law.¹⁹ Moving beyond the confines of city-states to which it had been bound among the ancients and in some small medieval republics, its modern beginning is often associated with the ideas and demands in the 1640s of the Levellers, who organized their movement "around the idea of popular sovereignty."²⁰ But it was in North America, from the first English and Dutch settlements to the Revolution and beyond that popular sovereignty "acquired a concreteness and importance that was wholly new and wholly different," with "the people" authorized and capable to create and superintend, act and enforce, what Kramer calls popular constitutionalism.²¹

A quarter century before the Levellers, forty-one religious dissenters composed and signed the Mayflower Compact on November 11, 1620. These men had arrived in Massachusetts a year after the *White Lion*, an English warship, had docked in Jamestown, Virginia, carrying "twenty and odd" African captives removed by force from a Portuguese slave ship. By the 1630s, Virginian documents record the "customary practice to hold some Negroes in a form of life service."²² Almost immediately, a contest between the newcomers and the indigenous population for control of land and water erupted.²³ Free and slave, settler and native, America was launched with its fundamental conundrums of popular sovereignty.

¹⁷ No other American war has cost so many military fatalities. www.statista.com/statistics/1009819/total-us-military-fatalities-in-american-wars-1775-present/ see also www.historynet.com/battle-of-gettysburg, www.historynet.com/civil-war-casualties. Hacker, "Human Cost of War," and "Census-Based Count."

¹⁸ For discussions of popular sovereignty's origins and lineage, see Morgan, *Inventing the People*; Bourke and Skinner, *Popular Sovereignty in Historical Perspective*; and Canovan, *The People*.

¹⁹ For a broad treatment that includes these aspects as well as a variety of early modern European sources, see Lee, *Popular Sovereignty in Early Constitutional Thought*.

²⁰ Loughlin, *Political Jurisprudence*, 47.

²¹ Kramer, *The People Themselves*, 24, 30, 45, 55.

²² Billings, *The Old Dominion in the Seventeenth Century*, 147.

²³ An important treatment of New England and New York in the seventeenth century is Lipman, *The Saltwater Frontier*.

The Mayflower Compact was executed well before Thomas Hobbes and John Locke identified the founding of a body politic with social contracts. Having arrived after two months at sea with nineteen women, thirty-three children, and nine other men, the signatories self-organized as a unified constituent power to establish a government within which they would be active and to which they pledged compliance, declaring how they “solemnly and mutually, in the presence of God, and one another, covenant and combine ourselves together into a civil body politic.”²⁴

This tiny community of Separatist Puritans was rigidly homogeneous. When America’s founders sought to apply the Compact’s principles of self-government and those of the settlements both Puritans and non-Puritans had founded in the following century and a half, they faced daunting odds, not only from matters of physical security, including slave insurrections and assaults by resisting indigenous populations, but also from divisions within the new country’s remarkably heterogeneous free white population.

“By the time of the Revolution,” Richard Hofstadter remarked in *America at 1750*, “white immigration was probably as large or larger than the entire colonial population of 1700, and the English homogeneity of the colonies had been decisively broken.”²⁵ Even as early as 1700, the colonies exhibited a striking degree of human variety. New York state’s Hudson Valley alone was composed of poorly integrated and often mutually hostile white newcomers – English, Scot, Irish, Welsh, Swiss, Dutch, French (Catholic but mostly Huguenot), Walloon, Palatine. There were Anglicans and Catholics (far more concentrated in Maryland and Pennsylvania), Puritans, Sabbatarians, anti-Sabbatarians, singing Quakers and ranting Quakers, Anabaptists, including Mennonites and Amish, and a smattering of Jews. There also were black slaves, about 15 percent of the population even in this northern location, and a diverse native population – Algonquin, Lenape, Mohican, Iroquois, Wappinger, and other Native Americans. These indigenous groups soon were locked into a terrible game with the newcomers, the one side experiencing expropriation, sometimes violent, and recurring deceit; the other experiencing physical insecurity and bewilderment at rejection. These were the stress lines in just one place in one colony.²⁶

In *Federalist 2*, John Jay famously took “notice that Providence has been pleased to give this one connected country to one united people – a people descended from the same ancestors, speaking the same language, professing the same religion,”²⁷ but this assertion was rather more a wish than reality.

²⁴ https://pilgrimhall.org/mayflower_compact_text.htm.

²⁵ Hofstadter, *America at 1750*, 31.

²⁶ Bailyn, *Peopling of British North America*; Jacobs and Roper, *Worlds of the Seventeenth-Century Hudson Valley*; Groth, *Slavery and Freedom in the Mid-Hudson Valley*; Lavin, *Dutch and Indigenous Communities in Seventeenth-Century Northeast America*.

²⁷ https://avalon.law.yale.edu/18th_century/fed02.asp.

The English colonies were not uniformly English, let alone uniformly Anglican. Proportions varied. Nearly nine in ten residents of Connecticut were English (yet still diverse given the geographical and religious sources from which they were drawn), but only one in four in Pennsylvania, by contrast to four in ten who were German. In all, as much as half the population did not have English roots; as measured by the census of 1790, some 9 percent were German and 16 percent Irish. “The sense of variety,” Aristide Zolberg commented, “was heightened by the uneven distribution of the various groups among the colonies and their differing relationships, reflecting different modes of social organization.”²⁸

Moreover, the colonies were rife with xenophobic and nativist tendencies. The harsh treatment of Palatines in 1709 drove them out of New York to Pennsylvania. Concurrently, Huguenots were put under pressure in South Carolina and Rhode Island, and Moravians were the objects of punitive 1713 legislation in Connecticut.²⁹ Writing in his 1751 essay, “Observations Concerning the Increase of Mankind,” Benjamin Franklin expressed doubt about the desirability not only of importing black slaves but the presence of Europeans with “what we call a swarthy complexion,” a list of non-Anglo-Saxon undesirables that, for Franklin, included most Germans, Italians, Russians, Spaniards, and, quite remarkably, Swedes. By the eve of independence, noted Zolberg, “the American colonies constituted an assemblage of diverse communities that, if brought together into a single state, would constitute a uniquely heterogeneous mosaic.”³⁰

Moreover, this complex human patterning overlay northern, southern, and western sectional units, “three major groupings of population, differentiated by physiographical conditions, economic interests and political ideals.” These divisions, Arthur Meier Schlesinger wrote, represented divergences in “modes of living and attitudes of mind much more fundamental than those indicated by arbitrary political boundaries” that separated the thirteen states.³¹ There were class divisions as well among the white settlers, who ranged from owners of plantations and commercial elites to indentured servants, persons cultivating isolated small farm holdings, and unpropertied urban majorities.³²

The challenge of such diversity in an extended polity was profound; one might have thought insurmountable. Constituting an American people, even if exclusively white and in the majority English and Christian, was no simple matter, not least because two significant bases for peoplehood claims – shared religious identity and a claim to be an autochthonous population – were absent.

²⁸ Zolberg, *A Nation by Design*, 52, 53.

²⁹ Beiler, “Dissenting Religious Communication Networks and European Migration.” For compelling overviews, see Pestana, *Protestant Empire*; Farrelly, *Anti-Catholicism in America*.

³⁰ <https://founders.archives.gov/documents/Franklin/01-04-02-0080>; Zolberg, *Nation by Design*, 51.

³¹ Schlesinger, “American Revolution Reconsidered,” 65, 67.

³² Nash, *Unknown American Revolution*; Tycko, “Captured Consent.”

To be sure, there were important integrating currents. The colonial historian Jack Greene emphasized how white Americans had become more alike by 1776 as a result of sharing a common grievance, a deep feeling of being second-class Britons. Tocqueville stressed the hegemony of shared English rule and the experience of English mores. Both concurred that the colonists’ robust patterns of self-government, features intensified by a great distance from the mother country and the absence of a native population eligible for mobilization as subjects of the crown, facilitated the people’s emergence as the core political actor.³³

Though noteworthy, these factors were not sufficient to create a common people. At least equally necessary was the availability of rigorous and compelling political thought about the role of the people in politics, together with designs for institutions that could galvanize, in the language of John Rawls, an overlapping political consensus amidst exceptional human diversity.³⁴

The global pioneer that Bancroft celebrated and Tocqueville viewed as a fore-runner rested on a palimpsest of ideas, composed by distinct and diverse layers that shaped the contours and established the mechanisms that first supported and later destabilized popular sovereignty in America.

Making a godlike civic and patriotic people would not have been possible without the existence of political leaders who knew quite a lot about the sometimes complementary but often competing ideas of Bodin and Grotius, Pufendorf and Rousseau, Montesquieu and Blackstone, and especially Hobbes and Locke.

As critics of parliamentary sovereignty, the founders had come to believe that the subjection of the king to parliament had gone wrong, and that, as Hobbes had articulated, the choice of a regime belongs to the people.³⁵ Notwithstanding his preference for monarchy, Hobbes had emphasized how, when exiting the state of nature, the emergent people was free to choose any form of government, not just monarchy, but also aristocracy or democracy. “The differences between commonwealths,” he wrote in *De Cive*, “are derived from the difference in the persons to whom *sovereign power* is committed.”³⁶

From this then-novel vantage, all regimes are inherently popular: “The People rules in all Governments, for even in Monarchies the People Commands; for the People wills by the will of one man; but the Multitude are Citizens,

³³ Greene, *Peripheries and Center*, 165–74.

³⁴ Rawls, *Political Liberalism*, xlv, 15, 25, 141–50.

³⁵ I am not knowledgeable enough to confidently evaluate Eric Nelson’s revisionist claim that places a Royalist theory of representation at the center of the Revolution, which he describes, privileging the presidency, as an effort to render compatible “the rule of one with the sovereignty of the people.” Nelson, *The Royalist Revolution*, 8.

³⁶ Hobbes, *On the Citizen* [Tuck and Silverthorne edition], 91.

that is to say, Subjects. In a Democracy, and Aristocracy, the Citizens are the Multitude, but the Court is the People. And in a Monarchy, the Subjects are the Multitude, and (however it seemed a Paradox) the King is the People.”³⁷

Americans embraced this theory of authorization.³⁸ “When *right* and *exercise* are separated,” Hobbes argued, “the government of the commonwealth is like the ordinary government of the world, in which God the first mover of all things, produces natural effects through the order of secondary causes.”³⁹ Not God but the people as God – sovereign, united, and acting within an unusually capacious designation of natural law – could authorize and fashion governments to escape fear-creating states of nature.

In this sense, America’s founding was Hobbesian. Richard Tuck has recorded many instances in which the people exerted direct popular control over the adoption of state constitutions and the federal constitution. In the early republic, such constituent power was based on a nearly universal white male franchise. “Between 1778 and the beginning of the Civil War, almost all American states moved to a plebiscitary basis for their constitutions, with a particular rush occurring (unsurprisingly) in the heyday of Jacksonian democracy. At the start of 1861 only five states out of a Union of thirty-four did not use the plebiscite.”⁴⁰ We can see this density of participation prior to the First Continental Congress in the popular conventions called for ratification. There, “the people from the back-country were, for the first time, admitted to the full measure of representation which had long been denied them by the unjust system of representation in the colonial assemblies.”⁴¹

For Hobbes, this is where the people’s role must decisively terminate.⁴² American popular sovereignty, however, did not stop here. After exercising their constituent power, the people must not sleep. With this conceptual and practical move, the founding became Lockean. To be sure, the rebel leaders read Locke with an emphasis, arguably a distorting emphasis that glossed over his support for the parliamentary sovereignty they wished to reject. What did draw them to Locke was his endorsement of how the people should persistently be a

³⁷ Hobbes, *On the Citizen* [Tuck and Silverthorne edition], 137.

³⁸ Having “repositioned fundamental sovereignty in the people themselves as an entity separate from Parliament,” as the legal scholar Andrew Kilberg has put the point, the founders designated “We the People” as more than persons and citizens, but also as an abstract people with constituent powers “out of and above the government itself.” Kilberg, “We the People,” 1072.

³⁹ Hobbes, *On the Citizen* [Tuck and Silverthorne edition], 142–43.

⁴⁰ Tuck, *Sleeping Sovereign*, 197. The first constitutional referendum of free men took place in Massachusetts in May 1778, when the nays dominated.

⁴¹ Schlesinger, “American Revolution,” 74. He notes how “in closely divided provinces like Pennsylvania and South Carolina their voice [favoring the radicals] was undoubtedly the decisive factor,” 74.

⁴² “When he who has the right to reign wishes to participate himself in all judgments, consultations and public actions, it is a way of running things comparable to God’s attending directly to every thing himself,” a situation of human hubris and overreach that he thought to be “contrary to the order of nature.” Hobbes, *On the Citizen* [Tuck and Silverthorne edition], 143.

hands-on sovereign. They were to play an active and continuing role within the politics of representation, with “one rule for Rich and Poor, for the Favourite at Court and the Country Man at Plough,” based on the rule of law, individual and collective rights, political representation, the separation of powers, a free press, and free civil society, each a key feature of America’s expansive popular sovereignty.⁴³ With this Lockean tilt, as Alexander Hamilton insisted, “no laws have any validity or binding force without the consent and approbation of the *people*, given in the persons of *their* representatives, periodically elected by *themselves*.”⁴⁴

Madison and his constitution-making colleagues propelled selections from this empowering body of thought to craft an institutional liberalism that gave expression to popular sovereignty in wholly novel and thickly inscribed ways under modern conditions, circumstances that included the enlargement of scale, the rise of commercial capitalist societies, and the increasing plurality of groups, interests, and geographies.⁴⁵

To canalize popular action, they were not willing to rely exclusively on internal restraints or social norms. As institutionalists, they devised hardwired barriers to straightforward popular rule: separated powers, an indirectly elected Senate, the Electoral College, constraints on simple majorities, the globe’s first constitutional court, and a robust federalism that did not wholly erase state-level sovereignty. Sovereignty of the people, yes, but with a key caveat, as Robert Dahl wrote in his *Preface to Democratic Theory*: “The Madisonian argument asserts, as an ethical inference from its basic assumptions, that accordance with the preferences of the greater number of citizens ought to be a necessary condition but not a sufficient condition for government policy.”⁴⁶ Organized this way, the constitution sought to curb both minority and majority forms of tyranny.

The story does not stop here. Hobbes, Locke, and Madison each underwrote three further elements without which the difficult task of forming an American people on a shared civic basis likely would have failed.

Hobbes’s state of nature, a state of perpetual threat, impelled humans to create governments and civil societies; actions they would not take “in the absence of fear,” which he defined as the “anticipation of future evil.” Unlike Locke’s comparatively more irenic, though not entirely peaceful, state of nature, that of Hobbes was dramatically of “War; and not simply war, but

⁴³ Locke, *Two Treatises of Government* [Cambridge 1990], 354, 363, 382. With Jefferson’s Declaration of 1776 having been written in terms that drew directly on Locke’s *Second Treatise*, we should not be surprised to learn that Locke was “cited more than any other thinker in American newspapers of the revolutionary era.” Brewer, “Slavery, Sovereignty, and ‘Inheritable Blood,’” 1039.

⁴⁴ Hamilton, *Political Writings of Alexander Hamilton*, 48.

⁴⁵ For a discussion of the making of institutional liberalism with republican raw materials, see Kalyvas and Katznelson, *Liberal Beginnings*, 88–114.

⁴⁶ Dahl, *Preface to Democratic Theory*, 45.

a war of every man against every man.” This circumstance, he insisted, was not merely speculative, as “the present century presents an example of this in the Americans,” referring to North American native Indians, whose lives he described as so fraught that even “the victors themselves are so constantly threatened by danger that it must be regarded as a miracle if even the strongest survives to die of years and old age.”⁴⁷

This is precisely how that population was denoted in the Declaration of Independence, “merciless Indian Savages whose known rule of warfare, is an undistinguished destruction of all ages, sexes and conditions.” Alexander Hamilton reprised this source of danger in *Federalist* 24. Enumerating threats to the new republic, he included “the savage tribes on our western frontier.” These insecurities together with worries about dangerous overseas foes with possessions in the New World confronted Americans with Hobbesian concerns about physical danger. A source of constitutional creativity in Philadelphia, these anxieties helped generate a common American identity.⁴⁸

Crucial, as well, was Locke’s formula for religious coexistence. “Above all things,” his *Letter Concerning Toleration* counselled, it is “necessary to distinguish exactly the business of Civil Government from that of Religion.” This institutional recommendation had been motivated by how post-Reformation religious diversity had “produced all the Bustles and Wars, that have been in the Christian World, upon account of Religion.”⁴⁹ Over and again, key founders adopted this position. Virginia’s January 1786 *Statute for Religious Freedom*, written by Thomas Jefferson and guided to passage by Madison, averred that “to suffer the civil magistrate to intrude his powers into the field of opinion and to restrain the profession or propagation of principles on supposition of their ill tendency is a dangerous fallacy, which at once destroys all religious liberty.”⁵⁰

The importance of the First Amendment stipulation that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof” must not be underestimated. Certainly, Tocqueville took notice. Unlike France, he argued, the separation of church and state in America had made it possible for religion and freedom to coexist.⁵¹ Equally important was the absence of religious tests for office, thus permitting the admission to public life of Catholics and Jews many decades before such entry in Britain. Moreover, the 1790 “Bill to Establish an uniform Rule of Naturalization” limited to “any alien, other than an alien enemy, being a free white person,”⁵²

⁴⁷ Hobbes, *On the Citizen* [Tuck and Silverthorne edition], 24, 25, 29, 30.

⁴⁸ “Declaration of Independence”; Hamilton, Jay, and Madison, *The Federalist*, 149; Jóhannesson, “Securing the State”; Edling, “Peace Pact and Nation.”

⁴⁹ Locke, *A Letter Concerning Toleration*, 26, 55.

⁵⁰ <https://law.lis.virginia.gov/vacode/57-1/>.

⁵¹ This aspect of Tocqueville’s thought has been notably stressed by Kahan, *Tocqueville, Religion, and Democracy*. For a significant summary, see Hutson, *Church and State in America*.

⁵² www.loc.gov/resource/rbpe.21301100/?sp=

did not impose any tests of language or religion for potential white citizens, an openness and announced a form of confident toleration not yet found on that scale anywhere else.

Further, like Hobbes, for Locke “in the beginning of the World was America,” an emblematic site for the pre-civil society state of nature.⁵³ As Barbara Arneil shows convincingly, Locke’s liberal imagination in his *Second Treatise*, especially his consideration of property as justified and secured by labor, validated taking land from Indian nations despite their prior possession of the given territory, a set of actions that advanced white solidarity.⁵⁴

A third condition, primarily arranged by Madison, underpinned the constellation of thoughts and institutional suggestions on which the founders relied, without which the South never would have entered the Union.⁵⁵ Effectively, the constitution functioned as a federal treaty whose supra-state institutions did not require individual states to relinquish key rights, including the right to sanction chattel slavery. Without protections for the South’s human and economic racial system – the fugitive slave clause, the international slave trade clause, the organization of the Senate, which, down to 1850, granted no less than parity for the slave states, a “comity clause” that effectively guaranteed that non-slave states would respect southern judgments about the institution, and especially the 3/5 rule guaranteeing numerical advantages in the House of Representatives and the Electoral College – a single (white) American people based on a union between slave and non-slave states would have been impossible.⁵⁶

⁵³ Locke, *Two Treatises of Government* [Cambridge 1990], Treatise II, para. 49.

⁵⁴ Arneil, *John Locke and America*. See especially ch. 5, which chronicles Locke’s close attention to the minute details of colonial life in Carolina between 1668 and 1675, when he served as secretary to the Lords Proprietor.

⁵⁵ For Judith Shklar, the antinomy of black chattel slavery and white freedom was a fundamental driver generating common bonds of identity among white Americans, notwithstanding their various dimensions of diversity. I broadly share this view, but also argue that the constellation of ideas I have identified principally with Hobbes, Locke, and Madison, shaped the character and content of popular sovereignty in the United States in basic ways.

⁵⁶ Madison explained in *Federalist 54* why, for purposes of political representation, a slave would count as 3/5 of a person: “In being compelled to labor, not for himself, but for a master; in being vendible by one master to another master; and in being subject at all times to be restrained in his liberty and chastised in his body, by the capricious will of another, the slave may appear to be degraded from the human rank, and classed with those irrational animals which fall under the legal denomination of property. In being protected, on the other hand, in his life and in his limbs, against the violence of all others, even the master of his labor and his liberty; and in being punishable himself for all violence committed against others, the slave is no less evidently regarded by the law as a member of the society, not as a part of the irrational creation; as a moral person, not as a mere article of property. The federal Constitution, therefore, decides with great propriety on the case of our slaves, when it views them in the mixed character of persons and of property. This is in fact their true character.” Continuing, Madison noted that slaves had been transformed into property by law, so that “if the laws were to restore the rights which have been taken away, the negroes could no longer be refused an equal share of representation with the other inhabitants.” Madison, *The Federalist*, 349–50.

With some 700,000 enslaved Africans, the vast majority in the South (constituting just over 60 percent of the population in South Carolina and fully one-fifth of the country's total population), the institution of chattel slavery was placed out of reach in the Philadelphia document, a view that all but the most radical abolitionists came to share.⁵⁷ Certainly this was Abraham Lincoln's understanding. As he wrote to Albert G. Hodges, the proprietor of Kentucky's *Frankfort Commonwealth*, on April 4, 1864,⁵⁸

I am naturally anti-slavery. If slavery is not wrong, nothing is wrong. I can not remember when I did not so think, and feel. And yet I have never understood that the Presidency conferred upon me an unrestricted right to act officially upon this judgment and feeling. It was in the oath I took that I would, to the best of my ability, preserve, protect, and defend the Constitution of the United States ... I understood, too, that in ordinary civil administration this oath even forbade me to practically indulge my primary abstract judgment on the moral question of slavery.

Of the many motions tabled at the Constitutional Convention, not one concerned abolition. "Great as the evil is," said Madison, "dismemberment of the Union would be worse."⁵⁹

The appeal of Hobbesian constituent power and Lockean rights-based active political participation; the Madisonian rules to check the excesses of popular sovereignty; the fear of insecurity; the religious toleration that offered each faith a stake in the republic; and the arrangements that reassured the South that freedom and slavery could coexist helped bring about Bancroft's and Tocqueville's godlike people.

At the time, the promise of future westward expansion facilitated this agreement by advancing white borders of belonging.⁶⁰ The thirteen states at the founding occupied some 430,000 square miles, many inhabited by the country's indigenous population of approximately 600,000 (a population reduced to just under 340,000 by 1860). During the last decade of the eighteenth century and the first decade of the nineteenth, treaties transferred some 170,000 square miles – three and a half times the size of England – from native nations

⁵⁷ Conlin, *Constitutional Origins of the American Civil War*, xxiii, xix.

⁵⁸ www.abrahamlincolnonline.org/lincoln/speeches/hodges.htm.

⁵⁹ *Debates of the Convention of Virginia*, 322. As a wilfully ambiguous document that stopped short of formally endorsing slavery yet facilitated its existence while securing a system of liberties that could be claimed by persons excluded, the Constitution permitted slavery to thrive. When ratified, slavery still had a nontrivial northern presence, nearly 15 percent of the population in New York and 10 percent in Rhode Island. Starting in Pennsylvania with a gradual abolition Act in 1780, abolition bills nearly eliminated slavery north of the Mason–Dixon Line by 1840, decisively by 1850.

⁶⁰ "Borders of belonging" is the phrase designated by Welke, *Law and the Borders of Belonging*. For a prior treatment, see Muller, "Bonds of Belonging," 29–58.

to the United States.⁶¹ Following the Louisiana Purchase from France in 1803, the United States claimed a huge tract of new territory, 814,000 square miles.⁶² Even earlier, but certainly accelerated by this massive expansion, the country experienced a mighty westward surge driven by dramatic population growth and economic opportunities, not least for plantation-based chattel slavery.

Most of these lands possessed only pockets of settler presence in an environment largely controlled by native nations. From the start, the goal was indigenous land cessions and settler migration. As in the example of the Northwest Ordinance of 1787, at no time did plans to incorporate new territories "outline a place for native peoples in the American nation."⁶³ The dominant ambition was clear. Whether by negotiation or force, land should be cleared for European American farmers and settler sovereignty.⁶⁴ President George Washington's robust policies of dispossession earned him the Native Seneca name "Destroyer of Villages" during the War for Independence when "he ordered General John Sullivan ... to undertake a scorched earth policy against the people and lands (today west-central New York state) of the Six Nations, as well as authorizing an independent secondary strike on Seneca villages in northwestern Pennsylvania."⁶⁵ Commenting on Washington's avowal that "It is for us a matter of honor to treat them with kindness and even generosity," Tocqueville dryly noted, "This virtuous and noble policy has not been adhered to."⁶⁶ The overarching objective was native exit and white entry, with occasional, and quite exceptional, efforts to "civilize" the tribes to make them eligible for inclusion in the young republic. By way of formal treaties and federal laws, the United States found ways to extinguish "in an orderly way the Indian title to the land so that expanding settlements might find unencumbered room" as the classic treatment of American Indian policy between 1790 and 1834 by Francis Paul Prucha records.⁶⁷

But across this period, Indian policies were not uniform. During and just after the Revolution, half of the land claimed by US sovereignty was located in the Gulf Coast and the trans-Appalachian West up to the Mississippi Valley,

⁶¹ The figures are cited in Edling, "Peace Pact," 300.

⁶² After adjustments with Spain in 1819, the claim was reduced to 883,046 square miles, constituting 565,149,377 acres. Lee, "Accounting for Conquest," 932, 936.

⁶³ Edling, "Peace Pact and Nation," 296; Edling, "United States Expansion and Incorporation," 445. The Northwest Ordinance banned slavery, but southerners believed that once states would be crafted out of these lands popular sovereignty would determine whether enslaved persons could be present (as indeed they came to be in Indiana and Illinois).

⁶⁴ For discussions, see Bergmann, *American National State and the Early West*; DuVal, *Independence Lost*.

⁶⁵ Anderson, *George Washington Remembers*, 31; also see Calloway, *The Indian World of George Washington*; Mann, *George Washington's War on Native America*; Schmidt, *Native Americans in the American Revolution*.

⁶⁶ Tocqueville, *Democracy in America* [Goldhammer edition], 386.

⁶⁷ Prucha, *American Indian Policy in the Formative Years*, 2.

each a site of intense imperial conflicts and chronic violence. When placed under American control, these western borderlands were broadly governed in concert with the existing law of nations. Declaring “good faith” and announcing friendship as the goal, the Ordinance that specified how areas carved out of the Northwest Territory could become US states guaranteed that the lands of the present nations could only be alienated by their consent or by conquest “in just and lawful wars authorized by Congress.”⁶⁸

Before independence and well into the country’s first half-century, tribal relations continued to be understood to be aspects of international relations recognizing the tribes as sovereign nations who possessed territorial rights, distinguishing them from deracinated rights-less slaves. Concurrently, however, the native tribes, labeled as “savage,” were not placed on a par with “civilized” European nations. Inside this inherently unsettled situation, there were many “middle grounds,” borderland balances backed by law and geared to manage points of contact with a degree, if only a modest degree, of attention to Indian interests.⁶⁹ As an example, legislation in the very first American Congress established penalties for trading on the frontier without a license, and invalidated the purchase of Indian lands unless made by a public treaty with the United States. This law was strengthened at Washington’s request in 1793, with the goal, as the president put things, to “render tranquillity with the savages permanent by creating ties of interest.”⁷⁰ A series of comparable laws followed well into the 1820s.

Unlike God, popular sovereignty in America proved vulnerable. Its balance of ideas and institutions, policies and practices, was undermined with the introduction of two not quite new but increasingly insistent persuasions, starkly delimited to the white subset of the population, that were promoted by President Andrew Jackson and Vice President John C. Calhoun. Each extended popular sovereignty in the name of democracy. Each attempted to deepen and extend eligible citizen freedom in tandem with evermore absolute distinctions between persons thought to be suitable for American citizenship and others, African and native, who by virtue of race and civilization were designated as unqualified. Together, these interventions sharpened and accelerated already existing conflicts between North and South and between proslavery supporters and abolitionists, generating debates about the future of the West that turned, above all, on disputes about white liberty that put the era’s sharp advances for democracy in tension with existing patterns of popular sovereignty. Membership questions that had been present in British North America and the early United States took new, indeed incendiary, form.

⁶⁸ Section 14, Article 3.

⁶⁹ White, *The Middle Ground*, 1991.

⁷⁰ Washington, “Fifth Annual Address.”

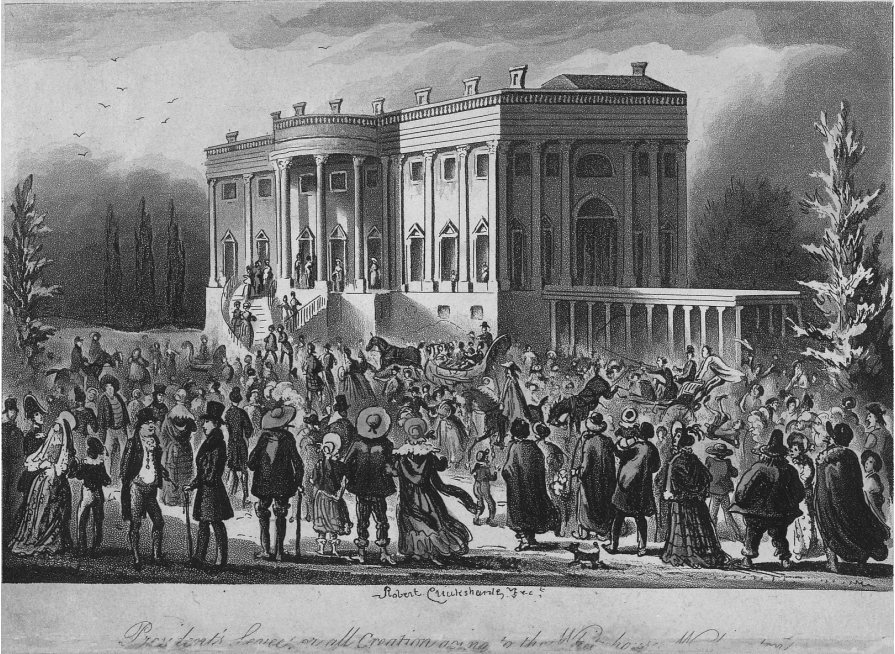


FIGURE 6.1 "President's Levee, or all creation going to the White House," by Robert Cruikshank

No doubt, the positions taken by Jackson and Calhoun were popular with much of the electorate. No doubt, too, both believed their perspectives about westward expansion, Indian removal, and the expansion of slavery were consistent with the constitutional arrangements on which popular rule rested. Yet, in retrospect, we can see that the judgments and assertive actions of Jackson and Calhoun made it impossible to maintain the fragile equilibrium that, at the time of their election, was continuing to sustain a collective sovereign people. With these initiatives, ever-sharper and ultimately irreconcilable divisions among white male citizens were put into play.

The Democratic victory in 1828 signaled an alliance between yeoman farmers, northern workers, southern planters, and other supporters of the region's slave system (Figure 6.1). Jackson, a plain-spoken backwoodsman and popular military hero from Tennessee, unified this electoral coalition. He was joined for a second term as vice president (having been elected in 1824, serving during the presidency of John Quincy Adams) by his fellow Democrat, Calhoun of South Carolina. In this unusual combination of two southerners holding the country's top offices, they allied with Martin Van Buren, governor of New York, the political virtuoso who followed Jackson into the White House in 1837. In conjunction with the virtual elimination of property requirements for

voting, restrictions that had existed in ten of the thirteen states in 1790,⁷¹ these Democrats forged a new kind of mass party, “responsible to a broad white male electorate and a party rank and file of ordinary voters, led by professional politicians.” This was the innovative type of party that Max Weber, nearly a century later, placed at the heart of his essay on “politics as a vocation.” A half-century later, the political scientist Samuel Huntington saluted such parties as the “distinctive organization of modern politics.” Managing participation and aggregating interests, the institution resolutely links the people to the state.⁷²

America soon discovered that such parties – the institutional heart and soul of competitive democratic politics – are good at organizing peaceful competitions for leadership positions and crafting provisional policy arrangements for matters that are divisible, subject to compromise. But when constitutional values and fundamental moral issues become the stuff of dispute, a whirlwind threatens. In such situations, political parties can mobilize popular sovereignty to support illiberal orientations that undermine ethical political standards.

Jackson was especially interested in opportunities on the frontier’s vast incorporated territories. He sought to secure white dominion as quickly as possible. Before assuming the presidency, Jackson had “speculated in Indian lands while pursuing commercial ventures throughout American, Spanish, and Native jurisdictions.” With a fierce Hobbesian concern for security after the Middle Tennessee Indian Wars of the 1790s, Jackson began to develop a perspective on popular sovereignty at the edge, where persons styled as civilized collided with “a cruel state of nature.”⁷³ This situation, he believed, required “a new ‘protection covenant,’ whereby the people themselves ... retained full sovereignty to deploy violence,” with sovereignty defined “as the power to use force without asking anyone.”⁷⁴ When, in 1818, he led a complement of 3,000 that captured Florida from Spain and subdued the Seminole, serving three years later as the territory’s military governor, Jackson made Indian removal and the capture of fugitive slaves top priorities, announcing that his efforts had protected the United States not only from the Spanish and British Empires, but also from “Negroes and Indians,” persons he termed “savage foes.”⁷⁵

On this account, the federal government never should impede the movement of free white people into western territory, constrain battles by settlers to displace native peoples, or, for that matter, resist decisions to purchase and

⁷¹ See Keyssar, *The Right to Vote*.

⁷² Wilentz, *Chants Democratic*, 173–74; Weber, *Essays in Sociology*, 77–128; Huntington, *Political Order in Changing Societies*, 91.

⁷³ Opal, “General Jackson’s Passports,” 69, 71.

⁷⁴ Opal, “General Jackson’s Passports,” 77. In 1811, Jackson personally had experienced and deeply resented the demand that he show a passport to enter Choctaw territory in Mississippi to collect a group of slaves a business partner had failed to sell on the Gulf Coast.

⁷⁵ Hammond, “The High Road to a Slave Empire,” 357.

utilize black slaves. Specifically, Jackson rejected the idea that the movement of white people on the continent should be delimited. Free-born Americans, he insisted, should be able to go anywhere on the continent, whether for business or settlement, unimpeded by public authority.

Before the Jackson presidency, white movement had been regulated. Some aggressive trans-legal forays into Indian territory by frontiersmen were restrained, not entirely without efforts to protect Indian life. Authorities sometimes resisted what they called white intrusion, a term utilized to refer to unofficial attempts at expansion and settlement in areas allocated, often by treaty, as Indian. In 1816, Secretary of War William H. Crawford declared that "Intrusions upon the lands of the friendly Indian tribes, is not only a violation of the laws, but in direct opposition to the policy of the government towards its savage neighbors." Should such intrusions be reported, he continued, "the President requires that [the settlers] be removed, and their houses and improvements destroyed by military force; and that every attempt to return, shall be repressed in the same manner."⁷⁶

"When Meriwether Lewis and William Clark were spinning yarns of a continent crossed," between 1803 and 1806, Samuel Truett has written, "the United States was an archipelago of settler islands, strung on a weak web of roads and the aqueous spaces of the Ohio River, the Mississippi River, the Gulf of Mexico, and the Atlantic and Pacific Oceans." These borderlands, he stressed, were multifaceted, with ultimate outcomes impossible to predict.⁷⁷ At the start of the Jackson presidency, much American territory still was distinguished by such geographically constrained settlements surrounded by more powerful indigenous nations, producing much insecurity.

President Jackson detested such unpredictability, both as a personal and policy matter. As a high priority, in tune with much popular opinion and pent-up demand by prospective colonizers, he sought to liberate white settlement from restraints by inaugurating a more aggressive framework for expulsion and continental expansion, soon to be accelerated by the conquest of more than half of Mexico in the 1840s. The once-dominant treaty process was superseded both by accelerated violations and evermore insistent policies of Indian removal based on large land swaps that moved native people westward into Indian territory. Initially established in 1822, this zone was radically expanded in 1834 to include the immense area that would become Kansas and Nebraska, as well as Oklahoma, Colorado, North Dakota, South Dakota, Montana, and Wyoming.⁷⁸ As these policies were developing and taking hold, Tocqueville was projecting "that the Indian race in the United States is doomed."⁷⁹ A decade later, Jackson

⁷⁶ Secretary of War William H. Crawford to Major General Alexander Macomb, Detroit, January 27, 1816, in Carter, *Territorial Papers of the United States*, 619.

⁷⁷ Truett, "Settler Colonialism," 438.

⁷⁸ Edling, "United States Expansion," 446–51.

⁷⁹ Tocqueville, *Democracy in America* [Goldhammer edition], 376.

boasted to Moses Dawson of Alabama that “We have labored for many years to free the States of our Union of the Indian population within our limits, and may be said to have just succeeded in the accomplishment of this human policy.”⁸⁰

During and after Jackson’s two-term presidency, free settler movement was accompanied by policies of removal that shifted the Potawatomi, the Sauk, the Fox, the Creek, the Cherokee, the Chickasaw, and the Choctaw, some 80,000, to the west of the Mississippi under the auspices of the Indian Removal Act of 1830, a law upheld as rational and humane, but that certainly proved otherwise.⁸¹ At the time of its passage, even after prior dispossessions “Native Americans still controlled millions of acres east of the Mississippi, particularly in the South. In the 1820s, Creek Indians owned a fifth of present-day Alabama; Choctaw and Chickasaw, half of Mississippi,” living on richly-fertile, valuable land.⁸²

These original inhabitants no longer were defined as sovereign and independent, but as “domestic dependent nations” in the terminology of the Supreme Court’s 1831 *Cherokee Nation v. Georgia*. The national state now backed the mobility decisions of individual white settlers by ordering land surveys, reorganizing former Indian lands, extending postal routes, and erecting military forts at key transportation locations, thus accelerating dramatic demographic changes.⁸³ This rush to the West soon brought a dramatic quickening to the period’s growing crisis about the expansion of slavery.

An anxious Calhoun was concerned, one might say obsessed, with this issue and, with it, the security of the slave system. Slavery, for Calhoun, was a public good, not a necessary evil. The future production of cotton, rice, tobacco, and sugar by enslaved people within this felicitous system, he believed, depended on territorial expansion. Indian removal, he understood, thus also enhanced the security of the South’s social order. Just as white population growth in the North was fast outrunning that of the South, threatening to upend the region’s long-existing political veto capacities, the West, if opened to slavery, might keep alive the national balance of sectional power.

Slavery, in fact, moved from strength to strength during the three decades before the Civil War. From Georgia to Texas, an enlarged arena for plantation slavery was displacing the Caribbean as the main source of North American commodity production, and the enslaved population grew to some 4 million. With national state power applied “to protect slavery, to bolster slaveholders’ claims of mastery, to strengthen claims of sovereignty in borderlands, and to conquer new territory to protect slavery, ... the United States became the

⁸⁰ “General Jackson’s Letter to Mr. Dawson of Alabama,” in *Southern State Rights, Anti-Tariff & Anti-Abolition*, 29 (<https://lccn.loc.gov/11025822>). On Indian resistance, see Dinwoodie, “Evading Indian Removal,” 17–41.

⁸¹ A first-rate study is Saunt, *Unworthy Republic*.

⁸² Caitlin Fitz, “People Who Profited Off the Trail of Tears.”

⁸³ A classic study is Foreman, *Indian Removal*.

preeminent North American and Atlantic world empire for slavery.”⁸⁴ With these developments, Lincoln, in a letter to William H. Seward one month before his inauguration, designated the United States as “a slave empire,” when explaining why he would refuse any efforts to further expand slavery under federal protection. Using local popular sovereignty to do just that, he argued, was an immoral “trick.” There must not be, he argued, any further compromises.⁸⁵

This sensibility, together with growing and often effective abolitionist mobilizations, assertive efforts by free blacks to claim the full rights of citizenship, the demographic tilt favoring northern representation in Washington, and the central role slavery came to play in the era’s borderland disputes, all animated growing anxieties among southern leaders, not least Calhoun.⁸⁶ His late life treatise, *A Discourse on the Constitution and Government of the United States*, insisted that because the United States was not more than a federation of states, popular sovereignty had never signified a single national people – a “theory of the nationality of the government,” he wrote, “of recent origin” that was “founded on fiction,” thus opening the door to future secession as a constitutional right.⁸⁷ To defend slavery, he famously outlined constitutional instruments to infirm potential antislavery majorities as he watched abolitionist and anti-expansionist ideas enter the political mainstream. These included requirements for concurrent cross-region majorities based on the nullification of objectionable federal statutes, a veto by individual states, each considered sovereign and independent, as well as the more fanciful idea of a dual presidency, with each acting to forestall the inherent right to secede by promoting cross-sectional compromises.

Jackson did not agree. Though proslavery, he was a nationalist who had no interest in diluting the federal government’s powers or the capacities of the president. Trying to strengthen federal authority by resting it on popular sentiments and populist causes, he utterly rejected nullification when South Carolina declared the Tariff Acts of 1828 and 1832, passed by Congress and signed by Adams and Jackson, respectively, to be unconstitutional.

Nullification unraveled the constitution’s deliberate ambiguity about the location of popular sovereignty and the qualities of the American people. The United States, as Max Edling has observed, was founded as “a *union* of semi-sovereign state-republics” coupled with “a sovereign *nation* ... The national government,”

⁸⁴ Hammond, “The High Road to a Slave Empire,” 349. On the role of national state power, see Fehrenbacher, *The Slaveholding Republic*. An important contemporaneous overview of southern slavery in the 1850s is Olmsted, *A Journey in the Seaboard Slave States*.

⁸⁵ Abraham Lincoln to William H. Seward, February 1, 1861: <https://quod.lib.umich.edu//lincoln/lincoln4/1:290.1?rgn=div2;view=fulltext>.

⁸⁶ The literature on abolitionism is immense. Particularly compelling, and focusing on black voices, is Sinha, *The Slave’s Cause*. On demands by free black Americans for citizen rights, see Jones, *Birthright Citizens*.

⁸⁷ Calhoun, *A Disquisition on Government and A Discourse on the Constitution and Government of the United States*, 140. *Discourse* was in handwritten form, on loose sheets, when Calhoun died in 1850, and is likely to have been written principally in 1849, between congressional sessions, when he was serving as a member of the Senate from South Carolina.

quite uniquely, thus “was simultaneously a *forum* for the negotiation and settlement of member-state interests and conflicts in Congress and a *central government* ... that existed independently from the member-states,” and which governed through congressional legislation directed to the citizenry as a whole.⁸⁸ In this regime, states on one side of the Mason–Dixon line had abolished slavery; on the other, slavery had expanded within state-organized legal codes. Not surprisingly, the hardest questions arose in territories not yet states, still under national control, concerning future terms of transition.

Jackson’s version of popular sovereignty helped propel already demanding pressures at the frontier. Notwithstanding their differences, Calhoun contributed mightily to emplacing popular sovereignty at the very heart of the territorial slavery dispute, hoping to engineer the nation’s racial composition by popular white design.⁸⁹ Further, the entwined perspectives of Jackson and Calhoun, which dominated American dispositions and policies until the election of Lincoln, transformed the articulated meaning of the American Revolution. Well into the 1820s, independence movements in Latin America were enthusiastically welcomed in the United States as liberal and democratic progeny, consistent with a godlike American people. With the Jackson–Calhoun turn, however, and with slavery retreating in all the South American republics but monarchical Brazil, the hemisphere’s regimes became foils, places where dark-skinned radicals were perceived as confining slavery and crossing racial boundaries, and characterized as distinct from the more mature and exceptional white republic in the United States, a country, like most of the colonial Caribbean, not hostile to the expansion of slavery.⁹⁰

The Missouri Compromise of 1820 had demarcated the line between free and slave territory acquired by Jefferson in the Louisiana Purchase. The question, having been reopened by the vast new lands acquired in the Mexican War by the 1848 Treaty of Guadalupe Hidalgo – fully 60 percent of the land that previously had composed Mexico – now seemed settled by the Compromise of 1850 (Lincoln believed it had been settled “forever”). That set of five statutes, drafted by Henry Clay of Kentucky, a Whig, and Stephen Douglas of Illinois, a Democrat, specified which lands would be open to slavery and which would not, together with a draconian Fugitive Slave Act that required escaped slaves to be returned to their masters even after entering states that banned slavery.⁹¹ In the interest of keeping the Union intact, Lincoln had accepted the

⁸⁸ Edling, “A More Perfect Union,” 400.

⁸⁹ There is a very considerable literature. See, as instances, Childers, *Failure of Popular Sovereignty*; Woods, *Bleeding Kansas*.

⁹⁰ For this important understanding, see Fitz, *Our Sister Republics*.

⁹¹ Summaries of the legislation and the historiography of its implications can be found in Russel, “What Was the Compromise of 1850?” and Woods, “Compromise of 1850.”

Compromise of 1850, notwithstanding, as he wrote to his proslavery Kentucky friend Joshua Speed on August 24, 1855, "I hate to see the poor creatures hunted down," but "I also acknowledge *your* rights and *my* obligations, under the constitution, in regard to your slaves."⁹²

The 1850 agreements did not survive. Stability was upended four years later by the Kansas–Nebraska Act, also authored by Senator Douglas. Substituting popular sovereignty for the prior demarcation of slavery's remit, the law created a vast new ground, carved from Indian territory, north of the line that had been closed to slavery under the Missouri Compromise. "Let the people decide," Douglas famously announced, as the bill authorized decisions by settlers about the existence of slavery under the rubric of popular sovereignty. The subsequent controversy gave rise to the Republican Party's birth, and to Lincoln's shift of political allegiance. And it was the issue of popular sovereignty – more specifically Lincoln's opposition to it regarding the extension of slavery – that launched his spectacular ascent to the presidency.⁹³

Douglas argued that it was for white men to judge whether to approve the existence of slavery in a free vote. Lincoln answered with an ethical retort. Popular rule, he argued, is not unlimited. Moral codes must not be made or unmade by majorities. The people is not a God.

Such "a moral, social, and political evil," language he used in Bloomington, Illinois, in September 1854, and a "monstrous injustice," the term he applied in Peoria, Illinois, the next month, must not be decided by the people. Unlike issues appropriately settled by voting, the outcome here would not be provisional; the evil would persist even if majorities were to change. And who was "the people"? The humanity of black Americans would be denied by authorizing settlers to bring their human property to the new territory. "When the white man governs himself that is self-government, but when he governs himself, and also governs *another* man," Lincoln stated at Peoria, "that is *more* than self-government – that is despotism."⁹⁴

There was a vote, boycotted by free-state voters. The result elected delegates who wrote the Lecompton Constitution, which in 1857, became the basis for the request by Kansas for admission to the Union as a slave state. President James Buchanan backed the proposal, and submitted it to Congress. By then, however, the Jackson–Calhoun version of popular sovereignty had been confirmed. In March of that year, the Supreme Court, in *Dred Scott v. Sandford*, banned any limits on the westward expansion of slavery and denied American citizenship to any black person.⁹⁵

⁹² "I bite my lip and keep quiet," Lincoln added. Bassier, *Collected Works of Abraham Lincoln*, 320.

⁹³ For the legislative history, see Russel, "Issues in the Congressional Struggle Over the Kansas–Nebraska Bill"; Dean, "Stephen A. Douglas and Popular Sovereignty."

⁹⁴ *Collected Works of Abraham Lincoln*, 239, 255, 266.

⁹⁵ The classic consideration remains Fehrenbacher, *The Dred Scott Case*; also see Graber, *Dred Scott and the Problem of Constitutional Evil*.

During this decade, the popular sovereignty that had attracted Bancroft and keenly interested Tocqueville lost its unifying constitutive standing. The concerns Edmund Morgan raised at the bicentennial became incendiary. “How,” he asked, “to discover the will of the people? How to get them to express it? How to know whether there was any will to express? How to make government responsive to it when it was expressed? And what to do when the apparent will of the people ran counter to what their representatives thought good and right for them?”⁹⁶ With disputes about slave-bearing westward movement, these questions collided with considerations of race, civilization, and rules for belonging. In that context, America’s white peoplehood, a formation that overcame great diversity by combining Hobbesian, Lockean, and Madisonian ideas and institutions, could not be sustained.

During the Kansas–Nebraska conflict, the combined standpoints and achievements of Jackson and Calhoun exposed long-latent but previously managed tensions. With an acceleration of popular participation, a more agonistic democracy, hurried westward motion, and an evermore vibrant defense of an expanding slave system, popular sovereignty’s cohesion became increasingly provisional and instrumental. Two months after *Dred Scott*, the proslavery Democrat Francis W. Pickens, soon to lead South Carolina’s secession as governor, wrote this to Benjamin Perry, another future governor and then a pro-Union nationalist member of the state’s House of Representatives: “As long as the Government is on our side, I am for sustaining it and using its power for our benefit.” But if “our opponents reverse the present state of things *then* I am for *war*.”⁹⁷

“If there is any country in the world,” Tocqueville had asserted, “where one may hope to assess the true value of the dogma of popular sovereignty to study its application to the affairs of society and judge its benefits and dangers, that country is surely America.” Godlike popular capacity, he understood, did not necessarily portend a happy outcome. In France, he lamented, “rather than gradually taking control of society so as to rule in peace,” democracy “marches on through the chaos and tumult of battle.”⁹⁸ The United States did not prove exempt.

As Tocqueville urgently understood, popular sovereignty is protean. The animating idea that a ruling people makes binding lawful judgments in the first and last instance has become omnipresent irrespective of a given regime’s form or the degree to which the political order is premised on openness, pluralism, and liberty. An abstract people can sanction the full spectrum.⁹⁹ Popular

⁹⁶ Morgan, “Popular Sovereignty,” 112–13.

⁹⁷ Woods, “What Twenty-First-Century Historians Have Said about the Causes of Disunion,” 429.

⁹⁸ Tocqueville, *Democracy in America* [Goldhammer edition], 11, 62.

⁹⁹ For a useful discussion of the framing through popular sovereignty of limited powers in constitutional states, see Pasquino, “Popular Sovereignty,” 144–58.

sovereignty, moreover, extends from the noble to the terrible not only in illiberal regimes. There are no guarantees that citizens in democratic civil society will direct egalitarian and warmly welcoming, or even tolerant, preferences to their representatives, or that their leaders will opt to promote human pluralism.

Persisting questions – Morgan’s questions – about the character, formation, stability, distribution, content, and influence of the will of the people, its connection to the central institutions of liberal democracies, and the ways popular sovereignty directs and constrains the actions of rulers and in turn is shaped by them, oriented the classic analytical study by the political scientist V.O. Key, Jr., *Public Opinion and American Democracy*, and offers a guide to how we might continue to engage with questions of popular sovereignty. Seeking to place “knowledge about public opinion in a political context,” Key was motivated to understand how “the preferences, aspirations, and prejudices of the public ... [are] connected with the workings of the governmental system” in determinate historical situations. Like Morgan, Key wished to discern “what critical circumstances, beliefs, outlooks, faiths, and conditions are conducive to the maintenance of regimes under which public opinion is controlling, at least in principle, and is, in fact, highly influential.”¹⁰⁰

Key concluded with the designation of a problem, and a forceful contention, each germane to the story of American beginnings. The problem concerns the formation of a people with “a sense of the collectivity” in circumstances where the population, by choice and by imposition, is divided into “segments, each with its own sense of separateness.” The contention concerns the qualities and duties of individuals who lead and govern, the values and sense of responsibility they possess, the frames of choice they offer, and the discretion they exercise. On the understanding that the will of the people is never entirely free-standing but correspondingly directed, Key closed with this claim¹⁰¹:

The masses do not corrupt themselves; if they are corrupt, they have been corrupted. If this hypothesis has a substantial strain of validity, the critical element for the health of a democratic order consists in the beliefs, standards, and competence of those who constitute the influentials, the opinion-leaders, the political activists If a democracy tends toward indecision, decay, and disaster, the responsibility rests here, not in the mass of the people.

The early American story of popular sovereignty not only signifies the importance of this perspective, but also suggests that it is too simple. To be stable or even possible, governments must be popular. What if the preferences of the greater number are in tension with humanity and justice? How should leaders govern that multitude?

Key was more confident than I about ascertaining the proper balance between responsiveness and leadership, but his strong assertion about leadership has

¹⁰⁰ Key, *Public Opinion and American Democracy*, vii, 535, 536.

¹⁰¹ Key, *Public Opinion and American Democracy*, 548, 549, 558.

shaped the way I have pursued answers to my questions concerning how a coherent political people managed to emerge despite demographic and sectional diversity, and why this ethically complicated revolutionary achievement collapsed despite a supportive matrix of ideas, institutions, and policy compromises. With an emphasis similar to Key's, I have tasked Jackson and Calhoun for the content of their exaggerations of popular sovereignty. As they facilitated a proslavery drive to settle the West, in part a response to mass pressures for land, opportunity, and racial hierarchy, their political guidance proved fateful by "unleashing popular prejudice in a new and politically potent direction."¹⁰²

There is no gainsaying the short-term successes of Jackson and Calhoun. They enlarged white participation and won popular mandates. They altered the rhetoric of popular sovereignty to fit mass deportations and chattel slavery, and achieved policymaking by Congress and the Supreme Court that furthered the continental expansion they desired. For some decades, as a result, they helped secure slavery against the institution's growing adversaries and thus kept the South in the Union. These very achievements, however, produced a great collision between the endemic issues of participation and representation identified by Morgan and an ever fiercer contest inside the trenches that long had guarded membership in the country's godlike people.

Comparable challenges currently persist. As in antebellum America, popular sovereignty continues to provoke dilemmas that demand moral judgment, institutional imagination, and necessary restraint. "Perhaps," as Morgan wrote, "the questions are unanswerable." Yet, as he also added, "we dare not" give up "the quest for better answers."¹⁰³

¹⁰² Saunt, *Unworthy Republic*, 10.

¹⁰³ Morgan, "Problem of Popular Sovereignty," 113.