

# **BIRTHRIGHT DEMOCRACY: NATIONHOOD AND CONSTITUTIONAL SELF-GOVERNMENT IN HISTORY**

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## **Abstract**

How did constitutionally limited government and democracy emerge in the West? Many scholars from many different perspectives have attempted to answer this question. I identify the emergence of these forms of self-government with early modern nationalism. Broadly speaking, nationalism of the right sort provides indispensable resources both for united popular resistance against autocratic rule, and for the formation and legitimation of national systems self-governance. Resistance and self-government both require a national consciousness that includes a myth of national origin, a national language, a common faith, and, crucially, native traditions of self-government, and stories of heroic ancestors who successfully defended those traditions against usurpers and tyrants. It is through national consciousness that abstract theories of resistance and self-government become concrete and tenable. It is through national fellowship that the idea of a political nation, possessing the right to make rulers accountable to its will, comes into existence and is sustained over time. My arguments basically fall under two headings, historical and theoretical. By an examination of the nationalist political thought of early modern European countries, I intend to establish important historical connections between the rise of nationalism and the emergence of self-government. But I also intend through the examination of the very same materials to emphasize that a certain set of nationalist assumptions is indispensable for making self-government coherent. The main body of the work consists of an in-depth examination of the early modern nationalist political thought of three European nations, the Netherlands, England and Russia.

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# Chapter I – Nationhood and Constitutional Self-Government

## 1. Introduction

How did constitutional self-government emerge in the West and what are the necessary preconditions for the establishment and maintenance of this form of government? Many scholars from many different perspectives have attempted to answer these questions. I do not pretend that my own will be comprehensive. If I may use the language of quantitative political scientists, I aim here to give a comprehensive treatment to only two variables, to wit, 1) nationhood, and 2) an historically grounded native constitutional tradition. I show the rise of constitutional self-government with early modern Dutch and English nationalism, and argue more generally that a certain kind of national consciousness is a necessary, but not sufficient, condition for the emergence and preservation of this form of government.

By nationhood, I mean a sense of unity and solidarity, a desire for political unification or the preservation of an existing unity, that can arise among groups of people who have commonalities of custom, language, race, or religion and a history of living together on the same territory. A nation is a group of people who are convinced that, come what may, they belong together in one political unit. By constitutional tradition I mean a shared belief of the members of a nation in the existence of a set of inherited political practices that largely conform to the following three principles. First, certain rights and privileges are reserved to individual citizens and corporations. According to settled custom and law, law-abiding individuals have an inviolable right to the security of their persons and property. Towns, cities, counties and other

corporations also have settled rights to local self-government, which are not to be meddled with by the national government. Second, members of the nation have a right to participate through national representative institutions in the framing of national legislation and the shaping of the nation's way of life. Third, the sovereignty of the nation is divided. The power to govern is divided between the national government and various local governments. In the national government, sovereignty is divided between different co-equal branches, such that alteration of the laws or the taking of sovereign decisions concerning, for instance, war or taxation, cannot proceed without the consent of them all. This sketch of constitutional self-government is consistent with the way early modern Dutch- and Englishmen defined it.

I consider these questions for two reasons. First, I believe that many of the principles of constitutional self-government have become eroded in the West. Second, there are, it hardly needs to be said, many nations that have attempted but ultimately failed to establish constitutional self-government. An examination of the conditions under which this form of government emerged and the arguments by which it was justified can tell us something about how it might be restored where it has been eroded, and how it might be established where it does not now exist. It is for the purpose of addressing the second problem that I include a chapter on 19<sup>th</sup> century Russia.

My argument has two basic components, the first of which is broadly theoretical. The abstractions of constitutional and democratic theory, namely individual, people, sovereignty, state, society, constitution are by themselves inchoate, and ultimately incoherent, unless they are supported by a certain set of nationalist assumptions. For there are many crucial questions which a universalist conception of political rights and obligations simply cannot answer. For instance, what is the concrete community that claims to have a right to govern itself in accordance with a

particular constitutional discipline, and what is the form of its constitution? One has to know who the people are, what the community of sentiment is within which men owe special duties to one another, within which there is indeed a common good to be sought. There must also be some common basis for agreement on the constitutional form. Abstract reasoning can lead in a thousand different directions. But national experience and national prejudices can provide a common ground.

The second component of the argument is empirical. The early-modern pamphlets and treatises promoting constitutional self-government in Europe are dripping with what we would immediately recognize as nationalist rhetoric. Compared to other tracts written around the time of England's Glorious Revolution, Locke's *Second Treatise*, with its deductive reasoning and its reflections on some sort of universal man in a state of nature, is very peculiar. Most other pro-constitutionalist writing in 17<sup>th</sup> century England, and in the Netherlands a century earlier, referred to specific national constitutional traditions and described supporters of absolutism as cowards, bastards—that is, not “true sons of fatherland”—and bloody foreigners. They spoke of duties to ancestors and descendants, of the honor of the nation. They spoke not of the rights of man, but of birthrights inherited from their forefathers—hence the title of this work “Birthright Democracy.” The people who created the modern constitutional order were not liberals in the mold of John Rawls, or cosmopolitans in the mold of Jurgen Habermas.<sup>1</sup> They were nationalists.

## **2. Early Modern Nationalism and Nationalism in General**

It will perhaps be objected that the term ‘nationalism’ is not suitable for a discussion of the realities of 16<sup>th</sup> and 17<sup>th</sup> century European politics. I maintain that it is. Although the term

‘nationalism’ was coined in the 19<sup>th</sup> century, many scholars argue that the phenomenon itself is much older, that the general thesis advanced by Eric Hobsbawm, Ernst Gellner and Benedict Anderson is in fact a “modernist fallacy.”<sup>2</sup> As Adrian Hastings writes “Hobsbawm wrote a history of nineteenth- and twentieth century nationalism, but not a history of nationalism, and denial of the first half of the story has inevitably skewed the whole.”<sup>3</sup> The same might well be said of the work of Gellner and Anderson. Nationalism scholars such as Hastings, Steven Grosby and Anthony D. Smith prove the modernist thesis wrong by documenting ancient, mediaeval and early-modern nations and nationalisms. Hastings argues convincingly that national consciousness in mediaeval Europe arose from the example of the Hebrew nation in the Bible and generally from a Christian understanding of the world as a world of nations. This national consciousness reached not only local elites, but also the general population, as the ideas were regularly expressed in church, which all classes attended. England, the world’s first nation, was, according to Hastings, a nation-state by the 14<sup>th</sup> century at the latest. Other European countries can also trace their modern condition as nation-states to mediaeval beginnings. The provinces of the Netherlands, as I will demonstrate in chapter 2, were, during the Revolt, in the process of becoming a nation. In any event, at whatever stage of development it happens to be, nationalism is always retrospective. The nationally conscious, as a matter of course, project their own consciousness backward in time to their most ancient ancestors. Moreover, Smith’s definition of nationalism as ‘an ideological movement for attaining and maintaining autonomy, unity, and identity on behalf of a population’ is, as I will demonstrate, certainly as consistent with the aspirations of the early modern Dutch and English as with the 19<sup>th</sup> century Russian thinkers in this study, though it does not fully encompass them.<sup>4</sup> They all appeal for national unity and

loyalty to a particular political order against those who would impose foreign constitutional models in church and state.

Apart from questions about how old nationalism is or particular modern nations are, it is important to note, as many scholars have done, that the phenomenon of nationalism tells us something about the nature of human beings and the way they relate to one another. As Steven Grosby argues “the attachments which are constitutive of the family represent an existentially primary pattern of human relationship.” Everything that we know from history and anthropology suggests that human beings have typically belonged from birth not only to an immediate family, but “to a larger cultural collectivity, whether a lineage, a clan, a tribe, a nation, or a national state.”<sup>5</sup> The national state is the largest political entity heretofore which conforms to this existential pattern. A nation feels like a family, as the words, homeland, motherland and fatherland suggest, and national states are able to capitalize on this intimacy and solidarity. This, as Grosby notes, certainly does not mean that the members of a national state are actually kin. The beliefs members have about their genetic or historical ties with one another may be objectively false. The point is that “human beings make classifications of the self and the other in accordance with such criteria...and on the basis of these classifications, they form groups, membership in which influences the conduct of their members.”<sup>6</sup>

It is on the basis of reflections such as these that Walker Connor asserts that man is “not a rational, but a national animal,” pointing to the enduring power of primordial sentiment and the appeal of primordial rhetoric in politics.<sup>7</sup> If Grosby and Connor are right, then it is unlikely that any amount of cosmopolitan or pluralist indoctrination, even in concert with the globalizing trends of late-modernity, will overcome the tribal inclinations of mankind, and the manifestation

of these inclinations in politics. Even if existing nations are destroyed, new human groupings are liable to form according to this basic existential pattern.

### **3. Nationhood and Constitutional Self-Government (or “Liberal Democracy”)**

The idea that there is a necessary relationship between nationalism and constitution self-government, or “liberal democracy” as it is more often called, is certainly not the mainstream view among democratic theorists. However, the connection has not been ignored in the democratic theory literature, and, what is more, it receives a great deal of attention in the comparative politics literature.<sup>8</sup> According to Margaret Canovan the unfortunate tendency “apparent in Anglo-American political thought ever since Locke” has been “to blur the differences between polities and voluntary associations, and to represent the democratic polity as a kind of expanded tennis club.”<sup>9</sup> A political community is not a mere voluntary association. As Canovan argues, nationhood is “a tacit premise in almost all contemporary political thinking.”<sup>10</sup> Liberal democracy in particular, she says, requires a people, which has some source of unity, solidarity and collective identity beyond common territory and shared procedures and institutions. The conditions prescribed by the liberal democratic ideal—to wit impartial laws and institutions, a strong but minimally coercive state, and public spiritedness among rulers and ruled—come closest to being realised in polities whose members have a shared sense of nationhood.<sup>11</sup> Where such “overarching solidarity” is absent it is very difficult to cope with disputes between plural groups in a liberal and democratic way.<sup>12</sup>

Looking over the world today, she says, such states are rare. It is only genuine nation-states that can support such an order.<sup>13</sup> Moreover, Canovan recognizes the inadequacy of liberal individualism to sustain such an order. Unity is harder to achieve in democracy or republicanism than in despotism. For this reason we see that traditionally popular self-rule is associated not

with individualism but civic virtue.<sup>14</sup> The liberal democratic order requires a source of unity that liberalism itself cannot provide. According to Canovan:

What unites conationals is less the characteristics they possess as individuals than the inheritance they share as members, typically a heritage compounded of ethnic, political cultural and other elements. All members own this legacy, even if they detest much of it... Nationalism, therefore, is not like other ideologies, it is not a creed but a legacy.<sup>15</sup>

Canovan argues that “the nation is a mediating phenomenon. It solves the various paradoxes of modern political life. The nation is a polity that feels like a community, combines choice and the transcendence of individuality, turns political institutions into a kind of family inheritance, and makes a contingent historical product seem like a part of the order of nature.”<sup>16</sup> Without the nation, self-government in cooperation with fellow citizens for the sake of a common good, carried out in accordance with a set of institutions and rules, seems an impossibility.

Writing in the same vein, Yael Tamir takes John Rawls and other liberals to task for failing to acknowledge the dependence of their theories on at least two “national” ideas, namely demarcation and continuity. Before one establishes liberal democratic institutions, one has to know what the extent of the political community is, and this question of demarcation cannot be decided through liberal democratic means.<sup>17</sup> For this reason, argues Tamir, liberals have had to adopt the principle of self-determination, which is a national idea incompatible with their universalist premises. To “sustain its character as a law-abiding and caring community, the liberal state must view itself as a continuous community rather than as a casual association of parties to a contract” that may be rescinded at Renan’s next “daily plebiscite.” Here too, for the preservation of a sense of continuity, the liberal democratic state must rely on a national idea of continuity.<sup>18</sup> Rawlsian liberals fail to understand “an agreement regarding some guiding principles of justice” is “too thin, and...insufficient to ensure the continued existence of a closed community in which members care for each other’s welfare, as well as for the well-being of

future generations.”<sup>19</sup>

Bernard Yack finds in Habermas’s theory of constitutional patriotism the same fault that Tamir notes in Rawls’ theory of justice. According to Yack, Habermas’s theory “assumes the existence of the very prepolitical cultural community that he, like most defenders of the civic idea of the nation, rejects in the name of a community based on rational consent and political principle.”<sup>20</sup> But, more interestingly, he asserts that, historically, it was the concept of popular sovereignty that created nationalism, because arguments for popular sovereignty logically necessitate recourse to a pre-political notion of community, which only nationhood can provide. As Yack explains, defenders of the doctrine of popular sovereignty presuppose the existence of a community to which political authority reverts when government no longer performs its proper function. What precisely this prepolitical community is, defenders of popular sovereignty have no clear answer. This, continues Yack, “opens the door to the identification of political with national community, of the people with the nation. For the nation provides precisely that what is lacking in the concept of the people: a sense of where to look for the prepolitical basis of political community.”<sup>21</sup> For this reason, Yack considers implausible the projects of civic nationalists such as Rawls and anti-nationalists such as Habermas to “purify” democratic politics of “cultural particularism.” This thesis, I argue, has much to recommend it, though in truth the relationship between popular sovereignty and nationalism is more complex. What is more, the relationship between constitutionalism—the “liberal” component of “liberal-democracy”—and nationalism, which Yack does not address, also deserves attention.

Comparativists offer related arguments. Anthony Marx makes the case historically that ethnic homogeneity is a precondition for democracy.<sup>22</sup> The civic idea of equal rights for all citizens, he says, is not “free-standing.” In England and France, the establishment of democracy

was proceeded by “religious antagonisms and exclusions [which] had built sufficient solidarity and unity.”<sup>23</sup> That process of national consolidation occurred at the expense of religious minorities, Catholics in England and Protestants in France. Mass hostility toward these minorities provided absolutist governments with a means of rallying the members of the majority confession, but in the long term this had the effect of causing the majority confession to coalesce in a cohesive group, and reducing the numbers of the minorities to such an extent that that the majority could feel secure in granting them equal rights.

Other comparativist political scientists make similar arguments based on the study of recent cases. Juan Linz and Alfred Stepan observe that democratic institutions are very difficult to establish when there are disagreements about the boundaries of the state, and who is a citizen. For them, such disagreements create a problem of “stateness.” They borrow this insight from Robert Dahl, whom they quote as follows:

We cannot solve the problems of the proper scope and domain of democratic units from within democratic theory. Like the majority principle, the democratic process presupposes a unit. *The criteria of the democratic process presuppose the rightfulness of the unit itself.* If the unit is not proper or rightful—if its scope or domain is not justifiable—then it cannot be made rightful simply by democratic procedures.<sup>24</sup>

As Linz and Stepan note, the idea of nationhood often supplies a viable definition of the unit. But this works only for relatively homogeneous populations. While they express hope that an inclusive definition of citizenship and various institutional agreements can overcome problems of “stateness” Linz and Stepan note that this presents great challenges: “the more the population of the territory of the state is composed of pluri-national, lingual, religious or cultural societies, the more complex politics becomes because an agreement on the fundamentals of a democracy will be more difficult.”<sup>25</sup> Nationhood defines the unit in which democratic institutions are to

operate. Where there is no nation, the establishment of democratic institutions is a very difficult matter.

Brendan O’Leary argues that “a stable democratic, majoritarian federation... must have a *Staatsvolk*, a national or ethnic people, who are demographically and electorally dominant—though not necessarily an absolute majority of the population—and who must be co-founders of the federation,” a theory he says is “consistent with liberal nationalism” and “inconsistent with liberal cosmopolitan and radical multiculturalists’ hopes.”<sup>26</sup> It is only from a position of unquestioned dominance that trust and toleration on the part of the majority nationality for the minority groups within a democratic federation is possible. O’Leary says that the *Staatsvolk* need not be an absolute majority, but also argues that democratic federations with larger *Staatsvölker*, in the range of 60-80% of the population, or higher, are more “stable and durably democratic” than those with smaller ones.

Liah Greenfeld also addresses the link between nationalism and democracy. For her it was early modern nationalism that built the road to modernity. According to Greenfeld,

The location of sovereignty within the people and the recognition of the fundamental equality among its various strata, which constitute the essence of the modern national idea, are at the same time the basic tenets of democracy. Democracy was born with the sense of nationality. The two are inherently linked, and neither can be fully understood apart from this connection. Nationalism was the form in which democracy appeared in the world, contained in the idea of the nation as a butterfly in a cocoon.<sup>27</sup>

Greenfeld also attempts to explain historically why some nationalisms led to liberal democratic political orders and others to authoritarian ones. Unfortunately, her analysis relies on a set of liberal categories that distort the meaning of the evidence she presents. She divides nations into individualist and collectivist types. The individualist nationalisms lead to democracy and prosperity, whereas the collectivist ones tend to be full of *ressentiment* and intolerance and

ultimately lead to authoritarianism, and even genocide. She argues that English nationalism, for example, was characterized by individualism: “It was because these individuals actually exercised sovereignty that they were members of the nation.”<sup>28</sup> In this, and in other instances, Greenfeld has it backwards. As Quentin Skinner notes, English republican thinkers of the 17<sup>th</sup> century “begin by focusing not on the freedom of individuals but rather on what Milton calls ‘common liberty’ or ‘free government’, what Harrington calls ‘the liberty of the commonwealth’, and what Sidney later calls ‘the Liberties of Nations.’”<sup>29</sup> In the Putney Debates, as I shall demonstrate in Chapter 3, it was in virtue of being born Englishmen that the soldiers thought they had a right to exercise sovereignty in the English nation. To the extent that they had rights, it was as parts of a larger whole, not as isolated atoms.

Rogers Smith does not concern himself in particular with the connection between nationhood and constitutional self-government, but he addresses two relevant points. First he lays to rest the liberal myth of the culturally neutral “civic nation.” He notes that “liberal republican democratic theories do not by themselves define the “people” who are to self-govern consensually, they do not indicate where the people should live and why—they do not provide any other than instrumental arguments.”<sup>30</sup> He argues that political projects have always relied on elements of ethnic order. In other words, there are no true civic nations: all modern nations have both civic and ethnic elements.<sup>31</sup> This argument is drawn primarily from Dominique Schnapper, who writes that, regardless of how one might define a nation theoretically, when one considers the question historically “it is indeed within a particular national community that individuals developed their identity.”<sup>32</sup> “The national state,” she writes, “has never been able to mobilize populations exclusively around a purely political goal or to impose behaviors linked to the priority of citizen allegiance over communitarian ties... Transcendence by citizenship—or the

principle of the tearing away from particular belongings accomplished by political society—can never be fully realized.”<sup>33</sup>

#### **4. Nationhood and Self-Government, Early Modern and Contemporary**

If one wishes to speak of political reality in any century, even our own, “self-government” is, admittedly, a problematic term. In a representative form of government, the people, by definition, do not rule. Thus, some democratic theorists, for instance, Robert Dahl, have said that it is more accurate to call countries such as the UK or US “polyarchies” since political power is in fact shared by a small portion of the population controlling different parts of government, and the degree of accountability of government to each citizen is never truly equal.<sup>34</sup> In fact, the Englishman George Lawson often uses the term “polyarchy,” rule by many, in his *Politica Sacra et Civilis* (1660), and, of the various terms in his lexicon, it is this one that best fits his description of England’s traditional form of government in which power is vested conjointly in King, Peers and Commons, and as well as well as descriptions of the government of the Netherlands, in which sovereignty was understood to be shared by representatives of the nobility and merchant class in the States General and the Stadholder.<sup>35</sup> This is not, however, to say that early modern European polyarchies and modern polyarchies are the same.

One must grant that the early modern theory of popular sovereignty and popular representation is different from the modern. As E.H. Kossmann explains, according to the 16<sup>th</sup> and 17<sup>th</sup> century conception of popular sovereignty “sovereignty belongs not to the individuals who together make up society but to society as a whole, to a structured set of interrelationships with a historical identity....”<sup>36</sup> In other words, popular sovereignty is understood not as the will of an aggregate of individuals discovered by a count of heads, that is, a will of the numerical

majority, but rather a will mediated through a complex set of inherited customs, privileges, liberties, relationships and procedures. In practice this meant that the representatives in the national government in the Netherlands were not chosen by popular elections. Except in the province of West Friesland where a portion of the population elected deputies, the direct constituents of the deputies to the States General were the landed nobility and the merchant patriciate of all the towns and cities of the United Provinces.<sup>37</sup> In England, members of the House of Commons were generally elected by the heads of families with 40 shilling freeholds, though the rules in some boroughs were different. The King and the Peers, obviously, were not elected.

One can, of course, argue, from the modern view of popular sovereignty, that such forms of government cannot be considered “democratic.”<sup>38</sup> For, in one of the clearest formulations of the theory, that of George Lawson, government is not directly accountable to the “virtual” members of the nation, that is, women, children, servants, strangers, tenants or vassals, or to other “irrational” persons, that is, rebels and traitors, who might otherwise qualify as “full” members of the polity. However, I maintain that early modern and modern forms of “self-government” are, properly speaking, different in degree, not in kind. Modern democracies, after all, still exclude irrational or untrustworthy residents such as children, convicts and foreign nationals from the franchise. Perhaps more significantly, whatever the modern theory of popular sovereignty may be, the practice is quite another matter. As a variety of social scientists have argued, the advent of universal suffrage and the decline of old aristocracies notwithstanding, wealthy and powerful members continue to have a vastly disproportionate influence on the electoral process and the formation of government policy in modern polyarchies.<sup>39</sup>

Dutchmen such as Grotius, and Englishmen such as George Lawson and Algernon

Sidney, maintained that these forms of representation were consistent with equality, properly understood, freedom and the principle of government by the consent of the governed. Grotius argued that the ancient Dutch constitution in its true form “provides a sufficient degree of equality when it creates the possibility for anyone from each estate to reach, on the basis of his abilities, the highest positions and share in power.” In Lawson’s theory, the English constitution could rightfully be called a system of self-government, for “full” and “eminent” members of the community, that is, freeholders and peers of the realm, had an active role in governing the nation. Lawson writes that “in the capacity and habitude of a Parliament, they are no subjects, but in the name of the people have a Legislative power, and exercise the highest acts of Government, excepting those of the Constitution.” Similarly, he asserts that whereas lords vote in person, freeholders “virtually give their suffrage in that assembly [parliament] by their representatives.” Sidney argues that the English constitution, according to which the king may not introduce or alter any law without the assent of the lords and commons is as consistent with the principle of self-government as the direct self-rule he imagines to have taken place in the first Saxon communities that settled in England.<sup>40</sup>

What is more, as some early modern thinkers, especially those in England who were in a position to reflect on the experience of the Commonwealth and the Protectorate, for instance George Lawson and, after him, John Locke, noticed, the individualistic theory of popular sovereignty could justify *mis*-representation of the nation and even tyranny by a faction in parliament.<sup>41</sup> The ramifications of this, however, began to be more fully understood only after the revolutionaries in France in 1789 attempted to apply Rousseau’s theory of the general will, conceived with the republican city-state of Geneva in mind, to a national representative republic.<sup>42</sup> Joseph de Maistre’s comment characterizes the problem very succinctly with a

reference to Article 52 of the French constitution of 1795, which, he says, “severs all relations between representatives and their respective provinces by warning them that *they are not sent by those who sent them*, but by the *nation*, a wonderfully convenient word, since one can make of it whatever one wishes...[I]t is impossible to imagine a system better calculated to annihilate the rights of the people.”<sup>43</sup> According to the French *philosophes*, a majority of deputies to the National Assembly, themselves elected by majorities in their districts, *shall make of the nation whatever they please*, a proposition perfectly consistent with the modern, individualistic theory of popular sovereignty, which, in theory measures the will of the people by a simple tally of the votes of every individual. Granted, almost no-one today is willing to follow the individualistic theory of popular sovereignty to its logical conclusion, but rhetorical appeals to the principle are constantly made.

Both Maistre and Edmund Burke defend the corporative theory of popular sovereignty which, by their time, was already falling out of fashion in political theory, if not in political practice.<sup>44</sup> Burke does so more explicitly. The modern theory of popular sovereignty, he insists, is not a suitable foundation for a republic. It is no better an “apparatus than the metaphysics of an undergraduate...[or] the mathematics and the arithmetic of an exciseman.”<sup>45</sup> The new theoreticians see men only as abstract, equal and interchangeable units, which they are not, and based on that initial assumption, “they have attempted to confound all sorts of citizens, as well as they could, into one homogeneous mass.”<sup>46</sup> The legislators of ancient republics saw men as they really are, distinguished one from another by birth, education, profession, residence in town or country, the source of their income and other differences:

From hence they thought themselves obliged to dispose their citizens into such classes, and to place them in such situations in the state as their peculiar habits might qualify them to fill, and allot to them such appropriated privileges as might secure to them what their specific occasions required, and which might furnish to each description such

force as might protect it in the conflict caused by the diversity of interests that must exist, and must contend in all complex society.<sup>47</sup>

Such an ordering of society, says Burke, is justified on the basis of real differences among citizens, and the advantages to be gained to the whole by such an arrangement. But this division of the nation into social orders and classes also “composes a strong barrier against the excesses of despotism.”<sup>48</sup> Each of the communities, the classes, the “little platoons,” to use one of Burke’s more famous phrases, has a social structure, a solidarity internal to its members, a consciousness of its own particular rights. A nation composed of such social orders stands much stronger against a central government grown tyrannical than a mass of isolated individuals.

In a parliament or an assembly of the states general, then, what is being expressed is not the aggregated will of a mass of individuals occupying a certain territory, but the common good of a nation composed of a variety of corporations and communities of interest. As Burke expresses it

in civil society, its own specific conventions in each incorporation, determine what it is that constitutes the people, so as to make their act the signification of the general will; to come to particulars, it is equally clear, that neither in France nor in England has the original, or any subsequent compact of the state, expressed or implied, constituted *a majority of men, told by the head*, to be the acting people of their several communities.<sup>49</sup>

The parts of the nation, from particular cities and towns to classes national in extent, such as the clergy, nobility, gentry and various other descriptions of property owners, as the case may be, each had their representatives in parliaments and states general. Such classes as the nobility and clergy, obviously, had a power in government far out of proportion with the number of their members. It was through this non-arithmetical system of representation that the will of the nation was thought to be expressed. This theory of representation was contested in the mid-17<sup>th</sup> century by the English Levellers, whose alternative conception I shall examine in Chapter 3, yet it remained dominant throughout the early modern period.

Understanding the difference between the early modern and modern theories of popular sovereignty is especially important, for the demand of early modern Europeans, such as the Dutch and the English, for the preservation of their rights to have representatives in states general or parliaments evinces not only a desire to participate in legislation for the good of the nation as a whole, but also to have a perch within the national government from which the rights and privileges of local self-government could be more effectively defended against the ambitions of a centralizing monarch. The authors of 16<sup>th</sup> century Dutch and 17<sup>th</sup> century English political tracts, do not always dwell on, and sometimes do not even explicitly mention, the question of local rights, but the fact is that concerns about national government, the liberties of corporations and the rights of local self-government all are intertwined. In the case of the Netherlands, the rights of the provinces are frequently mentioned, as I shall demonstrate in Chapter 2. In practice, the national government of the Netherlands had little power to interfere in affairs of local self-government. The States General of the Netherlands decided on matters of national defense, foreign policy, and federal taxes, but there was no federal court of justice, no federal ecclesiastical government, and no federal administration, and thus, it was very difficult for organs of the national government to interfere with provincial rights.<sup>50</sup> England, on the other hand, had a unitary state with a national church establishment and national courts of justice, yet as the national government had no paid bureaucracy, its policies could not be carried out in the counties without the cooperation of local nobility and landed gentry.<sup>51</sup> The reach of the national government into the counties was thought to be strictly limited by ancient custom. When local corporate liberties were perceived to be under attack from the national government, Englishmen responded with fury. As an instance of this, I have included in Chapter 3 one pamphleteer's denunciation of Oliver Cromwell's major-generals.

Apart from that of the communities and classes of the nation, there was one other party whose voice had to be heard, if only figuratively. This was the voice of ancestors. Burke expresses this most eloquently in his formulation of the idea of the social contract as a “partnership not only between those who are living, but between those who are living, those who are dead, and those who are to be born.”<sup>52</sup> In all acts of government, “the temporary possessors and life-renters... [of a commonwealth must not], unmindful of what they have received from their ancestors, or what is due to their posterity, ...act as though they were the entire masters.”<sup>53</sup> Not all early modern Dutch and English thinkers state such a principle explicitly—Sir Edward Coke, for instance, does—but one might well say that, for them, in matters of legislation and the constitution, the consent of ancestors, determined by examining the relevant precedents on any question, was as necessary for an act of the states or the parliament as the consent of the present crop of deputies from all the communities of the nation.

Certain preoccupations of modern democratic theorists reveal that, by and large, they subscribe to the individualistic theory of popular sovereignty. If they did not, then they would not be so concerned about the idea of equality of representation in general or specific cases of alleged exclusion of certain groups in certain places from the vote. Yet even modern democratic theorists, on the whole, strongly resist the idea that the will of the majority, even if based on the freest, fairest and most inclusive of elections, should always have its way. Granted the priorities of modern democratic theorists are different. They would restrict the “general will” more for the protection of individual rights, and the rights of non-traditional and purportedly marginalized groups, and in the name of future generations whom they expect to be more progressive and cosmopolitan. For them, the channels through which the general will is forced to pass, and by which it is sometimes completely diverted, are not the rights and privileges of traditional

communities and classes, or customs inherited from ancestors, but political party competition, parliamentary deliberation, judicial review, and international conventions.<sup>54</sup>

Regardless of the differences between the early modern and modern conceptions of popular sovereignty, regardless of the units of which the polity is thought to be composed, the citizens of any polyarchy are confronted with a common problem: the requirement that they share power with their fellow citizens, and be prepared to make accommodations and sacrifices for their fellow citizens. If they are not to simply outvote one another, but come to common agreements about how their polity should be governed, the parts of the polity and their representatives must have something in common with each other, an interest that transcends the particular interests of all groups. Nationhood, I argue, is one of the preconditions of such a sharing of power.

According to Burke, the various parts of a nation are held together by shared public affections, which develop, as it were, organically, from the various social ties among its members. Says Burke:

We begin our public affections in our families. No cold relation is a zealous citizen. We pass on to our neighbourhoods, and our habitual provincial connections. These are inns and resting-places. Such divisions of our country as have been formed by habit, and not by a sudden jerk of authority, were so many little images of the great country in which the heart found something which it could fill. The love to the whole is not extinguished by this subordinate partiality. Perhaps it is a sort of elemental training to those higher and more large regards, by which alone men come to be affected, as with their own concern, in the prosperity of a kingdom...<sup>55</sup>

For Burke, the family is the most basic unit of civilized society. This is where human beings first learn to be social and to care for others. But the family by itself is not enough to generate public affections in people. Public affections first grow out of the interactions between residents neighborhoods, local communities. Then there are provinces, which each have their own cultural peculiarities, their own history. The province thus forms a larger community to which people

also form an emotional attachment. Through the connections people have with the residents of other provinces, they see that people in other parts of the country also share many of the same customs, the same prejudices, the same habits. It is clear from Burke's description here that although there is much diversity of interests and, perhaps, of customs, between one province and another, yet the residents of each can recognize, amid that diversity, something in common, as if each "division were so many little images of the great country." This last step assumes that there is a significant degree of cultural similarity between the various parts of the country. If the different provinces were culturally alien to one another, then the mutual sympathies of which Burke speaks probably would not develop.

### **5. On Prejudice: or, the "more than rational" and "irrational" bases of political knowledge**

One of the main things I wish to emphasize in this work is that, like the bonds of nationhood, attachments to particular constitutional forms are not generated or sustained by the sort of deductive reasoning one sees in Locke's *Second Treatise*. Nationhood, as Burke's account shows, depends on some degree of immediately recognizable cultural homogeneity. Likewise, a constitutional form must have some connection to the actual experience of a people if it is to be regarded as legitimate, and if its rules are to be consistently followed, even when expediency dictates other courses. Therefore, much more than abstract, universal argumentation, historical narratives, or what Rogers Smith calls "stories of peoplehood," are crucial in both activating and deepening national solidarity, and in generating and sustaining allegiance to a particular constitutional discipline.

Edmund Burke and Joseph de Maistre offer some very pertinent reflections on how human beings receive knowledge about political life. In promoting rights and constitutionalism, cosmopolitan philosophers of Habermas' school make their appeal "on the basis of reasons we think can be justified from the standpoint of all human beings."<sup>56</sup> This is the same approach as that of propagandists of the French Revolution such as Thomas Paine and Emmanuel Sieyès. Both Paine and Sieyès adorn their rationalist premises with deistic rhetoric, but the upshot of their argument is that man, in his essence, is everywhere the same, and that nature prescribes to all men the same rights. As Paine puts it "all agree in establishing one point, *the unity of man*; by which I mean all of *one degree*, and consequently that all men are born equal with equal natural rights."<sup>57</sup> This natural equality, and these natural rights are ahistorical; they originate in a common humanity that existed and now exists apart from all particular political communities. Paine annihilates all of human history in order to return to "the origin of man"<sup>58</sup> Like Paine, Sieyès rails against those who seek political wisdom in history and in old parchments. "Stop," he says "your rights are already there, within yourselves. There they are imprescribable, engraved in immortal characters by an almighty hand."<sup>59</sup> Both men also make wild-eyed promises of future prosperity for those who embrace these principles. Calculating rational individuals ought, after all, to be persuaded by appeals to their self-interest. But since there are no records of these original rights, and certainly no particular memories associated with them, the persuasiveness of such propositions must rest on logical consistency, limp, impersonal deism, and vague promises of future gain.

From the point of view of Burke and Maistre, such claims, at their root rationalistic and unencumbered by anything that could engage the affections of specific human populations, would not be persuasive for most. Human beings receive their political and other opinions in a

different way. According to Burke, unaided reason is too feeble to sustain the ties of citizens with each other, and with their institutions and their governors. Reason, if it contributes anything at all to such ties, must be supported by public affections and prejudices. Although Burke preserves the notion of contract in his political theory, he explicitly rejects the idea that society is based on a Lockean social contract. He says, for instance, that “the state ought not to be considered as nothing better than a partnership agreement in a trade of pepper and coffee, calico or tobacco, or some other such low concern, to be taken up for a little temporary interest and to be dissolved by the fancy of the parties... it is not a partnership in things subservient only to the gross animal existence of a perishable nature.”<sup>60</sup> The state, in other words, is not held together by the rational calculus of the individual, who, independent of his fellows and his ancestors, reasons that ‘the laws are what protect my individual rights, therefore I shall obey the laws.’ If that were the only foundation, then, according to Burke, the state would undoubtedly dissolve. “Men” he says, “are not tied together by papers and seals. They are led to associate by resemblances, by conformities, by sympathies.”<sup>61</sup> These resemblances, conformities and sympathies, or “public affections” are the real basis of the state, the real source of legitimacy for both political ideas and institutions. For Burke, the bond of citizens with one another and their attachment to certain ideas and institutions is either not rational, or it is something that is *more* than rational; there is more to it than the rational calculations of an individual about his interest.<sup>62</sup>

The citizen who is left with his unaided reason, and nothing else, will not know how to exercise his rights, or how to perform his duties. Therefore, not only are public affections required to sustain the state, but also prejudices. Burke writes

Many of our men of speculation, instead of exploding general prejudices, employ their sagacity to discover the latent wisdom that prevails in them. If they find what they seek (and they seldom fail) they think it more wise to continue the prejudice, with the reason involved, than to cast away the coat of prejudice, and to leave nothing but the naked

reason; because prejudice, with its reason, has a motive to give action to that reason, and an affection which will give it permanence... Prejudice renders a man's virtue his habit.<sup>63</sup>

Reason and prejudice are not always opposed to one another. According to Burke, more often than not, prejudices contain reason; that is to say, they are rational. They make sense and they are useful to social life within particular political communities. But to extract the reason and cast off the prejudice is a mistake, because, as Burke never tires of saying, unaided reason is feeble. Prejudice is a necessary aid to reason for two reasons. First, it is a stock of wisdom that is "of ready application in an emergency." One does not always have to think about what one is entitled to by right or what duty demands in any given situation. One knows how to act out of habit. Moreover, in a principle discovered by "naked reason," there is nothing to engage the affections. Good prejudices supply "reasons" to do a thing, or to forebear. Reasons that are suggested by prejudice are more compelling, because the habits and experiences that one shares with the other members of one's community, and one's ancestors, stand firmly behind them.

Maistre states the case against abstract reason and for prejudice more forcefully. His opinion on this matter is worth quoting at length:

Human reason reduced to its own resources is perfectly worthless, not only for creating but also for preserving any political or religious association, because it only produces disputes, and, to conduct himself well, man needs not problems but beliefs. His cradle should be surrounded with dogmas, and when his reason is awakened, it should find all his opinions ready-made, at least all those relating to his conduct. Nothing is so important to him as *prejudices*. Let us not take this word in a bad sense. It does not necessarily mean false ideas, but only, in the strict sense of the word, opinions adopted before examination. Now these sorts of opinions are man's greatest need, the true elements of his happiness, and the Palladium of empires. Without them, there can be neither worship, nor morality, nor government. There must be a state religion just as there is a state policy; or rather, religious and political dogmas must be merged and mingled together to form a complete *common or national reason* strong enough to repress the aberrations of individual reason, which of its nature is the mortal enemy of any association whatsoever because it produces only divergent opinions.<sup>64</sup>

This passage will perhaps seem more threatening than anything so far quoted from Burke. Maistre after all, to the extent that he is known at all, is usually known an absolutist and proto-fascist who sang ghastly paeans to the public hangman. This view, however, as some have amply demonstrated, is mistaken.<sup>65</sup> According to Maistre, human reason on its own cannot sustain any political association. As a critical and abstract way of thinking, it cannot generate the common prejudices and dogmas upon which political associations rest. It is not an extreme statement to say that individual reason has to be repressed by the national reason. The national prejudices and dogmas to which Maistre refers must in fact be able to overwhelm the contrary conclusions of an individual's reason most of the time. If the "common" or "national" way of reasoning does not dominate, then the political order cannot sustain itself, at least not for long.

As Maistre goes on to explain "In the political order... if one wants to build on a large scale and for the centuries, one must rely on an opinion, on a *large* and profound belief. For if this opinion does not dominate a majority of minds and if it is not deeply rooted, it will furnish only a *narrow* and transient base."<sup>66</sup> Maistre states his position on the question of legitimacy most concisely in the following sentence: "Government is a true religion: it has its dogmas, its mysteries and its ministers."<sup>67</sup> The characterization is applicable not only to pre-modern polities. Liberal democracy itself is a religion (I will leave it to others to decide whether it is a "*true* religion"). It, too, has its dogmas, its mysteries and its ministers. Like the Catholic Church at which Maistre worshipped and the constrained monarchy that he wanted the French to obey, it also has its heresies. If, for instance, a majority of the citizens in a liberal democratic country began to believe the cynical maxim that "if voting really made a difference, they would make it illegal" then democratic legitimacy would be in serious danger. Every political order thus rests on some set of religiously held beliefs and a disposition to worship the institutions of that order.

As Maistre puts it “Either every imaginable institution is founded on a religious concept or it is only a passing phenomenon. Institutions are strong and durable to the degree that they are, so to speak deified.”<sup>68</sup>

Habit and prejudice are concepts that Burke considered central to the question of political cohesion and legitimacy. Maistre also uses these concepts, and seems to understand their importance in roughly the same way. The individual citizen needs a stock of ready made opinions to guide his conduct, so that he will act appropriately when the situation demands, and not become entangled in a web of his own reasoning: “We *know* the morality received from our fathers as a collection of dogmas or useful prejudices adopted by the national mind. On this point we owe nothing to any man’s individual reason.”<sup>69</sup> Burke does not use the word “dogma” at all when addressing this question. And this would not necessarily be significant, except for the fact that Maistre understands *political* dogmas in a particular way. This points to a subtle, but important difference between the two, at least regarding political matters.<sup>70</sup> For Maistre, it is dogmas of a particular kind that are most compelling, namely dogmas that “astonish reason.”<sup>71</sup> Thus, whereas Burke argues that useful prejudices are often rational at their base, such that we could distill them down to pure rational principles if we so chose, Maistre claims that in fact some of most useful prejudices and dogmas are strikingly irrational, and that this is perhaps the main source of their power. Maistre argues that if rationality were the true criterion for durable opinions and institutions, then the survival of the Christian religion could only be considered miraculous:

Who can show us one other religion founded on miracles and revealing incomprehensible dogmas, yet believed for eighteen centuries by the greater part of mankind and defended down through the ages by the greatest men of each era from Origen to Pascal, despite the utmost efforts of an enemy sect that, from Celsus to Condorcet, has never ceased bellowing?<sup>72</sup>

It may be, then, that in politics, as well as in religion, the miraculous and the incomprehensible are more compelling than anything rational. Thus, political communities would need mysteries and miracles more than rational principles.

Reason alone will not make the body politic cohere. The ties that bind citizens to each other, to their institutions and the governors are either *more than rational* (Burke), or they are *irrational* (Maistre). Given a religious society, the state must be “consecrated” by the dominant religion (Burke), or “deified” (Maistre). This means that there must be a state religion, but more generally, that the political order rests on a religious kind of veneration. Above all, the government of country must be a reflection of the more than rational or irrational prejudices, habits, sympathies, affections and dogmas that dominate in society.

## **6. Forensic History and Epic History**

Rogers Smith has coined the term “ethically constitutive stories.” He argues that “stories of peoplehood” play an incalculably large role in politics. It has become something a cliché that, in politics, the winners are always those with the best stories. This, we will see, is as true about the past as it is about the present. The stories of peoplehood that Smith has in mind are stories shared by both political elites and masses that define our duties as members of a culture, a religion, a race, or a nation.<sup>73</sup> These stories are always contested, as different political actors understand them in different ways and manipulate them to suit their aspirations. Yet, as Smith notes “forms of political peoplehood... are largely generated, motivated, and also meaningfully limited by the particular range of stories of possible political identity that they have inherited and long valued.”<sup>74</sup> In other words the possibilities, for example, of different political forms in a given polity are significantly limited by the range of stories by which a particular people defines

itself. Smith also notes that “stories of peoplehood underline the independence of ‘the people’ from their government.”<sup>75</sup> In fact, as Smith’s theory would suggest, there are various stories of peoplehood in a given polity, some of which emphasize the people’s dependence on their rulers, and others their independence. The emergence of constitutional self-government obviously requires the victory of stories that emphasize the people’s independence from their government.

The stories of nationhood are always historical in form, but, it should be obvious, these historical narratives do not conform to modern academic standards. This is not to say, however, that their authors consciously engaged in myth-making, or that the stories themselves would appear, supposing we were to evaluate them by modern historiographical standards, to be entirely mythical. There are at least two ways we might characterize such historical narratives. In view of the fact that most writers of ancient constitutional history were, at least in England, common lawyers, John Phillip Reid calls their historical narratives “forensic history.” Although the terms common law and common lawyer have little currency in the Netherlands, the famous “pensionaries” who wrote Dutch political tracts, such as Francois Vranck and Hugo Grotius were public servants trained in common law of their provinces. Reid lists some of characteristics of this type of history. In the first place, it is selective; it involves “the marshaling of facts supporting only one side of a litigation.” If precedents for a particular argument are in short supply, a forensic historian can assume the validity of his principle, and place the burden of proving the contrary on his adversary. In some instances, there may be conscious manipulation of particular precedents.<sup>76</sup> The authors I consider here employ all of these techniques in their historical narratives.

However, I must dispute Reid’s purely instrumentalist interpretation of the appeals of common lawyers to history. He claims these men spoke and wrote about the ancient constitution

“not because thinking of the past led them to champion restraint” on the power of the government, but because “the ancient constitution was a convenient, pragmatic, contemporary and forensic way of arguing restraint by those already converted to that side of the constitutional paradox.”<sup>77</sup> It is possible this is true of the 18<sup>th</sup> century English and American lawyers to whom Reid refers. But there is no evidence to suggest that 17<sup>th</sup> century common lawyers such as Coke and Selden, or their Dutch or Russian counterparts for that matter, viewed history only as a means to convey arguments arrived by reason to a wider population. As I note in Chapter 3, Selden in particular was very scrupulous in his use of history. Coke, compared even to his contemporaries, was remarkably uncritical, but that still does not make his approach to history merely instrumental. These men were certainly aware that the records of their nation’s common law contained many precedents that did not fit their interpretation of the ancient constitution. But the weight of history, as they saw it, was generally on the side of constitutional restraint. That general view, imparted to them in large part by their understanding of the nation’s past, they presented forensically to the wider population.

There is an additional component of the historical narratives which, as Reid points out, is “not prevalent in most forensic history,” that is, “the division of the past between heroes and villains.”<sup>78</sup> This points us in the direction of another type of history. Nietzsche, in his essay “On the Uses and Disadvantages of History for Life” describes a few varieties of history all of which are opposed to “history as a science.” It should be said that Nietzsche rejects not so much the application of scientific methods to the study of history, but rather the dispassionate attitude of the scientific researcher: “To take everything objectively, to grow angry at nothing, to love nothing, to understand everything, how soft and pliable that makes one.”<sup>79</sup> Such a disposition makes one unfit for action. For history to be useful for life, Nietzsche tells us, it must inspire and

prepare men for action. “History,” he says “belongs above all to the man of deeds and power, to him who fights a great fight, who needs models, teachers, comforters and cannot find them among his contemporaries.”<sup>80</sup> The sort of history that provides models, teachers, and comforters from the past to the man of action comes in three species, to wit “monumental history,” “antiquarian history,” and “critical history.” The first two are most pertinent in characterizing the historical narratives I treat here.

According to Nietzsche, the essence of “monumental history” is “that the great moments in the struggle of the human individual constitute a chain, that this chain unites mankind across the millennia like a range of human mountain peaks, that the summit of such a long-ago moment shall be for me still living, bright and great.”<sup>81</sup> Monumental history focuses on the peaks of great human courage and achievement, and ignores all the intervening “dross, refuse, vanity, animality” which, if one were to study it, would incline the soul to hopelessness and apathy. From “the monumentalist conception of the past” the potential man of action learns that “the greatness that once existed was in any event once *possible* and may thus be possible again; he goes his way with more cheerful step, for the doubt which assailed him in weaker moments, whether he was not perhaps desiring the impossible, has now been banished.”<sup>82</sup> Since its purpose is to inspire by presenting “something exemplary and worthy of imitation,” there will always be some distortion of the motives driving historical actors, the making of what is dissimilar to look similar, the beautification, the exaggeration of the significance of certain persons and events.<sup>83</sup>

If monumental history spurs the would-be hero out of his apathy by an appeal to exemplary persons and events, antiquarian history, according to Nietzsche, draws the individual out of his isolation, and makes him part of a “we:”

The history of his city becomes for him the history of himself; he reads its walls, its towered gate, its rules and regulations, its holidays, like the illuminated diary of his

youth and in all this he finds again himself, his force, his industry, his joy, his judgment, his folly and vices. Here we lived, he says to himself, for here we are living; here we shall live, for we are tough and not to be ruined overnight. Thus with the aid of this “we” he looks beyond his own transitory existence and feels himself to be the spirit of his house, his race, his city. Sometimes he even greets the soul of his nation across the long dark centuries of confusion as his own soul.<sup>84</sup>

Antiquarian history acquaints the individual with the habits, customs, laws and ceremonies of his people stretching far back into time. Looking into them, he finds them familiar and develops a deep affection for them. In the customs of his people he sees his own image reflected back and becomes part of an intergenerational community, about whose fate he cannot be indifferent. Antiquarian history also evokes a conservative disposition, which, Nietzsche says, is necessary for the preservation of a community. It allows peoples to be “contented with their own homeland and its customs” and dampens the urge to “restless cosmopolitan hunting after new and ever newer things.”<sup>85</sup>

If one combines the techniques and the effects of monumental and antiquarian history, it seems one ends up with a “national epic.” Indeed, it is odd that Nietzsche does not speak of “epic history.” This was precisely the sort of history Thomas Carlyle had in mind when he undertook to tell the story of England’s Puritan Revolution. Like Nietzsche, Carlyle rails against academic historians to whom he gives the collective name “Dryasdust.” The tens of thousands of pamphlets from the Civil War stored in the British Museum he describes as “huge heaps of mouldering wreck, wherein, at the rate of perhaps one pennyweight per ton, lie things memorable.”<sup>86</sup> In general, Carlyle suggests, most of what one finds in the historical record is utterly worthless. It is not worth printing, much less being analyzed and commented upon: “The sound of them is not a *voice*, conveying knowledge or memorial of any earthly or heavenly thing; it is a wide-spread inarticulate slumberous mumblement, issuing as if from the lake of Eternal Sleep. *Craving* for oblivion, for abolition and honest silence, as a blessing in

comparison.”<sup>87</sup> Most historical materials deserve oblivion and abolition.

The role of the true historian, according to Carlyle, is to sift the few heroic and exemplary elements from the general rubble and present those to the public in epic form, as the ancient poets did:

I have known Nations altogether destitute of printer's-types and learned appliances, with nothing better than old songs, monumental stone heaps and Quipo-thrums to keep record by, who had truer memory of their memorable things than this! Truer memory, I say: for at least the voice of their Past Heroisms, if indistinct, and all awry as to dates and statistics, was still melodious to those Nations. The body of it might be dead enough; but the soul of it, partly harmonised, put in real accordance with the 'Eternal Melodies,' was alive to all hearts and could not die. The memory of their Brave Ones...[rose]...like a Heaven's Apparition, which it *was*, it still stood radiant beneficent before all hearts, calling all hearts to emulate it, and the recognition of it was a Psalm and Song.<sup>88</sup>

The Greeks had their *Iliad*. In it was their pantheon, their gallery of heroes who represented the qualities worthy of memory and emulation. England, thought Carlyle, needed an equivalent *Cromwelliad*. In short, for Carlyle, the study of history had to do with sifting out the persons and events worthy to be added to the national pantheon, for the pantheon is the essence of a nation: “By their pantheons ye shall know them!”<sup>89</sup> History writing should, insofar as it is possible, be a psalm and song, and a call upon all sons of the fatherland to emulate its *exempla*.

These reflections by 19<sup>th</sup> century thinkers on the moral and political uses of history are surely too self-conscious for early modern writers of constitutional history. Nevertheless, they help us to understand the approach of those earlier writers, for them more instinctual, to history, and to recognize many of the patterns in their narratives. The early modern texts written in defense of constitutional self-government combine both the monumental and the antiquarian, the exemplary deeds of courage of particular men or generations of men, the continuity of national custom, and the consistency of the national character. They never attain to the grandeur of

Homeric epic, but at certain points they approach such heights. Moreover, the most frequently used rhetorical devices, that is, appeals to the fame of ancestors and the judgment of posterity, are strikingly Homeric. Just as Nestor, in the dispute between Achilles and Agamemnon, appeals to the example of great ancestors: “hearken unto me...Ere now I have consorted with warriors that were better men than ye,” such as Peirithous, Dryas, Caeneus, Exadius, Polyphemus and Theseus. “Mightiest were these of all men reared upon earth; mightiest were they, and with the mightiest did they fight, even with the centaurs that had their lairs among the mountains, and in terrible wise did they destroy them.”<sup>90</sup> Just as Patroclus reminds Achilles of his duty to posterity: “How shall any other yet to be born have any profit from thee, if thou ward not off shameful ruin from the Argives?” and, in essence, tells him that his refusal to fight for his fellow Greeks is the sort of betrayal one would expect only from a bastard: “Pitiless one, it seems the knight Peleus was not your father.”<sup>91</sup> So do early modern defenders of constitutional self-government appeal to the brave ones of bygone ages who protected the liberties of the nation and to the judgment of future generations. So do they accuse the deniers of that ancient liberty of bastardy, of not being true sons of the fatherland.

## **7. Narratives of Nationhood and Constitutional Self-Government**

My general argument is that the sort of national consciousness I have been defining provides indispensable resources both for united popular resistance against autocratic rule, and for the formation and legitimation of national systems self-government. Resistance and constitutional self-government both require a national consciousness that includes a myth of national origin, a national language, a common faith, and, crucially, native traditions of self-government, and stories of heroic ancestors who successfully defended those traditions against

usurpers and tyrants. It is through national consciousness that abstract theories of resistance and limited self-government become concrete and tenable. It is through national fellowship that the idea of a political nation, possessing the right to make rulers accountable to its will and the courage to force the matter when necessary, comes into existence and is sustained over time.

The general pattern of these ethnic, or national-historical narratives, is as follows. First, the only credible challenger to absolute monarchy or dictatorship is nativism, an appeal to the rights, privileges, customs, and folkways of native ancestors, who, as the narrative always goes, have been enslaved by a prince or dictator who is either actually foreign, descended from foreigners, or who, by his disrespect for native customs, is seen to behave like a foreigner. Second, credible resistance to absolutism requires an appeal to a successful rebellion against tyranny from the past. Third, to be established in the present, self-government must be seen to be the ancient authentic tradition of the nation, which was later corrupted. Self-government is not newly created *ex nihilo*, it is “restored.” Thus there must be traces in the past of this tradition of self-government. All of the foregoing assume national consciousness. “One man, one vote” democracy is part of the same development. It is the bringing of larger swathes of the common people into already established traditions of self-government. Democratic narratives, as opposed to aristocratic ones, assert that there was a time when all the people were enfranchised and that, in any event, the lower orders are part of the nation too, and therefore deserve to exercise national sovereignty together with the other members.

This type of narrative has important advantages over more abstract arguments based on some notion of natural rights or natural law. First, the courageous and virtuous ancestors who fought in unity for their liberties serve as the present generation’s better selves. They can inspire courage in the present generation to act. If our ancestors could depose tyrants and then act

together as one nation, sharing power among themselves, then so can we. If we cannot, then we are a disgrace to our forebears. Second, the laws and institutions discovered in dusty parchments provide a basis for agreement on constitutional procedures. Third, an ancient constitution connected to common memories of the national past is likely to have more appeal and legitimacy in the country at large than a new constitution decided by majority vote at one assembly at one moment in time. Finally, the narratives were based on actual constitutional experience, which cannot be discovered by pure reason, or distilled into axioms. There is the Platonic way of looking at such questions, which states that abstract ideas are the substance, whereas the myths are the clothing for the ideas; but this is simply wrong. Abstract ideas can never contain everything that is politically significant. When one distils everything down to axioms, one does not gain greater clarity, rather one loses much of the real substance. The narratives contained much of this substance and presented it in an accessible form.

The evidence for this is the collection of political treatises, pamphlets and speeches supporting constitutional self-government that were written and published in the relevant historical periods. These writings are, first of all, evidence that national consciousness and belief in a constitutional tradition existed among some people. But also they were to a certain extent, constitutive both of national consciousness and constitutional traditions. This is not to say that the authors created national consciousness or invented constitutional traditions out of nothing. They were dealing with populations that already had commonalities of custom, language, race, and religion, as well as common historical memories. The texts in question both activated historical memories that were already in existence, and, to a certain extent reconstructed them, whether consciously or not. There is no question that these accounts of the national past had many mythical elements to them. But the myths were at least connected to actually existing

institutional practices and experience. So we should not necessarily call these national narratives *noble lies*. It is more accurate to call them *noble exaggerations*.

As I say, the lack of attention to nationhood and nationalism is a problem both in contemporary democratic theory, and in the history of political thought. In the debates of democratic theorists concerning the individual, the state, popular sovereignty, and legitimacy, the category of 'nation' is all too often confounded with other categories, left out of consideration altogether, or, where recognized, it is regarded as a thing, perhaps useful in the past, that now, in the postmodern age, must be overcome. And yet without the nation, with its history, memories, traditions, and the ethnic and territorial boundaries it supplies, political theorists have a hard time explaining why 'this multitude of individuals' is in fact 'a people' whose members owe special duties to one another, who have a right to form a government accountable to themselves and to no others, and who have a duty to abide by a particular constitutional discipline in their relations with each other and their government. They also find it hard to explain how a great multitude of disparate individuals can form a coherent joint resistance to a tyrannical government, or why the removal of a dictator leads, in some cases, to liberal democracy, and in others, to chaos culminating in the establishment of another dictatorship, or even the dissolution of the state.

When one considers the historical scholarship, one finds, at least in the more popular works of Skinner, Tuck, and Franklin, early-modern constitutionalist writers who made historically-minded arguments dripping with nationalist rhetoric, are treated as mere stepping stones leading to a culmination in John Locke and his universalist theory of human rights and constitutional government. Skinner, for his part, treats the arguments of the French monarchomachs as precursors to Locke's *Second Treatise*.<sup>92</sup> He gives only brief consideration to the national-historical, nativist argumentation of François Hotman's *Francogallia*, and focuses

on the bits of natural rights discourse he finds in the *Vindiciae Contra Tyrannos*, the writings of Beza and other works. Tuck, in his well-known monograph on *Natural Rights*, takes a similar approach, selecting those works of Selden and Grotius which presage a natural rights discourse, although the ‘nationalist’ scholarship of these two thinkers was arguably more important for the development of constitutional self-government, and the protections of individual rights entailed therein, in the Netherlands and England.<sup>93</sup>

My claim is that the national-historical arguments of these thinkers provided something fundamentally different, and something more fundamentally important for the development of modern constitutional democracy. They did not merely provide better thinkers such as Locke with material to construct their abstract theories. Nor did they endow individuals with abstract human rights. In a sense, the texts of early modern defenders of constitutional self-government rhetorically reconstituted mere ‘multitudes’ as ‘nations’. They were written from the point of view of one ‘reminding’ his own people of something ‘forgotten,’ that they were the descendants of ancestors who had possessed a coherent political community, who had loved liberty and tolerated kings only to the extent that the latter procured the common good and protected their liberty as a people. Our ancestors, in other words, constituted themselves as a people, and then delegated certain authorities to kings and other magistrates. They had a settled way of sharing the sovereign power of the nation among its various estates, and they guaranteed their fellow subjects certain rights, which were understood to inhere in them not as human beings, but as members of a particular national community of common blood and custom. They were no formless mass in need of a king to shape them into a nation, and, indeed, when kings trespassed on their native rights, they petitioned, chastised and even deposed them.

The emergence of constitutional self-government in Western Europe within the framework of already existing nations is sometimes viewed as a fortunate coincidence. Before there can be rule by the people, one has to know who the people are. In well-established nations, where at least the politically active portion of the population has developed a national consciousness, this question has already been resolved. As Pierre Manent writes,

Democracy as we understand it came into being within the framework of the nation...the nation provided the concrete context and gave 'flesh' to the democratic abstractions of the sovereignty of the people and of the general will. It is this people here who wish to govern themselves, who wish to be represented by a parliament elected by universal suffrage.<sup>94</sup>

This is generally true, and even Jürgen Habermas admits as much.<sup>95</sup> However, if we observe the historical development of constitutional self-government in Holland, England, and indeed elsewhere, we will see that the simultaneous rise of national consciousness and demands for self-rule in a country are more than a fortunate coincidence. In fact, constitutionalist and nationalist discourses were mutually reinforcing. In the first place, we observe the discovery of traditions of liberty and self-government in a people's ethnic history. Second, the location of such traditions in an ethnic past either creates, where it does not yet exist, or deepens an already existing, national consciousness. The people, as a coherent community that ruled itself in the distant past, is perceived to be older than the royal family that now rules over it. Its rights, being more ancient, surpass in dignity those of the monarch. The example of self-rule in the past, moreover, endows a people with confidence in its ability to act harmoniously as one, without a sovereign person to unite its disparate members. Essential to that confidence in the ability of one's nation to rule itself is a belief in ancient practices which facilitated self-rule, avoiding the tyranny of rule by a faction, the chaos of factional struggle, and the abuse of individual rights. Finally, the act of defining the people as a coherent body who have inherited rights from their ancestors and

the widening recognition of this fact eventually erode the remaining customary barriers to the establishment of universal suffrage. Arguments for delimiting political right are defeated by the principle of equality for “natives”, for members of the nation.

In this study, I focus mostly on the first two steps. The completion of the third step, toward universal suffrage for all members of the nation, would take me beyond the historical periods in question. What is more, the deeper problems attendant upon that development, most notably the erosion of the aristocratic element in constitutional self-government, would require much more attention than can be given to it here. Such reflections properly belong in another book, with the word “aristocracy” in its title. Here, I will consider the aristocratic element in ancient constitutionalism in a very limited way: 1.) as a source of the rhetoric of civic virtue, (2.) as a tradition which supported the opinion that constitutional self-government required a distribution of legislative sovereignty between two assemblies, that is, bicameralism. Regarding universal suffrage, I shall show in all the cases here under consideration that the arguments for democracy were already formulated in the earlier period, and that the objections raised by opponents, while not devoid of merit, are decidedly weak given the way they are framed. The early proponents of universal suffrage may have lost in the event, but their claims were found to be very persuasive.

I do not claim that ethnic narratives were the only source of aspirations to limit power, protect rights, impose a shared notion of the good, and otherwise make government accountable to the people, or that they were sufficient by themselves to inspire Europeans to demand these things. A three-dimensional view of human beings requires an acknowledgment of their various modes of thought and motivations. The early modern period in particular is noted as an age in which a great diversity of doctrines theological, political, and social, as well as ordinary

economic interests, influenced men in varying degrees and in various combinations. No sensible person could deny that economic interests stood, among many other things, behind the demand for the protection of rights to property. There is no question that Biblical sources in general, and Protestant theology in particular contributed much to these aspirations. Religion, moreover, injected concrete content and popular passion into the nation-building process in early modern European states, as Anthony Marx has shown. Although the story is more complicated, one of the prisms through which the Dutch Revolt may be viewed is that of a Protestant nation rising against a Catholic King. England was forged as Protestant nation, with much bloodshed, before the revolutions of the 17<sup>th</sup> century. Hostility toward a perceived papist threat from within (Catholicizing monarchs and bishops) and without (Catholic France and Spain) continued well into the 18<sup>th</sup> century. In both cases, the desire to improve the religious character of the nation, balanced by a desire for freedom of conscience for individuals, provided a powerful impetus to political action. Religion is not my focus in any event, thus theology receives scant attention. But insofar as religion was a defining element of a nation's character, and part of a shared notion of the common good which the nation's representatives thought themselves justified to inculcate and protect through political means, it is addressed here. The abstract legal philosophy of contract and consent employed by Hobbes and Locke—but not invented by them—also played a role, as did the rediscovery of ancient Greek and Roman republicanism. But these things, I assert, would have meant nothing had they not been adapted, by national political writers, to fit distinct national narratives.

I focus on ethnic narratives not to deny the role of other factors, but to point out their special contribution, and to make a claim concerning their continued importance. The universal principles of natural right, consent, and contract do not provide adequate answers to the question

of who the people are. A particular religion can be one characteristic of a particular people, but it cannot be the only trait. If the Dutch had defined themselves exclusively, or even primarily by their Protestantism, then William the Silent would not have asked predominantly Catholic provinces to renounce their Catholic king and join him. Nor would such provinces have wanted to be part of a republic defined exclusively by Protestantism. If the English had been defined exclusively by their Protestantism, then the Dutch and French (Huguenot) Protestants across the channel would have been no less English than they. If, on the other hand, nations had been defined by particular denominations, then the people who called themselves English would have been divided into separate nations of Anglicans, Presbyterians, Independents, and hopelessly anarchic groups of sectaries. Finally, the existence of class identities does not explain why poor Englishmen should think to demand that rich Englishmen extend political rights to them, or why the rich Englishmen should be persuaded by such appeals. The shared national narratives are what ultimately convince persons belonging to different classes and different Christian denominations that they are equals at least in virtue of their common membership in a nation. Nationalism overcomes, however imperfectly, differences of class and of religion; or rather, it must do so. Otherwise, the establishment of self-rule is likely to lead to any number of things, none of which are good, to wit, class exploitation, civil war, secession, or despotism, which according to Hobbes, was the only answer for a multitude lacking sufficient internal sources of unity. The national narratives, moreover, provide what abstract theories and foreign lawbooks cannot: they tell of the institutions that arose here, in this place, to suit the specific needs of “our ancestors.”

My choice of texts is governed by three rules: First, I have endeavored to choose such texts as were widely available, or at least in print, before or during the relevant political events,

or such as were essentially the recordings of public debates (the one exception being the writings of the Decembrists in Russia, which did not become generally known until decades after their authors had been undone as a political force). Second, to the extent that this is possible at all, I have tried to cull out of the great mass of materials those examples which seem, in my judgment, which is obviously influenced by the selections other scholars have made, the most broadly representative of the opinions of the age. Third, confining myself within the first two sets of parameters, I have chosen those texts which are particularly cogent in their treatment of particular theoretical and practical problems, such as questions of rights, polyarchy (the sharing of sovereign power by different estates), the rule of law and constitutional form, democratic representation, and what underwrites them all, ideas of nationhood.

## **8. Establishing and Restoring Constitutional Self-Government**

My focus in this work is historical, but I do not wish to lose sight of contemporary problems. The challenges of the 21<sup>st</sup> century are very different from those of the 16<sup>th</sup>, 17<sup>th</sup>, 18<sup>th</sup> and 19<sup>th</sup> centuries in many respects, yet in some fundamental ways they are much the same. Time has done nothing to undermine the old republican opinion that unchecked power inclines almost inevitably to corruption, and that without a virtuous citizenry capable of uniting for common action, no republic can long endure. Formal checks and balances notwithstanding, the inclination of “economic leviathans”<sup>96</sup> to use their connections to power for their own benefit, at the expense of everyone else, is almost as much a constant of life as death or taxes, and so virtuous citizens must always be prepared to apply a countervailing force. Moreover, the pressures of 21<sup>st</sup> century politics and economics are especially corrosive of the principles of division and checking of powers, protection of individual rights, and of peoples ruling

themselves in accordance with laws rooted in their culture. Whether one is engrossed by concerns of national security, or social justice, fears of economic inefficiency, or social, political and economic anarchy, the consequence always seems to be a drive to streamline and to centralize power, and to introduce exemptions to traditional rights that stand in the way of measures which, we are told, are dictated by dire necessity. If in the old days monarchs pretending to a divine right sought to rule unchecked, now the de facto executives of various states and transnational financial elites, often in league one with another, are the ones who seek most tenaciously to concentrate unlimited power in their own hands. In short, the key political problems of previous centuries remain relevant.

Today's multinational corporations win funding, dispensed at the discretion of bureaucracies beholden to the executive, to advance their own peculiar interests. When an earlier generation of Westerners saw kings granting monopoly rights and other privileges to particular economic actors, they regarded this as an attack on the economic liberty of all subjects, and on the prosperity of the nation as a whole. They insisted that the chief executive could not make such deals with particular businesses, and that, moreover, it was—with important exceptions for the common good, to be thoroughly debated in parliament and, if approved, to remain subject to parliamentary discretion—generally inconsistent with the liberty of subjects, and national prosperity, for governments to confer special privileges on certain persons or corporations. Today's chief-executives increasingly go to war not with the consent of their people, through traditional constitutional procedures, but with mandates from the U.N., supposedly based on the need to protect "human rights."

In the face of similar pressures, the commitment of 21<sup>st</sup> century citizens to the principles of constitutional self-government will not stand on reason, much less on considerations of

expediency, the very justification that is most often used by those who aim to rule unimpeded by instilling passivity and fear, and most often heeded by those who are apathetic or afraid: it can only be sustained, as it was in earlier centuries, by strong *national prejudices* supported by the sort of courage that belongs only to those who value their honor, freedom and national culture above their own lives.

A spirit of national fellowship and nationally rooted prejudices in favor of constitutional government are even more essential in countries that do not presently enjoy even the eroded freedoms and constitutional protections of Western European based nation-states. The population of a country such as Russia, I argue, would have to become *more* nationalistic for the establishment of constitutional self-government there. Such national mobilization, however, would have to be preceded by the popularization of a version of the nation's history and character that is compatible with the principles of the desired form of government.

Constitutional self-government also faces a variety of new challenges. Among these are increased pluralism from mass immigration, and the hostility toward nation-states and the traditional *Staatsvölker* of said states on the part of intellectual and activist elites committed to various alternative visions of political and social order. Twenty-first century liberal-democratic ideologies not only lack the resources to combat the drive toward centralization in matters such as the economy and war powers, but in fact it has been revealed to be the perfect court ideology for this new order. All of its various forms, from statist liberalism to multiculturalism, to constitutional patriotism, promote just the kind of consciousness is laying the groundwork for the new order. Statist liberalism produces the atomized, self-interested, passive individual who has neither the desire nor the capacity join his fellows in a struggle to make government accountable to their wishes.<sup>97</sup> Multiculturalism produces mutually hostile factions who compete with each

other for recognition and largess from the state.<sup>98</sup> Constitutional patriotism, on the model of the European Union, robs peoples of their historic rights and institutions and replaces them with chimerical “human rights”. The emphasis in liberal democratic ideology on equal rights for all members of the human race, to the prejudice of the rights of members of particular nations, is perfectly suitable to the new order of globalized crony capitalism, and undemocratic *dictats* from transnational organizations which style themselves representatives of “global public opinion.” The plea for “tolerance”, “reasonableness,” “human rights,” and “global public opinion”, common to all the forms of liberal democratic ideology I have listed, is a plea for cowardly surrender to unaccountable and distant rulers. Resistance to tyranny and the assertion of the right to self-government require a different sort of consciousness. What is required in this age is not tolerance, but intolerance, not reasonableness, but courage.<sup>99</sup>

The sovereign nation-state, as Jeremy Rabkin demonstrates, is the only place where constitutional self-government has ever been achieved. The intrusion of global governance, somewhat like the ghostly authority claimed by Popes of old, threatens to undermine the national constitutional mechanisms by which political power has been effectively measured and limited, and rights asserted and protected.<sup>100</sup> The sovereign nation states provides a space for particular peoples, when the rest of the world is going wrong, to apply themselves to getting things right at home. “National independence,” he writes, “is the first bulwark of personal rights.”<sup>101</sup> And for a people to be bound together in a common constitutional discipline, it is necessary, continues Rabkin, that they have, in the words of Locke, that “some acquaintance, friendship and trust in one another.”

The principles of government defended here are, it must be admitted, logically incompatible one with another to a certain extent. These three principles are the inviolability of

the liberties of the subject, the division of the sovereign power between different branches of government, and between national and local government, and the right of the nation, as a nation, to rule its members for the common good, to preserve a particular way of life that supports their shared notions of the good. In short, the three principles are the rights of the individual, the rights of the nation, and the division of sovereign power. All are components of constitutional self-government, as I define it here, yet it is obvious that neither the rights of the individual, nor the rights of the nation, nor even the principle of dividing the sovereign power, whose purpose is to protect the former two principles, can be made absolute without prejudice to the others. If individual rights are to be supreme, then how can a national majority, however mediated by institutions and the interests of classes and corporations, favor particular notions of the good without prejudice to dissenting individuals? If the democratic right of the nation be supreme, then how can any individual be absolutely guaranteed protection of his life, property and any other freedoms he cares to assert for himself as an individual? If the principle of dividing the sovereign power be supreme, then what is to be done in the event of a constitutional stalemate which threatens the interest of the nation, the rights of individuals, or both? None of these principles can be made absolute without potentially destroying the rest. What is required is a balance of principles that are logically at odds with one another, and such a balance, I say again, can only be maintained by the cultivation and maintenance of national prejudices to support it. Good prejudices themselves cannot be imposed on any multitude by an enlightened central government. The ideas have to be present already in the national memory, and capable of being popularized, and this is unlikely in a multitude riven by deep ethnic, cultural, and ideological divisions.

What I call the democratic right of the nation, to be a nation, to assert its own national culture, is unlikely to be acknowledged as easily as the other two principles. Indeed, many, perhaps most, contemporary democratic theorists deny such a right.<sup>102</sup> I defend it on two grounds: first, for its own sake. All the Dutch, English and Russian authors considered in this work defended such a right, and would have regarded the deniers of the rights of nations to be traitors, and, in the words of Giuseppe Mazzini, “humanity’s bastards.”<sup>103</sup> The right of nations remains important for its own sake in the present as well. In the words of Yael Tamir: “the respect for continuity inherent in national membership enables individuals to place themselves in a continuum of human life and creativity, connecting them to their ancestors as well as to future generations and lessening the solitude and alienation characteristic of modern life.”<sup>104</sup> Second, because a national culture, as both the basis of political community and as the repository of particular prejudices is necessary to sustain the other principles, that is, the inviolability of individual rights and the division of power. In most people, these opinions emerge from and are sustained not by reasoning so much as by the individual’s attachment to his national culture.

The bulk of this work consists of an effort to substantiate these claims through an examination of the development of nationalist political thought in three countries: the Netherlands, England and Russia. Each historical chapter begins with a consideration of the absolutist political discourse prevalent in each country, and proceeds to an in-depth examination the nativist discourses that were provoked thereby. In Chapter 2 on the Netherlands, I begin with the absolutist statements of King Philip II of Spain and a few of his lieutenants, as well as the *Politica* of Justus Lipsius, and proceed to examine the nativist, constitutionalist discourses of William of Orange, the *Justification* of 1568, and the *Apology* of 1580, as well as the *Defense and True Declaration* of Philips of Marnix, Lord of St Aldegonde, 1570, the *Discourse* of

“Junius” Johan de Jonghe, the anonymous *Address and opening to make a good, blessed and general peace in the Netherlands*, and conclude with Hugo Grotius’s *Antiquity of the Batavian Republic*. These texts established a tradition of the Netherlands as an independent nation governed by a confederal form of government composed of the nobility, clergy and representatives of the several provinces called the States General.

Chapter 3 on England begins with the absolutism of James I and Hobbes, and examines the constitutionalist thought of Sir Edward Coke and John Selden, Philip Hunton’s *Treatise of Monarchy*, Nathaniel Bacon’s *Historical Discourse on the Uniformity of the Government of England*, the *Putney Debates* and selected Leveler pamphlets, the main political works of George Lawson, and concludes with Edward Cooke’s *Argumentum Anti-Normannicum* and Algernon Sidney’s *Discourses Concerning Government*. These texts among others established the tradition of conjoint rule by King, Peers and Commons and the corporate and individual rights of subjects first codified in Magna Charta. Together, the English and Dutch cases provide more or less unproblematic confirmation of my theory about the nationalist origins of constitutional self-government.

Russia is a problematic case. Something very similar to the nationalist reaction against absolutism begins there in the late 18<sup>th</sup> and early 19<sup>th</sup> century when writers begin to blend constitutional theories of government with stories of native traditions and native heroism. But for a variety of reasons, these promising narratives are shunted aside by the advocates of the people’s independence from their rulers in favor of purely liberal and civic republican appeals, which fail to garner widespread support, while the autocracy appeals to Russian nationalism. Chapter 4 on Russia begins with the defense of autocracy (*samoderzhavie*) by court historian Nikolai Karamzin, and then examines two nativist responses, one by Decembrist rebels such as

Pavel Pestel, Nikita Murav'ev, Mikhail Fonvizin, Gavril Batenkov and Count Dmitriev-Mamonov, who desired to restore some form of Russia's ancient constitutional government, and another by Slavophiles such as Aleksei Khomyakov, Yuri Samarin, the brothers Aksakov and Aleksandr Koshelev whose liberty agenda was limited to local corporate rights and local self-government, and did not present a constitutionalist challenge to autocracy. The chapter concludes with a consideration of how these two discourses lived on among Russian émigré writers after 1917, notably Georgi Fedotov and Ivan Ilyin, and examines their visions of Russia's post-Soviet future.

Throughout these three chapters, I argue that Lockean liberalism and Rousseauian civic republicanism are not a sound basis for a tradition of self-government. I show in Chapter 3 that as much as Locke was opposed to Hobbes, it is his own liberal arguments which lead us back to the Hobbesian solution to politics. Locke's arguments lead either to the friendless passive individual who has nowhere to turn to for protection but the mighty Leviathan, or to warring factions who each think they have a right to exercise national sovereignty according to formulas that are nothing but the fantasies of their own brains. In Chapter 4 I argue that the extreme rationalism of some of the Decembrists was fraught with the same dangers.

Chapter 5 presents a critique of the four contemporary iterations of liberal-democracy, agonistic pluralism, statist liberalism, multiculturalism, and constitutional patriotism. I will explain, with reference to my cases, why these doctrines are most likely incapable of sustaining constitutional self-government. I conclude with a defense of nationally oriented constitutional self-government.

<sup>1</sup> I shall engage with liberal and cosmopolitan theories of constitutional self-government in the concluding chapter.

<sup>2</sup> The chief works of the ‘modernists’ are E. Hobsbawm, *Nations and Nationalism since 1780*, (Cambridge University Press, 2012); E. Gellner, *Nations and Nationalism*, (Ithica, NY: Cornell University Press, 1983); B. Anderson, *Imagined Communities*, (London: Verso, 2006). The ‘modernist fallacy’ is refuted in several studies by Anthony D. Smith, especially *The Ethnic Origins of Nations* (Oxford: Blackwell, 1988); *Nations and Nationalism in a Global Era* (Cambridge: Polity Press, 1995); *The Cultural Foundations of Nations*, (Oxford: Blackwell, 2008); by A. Hastings in *The Construction of Nationhood*, (Cambridge University Press, 2006); and by Steven Grosby in “Nationalism and Social Theory: The Distinction between Community and Society,” in *Routledge International Handbook of Contemporary Social and Political Theory*, ed. G. Delanty & S.P. Turner, (New York: Routledge, 2001), 280-289, and *Nationalism: A Very Short Introduction*, (Oxford University Press, 2005).

<sup>3</sup> Hastings, *The Construction of Nationhood*, 11.

<sup>4</sup> Smith, *Cultural Foundations of Nations*, 15.

<sup>5</sup> Grosby, “The verdict of history: the inextinguishable tie of primorality,” *Ethnic and Racial Studies*, 17: 1 (1994), 164.

<sup>6</sup> Grosby, “The verdict of history,” 168.

<sup>7</sup> See Walker Connor, *Ethnonationalism: The Quest for Understanding*, (Princeton University Press, 1994). In particular, see the essay “Man is a  $\Re$ -National Animal,” 195-209.

<sup>8</sup> For a review of recent comparativist perspectives on this question see Marc Heibling, “Nationalism and Democracy: Competing or Complementary Logics,” *Living Reviews in Democracy*, 1 (2009). Accessed online: <http://democracy.livingreviews.org/index.php/lrd/article/viewArticle/lrd-2009-7> 23 November 2010

<sup>9</sup> M. Canovan, *Nationhood and Political Theory*, (Cheltenham, UK: Edward Elgar Publishing Ltd., 1996), 21.

<sup>10</sup> M. Canovan, *Nationhood and Political Theory*, 1.

<sup>11</sup> M. Canovan, *Nationhood and Political Theory*, 38.

<sup>12</sup> M. Canovan, *Nationhood and Political Theory*, 41.

<sup>13</sup> M. Canovan, *Nationhood and Political Theory*, 38.

<sup>14</sup> M. Canovan, *Nationhood and Political Theory*, 23.

<sup>15</sup> M. Canovan, *Nationhood and Political Theory*, 72.

<sup>16</sup> M. Canovan, *Nationhood and Political Theory*, 69.

<sup>17</sup> See also Bernard Yack on this point: ‘You need to assume the existence of boundaries between peoples before you can exercise the principle of popular sovereignty. Therefore, you cannot use popular sovereignty to determine where the boundaries between peoples should lie.’ B. Yack, ‘Popular Sovereignty and Nationalism,’ *Political Theory*, 29:4 (2001), 529.

<sup>18</sup> Y. Tamir, *Liberal Nationalism* (Princeton: Princeton University Press, 1993), 121.

<sup>19</sup> Y. Tamir, *Liberal Nationalism*, 118.

<sup>20</sup> B. Yack, ‘The Myth of the Civic Nation,’ *Critical Review* 10: 2 (1996), 200.

<sup>21</sup> B. Yack, ‘Popular Sovereignty and Nationalism,’ *Political Theory*, 29:4 (2001), 524.

<sup>22</sup> Anthony Marx, *Faith in Nation: Exclusionary Origins of Nationalism*, (Oxford University Press, 2003), 31.

<sup>23</sup> Marx, *Faith in Nation*, 165-166.

<sup>24</sup> J.J. Linz & A.C. Stepan, *Problems of Democratic Transition and Consolidation: Southern Europe, South America, and Post Communist Europe* (Baltimore: John Hopkins University Press, 1996), 26.

<sup>25</sup> Linz & Stepan, *Problems of Democratic Transition and Consolidation*, 29.

<sup>26</sup> Brendan O’Leary, “What States Can Do with Nations: An Iron Law of Nationalism and Federation?” in *The Nation-State in Question*, ed. T.V. Paul, G.J. Ikenberry, J.A. Hall, (Princeton University Press, 2003), 68.

<sup>27</sup> Liah Greenfeld, *Nationalism: Five Roads to Modernity* (Cambridge, Mass.: Harvard University Press, 1992), 10.

<sup>28</sup> Greenfeld, *Nationalism*, 10.

<sup>29</sup> Quentin Skinner, *Liberty Before Liberalism* (Cambridge University Press, 1998), 23.

<sup>30</sup> Rogers Smith, *Stories of Peoplehood: the Politics and Morals of Political Membership* (Contemporary political theory; Cambridge University Press, 2003), 89.

<sup>31</sup> Rogers Smith, *Stories of Peoplehood*, 76.

<sup>32</sup> Dominique Schnapper, *Community of Citizens: on the Modern Idea of Nationality* (New Brunswick, N.J.: Transaction Publishers, 1998), 60.

<sup>33</sup> Schnapper, *Community of Citizens*, 91.

<sup>34</sup> See Robert Dahl, *A Preface to Democratic Theory: Expanded Edition*, (University of Chicago Press, 2006), especially 127-132..

<sup>35</sup> See Condren, *Lawson's Politica*, 128. In Lawson's depiction, he says, the government of England has the shape of a 'polyarchal trinity'.

<sup>36</sup> Kossmann, *Political Thought in the Dutch Republic*, 137.

<sup>37</sup> Kossmann, *Political Thought in the Dutch Republic*, 17.

<sup>38</sup> Condren for instance argues, *contra* Franklin, that Lawson and similar thinkers can in no way be considered 'democratic.' See Condren, 'Resistance and Sovereignty in Lawson's *Politica*,' *The Historical Journal* 24:3 (1981), 675-8.

<sup>39</sup> For instance, see C. W. Mills, *The Power Elite*, (New York: Oxford University Press, 2000); J. McCormick, *Machiavellian Democracy* (Cambridge University Press, 2011); J. Green, (February, 2013), *Liberalism and the Problem of Plutocracy*. Unpublished paper presented at the UW-Madison Political Theory Workshop.

<sup>40</sup> Hugo Grotius, *The Antiquity of the Batavian Republic*, ed. & transl. Jan Waszink, (Assen: Van Gorcum & Comp., 2000), 55; George Lawson, *An Examination of the Political Part of Mr. Hobbes his Leviathan*. In *Leviathan: Contemporary Responses to the Political Theory of Thomas Hobbes*. Ed. G. A. J. Rogers. (Bristol: Thoemmes Press, 1995), 59; Lawson, *Politica Sacra et Civilis*, ed. C. Condren, (Cambridge University Press, 2006), 29; Algernon Sidney, *Discourses Concerning Government*, (Indianapolis, IN: Liberty Fund, 1996), 478-493. I discuss all of these thinkers in much greater depth in chapters 2 & 3.

<sup>41</sup> George Lawson, *Politica Sacra et Civilis*, ed. Conal Condren, (Cambridge University Press, 2006), 226; John Locke, *Two Treatises of Government*, ed. Peter Laslett, (Cambridge University Press, 1994).

<sup>42</sup> See Keith Michael Baker, *Inventing the French Revolution: Essays on French Political Culture in the Eighteenth Century*, (Cambridge University Press, 1990).

<sup>43</sup> Joseph de Maistre, *Considerations on France*, trans. R.A. Lebrun, (Cambridge University Press, 2006), 36-37.

<sup>44</sup> Burke's theory is more comprehensive than my own explication suggests and has many peculiar features as well. I refer here only to those aspects of it which help to illustrate 16<sup>th</sup> and 17<sup>th</sup> century conceptions of popular sovereignty. For a more complete examination of Burke's conception of popular sovereignty and representation, see chapter 8 of Hannah Pitkin, *The Concept of Representation* (Berkeley: University of California Press, 1972).

<sup>45</sup> Burke, *Select Works of Edmund Burke: A New Imprint of the Payne Edition, Vol. 2*, Ed. E.J. Payne (Indianapolis: Liberty Fund, 1999), 292.

<sup>46</sup> *Select Works of Edmund Burke, Vol. 2*, 293.

<sup>47</sup> *Select Works of Edmund Burke, Vol. 2*, 292-293.

<sup>48</sup> *Select Works of Edmund Burke, Vol. 2*, 294.

<sup>49</sup> Burke, *Further Reflections on the Revolution in France* (Indianapolis: Liberty Fund, 1992), 167.

<sup>50</sup> Kossmann, *Political Thought in the Dutch Republic*, 14.

<sup>51</sup> Sommerville, *Politics & Ideology in England 1603-1640*, (London: Longman Group Ltd., 1986), 57.

<sup>52</sup> *Select Works of Edmund Burke, Vol. 2*, 193.

<sup>53</sup> *Select Works of Edmund Burke, Vol. 2*, 191.

<sup>54</sup> Liberals and pluralists emphasize individual rights. For examples of the former, see Shapiro, *The State of Democratic Theory*, (Princeton: Princeton University Press, 2003) and Stephen Macedo, *Diversity and Distrust: Civic Education in a Multicultural Democracy*, (Princeton University Press, 2003), of the latter, William Connolly, *Pluralism*, (Durham, NC: Duke University Press, 2005). Within liberalism, some see parliamentary deliberation and statute as the best way to protect individual rights, others judicial review. See Jeremy Waldron, *The Dignity of Legislation* (Cambridge University Press, 1999), and Christopher Eisgruber, *Constitutional Self-Government*, (Cambridge, MA: Harvard University Press, 2007), respectively. Multiculturalists emphasize the rights of purportedly marginalized groups, see Will Kymlicka, *Multicultural Citizenship*, (Oxford: Oxford University Press, 1996). Post-nationalists such as Seyla Benhabib, *The Claims of Culture: Equality and Diversity in the Global Era*, (Princeton University Press, 2002), and Jan-Werner Muller, *Constitutional Patriotism*, (Princeton University Press, 2007), put more emphasis on international standards of justice and international institutions.

<sup>55</sup> *Select Works of Edmund Burke, Vol. 2*, 307.

<sup>56</sup> Seyla Benhabib, *The Claims of Culture: Equality and Diversity in the Global Era*, (Princeton, N.J.: Princeton University Press, 2002), 145.

<sup>57</sup> Thomas Paine and Bruce Kuklick, *Political Writings, Cambridge Texts in the History of Political Thought*, (Cambridge ; New York: Cambridge University Press, 2000), 85.

<sup>58</sup> *Ibid.*, 84.

<sup>59</sup> Emmanuel Joseph Sieyès, *Political Writings: Including the Debate between Sieyès and Tom Paine in 1791*, trans. Michael Sonenscher (Indianapolis, Ind.: Hackett Pub. Co., 2003), 18.

<sup>60</sup> Edmund Burke, *Select Works of Edmund Burke: A New Imprint of the Payne Edition*, Ed. Francis Canavan (Indianapolis: Liberty Fund, 1999), Vol. 2: 193.

<sup>61</sup> Edmund Burke, *Select Works of Edmund Burke: A New Imprint of the Payne Edition*, Ed. Francis Canavan (Indianapolis: Liberty Fund, 1999), Vol. 3: 132.

<sup>62</sup> As Richard Avramenko writes, reason is liminal. What binds people to one another is a “community of care.” See Avramenko, *Courage: The Politics of Life and Limb* (Notre Dame, IN: University of Notre Dame Press, 2011), 15.

<sup>63</sup> Edmund Burke, *Select Works of Edmund Burke: A New Imprint of the Payne Edition*, Ed. Francis Canavan (Indianapolis: Liberty Fund, 1999), Vol. 2: 182.

<sup>64</sup> Joseph de Maistre, *Against Rousseau : "On the State of Nature" ; And "On the Sovereignty of the People"*, trans. Richard Lebrun (Montreal ; Buffalo: McGill-Queen's University Press, 1996), 87.

<sup>65</sup> (Blamares, forthcoming; Camcastle, 2005).

<sup>66</sup> Joseph de Maistre, *Against Rousseau : "On the State of Nature" ; And "On the Sovereignty of the People"*, trans. Richard Lebrun (Montreal ; Buffalo: McGill-Queen's University Press, 1996), 107

<sup>67</sup> *Ibid.*, 87.

<sup>68</sup> Joseph de Maistre, *Considerations on France*, trans. Richard Lebrun (Cambridge; New York: Cambridge University Press, 1994), 41

<sup>69</sup> Maistre, *Considerations on France*, 102.

<sup>70</sup> Regarding religion Burke and Maistre seem to substantially agree. Burke argued that the power of religion lay not in the clarity of its ideas, but in its ability to inspire the irrational passions of mankind. As he writes in his *Enquiry into the Origin of Our Ideas of the Sublime and Beautiful* ‘it is one thing to make an idea clear, another to make it affecting to the imagination.’\* The imagination of man, argues Burke, is inspired by ‘the sublime,’ that is, things which overwhelm his reason and his perceptions based on empirical realities. Summarising Burke, Iain Hampsher-Monk writes ‘reason is overwhelmed by the vast and the infinite, such as the ocean, by the powerful and the obscure, the dark and the unknown.’† Hence religion can be said to retain its power to the extent that it preserves these qualities. When a religion succumbs to secularisation, when its ideas are rationalised, brought into greater accord with empirical reality, then that religion loses something of its sublimity, and therewith, its power to inspire. Rational and empirical precision and clarity are less capable of producing a sense of awe in a person.

\* Edmund Burke, *Enquiry into the Origin of Our Ideas of the Sublime and Beautiful* in *The Works of the Right Honourable Edmund Burke, Vol. 1*, ed. Henry Frowde (London: OUP, 1906), 111.

† Iain Hampsher-Monk, ‘Burke and the Religious Sources of Conservative Skepticism’ in *The Skeptical Tradition*

<sup>71</sup> Joseph de Maistre, *Considerations on France*, trans. Richard Lebrun (Cambridge University Press, 1994), 44.

<sup>72</sup> Joseph de Maistre, *Considerations on France*, 46.

<sup>73</sup> Rogers Smith, *Stories of Peoplehood*, 64.

<sup>74</sup> Rogers Smith, *Stories of Peoplehood*, 48.

<sup>75</sup> Rogers Smith, *Stories of Peoplehood*, 162.

<sup>76</sup> J.P. Reid, “The Jurisprudence of Liberty,” in *The Roots of Liberty: Magna Charta, Ancient Constitution, and the Anglo-American Tradition of Rule of Law*, ed. Ellis Sandoz, (Indianapolis, IN: Liberty Fund, 1993), 270-273.

<sup>77</sup> J.P. Reid, “The Jurisprudence of Liberty,” 269.

<sup>78</sup> J.P. Reid, “The Jurisprudence of Liberty,” 270.

<sup>79</sup> Nietzsche, *Untimely Meditations*, trans. R.J. Hollingdale, (Cambridge University Press, 2011), 105.

<sup>80</sup> Nietzsche, *Untimely Meditations*, 67.

<sup>81</sup> Nietzsche, *Untimely Meditations*, 68.

<sup>82</sup> Nietzsche, *Untimely Meditations*, 69.

<sup>83</sup> Nietzsche, *Untimely Meditations*, 70.

<sup>84</sup> Nietzsche, *Untimely Meditations*, 73.

<sup>85</sup> Nietzsche, *Untimely Meditations*, 73-74.

<sup>86</sup> Carlyle, “Introduction” in *Oliver Cromwell's Letters and Speeches: With Elucidations, in five volumes*, (London: Chapman and Hall, Ltd.), Vol. 1, 2.

<sup>87</sup> Carlyle, “Introduction” in *Oliver Cromwell's Letters and Speeches*, Vol. 1, 3.

<sup>88</sup> Carlyle, “Introduction” in *Oliver Cromwell's Letters and Speeches*, Vol. 1, 4-5.

<sup>89</sup> Carlyle, “Introduction” in *Oliver Cromwell's Letters and Speeches*, Vol. 1, 5.

<sup>90</sup> Homer, *The Iliad*, trans. A.T. Murray, (London: William Heinemann Ltd., 1960), vol. 1, 23, (i, 259-268).

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<sup>91</sup> Homer, *The Iliad*, vol. 2, 167, (xvi, 31-33).

<sup>92</sup> Skinner, *Foundations of Modern Political Thought, Vol. 2* (Cambridge: Cambridge University Press, 1978), 239-40, 318, 338.

<sup>93</sup> Tuck, *Natural Rights Theories: Their Origin and Development*, (Cambridge: Cambridge University Press, 1982). The main 'nationalist' work of Grotius is *The Antiquity of the Batavian Republic* (1610). Tuck does discuss Grotius' use of the Batavian myth, as well as Selden and Nathaniel Bacon's use of the Anglo-Saxon myth in *Philosophy and Government 1572-1651*, (Cambridge: Cambridge University Press, 1993), but even there these discourses are stops along the way to the 'great natural law theories of the mid-century.' Selden's nationalism is most visible in *The English Janus* (1610) as a whole, in the chapters on England in his more famous *Titles of Honor* (1614), and in many of his speeches in the Commons.

<sup>94</sup> Pierre Manent, *Democracy without Nations? The Fate of Self-Government in Europe*, trans. Paul Seaton, (Wilmington, DE: ISI Books, 2007), 74.

<sup>95</sup> See Habermas, "The European Nation State. Its Achievements and Its Limitations. On the Past and Future of Sovereignty and Citizenship," *Ratio Juris*, 9 (2) 1996, 125-37.

<sup>96</sup> See Robert Nisbet, *Twilight of Authority* (Indianapolis, IN: Liberty Fund, Inc., 2000), 9-10.

<sup>97</sup> Sheldon Wolin, *Democracy Incorporated: Managed Democracy and the Spectre of Inverted Totalitarianism*, (Princeton University Press, 2008), 109.

<sup>98</sup> Sheldon Wolin, *Politics and Vision: Continuity and Innovation in Western Political Thought, Expanded Edition*, (Princeton University Press, 2006), xvi, writes that if "measures against discriminatory practices based on race, gender, ethnicity, or sexual orientation" and other reforms "help to empower, they may also contribute to splintering and fragmenting opposition, making it difficult to form effective majorities and easier to divide and rule."

<sup>99</sup> See Avramenko, *Courage: The Politics of Life and Limb*.

<sup>100</sup> Jeremy Rabkin, *Law without Nations?: Why Constitutional Government Requires Sovereign States*, (Princeton University Press, 2007), 70.

<sup>101</sup> Rabkin, *Law without Nations?*, 60.

<sup>102</sup> For instance: George Kateb, *Patriotism and Other Mistakes*, (Hartford, CT: Yale University Press, 2008); William Connolly, *Pluralism*, (Durham, NC: Duke University Press, 2005); Howard Schweber, *Democracy and Authenticity: Toward a Theory of Public Justification*, (Cambridge University Press, 2012).

<sup>103</sup> "Without a fatherland you have neither name, token, voice, nor rights, no admission as brothers into the fellowship of the Peoples. You are the bastards of Humanity," Mazzini, *The Duties of Man and Other Essays*, (London: J.M. Dent & Sons, 1907), 53.

<sup>104</sup> Y. Tamir, *Liberal Nationalism*, 86.

## CHAPTER II — The Netherlands

For in truth, a man is always naturally inclined towards his own land and all that concerns his country; and he prefers to hear about the courageous manly deeds, works and history of the place where he was born and raised, rather than those of foreigners.<sup>1</sup>

- Cornelius Aurelius, *Divisiechroniek*, 1517

The first nationalist revolution in early modern Europe which results in constitutional self-government takes place in the Netherlands. Many of the patterns established here are repeated elsewhere.

### 1. Absolutism Spanish and Dutch

Although King Philip of Spain saw himself as an absolute monarch, and asserted this in his public pronouncements in Spain, he was more circumspect, at least in word if not in deed, in his relations with the Dutch provinces. Even in his infamous *Ban and Proscription* which promised money and a title of nobility to anyone who would deliver him the head of William of Orange, Prince of Nassau (also known as William the Silent<sup>2</sup>), Philip II claimed that he had always respected, and did now acknowledge the ancient rights and privileges of the Netherlanders. The actions and words of his subordinates belied these claims. Governors and other servants of the crown in their proclamations vowed to reduce the provinces to “full and complete obedience” which William the Silent interpreted as an intention to abrogate all the traditional rights and privileges of Netherlanders.<sup>3</sup> Moreover, they typically dismissed petitions from the nobility and the towns as infringements on the King’s prerogative. For example, in an exchange with John de Longhe, King Philip’s appointed governor of Antwerp, Frederick Perrenot, dismissed Dutch claims of a traditional right of the provinces to assemble the States General on their own initiative to treat with the king concerning their grievances:

It seemeth to me very strange that subjects will seem to enforce their prince to follow their appetite in the assembling of Estates, yea, and that generally amongst a sort of Seignories, which in degrees, jurisdictions & customs have nothing in common, but only neighbourhood the one with the other. Indeed they have one Lord who oftentimes hath given them leave to talk at their pleasure...not meaning that this his bounty should be wrested unto any prejudice against himself: for it seemeth certain by the request of this assembly that they would make laws, and keep him as Ward.<sup>4</sup>

It is clear from this that the governor did not misunderstand the nature of the request. In his view, the Dutch provinces had no right to make such demands. Thereby he effectively denied that the Dutch provinces had any common rights, as members of one Dutch fatherland, vis-à-vis their sovereign. To claim so was to trespass on the legislative prerogative of the king and treat him as though he were their ward.

Even after the Northern Netherlands had effectively won independence from the Spanish crown, the Dutch idea of constitutional self-government was still not universally acclaimed within the United Provinces. On the contrary, absolutism still had many defenders. In fact the most magisterial work of Dutch political theory of the era was undoubtedly the *Politica* of Justus Lipsius. Published in 1589, the *Politica* was, according to the judgment of Martin van Gelderen "above all the most distinguished plea for princely rule and a powerful repudiation of some of the main arguments employed by Dutch authors to support the Revolt."<sup>5</sup> In the first place, whereas other Dutch political writers of the era had held the honor of ancestors and the liberty of the fatherland to be values upon which no compromise was to be contemplated, Lipsius emphasized that heaven was the only true fatherland of man, that earthly fatherlands were subject to natural laws of growth and decline, the fortunes and misfortunes of Providence, which no man may resist. Dutch constitutional thought gave clear justifications for resistance to tyranny. Lipsius declaimed against all supposed rights of resistance and counseled citizens to "endure the things present, in hope of amendment." Finally, Lipsius made no mention at all of

provincial or national assemblies in the governance of kingdoms. His vision of the government was rule by a prince and his advisers, without any role for an assembly of the Estates.<sup>6</sup>

## **2. Narratives of Dutch Nationhood and Liberty**

In his study of the political pamphlets of the Dutch Revolt, van Gelderen identifies “liberty, privileges, and States” as the “trinity” of the “Dutch political order,” first formulated by Jacob van Wesembeeke, and further developed by subsequent writers. The liberty of the provinces, as a condition both of the prosperity and personal liberty of the inhabitants was the “highest political value.” This liberty was “embodied in the privileges of the country” which were understood as contractual or “constitutional guarantees of liberty.” The most essential of those privileges was the requirement that the prince seek the advice and consent of the States General in all weighty matters concerning the provinces.<sup>7</sup> In van Gelderen’s treatment of the political pamphlets of the Revolt, this trinity is the focus. My task here is to show how distinctly nationalist ideas undergirded and supplied much of the material for this trinity. For the liberty that the Dutch claimed to be defending was a liberty that had been won, preserved, and bequeathed to them by their ancestors. The privileges, together with various national stories, were the recorded evidence of that ancient love of liberty and the continuity of the ancient rights. The institution of the States General was the chief means whereby the old liberties and the welfare of the fatherland had been in the past, and could now be, preserved and promoted. All of this assumed that the Dutch people were a nation, members of a common fatherland with special duties to one another, notwithstanding the fact that their provinces were, and had long been, part of a larger empire, and that their head of state was not Dutch. Thus the ideas of rights for natives and national community were explicitly articulated together with recitations of the privileges.

The argument of the rebels was, in essence, that the Netherlanders were a nation defined by common ethnicity, culture and laws who therefore had common rights as members of a nation. That the rebels could and did affirm with confidence, first, that such commonalities indeed existed, and, second, that irrecusable political duties followed from membership in a common fatherland, does not mean that all Netherlanders were disposed to accept either claim. Carl Schmitt's apt distinction between a "people" and a "nation" sheds light on the problem. The terms themselves are of no consequence, for every political theorist assigns his own definitions to them, but the conceptual distinction is a useful one. A nation, he says

denotes, specifically, the people as a unity capable of political action, with the consciousness of its political distinctiveness and with the will to political existence, while the people not existing as a nation is somehow only something that belongs together ethnically or culturally, but it is not necessarily a bonding of men existing *politically*.<sup>8</sup>

As is well known, the key test of a "political" unity for Schmitt is that the unity is of sufficient intensity to divide human beings into clear-cut friend-enemy groupings. One could say, perhaps, that at least the Dutch (*Dietsch*) provinces of the Netherlands were a people.<sup>9</sup> Members of the Dutch provinces may have viewed each other as belonging together ethnically or culturally, but the will of them all to fight in a co-ordinated fashion against the common enemy, Spain, each province sacrificing as necessary for the sake of the others, varied with the fortunes of the war, with provincial loyalty often trumping national. The Dutch provinces, one might say, were somewhere on the continuum between mere "peoplehood" and "nationhood." The most "political" of the Netherlanders, then, constantly "reminded" the rest of their people that they were one nation, and exhorted them to behave like one. The results were mixed. But, in any case, the nationalists were right. Without a "political" commitment of all to the common fatherland, none of the ancient customs and rights of the people could be adequately protected.

Though I have been speaking of the Dutch as a nation, or proto-nation, I should pause here to clarify one point. For there is a tradition particularly in American political thought of defining a people by its form of government instead of the reverse. According to this way of thinking, a multitude is a nation if it has a unitary, or at least quasi-unitary *national* government. If on the other hand, a multitude has a confederative form of government, then there is no nation, but rather, several nations, or states, joined together in an alliance. According to this view, which arose from controversies that appear to be peculiar to the American experience, one might say that the people of the Dutch Republic never constituted a nation, for they emerged from Spanish dominion with a confederative form of government. I will not define a people by its form of government in this manner, for I find that it only leads to confusion. A nation is an entity that has a will to form and maintain some sort of exclusive political union. If that union has the form of a confederation, in which sovereignty is formally divided among the several constituent provinces, each reserving the right to refuse its assent, or nullify the decisions of a national assembly, it is still a nation. Nationhood and nationalism, as I use these terms here, do not imply a particular form of organization. Nationalism certainly does not have to mean a unitary central government. On the contrary, early modern nationalists, those of the Netherlands especially, opposed centralization.

The Dutch response to the absolutist pretensions of Philip II was, in the first instance, to refer directly to the collection of old charters and treaties which constituted the native privileges of the Netherlanders. These privileges were viewed as evidence of a contractual relationship of very long standing between the provinces of the Netherlands and the princes and dukes who traditionally served as their heads of state. Initially, the most important of these was the *Joyeuse Entrée* of 3 January 1356, a charter granted by Duchess Joanna to the province of Brabant. It was

cited constantly in the pamphlet literature of the 1560s-80s, though usually not quoted, perhaps because the text was held to be well-known. The key clause of the document reads as follows:

And if the case be that we, our heirs, or our offspring violate, infringe or order the infringement of these afore-mentioned points, articles and agreements in general or in detail, in whatever manner that may be, then we consent and permit the afore-mentioned worthy persons that they perform no longer any duties towards us, our heirs or our offspring nor are any longer subordinate to us, until we have redressed and requited it to them completely.<sup>10</sup>

This document was taken as clear evidence that the Dutch people had a right to disobey their princes, whenever the latter failed to keep their agreements and to rule in accordance with ancient custom and law.

The Grand Privilege of Philip the Good (1477) specified three powers of the joint assemblies of the provincial States, the States General. First, the prince of the Low countries could declare war only with the consent of the States General. Second, the States General were at liberty to assemble on their own initiative to discuss common affairs. Third, no new taxes could be raised without the consent of the States.<sup>11</sup>

It is important to note, however, that there was considerable variation in the agreements between princes and the various provinces. Strictly speaking, the most oft-cited charter, the *Joyeuse Entrée*, pertained only to the province of Brabant, and not to the Netherlands as a whole. Indeed one of the challenges the Dutch defenders of liberty faced was to convince themselves and their people that a vast collection of multifarious charters, treaties and customs of the 17 provinces of the Netherlands amounted to a coherent *national* tradition, which, without infringing or dissolving the particular rights and privileges of self-government within each province, granted all Netherlanders certain common rights and demanded of them certain common duties. A conception of national rights and a national constitution, and a plan for coordinated national action, were necessary to counteract the imperial policy of the King Philip and

his lieutenants, which was designed to keep the provinces divided and isolated from one another so they would receive with gratitude whatever bones the King saw fit to throw them individually.<sup>12</sup> For such a conception and constitution to be compelling, it would have to be founded on argumentation which was not merely juristic, but which defined the Netherlanders as a particular kind of people, appealed to affections for a common Dutch fatherland where they existed, and attempted to inspire such feelings where they were weak or nonexistent. This is not to say that the political writers consciously made myths, or that the stories of nationhood they told were merely a vehicle for the transmission of abstract ideas. It is to say that they acted as actual human beings do, and not as political theorists in the tradition of John Locke imagine them to behave, seeking to convey political truths, which never entirely conform to logic or fact, to all whom they regarded as “their people.” There is the Platonic way of looking at it. The abstract ideas are the substance, the myths are the clothing for the ideas, but this is simply wrong. Abstract ideas can never contain everything that is politically significant. When one distils everything down to axioms, one does not gain greater clarity, rather one loses much of the real substance. In this case, and in the others, most of the real substance, that is, the concrete rights and privileges, and the institutions and procedures of government, came not from philosophy but from an interpretation of national history.

If the Netherlanders had rights and privileges of self-government within the Spanish Empire, it was because they were a particularly freedom-loving people, descended from brave ancestors who had had the fortitude and strength to retain their autonomy. Such charters as appeared in the late Middle Ages were perceived to be a reflection of this national character, of the ancient character and custom of the people of the Netherlands. Something of that long-held belief in the people’s ancient love of freedom is reflected the speech to the States General by

Guillaume Hugonet, requesting aid in behalf of Charles the Bold, which flatters the descendants of “the Belgian part of Gaul, as described by Julius Caesar” and as they had developed “free institutions especially under the House of Burgundy.”<sup>13</sup> Various stories of ancestral resistance to tyranny were accounted proof of this distinctive national character. In the early stages of the Revolt, the emphasis was on narratives of mediaeval resistance to arbitrary government in various parts of the Netherlands. One of the more popular of these stories of resistance was of recent memory. In 1487, the towns of Bruges and Ghent, driven to desperation by excessive taxation, wars, the depredations of royal soldiers and various other grievances, had risen against and imprisoned their visiting regent, Holy Roman Emperor Maximilian I. The dispute had been settled by the States General, with the Emperor forced to abide by the privileges of the Netherlanders that he had failed to respect. There were several other stories from earlier times as well. In the later stages of the Revolt when only the Northern Provinces remained in the struggle, accounts of the heroic revolt of the ancient Batavians, putative ancestors of the Hollanders and Geldrians, against the Roman Empire, became the most popular of the stories from the past. The basic outline of this narrative had been in print in Holland and adjacent provinces since 1517, as I will demonstrate at the end of this chapter.

As the Revolt wore on, the freedom-loving character of the Netherlanders was contrasted in ever higher relief to the despotism of the Spanish King and his governors, Dutch courage to the slavishness of non-Dutch dominions of the Spanish empire. In the rhetoric of Dutch pamphleteers, the Dutchman became more courageous and freedom-loving in proportion as the Spaniard became more foreign and wicked.<sup>14</sup> Ultimately the Spaniard was an enemy not so much because he was Catholic, but because he was cruel and domineering, and as such, not even

properly Christian, but more like the civilizational enemies of European Christendom, the Turks and Jews.

The influence of Protestantism, especially in the North, on the course of the Revolt is not to be denied. Protestants were the first targets of Philip II's inquisition in the Netherlands. But at no stage of the Revolt were Protestants a majority even of the Northern Dutch provinces, much less of the Southern. The initial political resistance to King Philip was carried out by the nobility, who were not Protestants. One finds moreover that, on the whole, even Protestants themselves approved resistance against the Spanish authorities not on theological, but on constitutional grounds.<sup>15</sup> According to the ancient privileges of the provinces, Dutchmen were entitled to decide on the religious discipline of their nation themselves, by consulting with one another through their traditional institutions of self-government. For the lieutenants of a Spanish king to impose an Inquisition on them, which especially targeted their Protestant countrymen but oppressed many Catholics as well, was a violation of their ancient rights and privileges, and thus they had a constitutional right to resist.<sup>16</sup>

### **3. The Attempted Compromise of 1566 and Orange's *Justification* of 1568**

The first political resistance to the power of the Spanish monarchy came in response to Philip's attempt to impose a Spanish Inquisition on the Dutch provinces. The stated purpose of it was to root out the Reformed Religion, which had begun to show itself in the Netherlands in the first half of the 16<sup>th</sup> century, and, by the 1560s, to assert itself ever more insistently. Mobs of the common people resisted the Inquisition in the only way they knew, by destroying Church property in the Iconoclastic Fury, or by forming parties of vigilantes to free fellow Dutchmen who had been imprisoned and condemned to death by the Inquisitors. The first co-ordinated

political resistance, however, came from the Nobility, who perceived in the Inquisition not only an attack on their Protestant countrymen, but an attempt to subvert the liberties and privileges of all Netherlanders.

Two documents in particular, the *Compromise* and the *Petition*, both of 1566, list the grievances of the Dutch nobility. One finds in these papers a clear affirmation of the idea that the Netherlands were not just a collection of provinces, or a neighborhood, with nothing in common, as royal servants were wont to describe the territory, but a common fatherland, with a common culture and common laws and rights. The nobles, moreover, expressed concern not only about their own rights and privileges, but those of “all subjects.” The signatories of the *Compromise* declared the following:

Everyone who has this paper before him must know that we, the undersigned, have been duly and sufficiently warned and informed that there is a great crowd of foreigners – men without any concern for the safety and prosperity of the provinces in the Netherlands, with no care for God's glory and honour or for the commonweal, driven only by private avarice and ambition, even to the disadvantage of the King and all his subjects – who pretend to be zealous for the maintenance of the Catholic religion and the union of the people and have managed to persuade His Majesty by their well-turned remonstrances and false information to violate his oath and to disappoint the expectations he has always let us cherish, by not only failing to mitigate the edict is already in force, but by reinforcing them and even by introducing the Inquisition in all its strength.<sup>17</sup>

The complaints of the nobility, as we see, were directed against “a crowd of foreigners,” persons who could not be trusted to procure the “safety and prosperity” of Netherlanders. That the Inquisition was meant to maintain the Catholic religion was pretence, concealing “private avarice and ambition.” These foreigners had persuaded the King to “violate his oath” by refusing to comply with the request of his Dutch subjects to mitigate his Edict of Inquisition. With such an assertion, the Dutch nobles obviously assumed a right on the part of the representatives of the

Dutch people not only to petition their sovereign for a redress of grievances, but also to gain satisfaction of their demands.

According to the signatories of the *Compromise*, the King's Inquisition was not only illegal according to the ancient rights and privileges of the Netherlands, but more than that, it threatened to dissolve the entire web of laws, customs and ordinances which Dutch ancestors had handed down to posterity for their protection:

Under the veil of only a few men's false hypocrisy, it will inevitably destroy all law and order, do away with all honesty, wholly weaken the authority and force of the old laws, customs and ordinances observed from time immemorial. It will deprive the states of this country of all freedom to express their opinion, it will do away with all ancient privileges, franchises and immunities, and not only make the burghers and inhabitants of this country miserable and everlasting slaves of the inquisitors, who are worthless people, but even subject the magistrates, officers and all nobles to the mercy of their investigations and visitations, and finally endanger the lives and possessions of all the king's honest and loyal subjects perpetually and openly.<sup>18</sup>

Essential among these ancient rights and privileges was the ancient freedom of the assembled States of the several provinces to express their opinion concerning all matters of law and policy pertaining to the Netherlands. The nobles appear to have been convinced that without this right, none of the other rights of Netherlanders could ever be secure. If the inquisitors had unchecked authority to arrest any Dutch subject for heresy, then neither the nobles nor the deputies from the towns to the States General could safely register their objections to any alleged violation of rights whatever. The Edict of Inquisition therefore threatened to reduce all Dutchmen, burghers, inhabitants of the country, and nobles alike, to slavery. Accordingly, in their subsequent *Petition* to the King, worded somewhat more tactfully than the *Compromise*, the nobles implored "his Majesty very humbly that it may please him to seek the advice and consent of the assembled States General for new ordinances and other more suitable and appropriate ways to put matters right without causing such apparent dangers." This, they asserted, was the ancient right of the

people of the Netherlands: following any dispute between King and people, to assemble the States General so that the King may hear their advice and gain their consent to “new ordinances” and “appropriate ways to put matters right.”

King Philip was not amused. In a strategic move, he recalled Cardinal Granvelle, the chief orchestrator of the Inquisition, but then sent a new Governor General, the Duke of Alva, to carry on with his original policy in the Netherlands. William of Orange, one of the signers of the *Compromise*, prudently fled Brussels before the Duke arrived. Two other prominent signatories, the Counts of Egmont and Horn, remained; upon his arrival, Alva had them arrested on the charge of heresy, and beheaded.

William of Orange would ultimately prove the most important leader of the Dutch Revolt, earning for himself during his life the epithet *vader des vaderlands* (“father of the fatherland”). It is thus fitting that we give considerable attention to his writings. *A Justification or clearing of the Prince of Orange* (1568) is one of William’s more personal appeals. But it justified not only his own actions, but also the tumults of the common people and resistance by the other nobles who had signed the *Compromise* and *Petition*. Addressing the King in a measured and conciliatory tone, which may have been a ruse, Orange gave an account of the usurpation of the government of the Netherlands by the King’s representative, Cardinal Granvelle, the subversion of a particular form of government to which the people of the Netherlands had long ago grown accustomed.<sup>19</sup> It was obviously meant for a much wider audience than that of the King and his advisors. Referring to Granvelle and his entourage, Orange wrote “I saw them endeavour by all means to bring the country to bondage, (which some men term full obedience).”<sup>20</sup> This “full obedience” demanded by the King and his Spanish lieutenants in the mind of Orange was the same as bondage, that is, royal absolutism, a form of

government foreign to the people of the Netherlands, as evidenced by their ancient charters and by the zeal with which their ancestors had defended their rights.

The Netherlanders were therefore right to resist Cardinal Granvelle. The reason, Orange argued, for the disturbances, was that

the said countries were very jealous for the preservation of their liberties and franchises which they had as well by virtue of covenants made with their princes, as by force of privilege obtained by them, and specially of the emperors of old time, for fear that they might be deprived of them by bringing in of strangers, and namely of the Spaniards.<sup>21</sup>

The Netherlanders were “jealous” of the liberties and franchises they had obtained from their princes. These liberties were confirmed by covenants with princes and emperors reaching far back into history. They had been especially insistent on the binding force of these covenants after King Philip of Spain became their emperor, for they had feared that a Spanish king might bring Spanish troops into their provinces. Firm protections were required against the possible inundation of the country with foreigners, who would not respect the rights of natives.

Cardinal Granvelle himself had proven both in word and deed that he was unwilling to respect the rights and privileges of the Netherlands. According to Orange, Granvelle had counselled the King that “he would never keep well those Countries, unless he maintained a power of Spaniards there, and conquered them new again... so as he might abolish all the said covenants and privileges, and rule them as he listed.”<sup>22</sup> He had then pursued precisely this policy. First “he had caused the King before his departure, to ordain a Council of estate, wherein certain of the chief knights of the order were appointed deputies” to govern the provinces. This was done against the will of the Dutch nobility who saw the new council as an innovation and violation of the ancient rights and the traditional form of government of the Netherlands. Then “within a while after the Kings departure, he began to deal with all matters of importance alone by himself.”<sup>23</sup>

This was no less than a total subversion of the traditional form of government in the Netherlands, in which the hereditary nobility, the bishops and the deputies from the towns decided all important questions of common concern jointly with the King or his representatives. Granvelle had reduced the power of the nobles, not to mention the deputies of the towns, and usurped all power to himself and such churchmen as were beholden exclusively to him. “The people,” continued Orange, “were of the opinion, that that was the high way to infringe all their liberties, franchises, and privileges and to bring in the Inquisition, and to renew the rigour of the injunctions, and finally to bring them in bondage to the clergy.”<sup>24</sup> Such actions were, in short, “unmeasurable alterations, at the pleasure of a stranger, and of certain unknown persons, against... the privileges of the countries.”<sup>25</sup>

Orange reiterated the demand that he had made together with his peers two years earlier, that the dispute between king and people be considered and settled by the States General of the Netherlands:

seeing that in these Low Countries, in cases of importance, whereupon both honour and goods depend, whether it be publicly or privately, men have been wonted to refer themselves to the States, who have been of that authority, that in old times, yea and even in the time of Charles late the Emperor of happy memory, they have often times assembled by reason of occurrences of like or less importance, yea, and even in the case of religion... Let us not think it unlawful for us to require the same thing now which we see to have been done and used in like cases heretofore.<sup>26</sup>

According to the settled law and tradition of the Low Countries, important cases concerning such matters as the honor and property of subjects and the ecclesiastical discipline of the provinces ought to be decided by the States General. This, insisted Orange, had been the practice of Charles V, Philip II’s predecessor, and in old times. The Netherlanders, then, had a right to appeal for this procedure now.

But Orange now went beyond the right of petition he and the other signatories of the *Compromise* had claimed before. For the request to summon the States General had gone unheeded, and, much worse, two of Orange's peers had been executed for exercising their rights according to tradition. The Duke of Alva, in failing to answer the lawful petition of the nobles, except with a continuation of the contested policy, and sentences of death for the petitioners, had violated the covenant by which the people of the Netherlands owed obedience to their King and his lieutenants. By these actions, and by the kidnapping and imprisonment of Orange's son, Alva had demonstrated that he "meaneth not to stand to any covenants, bonds, laws, rights, or customs, and therefore that it should be impossible for me to obtain any discharge at his hand."<sup>27</sup> Therefore, Orange, and the Dutch provinces in his care, had the right to resist the King and his lieutenants according the terms of the *Joyouse Entrée*, until such time as the King relented and acceded to their lawful demands:

Wherefore, and forasmuch as both by right of law, and by force of covenant, brought in at joyful entrance, containing the laws whereby the Duchy of Brabant oweth obedience, we which have always had our dwelling place in the same Duchy, have good ground to withhold and suspend all obedience which we owe to the King, until his Majesty being better informed, have amended the things that have been done and attempted contrary to the said joyful entrance and in prejudice thereof.<sup>28</sup>

Such a statement no doubt stretched somewhat the traditional meaning of the law. Orange had possessions in Brabant, where the *Joyeuse Entrée* was in force, but he had since fled to Holland. He now claimed a right to resist the King from exile with those provinces that supported him. This was not, then, a claim that the provinces as a whole, as a nation or common fatherland, had a right to resist their King. The Prince of Orange, as a landholder in the province of Brabant, had a right to resist the King as a subject of the laws of that province. Indeed, it would be the burden of subsequent writers to make a more coherent case for the national rights of Netherlanders. This clause of a mediaeval charter would be taken not merely as a right according to law, but as a

legal landmark expressive of a larger tradition of the people of the Netherlands, who, in all of their provinces, had always insisted upon their fundamental rights, and resisted tyranny with courage. Such a people would not bow down to a tyrannical king.

#### **4. Foreigners, the Common Fatherland and the Courage of Ancestors: Three Pamphlets from the 1570s.**

In the 1570s, the pamphlets became more nationalistic in at least three respects. First, the anti-foreign, and especially anti-Spanish, tone became more strident. Second, stories of ancestral resistance and invocations of duty to ancestors grew more prominent. Third, the idea of the provinces of the Netherlands as a common fatherland came to be more clearly and insistently articulated. It was chiefly in these terms that the right of the people of the Low Countries to resistance and self-government was expressed. In the following I shall consider three pamphlets: 1.) *A Defence and True Declaration* (1570), 2.) the *Discourse* of Junius de Jonghe (1574), and 3.) the *Address and Opening* (1576).<sup>29</sup>

##### **A Defence and True Declaration**

According to the most recent research, *A Defence* was written by Philips of Marnix, Lord of St. Aldegonde, a close ally of William of Orange.<sup>30</sup> The rebels presented this document to the Reichstag at Spiers in the hope of persuading the princes of Germany to grant them military aid against the Spaniards. Composed in Latin, it could not have been read by the general population in the Netherlands. However, it was evidently read by well-educated rebels, for many facets of its narrative recurred time and again in later pamphlets published in Dutch.

Interestingly, the author of *A Defence* began not with a description of affairs in the Low Countries, but with an account of the roots of Spanish tyranny. The kingdom of Spain, he argued,

had been subjected long ago to the will of the Inquisitors. The Inquisition had begun, following the *Reconquista*, as an effort to “root out all the remnants of the wicked Mohammedan and Jewish sects.”<sup>31</sup> But the Inquisition went beyond this original purpose, and the ambition of the inquisitors grew with their power so that, eventually, they sought jurisdiction over men of all degrees and descriptions, and having achieved that, they used their authority to accuse men of heresy as a means of advancing their own wealth and power. With their charge of heresy they could cause to be killed or at least blacken the reputation of anyone who opposed them. As the inquisitors advanced, the author continued, “they broke privileges and immunities, they abated the dignity of the Nobility, whom they call ‘The grand council’ without whose authority in time past nothing was decreed in Spain. Finally...they usurped to themselves sovereign power over the King himself, and over the majesty of the royal scepter.”<sup>32</sup> The inquisitors, then, had succeeded in destroying the liberty of the Spaniards utterly by eliminating the power of the Nobility, and gaining an undue influence on the Crown, which benefited from the revenue generated by the Inquisition. Thus, the image of Spain presented by Marnix was of a thoroughly corrupt people, who had acquiesced to a condition of servitude, and whose government, subverted by the influence of the inquisitors, afforded subjects no protection of their lives or privileges. This was in stark contrast to his portrayal of the Low Countries.

The Low Countries, continued the author, became an object of the Inquisitors’ ambition after they were united under one king (Charles V in 1516) with Spain. “Therefore,” he said, “of long time they think that they may lawfully enforce upon us the Spanish laws and ordinances, Spanish manners and the Spanish yoke of Inquisition, abrogating all our country laws, abolishing all memory of the German name, destroying our privileges and oppressing our liberty.”<sup>33</sup> Notably, Marnix here accused the inquisitors of aiming not only to impose the Inquisition on the

Low Countries and deprive them of their traditional liberties, but also to Hispanicize them, to force them to adopt Spanish manners and to forget their identity as “low Germans.”<sup>34</sup> The Netherlanders were in danger of losing their distinctiveness as a people together with their prosperity and personal liberties.

The strongest evidence of the Inquisitors’ conspiracy to subdue and hispanicize the Netherlands was an “Advice” to King Philip thought to have been written by Cardinal Granvelle, or perhaps another of the Inquisitors.<sup>35</sup> The author of the “Advice”, affirmed Marnix, had complained of the peculiar liberties and privileges of the Netherlanders, and had proposed measures to eliminate them. The conspirators, he said, had insisted

that the ancient liberty of assembly of the estates in parliaments that has continued in all ages greatly abates the power of the prince, for that there, both by ancient usage of their forefathers it was so provided, and by the promises and covenants of the princes themselves confirmed with their oaths it was so ordained, that the princes should not decree or do anything to the prejudice of the people’s liberty, or of the authority of their laws without the will and the assent of the whole country.

By Marnix’s account, then, the inquisitors acknowledged that the Netherlanders had an ancient tradition of constitutional self-government. Kings could do nothing without the assent of the States, and each king had confirmed this arrangement with promises and covenants. As such, then, from the standpoint of the Netherlanders, a king was not a king, but “some common Duke or Earl, or rather, a guardian of their right and laws.” The provinces resembled a free commonwealth: “as it is in most free commonwealths, so they yearly create of themselves magistrates, and burgomasters with sovereign power of negative voice” and bar “strangers” from “bearing office in the commonwealth.” Worst of all, the Netherlanders had had the presumption on occasion to “chasten” their princes “with penalties, sometimes with imprisonment, and sometimes with deposing them.”<sup>36</sup>

Marnix, it should be noted, did not in any way dispute the veracity of these “allegations.” On the contrary, his own descriptions of the political tradition of the Netherlands confirmed the truth of every charge. The Low Countries were in fact a “free commonwealth” and it was the Inquisitors, and, possibly, also the King of Spain himself, who were guilty of attempting to subvert it. The inquisitors, continued Marnix, had long prevailed upon the sovereigns of Spain, first Charles V, and then Philip II, to alter the traditional character of the Netherlands as a free commonwealth, and bring it “to the name and title of a kingdom...abrogating the power of popular magistrates ...[so that] it might be governed with new laws by discretion as the Kingdoms of Sicily and Naples be, that have been acquired by conquest.”<sup>37</sup> The design was to replace the constitutional rule of the Netherlands with rule by discretion, or arbitrary rule. To do so would be to treat the Low Countries like territories that had been annexed to the empire by conquest, and so deprived of any traditional liberties and privileges they may have claimed. Marnix went on to show that Cardinal Granvelle, and later, the Duke of Alva, had taken actions that proved beyond a doubt that they were carrying out the design proposed in the “Advice” to conquer and subdue the Netherlands. These actions included those mentioned by Orange’s *Justification*, as well as thousands of unlawful executions and spoliations, and frequent acts of arbitrary violence of the Spanish soldiers against the native population.<sup>38</sup>

But the Netherlanders had never been the sort of people who would submit to conquest and servitude. It had long been well understood in Germany, indeed throughout Europe, averred Marnix, that maintaining the right to general assemblies was the only way to preserve liberty. But in “Low Germany” the custom of calling general assemblies had always been “especially” pronounced:

It is most manifest that the case so stands, for in it the princes have in all ages from time to time been subject to the power of the general parliaments, have been elected by them,

and confirmed of them, without whose assent and authority they never would decree anything, and it is manifestly provided and established by the privileges of Brabant and the customs of Flanders, that they never have authority to do it hereafter. But as by their mutual assent and contract, they be in force of covenants agreed upon, and hereafter to be taken for the common law of the country.<sup>39</sup>

Throughout the ages, then, it had been a custom in Low Germany that princes were subject to the power of the States General. Here Marnix interpreted the privileges of Brabant, especially the *Joyouse Entrée*, and the customs of Flanders as recent confirmations of an immemorial custom which pertained to all of Low Germany. Those privileges had established that the ancient common custom of Low Germany was its common law.

But the existence of such charters was not itself the only evidence of the special character of Low Germans. When princes had violated their rights in the past, they had indeed “chastened” them. Casting blame directly on King Philip in this instance, Marnix argued that the King of Spain had been wrong to respond to the Dutch nobility’s act of rebellion with an even worse tyranny, that perpetrated by the Duke of Alva. For in the past, Netherlanders had used acts of rebellion as a means of compelling kings to keep their covenants:

We read that in the time of our ancestors, many of the cities of Flanders rebelled against Maximilian, the most mighty King of the Romans, and the citizens did not only openly refuse his government and detained with them for the space of eight years his son Philip against his will, but also most contumeliously threw Maximilian himself into prison... Then, this good Prince Maximilian, in this so odious rebellion, and having been so injuriously handled, was so far from doing anything like unto the Alvan Duke, that he not only with great gentleness received his subjects again into his grace’s favour, but also with great clemency worthy of so great a prince restored unto them again all their privileges and ancient immunities.<sup>40</sup>

The Holy Roman Emperor Maximilian, then regent of the Netherlands, had been disobeyed and then imprisoned for his arbitrary government. He had then drawn the correct lesson from the expressions of anger of his subjects, and, acting like a true prince of the Netherlands, restored to the people the privileges from which they, clearly, would not be parted.

Marnix thus emphasized several important themes which would be repeated in subsequent pamphlets justifying Dutch resistance and appeals for the restoration of Dutch liberties and privileges. First, he drew a stark contrast between the corruption and slavishness of the Spaniards and the immemorial and abiding spirit of liberty of the Low Germans. Second, he distinguished between the ancient constitution of the Germanic provinces of the Netherlands, which had the character of a free commonwealth, and other slavish provinces of the Spanish empire who had submitted to conquest. Third, he underlined instances in the past in which the Dutch provinces had resisted and even punished tyrannical kings, and had thereby extracted concessions from them.

All of these arguments ought to have resonated with the inhabitants of the Netherlands at this time, not least the assertion that the Low Germans had a tradition of resisting and even chastising tyrannical kings. Indeed, under the governor-generalship of the Duke of Alva the inhabitants had engaged in various acts of political resistance. Alva eventually had summoned the States General, but not to offer redress of any of the grievances which had been aired in connection with the Inquisition and the government of Cardinal Granvelle generally. He had sought the assent of the States to three new taxes, whose purpose was to pay for the maintenance of Philip II's vast standing army in the Netherlands. The first of these, the Hundredth Penny, was a one percent tax on all capital assessed in the year 1569-70. Such a tax as this was more or less in keeping with tradition. In the past the States General of the Netherlands had often voted supply to their kings for the prosecution of wars. These supplies or *aides* were granted once-for-all; if the monarch desired to renew them, he was expected to convoke the States again and ask for their consent. The States assented to the Hundredth Penny tax. The other two taxes, the Tenth Penny and the Twentieth Penny were to be permanent. The one was a ten percent impost on all

sales of moveable goods, and the other a twenty percent levy on all future sales of land. In spite of all of Alva's attempts to intimidate them with the threat of military force, the members refused to assent to the Tenth and Twentieth Penny taxes, insisting that they would only agree to traditional once-for-all *aides*. Frustrated by this intransigence and under pressure from the King to carry out his instructions posthaste, Alva undertook in 1571 to collect the taxes without the consent of the States. In response to this, Dutch tax-payers went on a tax strike, and though the Duke mobilized troops to bully the merchants, he managed to collect no more than an infinitesimal portion of the projected revenue. What is more, the States of several provinces dispatched deputies to Spain to protest Alva's actions.<sup>41</sup>

Many of the cities and towns of the Netherlands resisted Alva in another way, far more alarming to the governor-general and King Philip, but entirely in keeping with Marnix's portrayal of the Netherlanders as a people who had long been accustomed to pry concessions from their rulers, when necessary, by means of coordinated, political acts of resistance. From 1568 to 1572 William of Orange made several incursions into the Netherlands, with such forces as he could muster, to encourage rebellion against the Spanish regime. In open defiance of Alva, several cities and towns throughout the country opened their gates to William or his confederates and gave them heroes' welcomes. Alva, for his part, did not perceive such acts as a legitimate means of defending native privileges or exacting concessions from the sovereign. Able commander that he was, he marched troops into rebellious cities and towns and sacked them; in a couple notable cases he literally razed Dutch towns to the ground together with their inhabitants such that, by his own account, "not a mother's son escaped."<sup>42</sup>

After Alva's counter-offensives, William of Orange, whose forces were never a match for the armies of King Philip, managed to keep possession of only two northern provinces,

Holland and Zeeland. The political pamphlets distributed in his behalf in the vernacular never reached the same level of sophistication as the treatise of Marnix, but they contained most of the same themes, and surpassed Marnix in the vehemence of their language. The Duke of Alva and his army were execrable foreign invaders. The Netherlanders had many ancient privileges, including a right to resist their princes when the latter acted outside of the law. A true prince of the Netherlands was duty-bound to restore to the people all the liberties of their forefathers.

In one of the pamphlets that has survived, for instance, the author affirmed the content of the resistance clause of the *Joyouse Entrée*, though he did not specifically cite it, as an uncontested right of all Netherlanders:

You well know that by the king's own proper consent you are free and released from the oath of obedience you owe him, if he or others in his name infringe the promises and conditions on which you have accepted and received him, until finally every right has been restored. I also remind you that according to your privileges you are permitted to close the gates of your towns and to resist by force not only the servants of your prince but also the prince himself, in person, whenever he attempts to proceed by force of arms.<sup>43</sup>

In another pamphlet from a few years later, an unknown writer speaking in William of Orange's name lambasted the foreign despotism of Alva, and promised a restoration of all the ancient liberties of Netherlanders. Alva was vilified as a "child of unbelieving Jews (whose hatred of us is secretly inspired by his not being of Christian origin)." Alva's lieutenants in the army and administration were similarly maligned as a mass of foreign scum composed of "the despicable disciples of African slaves" and "refuse" from various parts of Europe "who have often deceived you...telling you in their barbaric tongue that they were Netherlanders," before all of whose eyes Alva had dangled "the hope of planting colonies in our fatherland."<sup>44</sup> The writer made several promises in William's behalf among which were the following: that "the name of the inquisition shall be erased forever," that "those who have no right to be in this country...shall be banished,"

that “the people be given back their houses, possessions, hereditary estates, their good name, their freedoms, privileges and laws, by which liberty is maintained,” that “state affairs shall be discussed in the States of the provinces in accordance with the custom of our ancestors,” that “political matters will be dealt with by the king himself and by the States which are chosen in every province and not be dispatched secretly by hired foreigners,” and that “those people be turned out of magistracy, the army and the provinces, who according to the laws of the provinces and the agreements which princes make at their investiture have no right to be there.”<sup>45</sup> In brief, then, William promised to restore to the Netherlanders all the privileges won and maintained by their forefathers—namely the individual right of property, the corporate right to self-government in all local affairs at the provincial level, and the corporate right to conjoint rule by the States General and the King in all common affairs, including religion, at the national level—and to expel all foreigners from the land, and especially from the army and the organs of government. On the strength of these promises, William was accepted as Stadholder by the provincial States of Holland and Zeeland.

William of Orange and his confederates were not content with the seat they had acquired in Holland and Zeeland. I shall not attempt to assess the relative weight of the motives of patriotic duty and personal ambition in their political calculations. The relevant consideration is that they saw the whole of the seventeen provinces of the Low Country as their fatherland—with some reservations, perhaps, about the Walloon provinces—saw the natives of these territories as their compatriots, the particular Dutch liberties and customs they promoted as pertaining to these communities and to no-one apart from them.<sup>46</sup> In their minds the boundaries of the nation, with one possible exception already noted, were not in dispute. How the southern provinces perceived

these aspirations I shall address in due course. But now I turn to one of the most direct statements of this Dutch national consciousness from the period.

**The *Discourse* of Junius de Jonghe**

The *Discourse* of Junius, the pen name of John de Jonghe, another ally of William of Orange, who served as governor of the town of Veere in Zeeland, was written to justify two demands that the States of Holland and Zeeland had addressed to the King. The first demand was that all foreigners, namely the Spanish administrators and soldiers, should be withdrawn from the Netherlands; the second, that the King should convoke the States General of the Netherlands and consult with them on a new policy for the government of the provinces. What is most interesting about this pamphlet is not so much the demands themselves, which were not new, but the way the author vindicated them. Like earlier pamphlet writers, Junius substantiated his claims by reference to the privileges, but he did not limit himself to this sort of argumentation. For the reply he had received from Frederick Perrenot to his previous requests essentially denied that the Netherlands was a distinct political community. In the *Discourse*, then, Junius was compelled to demonstrate that the Netherlanders were in fact one people, with a common history, a common name, common traditions, and therefore, common rights, instead of leaving their nationhood as an unstated assumption. Not all of Junius's arguments are equally felicitous, but even the puzzling ones are at least revealing.

The necessity of dealing straightly with the question of nationhood is revealed in Junius' arguments about the duties of kings to their subjects. Junius asserted that, beyond the violation of specific privileges, King Philip had breached the most fundamental duty of a king, to protect his subjects from violence and destruction at the hands of foreigners:

And I pray you, how could you lay (I will not say any foundation of peace) but only some feigned appearance of an agreement, except that these...[strangers] do first give up

their weapons and get them packing out of this country? Unless you think that the means to attain to peace do then consist in setting strangers... in possession of the subjects' good (moveables & immovables) & to let them violate their wives and children; and that for a full end of such their benefits and favours the subjects might do well to entertain and cherish them to cut all their throats, so as they might at once plead full possession, and the King be rid of his true subjects.<sup>47</sup>

The most favorable interpretation of recent events, argued Junius, was that which the States of Holland and Zeeland had given in their address to the King, that Philip had allowed, through negligence or oversight, foreigners to enter the Netherlands, who had undertaken on their own initiative to “exercise barbarous and Turkish Tyrannies of their own authorities” there, depriving the Netherlanders of their lives, liberties, goods, and honor. The allegation that foreigners were robbing the natives of their “moveable and immovable” goods is an unmistakable allusion to the hated Tenth and Twentieth Penny taxes. If the King did not now withdraw these foreigners, “God forbid...that they should be constrained to think that their king is in arms against them, and so bent to their ruin and destruction.”<sup>48</sup> By allowing such foreigners to prey upon the Netherlands, King Philip opened himself to the accusation that he was making “war against the King’s own countries...to put to ruin and destruction his own subjects.” “And to be short,” he concluded, “he maketh war against himself. A prince without his subjects is no prince.”<sup>49</sup> If he desired peace with his subjects, he must perform his fundamental duty as King and recall these predatory strangers.

What is odd about this argument, at least from the modern point of view, is the claim that the King was permitting certain “false subjects” to entertain and enrich themselves at the expense of his “true subjects.” The Netherlanders were, doubtless, subjects of the King of Spain. But so too were, doubtless, the Spanish administrators and soldiers who were in the Netherlands by leave of the King of Spain. If he had the will and the resources, the King of Spain could harass and destroy his Dutch subjects and place his Spanish and other non-Dutch subjects in possession

of their property, as was allegedly happening. In that case could he not be said to be serving his “true subjects”, the Spaniards? At this stage, however, Junius was either unable or unwilling to voice the conclusion that a Spanish king could not be relied to protect his Dutch subjects from the depredations of his Spanish ones. But his argument pointed very strongly in that direction. Though Junius did not carry his generally nationalist argument to its logical conclusion in this instance, his discourse nevertheless reveals the pressure that circumstances were bringing to bear on the idea that an emperor of a vast and culturally diverse empire could be expected to treat all his subject peoples as “his true subjects.”

As I have said, Junius justified the demand for the convocation of the States General in the first instance by reference to the privileges. But he went beyond the recitation of the law. For the law was valid because, first, it had been created for the sake of representing the interests of a particular people, and, second, it had been found, in the course of many generations, to be conducive to their good. “The Estates,” he said, “in a form of political government, are none other thing but the chief and principal heads of the multitude.”<sup>50</sup> The States were the chief representatives of the Netherlanders; as such then, they conveyed the interests and the dispositions of the people to the king, so that he, in his turn, might formulate “laws and ordinances” for their good. “This is the cause,” he continued

why our ancestors excelling in wisdom and perfect policy, have very well ordained heretofore, that especially the king should very straightly be bound and united with the Estates of the Country, not to do anything of importance without communicating the matter unto them first, as they on their side ought to behave themselves unto their prince.<sup>51</sup>

The ancestors had ordained that the king should do nothing of importance before consulting with the States, and this had been the source of all those good laws and ordinances with Netherlanders had for many generations enjoyed.

But the king's representative, Perrenot, had denied that the people of the Low Countries had a common fatherland. If there were no nation, but only a collection of provinces with nothing in common amongst them, then what right could they have to common representative bodies, namely the assemblies composed of the nobility, clergy and burgesses of all the provinces and towns of the Netherlands? In recent years, moreover, the King's policy toward the Netherlands often had been consistent with Perrenot's assertion that the Low Countries had "nothing in common, but only neighbourhood the one with the other." Following the tumults of 1566, the King's lieutenants in the provinces had been instructed to convoke several of the provincial assemblies separately, one after the other. As Jacob Wesenbeke had reported, the consultations had been so planned as to prevent the provincial representatives from discussing the proposed measures at any length, consulting with their principals, or with members of other provinces. Furthermore,

the States were first convoked in the provinces which were least accustomed to show that they have some freedom and were most subject to the inquisition and the persecutions, while in the provinces which were most influenced by the novel developments, possessed the greatest privileges and had through words and deeds most boldly defended the freedom of the country, the States were not convoked at all.<sup>52</sup>

With all of this in mind, Junius was compelled to remind both the King and the other provinces that the Low Countries were one common fatherland.

In his rejoinder to Perrenot's claim, Junius declared

I cannot imagine that you are so ignorant of the Chronicles, or such a stranger to the knowledge of the state of these countries, as that you know not how that since the time of Charlemagne, these countries and provinces have ever been united in one body together, with many other neighbours and borderers.

Since the time of Charlemagne, affirmed Junius, some 800 years ago, the Netherlands had been one body. They had been, it was true, surrounded by other neighbors, other bordering provinces, who were all part of the same empire with them. Yet the Netherlands had always been one

united body politic within the empire. Anyone who did not understand this was either “ignorant” or a “stranger” to the people of the Netherlands. Laws did not always reflect such unity during that 800 year period, for the provinces had been inherited by different seignors in the course of time. All the same, continued Junius, although

by diversity of successors, being dismembered the one from the other, yet they did always keep a certain unity of Amity and alliance together, even until the time of the good Duke Philip, who brought them again into one body, and tied them fast and inseparable by many good ordinances, laws and privileges, which he gave unto them in general.<sup>53</sup>

The provinces, though separated for a time, had kept amity and alliance with one another, until they were brought together again by Philip the Good, the Duke of Burgundy, who had acknowledged their unity by granting them many laws and privileges in common to fortify their bonds. Philip the Good’s successor, Charles the Bold, had been, however, of “haughty mind” and had gone about “openly to make these countries a kingdom.” That is, he had attempted to take away those common privileges his father had granted to the Netherlanders in order to rule over them thereafter as a principality. But in this he was “hindered by the Estates of the said countries who withstood the same.”<sup>54</sup> Thereafter, continued Junius, the kings and dukes of the Netherlands had always confirmed the status of the provinces as one body, and the rights and privileges pertaining to them as such.<sup>55</sup>

Junius concluded with three more proofs of the abiding unity of the Netherlands:

These countries be and have been always in the same sort united more than the others from whence proceedeth that custom which they have ever had to assemble the towns and provinces in the exercise of the bow, and other arms left unto us by our predecessors, but only by this unity. How cometh it to pass, that feasts in public places, the towns and provinces have been always called together by public authority: but only to show the unity of the poor country... Is not the name of the Base Almaines [i.e. Low Germans] or Flemings (as the Spaniards do call us at this day) common unto us all? The speech although it be distinctly of divers sorts, it is so common amongst us, that in the selfsame towns they be used equally.<sup>56</sup>

First, whenever the sovereigns of the Netherlands had asked for supply to fund their wars, they had always assembled the States of all the towns and provinces together. Second, feasts were always called by public authority for all the provinces together. Third, the people of the Netherlands had common names by which they were known to outsiders. The Spaniards themselves called them either Low Germans or Flemings (in Dutch *lage Duitsers* and *Vlamingen* respectively). All of these things showed that the inhabitants of the Netherlands were one people. Their linguistic variety, insisted Junius, was no hindrance to nationhood, for the various languages spoken, mostly dialects of Dutch and French, were “used equally” in the towns.<sup>57</sup> A multitude that was known by common ethnic names, possessed of common linguistic usages and had been seen to have acted in common and to have preserved its unity and common customs through so many ages was clearly worthy of being recognized as one people, and therefore had an undeniable claim to be represented in common. The political rights of Netherlanders thus rested ultimately on the fact, indisputable on Junius’ account, of their existence as one people. Nationhood was the basis of all other political rights. The charters contained all the particular elaborations of that fundamental right of the nation, which previous generations of Netherlanders had insisted upon, and princes had duly recognized. On that firm basis, then, the people should demand, and the king grant, nothing less than a full convocation of the States of all the provinces for the resolution of present difficulties.

The northern provinces of Holland and Zeeland had become the center of the revolt against Spain, but there were many in the southern provinces, especially in Flanders and Brabant who agreed with the view of Dutch nationhood and constitutional tradition espoused by Orange and his confederates, though not all trusted the Protestants of the north in general, or Orange himself in particular. Holland and Zeeland managed to defend themselves against the Duke of

Alva's attacks, and after a series of embarrassing losses, King Philip recalled the Duke in 1573. The latter's replacement, Don Luis de Requesens arrived in the Netherlands the same year. That his authority might be recognized in Holland and Zeeland was out of the question. The States of Holland and Zeeland issued the following warning to the States General at Brussels concerning Requesens: "Who is he? Would he be able to mention his grandfather? Where does he come from? Is he not a foreigner, who has not a foot of ground and neither friends nor relations in these provinces? It is not in keeping with our laws and ancient traditions that he should want to be regarded as stadholder, governor and captain-general of these provinces."<sup>58</sup> The southern provinces decided not to shun Requesens, but they were even less co-operative with him than they had been with Alva. Like Alva, Requesens was held back in his campaign against the rebellious northern provinces by the limited revenue he received from Spain, and though he raised some money by taxing the local population, could never make up the difference. In open defiance of the new Governor-General, the States General of the southern Netherlands now refused to pay even the Hundredth Penny tax to which they had assented under Alva. Their pay in arrears, Spanish soldiers mutinied, and attempted to extort by terror the wages that were owed them both from individual Dutch cities and towns and from the royal government in Brussels. This, obviously, could not fail to enflame anti-Spanish sentiment in the Netherlands and strengthen the position of would-be rebels in the south. When Requesens suddenly died in 1576, the southern Dutch nobles, with the Duke of Aerschot at their head, saw their chance. The King's entire ruling Council of State in Brussels was arrested and imprisoned, and with it out of the way, Aerschot and others immediately made proposals to summon a meeting of the States General, and to open negotiations for a treaty with Holland and Zeeland.<sup>59</sup>

### **The Address and Opening**

The *Address and Opening to make a good, blessed, and general peace in the Netherlands*, penned by an unknown author sometime after the death of Requesens and before the arrest of the royal Council of State in Brussels expressed the view of many in the predominately Catholic southern Netherlands. By the words of Requesens himself, even in the supposedly loyalist provinces, on matters of principle “Everyone is convinced that the rebels are in the right. It is incredible how far public opinion is on their side, and everything they say is believed as if it were the Bible.”<sup>60</sup> The author of the treatise gave explicit expression to his personal distrust of William of Orange and Protestants generally. He remarked with worry that “among us most of the communities sympathize in their hearts with the Prince, because of his gentleness and kindness,” and moreover, that “it is to be feared that their religion will make so much progress that we will not be able, not with any violence, to defend or advocate our own these, our countries.”<sup>61</sup> However, his view of Dutch nationhood and the Dutch constitution was entirely compatible with that of the Orangists, and his desire for Dutch national union unshaken by the above-mentioned fears. The author’s immediate aim was to encourage deputies of the States General to seek an end to the civil war and reestablish the union between the southern Netherlands and the provinces of Holland and Zeeland. The *Address* is one of the more impressive treatises of the age both in its command of historical materials and its rhetorical appeal to ancestral virtue, the two main pillars of its defense of a particular Dutch political order.

The author called upon the noble lords and deputies of the States General to take action to avert “the total spoliation and demise of our dear fatherland, together with the sad yoke of foreign nations, which, due to our discord, will imprison us and our offspring eternally.”<sup>62</sup> This disaster could be avoided only if they resolved to enter a binding accord “with our neighbours and brothers in Holland and Zeeland” and to “resurrect our old privileges, laudable customs, and

rights of the country...and reestablish them on their old footing, just as they had been left us by our ancestors.”<sup>63</sup> Such was the only policy suitable to “true lovers of their fatherland and its faithful natives.”<sup>64</sup> It was, then, a call to throw off the yoke of foreign rule, to make the common fatherland whole again and to restore the constitution to its authentic ancestral form.

The author characterized the ancient constitution of the Netherlands in much the same way that Marnix had in his *Defence*. “God’s word,” he said,

as well as all rights, privileges, old habits, usages and customs, and all mutual contracts, treaties, and alliances of the Low Countries, validated and confirmed by the Lord of the country and by the States, with God’s word and with the holy oath, makes it clear and public that these Netherlands, fallen by the law of succession by from the House of Burgundy unto the King of Spain, the natural Lord of the country, have never been governed as an absolute monarchy or kingdom, where the Lord of the country would have been allowed to manage all the affairs of the country at his will and pleasure, without minding its laws and rights. On the contrary, the country has always been managed and administered, with right and justice, through a republican or rational civic policy, in such a way that the lord of the country has been like a servant and professor of the country’s rights, laws and regulations, indeed, like a father of the fatherland, whose task it is to serve all, be they poor or rich, noble or common, with equal laws, justice and judgment.<sup>65</sup>

“God’s word” appears at the beginning. Indeed, Divine Law, as the author acknowledged, provided some general prescriptions. “God,” he said “has enclosed all power within certain confines and has decided and willed that everyone remain within the limits of the vocation to which he has been called.”<sup>66</sup> Toward the end of the treatise he also described the kingdom of the Israelites and the Roman Republic as examples of this divine principle of government. But ultimately he concluded that it was “unnecessary to look for foreign examples in order to prove this argument, as we can observe it sufficiently in our own case.”<sup>67</sup> The author’s emphasis, therefore, was on the particular order that had arisen in the Netherlands. The history of the fatherland itself was for practical purposes a self-sufficing justification for the form of government and the specific rights and privileges that were to be defended. The present Lord of

the country, the King of Spain, by the dictates of ancient custom could not pretend to any right to absolute rule. He was no less constrained than his predecessors had been by the oath he had taken upon succeeding to the throne to rule the Netherlands only in accordance with the laws and rights of that country. The ancient contract between prince and people, confirmed many times through the ages, stipulated that he was to govern through a “republican policy” equitably professing and enforcing the country’s old rights, laws and regulations.

The most important privilege of the Netherlanders, and that upon which all other rights depended, was to be represented by the States General. The States were composed of men “elected from the whole generality to represent the entire body, to do in its name what otherwise the generality should have done itself.” According to tradition the States General were composed of three orders. “Originally,” wrote the author,

these were the two States, namely that of Knighthood or Nobility, to which some of the most principal nobles have been admitted; and that of towns, to which some burgomasters, jurors, ward-masters, pensionaries, and other similar persons have been elected from the communities of towns and other free jurisdictions. Later the clergy has joined too. Out of their company the clerics have chosen some distinguished prelates and abbots, who were supposed to represent the entire clergy and to defend faithfully its rights, privileges and freedoms with the other States.

The States General, then, consisted of Nobility, elected deputies from the towns and other free jurisdictions and clergy. The three estates together represented the whole people and acted in its name. Together with the Lord of the country they had power to decide on all “grave, important affairs to advance the common good of the country.”<sup>68</sup>

The Lord of the country was required to rule conjointly with the States General, which is to say that he could not take any important decision concerning them without their express consent. A Lord of the Netherlands swore an oath upon his accession

neither to declare nor to wage war, nor, once it has been declared, to make peace, nor to make alliances, nor to introduce any innovations which reduce or change the laws of the country, without the common and well-considered consent and approbation of the countries and the States; also that he will not impose any tax, tribute or excise-duty upon the people without their free consent, which they will render him not as his right, but by their grace, as the charters made at various times concerning this issue, explicitly state... And if he dares act against this, the States will be bound to refuse and resist it. In your hands—and you are custodians and guarantors of this oath for the entire community—he also promises to treat each individual not at will, but by right and justice, and everyone in accordance with the justice of his town.<sup>69</sup>

This is a remarkably concise description of the ancient constitution of the Netherlands as the rebels understood it. The sovereign powers of the community in matters of war and peace and taxation were shared by the Lord of the country and the States. What is more, none of the existing laws, including those pertaining to religion, could be altered, nor any legal innovations introduced without the free consent of the States. The States granted requests of the Lord of the country by their grace, and not because they were required to assent to anything the Lord proposed. They had a right to refuse any measure on behalf of the whole community. The States General themselves, as a body, though meant to share in all important sovereign decisions, were constrained in their actions by the provinces from which their members came. According to custom, the members of the States General, as representatives of their respective orders, and of the community as a whole, were required to consult with their principals before reaching a decision on matters of great weight. Thus, the representatives themselves were expected to secure the assent of the provinces, or the “countries” as the author put it, who sent them to measures under consideration at meetings of the States General.<sup>70</sup> The States General were the primary guarantors of the sovereign power of the whole fatherland, but also of the individual rights of its subjects. They were bound to ensure that each subject would be protected under the rights and privileges specific to his province or town, especially those pertaining to the security of the subject’s person and property.<sup>71</sup> Finally, as the guarantors of the constitutional order of the

Netherlands, the States General were also bound to resist and even depose the Lord of the country if he violated their rights and privileges.

The author of the treatise grounded every point of his description of the Dutch political order in the texts of mediaeval charters and in other historical precedents. He cited several clauses from the already familiar *Joyeuse Entrée* of 1356. But he reached back much farther into the history of Brabant and Flanders as well. Several mediaeval charters and treaties attested to the composition of the States General, its representative character, and its conjoint powers with the Lord of the country. The Charter of Kortenberg, for instance, granted by the Duke of Brabant in 1312, had established a council composed of representatives of the nobility and towns of Brabant. Later, towns in Flanders also sent deputies. By the terms of the Charter, this Council of Kortenberg could assemble “every three weeks” and had “full powers to provide for these matters [the privileges, rights and resolutions of the country] and to improve them, and according to their best judgment, to do and ordain all good things for the benefit of the Lord and his country.”<sup>72</sup> The Treaty of 1339 between the Count of Flanders and the Duke of Brabant confirmed the representative power of the States, and their role in judging disputes between the people and the Lord of the country.<sup>73</sup> The peace concluded by the States General with King Maximilian in 1488 again confirmed “that by right and by office the States are entitled to make peace, and to manage their affairs of the country to the country’s greatest benefit.”<sup>74</sup>

Several other charters and treaties from the late 14<sup>th</sup> century to the early 16<sup>th</sup> confirmed not only the general representative and adjudicative powers of the States General, but also their right to petition and disobey the Lord of the country should he do something harmful to the common good, and what was more, the duty of the provinces to assist one another in defense of their liberties. For instance, according to the 1354 alliance of the towns of eight provinces,

Netherlanders had sworn “to each other and their descendants... ‘to help each other maintain their liberties, charters, privileges, habits, customs and usages, and, should somebody oppose these, to help constrain him; and should one of them fall into trouble as a result of their unity, to help combat this trouble in concord, with body and goods.’”<sup>75</sup> This was especially instructive. On the author’s account, previous generations of Netherlanders from many different provinces of the low country had pledged in several treaties and charters through the ages to come together in concord and risk their bodies and their goods in defense of the liberties, privileges, habits and customs of them all. As the chief “guarantors, observers and guardians of the common welfare of our fatherland,” the States General had coordinated such common resistance.

This ancient right and duty of common resistance included, on the author’s account, an effective right to depose the Lord of the country if petitions and disobedience failed to achieve their end. The author quoted from the New Regiment of 1421, granted by John IV of Brabant, in which the Duke promised that “if he or his descendants” should violate the rights and privileges of the country, the States were not only released from their oath to him, but also “the three States of the country of Brabant may elect by majority a Regent of their choice for the common good, welfare and profit of the whole country of Brabant; and that this Regent shall have full power to act in all matters like a Prince and Lord of the country.”<sup>76</sup> By the author’s interpretation, then the three estates as representatives of the whole community, had the power, in extreme cases, to choose a new Lord of the country.

The right of replacing one Lord of the country with another did not begin in 1421, nor was it confined to Brabant. It was, insisted the author, a general right of the people of the Netherlands that could be traced back at least to the 11<sup>th</sup> century. Heroic Flanders, he said, has risen often “to maintain its rights and privileges and to constrain the will and violence of the

Lord of the Country under the country's laws.”<sup>77</sup> On such occasions, he continued, there has been no unjust rebellion, but rather, the “whole country has acted in accordance with the rights of the country, as has been confirmed and affirmed with the succession of the next Lord of the country.” Such had been the case in 1070, “when they expelled the Countess Richildis, because she had broken the privileges and accepted and inaugurated Robert the Frisian in her place as their Lord and Count;” and in 1127, “when they called Diederich the Alsatian, and took him as their Lord, expelling Count William of Normandy who wanted to govern by force, with violence and at his own pleasure.”<sup>78</sup> From time immemorial then, the author contends, Netherlanders had resisted arbitrary rule; they had successfully exercised their inherited right to depose tyrants and replace them with rulers who would faithfully observe their privileges and customs.

The author's account, as I have been suggesting, was much more than a recitation of old treaties, charters and laws. For rights, privileges and laws do not make themselves. They are not legitimate, they are not worthy of reverence, merely because they are called “laws”, or because one can discover written records of them. The constitutional order of the Netherlands, as the author described it, was valid ultimately because it was an authentic inheritance created and preserved through the ages by wise and brave ancestors. Thus, the author's aim was not merely to present legally valid arguments for a set of actions, but also to remind his audience of what sort of people they were, or rather, what sort of people they had been. Those Dutch ancestors from all the provinces of the Low Country had joined together on several occasions and risked their bodies and their goods to protect their liberties and customs both from outsiders and from their own kings. If the Netherlanders did not rise now in defense of their inheritance, if they did not seek now to exercise all those rights that had been won and preserved for them by previous

generations, then they would be a disgrace to their ancestors. The author asserted this with the following rhetorical question:

What would our forefathers say now, if they were permitted to return to life, and saw what we, their children and descendants, have in our times suffered and accepted for so many years from the Duke of Alva, the Commander [Don Luis de Requesens], and other Spaniards? How amazed would they be that that we suffer and bear from strange nations so many infractions and violations of all those laudable privileges and rights that they left us with so much effort and carefulness, without even daring to speak up against it?<sup>79</sup>

The author listed all the grievances we have already seen, to wit: the violence of the King's armies against Dutch subjects, murder, rape, illegal taxes, the sacking of cities and towns, all of which the Dutch now continued to "watch with folded hands." Most shameful of all was "that we still feed and help to maintain a war, which was started and until now waged, against all the rights of the country."<sup>80</sup> All Dutchmen now must unite to end this, as their forefathers had done on like occasions in the past, or the memory of laudable ancestors would be betrayed.

The author also expressed his national consciousness with remarks critical of the politics of empire. One of the reasons for the present troubles was that Netherlanders of the last century had been lured by ambition to seek alliances with powerful foreigners far from their homeland:

enjoying glory for our prosperity, we tried to make coalitions and alliances far away from our frontier with countries with which we shared neither friendship nor anything in common, only to obtain the glory of having powerful and mighty Lords. We wanted to cherish them in everything, accepting forever what they ordained, regardless of whether it accorded with right and equity, and regardless of whether the States of the country had been heard. Verily from that time on, the state of the country started to totter greatly.<sup>81</sup>

Desire for the glory that would come from membership in grand empires had caused Netherlanders to join together with peoples with whom they had nothing in common. They betrayed their own liberties and customs as they sought to appease foreign magnates. They had been blinded not only by desire for glory but also by naivete. Dutch princes and lords had

married Spanish women, believing that if they only stipulated certain limits on Spanish power in their provinces, they could enjoy all the benefits of an alliance with foreigners “without enmeshing Spain in our laws, or our country in Spanish ways.” Accustomed to the relations of mutual trust they had enjoyed with their own kind, they had been trusting of foreigners when they ought to have been suspicious: “our pious forefathers dealt with their Lords in such sincerity and simplicity that they never suspected, that under the cloak of the Spanish alliance, it would be attempted to bring this country under Spanish or other foreign rule.”<sup>82</sup> For the princes and lords of the Netherland to commingle with foreign women and to bring their people into a political union with foreigners with whom they had no history of friendship and nothing in common had been a grave error. The imperial policy had been a failure, making it impossible to preserve native distinctiveness and native rights. The right course politically was to pursue a nationalist policy: to restore the union with members of their own kind, their friends and neighbors in Holland and Zeeland, instead of waging war against them “for the sake of the Spaniard,” who, according to the boast of the Duke of Alva, wanted to “fry” all these Dutchmen of the north “in the butter of Holland.”<sup>83</sup>

### **5. The *Apology* of William of Orange and the Dutch Declaration of Independence**

During their window of opportunity after the death of Requesens and the arrest of the King’s council in Brussels, the States General pursued something like the nationalist policy advocated by the author the *Address and Opening*. Though many of them still hoped ultimately to reconcile with King Philip and salvage the alliance with Spain, they resolved in this instance to act without their Spanish sovereign. Before the King could appoint a new governor-general, the States General, representing all but three of the southern provinces, sent a delegation to

Ghent to open negotiations with William of Orange and representatives of the States of Holland and Zeeland. The outcome of this meeting was the Peace of Ghent, a treaty signed by all of the northern, and a majority of the southern—all who had sent deputies to the States General—provinces. The three points on which all the provinces agreed, at least at this moment, were that all Spanish soldiers should be expelled from the Netherlands, that the King must agree to a full restoration of the ancient constitution, and that the disagreements concerning the ecclesiastical discipline of the Netherlands were to be resolved at some future time by a full assembly of the States General.

The language of the treaty was much like that of earlier documents, such as the ancient resolutions cited by the author of the *Address and Opening*, all signatories effectively swearing

to maintain from now on a lasting and unbreakable friendship and peace and to assist each other at all times and in all events by word and deeds, with their lives and property, and to drive out of the provinces the Spanish soldiers and other foreigners who have tried, without any recourse to law, to put to death lords and nobles, to usurp the wealth of the provinces, and to reduce the commonalty to perpetual enslavement.<sup>84</sup>

In the event, however, the union proved neither unbreakable nor lasting. Below I shall discuss the two primary reasons for the ultimate failure of the pan-Dutch union, namely, mistrust between Protestants and Catholics, and the abortive attempt to install the Duke of Anjou as Lord of the country. The initial difficulties of the union had to do with more immediate causes. In the first place, having received word of the signing of the Peace of Ghent and finding his coffers empty, King Philip instructed Don John to take a conciliatory approach. He gave the Governor-General permission to bargain with the States General for their acceptance of his authority by acceding to all of their demands. This offer won the favor of the Duke of Aerschot and his party, but not of the Prince of Orange and his, and so the split between the “perpetual union” of the provinces began.

From all of this followed much factional wrangling. Don John eventually lost patience with the conciliatory policy he had been instructed to pursue, attempted to re-establish royal authority by force, and was ousted. Protestant supporters of William of Orange strengthened their position in Ghent and Brussels, which put great fear into the hearts of the Catholic nobility in the Walloon provinces. In 1579, the northern provinces formed the Union of Utrecht, by which they gave expression to their desire to break with Spain. In response, the Walloon provinces, who had always been the least reliable to the rebel cause, broke with the Dutch provinces, formed the Union of Arras, and accepted King Philip's new representative, Alexander Farnese, as their legitimate Governor-General. Only after the departure of the Walloons was an accomplished fact did Flanders and Brabant join the Union of Utrecht. The Prince of Orange had received a hero's welcome when he arrived in Brussels in 1577, but the war effort of the Dutch provinces under his *de facto* leadership did not go well. The King had sent emissaries to propose negotiations for peace in 1578. After the Walloons had abandoned the rest of the Netherlands in 1579, the States General of the provinces belonging to the Union of Utrecht agreed to talks with the King's representatives at Cologne. The royalist strategy formulated by Cardinal Granvelle was far less conciliatory than that of Don John had been. In light of recent royalist victories, it was calculated to sew discord between the hard line rebels and the still significant faction in the States General that was already disposed to make peace with the King on terms favorable to the royalist cause.<sup>85</sup> The King of Spain now presented the Netherlanders with a stark choice by offering a prize of ready money and a title of nobility to anyone who would bring him the head of William of Orange. Netherlanders could pay their respects to either one or the other of these two men, both called "father of the fatherland," the one by convention, the other by popular acclamation; they could no longer maintain the fiction of being loyal to both.<sup>86</sup>

This was the event that produced the most famous written exchange of the Dutch Revolt, King Philip's *Proscription against William of Nassau, Prince of Orange*, and the latter's *Apology*.<sup>87</sup> There is much of interest in this exchange. William's *Apology* is, moreover, thought to have been very influential. According to Swart, a large portion of the Netherlands, perhaps even a majority of the population, was disposed to accept the King's terms at Cologne.<sup>88</sup> The *Apology* was presented to the States General at Delft on 13 December 1580 and read out in full before the assembled deputies. It was then published in February 1581. The States General of the Netherlands, with representatives from all the northern provinces, as well as from Flanders and Brabant, resolved to abjure King Philip of Spain six months later in July 1581. In the following paragraphs I shall focus on one broad question, which William's *Apology* was meant to answer, "who is native and who is foreign to the Netherlands?" This, I argue, is the main thread upon which depends the coherence of all the subordinate claims of the tract. On William's account, there was a distinct customary and racial inheritance that was proper to natives of the Netherlands. Those who did not acknowledge it were either foreign enemies or traitors. All the arguments about liberties, rights and institutions were bound up in this nativist discourse.

The prince was, one could say, forced to answer this question, for in his *Proscription* King Philip had denounced him as a predatory foreigner, who had

refused to accept the great profits to be given him if he would return to his native country—where everyone naturally should desire most to live. As a stranger he delights, on the contrary, to remain and destroy our countries rather than yield to that which is reasonable and good for the interests of our loyal subjects, the inhabitants thereof.<sup>89</sup>

However, one sees that this attack provided the prince with a perfect opening. The accusation of foreignness gave him an opportunity not only to defend his own credentials as a native of the Netherlands, but also to lend his authoritative voice to the task of defining what it meant to be Dutch, of discerning who were the real friends and enemies of the Dutch people, and who,

therefore, could be entrusted with the sovereign powers of the Dutch fatherland. Thus, I assert, though the *Apology* was certainly a very personal document designed defend the reputation of one man, the kinds of arguments it deployed can tell us a great deal about the relationship between national consciousness and citizenship, constitutionalism and democracy in general.

In point of fact, King Philip's accusation was in one sense technically true. William of Orange was born not in the Netherlands, but in Germany. Supposing an individual's actual membership in a nation could be settled by a mere legal convention, *jus solis* in this case, William of Orange could not be a Dutch native. But the legal formulas states have employed to define citizenship cannot account for membership in a nation as an ontological fact. A strictly legal-philosophical concept of political membership such as *jus solis*, is, to borrow a phrase from Carlyle, like "a pair of spectacles behind which there is no eye," that is, it is a standpoint that one can reach only after one has distilled out everything that has to do with real human passions and perceptions, the substance of mutual bonds.

The King's argument was especially clumsy in view of the fact that he himself was, obviously, born in Spain. "If that be so," reasoned the Prince, "then the king himself is a stranger also." But again, the important question, asserted William, was not "where" one happened to be born, but "who and what" one was. On the Prince's account, belonging to a nation had racial, temporal, and customary or cultural dimensions. The first fundamental difference between himself and Philip II, was that the latter "was born in Spain, a country which is the natural enemy of the Netherlands, whereas I was born in Germany, a country which is naturally the friend of this country."<sup>90</sup> The Netherlanders were a Germanic people; therefore, Germany and Germans were their natural friends. Spaniards were a different sort of nation, who had demonstrated by their actions that that were natural enemies of the Dutch. Their behavior was such, William did

not hesitate to say, that it must be rooted in their peculiar nature, the product, as he later explained, of an admixture of non-European blood and non-Christian religious culture. In reference to the prizes King Philip offered for the Prince's head, gold and a title of nobility, William declared

if the Spaniards account such people for Noblemen, and if this be the way to come to honour in Castille and Spain, I will no more wonder at that which all the world believeth, to wit, that the greatest part of the Spaniards, and especially those that count themselves Noblemen, are of the blood of the Moors and Jews, who also keep this virtue of their ancestors, who sold for ready money the life of our Saviour.<sup>91</sup>

Some prominent Netherlanders, it should be noted, expressed disapproval of such vilification of the Spaniards.<sup>92</sup> But one is forced to ask what the effect of this might have been all in all. Swart himself notes on several occasions that anti-Spanish sentiment in the Netherlands was stronger among the common people than among patricians, and, at least in the North, hatred of this common foe assuaged, to a significant degree, the mutual suspicion and hostility of Dutch Protestants and Catholics. William of Orange may well have believed his assertion in his heart. But even if he did not and used such language in a purely calculated way, one is forced to ask questions that will be uncomfortable for liberal and post-nationalist philosophers. Is it really conceivable, practically speaking, that such attitudes could be, in some future time, excluded from politics? Furthermore, are there cases and causes in which the most distasteful form of racial and religious vilification of a political enemy can be normatively justified?

In any event, it should be noted that, as far and as deep as this expression of enmity against the Spaniard went, it was not total. Carl Schmitt has distinguished between three kinds of enemies, corresponding to three degrees of enmity, "formal," "real," and "absolute." William of Orange regarded the Spaniard as a *real* enemy, but, the intensity of his vilifications notwithstanding, by no means as an *absolute* one. His was the enmity proper to what Schmitt

called a “telluric” consciousness. His Dutch nationalism, therefore, was of a modest and defensive character. This is evident from the language of his vow to expel the Spaniards from the Netherlands:

I am willing to let ...[the Spaniards] know further, that as one part of the country is already cleansed of them, and without any memory of them therein except of their bones, so I will not cease, with the help of God and the continued assistance of your favour, to employ all my efforts to purge the whole country from this vermin and to compel them and all their adherents to flee over the mountains where they can trouble their own countries if they wish, but allow us to live here in peaceful possession of our bodies, our estates and our consciences.<sup>93</sup>

William’s enmity toward the Spaniards, intense as it was, would continue only as long as they remained on Dutch soil. They were not enemies of God, or of humanity, worthy to be wiped from the face of the earth. They were by their nature merely enemies of the Dutch, and thus only ought to be expelled from the Netherlands. Once they had fled, he would not think of pursuing them into their own native land. Peace with Spain was possible and desirable, provided that Spaniards no longer trespassed on the territory of the Dutch. The nationalism expressed by William of Orange was thus modest and limited in its aspirations, without even a hint of the messianic distempers with which nationalism has been often infected, before this period and since, owing to the unfortunate influence of millenarian religiosity, whether of the quasi-Christian or purely secular humanist variety.<sup>94</sup> Without that element, nationalism appears to be a form of political consciousness that is not only necessary for self-government, but is also compatible with the goal of limiting enmity between peoples. Enmity can be limited by observance of boundaries.

I began my analysis of the *Apology* with a description of the racial or “natural” dimension of being a Dutch native. The Dutch, according to William, were a Germanic people, and thus did not belong in the same political union with Spaniards. I now turn to the temporal dimension.

Continuing his argument that an individual's location at birth could not be decisive in determining one's nationality, William burnished his native credentials by reference to the history of his family in the Netherlands. His ancestors of the House of Nassau, he said, "not only began to reside here, but also were Lords who possessed great domains, high dignities and titles" in the province of Gelderland as early as the year 1039:

The fact that my predecessors were Lords, Counts and Dukes of Gelderland can be proved from the many monuments and landmarks which remain to this day. I can assure you, therefore, that he who calls me a stranger can show no such proof that he had his origin in this country. On the contrary his race was unknown in this country at that time.<sup>95</sup>

Having begun their life in the Netherlands as Counts of Gelderland, William's predecessors "began more than two hundred years ago to take possession of Counties and Baronies in Luxemburg, Brabant, Flanders and Holland." His ancestors, therefore, had long been tied to many parts of the Netherlands, and not only as feudal lords who might view their possessions as mere personal property, but as active "citizens" obligated by their noble status to serve. For according to an "explicit law to this effect amongst us, in Brabant as well as in other places," he continued, "you look upon all as citizens of the country who possess such Lordships, so as to induce them to take part in the affairs of the country."<sup>96</sup> Specifically, this meant, among other duties, serving as the Stadholder of one or another province, the participation of nobles in deliberating and voting with their peers in assemblies of the provincial States, and, either directly or through representatives, in assemblies of the States General. William of Orange, then, ought to be regarded a native because his ancestors had dwelled in the Netherlands and participated as citizens in its political affairs for more than five centuries. The ancestors of the King of Spain and his adherents, had, on the other hand, been unknown to the people of the Netherlands until recently. National belonging, then, had also this multigenerational dimension; nativeness did not

inhere in the individual alone. The long habitation of one's predecessors in the land, and their long participation in the common affairs of its people, made one more native, and thus, more worthy of trust, than those who lacked such a lineage. Such a lineage, in any event, certainly meant more than the place of an individual's birth.

The third dimension of nativeness consisted in having the right attitude toward the common customs, privileges and rights of Netherlanders. On this point, William did not necessarily break any new ground, but then, there was no need for him to innovate. There was, as I have shown, an already established national narrative in the Dutch-speaking provinces of the Netherlands upon which he could draw. In the *Proscription*, King Philip attempted to show some deference to the privileges of the Netherlands. For instance, he disowned the Duke of Alva and claimed that the latter's "imposition of the tax of ten and twenty percent" was a "thing which we never ordered him to do, nor ever understood to have been assessed except by the consent of our subjects; and even from that we had also intended to free them."<sup>97</sup> However, he did not disown the Inquisition, which remained hateful in the eyes of Protestants and Catholics, and condemned William of Orange for his advocacy of "Liberty of Conscience—which we hold to be nothing else but veritable confusion in religion."<sup>98</sup> What is more, contrary to his specific concessions to the privileges of the Netherlanders on matters of taxation, he declared that "we are the absolute and sovereign Prince of the said countries of the Netherlands."<sup>99</sup>

On William's account, these statements on the part of the King, together with his actions, proved that he was a complete stranger to the laws, customs and privileges of the Netherlands. In the first place, Philip's arrogating to himself the title of "absolute and sovereign King of the Netherlands" proved that he did not understand what sort of people the Dutch were, and thus did not comprehend the traditional role prescribed for a father of the Dutch fatherland:

Let him be a King in Castile, in Arragon, in Naples, among the Indians, and in Jerusalem if he wishes, and a Governor in Asia and Africa. But I will only acknowledge him in this country as a Duke and a Count, and with a power limited according to our privileges which he swore to observe when he entered with great ceremony into the country.<sup>100</sup>

Philip II ruled as an absolute monarch in Spain, in Naples, among the American Indians and in other places. But in the Netherlands he had been received according to the terms prescribed by the *Joyouse Entrée* as a Duke or Count of the country, whose powers were limited. His words and deeds proved he did not understand, or was unwilling to acknowledge the special character of the Dutch political order.

He has always fostered a desire in his heart to subject you in absolute bondage, which they call a Full and Complete Obedience. This means depriving you entirely of your ancient privileges and liberties, and treating you, your wives and your children, as his officers have treated the poor Indians, or at best, the people of Calabria, Sicilia, Naples and Milan. For they forget that these countries of yours were not obtained by conquest, but mostly by right of inheritance or else by the will of those who voluntarily subjected themselves to his predecessors under favorable and legal conditions.<sup>101</sup>

The Dutch, he reminded his audience, were unlike the other subject peoples of the Spanish Empire. Philip desired to treat them, at worst, like barbarian slaves, or at best, like peoples of southern Europe who had been conquered by Spain. The King of Spain had become Count of the provinces of the Netherlands not by conquest, but by right of inheritance, or by covenant, both of which preserved their traditional rights.

As a people ever jealous for their liberty, and possessed of sufficient wisdom and courage to defend it, the Netherlanders never would have submitted to a Spanish conquest, or any other conquest for that matter. Indeed, echoing earlier Dutch tracts, he declared that the Netherlanders had a long history of defending their rights against tyrants. The tyrannical tendencies of the Spaniards had long been held in check “by the fact that these provinces were full of brave Lords who were wise and valiant men like their noble ancestors, and who acted as a break upon the

insolence and aggressiveness of the Spaniards.”<sup>102</sup> Like those brave Dutch ancestors “the Barons of Brabant and of other cities and towns” who “always have taught the Spaniards how great their power was whenever they attempted to exceed their authority” we, he said, addressing the Barons and deputies of the States General, “will soon teach him such a lesson...”<sup>103</sup> The Dutch would force this foreigner, the King of Spain, to understand what they were made of.

Philip II was an obvious stranger to the Netherlands insofar as he charged its people with treason for their insistence on exercising the most fundamental of the rights they had inherited from their ancestors. These were chiefly their corporate rights to participation in national affairs, which they exercised through the States General, and their individual rights as citizens, which were protected by provincial judges and magistrates. Referring to the States General he said

For this noble Assembly, since it serves as a check upon tyrants, is hated by them who are the despoilers of the people, the enemies of their subjects and of their own authority; but it is loved and revered by true kings and princes and those who are really fathers of the people who regard it as the true foundation of government.<sup>104</sup>

A true father of the Dutch fatherland would understand that the States General existed to protect the liberties and customs of the people, and to promote the common welfare together with the Lord of the country, and that, therefore, the States were the true foundation of government. Only tyrants or enemies could make the error of believing that their authority would continue if they refused to seek the assent of the States in all matters of importance.

Although he did not explicitly ascribe to himself the title, which, indeed, might have seemed overly bold, William took every opportunity to clothe himself in the mantle of a traditional Dutch “father of the fatherland.” He began his *Apology* by proclaiming to the States General that “I acknowledge you only as my superiors.”<sup>105</sup> William’s family, he insisted, had not merely inhabited and participated in the government of the Netherlands for many centuries; his ancestors had protected Dutch liberty. King’s Philip’s *Proscription*, he said, had afforded him an

opportunity “to leave to my posterity an example of virtue to be followed by all those who would honor the nobility of their ancestors—not one of whom has ever favoured tyranny, but all of whom loved the liberty of the people among whom they have borne office and held positions of authority.”<sup>106</sup> A true father of the Dutch fatherland loved the liberty of the people, and thus could not but acknowledge the sanctity of the privileges and the authority of that institution, the States General, that was the chief guarantor of liberty. “I am,” he declared, “and shall remain all my life, popular among the people, because I will continue to maintain and defend your liberties and privileges.”<sup>107</sup> Moreover, the “other Lords and wise persons, both of the nobility and the common people” understood that the liberties and privileges were an inheritance in whose defense they must risk their bodies and goods, and that the Spaniard was a natural enemy who must be repelled. Those Dutchmen who did not understand this “were infected by the contagion of their fathers who served the ambition of the Spaniards and the Cardinal [Granvelle].”<sup>108</sup>

William gave specific examples of the liberties and privileges of Netherlanders. A father of the Dutch fatherland was required to take all sovereign decisions with regard to the country in consultation with the States General:

He has no power, by any Ordinance or Decree, to change, or alter in any way whatsoever, the condition of the country. He must be content with his ordinary revenues, and not levy any imposition or exact any taxes without the express permission of the country and in keeping with its privileges. He may not do anything to devalue or debase the money without consent of the States-General.<sup>109</sup>

It was through the States General that Netherlanders exercised their corporate rights as members of the nobility, clergy and people. The law of the land could not be altered, taxes could not be levied, the currency could not be devalued, without the express consent of their representatives. The privileges also afforded important protections to individual subjects. The Lord of the country, he said, “cannot force any of his subjects to do something until the Judges of the Bench

in the district where they live have given their consent.”<sup>110</sup> Furthermore, “he cannot have any subject arrested without first informing the magistrate of the place. Nor can he deport any prisoner out of the country.”<sup>111</sup> The rights of individual subjects to their lives, liberties and estates were protected from the tyranny of the executive by the judges and magistrates of the districts. “Not only once,” he insisted “but over and over again, the king and his adherents have violated all these privileges and have trodden them tyrannically under foot.” It was, therefore, no longer a question of whether resistance to the King of Spain could be adjudged a treasonable act. On the contrary, “Do you not agree, therefore, my Lords, that if the Barons and Nobles do not oppose the Duke and bring him to justice, they themselves should be condemned for perjury and unfaithfulness?”<sup>112</sup> Not to resist the King of Spain in defense of native liberties and privileges, not to expel the Spaniard from the Netherlands for the preservation of a particular way of life, was a violation of the patriot’s duty to protect his patrimony; it was treason to the fatherland, an abandonment of one’s birthright.

Recovery of the liberties and privileges and expulsion of those foreigners who would negate them was ultimately, on William’s account, a question of national honor. These “privileges and liberties which our ancestors have enjoyed from time immemorial, and which they have passed on from one generation to another” were a central constitutive element of the Dutch way of life, and of the glory of the Dutch nation. The Spaniard had, at least since the reign of the Duke of Alva, “insolently trod[den] under foot all our ancient liberties and everything that remained to us of the glory of our ancestors.”<sup>113</sup> Fittingly, in his final appeal for unity in the *Apology*, William impressed upon his audience the shame that would be visited upon their nation if they could not achieve sufficient “concord” among themselves to recover their common inheritance: “It should be a lasting reproach upon us and our people if having such a glorious

country and such effective means to defend it, we shall be conquered by our enemies because, through selfish greed, some pull one way and some another.”<sup>114</sup>

The formal declaration of independence of the Netherlands from Spain, enacted by the States General of all the provinces of the Netherlands, excepting the Walloon provinces that had departed from the union in 1579, lacks the spiritedness of the *Apology of William of Orange*, and of the other tracts examined above, but it employs arguments drawn from all of them. Like the *Discourse of Junius* and the *Address and Opening*, the Act of Abjuration, as it is often called, alluded to a “law of God” and a “law of nature” according to which a “prince is created for the subjects (without whom he cannot be a prince) to govern them according to right and reason and defend and love them as a father does his children.”<sup>115</sup> But the content injected by the authors into these otherwise vague and vapid formulations “right, reason, and the love of a father for his children,” which could mean almost anything depending on the cultural context, was uniquely Dutch. In reality, this edict was an assertion of Dutch reason, Dutch rights, and the Dutch notion of a father of the fatherland, as defined by William of Orange among others.

On the crucial question of the relationship between prince and people, the Act of Abjuration echoed William’s *Apology*: if the prince endeavors to

deprive them of their ancient liberty, privileges and customs and to command and use them like slaves, he must be regarded not as a prince but as a tyrant. And according to right and reason his subjects, at any rate, must no longer recognise him as prince (notably when this is decided by the States of the country), but should renounce him; in his stead another must be elected to be an overlord called to protect them.... This should happen particularly in these countries, which have always been governed (as they should be) in accordance with the oath taken by the prince at his inauguration and in conformity with the privileges, customs and old traditions of these countries which he swears to maintain.<sup>116</sup>

The ancient liberties, privileges and customs alluded to here were, of course, the very same that had been elucidated before by many Dutch political writers. To deprive the Netherlanders of

their traditional rights was in effect to reduce them to slavery. This would not necessarily be a valid proposition in other countries. Any prince who did so, and in spite of legitimate petitions, refused to mend his ways, was to be designated a tyrant and renounced, especially if the States, the representative organ of the united provinces, so resolved. Other countries had States or parliaments which had similar covenants with the princes of the realm, but in the Netherlands this right of renouncing a tyrant was “particularly” well established. *Here*, as the oath taken by all princes of the Netherlands clearly indicated, it had “always” been so. After a lengthy recitation of grievances against Philip II and his lieutenants, all of which had been expressed before in one form or another, the edict resolved that

we have been forced (in conformity with the law of nature and for the protection of our own rights and those of our fellow-countrymen, of the privileges, traditional customs and liberties of the fatherland, the life and honour of our wives, children and descendants so that they should not fall into Spanish slavery) to abandon the king of Spain and to pursue such means as we think likely to secure our rights privileges and liberties.<sup>117</sup>

## **6. The Catholic-Protestant Conundrum and the Anjou Debacle**

The proclamation of the Act of Abjuration (1581), the Netherlands’ declaration of independence, marks the zenith of pan-Dutch nationalism. The two large southern provinces, Flanders and Brabant, were, however, ultimately recaptured by Spain. Geography certainly played a role in this loss. The southern provinces were much harder to defend than the northern, and, in any event, even a united national will cannot be expected to prevail over all countervailing forces. The trouble was that, apart from the unfavorable material conditions, there were serious impediments to national unity in the provinces, impediments by no means limited to the peculiarities of the confederative form of the Dutch government which the deputies of the State General consistently refused to abandon even when proposals for greater centralization

came from William of Orange himself. The northern and southern provinces of the Netherlands continued to be bedeviled by religious divisions, and by the well-established custom of seeking a great foreign prince to serve as lord of the country, a custom that seemed expedient to William of Orange considering how small and thinly populated a country the Netherlands was in comparison with its enemy. The religious divide, which was for many Netherlanders *political* in the Schmittian sense of dividing individuals into groups of friends and enemies, weakened the unity of the northern and southern provinces. The custom of seeking a foreign prince proved unworkable largely because the members of the States General, with good reason as it happened, did not trust the person chosen, in this case the French Duke of Anjou, and thus would not commit to him the funds necessary to beat back the Spanish army. A deficit of cultural homogeneity, partly a product of religious differences, partly a product of the national difference between the people and their new French prince, did more harm to the cause of Dutch national independence and self-government than confederalism.

Such national unity as was manifested by the provinces was achieved in spite of persistent feelings of mistrust between north and south, and within the southern provinces, on the matter of the religious settlement of the country. As I noted above, the first attempt at creating a union of all the provinces, the Peace of Ghent, established that the settlement of the religious question would be deferred to the next meeting of the States General. Following this, however, the States General of the southern provinces made a deal with Don John, without consulting with Holland and Zeeland, and signed the Perpetual Edict, which required among other things that the States swear an oath to maintain the supremacy of the Catholic Church. Many Protestants in the north regarded this as a betrayal.

In May 1577, delegates from the States General, including the Duke of Aerschot and Lord Grobbendonck, and the states of Holland and Zeeland, including William of Orange and his associates, met at St Geertrudenberg to discuss the matter.<sup>118</sup> After much preliminary sparring, the delegates came to the principal point of contention. Lord Grobbendonck, addressing Prince William, said

To say the truth, we are quite sure that you shall not make war on us, but we see, on the other side, that you wish all the while to expand your religion, and that you are not content to maintain it among yourselves, if you may procure, by means fair or foul, the extending of it into our provinces. What assurance will you give us, that when all your demands shall have been accorded, that you will make no innovation contrary to the treaty in the matter of religion?

William's response was to ignore the accusation, by no means an unfounded one, that his people were engaging in proselytism in the Catholic provinces, and to insist that his side had kept its promises, and would continue to abide by the terms of the treaty.<sup>119</sup> Lord Grobbendonck pressed further "the principal point of the treaty stipulates that you submit the matter of the exercise of your religion to the States General...do you promise to submit to everything that the States General shall ordain as much on this, as on all the other points...?" William tried to avoid giving a direct answer, but Lord Grobbendonck would not let the matter drop: "You do not mean, then, to submit to the States concerning the exercise of religion?" "Certainly not," burst out the Prince finally, "for to say the truth, we see that you wish to extirpate us, and we do not wish to be extirpated." The Duke of Aerschot intervened at this point: "Ho! There is nobody who wants that!" The Prince, however, insisted that this was the only possible conclusion: insofar as the States General had sworn an oath, according to the terms of the Perpetual Edict, to maintain the Catholic religion, that aim could not be accomplished without extirpating the Protestants.<sup>120</sup>

This religious mistrust, bursting out into the open here at the conference in St Geertrudenberg, continued to hinder national unity. William of Orange always pressed for a

policy of religious toleration. But he was forced to abandon it at the behest of his supporters, first in the north, and then in the cities of Brussels and Antwerp. As William explained in his *Apology*

The States [of Holland and Zeeland], which at first thought it would be better for the country to allow both religions to be tolerated, soon discovered that because of the treasonable acts of the disloyal amongst us, the country would face complete ruin unless the exercise of the Roman religion was forbidden. They also found that those who had made profession of this religion, especially the priests, had taken an oath to the Pope which was above their oath to the country.

The law forbidding Catholic worship, he continued, had been passed “unanimously” first by the Assembly of the States of Leyden, and then by the League of the provinces of Holland and Zeeland.<sup>121</sup> Such laws as these could not fail to be disturbing to Catholics in the south. But even more threatening were the Protestant coups in the city governments of Brussels and Antwerp, which, everyone knew, could not have succeeded without the knowledge and support of William of Orange. These new governments, dominated by Protestants, also banned Catholic worship. Upon his arrival in these cities, William persuaded his supporters to repeal these bans. But Protestants continued to harass Catholics when the latter tried to assemble for worship.

Indeed, among certain Protestants an opinion had been formed that toleration of the Roman Catholic religion was altogether incompatible with the goal of preserving Dutch liberties. As one Protestant pamphleteer put it,

Maintaining the one and only Roman Catholic religion in this country and maintaining tyranny there, comes to the same thing... To maintain the one and only Roman Catholic religion means the reintroduction of the penalty of banishment and confiscation, the rekindling of the stakes, the re-erection of the gallows in all parts of these provinces, the reintroduction of the inquisition and finally the resurrection from hell of those horrible and cursed edicts, at the remembrance of which all good patriots are filled with horror and abomination.<sup>122</sup>

William of Orange had always blamed the Inquisition and all the other violations of Dutch liberties on the Spaniards. But Dutch Protestants such as the one here blamed these evils on Catholicism itself. According to this pamphleteer, maintaining Catholicism in the Netherlands

would ensure the continuation of tyranny. Roman Catholicism was incompatible with Dutch patriotism. In effect, to be pro-Catholic was to be anti-Dutch:

Is it possible that the Netherlands should once again be so mad and frantic as to bring even greater ruin on itself in order to maintain the Roman Catholic superstition? To establish the Roman Antichrist? Will parents, friends, confederates and allies, fellow citizens, fathers, mothers, children, brothers, sisters, discard patriotism and love to maintain the one and only Roman whore?<sup>123</sup>

There can be little doubt, but that such sentiments as these weakened the will of Flemings and Brabantians, with their Protestant minorities and Catholic majorities, to resist the renewed Spanish onslaught, and the resolve of the Protestant dominated northern provinces to risk their bodies and goods for the majority-Catholic south. The mistrust, after all, was not based on idle fears, but on real experience. Ultimately, William of Orange himself would die at the hands of a Dutch Catholic assassin.

Another serious impediment to Dutch unity, and indeed this has been regarded the most important cause of the fall of Flanders and Brabant back into Spanish hands, was the decision of the States General, much influenced by William of Orange, to accept the Duke of Anjou as Lord of the Netherlands. Historians have noted that, from the point of view of imperial realpolitik, it made eminent sense for the Netherlands to seek as their Lord of the country a foreigner who would have at his disposal the resources of one of Europe's great powers, in this case France. But to the extent that this was not an imperial conflict, but a national one, the assumptions of imperial politics did not apply. As Swart has noted, when plans were first proposed in 1579 to abjure King Philip II in favor of the Duke of Anjou, many members of the States objected that a French Duke would not accept the limited powers they were prepared to offer him according to Dutch tradition, that he might become as bad or worse a tyrant than Philip II.<sup>124</sup>

The States General could not be prevailed upon to grant Anjou either the power or the funds necessary to carry on with the war. In the end Anjou did precisely what many of them had expected him to do all along: upon the arrival of troops from France, which, according to the terms of his election as Lord of the Netherlands, were supposed to be sent against the Spaniards, Anjou personally took charge of the French army and attempted a coup d'état in Antwerp. Armed citizens of Antwerp were ready for him, however, when he charged the gates of the city, and they saw him off with great losses on the French side. Of those who survived, many were later drowned in bogs or killed by the local peasantry.<sup>125</sup> These Frenchmen were no more welcome in Flanders than the Spaniards. A pamphlet written shortly after Anjou's abortive coup expresses this attitude:

It is not only the chronicles that testify that our fellow-countrymen themselves have strong hands and feet. Recently this was made abundantly clear in Holland and Zeeland and there would have been more such examples if our nation had been allowed to bear arms and train in the use of them and had it not been considered better to enlist foreigners. For as a result our countrymen were unable to discover their own strength and allowed themselves to be treated as milch-cows. In fact the inhabitants of Antwerp recently proved (the eternal credit be to God alone) that when necessary they could behave like men... Now it is time for us to stop looking and hearing with foreign eyes and ears; it is time to stop protecting ourselves by means of foreign hands; we should open our own ears and eyes and use our own hands and people for our deliverance and protection...<sup>126</sup>

William of Orange did not approve, however, of the policy of self-reliance. He had very compelling reasons to think that the rebellion could not succeed without foreign assistance. But all the same, a policy conceived on the assumptions of an imperial age proved impossible to implement in view of recent events. Orange had good reason to push the States General to seek reconciliation with Anjou, in spite of the latter's treason, to prevent him from entering into an agreement with Spain. Yet successful implementation of the policy would require a level of trust between Netherlanders and Frenchmen which simply was not attainable at this time. Though the

States General eventually reconciled with Anjou, many Netherlanders remained deeply distrustful. In the summer of 1583, Orange ordered Anjou's troops under the command of Marshal Biron to come to the aid of several Flemish coastal towns menaced by the Duke of Parma's Spanish forces, but relief never arrived, for the Francophobe inhabitants of Ghent denied these French troops entry to Flanders. As a result, these towns were recaptured by Spain.<sup>127</sup> Some months later, the States of Holland urged William to abandon his attempt to reinstate Anjou as Lord of the County warning that if he persisted, the anti-French population in Holland would revolt.<sup>128</sup> In 1584, William of Orange was assassinated, and the Duke of Anjou died of illness. After a last ditch effort by the States General to offer to King Henry of France the title of Lord of the Netherlands, a title he did not desire, the "French policy" came to an end.

King Henry III of France would not be the last foreign lord to whom the States General of the Netherlands would turn, however. In 1585, after much of Brabant and Flanders had been lost to the Spaniards and Antwerp was under siege, the States General of the northern Netherlands sought military aid from Queen Elizabeth of England, and, to that end, offered to receive her favorite, the Earl of Leicester, as their governor-general. The treaty signed by the States General and Leicester was a very peculiar document, expressive more of the desperation of the times than of what had come to be acknowledged as an established tradition. Indeed, only a foreigner could have believed the first proposition of the treaty concerning sovereign power. It stated that the Earl of Leicester

shall be commissioned Govern and Captain General of the aforesaid United Provinces... His Excellency shall have full and absolute power in the aforesaid Provinces and Associated regions, in matter of civil government and justice, such as the Governors General of the Netherlands have in all times legally possessed, and particularly in the time of Charles V of beloved memory.<sup>129</sup>

Thus, on the one hand, Leicester was to be received on such terms as Governors-general of the Netherlands “always” had: that is, he was to be granted “absolute power” to govern the provinces as he saw fit. But, on the other hand, Leicester was *not* to be granted absolute power to govern the provinces as he saw fit, for

the Estates, both general and particular, shall assemble when they wish and act as they deem proper for the welfare and service of the country: All this without prejudice to the Rights, Freedoms, Preeminences, Privileges, Treaties, Contracts, Statutes, Ordinances, Decrees and Customs of the above-mentioned Provinces in general, or of each Province, City and member of each in particular, which notwithstanding anything above, shall remain in full vigour.”<sup>130</sup>

In spite of what had been said above concerning the absolute power of the governor-general, all the traditional rights, freedoms and privileges of the Netherlands, especially the right of the States to meet and act for the good of the fatherland with or without the lord of the country, remained “in full vigour.” It should come as no surprise that this document, with its clumsy sophistry, would not prove a sound basis for a lasting accord.

The English alliance benefited the Netherlands not because it provided the country with a new lord, but because King Philip considered it an act of war on England’s part, and sent an Armada against that nation, which famously failed and left his kingdom substantially weakened in its finances, resources, and reputation. Leicester’s regime in the Netherlands almost immediately provoked opposition. His attempt to act as an absolute lord and to create a more centralized government did not go far. When Queen Elizabeth recalled him for consultations on England’s internal affairs, the States General reasserted its control over politics in the Netherlands, ignoring the orders of the Council of State Leicester had charged to govern in his absence. Thomas Wilkes, one of two English members on the Council, objected that his action by the States represented a violation of “equity, law, reason and natural common sense.” Quoting Bodin, Wilkes asserted that “sovereignty is limited neither in power nor in time.” “In

giving His Excellency general and absolute command, the commonalty allowed him to exercise justice, administer civil, naval and military affairs, and to take action in all things pertaining to high authority or sovereignty.” In other words, by the accord of 1585, the whole people of the Netherlands had granted the Earl sovereignty, which was by its nature unlimited. This meant that the States General by itself had no authority to alter the agreement or to interfere with the government of the country.

Unsurprisingly, this argument from “reason” and “natural common sense,” asserting that sovereignty was by nature unlimited, and that, as a consequence of a treaty signed two years before which invested absolute sovereignty in the Earl of Leicester, the States General had no authority in the Netherlands, convinced no-one. In the response commissioned by the States General, Francis Vranck began by remarking wryly that “Sir Wilkes” and others had “no full experience with the affairs of these countries” and were not “sufficiently instructed as to the foundation of the state of these countries.”<sup>131</sup> Such arguments as Wilkes had been able to muster from “reason” and “nature” were irrelevant. What mattered was the native traditions of the Netherlands as shown by the chronicles, treaties and other landmarks of Dutch history, in this case, with a particular focus on the history of Holland and Zeeland. I shall not here consider at length a narrative whose basic outlines we have already seen several times. Vranck defended the ancient constitution of the Netherlands as the other authors considered in this chapter had done before. After describing the ancient form of government of the Netherlands and “the invincible bravery” which “this people” has displayed in defending it, Vranck concluded by declaring that “those who despise and mock the States of the country...are certainly enemies of the state and republic of these countries.”<sup>132</sup> By 1588, the Earl of Leicester and his lieutenants no longer had any standing in the Netherlands. Count Maurice of Nassau, son of William of Orange, already

accepted as stadholder of several of the provinces, took command of the armed forces of the Netherlands. Though not officially, the States General finally had, in effect, elected a native lord as the chief-executive of the national government.

## 7. “Our Ancestors the Batavians” and Dutch National Sovereignty

The one peculiarity of Vranck’s defense of the ancient constitution of the Netherlands is that it does not mention what was at this time becoming the preeminent political narrative of the Dutch nation, the Batavian myth. Throughout the Dutch Revolt, defenders of Dutch liberty and independence cited the chronicles of the various provinces to bolster their case. Each province obviously had its own distinctive stories. As councillor of state Elbertus Leoninus said in a speech to a meeting of the States General at Antwerp in 1579

Formerly when the provinces were separate, each one had individual means of self-protection and waging open war against kings and potentates: the chronicles of Brabant, Gelderland, Flanders, Utrecht, Friesland and other provinces give evidence of this and the examples are so well-known and still so fresh in our memory that there is no need to relate them at length.<sup>133</sup>

As I have shown already at length, these examples from the various provincial chronicles of courageous, liberty-loving ancestors who successfully defended their ancient rights against usurpers and tyrants, supplied most of the content of the arguments promoting a Dutch national constitutional order. After Flanders and Brabant had been recaptured by Spain, and hope of retaking them had begun to wane, it was to be expected that the chronicles of Holland, now the largest and wealthiest province in the union should rise to prominence and play a central role in defining the identity of the Dutch nation.

The most accessible chronicle of the history of Holland in the 16<sup>th</sup> century was the *Divisiechroniek* of Cornelius Aurelius. First printed in Dutch in 1517, and reprinted throughout

the century, the *Divisiiekroniek* traced the history of Holland back to the most ancient inhabitants of the province, the Batavians. This Germanic tribe, mentioned in the works of Tacitus, was, as far as Aurelius was concerned, the direct ancestor of modern day Hollanders—indeed he used the terms “Batavian” and “Hollander” interchangeably when referring to them. The political aspirations of Dutchmen of the latter half of the 16<sup>th</sup> likely would have been mostly alien to Aurelius himself. But the Dutch rebels of the 1570s and 80s could not have failed to see the relevance of Aurelius’ account of the Batavians to their struggle.

Two elements of Aurelius’ narrative were especially pertinent to the late 16<sup>th</sup> century Dutch struggle for freedom and independence. First, according to Aurelius, the ancient Batavians had been, for all intents and purposes, an independent nation, who had earned the respect of their most powerful neighbor, the Roman Empire. Aurelius emphasized the amicable relations between the Batavians and the Romans: "It would surely be strange were we not to admire the fidelity and the amity and devotion of the Romans towards the Batavians; since, despite the obstacle of distance, tremendous resources of money and labour are mobilised for their armaments to be prepared under the guidance of Caecilius Bato, the leader of the Batavians."<sup>134</sup> The relations, Aurelius insisted, were not evidence that the Batavians were subjects of the Roman Empire. On the contrary, as ancient records and inscriptions demonstrated, the Batavians, as befitted a courageous people, had been allies and equals of the Romans, and had never thought of subjecting themselves to anyone: "These antiquities and inscriptions are found here to this day and they surely prove Holland’s ancient and valiant pedigree, the country with which the Romans were allied, where they were garrisoned and which they preferred above the other nations."<sup>135</sup>

There came a time, however, when Rome ceased to treat this free Germanic nation as an ally and began to demand military service from them as though the Batavians were tribute-paying subjects of the empire. By Aurelius' account, the Batavians were unwilling to relinquish their independence and their privileges, and revolted against the Roman authorities who refused to allow them to depart home upon the conclusion of a military campaign they had undertaken together as allies. He described the revolt of the Batavians/Hollanders as follows:

The Hollanders, Katwijkers, Kennemers and their cohorts then sent a legate out to Bonn with the following message: 'to the mighty captain of Bonn, Herennius Gaullus, blessings. We Hollanders and those with us request free passage to travel in our country. We have no quarrel with the Romans in whose service we have lost much blood many times. But now we have grown tired of a long period of noble military service and wish to return home to see our country again and live in peace. As long as no one attacks us or harms us we shall hurt nobody. But if we are forced to arms we shall carve a way through with our swords.' The man of Bonn decided to attack them and refused the Hollanders passage. Herennius Gaullus, the captain, Center legion from Bonn comprising three thousand strong men and their servants and many Belgians or Treveri with peasants hardened and brave in attack and danger. These came out of the gates of Bonn *en masse* like raging dogs to fight the Hollanders, although these were small in number. When the Hollanders realized what was happening they remember their proud military reputation and formed a tightly packed line so that the Bonn army dared not attack them from either side, neither from the front nor from behind. The Hollanders were undaunted and launched themselves with strength and courage upon the huge mass of the Bonn army despite their small numbers, breaking their lines, splitting and separating their forces and putting the three thousand man legion to flight back to the gates of Bonn. The Hollanders gave chase and killed so many that the ditches of Bonn were filled with dead, and many died from suffocation during the stampede while many others died because of the ferocity and bravery of the Hollanders who fought and won. After this victory the Hollanders continued peacefully on their way, but they avoided the city of Cologne explaining that they were forced to fight the battle upon the cause they had asked for free passage, that this was refused them and that they had been forced to help themselves and force a way through with their swords. And this happened 73 years after the birth of Christ. All this is witnessed to the great strength, power and military might of the Hollanders under the Romans in former times.<sup>136</sup>

Such passages as this one established the military prowess and valor of the ancient Hollanders, and their zeal for independence. According to Aurelius' chronicle, the long-term consequence of this revolt had been a restoration of the prior alliance between the Batavians and the Romans.

The latter had been made to understand that the Batavians would not part with their liberties or their independence.

The *Divisiiekroniek*, as well as many other sources on the history of the Batavians were in print in the early days of the Dutch Revolt. In 1565, a year before the first uprising, the States of Holland appointed an historian to record the province's ancient rights and privileges, especially the right of summoning the States on their own initiative. Hadrianus Junius found support for these rights in his research into the history of the Batavians.<sup>137</sup> In 1575, Janus Dousa first drew the connection between the Batavian revolt against Rome and the Dutch revolt against Spain.<sup>138</sup> The city of Leiden, which had been besieged by the Spaniards in the previous year, but successfully defended, was rechristened *Lugdunum Batavorum* to establish the connection between the heroic defense of the city in modern times and the struggle for liberty of the ancient Batavians. The Batavians became a preeminent symbol of the Dutch fatherland in the 1580s, during which several other ancient chronicles concerning their time were published, mostly in Latin. That the Batavians had become a broadly popular symbol of Dutch courage and liberty is evidenced by the appearance in the 1580s of illustrations depicting father-liberators of the fatherland William of Orange, and later his heir Count Maurice of Nassau, side-by-side with the ancient military captain of the Batavians, Caecilius Bato, also known by the Roman name Claudius Civilis, who had led the revolt against the Roman legate to restore the liberty of the Batavians.<sup>139</sup> The meaning of these illustrations ought to have been obvious to all but the most indifferent of Dutchmen: just as Civilis had liberated the ancient ancestors of the Dutch, the Batavians, from Roman oppression in the first century AD and restored their right to self-rule, so would William of Orange (and Count Maurice) restore the ancient rights and privileges of the Dutch and their freedom from domination by the Spaniards.

### Hugo Grotius: The Antiquity of the Batavian Republic (1610)

This Batavian story was a central component of the argument of Grotius's *Antiquity of the Batavian Republic*, begun in 1601 and published in Latin and Dutch in 1610. Grotius himself may have expressed skepticism about it later in life, but the considered view of scholars seldom has any influence on politics: no other work of Grotius was published in a pocket-book format or reprinted as many times in the vernacular.<sup>140</sup> This treatise was written to justify a revolt that had already taken place, and a constitutional order that had already, more or less, taken shape. However, even after the signing of the truce with Spain in 1609, the position of the Dutch Republic as an independent nation was by no means secure, and the constitutional order that had arisen was by no means without powerful critics at home.<sup>141</sup> The Dutch Republic did not receive official recognition as an independent nation-state by the European Great Powers until the signing of the Treaty of Westphalia of 1648.

The most magisterial work of political theory in Dutch the late 16<sup>th</sup> and early 17<sup>th</sup> century, the *Politica* of Justus Lipsius, made powerful arguments for absolute monarchy while Dutch statesmen continued to struggle with their confederated republican form of government. Published in 1589, the *Politica* was, according to the judgment of Martin van Gelderen “above all the most distinguished plea for princely rule and a powerful repudiation of some of the main arguments employed by Dutch authors to support the Revolt.”<sup>142</sup> In the first place, whereas other Dutch political writers of the era had held the honor of ancestors and the liberty of the fatherland to be values upon which no compromise was to be contemplated, Lipsius emphasized that heaven was the only true fatherland of man, that earthly fatherlands were subject to natural laws of growth and decline, the fortunes and misfortunes of Providence, which no man may resist.

Dutch constitutional thought gave clear justifications for resistance to tyranny. Lipsius declaimed against all supposed rights of resistance and counseled citizens to “endure the things present, in hope of amendment.” Finally, Lipsius made no mention at all of provincial or national assemblies in the governance of kingdoms. His vision of the government was rule by a prince and his advisers, without any role for an assembly of the estates. What is more, as Kossmann’s survey of Dutch political thought demonstrates, monarchy was favored by most political theorists at Dutch universities in the early 17<sup>th</sup> century.<sup>143</sup> The new status of the Dutch provinces as an independent state, and the peculiarity of their constitutional order were evidently in need of defenders.

Grotius uses the Batavian narrative to convince his countrymen that their seemingly novel status and constitution are in fact the same status and the same constitution that their nation has always possessed. Following works published in the 1580s and much earlier, Grotius traces the origins of the Dutch people to the Batavians, who, by his account, were an ancient Germanic tribe who first settled an island off the coast of modern Holland, and then expanded to encompass much of the Northern Netherlands. Throughout his treatise, he emphasizes two things, first, the Batavians’ free, independent and courageous spirit, and, second, the constitution that was an expression of that national spirit, and best suited to the preservation of Batavian liberty, a government by the most eminent members of the two estates, nobility and people, “combined with a principate subjected to laws.”<sup>144</sup> Grotius argues that such a constitution is ideal, for it occupies an intermediate position between a principality and government by the people so as to “avert the negative aspects of both, and combine their good qualities.” Ruling the nation in concert, the prince and the estates are able to avoid the sorts of mistakes that an absolute prince, or an unchecked popular assembly, would be bound to make. Moreover, such a

constitution “provides a sufficient degree of equality when it creates the possibility for anyone from each estate to reach, on the basis of his abilities, the highest positions and share in power.”<sup>145</sup> The Batavian constitution thus embodies two principles essential to the preservation of liberty, the principle of checks and balances, and the principle of equality, which for Grotius means that any member of the nation who distinguishes himself and gains the confidence of his fellow citizens, may rise to the highest positions and share in power. The latter principle, as I have noted above, was not generally realized in the government of the United Provinces. But by ascribing this principle to the ancient Batavian constitution, Grotius establishes it as the immemorial tradition of the nation, which later generations could, and indeed, would appeal to, against the domination of the second estate of each of the Dutch provinces by closed oligarchies.<sup>146</sup>

The question of continuity, of immemoriality, is central to Grotius’ argument. This is the essence of Grotius’s approach to persuading his countrymen to support the newly independent Dutch Republic and its constitution. In doing so, they are not embarking on something new, not applying a general law, or exercising a general right of humanity, not attempting put into practice a doctrine arrived at through sound reasoning from certain infallible first principles. They are merely following what all of their ancestors, or, at least the best of them, always knew to be the right course. Grotius makes this assertion in the form of an extended metaphor:

If someone contemplates this matter carefully, he will easily find that the form of government which we now have, has not recently begun with us, but that the one which previously existed has become more visible. In the same way in which a house can continue to exist, even if you change one or more parts, but ceases to exist if you break up the foundations, a constitution does not immediately become a different one if the names and functions of its magistrates change, as long as the main force of the government and the supreme power, and the mind, so to speak, that moves and binds the whole, remain one and the same.<sup>147</sup>

The metaphor is apt, though certainly not original. As Steven Grosby has shown, the household or the family, is, for obvious reasons, the most common metaphor for the nation.<sup>148</sup> In Grotius's account, the constitution is the ancestral house, the structure that protects the national family. Like the family, the nation has physical and mental essences, blood and memory, which are transmitted from generation to generation. The constitution, like a house, has a foundation, a structure, which remains essentially the same, although, in the course of time, certain parts must be repaired, replaced or altered. But outward changes notwithstanding, it is possible for the essence to remain the same. Grotius portrays the constitution as an indissoluble part of the national family, which it has transmitted from one generation to the next together with its blood and its other memories.

By Grotius' account, the foundations of the constitution are as old as the foundation of the nation itself. The Batavians, he says, established their first settled community on an island devoid of other inhabitants, and made it their own: "Now this is the most lawful beginning of a free state: that the people of free origins founded on free soil." At their first settlement, then, the Batavians were a free people, independent of all others. At this time and after, according to ancient sources, the Batavians had the same sort of government as the ancient Gauls before the Roman period: "the power of their princes was such that the multitude had no less power over them, than they over the multitude."<sup>149</sup> This was the essence of "liberty" as they understood it: the people were not ruled by an absolute monarch, but by representative assemblies containing their best citizens. This is confirmed by a speech of Claudius Civilis who said that whereas "Oriental peoples" (Syria, Asia and the East) "belong under a monarchy, the Batavians were naturally unsuited to this form of government."<sup>150</sup>

Grotius cites several passages from Tacitus' work on the ancient Germans to fill out the picture of the ancient Batavian government as a mixed constitution in which kings or commanders ruled together with assemblies of the people. The Batavians were a Germanic tribe, and therefore one could say of them what Tacitus had said of the Germans on the whole "that the Kings of the Germans 'had no unlimited or arbitrary power'; and [Tacitus] even adds that in an assembly, they were listened to 'for their convincing power, rather than for their competence to give orders.'" Kings, in fact, were rare. More often, there were only commanders appointed by the assembly to prosecute specific wars. Claudius Civilis himself was one such commander. In any case, the essential point, from Grotius' point of view, was that the commander-in-chief, whether a king or a temporary commander, had limited authority:

Since both were limited, they were necessarily defined within limits. These limits were imposed by law and the power of others. The law imposes restrictions, as Tacitus calls it, and when the power of others is added, the situation is created in which one rules at the request of others, not in his own right. The laws were not written down, but, like the Spartan laws, were effective through their position in memory and long-standing use.<sup>151</sup>

The Batavians, then, ruled themselves in accordance with the laws of a mixed constitution, maintained through the generations by its position in memory and custom.

In its form, the ancient government of the Batavians resembled the present government of Holland, with its provincial States composed of an assembly of the Nobility, an assembly of deputies sent by the towns, and a Stadholder, who exercised the executive power in the constitution with the advice and consent of the States. According to Tacitus, the Germanic peoples "had a system of two councils: a small council, in which everyday matters and the more frequently occurring ones were dealt with, and which consisted of the princes only; and a large council, which held the supreme power, and consisted of both estates."<sup>152</sup> It is clear, continues

Grotius, that “with this council ... which consisted of both estates, the highest power resided.”

The Batavians also had precisely this form of government:

The history of Civilis shows that the Batavians did indeed have the very form of government we are now discussing: in order to have the war against the wrongdoings of the Romans declared in proper form, Civilis "convoked the nobility of the tribe and the most prominent from the people", which words provide us with clear evidence of the existence of both estates.<sup>153</sup>

Thus, the government of the Batavians was composed of a prince, who was either a permanent king or a commander in wartime, and two estates, “the nobles, who were also called peers or princes, and those chosen from the common people.”<sup>154</sup>

The relations of the Batavians to the Romans provide more than evidence of the ancient constitutional order of the Batavians. In the telling of Grotius, and of other writers whose works were published before and during the Dutch Revolt, the revolt of the Batavians against Roman tyranny supplies a signal example of Dutch courage, love of freedom, and status of the Dutch people as an independent sovereign nation. The Batavians, Grotius insists, never were conquered by the Roman Empire, and therefore, never had been its subjects:

It is reasonable...to believe that the Batavians respected Roman power, but did not submit to them. This is indicated by the word *association*, which Tacitus uses in the passage just mentioned, and more precisely an honourable association, since he says: “they retain the honourable badge of an ancient alliance.”<sup>155</sup>

Tacitus, he says, had remarked that although such associations between unequal parties usually degenerated into a predatory relationship in which the superior power enjoyed all the benefits, this had not been the case with the Batavians, who had achieved, “through their inborn virtue and loyalty, the retention of their associated position – that is, their equality and rights – not only in theory, but also in fact.”<sup>156</sup> In further confirmation of the independence of the Batavian nation, he writes

Civilis, in his oration to the people, says that no Roman governor has ever come to the Batavians. Instead, they govern their own state with their own laws in their own magistrates; so they were never counted among the provinces. On the contrary, Tacitus often mentions "the Batavian nation", "the congregation of the Batavians", "the community of the Batavians", with which words he refers to nothing else than what we today call an independent state.<sup>157</sup>

The Batavians were a cohesive, independent nation, not only conscious of their rights and freedoms, but able, through their inborn virtue, to retain them in spite of the pressure from their large ally to the South.

When the Romans attempted to treat them as a subject people, rather than as an ally, this was occasion for revolt:

At that moment, however, when the Romans changed from using auxiliary troops to raising troops by recruitment, and not only greedily carried out this recruitment, but also added to it the disgrace of atrocities, which it was impossible for free-born men to bear, the Batavians did what brave men must do, that is, they took up arms, in order to defend their freedom and their purity.<sup>158</sup>

Grotius emphasizes the tenacity with which the Batavians resisted Roman aggression in defense of their native freedom:

From the history of these wars, it appears how eager the Batavians were to defend their freedom, in defence of which they have not shrunk from challenging the Roman power and the fifteen legions surrounding them. Thus, "the name of Rome was driven from the island of the Batavians": and the Batavians themselves "enjoyed great fame all from Germany and Gaul as the founders of freedom."<sup>159</sup>

Not only did the Batavians regain their independence in the event, and establish a reputation for themselves as courageous lovers of freedom, which remained unbroken through the ages in spite of the attempts of other nations to conquer them. They in fact absorbed some other kindred Germanic tribes into their community, and formed close associations with others, including the Mattiaci and the Frisians. Though records for some five hundred years of history were absent, one could assume that the Batavians and their kindred tribes, who, together, eventually came to call themselves Hollanders, preserved their independence. In any event, the first counts of

Holland were free from any foreign obligation. Some counts of Holland may have invoked the protection of the “German Emperors,” but this could never affect “the independent position of the state or its later princes.” “Holland,” he declares, “has never been subject to the laws and decisions of the Emperors and the Empire.”<sup>160</sup>

The Batavians/Hollanders did more than preserve their national sovereignty. According to Grotius, they also maintained their old laws and freedoms in succeeding generations. They kept more or less the same political traditions, just as they had preserved other old customs. This is evident from a review of mediaeval treaties and statutes, which, he says, are to be accounted as but a written expression of the immemorial customs of their Batavian progenitors. Grotius lists the essential features of the constitution of Holland:

The most important laws regarding the government were the following: a female prince shall not marry without the consent of the States of Holland; the offices of counselor, steward and sheriff shall not be given to foreigners; the States shall have the right to congregate as often as they want and wherever they want, and shall not need the permission of the prince to do this; only the States shall decide whether new taxes will be levied, whether someone will be exempted from paying them; the prince shall not be permitted to start a war to defend the interests of the country or to prosecute wrongdoings without the permission of the States; the princes shall use the Dutch language in their official papers; the prince shall coin money, and change the coinage according to what the States decide circumstances require; it shall not be possible for the prince to renounce any part of his principedom; it shall not be permitted to convoke a congregation of the States outside the country; if the prince needs a grant or contribution, he shall ask these from the States in person, and not by means of an agent. He shall not demand taxes if these are not voluntarily given; justice shall only be administered by ordinary judges; the ancient laws and customs shall not be violated; if the prince decrees anything that is in contradiction with those, no one shall be held to obey the decree.<sup>161</sup>

According to immemorial tradition, then the sovereignty of the nation lies with the States. The prince is not to declare war or raise taxes without the consent of the States. He cannot interfere with the ordinary administration of justice by the courts. He cannot violate the ancient laws and

customs of the land, and if he should decree anything in contravention of those laws, the States and the people are at liberty to disregard it.

The original constitution of Holland is thus a contract between prince and people, which remains valid in spite of the fact that Counts of Holland in later times usually ascended to the throne by hereditary right. The hereditary rights of royal princes did not undo the rights of the States and the people:

Although succession in Holland followed the lines of paternal descent, no one was accepted as prince before he had taken an oath before the States to observe the laws and customs of the country, in order to indicate that the basis of governmental power was not paternal inheritance but the consent of the people, that is, of the States. When this was done, loyalty and obedience were promised in return to the prince who had promised to govern on the basis of the laws.<sup>162</sup>

The contractual nature of this constitution is not a mere theory; it has been confirmed by many precedents, which Grotius proceeds to cite at length, filling several pages with descriptions of past instances in which the mediaeval Counts of Holland were confirmed, and sometimes deposed, by the authority of the States.<sup>163</sup>

As descendants of the Batavians and associated ancient German tribes such as the Mattiaci and the Frisians, the other member states of the Union of Utrecht, to wit Gelderland, Zeeland, Utrecht, Friesland, Overijssel and Groningen had similar traditions of self-government and essentially the same relations with the Stadholder, who was often the same man in several or all of the provinces. On Grotius' account then, the union of these provinces, all populated by kindred tribes, goes back to ancient times. They all have long had the same "custom of sending representatives in order to consult with each other about the common interest. The assembly consisting of these representatives is rarely dissolved, and is called the States General."<sup>164</sup>

This whole constitutional order continued undisturbed for many centuries, as long as the people respected the prince and the prince "continued to respect the laws and the meetings of the

people.”<sup>165</sup> Order was disturbed, however, when foreign princes with interests and bases of power outside of the Netherlands, ascended to the office of lord of the Dutch provinces. As Grotius puts it “the ancient princes, whose every prospect lay within their own country, and who had no foreign power to call in, showed themselves obedient to the laws, admirers of justice, and respectful of the States because they understood that their own position was founded on the States’ financial assistance.”<sup>166</sup> Here Grotius emphasizes the financial dependence of the prince on the States General as a check on executive tyranny. But, by his account, foreign manners also played a role in the corruption of the Dutch government. The Burgundians, being descendants of kings, and as such, unaccustomed to the limits that Netherlanders place on their princes, “made the first step towards absolute rule.” After them, Charles V committed serious abuses, “but he restrained himself out of love for these regions, since he was born and brought up here... and knew... the character of the people,” especially the jealousy with which they guarded their freedom. But his son Philip was raised as a Spaniard, and thus, in the service of that nation’s interests and operating on the assumptions of a foreign culture, attempted to impose on the Netherlanders something that they could not brook, an absolutist form of government administered by foreigners. This constituted a violation of the sovereignty of the Netherlanders and all their ancient rights.<sup>167</sup>

It was, therefore, on account of his violation of his agreement to govern according to the traditions of the Netherlanders that King Philip II of Spain was justly deposed as Count of Holland, and the other provinces of the Netherlands. Grotius lists the well-known grievances against the King of Spain: first, he had changed the administration of the provinces and begun issuing decrees from Spain without consulting the States; then he had attempted to impose an Inquisition on the provinces, and when the nobles requested that the question of ecclesiastical

administration be settled by the States General, he forbade the holding of such a meeting; finally, he had sent the Duke of Alva as governor of the Netherlands to establish “absolute rule” and abrogate “all rights and customs of the people.”<sup>168</sup> In response to these violations and acts of aggression, the Dutch did what their ancestors had done: “Following the example of their ancestors, who took up arms against the Romans who tried to secure domination, they declared war on Alva.”<sup>169</sup> When it became manifest that none of their petitions and admonitions would move the King, the States General “declared Philip deposed from the principate in accordance with the law itself, because of his violation of the laws regarding the extent of his power.”<sup>170</sup>

Grotius’ defense of liberty and constitutionalism is thus delivered by means of a typical nationalist narrative. He advocates the preservation of a particular constitutional form by telling a story about wise and courageous ancestors who fended off powerful foreign aggressors to protect their way of life and pass it on to the next generation. Just as their ancient ancestors, the Batavians, repelled the onslaught of the most world’s greatest empire, Rome, so did the Hollanders and other Netherlanders wrench their independence and freedom back from the grandest empire of their time, the Spanish Empire. In conclusion, then, Grotius declares the preservation of this independence and constitutional freedom the sacred duty of all Dutchmen:

Therefore, we owe much to our ancestors, who have accepted a form of government, which was excellent in itself, and ideal for our character and ambitions, from the original founders, preserved it in peace time, recovered it by war, and passed it on to us. It is now our duty, if we do not want to be ungrateful or imprudent, firmly to defend this form of government, which is urged by reason, approved by experience, and recommended by antiquity.<sup>171</sup>

With his Batavian narrative, Grotius defended Dutch liberty as no Lockean philosopher could, appealing not only to “reason,” but also to concrete experience, and to the non-rational component of human consciousness, the desire for continuity, and community, the memory of ancestors, the admiration of heroes.

The Dutch kept this form of government for the next two hundred years, and, after that, adopted a constitutional monarchy, which, though more centralized than the earlier form, was seen to be a continuation of the tradition of Batavian liberty. As I suggested at the beginning of this section, Grotius' Batavian narrative was entirely amenable to a more democratic interpretation of representation as well. Grotius had said that one of the main principles of the Batavian constitution was equity, which meant that anyone who distinguished himself and gained the confidence of his peers could rise to the highest offices in the land and have a share in power. In the 18<sup>th</sup> century, the Dutch Patriot Party sought, among other things, broader popular participation in the government of the Netherlands. Derk van der Capellen framed his appeal as follows:

O, compatriots, take up arms, all of you, and take care of the affairs of the whole country, that is, your *own* affairs. The country belongs to all of you and not to the prince with his highly placed clients who regard and treat you, all of us, the whole Dutch people, the descendants of the free Batavians, as if they were their heritable property, their oxen and sheep which they may shear or slaughter at will. The people living in a country, the inhabitants, the townsmen and peasants, the poor and rich, the great and small, all of them together are the real owners, the lords and masters of the country and they can say how they want things to be arranged, how and by whom they wish to be governed.<sup>172</sup>

According to Van der Capellen, all Dutch people were the descendants of the illustrious free Batavians, and as such, all members of the nation inherited that ancient virtue and liberty, and thus, were capable of and entitled to participate in governing the nation.

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<sup>1</sup> Tilmans, 263

<sup>2</sup> William's actual epithet was *le taciturne*, or, in Dutch *de zwijger*. By his own account, he had earned it on account of his circumspection upon being informed by King Henry II of France of plans "to root out all those who were suspected to be of the Evangelical Faith in France, in this country, and in all of Christendom." "I," he said, "not wishing to lose the confidence of his majesty lest he should conceal anything from me, answered him in such a way as not to cause him to think differently. He went on, therefore, to inform me of all that the Inquisitors proposed to do." See *The Drama of William of Orange*, ed., L.H. Lehmann, (New York, Agora Publishing Co., 1937), 74. Thus, William the Taciturn, as "close-tongued," "not saying too much," "not spilling the beans" etc., makes perfect sense. "Silent," however, though more sonorous than "taciturn" is an utterly stupid translation.

- <sup>3</sup> *The Drama of William of Orange*, ed. L.H. Lehmann, (New York: Agora Publishing Co., 1937), 70.
- <sup>4</sup> *Certein letters wherein is set forth a Discourse of the Peace that was attempted and fought to have bin put in effecte by the Lords and States of Holland and Zelande in the yeare of oure Lorde 1574*, (London: Thomas Marshe, 1576), 32. Throughout this chapter, I have silently modernized the orthography of Elizabethan era translations such as this one.
- <sup>5</sup> Martin van Gelderen, *The Political Thought of the Dutch Revolt 1555-1590*, (Cambridge: Cambridge University Press, 1992), 187.
- <sup>6</sup> van Gelderen, *Political Thought of the Dutch Revolt*, 181-187.
- <sup>7</sup> van Gelderen, *Political Thought of the Dutch Revolt*, 118-119.
- <sup>8</sup> Schmitt, *Constitutional Theory*, trans. Jeffrey Seitzer, (Durham: Duke University Press, 2008), 127.
- <sup>9</sup> As we will see, there was less general agreement that the Francophone Walloons were part of the same community, even if they had long been part of the same administrative unit within the empire.
- <sup>10</sup> Quoted in *Texts Concerning the Revolt of the Netherlands*, ed. E.H. Kossmann & A.F. Mellink (Cambridge: Cambridge University Press, 1974), 199, fn 7.
- <sup>11</sup> van Gelderen, *Political Thought of the Dutch Revolt*, 23.
- <sup>12</sup> In speaking of a Dutch nation, I use the word “national” for convenience. It conveys the right idea, at least. But to be strictly accurate, Dutch thinkers of this time generally described the 17 provinces as their “common fatherland” (in Dutch “*gemeenschappelijke vaderland*”). Generally speaking, the words “nation” and “national” appear only in Francophone pamphlets.
- <sup>13</sup> H. G. Koenigsberger, *Monarchies, States General, and Parliaments: The Netherlands in the Fifteenth and Sixteenth Centuries* (Cambridge: Cambridge University Press, 2001), 36.
- <sup>14</sup> See K. W. Swart, *William of Orange and the Revolt of the Netherlands, 1572-84*, trans. J.C. Grayson, (London: Ashgate Publishing Company, Ltd., 2003), 5, on the “Black Legend” spun by Dutch propagandists, which exaggerated Spanish misdeeds.
- <sup>15</sup> Van Gelderen, *Political Thought of the Dutch Revolt*, 94.
- <sup>16</sup> It is true, however, that as the Revolt wore on, the Catholic – Protestant divide within Dutch provinces became much more acute. This is doubtless one of the causes of the failure of the union of the more Protestant Northern and the more Catholic Southern provinces. On this, more below.
- <sup>17</sup> *Compromise, January 1566*, in *Revolt of the Netherlands*, 59-60.
- <sup>18</sup> *Compromise, January 1566*, 60.
- <sup>19</sup> See Swart, *William of Orange*.
- <sup>20</sup> *A iustification or clearing of the Prince of Orendge against the false sclaunders, wherwith his ilwillers goe about to charge him wrongfully*, (London: Iohn Day of Aldersgate, 1575), 9.
- <sup>21</sup> *A justification of the Prince of Orange*, 16.
- <sup>22</sup> *A justification of the Prince of Orange*, 16.
- <sup>23</sup> *A justification of the Prince of Orange*, 20-21.
- <sup>24</sup> *A justification of the Prince of Orange*, 23.
- <sup>25</sup> *A justification of the Prince of Orange*, 24.
- <sup>26</sup> *A justification of the Prince of Orange*, 43.
- <sup>27</sup> *A justification of the Prince of Orange*, 125.
- <sup>28</sup> *A justification of the Prince of Orange*, 126.
- <sup>29</sup> *A defence and true declaration of the things lately done in the low country, whereby may easily be seen to whom all the beginning and cause of the late troubles and calamities is to be imputed in The Dutch Revolt*, ed. Martin van Gelderen, (Cambridge: Cambridge University Press, 1993), 1-77; *Discourse in Certein letters wherein is set forth a Discourse of the Peace that was attempted and fought to have bin put in effecte by the Lords and States of Holland and Zelande in the yeare of oure Lorde 1574*, (London: Thomas Marshe, 1576), 34-84; *Address and opening to make a good, blessed and general peace in the Netherlands, and to bring them under the obedience of the King, in her old prosperity, bloom and welfare*, in *The Dutch Revolt*, ed. Martin van Gelderen, (Cambridge: Cambridge University Press, 1993), 81-122.
- <sup>30</sup> Martin van Gelderen, *The Political Thought of the Dutch Revolt*, 123.
- <sup>31</sup> *A defence*, 1993, 15.
- <sup>32</sup> *A defence*, 1993, 17.
- <sup>33</sup> *A defence*, 1993, 19.
- <sup>34</sup> Marnix obviously had good reason to emphasize the “Germanness” of his own people in this address to the German Reichstag, but, all the same, it was common at this time to refer to the Netherlands as “Low Germany.”

<sup>35</sup> “Certain Advice and Plain Declaration for His Majesty the King Concerning the Control and Safety of His State and the Commonweal and the Prosperity of the Country”,

<http://dutchrevolt.leiden.edu/english/sources/Pages/1568advice.aspx>

<sup>36</sup> *A defence*, 1993, 20.

<sup>37</sup> *A defence*, 1993, 20

<sup>38</sup> *A defence*, 1993, 58-60.

<sup>39</sup> *A defence*, 1993, 52.

<sup>40</sup> *A defence*, 1993, 63-64.

<sup>41</sup> Geoffrey Parker, *The Dutch Revolt*, (Ithica, NY: Cornell University Press, 1977), 115-117.

<sup>42</sup> See Parker, *The Dutch Revolt*, 141-2.

<sup>43</sup> *Faithful exhortation to the inhabitants of the Netherlands against the vain and false hopes their oppressors hold out to them, 1568*, in *Texts Concerning the Revolt of the Netherlands*, ed. E.H. Kossmann & A.F. Mellink (Cambridge: Cambridge University Press, 1974), 87.

<sup>44</sup> *Remonstrance of William of Nassau, prince of Orange &c., redeemer of the freedom of the Netherlands, to the States and the people, 1572*, in *Revolt of the Netherlands*, 95. See also the *Missive from the knights, nobles and towns of Holland to the States of the country of 1573* which warns that Alva intends to “people this country, so far as any country remains, with foreigners,” *Revolt of the Netherlands*, 106.

<sup>45</sup> *Remonstrance of William of Nassau*, 96-97.

<sup>46</sup> William’s *Remonstrance* (quoted above) refers to Walloons as foreigners. This is not the only instance in Orangist pamphlets of Walloons being lumped together with other foreigners.

<sup>47</sup> *Certein letters*, 1576, 45.

<sup>48</sup> *Certein letters*, 1576, 44.

<sup>49</sup> *Certein letters*, 1576, 49.

<sup>50</sup> *Certein letters*, 1576, 62.

<sup>51</sup> *Certein letters*, 1576, 63.

<sup>52</sup> Jacob Wesenbeke, *The description of the events which happened in the matter of religion in the Netherlands, 1569*, in *Revolt of the Netherlands*, 66-67.

<sup>53</sup> *Certein letters*, 1576, 70.

<sup>54</sup> *Certein letters*, 1576, 71.

<sup>55</sup> *Certein letters*, 1576, 72-3.

<sup>56</sup> *Certein letters*, 1576, 74-5.

<sup>57</sup> This claim is of course questionable. Although well-educated men like Junius and his peers probably could speak Dutch and French with equal facility, the same could not be said for everyone else. In the Walloon provinces, French was the language of the nobility and people. In the Dutch/Flemish provinces the common people spoke a variety of Dutch dialects. See Koenigsberger, *Monarchies, States General, and Parliaments*, 24, on the dividing line.

<sup>58</sup> *A kind admonition to the States of Brabant, Flanders etc., 1574* in *Revolt of the Netherlands*, 116.

<sup>59</sup> This is an exceedingly brief account of a complex series of events. See Parker, *The Dutch Revolt*, 162-176.

<sup>60</sup> Quoted in Swart, *William of Orange*, 88.

<sup>61</sup> *Address and Opening*, in *The Dutch Revolt*, ed. Martin van Gelderen, (Cambridge: Cambridge University Press, 1993), 117.

<sup>62</sup> *Address and Opening*, 81.

<sup>63</sup> *Address and Opening*, 82.

<sup>64</sup> *Address and Opening*, 83.

<sup>65</sup> *Address and Opening*, 85.

<sup>66</sup> *Address and Opening*, 84

<sup>67</sup> *Address and Opening*, 107.

<sup>68</sup> *Address and Opening*, 86.

<sup>69</sup> *Address and Opening*, 93

<sup>70</sup> On this point, see van Gelderen, *The Political Thought of the Dutch Revolt*, 24, 141.

<sup>71</sup> For instance see *A fraternal warning to all Christian Brethren*, 1581: “It is a privilege that makes it illegal to torture a burgher without the court’s permission, for this does not apply to foreigners; it is a privilege when—as is the case in some towns—the house of the burgher is so free that no officer is allowed inside that house to seize anyone unless that person has not paid his debts...” in *Revolt of the Netherlands*, 232.

<sup>72</sup> *Address and Opening*, 88.

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- <sup>73</sup> *Address and Opening*, 88-89.
- <sup>74</sup> *Address and Opening*, 90-91.
- <sup>75</sup> *Address and Opening*, 90.
- <sup>76</sup> *Address and Opening*, 96.
- <sup>77</sup> *Address and Opening*, 96-97.
- <sup>78</sup> *Address and Opening*, 97.
- <sup>79</sup> *Address and Opening*, 97.
- <sup>80</sup> *Address and Opening*, 97.
- <sup>81</sup> *Address and Opening*, 107.
- <sup>82</sup> *Address and Opening*, 108.
- <sup>83</sup> *Address and Opening*, 117-118.
- <sup>84</sup> *Pacification of Ghent, 8 November 1576*, in *Revolt of the Netherlands*, 127-8.
- <sup>85</sup> Parker, *The Dutch Revolt*, 195.
- <sup>86</sup> William of Orange was first honored with the epithet “father of the fatherland” in 1571, not by any member of his circle, but by a Henry Geldthorp, a headmaster of schools at Sneek, Leeuwarden and Delft. See *Direction for the deliverance of the Netherlands from the Spaniard in Revolt of the Netherlands*, 92. If we can believe Marnix, William’s support from the common people of the Netherlands was stronger than that from any other class. See Swart, *William of Orange*, 57.
- <sup>87</sup> The text was composed by William’s court preacher Villiers, but it is thought that William “must have made a particularly large contribution” and that the “general tendency of the work and the choice of specific topics to be discussed were fixed after discussion between the Prince and Villiers,” Swart, *William of Orange*, 189.
- <sup>88</sup> Swart, *William of Orange*, 177.
- <sup>89</sup> *The Drama of William of Orange*, ed. L.H. Lehmann, (New York: Agora Publishing Co., 1937), 35. I have quoted primarily from this edition as it is the most readable English translation of these texts currently available. However, Lehmann sometimes omits clauses, sentences, even entire paragraphs. Therefore, when necessary, I have turned to the following reprint of the original complete and unabridged English translation of 1581, whose orthography and spelling I have modernized as I thought fit: *The Apologie of Prince William of Orange Against the Proclamation of the King of Spaine*, ed. H. Wansink, (Leiden; E.J. Brill, 1969).
- <sup>90</sup> *The Drama of William of Orange*, 66.
- <sup>91</sup> *The Apologie*, 137-8.
- <sup>92</sup> Swart, *William of Orange*, 197.
- <sup>93</sup> *The Drama of William of Orange*, 75.
- <sup>94</sup> Eric Voegelin regarded messianic nationalism to be a species of “political religion.” He argues that “The Christian apocalypse of the empire and the symbolism of the late Middle Ages form the historical basis for the apocalyptic dynamics in modern political religions.” The “three empires” of Marx’s theory of history, the “Third Reich of National Socialism,” and the “fascist third Rome” all mimic Joachim of Fiore’s historicization of the Christian Apocalypse. But in the modern political religions “the end realm is no longer a transcendent community of the spirit but an earthly community of perfected humanity.” Messianic nationalism is thus the most dangerous and aggressive form of nationalism, as it makes a particular nation the bearer of a blueprint for perfected humanity, which must be imposed on the rest of mankind. See *The Collected Works of Eric Voegelin, Vol 5. Modernity without Restraint* (Columbia: University of Missouri Press, 2000).
- <sup>95</sup> *The Drama of William of Orange*, 68.
- <sup>96</sup> *The Drama of William of Orange*, 67.
- <sup>97</sup> *The Drama of William of Orange*, 26.
- <sup>98</sup> *The Drama of William of Orange*, 26.
- <sup>99</sup> *The Drama of William of Orange*, 35.
- <sup>100</sup> *The Drama of William of Orange*, 66.
- <sup>101</sup> *The Drama of William of Orange*, 70.
- <sup>102</sup> *The Drama of William of Orange*, 69.
- <sup>103</sup> *The Drama of William of Orange*, 67.
- <sup>104</sup> *The Drama of William of Orange*, 72.
- <sup>105</sup> *The Drama of William of Orange*, 41.
- <sup>106</sup> *The Drama of William of Orange*, 44.
- <sup>107</sup> *The Drama of William of Orange*, 103.
- <sup>108</sup> *The Drama of William of Orange*, 72.

- <sup>109</sup> *The Drama of William of Orange*, 83.
- <sup>110</sup> *The Drama of William of Orange*, 83.
- <sup>111</sup> *The Drama of William of Orange*, 84.
- <sup>112</sup> *The Drama of William of Orange*, 84.
- <sup>113</sup> *The Drama of William of Orange*, 91.
- <sup>114</sup> *The Drama of William of Orange*, 115.
- <sup>115</sup> *The Drama of William of Orange*, 216.
- <sup>116</sup> *The Drama of William of Orange*, 217.
- <sup>117</sup> *The Drama of William of Orange*, 225.
- <sup>118</sup> See *Vraye narration de propos de coste et d'aultre tenuz entre les deputez de don Jehan et monseigneur le prince et deputez d'Hollande et Zeeland, a Geertudenberghe, au mois de may 1577* in *Representative Government in Western Europe in the Sixteenth Century*, ed. G. Griffiths (Oxford: Clarendon Press, 1968), 454-462.
- <sup>119</sup> *Vraye narration*, 459.
- <sup>120</sup> *Vraye narration*, 460.
- <sup>121</sup> *The Drama of William of Orange*, 87.
- <sup>122</sup> *The true patriot to the good patriots*, in *Revolt of the Netherlands*, 160.
- <sup>123</sup> *The true patriot*, 161.
- <sup>124</sup> Swart, *William of Orange*, 215.
- <sup>125</sup> Swart, *William of Orange*, 231-2.
- <sup>126</sup> *A discourse outlining the best and surest form and frame of government to be established in the Netherlands in these times*, 1583, in *Revolt of the Netherlands*, 244.
- <sup>127</sup> Swart, *William of Orange*, 237.
- <sup>128</sup> Swart, *William of Orange*, 241.
- <sup>129</sup> *Representative Government in Western Europe in the Sixteenth Century*, 530.
- <sup>130</sup> *Representative Government in Western Europe in the Sixteenth Century*, 531.
- <sup>131</sup> Vranck, *Short exposition of the right exercised from all old times by the knighthood, nobles and towns of Holland and Westvriesland for the maintenance of the liberties, rights, privileges and laudable customs of the country*, in *The Dutch Revolt*, 230.
- <sup>132</sup> Vranck, *Short exposition*, 235, 237.
- <sup>133</sup> *Discourse of Elbertus Leoninus, councilor of State, to the States General at Antwerp. 11 April 1579*, in *Revolt of the Netherlands*, 179.
- <sup>134</sup> Quoted in Tilmans, Karin. *Historiography and Humanism in Holland in the Age of Erasmus: Aurelius and the Divisiechroniek of 1517* (Nieuwkoop: De Graaf Publishers, 1992), 233.
- <sup>135</sup> Tilmans, *Aurelius and the Divisiechroniek of 1517*, 239.
- <sup>136</sup> Tilmans, *Aurelius and the Divisiechroniek of 1517*, 242.
- <sup>137</sup> Waszink, "Introduction" in Grotius, *Batavian Republic*, 9.
- <sup>138</sup> Waszink, "Introduction" in Grotius, *Batavian Republic*, 9.
- <sup>139</sup> I. Schöffner, 'The Batavian Myth during the Sixteenth and Seventeenth Centuries', in: J.S. Bromley and E.H. Kossman (eds), *Some Political Mythologies Britain and the Netherlands* vol. 5, (The Hague 1975), 89.
- <sup>140</sup> On the pocket-book editions of the text, see Tuck, *Philosophy and Government*, 164. Composed in Latin, the text was immediately translated into Dutch upon publication in 1610. The Dutch translation was reprinted in 1636, 1639, 1641 and twice in 1651. A second translation was published in 1681 and reprinted in a work called *Antiquitates Germanicae* in 1714, 1728, 1756 and 1757. See Jan Waszink, "Introduction" in Hugo Grotius, *The Antiquity of the Batavian Republic*, ed. & transl. Jan Waszink, (Assen: Van Gorcum & Comp., 2000), 31-32.
- <sup>141</sup> As Tuck shows, Grotius himself was at times critical of the decentralized constitutional order of the Netherlands.
- <sup>142</sup> Martin van Gelderen, *The Political Thought of the Dutch Revolt 1555-1590*, (Cambridge: Cambridge University Press, 1992), 187.
- <sup>143</sup> Kossman, *Political Thought in the Dutch Republic*, 37ff.
- <sup>144</sup> Hugo Grotius, *The Antiquity of the Batavian Republic*, ed. & transl. Jan Waszink, (Assen: Van Gorcum & Comp., 2000), 55.
- <sup>145</sup> Grotius, *Batavian Republic*, 55.
- <sup>146</sup> Kossman is thus not entirely justified in asserting that Grotius's tract served merely to preserve the existing order. Kossman, *Political Thought in the Dutch Republic*, 32.
- <sup>147</sup> Grotius, *Batavian Republic*, 51.
- <sup>148</sup> Grosby, *Nationalism, A Very Short Introduction*, (New York: Oxford University Press, Inc., 2005), 43-56.

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- <sup>149</sup> Grotius, *Batavian Republic*, 57.  
<sup>150</sup> Grotius, *Batavian Republic*, 59.  
<sup>151</sup> Grotius, *Batavian Republic*, 59.  
<sup>152</sup> Grotius, *Batavian Republic*, 65.  
<sup>153</sup> Grotius, *Batavian Republic*, 65.  
<sup>154</sup> Grotius, *Batavian Republic*, 65.  
<sup>155</sup> Grotius, *Batavian Republic*, 69.  
<sup>156</sup> Grotius, *Batavian Republic*, 69.  
<sup>157</sup> Grotius, *Batavian Republic*, 71.  
<sup>158</sup> Grotius, *Batavian Republic*, 73-5.  
<sup>159</sup> Grotius, *Batavian Republic*, 75.  
<sup>160</sup> Grotius, *Batavian Republic*, 87.  
<sup>161</sup> Grotius, *Batavian Republic*, 89.  
<sup>162</sup> Grotius, *Batavian Republic*, 91.  
<sup>163</sup> Grotius, *Batavian Republic*, 91-5.  
<sup>164</sup> Grotius, *Batavian Republic*, 111.  
<sup>165</sup> Grotius, *Batavian Republic*, 95-97.  
<sup>166</sup> Grotius, *Batavian Republic*, 99.  
<sup>167</sup> Grotius, *Batavian Republic*, 99.  
<sup>168</sup> Grotius, *Batavian Republic*, 99-101.  
<sup>169</sup> Grotius, *Batavian Republic*, 103.  
<sup>170</sup> Grotius, *Batavian Republic*, 105.  
<sup>171</sup> Grotius, *Batavian Republic*, 115.  
<sup>172</sup> Quoted in Kossmann, *Political Thought in the Dutch Republic*, 187.

# Chapter III — England

“For assuredly, out of the old fields must spring and grow the new corne.”  
- Sir Edward Coke

## 1. Absolute Monarchy: Hobbes and the Norman Conquest

Before we consider nationalist stories about England’s past, and how the English nation underwrites certain political ideas, we must examine the absolutist stories which provoked these discourses. For the 21<sup>st</sup> century reader, the most familiar formulation of the absolute monarchist position is that of Thomas Hobbes. This was not so in 17<sup>th</sup> century England. Judging from the responses now extant, Hobbes had no defenders in England in the fifty years after the initial publication of *Leviathan* in 1651.<sup>1</sup> Yet, the Hobbesian argument is worth considering precisely because of its radicalism. For Hobbes an entity such as “the people” can have no existence outside of an instituted commonwealth. Before there is a sovereign, or a state, there is no society, there is no people; there is only a multitude of individuals. As Hobbes writes in *On the Citizen*, “prior to the formation of a commonwealth a *People* does not exist, since it was not then a person, but a crowd of individual persons.”<sup>2</sup> For a people to exist as a coherent whole, with common interests, and common sentiments, the many wills of the multitude, which lead each individual in a thousand different directions, and mostly against one another, must be reduced to one will, that of the sovereign. As Hobbes puts it in *Leviathan* “A Multitude of men, are made *One Person*, when they are by one man, or one Person, Represented...For it is the *Unity* of the Representer, not the *Unity* of the Represented, that maketh the Person *One*.”<sup>3</sup> It is by their common obedience to one man, the Sovereign, that the individuals of an otherwise chaotic, formless multitude are constituted as a people.

Without a Sovereign to forge their unity by substituting his will for all of their individual wills, a multitude of individuals can have no common existence. Hobbes makes this explicit with his refutation of Cardinal Bellarmine's argument that "the Members of every Common-wealth, as a Naturall Body, depend one of another." "It is true," continues Hobbes,

they cohaere together; but they depend onely on the Sovereign, which is the Soul of the Common-wealth; which failing, the Common-wealth is dissolved into a Civill war, not one man so much as cohaering to another, for want of a common Dependance on a known Sovereign; Just as the Members of the naturall body dissolve into Earth, for want of a Soul to hold them together.<sup>4</sup>

It is the individual person of the sovereign that constitutes the people as a body. Without him, they are no people, but a squabbling multitude. Thus it is the right and duty of the sovereign to make the agglomeration of radical individualists one body, to transform the multitude into a people, or nation, by imposing upon them his own notions of good and evil, a uniformity of "temper, custom, and doctrine" and positive laws of his own invention.<sup>5</sup>

Hobbes' argument is unique in its total denial of the existence of any pre-political community. It is at the same time abstract and immediate in its appeal, and this also distinguishes it from earlier justifications of absolute monarchical authority. It puts all of history to one side and appeals to individuals in the here and now with an abstract proposition: "this is true always and everywhere: absent an absolute sovereign, there can be no peace among men." Since, according to this theory, the people do not exist as a body apart from the will of the sovereign, there is no vantage point from which to criticize the sovereign power. Whatever advantages of peace, community and civilization they enjoy they owe to their sovereign. There is no alternative model of community to which one may refer. Therein, at least in theory, is the strength of this formulation.

The Hobbesian formulation of absolutism is a late one. The older justifications of absolute monarchy deny not the existence, but the relevance of a pre-political English

community. The historical narrative offered by supporters of the King throughout the 17<sup>th</sup> century refer to a single event, the conquest of England in 1066 by William of Normandy.<sup>6</sup> In the late 16<sup>th</sup> century royalists begin to make use of the Norman Conquest in arguments justifying absolute monarchy. Rev. Dr. Adam Blackwood argues in his *Apologia pro Regibus* (1581) that “William’s power after the Conquest was absolute, and that any right which his conquered subjects retained in their property thereafter was by his grace.” Blackwood compares the position of the English to that of the American Indians after the Spanish conquest.<sup>7</sup> King James I himself writes in *The Trew Law of Free Monarchies* (1598):

For when the Bastard of *Normandie* [William I] came into *England*, and made himself king, was it not by force, and with a mighty army? Where he gave the Law, and tooke none, changed the Lawes, inverted the order of government, set downe the strangers his followers in many of the old possessours rooms, as at this day well appeareth a great part of the Gentlemen of England being come of the *Norman* blood, and their old laws, which to this day they are ruled by, are written in his language, and not in theirs: and yet his successours have with great happinesse enjoyed the Crowne to this day.<sup>8</sup>

In this view, then, William the Conqueror had acquired absolute power over the English by his conquest, and the descendants of William all inherited this absolute power. Supporters of the monarchy, such as Nicholas Ferrar, would accept this theory, adding that the Anglo-Saxons had been dissolute, and that the imposition of absolute rule upon them had been to their benefit.<sup>9</sup>

According to Foucault, Hobbes created his radical new formulation of the theory of absolute monarchy primarily with a view to replacing earlier history-based arguments that he thought were more vulnerable to critique.<sup>10</sup> In Hobbes’ view existing historical arguments are not only susceptible to attack, but they are also needlessly provocative. In the final chapter of *Leviathan*, Hobbes criticises those monarchs who use historical arguments to justify their authority. It is unwise, he says, for them to

justify the War, by which their Power was at first gotten, and whereon (as they think) their Right dependeth, and not on the Possession. As if, for example, the Right of Kings

of England did depend on the goodnesse of the cause of *William* the Conquerour, and upon their lineall, and directest Descent from him; by which means, there would perhaps be no tie of the Subjects obedience to their Sovereign at this day in all the world: wherein whilst they needlessly think to justify themselves, they justify all the successefull Rebellions that Ambition shall at any time after raise against them and their Successors. Therefore I put down for one of the most effectuall seeds of the Death of any State, that the Conquerors require not onely a Submission of mens actions to them for the future, but also an Approbation of all their actions past; when there is scarce a Common-wealth in the world, whose beginnings can in conscience be justified.<sup>11</sup>

Historical arguments, Hobbes well understood, are dangerous for absolute monarchs. In the English case, to assert the monarch's right on the basis of a conquest only reminds those individuals, whom he would convince to be passive and isolated atoms, that the power that now protects them was originally established by the violent subjugation of their ancestors. Such a reminder is provocative: it challenges all rebels to appeal to the lost honor of conquered ancestors and to speak of a restoration of ancient rights lost at the time of the conquest.<sup>12</sup> The mind of the subject, when confronted with such an argument, is drawn away from the exigencies of the present situation to the contemplation of a collective past with its assortment of memories and grievances. The act of reaching into the distant past for justification serves as an invitation for rebels to do the same, and to do so on their own terms. So as not to provoke such dangerous imaginings, the monarch should emphasize that his right to rule is based on his present possession of the power to protect. The Hobbesian argument ignores history, viewing it as a Pandora's box, and appeals to the isolated individual's present interest in enjoying the material benefits of peace.<sup>13</sup>

The Stuart kings themselves in their parleys with parliament were never so incautious as to assert their prerogative powers on the grounds of the right of Conquest. But they resorted of necessity to arguments that denied any particular rights and privileges to the English as a distinct nation. For instance, in 1610 James I declared before the House of Commons:

First therefore in the matter, all kings Christian as well elective as successive have power to lay impositions. I myself in Scotland before I came hither, Denmark, Sweden that is but newly successive, France, Spain, all have this power. And as Bellarmine abuses me in another sense *solus rex Angliae timet*, so shall *solus rex Angliae* be confined?<sup>14</sup> Besides to call in question that power which all your kings have ever had, which 2 women have had and exercised, I leave it to yourselves to think what dutiful subjects ought to do in it.<sup>15</sup>

Here King James I asserts what he takes to be a general right of European monarchs to tax their subjects without consent of parliament. If other kings may do so, why is the King of England forbidden? Is he not like any other Christian monarch? For good measure, James I buttresses his claim by citing what he believes to be a precedent in English law.

Nicholas Fuller, MP for St Mawes, answered King James the next day before the whole House:

[T]hough the King were in truth very wise yet is he a stranger to this government. He makes mention of this to be done in the time of 2 Queens. I remember not any such thing, but that by a statute of tonnage and poundage they had that they had... The King speaks of France and Spain what they may do, I pray let us be true to the King and true to ourselves and let him know what by the laws of England he may do.<sup>16</sup>

In this reply, Fuller grounds his argument on the distinctiveness of English law, which James I, being a ‘stranger’ from Scotland, evidently does not understand. The laws of Scotland, Spain, France and other nations are of no consequence in this debate. According to the ancestral customs of England, the *only* customs that matter *here*, the King may not lay impositions without consent of Parliament. His Majesty misunderstands the precedent he cites, for tonnage and poundage were collected by former kings of England only when authorized by statute, that is, by an Act of Parliament. If the Common Law of England is not taught up in Scotland, whence His Majesty hails, then we, the elected representatives of the counties of England, are duty-bound to instruct him on this point. Fuller’s reply to King James might be viewed as an opening salvo in the 17<sup>th</sup> century battle for sovereignty in England. The nativist tone of the challenge is no

accident.

Nicholas Fuller's reply to King James contains at least a hint of a wider narrative about the liberties of the English nation told in the 17<sup>th</sup> and in earlier centuries. This is the narrative that worried Hobbes, and other absolutists such as Robert Brady, who in his *Complete History of England* (1685), complains that 'we find nothing in our *Common Histories* of these Times, but the *Brave Feats* performed by the *English* for their Fundamental Rights and Liberties...Nothing in *Sir Edward Coke, Mr Selden, Mr Prynne*, and all late Writers when they chop upon these Times, and mention anything relating to them, but the *Magnanimity* of the *English* in Appearing for their *Birth-rights*, and the great *Privileges* they had formerly enjoyed.'<sup>17</sup> The narratives of England's history aim to demonstrate that English people existed as a coherent national community in the ancient past; that the laws and institutions that they now had, grew up round them over a long space of time to suit their particular needs; that they were never a formless, anomic mass in need of an absolute sovereign to shape them into a nation and inscribe laws of his invention upon them as a shepherd might brand his sheep.

Nor were they the sort of people who would submit to a conqueror. J.G.A Pocock seems perplexed that in the pamphlet war of the 17<sup>th</sup> century and beyond, the Conquest thesis, though only on occasion asserted for polemical purposes by proponents of absolutism, was with such great frequency, vehemence and mind-destroying exhaustiveness refuted by the defenders of the ancient rights of Englishmen. But there is nothing perplexing here when one considers the national consciousness of many 17<sup>th</sup> century Englishmen. Let the conquest thesis be asserted but infrequently by the proponents of absolutism, the claim that Englishmen were, in essence, the slaves of a master descended from foreigners was more offensive to their ears than any other royalist argument. For it denied their image of themselves as a free and valorous nation. The

vehemence and stubbornness with which the conquest thesis was refuted had as much, if not more, to do with wounded national honor, as it did with the presumed strength of a legal argument.

## **2. ‘Our Saxons,’ the Ancient Constitution, the Norman Yoke, and Protestantism**

In many important ways, the 16<sup>th</sup> century laid the groundwork in the national consciousness of English people which made the 17<sup>th</sup> century revolution in political consciousness possible. The 16<sup>th</sup> century saw the mass publication of a wide array of mediaeval sources about England’s national past. These mediaeval manuscripts were studied, edited and published by the members of antiquarian societies, and these sources provided the materials for learned treatises as well as popular history books for the lay reader.<sup>18</sup> Most importantly for our story, this included collections of Saxon laws, chronicles from the Saxon, and early Norman periods, and in particular, three documents which were purportedly written before the coming of William of Normandy in 1066, or shortly thereafter. These were the *Leges Edwardi Confessoris* (Laws of Edward the Confessor), the *Modus Tenendi Parliamentum* (The Manner of Holding Parliaments), and the *Mirror of Justices*. All three documents were forgeries, of the 12<sup>th</sup>, 13<sup>th</sup> and 14<sup>th</sup> centuries respectively. The latter two texts were regarded with skepticism by some in the 17<sup>th</sup> century. The common lawyer and antiquarian John Selden denied the authenticity of both the *Modus* and the *Mirror*.<sup>19</sup> But he accepted the *Leges Edwardi* as authentic.<sup>20</sup> The Society of Antiquaries put its stamp of approval on both the *Leges* and the *Modus*.<sup>21</sup> The *Mirror* had the most detractors of the three, but many prominent politicians and writers, including Sir Edward Coke and George Lawson (see below) accepted its authenticity without question. It bears repeating that the ideas in such documents, if not the documents themselves, were entirely

accessible to the lay reader in English long before the start of the 17<sup>th</sup> century. One of the most popular books of the Elizabethan period, John Foxe's *Acts and Monuments*, contained a chapter that incorporated the story from *Leges Edwardi* about William the Conqueror's non-conquest of England into a larger narrative of English political history spanning the centuries in which the people were seen to have petitioned their rulers whenever the fundamental laws of the kingdom were abrogated and to have raised "great commotions and rebellions" when necessary to see St. Edward's Laws restored.<sup>22</sup>

Four things emerge from the mass publication and digestion of these various sources by English society. First, the Saxons come to take pride of place among the ancestors of the English people. It appears to have become a convention to refer to them in histories and treatises as "our Saxons"; no other ancient tribe of the British Isles was so honored with the possessive adjective. In the first few decades of the 17<sup>th</sup> century popular histories published and many times reprinted by Richard Verstegan, William Martyn, and Samuel Daniel praised the Saxons as superior to the other inhabitants of the British Isles, lauding their uprightness, honor and courage.<sup>23</sup> Second, the three documents above, together with subsequent corroborating sources, offered a picture of the Anglo-Saxon form of government, in which the monarch ruled conjointly with a *Witanagemote*, a grand assembly of wise men drawn from the Nobility, the Clergy, and knights and burgesses of the shires. The *Witanagemote*, the precursor to the parliament, was the preeminent national institution through which the English people exercised a national legislative power and fended off attempts by royal administrations to usurp their local corporate and individual rights. Third, the *Legis Edwardi Confessoris*, together with several chronicle accounts gave a version of English history according to which the coming of William of Normandy was not a conquest. In this story, contrary to the one that had been more common theretofore, William, assailed by

petitions, or in other versions, vexed by revolts of Saxon barons, agreed in spite of his own wishes to rule England in accordance with the Laws of St. Edward the Confessor, England's 'ancient Saxon constitution'. Finally, the assimilation of this material brought at least some prominent Englishmen to a particular understanding about their history and identity as a people. William Lambarde, a 16<sup>th</sup> century Anglo-Saxon antiquary and common lawyer concluded that the English were a people so jealous of their liberty that they rebelled whenever the king made serious encroachments on their traditional freedoms. "The times hath been," he said in 1585 "when the nobility and commons of this realm have (with all humility and heart's desire) begged at the hands of their princes the continuation of their country laws and customs; and not prevailing so, they have armed themselves and have sought by force and with the adventure of their honours, goods and lives to extort it from them."<sup>24</sup> This is a claim that would echo and re-echo throughout England's tumultuous 17<sup>th</sup> century and beyond.

In the anti-absolutist polemics of the 17<sup>th</sup> century, these elements combine in two different Anti-Norman stories.<sup>25</sup> The first variation repudiates the assertion of King James I and others that William the Conqueror made a total conquest of England and set up himself and his descendants as absolute monarchs. Various arguments are asserted to the effect that the French king and his progeny were, in rather short order, conquered legally, linguistically, and even racially by the English people. The foreign king is forcibly Anglicized, and thereby made accountable to the nation of Englishmen. This narrative seeks mainly to validate the "ancient constitution" of England, according to which the king is required to rule with the consent of parliament, and to obey all established laws of the land, and to hold inviolate all the ancient rights, liberties, franchises of Englishmen. This first version itself appears in two basic forms throughout the century. First, there is the "common law" narrative according to which the

English people are bound to govern themselves according to a constitution whose origins are beyond memory. Second, there is the “popular consent” narrative according to which the ancient constitution was established by the choice of the Anglo-Saxon communities in Britain.<sup>26</sup> It is said these two narratives are fundamentally incompatible.<sup>27</sup> And certainly, in theory, they have different implications. A people can have no right to abrogate an immemorial constitution made, in Burke’s famous phrase “by what is ten thousand times better than choice.”<sup>28</sup> But if the constitution was instituted by the people’s choice, they may, in the words of Algernon Sidney “abrogate what they instituted.”<sup>29</sup> Yet in practice, the representatives of both these perspectives usually wanted much the same thing, namely a “restoration” of the same ancient constitution, or at most a reconstruction based very firmly on the old principles. What is more, in the historical and philosophical treatises of the era, the two perspectives tend to be blended together. Modern academics in general and analytical philosophers in particular like to disaggregate and classify things. But political writing is all about combining ideas that perhaps ought not to go together, blurring some distinctions while sharpening others, emphasizing some matters while relegating others to oblivion, all to produce an appealing and persuasive narrative. The rules of analytical philosophy are nothing but a hindrance in such an endeavor. It is precisely this phenomenon that interests us here, together with the particular political agenda that it supported.

The second general variation, that told by the Levellers and other more radical thinkers, accepts the monarchical interpretation of the Conquest as the imposition of a foreign yoke upon English necks, and employs that as a justification for the removal not only of the present king, but the elimination of kingship generally, and of that other essential part of the ancient mixed constitution, the House of Peers. Exponents of this second view not only offered general theoretical justifications for dispensing with the constitution—claims to the effect that

sovereignty resides ultimately in the nation as a whole and in each of its members—but also made concrete demands that a more broadly representative House of Commons be empowered to rule essentially unchecked by king or peers. Therefore, the second narrative clearly has implications vastly different from those of the first, except in one crucial respect. As far as the question of resistance to executive tyranny is concerned, one narrative is as good as the other. The second might even have been better for that purpose. In any event, we know from the testimony of officers at the Putney Debates that New Model soldiers were animated by this account of English history. The constitutional changes demanded by the Levellers were not realized, yet their arguments about the ultimate location of sovereignty and the extent of citizenship allow us to address the problems of “step three” as described in chapter 1.

I emphasize these Anti-Norman narratives for it is through these narratives that the defenders of liberty and self-government reconstitute the English nation. The English are reminded of the ancient rights that belonged to their ancestors and the ancient constitution, which, together with their virtue, protected them from the depredations of tyrannical kings. This constitution and these rights, and the community of Englishmen to which they belong, are far more ancient than any putative title to absolute monarchy. They are reminded, likewise, that their ancestors loved their native customs and their native liberty, and fought successfully against an aspiring conqueror and absolute monarch to preserve that heritage. The present struggle against absolutism thus becomes part of a larger historical saga. Englishmen of many generations have fought for their native rights. Present absolutist pretensions are an affront to all generations of Englishmen. Throwing off that yoke is a duty owed not only to the present generation, but also to ancestors and to posterity. In this way, says Foucault, “the justification for rebellion becomes a sort of historical necessity, once national phenomena become part of the discourse.”<sup>30</sup> And not

only does the justification for rebellion become a historical necessity, but also the preservation of a particular form of government, and the protection of particular national rights.

Let us now turn to an in depth examination of some representative examples of these strains of nativist English political discourse and consider specifically how they deal with questions of resistance, constitutionalism, political and personal rights, and how they employ, or reconstruct, memories of English nationhood to these ends.

### **3. Coke and Selden on the Liberties of Englishmen**

#### **Sir Edward Coke and the Reconquest of England**

One of the most prominent popularizers of the anti-Norman narrative and political agenda from the late 16<sup>th</sup> to the early 17<sup>th</sup> century was Sir Edward Coke, Attorney General and Speaker of the House of Lords during the reign of Queen Elizabeth, Lord Chief Justice under James I, and member of the Commons under Charles I. There are disagreements on just how broadly representative Coke's views were of common lawyers of the early 17<sup>th</sup> century.<sup>31</sup> But there can be no dispute that Coke himself was extremely influential, both as a politician pushing in 1628 for the passage of the Petition of Right, and as a producer of elegant prose on the common laws of England, which countless political writers would later cite as an authoritative source on the English constitution. In the prefaces to his *Institutes* and *Reports* on English common law, Coke engages in polemic with the defenders of the absolute monarchy supposedly established in England by the Norman Conquest. Coke establishes the independence of the English nation from absolutist rule by reaffirming the primacy of the English language, English blood, and the English constitution.

In the third part of his *Institutes of the Laws of England* (1606), Coke draws especial attention to his decision to publish the work in the English. Of the content of this volume, he writes “We have set forth in our English tongue ...[because] it concerneth all the subjects of the realm, more neerly by many degrees, then any of the other.”<sup>32</sup> He goes on to note that, according to various histories, William the Conqueror, hoping to eliminate the Saxon tongue, had “ordained that no one should plead in the king’s court, except in French” and also that boys should be taught French and Latin, so that these might become the primary languages of the kingdom.

Coke declares with relish that a statute of Edward III

hath taken these edicts of a Conqueror away, and hath given due honour to our English language, which is as copious and significant, and as able to expresse any thing in as few and apt words, as any other native language, that is spoken at this day. And (to speake what we think) we would derive from the Conqueror as little as we could.<sup>33</sup>

We might call this the first wave of the reconquest of the kingdom by the English. The Conqueror had been desirous to eliminate the English language and replace it with French. In this he failed. The English language has returned to dominance, and any king of the English must acknowledge their language as the language of the court and of the law books.

Coke also insists on “deriving as little as he could” from the Conqueror's Norman blood. He notes with satisfaction that Henry I, son of William died “without issue male”. Henry's queen was Maude, a woman descended from the English Saxon kings and the kings of Scotland. Their daughter, King Henry II's mother, also named Maude, was thus half English. Coke concludes: of Maude's “English blood by Gefery Plantagenet earle of Anjou all the kings of England are lineally descended.”<sup>34</sup> The English monarchy, thus, has been Anglicized by blood, and on that account, no king of the English can claim to be the direct descendent of William of Normandy, much less the inheritor of an absolute monarchy imposed by William upon the English people. We could call this the second wave of Coke’s reconquest of England for its native people.

It should, perhaps, be acknowledged that these two waves of reconquest, the one concerning blood or race, the other concerning language, have no direct bearing on the political questions I have undertaken to explore; but an indirect one they most certainly have. I point these things out to make a claim about the context in which Coke's legal, political arguments should be understood. Coke, though a lawyer, does not make purely legal arguments. His legal arguments are a product of his nationalism. In 17<sup>th</sup> century England, the matters in dispute were the nation's form of government, and the liberties of its subjects, not the nation's racial composition, or its language, or some other thing.<sup>35</sup> Thus these questions of government and rights become the objects into which nationalist energy is channelled.

The third wave of the reconquest, about which Coke has the most to say, concerns the common laws of England. For Coke, the laws of England are among the most precious possessions the English people have: "The auntient & excellent Lawes of England are the birth-right and the most auntient and best inheritance that the subjects of this realm have, for by them hee injoyeth not onely his inheritance and goods in peace & quietness, but his lyfe and his most deare country in safety."<sup>36</sup> These laws are the inheritance and birth-right of every Englishman, and they are precious because they protect the things most dear to him, not his estate and his goods only, but also his life and his country. Locke's triad would be 'life, liberty and estate': but affection for one's country and one's countrymen is there implicitly.<sup>37</sup> It is not mere liberalism that we are dealing with here. For Coke, the laws protect individual subjects severally and the nation as a whole. When Coke says that these laws are ancient, he means that they are not only beyond memory, but that they go back to the ancient Britons before the Roman invasion. In this he follows the 15<sup>th</sup> century Chief Justice of England Sir John Fortescue. In spite of the various invasions throughout the history of the British Isles, the laws have in some significant sense

remained the same in their essence. The common laws of England are the accumulated wisdom of many generations ‘refined and perfected by all the wisest men in former succession of ages and proved and approved by continual experience to be good & profitable for the common wealth...’<sup>38</sup>

Though Coke traces the common laws of England back to pre-Roman times, he is most concerned, for reasons the reader is already prepared to understand, to assert continuity between England’s present laws and those of the Saxons. The ‘ancient’ sources he cites are nearly all Saxon or early Norman ones. In the *Eighth Report* (1611) he argues that William the Conqueror did not succeed in abrogating Saxon laws, but was forced to swear an oath to uphold the laws of Edward the Confessor, who “out of the huge heape of the laws” going back to the reign of King Ina had “chose[n] the best and reduced them into one.” Coke further declares

That the grounds of our common laws at this day were beyond the memorie or register of any beginning, & the same which the Norman conqueror then found within this realm of England. The laws that Wil. Conqueror sware to observe, were *bonae & approbatae antiquae regni leges*, that is, the lawes of this kingdome were in the beginning of the Conquerours raigne good, approved, and auncient. And, that the people might the better observe their duetie and the Conquerour his oath, he caused *twelve of the most discrete and wise men in everie shire throughout all England*, to be sworne before himself, that, without swarving, either *ad dextram or sinistram*, That is, neither to flatter prerogative or extend priviledge, *they should declare the integritie of their lawes without concealing, adding, or in any sort varying from the truth*. And Aldred the Archbishop that had crowned him, and Hugh the Bishop of London, by the Kings commandement wrote that which the said Jurats had delivered: And these (as saith Ingulphus) *by publike proclamation, hee declared to bee authentike, and, for ever, under grievous punishment, to bee inviolably observed.*<sup>39</sup>

There is much of note packed into this brief account, which is based for the most part on the prologue of the *Legis Edwardi Confessoris*.<sup>40</sup> In the first place, the laws of England, which Coke had earlier traced back to King Ina, and found more perfectly codified in the form given to it by St. Edward the Confessor, go back beyond the memory of any beginning. As mentioned above, Coke thought them more ancient than the Anglo-Saxons themselves, having existed in Britain many centuries before they arrived.<sup>41</sup> These same laws, as Coke’s narrative has it, were adopted

and preserved by the Anglo-Saxons, and never abrogated, even at the time of the Norman Conquest. At most, argues Coke, the “Conqueror changed the name of this Court... but changed not the frame or jurisdiction of this Court in any point.”<sup>42</sup> William was obliged to swear an oath to rule in accordance with the existing constitution, and to uphold the existing laws of the kingdom. What is more, he had men from every shire in England swear to hold the new king to this observance by unswervingly “declaring the integrity of their laws” in the event that the king should “swerve” from them. The crowning of William is thus portrayed as an event that depended on the approbation of the English people, as declared by representatives from every shire, approbation, moreover, that would be conditional on the king’s continued observance of the “good, approved, and ancient” laws of England.

The reign of William I was followed by the misrule of two of his sons, William Rufus and Stephen. But “Henry I tooke away all the evil customes wherewith the kingdome of England was unjustly oppressed, and restored the Lawe of King Edward, (such Lawe as was in the time of the holy Confessor) with those amendments which his father added by advice of his barons.”<sup>43</sup>

The reconquest of the kingdom by the English nation is thus complete. What they had lost by the admitting of a foreign king and a foreign language into the highest office of the land, they soon regained by the natural death of William’s direct heirs and the restoring of the English tongue to prominence. And they had insisted from the beginning that William and his descendants could rule only according to their English laws.

What, then, were “the nationall Lawes of their native country” which had secured Englishmen time out of mind in the enjoyment of their inheritances, goods, lives, and their dear country?<sup>44</sup> The laws concerned primarily the frame of England’s government, and the liberties of her subjects. Let us begin with his characterization of the frame of government. The claim is

often repeated that Sir Edward Coke sometimes described the power of the English monarch in absolutist terms. And it is true that in what were likely the most obsequious speeches of his career, a young Edward Coke, newly appointed Speaker of the House of Lords in 1593, described Queen Elizabeth as Queen Bee and the Members Parliament as her drones, adding that “our lands, our goods, our lives are prostrate at your feet to be commanded.”<sup>45</sup> But in these same speeches Coke asserted the antiquity of parliament and its ancient rights and privileges. He describes England as an “absolute monarchy and empire” in *Caudrey’s Case*, but those who cite these statements and ascribe significance to them tend to ignore their context.<sup>46</sup> In any event, a decade later Coke’s obsequies to the monarch sounded more like veiled warnings. In the preface to his *Second Report* Coke writes

If thou readest of the tyranny of other Nations, wherein powerfull will and pleasure stands for Law and Reason, and where upon conceit of mislike, men are suddenly poysoned, or otherwise murthured, and never called to answer; Praise God for the Justice of thy gracious Sovereigne, who (to the Worlds admiration,) governeth her people by Gods goodnesse in peace and prosperity by Lawes, and punisheth not the greatest offendor...but by the just and equall proceedings of Law.<sup>47</sup>

The gracious sovereign Queen Elizabeth deserved praise only to the extent that she ruled after the manner of an English monarch, by the laws of the land, and not by her own will. If she were to do otherwise, she would be no better than a barbarous foreign tyrant. English monarchs, then, are required to rule in accordance with the common laws of the land, which reach back beyond memory, and which no English monarch has yet conquered. As Coke later expresses it, with a quotation from the 13<sup>th</sup> century English jurist Henry of Bracton “let the king attribute that to the law, which from the law he hath received, to wit power and dominion: for where will, and not law doth sway, there is no King.”<sup>48</sup> The English monarch derives his power from the laws, thus the laws circumscribe and restrain his will. A king who does not obey this law is no king. The king does not make the law which gives him his power.

The ancient laws of England prescribe, among other things, that the monarch rule together with Parliament, which for Coke meant that the King must respect the privileges of that body. In 1593, while Speaker of the House of Lords during the reign of Elizabeth I, Coke mentioned the ancient constitution of England for the first time in his long career. Addressing the Queen, he said “The High Court of Parliament... is the greatest and most ancient Court within this your Realm. For before the Conquest in the High places of the West Saxons, we read of a Parliament holden; and since the Conquest they have been holden by all your Noble Predecessors Kings of England.” He explains that the parliament of King Ina of the West Saxons contained all the same components as the parliament now extant. The “Fatherhood and Aldermen” with whom the king consulted “on weighty matters” correspond to the “bishops and noblemen” of the House of Lords, and the “wisest commons” to the “knights and burgesses” of the House of Commons.<sup>49</sup> Coke thus establishes the continuity of England’s ancient constitution in which King, Lords and Bishops, and Commons rule together. Coke reveals his sources several years later in the *Ninth Report*. There he cites the *Mirror*, in which “appeareth the whole frame of the ancient Common Lawes of this realm and first the High Court of Parliament” and the *Modus* “wherein the assembly of the Kings, the Lords, and Commons, according to the manner continued to this day, is set down.” The Conqueror, he asserts, “changed not the frame nor the jurisdiction of this Court in one point.”<sup>50</sup>

Coke gives no theory of the powers of the ancient parliament, or “wittena gemot, Assembly of Wise Men” as the Saxons had called it, but he offers “precedents” taken from the *Mirror* and *Modus*, confirmed by later records of the laws of the land. On the basis of the former document he asserts that “Before the Conquest Parliaments were to be holden twice every year.”<sup>51</sup> “One of the principall ends of calling of Parliaments, according to Coke, “is for

redressing of mischiefs and grievances that daily happen.”<sup>52</sup> And according to custom “the Parliament ought not to be ended while any Petition dependeth undiscussed or at the least, to which a determinate answer is not made.”<sup>53</sup> According to custom, then, dating back at least to the Saxon kings, parliament was to be convoked not less than twice a year, and the king was not to dissolve it until all petitions had been answered.

Equally important, Coke establishes the High Court of Parliament as the law-making court of the realm. Members are summoned to Parliament not only to “*parler la ment*” but also to pass Acts of Parliament. Says Coke “There is no Act of Parliament but must have the consent of the Lords, the Commons, and the Royall assent of the King, and as it appeareth by Records and our Books, whatsoever passeth in Parliament by the threefold consent, hath the force of an Act of Parliament.”<sup>54</sup> Coke, as I keep saying, offers no theory of the English constitution, but it is from this practice and principle, that the theory of conjoint national sovereignty in King, Peers and Commons arises.

Coke did not participate in the great battle between King and Parliament on the question of sovereignty, because he did not live to see it. But his writings helped lay the groundwork for it. As he put it, the ancient laws of the English people were their “birth-right”, which no foreign king of the past, and no present king adopting barbaric foreign manners, could take away from them. Fundamentally, these laws assured Englishmen protection of their persons, property and the good of their country by rights inherited from their Saxon ancestors. These laws prescribed both their rights as individual English subjects and as a nation, which governed itself by King, Lords and Commons, each with its own prerogatives and a coordinate legislative power.

Coke did participate personally in efforts to prevent the King from using his prerogative powers to dissolve the traditional rights of Englishmen as he and other parliamentarians

understood them. Coke was a leading figure in several confrontations between King and Parliament in the first couple decades of the 17<sup>th</sup> century, which culminated in the passage of the Petition of Right in 1628. This was the first of three ideological appeals to the ancient constitution, “asserting the privileges of law-courts and parliaments against the prerogative” for the protection of “property and the liberty of subjects.”<sup>55</sup> This was an effort to limit the ability of the King, the executive arm of the government, to interfere with the liberty of English subjects to their lives and property; it was a battle for the preservation of limited government.

Of essential importance in these battles between King and Parliament were rights believed to be protected by Magna Carta, which itself was understood as a late confirmation of rights that existed before the Norman invasion. Thus Magna Charta is seen as yet another episode in the history the English nation, a people, who, as Lambarde and others had said, extorted their rights from princes by force when they were deprived of them. According to Coke:

King John’s Magna Charta for the most part did containe the ancient laws and customes of this realme...partly taken out of the ancient laws of King Edward, not that King Edward the Confessor did institute them, but that he out of the huge heape of the laws, &c. chose the best and reduce them into one.<sup>56</sup>

The implication is that the liberties of Englishmen had been protected by law for centuries before Edward the Confessor’s time, for he had only compiled existing customs, and for centuries after the time of William I. “And these laws,” declared Coke, “are in the Register in many writs called Liberties for it is said, according to the great charter of the liberties of England, so called of the effect because they make us free.”<sup>57</sup>

Many of the most essential ancient freedoms of Englishmen had been confirmed in Chapter 29 of Magna Charta, which was, Coke emphasized, like the rest of the charter “for the most part declaratory of the principall grounds of the fundamentall Laws of England.”<sup>58</sup>

In Coke's interpretation, Chapter 29 declared "That no man be taken or imprisoned but per *legem terrae*, that is, by the Common Law, Statute Law, or Custome of England..." and that "No man shall be dispossessed of such franchises and freedoms and free customes as belong to him by his free birthright, unless it be by due process of law" which for Coke meant the ancient judicial practice, extant in Saxon times, of judgment by one's peers.<sup>59</sup>

The ancient constitution protected the property of subjects in another way also, a practice for which Coke found precedents in the ancient laws of England printed by Lambarde and in Magna Charta, namely that the King could not impose taxes or loans on his subjects without consent of Parliament. Our ancestors, says Coke, "were wise, they unfolded much in few words. *Tallagium* comes *a talliare*. You shall not cut a part of my substance without my will... No tallage shall be done... the word *tallagium* was in the Conqueror's time."<sup>60</sup>

#### **John Selden: 'Our Saxons' and the Ancient Constitution**

John Selden, a contemporary of Coke, also played a crucial role in the battle for the Petition of Right and in laying the groundwork for later political struggles. In the first place, he may be credited as one of the early expositors of a political narrative that would become very popular as the century wore on, a narrative which traced England's political heritage specifically to the Anglo-Saxons, and generally to the Germanic tribes of the continent from whom they descended. Unlike Coke, and Fortescue before him, Selden asserts in *Jani Anglorum* (1610), that Saxons from the continent 'in the end having turned the Britans out of their Ancestors Seats ... advanced themselves in an Heptarchy of England, so called from them.'<sup>61</sup> Contrary to Coke, but like many of his other contemporaries, Selden gives an account of a break in the continuity of the customs in Britain, and a planting of certain traditions on its soil by a nation from the forests of

Germany, whose zeal for liberty and self-government had been noted by ancient Roman writers, especially Tacitus.

As far as Selden was concerned, the Germanic people who settled Britain, though historians have ascribed different names to different tribes, were all one nation:

Albeit they pass by various names, yet in very deed they were all of them none but Saxons. A name at that time of a large extent in Germany... To wit, at first Horsus and Hengistus came over of Batavia, or the Low Countreys, with a great company of Saxons along with them; after that out of Jutland the Jutes (for Janus Douza proves, that the Danes under that appellation seised our Shores, in the very beginning of the Saxon Empire: out of Angela, according to Camden about Flemsburg a City of Sleswick, came the Angles; out of Friseland (Procopius is my author) the Frizons. One may without any wrong call them all Saxons; unless Fabius Quaestor Aethelwerd also did this Nation injury, by calling them so.<sup>62</sup>

That they were not united under a common civil authority did not mean that they were not a nation. Hengist and Horsa, as later the names would be more commonly spelled, were the first great Saxon leaders to arrive on Britain's shores and plant themselves and their customs there, but they were followed by kindred tribes (Jutes, Angles, Frisians) from various parts of the continent. To Selden, these different names were geographical designations of what was, properly speaking, one Saxon nation, several possessors of common blood, language and custom.

Much of *Jani Anglorum* is a catalogue of various customs and laws practiced by ancient tribes of Britain: the first part, covering the laws of the Britons and the Saxons, much of the commentary draws attention to the zeal of these peoples for justice and the severity with which they punished crime. But a significant portion concerns the customs of self-government practiced by these peoples. The aristocratic, and even proto-democratic customs of the Druids and other British tribes are mentioned, but as one would expect, the focus in these sections is on Germanic and Saxon practices. Tacitus is cited to validate the antiquity of Saxon customs, "For though he treat in general of the Germans, yet nevertheless without any question, our Saxons brought over along with them into this Island very many of those things, which are delivered to us by those

who have wrote concerning the Customs of the Germans.”<sup>63</sup> Among these customs, Selden cites Tacitus’ description of their manner of taking collective decisions:

In Councils or public Assemblies, the King or Prince, (i.e. a chief person) according as every ones Age is, according to his Nobility, according to his Reputation in Arms, according to his Eloquence, has an audience given him, where they use authority of perswading, rather than the power of commanding. If they dislike what he says, they disapprove it with a Hum and a rude noise. If they like the proposal, they shake and rustle their Spears or Partisans together. It is the most honourable kind of assent, to commend the Speaker with the clatter of their Arms.<sup>64</sup>

Selden remarks that this is likely the origin of the Saxon custom of choosing commanders for the waging of wars, known as Wapentake. But it also provides, as we see later, an early model for government by the King in Parliament, that is, such a form of government in which the chief person may not take any important action for the whole without first persuading the other assembled members of the community and obtaining a clear sign of their assent to his proposals.

Toward the end of the book, Selden offers to speak more generally concerning the makers of laws in Britain. Here again a description of Saxon customs predominates. Citing Tacitus once again, he asserts that the Saxon form of government by King-in-Parliament is “an usage that not without good reason seems to have come from the ancient Germans.”<sup>65</sup> The existence of this mode of government is confirmed by the oaths of Saxon kings and by the reports of ancient chroniclers. For brevity, I cite only Selden’s first example:

Whilst the Saxons governed, the Laws were made in the General Assembly of the States or Parliament. In front of King Ina’s Laws (‘tis above Eight Hundred and Eighty years that he first reigned we read thus, Ic Ine mid godes gift West-Saxona Cyning mide getheat & mid lere Cenredes mines fader & Hedde & Ercon wald mine biscops & mid eallum minum, ealdormanum, & tham yidestan Witan mines theode be beodeth &c. which in our present English speaks thus, I Ina by the Grace of God King of the West-Saxons, by the advice and order of Kenred my Father, and of Hedda and Erconwald my Bishops, and of all my Aldermen, and of the Elders and Wise Men of my people do command &c.<sup>66</sup>

These ancient general assemblies, Selden continues, are the same as those that “do now sit in great State, which with a wonderful harmony of the Three Estates, the King, the Lords and the Commons, or Deputies of the People, are joyned together, to a most firm security of the

publick.’’<sup>67</sup> The kingdom of England is governed now, as it was 800 years ago, conjointly by the three estates, King, Lords and Commons.

Like Coke, Selden insists that the arrival of William of Normandy did not fundamentally change the customs and laws of England. He highlights this in his preface, and later examines the various mediaeval chronicles about the coming of the Normans. William may have defeated Harold, but neither he, nor his descendants managed to defeat the English nation and form of government. Quoting the annals of Roger Hovedon, he says that William openly declared that he would rule by the laws of his ancestors, the Danes,

at hearing of which, all the great men of the Countrey, who had enacted the English Laws, were presently struck into dumps, and did unanimously petition him, That he would permit them to have their own Laws and ancient Customs; in which their Fathers had lived, and they themselves had been born and bred up in; forasmuch as it would be very hard for them to take up Laws that they knew not, and to give judgement according to them. But the King appearing unwilling and uneasie to be moved, they at length prosecuted their purpose, beseeching him, that for the Soul King Edward, who had after his death given up the Crown and Kingdom to him, and whose the Laws were, and not any others that were strangers, he would hearken to them and grant that they might continue under their own Countrey Laws. Whereupon calling a Council, he did at the last yield to the request of the Barons. From that day forward therefore the Laws of King Edward, which had before been made and appointed by his Grand-father Adgar, seeing their authority, were before the rest of the Laws of the Countrey, respected, confirmed and observed all over England.<sup>68</sup>

The story is similar to that told by Coke, but the emphasis on the persistence of the Saxon lords, despite several refusals, their appeal to the Soul of King Edward, and their unwillingness to part which the laws of their fathers, under which they had been born and bred, adds some poignancy to the tale. The Saxons would not be parted with the laws of their ancestors, and William at last concluded that he had no choice but acquiesce to their demands. William did not always keep his oath, once made, and those who succeeded him were far worse, but after the corruption and disorder of the reigns of William Rufus and Stephen, Henry I’s first act on ascending to the throne was to repeal their innovations with a declaration sent to all the sheriffs of England: ‘I

restore unto you the Law of King Edward, with other amendments, wherewith my father [William I] amended it.’<sup>69</sup>

The narrative here is instructive in more than one way. Not only does it show the continuity of the laws. It also presents an image of virtuous English ancestors who knew the laws of their nation well enough “to give judgement according to them,” and thus also to instruct their kings in them, and had the courage to stand up to kings whenever the latter violated the laws of the land. The mixed constitution which divided the sovereign power of the nation between King, Lords, and Commons and stipulated liberties of the subject which the government could not transgress could continue so long as it remained in the memory of the people, and so long as the people had the courage to insist on its observance.

#### **Coke and Selden on Law-making, the Constitution, and the Petition of Right**

Coke and Selden were preeminent men in the House of Commons during the showdown between King and Parliament that led to the passage of the Petition of Right. 1628 did not become a full-blown battle for sovereignty. But the right of a nation to make laws for itself was a principle they often asserted in the years leading up to this confrontation. If we are to ascribe to them a theory of national sovereignty, as the right of the nation to make laws for itself, we must first distinguish it from later theories, especially those of Locke and Rousseau. Neither Coke nor Selden would have allowed that any one generation of the nation had the right to completely dispense with ancestral customs and completely rewrite the fundamental laws of the land. The nation was not one generation only, not the subjects presently living only, but a succession of generations. Legislators were not to make statutes based merely on what they or their colleagues at the present time imagined to be good. The best statutes, at least to Coke’s mind, were those

that confirmed long extant practices. A true legislator had a duty to listen to the voices of generations of ancestors, to the soul of St. Edward, as it were.

The beginnings of nations are always shrouded in mist. Coke did not search for the beginnings of English law; to him it sufficed to say that they were beyond memory. Selden wrote in *Jani Anglorum* that the Laws of England began when the Saxons came to Britain and established themselves as political communities there. In *Notes on Fortescue*, Selden argued that all nations at their beginning “limit” natural law, introduce their own particular laws to suit their circumstances. It is from these original limits on natural law that the common law arises; they are authoritative, not to be abrogated at will, which, however, is not to say that they cannot be changed at all. There had doubtless been many piecemeal changes to the laws of the kingdom, so that “in regard to their first being they are not otherwise than the ship that by often mending had no piece of the first materials... yet... is to be accounted the same still.”<sup>70</sup> According to Selden and others, the common law in England included some sort of original contract between king and people. In Selden’s words “To know what obedience is due to the prince you must looke into the contract betwixt him and his people.”<sup>71</sup> The exact dimensions of that original contract could not be known, yet one could discern its fundamentals by examining precedents through the ages. This was where one was to look for that contract, not in natural law, but in the common law, in the accretions of time and experience. The example Selden gives by way of illustration concerns the question of the right of resistance, which became a matter of great moment in the 1640s: “*Quest[ion:]* What Law is there to take upp Armes against the prince in Case hee breakes his Covenant? *Answ[er:]* Though there bee no written Law for it yet there is Custome which is the best Law of the Kingdome; for in England they have always done it.”<sup>72</sup>

For Coke also, the laws were still the same in their essence but much refined through the ages in their particulars. From the beginning they had protected the liberties of the nation, and since that beginning, whenever it was, they had been “in many successions of ages, by long and continual experience (the trial of right and truth) fined and refined.” Thus no one man, or one assembly of men should be so foolish as to legislate “out of their own head and invention”, for “out of the old fields must come the new corn.” When judging cases at law or making laws in Parliament, Englishmen had a duty to listen to their forefathers, for as Coke said

they shall teach thee and tell thee, and shall utter words of their heart, without all equivocation or mental reservation; they (I say) cannot be daunted with fear of any power above them, nor be dazzled with the applause of the popular about them, nor fretted with any discontentment (the matter of opposition and contradiction) within them, but shall speak the words of their heart, without all affection or infection whatsoever.<sup>73</sup>

The rhetoric does perhaps soar too high. Surely some ancestors too could have been swayed by fear, dazzled by applause or fretted with discontentment. But, being dead, they could not be corrupted by the passions of *this* hour. And in any case, one never relies on a single precedent. When one considers the judgment of many ancestors, through a succession ages, on a great question, the sum will probably contain far more wisdom than the judgment of one man, or of one assembly: that is Coke’s assertion. And for Coke, as we have seen, the sum of those judgments of courageous and wise ancestors supports English liberty and a particular set of national virtues and institutional forms that protected it.

The parliaments of James I and Charles I, in which both Coke and Selden sat, defended the rights and privileges of the nation in this spirit. I shall give a few examples that resonate as much today as then. Freedom of speech, now often claimed as “human right,” or as part of the legacy of the Enlightenment, has its actual origin in parliamentary privilege. In the same speech in the Lords in 1593 in which Coke traced England’s parliamentary tradition back to the Saxon Witanagemote, he affirmed “Liberty of speech and freedom from arrests” as “the ancient custom

of parliament.”<sup>74</sup> Other English parliamentarians were of the same mind. In 1610, when James I issued a “commandment” restraining members of parliament from discussing his “impositions” on “goods exported out of or into this realm,” the members drew up a “petition of right” asserting “the ancient and fundamental right of the liberty of parliament in point of exact discussing of all matters concerning them and their possessions, goods and rights whatsoever.”<sup>75</sup> James I did not like anyone in or out of Parliament even to discuss his prerogative powers as a theoretical matter, much less challenge his right to exercise them in particular cases.<sup>76</sup> Parliamentarians insisted that their ancient right to freedom of speech during parliamentary sessions was essential to the preservation of common good of the nation. If they could not discuss grievances without fear of punishment, the nation could not set matters right.<sup>77</sup>

Parliamentarians also objected to the King’s granting monopolies to his favorites. The practice then resembles what we today might call crony capitalism, which Englishmen considered to be an infringement on economic liberties of the subject, and a threat to the prosperity of the kingdom as a whole. Coke in particular objected to the “Monopolizer... [who] engrosseth to himself what should be free for all men.”<sup>78</sup> In debate he proposed that a law be made “that no monopoly be granted, and they that produce any such may incur some great punishment, and this will kill the serpent in the egg.”<sup>79</sup> Such a law, he proceeded to demonstrate, would be consistent with ancestral practice; he outlined five cases in which various parliaments had caused monopolists to be fined or imprisoned and deprived of their special privileges. It should be noted that Coke’s condemnation of monopolies was not categorical; on occasion the establishment of a particular monopoly might conduce to the common good, but such cases needed to be debated and approved by parliament.<sup>80</sup>

The Parliament of 1628 is the most famous of the early 17<sup>th</sup> century for various reasons. One of the main questions debated then, and the main grievance that occasioned the Petition of Right, was that Charles I had begun to issue direct commands, over the heads of county judges, to imprison subjects without cause shown. Like his father, King Charles, together with various writers who favored absolutism, would sometimes justify such prerogative powers by reference to the practices of other European Kings and to such works as Bodin's *Six books of the Republic*. In the debates leading up to the Petition of Right, Coke, echoing Nicholas Fuller in 1610 responded to such justifications of the King's power to imprison without cause shown as follows: "We have a national law appropriate to this kingdom. If you tell me of other laws, you are gone. I will only speak of the laws of England."<sup>81</sup>

After the question had been examined in committees, and debated on the floor, it was the opinion of the majority of the Commons that the King had no such right according to the laws of England. Coke and Selden were two of the four MPs chosen to make the case for passing the Petition in the House of Lords. Sir Dudley Diggs, the first to address the Lords, traced the liberties of Englishmen back to the Germanic tribes described by Tacitus and through the reigns of the Saxon kings; affirmed that St Edward "by the blessing of God a good king" had preserved and embellished the ancient laws protecting the liberties of nation, and that William I and all his successors had sworn to uphold them.<sup>82</sup> Such manner of imprisonment without cause shown and for indefinite time had always been "contrary to the franchises of this land."<sup>83</sup> Littleton and Selden together recounted seven Acts of Parliament and 31 judicial precedents of the Englishman's right not to be imprisoned without cause shown from Magna Charta to the reign of Edward III to that of Elizabeth I.

Coke, the elder statesman, spoke last. He gave nine reasons why the King should not be permitted to arbitrarily imprison English subjects. Most of them merely summarized arguments already offered by Selden. Coke's sixth reason, however, appealed to English national honor. If the liberties of the subject were not preserved, the consequence would be

the loss and dishonour of the English nation in two respects: 1, for their valour and prowess so famous through the whole world; 2, for their industry, for who will endeavour to employ himself in any profession, either of war, liberal science, or merchandise, etc., if he be but tenant at will of his liberty? And no tenant at will will support or improve anything, because he hath no certain estate; and thus it should be both *dedecus* and *damnum* to the English nation and it should be no honour to the King to be king of slaves.<sup>84</sup>

Coke's remarks here explain a favorite axiom of Selden: "*Salus populi suprema lex, et libertas populi summa salus populi.*"<sup>85</sup> The welfare of the people is the supreme law, and the liberty of the people is the supreme welfare of the people. According to both men, the liberty of the English people, protected by its ancient laws, was the source of England's valor and prowess, its achievements in war, science and trade. Without its ancestral liberties, England would cease to be England and become a nation of slaves, a fate more disgraceful, more wounding to their national honor than any other they could contemplate.

In subsequent debates in conference with the Lords, and in the Commons, Coke continually reminded his fellow Parliamentarians of their duty to protect their heritage. To the Lords: "My Lords, your noble ancestors, whose places you hold, were parties to Magna Charta, so called for weight and substance... And you, my Lords, the Bishops are commanded to thunder out your anathemas against all infringers of Magna Charta."<sup>86</sup> Discussing the final text of the Petition in the Commons: "If we agree to this imprisonment 'for matters of state' and 'a convenient time' we shall leave Magna Charta and the other statutes and make them fruitless, and do what our ancestors would never do."<sup>87</sup> For Englishmen to acquiesce to such an arbitrary power would be a betrayal of the illustrious memory of their ancestors.

#### 4. The Civil War and the Struggle for Sovereignty

##### Philip Hunton on Consent, Resistance and Divided Sovereignty (1643)

There is scarce the meanest man of the multitude, but can now in these days tell us, that the government of the kingdom of England is a limited and mixed monarchy: and it is a marvel, since all the disputes and arguments of these distracted times both from the pulpit and the press do tend and end in this conclusion.<sup>88</sup>

Thus begins Robert Filmer's *The Anarchy of a Limited or Mixed Monarchy* (1648). If Filmer does not exaggerate, he confronted at this time a commonly held view of the English government, preached from the pulpits and in the press, and known even to the meanest subjects of the kingdom. It was, in any event, an old idea. The 15<sup>th</sup> century Chief Justice of the King's Bench Sir John Fortescue had written that England's monarchy was limited by law and parliament.<sup>89</sup> The Tudor monarchs, whatever their rhetoric might have been, had respected legal limitations on their powers.<sup>90</sup> Parliamentarians of Coke and Selden's generation, as we have seen, had understood England's government as mixed and limited by law. In 1640, Henry Parker, writing against what was perceived to be among the worst examples of Charles I's disregard for the law, the Shipmoney, assumed that the King's power was limited by the law and Parliament.<sup>91</sup> But Philip Hunton, a Presbyterian minister in Cromwell's good graces, was the first to give a full blown theory of English mixed monarchy. Filmer notes that Hunton was the first that he knew of who had actually "described" what others had assumed to exist. In fact many other writers including Charles Herle and William Prynne published tracts with similar arguments at this time, and all of them, including Hunton's, drew upon King Charles I's curious *Answer to the Nineteen Propositions* (1642), which conceded that England's government was a mixture of monarchy, aristocracy and democracy.<sup>92</sup> Hunton's text was reprinted in 1679, 1680

and 1689. Its theory of the coordinated sovereignty of King, Peers and Commons was embraced by the makers of the Glorious Revolution. By 1643, hostilities between the King's party and Parliament had already begun, the rebellion of Parliament inspired, or at least supported by common understandings of English freedom and the authentic English form of government variously articulated by many different persons. Hunton's was a work of synthesis in which the ideas of the rights of nations, the original contract between nation and government, a constitutional order that divides sovereignty and provides checks and balances, are all shown to derive from the historical experience of the English nation.

The essential argument of the treatise was that England was governed by the concurrent sovereignty of its three estates, King, Lords and Commons, that, any one of the estates exceeding its authority, the others had the right to check it, and that the people, upon consulting their conscience, might take up arms to assist that party which had taken upon itself the burden of restoring the constitution. This general argument had been provoked by several years of disagreement between king and parliament on questions of great moment relating to war powers, taxation, the liberties of the subject and the reforming of the national church.<sup>93</sup> Hunton wrote the piece with an eye to reconciliation, but for all that, he does not eschew violent confrontation as a last resort.

Hunton's *Treatise on Monarchy* is divided into two parts, of which the first ("Of Monarchy in Generall") offers an abstract theory of constitutionally limited monarchy, and the second ("Of this Particular Monarchy") grounds the abstract principles of the first part in English history and English law. Hunton's first premise is that the power of government in general, and of monarchy in particular rests on a contract with the nation. "It is Gods expresse Ordinance that in societies of Mankind, there should be a Magistracie or Government", he says, but the choice

of a particular form of government “is from humane designment.” It depends on each people’s “Relations to the forme they live under, to their affections and judgements in divers respects.”<sup>94</sup> The kings of Israel may have been directly chosen by God, and therefore possessed of a divine right to rule, but “they alone had the priviledge of an extraordinary Word.” “All others have the ordinary and mediate hand of God to enthrone them,” and that mediate hand, he reiterates, is the people. Different peoples subject themselves to different forms of government, and their relations with that government are determined by the “tacite and virtuall, or else expresse and formall consent of that society of men they governe, either in their own persons, or at the root of their succession...”<sup>95</sup> Regardless of the type of government, the nation and its various distinct characteristics, its customs of governance, are prior to the state. The type of government and the relations of the nation to its government are determined by the original consent of the nation when the government was instituted.

The next premise is that there are two types of monarchy, absolute and limited or mixed. “Absolute Monarchy is when the Sovereignty is so fully in one, that it hath no Limits or Bounds under God, but his owne Will.” A monarchy is absolute if, according to the original contract, the king is not bound by any law that is external to his own power. But in elaborating upon the nature of absolute monarchy, Hunton adds other points that are more interesting than this abstract and formal definition. First of all, absolute monarchy is the form of government of ‘the ancient Easterne Monarchies and that of the Persian and Turke at this day.’<sup>96</sup> The mild mannered Hunton tries to preserve a conciliatory tone throughout, but one sees that from his example (the only examples he gives, apart from that of Rome under bloodthirsty Nero), that absolute monarchy is the type of government the belongs to those people who are most alien to Europe and Christendom, who are Christian Europe’s long-standing enemies. Absolute

monarchy is the form of government that has been given to nations of slaves, barbarians and infidels.

What is more, even absolute monarchy is not wholly absolute in Hunton's eyes. Government has no purpose if it does not aim at the "conservation of the whole Publike." Therefore a "monstrous unnatural Tyranny" which seeks the "destruction of the whole community" may be justly resisted by force, even if it is an absolute monarchy. Here Hunton alludes to the Roman Senate's pronouncing Nero *Humani generis hostis*. But the second example is much closer to home: "the united Provinces are allowed in resisting Philip, though he had bin their absolute Monarch, if he resolved the extirpation of the whole people, and the planting of the countrey with Spaniards, as it is reported he did."<sup>97</sup> The ultimate crime, for which any ruler may be resisted is what we would today call genocide. As much as 17<sup>th</sup> Englishmen speak of the lives and properties of individuals, and the rights of estates, ultimately the nation itself has a collective right to be itself. In the last resort, the entity called the United Provinces, to whom he refers here, is neither a territory, nor an agglomeration of individuals, but a distinct people. For King Philip of Spain to extirpate Dutchmen, and plant their territory with Spaniards is a crime against the Dutch nation as a collective entity. Hunton does not make this argument against the King of England because the English people did not face the threat of extirpation as a nation, and because for them the bar for legitimate resistance was much lower—but I anticipate. So much for absolute monarchy.

The second kind of monarchy is limited. A "limited Monarch must have his bounds of power *ab externo*, not from the free determination of his owne will. Such monarchs derive their sovereignty "from ordinary Providence, the sole meane hereof is the consent and fundamental contract of a Nation of men, which consent puts them in their power, which can be no more nor

other than is conveyed to them by a contract of subjection.” It is the contract that makes the monarch what he is: “till this come and lift him up he is a private man, not differing from the rest of his brethren.” The reverse is also true. Since it is a law external to himself that makes a man a king and serves as an external measure of his exercise of power, the king’s violation of that law unking him. In this type of contract, the people “had power to set their owne termes of subjection” and therefore, he has no more power than what they granted him.<sup>98</sup>

In a limited monarchy, a king who acts outside of the law is no longer king. However, the question of resistance has to take into account the problem of judgment. Who judges that the king has acted outside the law? Hunton points out that in a case such as this, there is no external judge, set up by law, to decide the controversy. The judgment therefore falls to the people. Given the obvious dangers of resistance, “if the act in which the exorbitance and transgression is supposed to be, be of lesser moment, and not striking at the very being of that Government, it ought to be borne by the publique patience.” However “if it be mortall and such as suffered, dissolves the frame and life of the Government and publique liberty,” then, a redress of the wrongs must be sought by petition, “which if failing, Prevention by resistance ought to be.” The people, argues Hunton, have no legal authority over the King, or indeed the rest of the government, but they reserve a “moral power” to judge their government. “For I conceive,” he says, “in a case which transcends the frame and provision of the Government they are bound to, People are unbound, and in a state as if they had no government.”<sup>99</sup> When one part of the government has engaged in illegal acts which threaten to fundamentally alter or dissolve the constitution which the people instituted to protect their liberty, and has proven unresponsive to petitions, in essence, that government may be thought to have dissolved itself, leaving the People to decide by what means the original frame of government might be restored.

From the idea of limited monarchy, Hunton proceeds to mixed monarchy. Here he employs the categories of ancient republican theory. A mixed monarchy, like the mixed polities of the ancient world, is composed of monarchy, aristocracy and democracy. Although he declares that in a mixed monarchy, the monarchy must have “precedency,” and he lists the things in which the monarch’s priority consists, it does not alter the fundamental nature of a mixed polity. The essence of a mixed state is that “The Sovereigne power must be originally in all three... for why,” he asks, “is this mixture framed, but that they might confine each other from exorbitance, which cannot be done by a derivative power.”<sup>100</sup> A mixed government is composed of “several incomplete independent powers concurring to make up one *Integral* mixt power.”<sup>101</sup> The sovereignty of the nation is exercised concurrently, or coordinately by its three powers, which signifies that “there must be a necessity of concurrence of all three Estates in the production of the Acts belonging to that power, which is committed in common to them.”<sup>102</sup> For acts of the government which require the concurrence of all three powers, each must give its assent. Each also has the right to withhold its assent, meaning each has a negative voice, or veto power on the rest.

The purpose of such a form of government, as Hunton goes on to explain, is to better provide for the public good and safety, keeping the government within the bounds of the law. Dividing the sovereignty of the nation prevents any one part of the government from exceeding its prescribed limits:

If the Monarch invade the power of the other two, or run in any course tending to the dissolving of the constituted frame they ought to employ their power to preserve the State from ruine; yea, that is the very end and fundamentall aime in constituting all mixed Policies: not that they by crossing and jarring should hinder the publicke good, but that if one exorbitate, the power of restraint and providing for the publike safety should be in the rest; and the power is put into divers hands, that one should counterpoise and keep even the other.<sup>103</sup>

Of course, this whole theory was the very matter that was in dispute in the English Civil War. The King's party acknowledged no such right on the part of the Parliament or the people, to demand that he refrain from certain actions they considered illegal, or to resist him when he was refused their demands. This then, is one of the dangers of dividing sovereignty, which Hunton understood well. When petitions and demands do not bring the renegade part of the government back to order, there is no legal, formal way to decide the controversy. Therefore, Hunton here turns once again to the people to judge the controversy. It is their duty to consult their conscience and "give their utmost assistance" to those who seek to check illegality and restore the constitution.<sup>104</sup> The framers of the American constitution certainly had this question in mind when they established constitutional procedures for the removal of rogue chief executives. However, one may observe that no chief executive has ever been removed by this procedure. What is more, the United States proved unable to prevent its own civil war, arising from a different sort of constitutional conflict between the Federal government and the States. A genuine dividing of sovereignty entails genuine dangers, which cannot be averted by procedure alone. A national consensus must exist on the necessity of preserving such a system of shared power, and the nation must genuinely think of itself as one and desire to remain together, otherwise a divided national sovereignty is a government full of cracks into which separatist wedges may easily be driven. I shall address the question of national unity below. Hunton helps us to understand the first point, how the counterintuitive idea of dividing the sovereignty of the nation, with its manifold dangers, can become a national prejudice, which the people think essential to their liberty and the common good.

Hunton's argument in the second half of his treatise "Of this particular Monarchy" is that the English people have always had a limited and mixed monarchy of the sort he has described,

and that their ancestors many times fought to preserve it. Before going any farther, he says “Wee must first looke into the Frame and Composure of our Monarchy; for till we fully are resolved of that, we cannot apply the former general Truths, nor on them ground the Resolution of this ruining contention.”<sup>105</sup>

Hunton proceeds to offer five proofs that England’s monarchy is, and always has been limited and mixed. The most important of them, to his mind, is the fourth one:

had we no other prooffe, yet that of Prescription were sufficient: In all ages, beyond record, the Lawes and Customes of the Kingdome have been the Rule of Government; Liberties have been stood upon, and Grants thereof, with limitations of Royall power, made and acknowledged by *Magna Charta*, and other publike and solemne acts...<sup>106</sup>

Prescription, which means custom or tradition, discernable from the oaths, charters, and practices of Kings, shows what sort of government England has. What is more, the very existence of the Common Law and Statute Law of the realm, and the record of English kings swearing an oath of govern by them, proves them to be limited “for those Lawes are not of their sole composing, nor were they established by their sole Authority, but by the concurrence of the other two Estates.”<sup>107</sup>

But like those who came before him, Hunton does not ground English liberties in Magna Carta; he traces them back much farther in time. Divine right arguments for absolutism grounded in descriptions of the government of the Israelites in the Old Testament he dismisses out of hand “as if examples taken out of one Government do always hold in another.”<sup>108</sup> For Hunton, England’s form of government reflects the particular kind of people the English are, a people who have always loved freedom, and fought when necessary to preserve it. The assertion of Doctor Ferne in a tract published the previous year<sup>109</sup>, “That the King holds his Crown by conquest”—more specifically by three successive conquests (of the Saxons, Danes, and Normans)—provoke a lengthy refutation from Hunton. Those who justify the power of England’s monarchy by conquest, he replies “care not though it be ruine of the publique liberty,

by bringing a whole Nation into the condition of conquered slaves.”<sup>110</sup> Such an argument, that power may be legitimately conferred by conquest, he considers a “non-sequitor”, but in any event, what is more important is that, considering the matter historically, “it is an Assertion most untrue in it selfe.”<sup>111</sup> And here follows the story with which we are already familiar.

The coming of the Saxons to Britain was not a conquest, but an expulsion. Having driven out the Britons, the Saxons

by degrees planted themselves under their commanders; and no doubt continued the freedom they had in Germany; unless we should thinke that by conquering they lost their own Liberties to the Kings... Rather I conceive, the originall of the subjects libertie was by those our fore-fathers brought out of Germany, where as Tacitus reports, *nec Regibus infinita aut libera potestas*: Their Kings had no absolute but limited power; and all weighty matters were dispatched by generall meetings of all the Estates. Who sets not here the antiquity of our Liberties and frame of Government? So they were governed in Germany, and so here to this day, for by transplanting themselves, they changed their soyl; not their manners and Government.

For Hunton, as for Selden, the Saxons are the nation from whom present day Englishmen primarily descend, especially as concerns their love of liberty and their form of government, devised by them to preserve liberty. England was subject to subsequent invasions, for example by the Danes, who did conquer England at least in part, but their conquest “lasted not long when the English expelled them they recovered their Countrey and Liberties together.”<sup>112</sup> Neither was the invasion of England by the Normans, properly speaking, a conquest. For Harold had actually usurped the throne, and William had a legitimate title, being an adopted son of King Edward. “It is not to be imagined,” continues Hunton, “that such a Realme as England could be conquered by so few, in such a space, if the peoples voluntary acceptance of him and his claime had not facilitated and shortned his undertaking.”<sup>113</sup> In any event, William did not establish himself as a conqueror would, “but on the old Lawes, which he retheyned for himself and his Successors to governe by.” Some Norman customs were brought in, and some English nobles who had initially fought William were deprived of their estates “but the trial by twelve men, and other

fundamentalls of Government, wherein the English freedom consists, he left untouched, which have remained to this day.”<sup>114</sup> According to Hunton then, the English people, descendants of the ancient Saxon invaders who brought their traditions of liberty with them from the continent and planted themselves and their form of government on British soil, successfully repelled subsequent invasions, and never submitted to an absolute monarch, and so they retain the same rights of self-government, and the same individual freedoms at this day.

Their constitution in the 7<sup>th</sup> century may not have been the same in every detail as the one today, but the essential qualities of it were the same: to wit, the authority of the king was limited, and weighty matters were to be decided by general meetings of estates of the community. As Hunton describes it, England’s present day constitution evolved from that basic model. Hunton is, as we have seen, a social contract theorist, but his notion of the social contract merges with the common law view of a constitution defined by certain essentials that evolves in its particulars over time. He employs the language of original contract and institutional evolution at the same time. First, he supposes, a people composed of Nobles and Commons sets over itself one sovereign, resigning power to him “to be governed by such and such Fundamentall Lawes.” Second, since all governments must as time transpires make new laws, he supposes the Nobles and Commons covenanting with their Sovereign, “that if cause be to constitute any other Lawes, hee shall not by his sole power doe the work, but they reserve at first, or after it is granted them (which is all one) a hand of concurrence therein, that they will be bound by no Lawes, but what they joyne with him in the making of.”<sup>115</sup> The commons becoming too numerous to come to the assemblies, they elect deputies to exercise their authority, conjointly with the other two estates, of making and reviewing the laws of the realm.

The King may have the authority to convoke and dissolve the assemblies, but he cannot simply neglect to convoke them, or dissolve them whenever he pleases. Provision was made, either at the beginning, or later on, that Parliaments should be convoked at set times. Such a rule follows from the nature of the original constitution, because King, Nobles and Commons all have their own privileges from it. The acts of Nobles and Commons to make and review laws, and to dispatch the business of the kingdom, proceed “from their conjunct authority with the Kings, not from [their] subordination to the Kings.”<sup>116</sup>

In England, therefore, a mixed constitution has evolved in which the power of the kingdom as a whole is exercised conjointly by its three estates. Hunton describes three points of mixture in the English constitution. First, ‘the power of making, and authentick expounding Lawes’ is shared by all three estates: “an act cannot have the nature and forme of a Law of the Land, if it proceed from any one, or two of these, without the positive concurrence of the third.” Second, “the power of imposing taxes and payments on mens estates” may not be exercised without the assent of all three estates.<sup>117</sup> This power of “opening and shutting the Purse of the Kingdome” is such an important one, that it must be subject to the review of King, Peers, and the representative body of the people. Finally, the most general and expansive point of mixture is “the power of dispatching the affaires of the Kingdome which are of greatest difficulty and weight, the *ardua regni*, which the Writ for convocating the other Estates doth mention, supposing thereby that such difficulties are not to be dispatched by the power of one alone.”<sup>118</sup> All matters which fundamentally concern the “publike safety and weale” must be put to the consideration of the three estates of the kingdom. Such was the opinion of the original “Architects” of the frame of the English government, and so must Englishmen insist on it today.

If any of the estates should pretend to an absolute power in itself to make and interpret the laws of the land, to impose taxes, or to decide upon any weighty matter of concern to the whole nation, such as, for instance, the question of waging war, then this must be taken to be an attempt to alter the kingdom's form of government, and may be met by resistance. Hunton cites the various grievances against Charles I, and asserts that taken together they constitute "a grand intention and plot of altering the Government of this Kingdome."<sup>119</sup> At the end of his treatise, Hunton offers a plan for reconciliation between Parliament and King, requiring that Charles I cease to act after the fashion of an absolute monarch, and to remove from his staff all who have advised him to conduct himself in this manner. But defence of the fundamental liberties of the nation cannot rest on petitions alone. As a last resort, resistance, despite the danger of violence, can be justified, for "a temporary evill of war is to be chosen rather then a perpetuall losse of liberty, and subversion of the established frame of a Government."<sup>120</sup> "If you make it unlawful simply to use such power of resistance, you make it unlawful for a people to be free."<sup>121</sup>

### **5. Nathaniel Bacon and the Saxons: Englishmen's Better Selves (1647)**

Parliamentarian Nathaniel Bacon's *An Historicall Discourse of the Uniformity of the Government of England* (1647-1651), is often mentioned in studies of the English Revolution, but it has seldom received more than a cursory glance, and has been mischaracterized. The first half of the book was first published in 1647, the second part in 1651. The complete text was reprinted in 1682, during the Exclusion crisis, and then again in 1688-9. As the advertisement to the 1688-9 edition notes, after the reprint of 1682 came out, the publisher was prosecuted in court for certain passages that denied the right of the king to act outside of the law or without Parliament's consent. Pocock has written, that at the time of its first publication, Bacon's book

was one of the interregnum publications meant to support the idea of “a truncated single chamber ... ruling, and claiming powers to which there seemed no clear limit, in the name of the ancient constitution.”<sup>122</sup> But this is not the case. In the first place, the book was addressed to the speakers of both Houses of Parliament. It may be seen to give a clear sanction to the right of the nation to depose a king who has exceeded the limits prescribed by his oath, an argument that would become quite important in the period leading to the deposition and execution of Charles I in 1649, but there is nothing in it to justify unlimited rule by a truncated House of Commons sitting in perpetuity, or by a successively elected single-chamber national representative assembly. Bacon’s history is a defense of England’s ancient constitution and a call for its restoration. But his particular task in the first volume was to glorify its founders, to present the Saxons as a nation of liberty-loving heroes, bound to each other by brotherly love, who chose only the virtuous to serve them in government, and insisted that their kings obey the rule of law. The Saxons in this book appear as 17<sup>th</sup> century Englishmen’s better selves, whose example they ought now to follow.

The first edition of the first volume of the *Historical Discourse* is addressed to the Right Honourable Edward Earle of Manchester, and the Honourable William Lenthall, Esqu., speakers of the House of Peers and the House of Commons respectively. In the advertisement, Bacon explains the origin and the purpose of the work as follows:

Private debate concerning the right of an English King to Arbitrary rule over English Subjects as Successor to the Norman Conquerour, (so called) first occasioned this discourse. Here I have necessarily faln upon the Antiquity and Uniformity of the Government of this Nation: It being cleared may also serve as an Idea for them to consider, who doe mind the restitution of this shattered frame of policy.<sup>123</sup>

His aim, therefore was to recover out of an examination of English history the true nature of the ancient constitution, which preceded and survived the Norman Conquest intact, that it might be once again restored.

Bacon begins his account with a few pages on the Britons, but he soon turns to the Saxons, to whom he gives pride of place in the first volume. These are the founders of modern England, whose customs neither the Normans, nor subsequent Kings of England managed to appreciably alter. Like Selden, Bacon traces the beginnings of English liberty to the forests of Germany. The Saxon tribes, he says

were a free people, governed by Lawes, and those made... by the people and therefore called a free people, because they are a Law unto themselves; and this was a priviledge belonging to all the Germans, as Tacitus observeth, in cases of most publique consequence (*de majoribus omnes*).<sup>124</sup>

The German tribes, as Tacitus had observed, involved the people themselves in decisions of public consequence. What is more, on the continent, and later in England, the Saxon kings were elective. The elective monarchy evolved in time into the present hereditary monarchy. But initially, kings were elected from the Nobles:

The rule of their election was the same as in Germany, viz. to elect the cheifest out of the the cheifest family, that is the cheifest for worth, not by descent; yet the honour they bare to their brave kings who had deserved well, made some to honour their posterity, and to chuse their eldest after their decease, and so in time Crownes were taken up by Custome, and election often times subsequent was accounted but ceremony, unless the people will dispute the point.<sup>125</sup>

That Bacon established the early Saxon Kings as elective does not mean that he thought the chief executive of the state in modern England should be chosen by popular vote, or by a majority in both Houses of Parliament. Like Selden before him, Bacon meant to emphasize that the authority of kings was limited.<sup>126</sup> Though a King of England came to the crown ordinarily by inheritance, his rule was, by ancient custom, subject to the law and the people's approval. The legitimate heir could inherit his crown "unless the people will dispute the point." A royal heir did not meet with the people's approval, then, could be refused.

What is of more immediate significance, keeping in mind the impending deposition of Charles I, is that according to the ancient Saxon constitution, even a duly crowned king, should

he prove ill suited to his office, could be deposed. This, according to Bacon, happened as a matter of course in the early days, when the Saxons in England were not yet all under one government: “for the people had formerly a tricke of deposing their Kings (when they saw them peep above the ordinary reach) and this was an easie work for them to doe, where ever neighbouring Princes of their own nation watched for the windfals of Crowns.”<sup>127</sup> Thus the picture we are given of early Saxon England is one of kings who exceeded their authority according to custom and the approval of the people risked being deposed. The various politically autonomous communities of the Saxon nation did not brook arbitrary rule, and would only obey such princes as ruled with their approval.

After all the Saxon communities were united under one government, the same political tradition continued. The people insisted that kings rule within the law, and when they did not, the people either put them back in their place, or laid them aside altogether:

Its true Kings had their excesses, yet all was amended either by the body of the people, when they pleased to examine the matter, or by the Princes faire compliance when complaint was made, and so the Law was saved. And thus upon all the premises I shall conclude that a Saxon King was no other then a *primum mobile* set in a regular motion, by Lawes established by the whole body of the Kingdom.<sup>128</sup>

The Saxons, then, could truly be described as a self-governing nation. The customs and laws they brought with them from Germany prescribed a constitution in which the people, either as a body, or through representatives participated in the decisions of the commonwealth. They or their representatives made laws together with the king, whose duty it was to enforce the laws of the national community. These laws gave the king his power. The king enacted what the kingdom and its laws had already prescribed. Bacon finds evidence in ancient sources for the existence of the same constitution of king, lords and commons existent today, and attested elsewhere. No one of these estates could lord it over the others; each had an equal hand in the government of the nation. Bacon writes,

though it appeareth that the Kings had gotten the priviledge of summoning the grand meeting in his own name, yet it was by advice of the great men, and being met their votes were no other in value then as formerly; for all their Laws were *ex consilio sapientum*, and for ought can appeare out of antiquity the vote of the meanest continued as good as of the greatest, *arbitrium est penes plebem*. And thus the Micklemote or Wittagenmote of the Saxons in England continued in the King, Lords, and Freemen by the space of one hundred and fifty yeeres, and in some parts of England nigh two hundred yeeres before ever the Roman Bishops foot entered.<sup>129</sup>

In Saxon times, King's summoned their grand assemblies by the advice of their barons, and once assembled, both the nobles and commons had equal votes in all matters of state for which they had shared responsibility. This was an established institution for over a hundred years, as Bacon tells us. But what of this intrusion of Roman Bishops upon English soil?

The entrance of the Roman Bishop's foot provides Bacon with another occasion to praise Saxon vigor and tenacity. For at this time already, he says, the Church of Rome was "grown almost to the pitch of [the] Antichrist". But Austin and the Roman clergy perceived that the "Saxons had a Commonwealth founded in the Liberty of the people" and so, understanding that "the Saxon principles would not suffer them to be *ad omnia* for *Rome* ..." they agreed to a settlement between the Saxon state and its new church which "preserve[d] the municipal Laws in moderation toward the Canon."<sup>130</sup> In spite of the corruption of the Roman church, the Saxons were able to keep it in check. Seeing that "the Clergy seldom read the Scripture, and did never preach, and were so grossly ignorant" that they could not even "understand their common-prayers" King Alfred translated parts of the New Testament and Christian works in Latin into the Saxon tongue, making the Word accessible to his people. Ecclesiastical government in Saxon England could not become too iniquitous, for the clergy "admitted the Laity into their Synods, who were not so dull but could espy their ambition, nor so base-spirited as to live in slavery after conviction." The church allowed the power of Bishops to be yoked "under that of the Synods: for they had little or no power by the Canon that was not under their controul, neither in admission of Presbyters or others, determining of any cause, nor passing sentence of

Excommunication: And this could not but much hinder the hasty growth of Antichrist's power in this Kingdom."<sup>131</sup> The Roman Church in Saxon England was thus like "a young bear not fully licked" its predatory instincts held in check for hundreds of years by the liberty-loving Saxon people.<sup>132</sup>

In his "Epilogue to the Saxon Government" (chapter XLIII), Bacon idealizes the Saxon commonwealth:

It was a beautiful composure, mutually dependant in every part from the Crown to the cloune, the Magistrates being all choice men, and the King the choicest of the chosen; election being the birth of esteem, and that of merit; this bred love and mutual truth, which made them as corner-stones, pointed forward to breake the wave of danger; nor was other reward expected by the great men, but honour and admiration, which commonly brought a return of acts of renown... [I]t was a regular frame, in every part squared and made even by Lawes, which in the people ruled as *lex loquens*, and in the Magistrate as *lex intelligens*... The Saxons became somewhat like the Jews, distinct from all other people, their Laws honourable for the King, easy for the Subject, and their Government, above all other, likest to Christ's Kingdom, whose *Yoke is easy and Burthen light*.<sup>133</sup>

An idealized past is not just a fantasy. It is way of coming to grips with the present. In this case, the Saxon commonwealth provides the model against which the present kingdom of England may be measured. Bacon impresses upon his readers several things here. First, the members of the Saxon nation were bound to each by mutual love and trust. Second, their leaders were choice men. This is the significance of the idea of election. Kings were initially chosen from the Nobility, themselves men who had earned their places of eminence by performing acts of renown for the good of the nation, or men who, though they inherited their places, were kept to their duty by the memory of the acts of virtue of their fathers. Though kings may inherit their crowns, they too were bound to rule the kingdom as men deserving to be chosen for that office. As we have seen above, those who proved unworthy could be removed, and when such a course of action was deemed necessary, the brave Saxon people did not shirk their duty. When the great are honorable, they are honored, and this creates a virtuous circle, in which all the people of the

kingdom are inspired to contribute to the commonweal. Third, the Saxon kingdom was ruled by laws, which the people had a hand in creating together with their magistrates. All of these things together, brotherhood, esteem for the virtuous, the rule of law, the sharing of power between people and princes, made the Saxons a nation apart, in which the burdens of all were as light, and as like those of Christ's kingdom as they could be in an imperfect earthly kingdom. These feelings of brotherhood, the esteem for virtue, the rule of law, and the sharing of power are the prerequisites for liberty. Our ancestors had such, Bacon tells his 17<sup>th</sup> century audience, and if we wish to remain free, we must re-acquire for ourselves what our ancestors had.

Like the other authors considered in this study, Bacon argues that Saxon liberty survived more or less intact through foreign invasions and the encroachments of certain kings. We need not recount at length a story that has been rehearsed several times already in this chapter. In Bacon's telling, the storming of England by the Danes brought much hardship, and, in time, corruption to the English church, but against conquest and corruption stood "onely ...the liberty of the Saxon freeman; which the Danes could never conquer..."<sup>134</sup> As for William of Normandy, Bacon tells us that the Norman prince never thought he could conquer England by force, and that he made his claim to the crown "in a mannerly way" by asserting his title to it. The quarrel between himself, and Harold "was personall, and not Nationall" to which fact the ambivalence of much of the rest of the kingdom to their conflict attests. Most of England, Bacon tells us, stood on the sidelines as this war between two princes, both of questionable title, played out. William could not gain England by violence, nor could he presume to impose his own laws on it once crowned: "Thus this mighty Conquerour suffered himselfe to be conquered, and stooping under the law of a Saxon King he became a King by leave."<sup>135</sup>

In the rest of the first part, and then in the second, Bacon traces the perseverance of the English people, and the preservation of their authentic laws and customs through many trials, all the way to the reign of Elizabeth I. The lesson is clear. English people have kept their liberty for over a thousand years, and must not relinquish it now to anyone.

For Bacon, as for Coke, Selden, and many other men of high station, the narrative was an unproblematic one. But as we turn our attention from gentlemen who sat in Parliament to the soldiers who during the Civil War fought in Parliament's name, we must draw attention to a taint in the pedigree of English liberty, which came to be exploited. Like Coke and Selden, Bacon says that after the turmoil and rebellions during the reigns of William's sons, the English confirmed Henry I as their king. The kingdom was thus "settled by the ancient Laws of the Saxons mixed with some additions of Laws made by the King's Father [William I], with the joint advice of the grand Council of the Kingdom."<sup>136</sup> The mixture alluded to here was accounted insignificant by the authors we have discussed so far; they did not fundamentally alter the constitution, or affect the traditional liberties of Englishmen. Other men in England saw these additions as a taint, which had polluted the pristine laws of the kingdom, and deprived many Englishmen of liberties they had held before the conquest.

## **6. The Anti-Normanism of the Meaner Sort and Rationalistic Nationalism**

### **St. Edward's Ghost and the rights of the "meaner sort"**

We turn now to the second version of the Anti-Norman narrative, and other forms of nationalist discourse that arise during the Civil War and continue in earnest until the establishment of the Protectorate. These discourses raise new problems which animated political

actors in England, especially the soldiers. Few of the demands were met in their time, but they nevertheless show the connection between a certain kind of nationalist discourse, and particular political demands—and the willingness to risk life and limb for the same—as well as elucidate particular political problems that continue to challenge constitutional self-government.

As I suggest above, the Anti-Norman narrative told by Coke, Selden, Hunton, Bacon and many others not named here was vulnerable to the critique that the early Norman kings had, according to most chronicles, managed to introduce certain innovations to St. Edward's Laws, and that certain obvious traces of the Norman conquest remained visible in England in the 17<sup>th</sup> century.<sup>137</sup> For example, the laws of the land were written in Norman French, an insult to any Johnny Englishman who wanted to know his rights, and the titles of many of the Nobility also bore the marks of their Norman origin. For the Levellers and their allies in Cromwell's New Model Army, the ancient reconquest of England as described by the likes of Sir Edward Coke had been incomplete. They would now finish the job. They would now restore the glory of the English, and restore liberty for all members of the nation.

At the time of the Army Debates, which we shall consider below, a series of pamphlets by one John Hare was circulating. The author wrote the first of them in 1642, but the extant copies are dated 1647. The pamphlets were titled "St. Edward's Ghost, or Anti-Normanisme", "Plaine English", and "England's proper and onely way to an Establishment in Honour, Freedome, Peace and Happinesse." In the first pamphlet, Hare railed against "that infamous title of a conquered Nation, and that by so infamous a conquest; but more especially the still visible fetters of our captivity, the evidences of that title; those forraigne Lawes, Language, Names, Titles and Customes, then introduced, and to this day domineering over ours..."<sup>138</sup> All of these marks of a foreign conquest, he says, Englishmen have a right and duty to extirpate from their

kingdom. For Englishmen are the descendants of a heroic race who have always been prepared to risk life and limb to protect their ancestral freedoms.

The genealogy of the English people given by Hare is similar to what we have already seen in Selden, Hunton, and Bacon: “There is no man that understands rightly what an English man is, but knowes withall that we are a member of the Teutonic Nation, and descended out of *Germany*.” He then proceeds to “take a just survey of the gloriousnesse of that our Mother Nation” highlighting “her generous qualification and magnifick and warlick nature; her atchievements, domination, greatnesse and renown, her Majesty; and other heroicall points of excellence.”<sup>139</sup> The account emphasizes the military conquests of the Teutons, especially over the Gauls (ancestors of the rascally French), and the tenacity with which they held on to their liberty. He turns then to “the Saxons or English, (our peculiar Progenitors)” who expelled the Britons and “took the sole possession of the Land, thereby preserving their bloud, lawes, and language, incorrupted.”<sup>140</sup> Concluding his account of England’s Teutonic mother nation in general, the Saxon nation in particular he asks rhetorically: “What numberlesse conflicts and encounters did we continually maintaine, for the keeping of our possessions and preservation of our honour and Libertie, as they were derived involate from our Progenitors?” The Saxon nation, he declares, had “a hopeful language and happy Lawes, Lawes envied but not equall’d in Christendome [and] of such a politick structure as made our Prince a true and happy monarch, and yet ourselves as free as any people of Europe.”<sup>141</sup>

Hare professes no certainty as to the precise nature of the Norman Conquest. Perhaps it was not a military conquest at all, as many chronicles had recorded. William had promised to “preserve inviolate our Lawes and Liberties,” but managed to deceive his English subjects.<sup>142</sup> On the other hand “were it so that our English Nation was directly vanquished and conquered by

the Normanes, (at the sound whereof every true English mans stomach may well rise) have not we more then once requited their Nation in the like kind?" In any event, Englishmen had a duty to recover the lost rights cherished by their ancestors, and to expunge the Norman taint from their kingdom: "[W]e are most injurious to our selves, our Progenitors and our posterity, while wee so traiterously yeeld up to those Robbers, what our Ancestors so dearly purchased and preserved for us to enjoy, and afterwards to transmit and leave to their and our Name and bloud in all succeeding ages."<sup>143</sup>

Toward the end of the pamphlet, Hare lays out his demands, five in number: first, that William be "stript of that insolent Title" of Conqueror; second, that "the title to the Crowne be ungrounded from any pretended Conquest over this Nation, and his Majesty bee pleased to derive his right from St. Edwards legacy"; third, "that all the Normane Nobility and Progeny among us, repudiate their names and titles brought over from Normandy"; fourth, "that all the Lawes and usages introduced from *Normandy*...be abolished, and supply be made from St. Edwards laws"; and finally, "that our Language be cleared of the Norman and French invasion upon it...by purging it of all words and termes of that descent, and supplying it from the old Saxon and learned tongues."<sup>144</sup> Taken together, these demands are as much cultural as they are political. Like the great Sir Edward Coke, in his time one of the wealthiest and most powerful men in England, the humble John Hare too takes pride in English blood, heritage, and language, and asserts a right which can only be understood as collective, the right of a nation to preserve and promote its own peculiar heritage and to purge pernicious foreign influences.

It bears emphasis here that Hare's grievances, thus stated, are primarily cultural and political, and not racial, not because he is indifferent to matters of race, but because he does not regard the Normans as racially foreign. He demands not an expulsion of the population in

England descended from the Normans, but that these men become true Englishmen. “For the Normane Progeny,” he says

they may consider that themselves (as Norwegians) are originally (as Verstegan hath well observed) of one and the same bloud and nation with the English, namely the Teutonick, and that in doing what is here required, they shall but shake off that tincture of Gallicisme which their Ancestors took in Nuestria, and rejoyne themselves with their ancient Countrimen.”<sup>145</sup>

The Normans were thus not racial foreigners. They were Teutons who had acquired imperious and rude French manners in Normandy, which they ought now to relinquish once for all. From Hare’s point of view, the elimination of this cultural difference was of utmost importance politically. If the King and the Nobles insisted that they were descendants of conquerors, then they would behave like conquerors, lording it over the English, rather than treating them like fellow nationals, and the English, for their part, would treat their King and Lords like foreign enemies. In his third pamphlet, Hare writes

[there] can be no union in affection betwixt those that are profest strangers and enemies one to another as this Title and Innovations (the Ensignes of hostility) render our Kings & People (by reason of the unlimited prerogative inseperably appendant) is apt to suggest seeds of Tyranny to the Crown (as it hath continually done) & consequently of insurrections to the subject, the disturbance of the public peace.<sup>146</sup>

Hare’s demand, speaking in behalf of the English people, is that the King and the Nobles of the realm become full Englishmen, and behave accordingly. The peace and liberty of the kingdom depend all members of the kingdom seeing each other as fellow Englishmen, keepers of a common English heritage.

There is also the matter of language and the reform of the law. Hare did not specify what precisely were the “Norman Innovations” in the law that needed to be abolished. He did consider it an intolerable injustice that the laws of England “still scorn to speak otherwise then in the Conquerours Language.”<sup>147</sup> They should be rendered into English. What is more, certain other civil rights had been lost. He thought that the state of vassalage in which some Englishmen now

found themselves was a Norman innovation: “such as are in the nature of Villeines, are incapable of enjoying free-hold Lands, but though they purchase never so much, it belongs all to their Lords.”<sup>148</sup> All Englishmen had originally had the right to own land, or so Hare thought. If Hare could not name all the ways in which St. Edwards pristine laws had been corrupted by the Conquest, the Levellers could and would.

If one considers the pamphlets associated with the Levellers, and the statements of New Model Army agitators, one sees two kinds of arguments. First, there are arguments like those of John Hare, based on claims about heroic Saxon ancestors and an ancient pristine Saxon constitution, which were, both the people themselves and their institutions, later corrupted. The Levellers and Army Agitators add many specific demands to Hare’s general list of grievances. Second, there are arguments deriving from a rationalistic nationalism, according to which all native Englishmen are equally entitled to the right of self-rule and a raft of individual rights simply because they are all members of one nation. A man’s rights derive neither from his class, nor from the civil constitution, but from membership in the English nation. In the various pamphlets, and in the army debates, the culturally, ancestrally rooted nationalism and the rationalistic combine and overlap with each other.

The Levellers and Army Agitators take the nationalist-democratic rhetoric a step farther than anything we have so far examined. The Levellers are both English traditionalists of a kind and unapologetic innovators. They are English traditionalists to the extent that they argue that the reconquest of England by its native people is thus far incomplete, and needs to be carried forward until all original native rights have been restored. They are also rationalistic nationalists in that they demand a remodeling of the government that eliminates many elements that clearly have an ancient pedigree. But even their rationalism is usually alloyed with some sort of claim

about restoring the lost honor and rights of heroic ancestors. The question of rights considered generally, together with that of resistance and the constitution, shall be our focus here, as elsewhere, but let us consider some of the other matters animating the Levellers and the Army. In “A Remonstrance of Many Thousand Citizens,” thought to be written by Richard Overton, it is asserted that William did in fact subdue the English, and that elements of that tyrannical regime remain deeply ingrained in the English political order. “The Conqueror,” he says, “contrary to his oath, introduced Norman laws and his litigious and vexatious ways amongst us.” William “erected a trade of judges and lawyers to sell justice and injustice at his own unconscionable rate and in what time he pleased.” Apart from the general corruption of the legal system, Overton names particular legal practices as a legacy of the Conqueror, such as imprisonment for debt and the practice of impressment. These things, claims Overton, are “not from the beginning.”<sup>149</sup> Impressment is especially offensive to Overton. The act of “pressing men to serve in your war” against their will is, he says, no different from “binding a man to an oar as a galley-slave in Turkey or Argiere” something no freeborn Englishman could bear without dishonor.<sup>150</sup>

The English legal system also bears the stamp of the conqueror linguistically, as Hare pointed out. Accordingly one of the demands in a petition submitted to the Army is “that all laws of the land (locked up from common capacities in the Latin or French tongues) may be translated into the English tongue.”<sup>151</sup> The author of the “Large Petition”, thought to be William Walwyn, goes farther, demanding that Parliament “reduce all laws to the nearest agreement with Christianity”, thereafter to be “publish[ed] in the English tongue” and that “all processes and proceedings therein may be true, and also in English.”<sup>152</sup> The author of “An Agreement of the People” (probably John Wildman) makes these and other demands on the basis of what he

declares to be the “native rights” of Englishmen, whose restoration they are compelled to seek as much “by the example of our ancestors—whose blood was often spent in vain for the recovery of their freedom” as “by our own woeful experience.”<sup>153</sup> In these various pamphlets, one encounters demands that traditional rights of English subjects be recognized and observed for all freeborn Englishmen. It is a demand to fully extend to the meaner sort the same rights claimed by Coke and Selden for all freeborn Englishmen.<sup>154</sup> This is the aim of the reforms they demand, that all Englishmen be able to read and understand the laws by which they are governed and to receive fair trials, that their economic liberty be not curtailed by monopolies protected by the Crown, that the poor should enjoy their traditional right to the use of common lands, and to donations for their relief. These demands arise both from a memory of a purer more virtuous national past in which Englishmen were just to their fellow nationals, and from the more rationalistic notion that members of a national community deserve equal rights, vis-à-vis each other, and their government.

#### **The Army Debates: Resistance, the Constitution, and Universal Manhood Suffrage**

The Army Debates address four large questions: the right of resistance, the reform of the constitution, the role of the state in religious matters, and voting rights. I shall discuss the first three briefly here, for reasons that will become apparent, before turning to a deeper analysis of the fourth question, which has not yet been considered in this chapter. It is well known that religious passions animated the soldiers of the New Model Army. But the English nationalist narrative, as we shall see, also supplied passion for their endeavors, as well as much of the content of their political demands.

### **Right of Resistance and Constitutional Reform**

The right of resistance was not so much a matter in dispute in the Army Debates. After all, the Army by this time had been engaging the king's men on the battlefield for years. Yet the historical right of Englishmen to reclaim their liberties by force from tyrannical rulers is expressed in an entirely familiar manner by Commissary Nicholas Cowling, one of whose speeches, not recorded verbatim, asserts "that the sword was the only thing that had from time to time recovered our rights...our ancestors had still recovered from the Danes and Normans their liberties, by the sword, when they were under such slavery that an Englishman was as hateful then as an Irishman is now."<sup>155</sup> For Cowling, then, the recovery of English liberty was a matter of honor for the English nation. He evidently took great offense at the idea that Englishmen might live as slaves in their own native land, despised as much by their Norman descended overlords as the Irish were now despised by Englishmen. Of all the agitators in the debates, Cowling is the most vocal in his Anti-Normanism. Other observers have asserted that this sentiment was widespread in the Army. Richard Baxter, who claimed to have spent time among Cromwell's soldiers reported that they would ask "Who were the Lords of England but William the Conqueror's Colonels, or the Barons but his majors, or the knights but his captains?"<sup>156</sup> According to 20<sup>th</sup> century historian H. N. Brailsford, the New Model soldiers believed "that on Marston Moor and Naseby Field they recovered what was lost at Hastings."<sup>157</sup>

But to resist and chastise the King's men was one thing. The question of whether the people had the right to depose the king altogether, under the present circumstances, was still to be decided. At the time, the Presbyterian faction in Parliament was intent on making a settlement with King Charles. The much celebrated Colonel Thomas Rainborough disliked arguments from precedent, and, in the debates, frequently called upon the assembly to put history and precedent aside, and consider the case according to abstract reason and justice. Rainborough was of the

rationalistic nationalist school, a perspective we shall have occasion to criticize in due course.

But he was an Englishman who knew something of the history of his own nation, and could cite precedents. He gives a slightly different polish to the assertion by William Lambarde and later writers that Englishmen had throughout their history taken up arms when necessary to restore their native rights. He says

If writings be true there have been many scufflings between the honest men of England and those that have tyrannized over them; and if it be true what I have read there is none of those just and equitable laws that the people of England are born to, but are entrenchments on the once enjoyed privileges of their rulers altogether.<sup>158</sup>

In Rainborough's view, then, the key lesson of English history is that Englishmen have won their rights by forcibly prying them out of the hands of their rulers. There was not necessarily a pristine ancient constitution which ought to be restored. Rather Englishmen have over time gained more and more rights for themselves through scufflings with their rulers, and that is what is distinctive about Englishmen.

When the debate specifically touched upon the question of deposing Charles, a proposition of which many of the debaters were in favor, Rainborough said: "I would add that one of the main articles against Richard the Second was that he did not concur with, and agree upon, those wholesome laws which were offered him by the Commons for the safety of the people. If that were so great a right as did depose him, it is in the kingdom still..." This meets with the approval of Commissary General Henry Ireton, who, together with Cromwell, felt obligated to defend the proposed settlement with the king, even though his own sympathies evidently lay elsewhere. His rejoinder to Rainborough: "You would have us lay aside arguments of constitution, and yet you have brought the strongest that may be. I have seen the Articles of Richard the Second, and it is strange that the Parliament should not insist upon that."<sup>159</sup>

Whatever one might adduce from speculations about natural law, the right to depose a tyrannical king was clearly in the English nation.

The larger constitutional question in dispute, however, was whether Kings and Lords should continue to exist at all as part of the government of England, and if so, whether they should have any part in the legislative power of the kingdom. John Wildman presented the Leveller view of the matter, which combines an interpretation of England's ancient constitution with a rationalistic nationalist theory of sovereignty:

According to the King's oath he is to grant such laws as the people shall choose, and therefore I conceive they are called laws before they come to him. They are called laws that he must confirm, and so they are laws before they come to him. To give the King a legislative power is contrary to his own oath at his coronation, and it is the like to give a power to the King by his negative voice to deny all laws. And for the Lords, seeing the foundation of all justice is the election of the people, it is unjust that they should have that power.<sup>160</sup>

This was an interpretation of the King's coronation oath, which many took to be evidence of an original contract between King and people from Saxon times. The King was to *corroborare justas leges & consuetudines quas vulgus elegerit* ---which could be interpreted in two ways: "to confirm the just laws and customs which the people a.) chose or b.) shall choose." The conjugation of the final verb could signify either. The Levellers, following Henry Parker, argued that, according to the ancient constitution, the King was obligated to confirm whatever laws the Parliament may pass. To this they added their belief that the Lords could not justly hinder the will of the Commons, for only the Commons were elected by the people. The Leveller proposal then, was that King and Lords may exist, but in name only. Neither should be considered to possess the power of a negative voice on the people's representatives in the Commons. The nation ought to express its sovereign will through its representatives in the House of Commons, which was not to be thwarted by any other body or person.

Wildman here frames his argument with reference to the ancient constitution. I do not presume to doubt his sincerity, any more than I would doubt the sincerity of Coke or Selden. But it is true, beneath claim from precedent is a simple nationalist logic. In his petition “The Case of the Army Truly Stated” the sixth article declares

Whereas all power is originally and essentially in the whole body of the people of this nation, and whereas their free choice or consent by their representers is the only original or foundation of all just government, and the reason and end of the choice of all just governors whatsoever is the apprehension of safety and good by them, that it be insisted upon positively, that the supreme power of the people’s representers, or Commons assembled in Parliament, be forthwith clearly declared: as their power to make laws, or repeal laws, and also as their power to call to an account all officers in this nation whatever, for their neglect or treacheries in their trust for the people’s good...<sup>161</sup>

The formula is a simple one: one nation, whose sovereignty is supreme, is to have one body of representatives entrusted with supreme authority to make and enforce its laws. Such a body is accountable to no one but the nation taken as a whole, from which it derives all its power.

In the debate, Ireton objects that Wildman’s proposal does not in fact fit the ancient constitution. The coronation oath, taken together with “all the practice since” showed that laws “had some relation to the King and to his consent,” that the King had a right of “advising” the Parliament concerning the laws it wished to pass.<sup>162</sup> The decision of Parliament in recent years to declare laws without royal assent was an extraordinary measure, taken out of concern for the “safety of the kingdom” and not the normal practice.<sup>163</sup> Ireton offers a lengthy description of the ancient constitution which accords with the coordination thesis laid out by Philip Hunton and others.<sup>164</sup> But ultimately he proposes that the King and Lords retain only a limited power of veto to negate any laws that assault their persons or property. Otherwise the Commons might make any laws it chooses. These concessions do not satisfy the others, however, and Ireton himself seems not very adamant to defend the ancient rights of King and Lords.

Indeed, the passions of the debaters point to a more extreme solution. In the words of Edward Sexby:

We find in the word of God 'I would heal Babylon but she would not be healed.' I think we have gone about to heal Babylon when she would not. We have gone about to wash a blackamoor, to wash him white, which he will not...I think we are going about to set up the power of kings, some part of it which God will destroy; and which will be but as a burdensome stone that whosoever shall fall upon it, it will destroy him.<sup>165</sup>

As Sexby has it, the ancient constitution of King, Lords, and Commons could no more be made whole again than Babylon could be healed, could no more be made just than a "blackamoor" could be "washed white." To try to set up the old privileges of Kings and Lords is to defy God. In the end Wildman declaims "it will never satisfy the godly people in the kingdom unless that all government be in the Commons and freely."<sup>166</sup> Cowling, citing history, or rather, his interpretation of history, insists that "In Alfred's time, the Commons had all the power, and the King, before the Conquest, hanged forty-three of the Lords Justices in one year."<sup>167</sup> The consensus emerging in these Army debates, was that all power should be vested in the Commons, that kings were incorrigible, that the House of Peers was dispensable. Recent events, abstract ideas of justice, together with a belief in a more democratic ancient past, for which precedents could be found, led them to this conclusion.

Cromwell himself admits his agreement in principle with these arguments, especially that of Sexby, that to set up a government that God has destroyed is to defy God. Speaking of King and Lords, he says "If it were free before us whether we should set up one or the other, I do to my best observation find a unanimity amongst us all, that we would set up neither."<sup>168</sup> In 1647 the ancient constitution of Coke, Selden, Hunton, Bacon and others had no defender in Cromwell. Two years later, if not sooner than that, it had no defender in Ireton either. The right of Englishmen to seek the common good of their nation, through representatives directly accountable to the nation itself must not be impaired. However, it bears emphasis that neither the

Levellers nor the grandees, Ireton and Cromwell, had any intention of parting with the principle thought to be embodied in the ancient constitution, that the power of government, in whatever hands, ought to be limited, that there ought to be a mechanism by which the exorbitances of any person or body in government, including the sovereign House of Commons itself, could be restrained.

In the Whitehall Debates, Ireton explains the Agreement of the People which the Army is to propose to Parliament.

All the effect of this Agreement is no more but as restrictions upon that power...it shall not be in the hands of Kings or Peers, or in the hands of the present House of Commons, but in the hands of such as are chosen by the people; and not in their hands perpetually, but only for so many months as they are chosen; and that there shall be a new election of another Representative once in two years...And for the power given to the magistrate, it gives him no power but what the supposition of a magistracy or a commonwealth doth imply in itself...In the matter, they shall not have power to do in those things that we reserve from them; and one thing is a reservation of all other things that in are this Agreement, which are foundations of liberty.<sup>169</sup>

The new frame of government was to have two basic restrictions built into it. First, the power of this body entrusted with the people's sovereignty was to be limited by successive elections. No parliament could sit perpetually, but must yield its places to a new set of representatives duly elected by the people every two years. The exorbitances of any one parliament could be undone by the next one. Second, the new Agreement enumerated some nineteen things that Parliament was forbidden to do.<sup>170</sup> Successive popular elections, and a piece of parchment with a list of nineteen prohibitions—this was to prevent abuses of the people's sovereign power. It was entirely reasonable, but not founded in custom, not connected to the Englishman's memory of the past, not based on experience. Cromwell himself would very soon find it unfit for purpose. The Long Parliament would not consent to it; that having been forcibly dissolved, and new elections successively held, future parliaments liked it little better, and sometimes alarmed Cromwell with their excesses as much as he did them with his. In time the trial of experience and

the prodding of constitutionally minded members of the Protectorate parliaments wielding against Cromwell the arms of tradition and precedent, would conquer even this conqueror, who had scarcely ever known defeat on the field of battle. But again, I anticipate.

#### **The Levellers and Ecclesiastical Government**

Religion was the chief topic of the Whitehall Debates of 1649. We turn to this document to understand how the Army and the Levellers wished to reform religious government in the nation. There are three moments to look at here. First, there is religion as a constitutional matter. Selden and others had insisted that ecclesiastical government belonged to all three estates acting coordinately, and not to the King and Bishops alone. Second, religion was a question of national importance, therefore the Commons could not be denied input in the matter. Bacon had emphasized popular control in the early Saxon church as the one thing that had prevented ecclesiastical authority from becoming a bloodthirsty bear. Third, there was the question of freedom of conscience for dissenters. This principle had no historical pedigree, but it found favor among many who thought that, the bishops having persecuted many for their religious beliefs, any coercive power in ecclesiastical government was to be feared.

The Civil War, Ireton had said, was partly the result of disagreements between royalist and parliamentary factions on whether the two Houses of Parliament had the right to assume the government of the kingdom if they judged the King to have betrayed his trust. But it was also a disagreement concerning religious authority, the root of the controversy being that “we have not known in what persons, or what parties, or what council the trust has lain.”<sup>171</sup> Ireton’s answer to this question is that the trust ought to lie in authorities chosen by the people’s representatives. But another question is what powers concerning religion should be committed to such an authority. The principles strive against each other in the debate, freedom of conscience for

individuals, and the right of the nation as a nation to advance the cause of religion for the sake of the common good.

Ireton puts the question at Whitehall whether the magistrate should have any power over religion. Several of the speakers say that it should have none, asserting the primacy of freedom of conscience for individuals. One Captain Clarke states this position as follows:

I refer this to be considered: whether this be not our common right and our common freedom, to live under a civil magistrate, to live by our neighbours, but as touching religion to be free from the interference of either, and why any people should then for their religion be punished. I think, my Lord, that everyone here, when he speaks his conscience, will plainly say that they should not.<sup>172</sup>

In asserting absolute freedom of conscience, Captain Clarke does indeed speak for many in the debates. But not for all.

Ireton draws out opponents of this position with the following remark: we ought not, he says, “to restrain a man from that which Jesus Christ does teach him; but men have consciences to say that there are many things that men may own and practice under pretence of religion.”<sup>173</sup>

One Philip Nye recalls a relevant case: “there was a gentleman cast into Newgate to be executed for having two wives, and he had this case of conscience...All the arguments he advanced were for persecution for conscience.”<sup>174</sup> The conscience of the individual, suggests Nye, can lead men astray, and the commonwealth must have the power to exercise judgment in such matters for the good of all. One Colonel Rich offers that the question of the debate be modified: “Whether or no the civil magistrate is to exercise any power, restrictive or compulsive upon the persons of men in matters of religion, they walking inoffensive to the civil peace.”<sup>175</sup> The civil magistrate, asserts, Col. Rich, should punish no-one for any religious belief or practice, provided it does not violate the civil law. Ireton objects that this is not the question being debated. The civil peace is certainly important, but political considerations about religion are not limited to this.

Ireton proposes that the power of the magistrate, which in any case “hath not power to conclude your inward, but only your outward man,” be used to enforce conformity to the Decalogue.<sup>176</sup> This proposal is supported by many speakers. Nye’s formulation is the most political. Of “religion (the things of our God)” he says

it is *that* which is of the greatest public good and public concernment...By the light of nature we are able to say that for such things God will plague a nation, and judge a nation. A company of men, met together to consult for common good, do pitch upon such things as do concern the commonwealth. They would do what they can to prevent such sins or provocations as may make judgments come down upon their heads.<sup>177</sup>

This assertion elicits objections from several speakers in favor of absolute liberty of conscience. The framers of the ecclesiastical settlement of the Protectorate would attempt to find a middle ground between these two contradictory principles, as would, with far more success in the event, the framers of the settlement of 1689. The debate illustrates two mutually contradictory principles that were of great concern to these 17<sup>th</sup> century Englishmen: the freedom of conscience for individuals and the right of a Protestant nation to impose laws upon itself for the advancement of the cause of the Protestant religion, and the moral and, indeed, the soteriological health of the nation.

#### **Who is a Citizen? The Putney Debaters vs. John Locke**

We now turn to the most voluminously considered question of the army debates, the right to the franchise, which is the principal question discussed in the Putney debates of October-November 1647. This is of interest primarily in relation to what I have above called “step three”—the process by which larger swathes of the population are inducted into full political membership in the nation. The denial of the right to vote to some four-fifths of the English population was another injustice that many Levellers imputed to the Conqueror. On more than one occasion, Ireton and Commissary Nicholas Cowling confront one another on the question of whether England’s ancient constitution granted the franchise to all freeborn Englishmen, or only

a few, as things stood in the 17<sup>th</sup> century. Ireton, upon hearing the demands read out from the “Agreement of the People,” responds that he can agree to the proposal only if it be understood that “equal voice in the election of . . .representers” is to be granted only to those people who presently possess it “by the civil constitution of this kingdom, which is original and fundamental, and beyond which I am sure no memory of record does go”. Cowling interrupts to claim that this was not so “before the Conquest” implying that the ancient Saxon constitution, before it was corrupted by the Norman kings, extended the franchise more widely. Ireton, however, replies that “before the Conquest it was so”, that is, even before the conquest, the right of election was as limited as it is now. Cowling does not concede the point, and insists that only “since the Conquest the greatest part of the kingdom was in vassalage.”<sup>178</sup> This historical question is never resolved by the debaters. And, indeed, much of the argumentation in favor of expanding the franchise is in the rationalistic nationalist vein, and has nothing at all to do with history or precedent. Yet one cannot deny the importance of this belief, voiced by Cowling and others, that the Anglo-Saxon constitution had been more democratic. John Wildman insists that the ancient constitution, as propounded by Ireton’s is not the true one. “We have been under slavery,” he declares. “Our very laws were made by our conquerors; and whereas it is spoken much of chronicles, I conceive there is no credit to be given any of them, and the reason is because those were our lords, and made us their vassals, would suffer nothing else to be chronicled.”<sup>179</sup> This understanding of history, right or wrong, provides a concrete context for the debate.

In fact the Levellers were more right than they or Ireton knew, not that the ancient Saxon constitution had been democratic—for it is not known to this day whether the low-born participated in the Witanagemotes or voted at all—but that there had been an earlier time when nearly all Englishmen had had the franchise. The 40 shilling property qualification indeed was

not from the beginning. According to John Selden: “There was a time when all men had their voice in chuseing Knights. About Hen[ry] 6[th] they found the inconveniencie; so one parliament made a Law, that only hee that had 40 s[hillings] p[er] ann[um] should give his voice, they under should bee excluded. They made the Law who had the voices of all, as well under 40s. as above; & thus it continues att this day.”<sup>180</sup> Thus, had they been better historians, the Levellers need not have had resource to denials, or worse, the fantasy worlds of “reason” and “nature,” at all.

In any event, their historical consciousness, such as it was, provided an additional motivation to demand political rights. It is not only a matter abstract principle; it is a matter of reclaiming the rights of one’s ancestors. For the most part, the debate centers explicitly on two principles for determining who should have the full rights of citizenship, including the right to elect members of parliament. According to the first principle, it is by owning a certain minimum of immoveable property on the territory of England that one becomes a citizen. This position is argued by Ireton. The other principle, which I will call the “nationalist principle,” argued principally by Colonel Thomas Rainborough, says that all freeborn Englishmen are to be accounted citizens by virtue of the fact that they are Englishmen.<sup>181</sup>

Ireton’s principled argument for the property qualification to citizenship has essentially two facets. The first is the idea of the “permanent interest.” Ireton argues that a man who is not literally tied to the kingdom by his personal interest in preserving his estate there cannot be trusted to vote on the general interest of the nation. Only men firmly rooted in the kingdom by their immovable property in it can be reliable citizens. “If he has money” reasons Ireton, “his money is as good in another place as here; he has nothing that does locally fix him to this kingdom.”<sup>182</sup> He who has only money, and not immovable property, can make improvident choices as an elector, and flee the kingdom if it suffers on account of those choices. According

to Ireton, those who do not have the franchise should understand that it is in their own interest to “be concluded by the common consent of those that were fixed men, and settled men, that had the interest of this kingdom in them. ‘And from that way [they would say] I shall know a law and have a certainty.’”<sup>183</sup> These are the men who, according to Ireton, “have the interest of England in them.”<sup>184</sup> The interests of all are served when the fixed, settled men of property who have the most to lose personally by a miscarriage of government are solely responsible for choosing parliamentary representatives. These men will be most concerned to keep good order, from which all will benefit.

While this facet of Ireton’s argument is by no means devoid of sense, the other part of it, though also logical enough, is clearly impolitic under the circumstances. His explanation of the rights and duties of propertyless Englishmen puts these men on the same legal footing as foreigners. His argument is that, although all laws of parliament are established without their consent, the propertyless are nevertheless bound to obey them, in the same way that a foreigner sojourning in England would be bound to obey. Ireton writes

If a foreigner come within this kingdom, if that stranger will have liberty to dwell here who hath no local interest here, he, as a man, it’s true, hath air, the passage of highways, the protection of laws, and all that by nature; we must not expel him from our coast, give him no being amongst us nor kill him because he comes upon our land, comes up our stream, arrives at our shore. It is a piece of hospitality, of humanity to receive that man amongst. But if that man be received amongst us, I think that man may very well be content to submit himself to the law of the land; that is, the law that is made by those people that have a property, a fixed property in the land. I think, if any man will receive protection from this people though neither he nor his ancestors, nor any betwixt him and Adam, did ever give concurrence to this constitution, I think this man ought to be subject to those laws, and be bound by those laws, so long as he continues amongst them.<sup>185</sup>

A foreigner sojourning in England should obey the law because he enjoys its protections. These protections allow him to breath the air, use the roads and go about his business. No one would argue that a foreigner should make his obedience to the laws of a kingdom not his own conditional on his approval of the same. Ireton then asserts that “whoever is extraneous to [the

permanent interest in the land] that is, as good a man in another land, that man ought to give such a respect to the property of men that live in the land.”<sup>186</sup> With this assertion, Ireton declares Colonel Rainborough and company to have no more rights on English soil than a band of foreigners sojourning in England.

When Ireton’s arguments are reduced to their essence, they appear as follows. First, by his reasoning, the only true basis of a citizen’s concern for the nation is the preservation of his own fixed property. The national interest is nothing if it is not grounded in material self interest.<sup>187</sup> Second, there is, politically speaking, no difference between an unpropertied Englishman and a foreigner. To Ireton’s interlocutors, these arguments, are, not surprisingly, not only unconvincing, but insulting. In the first place, the propertyless officers to whom he pitches these arguments have risked their lives fighting for what they thought to be the good of England. Colonel Rainborough makes this point in the following words: “what shall become of the many men that have laid out themselves for the Parliament of England in this present war, that have ruined themselves by fighting, by hazarding all they had. They are Englishmen. They have now nothing to say for themselves.”<sup>188</sup> Not only have the officers demonstrated the commitment to the common interest of the nation, by risking their lives and all they had for it. But also, they are born Englishmen. They are no less English than members of the propertied class.

Ireton’s second argument essentially denies the soldiers’ Englishness. “If I have no local interest in property,” says Rainborough, “I am like a foreigner, and have no more than the rights of a foreigner.”<sup>189</sup> Edward Sexby, responding to the same argument, declares “We have engaged in this kingdom and ventured our lives, and it was all for this: to recover our birthrights and privileges as Englishmen; and by the arguments urged there is none... we have had little propriety in the kingdom as to our estates, yet we have had a birthright... If we had not a right to

the kingdom, we were mere mercenary soldiers.”<sup>190</sup> For Sexby, and the other officers, the rights and privileges of the kingdom, including the franchise, are gained by being of English blood. The rights and privileges they enjoy are not such as belong to all human beings by the law of nature, but particular to them as members of the English nation. Moreover, like Cowling, Sexby demands not the establishment of new rights for men of his station, but the *recovery* of the ancient rights of Englishmen. Ireton’s argument not only denies them the franchise, but it denies that they are English, denies that their ancestors were English. According to his argument these English soldiers are, politically speaking, no different from foreign mercenaries. Indeed, had these officers thought on it, it might have occurred to them to compare themselves to the Saxon barons, who, supposedly, had forced William the Conqueror to preserve St Edward’s Laws, or the English Barons who had forced King John to sign Magna Charta, preserving ancient rights for posterity by the spilling of their English blood. These officers and their men had now re-lived and re-enacted the blood rituals of those noble ancestors for the recovery of English liberty.

For the officers, the principle of government by consent of the people makes sense only if it is the consent of the whole people, the whole nation. As Colonel Rainborough argues, if only the propertied have the franchise, “then one part [of the nation] shall make hewers of wood and drawers of water of the other five, and so the greatest part of the nation be enslaved”. Major William Rainborough, moreover, rejects the notion that government is instituted only to protect property, and that protection of property is the only guarantor of the stability and welfare of the kingdom. “I think,” he says “that it is for the preservation of all the native freeborn men, that they should have an equal voice in election. . . . And the reason is: that the chief end of this government is to preserve the persons as well as estates, and if any law shall take hold of my person it is more dear than my estate.”<sup>191</sup> The purpose of the government is to protect all men of

English blood, regardless of their material holdings. Therefore, they must all be able to vote for their representatives. If the government is beholden to the nation, then it is beholden to all Englishmen severally.

Ireton and the soldiers do seem to talk past one another throughout much of this debate. Yet in doing so, they illuminate some interesting problems. First of all, Ireton's fear of mobility deserves attention. A nation cannot hope to secure its own interests if it allows too many foreigners to have an influence on its politics. Those who are not tied to England by their property, those who can easily move from one country to another cannot be trusted to have a part in exercising the sovereign power of the nation. Of such a man he says "whatever he hath, he may carry about with him... He that is here today, and gone tomorrow, I do not see that he hath a permanent interest."<sup>192</sup> The argument makes sense if one is speaking of actual foreigners. As Ireton puts it "I would not enlarge [the franchise] beyond all bounds, so that upon the same ground you may admit of so many men from foreign states as would outvote you... If a man be an inhabitant upon a rack rent for a year, for two years, or twenty years, you cannot think that man hath any fixed or permanent interest. That man... may have as much interest, in another kingdom as here."<sup>193</sup> It would be unwise to allow foreigners with interests in other kingdoms to vote in English elections. All of the soldiers who have something to say on this issue agree with Ireton's point. Actual foreigners should be excluded. But it is indeed odd for Ireton to equate the mobility of foreigners, across national boundaries, with the mobility of unpropertied Englishmen. Taken to its logical conclusion, Ireton's argument ought rather to exclude 21<sup>st</sup> century global billionaires or cosmopolitan academicians from having a voice in the politics of nations, than the poorer citizens of nation-states who cannot move from one country to another with ease, either physically or psychologically.

Ireton's other argument against extending the franchise is also telling, as is Rainborough's response to it. Ireton desires to know, if all the unpropertied men of England are to be enfranchised, "Why may not those men vote against all property?...and those that have interest in the land may be voted out of their land."<sup>194</sup> Mistrust between the rich and poor is one of many stumbling blocks for democracy. The more mistrust between the classes, the more the rich will be reluctant to extend the right to vote, or, as the case may be, the more eager they will be to use their influence to game the system so that no poor majority will be able to despoil them through the ballot box. Rainborough immediately understands Ireton the first time he expresses his fear of being voted out of his land. "I think," he says, "it doth go on mistrust, and things are thought too readily matters of reflection, which were never intended...God hath set down that thing as to propriety with this law of his, *Thou shalt not steal*. And for my part I am against any such thought, and, as for yourselves, I wish you would not make the world believe that we are for anarchy."<sup>195</sup> When pressed, however, Rainborough is less conciliatory on this point. In response to Ireton's demand "Show me what you will stop at; wherein you will fence any man in a property by this rule", Rainborough says "I desire to know how this comes to be a property in some men, and not in others."<sup>196</sup>

It is the nationalist principle that bridges, however imperfectly, the divide between rich and poor, so that they can share equal voting rights. As natives of the same nation, the same commonweal, they are not to despoil or oppress each other. Ireton and Rainborough having carried the debate heretofore, others try to offer a compromise, which would clearly exclude foreigners and servants from the franchise, but include all native freemen. As one Thomas Reade sums it up "I see no reason why any man who is a native ought to be excluded that privilege, unless from voluntary servitude."<sup>197</sup> This is the proposal that is eventually approved by vote at

the General council of the Army: “That all soldiers and others, if they be not servants or beggars, ought to have voices in electing those which shall represent them in parliament, although they have not forty shillings per annum in freehold land. And there were but three votes against this your native freedom.”<sup>198</sup> Cromwell and Ireton were unsatisfied with result, and somehow managed to nullify it and regain control of the army. Yet the debate still reveals the kind of consciousness that was behind demands for rights, and shows us how the notion of equal citizenship depends on something that at least resembles a blood and soil concept of nationhood, not mere rational consent of self-interested individuals.

It is, I think, no coincidence that the idea of birthrights belonging to all members of a particular nation logically leads to demands for equal representation in the House of Commons, whereas the natural right of individual to his property, as established in Locke’s *Second Treatise*, leads to the conception of citizenship delineated by Ireton. Since Locke does not allow any more or less fixed distinctions between one nation and another, or any sense of national solidarity, he is at pains to establish what makes an individual a citizen of a particular commonwealth. Since only the first generation of a community, voluntarily formed by individuals exiting the state of nature, gives its express consent to a government, Locke introduces the concept of tacit consent for all succeeding generations. But this tacit consent is problematic, because the tie between state and native citizen is no different from that between the same state and a foreigner. Use of the highways and similar acts, performed under the protection of the law, constitute tacit consent to the government. According to Sheldon Wolin, it is because of the flimsiness of this argument that Locke turned to property as the only reliable tie between citizen and state.<sup>199</sup> The idea, common to both Ireton and Locke, that a man’s first interest is the preservation of his property excludes an idea that is essential for political democracy. It excludes the idea that men, as

members of a community, can be trusted to responsibly seek the good of that community as a whole, to seek that good for its own sake. Democracy requires recognition on the part of citizens of a national interest. The unpropertied officers of the Putney debates stake the claim, already in 17<sup>th</sup> century England, that it is possible to have mutual concern for all fellow citizen-nationals regardless of one's material stake in the business. They see themselves all as Englishmen, are convinced that the purpose of an English government is to protect the rights, privileges, and ultimately the persons of all English men.

## **7. The Lord Protector Conquered by the Ancient Constitution**

Oliver Cromwell, as we have seen above, had no desire to restore England's ancient constitution. He was, however, a defender of the principles of constitutionally limited self-government, and would not tolerate arbitrary rule in England by King or Parliament, much less exercise arbitrary power himself. As his various attempts to find a new constitutional settlement failed, Cromwell was pulled by conservative parliamentarians and by his own experience back into the orbit of the ancient constitution, as proponents of the coordination thesis like Hunton had understood it. In the first place, Cromwell saw that the Long Parliament would not impose upon itself one of the two essential checks on government agreed upon in the army debates, the requirement of successive elections. The Long Parliament was not prepared to dissolve itself and call new elections, so Cromwell stepped in and forcibly dissolved it himself.

Cromwell then summoned the Little Parliament (or Barebones Parliament), a body of Puritan Notables assigned the task of finding a civil and ecclesiastical settlement for the state. The Little Parliament alienated Presbyterians with its proposals for ecclesiastical reform, and frightened many with proposals floated by some members to replace English common law with

Biblical laws of Moses, and thereafter dissolved itself. Cromwell then attempted to give England a new constitution, the equally ill-fated *Instrument of Government*, a model of government in which power was to be shared by successively elected parliaments, an executive person, and a council of state, composed of thirteen to twenty-one members, on which the executive sat. The English republicans in the army especially disliked this addition of a person with regal powers. Others had other complaints. Be that as it may, it is hard to blame Cromwell for inserting himself. It may be true that, regardless of the circumstances, those who have great power almost always hold themselves to be indispensable, and almost always assume that their relinquishing power can only lead to catastrophe. But there were good reasons for Cromwell to retain a position of authority in the kingdom. As he later said in a speech addressed to the first Protectorate Parliament, the Rump, unchecked by any power external to itself, had committed many abuses. "Poor men," he said, "under this arbitrary power, were driven, like flocks of sheep, by forty in a morning; to the confiscation of goods and estates; without any man being able to give a reason why two of them had deserved to forfeit a shilling."<sup>200</sup> Apart from such abuses by a House intent on perpetuating itself, he had already seen two Parliaments, the Rump and the Barebones, prove themselves incapable of reaching a constitutional settlement for the nation without the intervention of a sovereign person standing in for the king.

The First Protectorate Parliament, composed of a full complement of MPs from throughout the nation, was not satisfied with the Instrument, and took to debating it, even though Cromwell had said that MPs were to take their seats on the condition that they accept the Instrument as given, and apply themselves to reform measures that did not touch the fundamentals of the new constitution. The record of its actual debates is spotty; the Commons Journal does not record the controversies. We find in other sources, however, many of the

objections. Generally speaking, the first Protectorate Parliament was divided between rationalistic nationalist republicans inclined toward that idea that power should be vested in the House of Commons, with few external checks, and proponents of the coordination principle, which in this case meant that the sovereignty of the nation was to be exercised conjointly by Parliament and Person. There were several particular questions on which both sides agreed, however, much to the displeasure of the Lord Protector and the Council of State.

In the first place, the members refused to obey Cromwell's injunction that they not question the fundamentals of the new constitution. On the first full day of debating, objections were raised against the "Ordinance...made by the Lord Protector and his council, whereby it was High Treason for any man to speak against the present Government." This, reports Guibon Goddard, MP for King's Lynne,

occasioned many discourses concerning the freedom of speech in Parliament, it being alleged, that that was the first-born privilege of Parliament, and the very heart-string of it. In fine, it was allowed on all sides, that no law or power from without could impeach any member, for any syllable spoken within those walls, and that those precedents of Queen Elizabeth's, King James's, and the late King's times, were all illegal, and not to be drawn into a law.<sup>201</sup>

The ancient privilege of Parliament to debate any and all matters of consequence to the common good of the nation was asserted in principle. The Lord Protector had no more sanction, under the ancient laws of the kingdom, to abridge this right than had any of the monarchs of the last century. It having been agreed in principle that the House had the right to debate and advise the Protector concerning the recent remodeling of the constitution, the members proceeded to examine the *Instrument* article by article.

After the House had debated the Instrument for several days, Cromwell ordered the doors of the House barred, summoned the MPs to the Painted Chamber and harangued them for an hour and a half. Apart from just observations about the failures of previous Parliaments, Cromwell's main argument as to why the present House should not question the Instrument was

that they, together with the people of England who elected them, had already expressly consented to it:

Shall I ask you, Whether you came not hither by my Writs directed to the several Sheriffs of counties and through the Sheriffs to other Officers of Cities and Liberties? To which writs the People gave obedience; having also had the Act of Government communicated to them,—to which end, great numbers of copies thereof were sent down to be communicated to them. And the Government also required to be distinctly read unto the People at the place of elections, to avoid surprises, where they also signed the Indenture, with the proviso, “That the Persons so chosen should *not* have power to alter the Government as now settled in one Single Person and a Parliament!”<sup>202</sup>

This argument evidently convinced no one. A new constitution, as far as the English parliamentarians were concerned, could not be established at one moment, by an act of express or tacit consent of the people or their representatives. The rationalistic republican types thought such measures had at least to be deliberated upon and related to true principles of government. The more conservative types insisted that any new constitution be considered in the light of precedents. Cromwell’s *Instrument* simply did not conform to the conception of the ancient constitution that contemporary antiquaries and writers had imagined and popularized.

Once the Parliamentary session had resumed, the debates on the Instrument continued as before, in spite of the fact that the MPs had been required by Cromwell to sign the Ordinance that forbade them to do so. The House was divided on many questions, but on a few they were unanimous, or nearly so. I shall give one example. According to the Instrument, Parliaments were to be summoned once every three years, and in the intervals, matters of war and peace were to be decided by the Protector and his Council. Arguments in favor of this new provision were made on grounds of expediency, but the arguments against centered on claims about the ancient rights of Englishmen. Reports Goddard,

It was alleged on the other side, that the power of war was in itself an ancient right of the Parliament, that though kings in former times had, *de facto*, made war without advice of Parliament, yet there was no king since Henry III’s time, but, at some time or other, did ask advice of Parliaments in that very point, and did call and summon their Parliaments to that very purpose...

The power of making war, did necessarily employ the power of raising men, of raising monies, and of making military martial laws, which in the very making of them, are arbitrary, and in the execution, summary. In truth it did comprise, in the account of it, a power over our estates, our persons, and our lives. And this was an undoubted right of Parliament, that no tax can be made, no man's person imprisoned, nor their lives exposed to arbitrary martial laws, but by consent of Parliament.<sup>203</sup>

After two full days of debate on this question, it was resolved “without one negative, that the power of making war is in the Lord Protector and the Parliament, so as no war can be undertaken but by consent of Parliament.”<sup>204</sup>

These revisions of the Instrument continued for nearly five months. The debates became, among other things, increasingly hostile toward the Army. Demands were made that the standing army be reduced in size, and it was voted that after Cromwell's death, control of the army should pass to the Parliament.<sup>205</sup> The Parliament also alarmed Cromwell and the Council of State with demands for greater control over religious beliefs.<sup>206</sup> Cromwell dissolved the First Protectorate Parliament as soon as the five-month minimum prescribed by the Instrument had expired. But he did not attempt to govern the kingdom alone for long. We need not analyze his motives here. He summoned a new Parliament in 1656. He barred a large number of MPs from taking their seats, which already put the new assembly on questionable footing. But once Parliament had assembled, he took a more conciliatory and compromising attitude toward it, and Parliament repaid him in kind.

I shall address two matters of policy here. First, it is evident that Cromwell had taken to heart the previous Parliament's resolution on war powers, or at least he saw the tactical advantage of asking for their consent to wage war. Cromwell was convinced at this time that Spain posed an existential threat to England; the Spaniard, he said, sought to undo “our National Being...and so make it not to be.” Having laid out the case for war against Spain he said, in what was, we may say, a rare moment of eloquence for this country gentleman and soldier,

I pray consider it. Do I come to tell you that I would tie you to this war? No. As you shall find your spirits and reasons grounded in what hath been said, so let you and me join in the prosecution of that war -- as we are satisfied, and as the cause shall appear to our consciences in the sight of the Lord. But if you can come to prosecute it, prosecute it vigorously, or don't do it at all!<sup>207</sup>

Not every word of Cromwell in this speech was so conciliatory, however. After he had dissolved the last Parliament, the necessity of keeping order and raising revenue had led him to enact policies that were either expressly illegal or unknown to English common law. He had appointed major generals, answerable only to himself their master and the council of state, to keep order in the shires—"to have a little inspection upon the People thus divided, thus dissatisfied, split into divers interests,—and the workings of the Popish Party!" — as he put it, and imposed a decimation tax upon royalist households.<sup>208</sup> These policies, which he readily admitted "had been much regretted" he defended militantly. The major generals, and the decimation tax on rebellious royalists, he said "were so necessary to defend us against those Designs! And truly if any man be angry at it,—I am plain, and shall use an homely expression: *Let him turn the buckle of his girdle behind him!*"<sup>209</sup> Not so much homely, we must say, as militant—the meaning of this now obsolete expression from the days when MPs entered Parliament with swords attached to their belts: "If any man would oppose me in this matter, let him bring his sword hilt round!" But evidently, though Cromwell may have seen himself at this moment as a dashing swordsman about to draw his blade, the members of the Second Protectorate Parliament saw a bumbler stepping on a garden rake. The MPs were not cowed. The institution of the major generals and the decimation tax having been duly considered by the House, both were voted down, and only after Cromwell had acknowledged the defeat of these policies did Parliament vote supply for the war with Spain.

It is worth pausing here to consider the intensity of the opposition to Cromwell's Major Generals, whose existence was considered to be an egregious violation of the ancient rights of Englishmen to local self-government in the counties. Most constitutional debates of 17<sup>th</sup> century England concern the structure of the national government. But parliament was seen not only as a means for the nation to exercise a collective legislative power through representatives, but also to protect local rights from the encroachments of centralizing royalist administrations. The defense of parliament and of local privileges were thus related causes.<sup>210</sup> Thus Cromwell's major-generals, sent from Westminster not only to "have a little inspection of the People" but also to govern them at the local level, were greatly resented. For instance, in anticipation of the summoning of the 2<sup>nd</sup> Protectorate Parliament, William Prynne, in a tract entitled *A Summary Collection of the Principal Fundamental Rights, Liberties, Proprieties of all English Freemen* (1656), proposed that the new assembly put the question

whether the late erected New Powers of our Major Generals, and their Deputies throughout England be not such (in imitation of William Longchamp the first Protector in the Reign of Richard the first, who placed in every county armed Troops of Mercenary Souldiers, under New Governors of their own Creatures, to over-awe and enslave the People, and impose what Taxes and exactions he pleased, under pretext of preserving the publick Peace, and suppressing thieves and Tumults, yet was shamefully stript of all his Authority, and forced to flye over Sea, disguised in womens apparel, within one year after, notwithstanding all his Guards, or Garrisons; or of the Turkish Bashawes, and Beglerbeks, as most Patriots of their Countries Freedome, and the ordinary people mutter) and their exorbitant tyrannical proceedings in apprehending, taxing, decimating, dis-officing, dis-franchising, and sequestering all sorts of men in Counties and Corporations at their pleasure...<sup>211</sup>

Prynne's litany of grievances continues several more lines. In his telling, Cromwell's Major Generals were like the deputies of William Longchamp, first Protector of England when King Richard I was abroad fighting in the crusades. Like Longchamp, Cromwell was attempting to interfere with local self-government, to control the counties and corporations through illegal means on the pretext of preserving the public peace. Englishmen of the 12<sup>th</sup> century had not tolerated such violations of their ancient rights; Longchamp's guards and garrisons

notwithstanding, they had stripped him of all his authority, forcing him to flee England in disgrace, disguised as a woman. English patriots had never suffered their kings to impose Turkish tyrannies on them in their counties and corporations, much less should they suffer the same from the latest man to style himself Lord Protector of England.

It is generally acknowledged that, after the controversies of the Major Generals and the Decimation tax had been resolved, the Second Protectorate Parliament, unlike its predecessor, wrote a great many new statutes to reform the law, the morals, and the social conditions of the nation. As Cromwell himself said of its labors “though you have sat but little time...you have made many good laws, the effect wherof the people of the Commonwealth will with comfort find hereafter.”<sup>212</sup> These things being accomplished, both a majority of the members sitting and, in the fullness of time, Cromwell himself, found reasons to be dissatisfied with the *Instrument of Government*, and returned to the question of constitutional reform. The essence of the new proposed constitution, the *Humble Petition and Advice*, was not further innovation, but in the words of Speaker Lenthall “rather a remitter and restitution” of the forms and principles of the ancient constitution.<sup>213</sup> Both Cromwell and a majority of the Commons, saw the need for “another House” to perform the functions of the liquidated House of Peers. What is more, the members of the House desired to grant Cromwell the title of King, not out of nostalgic “kingship cravings,” as one bitter 21<sup>st</sup> century English republican has put it, but to more effectively bind and restrain Cromwell and his successors by the laws of the land.<sup>214</sup>

Almost nothing of the first debates on the restoration of “the other House” of Parliament appears to have survived. In his speech to the Lord Protector, Speaker Lenthall called this proposal a “self-denying request, a modest condescension to admit others into the bosom of so great a trust as that of legislative” suggesting that this other House was meant to have the co-

ordinate legislative power of the old House of Lords, together with the traditional judicial prerogatives of that body.<sup>215</sup> Debates subsequent to the adoption of the *Humble Petition*, considered the prerogatives of the other House, and its relationship to the ancient laws of the realm. Even those who opposed the restoration of the “other House” acknowledged that its purpose was, in the words of one Mr Godfrey, to serve as a “balance, a medium between the House and the single person.”<sup>216</sup> The small but vocal republican minority in the House objected not only to the existence of another house, but in particular to any proposal that said House receive the title of Lords. As Mr Scot put “I am for trusting the people with their liberties as soon as any; but when they come to irregularities, and the major part grow corrupt, they must be regulated by miracle, or otherwise perish.”<sup>217</sup> According to this argument, the irregularities of the one house, if such there be, were to be balanced by miracles, or by nothing. The old Lords had not provided a salutary constitutional balance since the Barons’ wars, and thus their power in the constitution had been justly eliminated. In this new era it was to be hoped that “the people of England should never have a negative upon them,” that is, the popularly elected House of Commons should not be subject to the veto power of another House.<sup>218</sup>

These arguments did not sit well with other members. As one Captain Whitgrave put it, alluding to the corruption of the Long Parliament, “It is an English proverb, ‘The burnt child dreads the fire.’”<sup>219</sup> Once it was granted that there ought to be another House to balance the Commons, one had to know what the powers of this House were by the laws of the land. Titles and appellations mattered, because they disclosed the rules and precedents by which organs of government were to operate. Mr Petty: “All our ancient books and records make mention of that other House, under the title of Lords. The ancientest book is that of the Saxon laws, which saith, *Episcoporum, Magnatum, et aliorum sapientum Regni.*”<sup>220</sup> Why should this other House be

called Lords, and connected thereby to a tradition traceable to the ancient laws of the Saxons, even though none of old Barons of the realm presently sit in it? One Mr Trevor's answer was as follows: "We know what the House of Lords could do. We know not what this other House may do. It may claim to be the House of Commons, to open the people's purses at both ends."<sup>221</sup>

These matters were never resolved by the Protectorate Parliaments. But the weight of a salutary tradition binding the government by ancient precedents pressed heavily on these men. In any event, what did have support of the majority was that there ought to be, as in the ancient constitution, another House to mediate between the Commons and the Executive. Cromwell himself, in a subsequent speech, said regarding *Humble Petition*, "I did tell you at a Conference concerning it, that I would not undertake it, unless there might be some other Persons to interpose between me and the House of Commons, who then had power, and prevent tumultuary and popular spirits."<sup>222</sup>

The other constitutional restitution proposed in the first draft of the *Petition* was that Cromwell be declared King. Cromwell himself would not consent to this, whether chiefly out of piety, or fear of adopting a title that was offensive to the ears of many of his officers, or both. But the reasons given for offering this title are worthy of consideration. As Lord Whitlocke said at the conference with Cromwell:

The foundation of that title of *Protector* being not known by the law, being a new title, it was thought that the title which is known by the law of England for many ages, many hundreds of years together received, and the laws fitted to it, and that to the law, that it might be of more certainty and clear establishment, and more conformable to the laws of the nation, that the title should be that of King, rather than that other of Protector.<sup>223</sup>

The sense of which was that the "general rights and liberties of the people" would be more secure under a magistrate holding the office of king, and thereby subject to all of the customary limits on holders of that office, recorded in the rolls going back many centuries. The title of Protector, as Speaker Lenthall would elaborate at the same conference, had "no further latitude

nor extent but the very *Instrument [of Government]*.<sup>224</sup> *The Instrument of Government*, by which Cromwell had attempted to bind the nation, created a new office, whose powers were not clearly defined. These men felt their liberties as Englishmen more secure when they had the entirety of their ancient constitution and laws at their disposal to aid them, that they might choose those courses confirmed by experience, and have the resources to limit the ability of the chief executive to insert new prerogatives for himself into the empty space surrounding a new constitution which had been created essentially *ex nihilo*, unencumbered by tradition.

The Protectorate did not long survive the death of its first Lord Protector. The vocal and powerful republicans of the army and the constitutional conservatives of Parliament could not be held together in coalition without Cromwell. However, one imagines that had Cromwell lived another decade or so, the government of England would have continued to revert to its old form as the men of that time imagined it: not the arbitrary rule of kings, but government in which the three estates exercised sovereignty coordinately, each balancing the exorbitances of the other.

## **8. Reflections on the disorder of interregnum and prelude to 1689—George Lawson: *Examination of Hobbes, and Politica Sacra et Civilis***

### **Lawson on National Sovereignty and Nation Unity**

The various attempts under Cromwell to find a constitutional settlement had failed. On this there seemed to be a general consensus. What is more, the fragile settlements that had been attempted only worked as long as Cromwell was able to exclude republican radicals from Parliament, and, of course, exclude royalists from the franchise altogether while crushing their periodic insurrections by force. The nation was divided into factions, some of which refused to recognize the legitimacy of the government. Cromwell tried to present himself and the frame of

government of which he himself was the lynchpin—as serving the interests of the Protestant English nation. Throughout his tenure as head of state, Cromwell repeatedly appealed to the religious and civil interests of the English nation. “The Protestant Cause is accounted the honest and religious interest of this nation.”<sup>225</sup> “We are apt to boast sometimes that we are Englishmen ...but it is a motive to us to do like Englishmen and seek the real good of this nation, and the interest of it.”<sup>226</sup> But there were too many whom these appeals did not reach. “What is the general spirit of this Nation?” inquired Cromwell in his last speech to Parliament. “Is it not that each sect of people...whether sects upon a Religious account or upon a Civil account...That every sect may be uppermost!”<sup>227</sup> This national disunity rendered impossible the settlement of the nation under a free constitution, and necessitated illegal measures: the imposition of dictatorial powers. For the nation to be free, and rule itself, its members had to see themselves as fellow nationals, and make the general good and the liberties of all their first priority. This is one of the chief claims of George Lawson’s meditations on the failure of the Protectorate, and his appeal for national reconciliation in the last days of that ill-fated regime. Hobbes was right that a squabbling multitude could have order only if it gave up its freedom.

When governments fail, and the threat of disorder, or actual chaos, ensues, political theory turns to the most basic questions. In the literature, Lawson is typically regarded as a sort of bridge ‘between Hobbes and Locke’ for he penned a lengthy refutation of the work of the former, and is said to have influenced the latter.<sup>228</sup> I find it useful to place Lawson between these other two thinkers, but I do so not to elucidate their thought, but rather to raise Lawson above both of them. In his two major works on politics, and especially in the latter, *Politica Sacra et Civilis* (1660), Lawson offers perhaps the deepest analysis of the vexing questions raised by the English Civil War of any 17<sup>th</sup> century English thinker. If Hobbes and Locke are today better

known, it is because they were better stylists, and better system-builders, not because they possessed superior understanding.

### **The Problem with Locke**

In the *Second Treatise* Locke makes a prodigious leap from the sovereign rights of individuals in a state of nature to the sovereign right of a political community. For him, a community is defined by the self-interest of its individual members. It is created only for the protection of each individual's life and property. Its basis is an agreement of members to transfer their individual right to execute the laws of nature to the group as a whole.<sup>229</sup> According to Locke, any multitude of individuals can form a community: "that, which begins and actually constitutes any Political Society, is nothing but the consent of any number of Freemen capable of a majority to unite and incorporate into such a society."<sup>230</sup> By defining a community in this way, Locke seems to be thoughtlessly reopening the Pandora's Box of cancerous factionalism that Hobbes had sought to seal shut forever. According to this definition of political society, or community, not even a minor interest group or faction may be legitimately denied the right to form its own commonwealth. Any voluntary association, capable of "concluding" its members by a majority vote on measures for the protection of their several lives and properties, can be said to possess popular sovereignty.

As if anticipating Locke, Filmer, in *The Anarchy of Mixed Monarchy* (1648) writes

Since nature hath not distinguished the habitable world into kingdoms, nor determined what part of the people shall belong to one kingdom, and what to another, it follows that the original freedom of mankind being supposed, everyman is at liberty to be of what kingdom he please, and so every petty company hath a right to make a kingdom by itself; and not only every city, but every village, every family, nay, and every particular man, at liberty to choose himself to be his own King if he please; and he were a madman that being by nature free, would choose any man but himself to be his own governor. Thus to avoid the having but of one King of the whole world, we shall run into a liberty of having as many Kings as there be men in the world, which upon the matter, is to have no King at all, but to leave all men to their natural liberty, which is the

mischief the pleaders for natural liberty do pretend they would most avoid.<sup>231</sup>

As Filmer indicates, there is nothing in the doctrine of natural rights to define the extent of the political community. Before one speaks of popular sovereignty, the question of demarcation must be answered. If one insists on starting with a random multitude of completely independent and historically unencumbered individuals, one has in fact a recipe for anarchy. Why should this individual, that family or that city participate in any larger community, submit to any larger constitutional discipline at all? Any “petty company” may declare itself sovereign at any time.

As Jeremy Rabkin notes in *Law without Nations?* Locke shows at least a vague awareness of this problem.<sup>232</sup> In his reflections on the origin of government in the *Second Treatise* he acknowledges “since then those, who liked one another so well as to joyn into Society, cannot but be supposed to have some Acquaintance and Friendship together, and some Trust one in another; they could not but have greater Apprehensions of others, than of one another: and therefore their first care and thought cannot but be supposed to be, how to secure themselves against foreign Force.”<sup>233</sup> Locke assumes that before there can be government, there must be a multitude that is drawn together by ties of acquaintance, friendship and mutual trust, which are internal to members of the group, and opposed to the force of outsiders. But Locke and succeeding generations of liberal theorists, buttressing their arguments as they do on universalist claims about human beings and human groups as such, fail to tell us anything substantive about the sources of friendship and mutual trust among the members of particular polities or the factors that make one group of human beings a polity distinct from other polities.

Locke cannot help us understand the sources of mutual trust and friendship that bind the pre-political community together. George Lawson can, for he defines “community” very differently from Locke, and he does so very likely because of his engagement with Hobbes. The

notion of a pre-political community is present in both of Lawson's political works, the *Examination* and the *Politica*, but it is given a more substantial formulation in the latter.<sup>234</sup>

According to Condren, Lawson's move away from a simple contract theory and his increased emphasis on the substantive bonds of the pre-political union in the later work may well have been elicited by "Hobbes's devastating treatment of the logic of contract in *Leviathan*."<sup>235</sup> To preserve the notion of political accountability, the pre-political community needed shoring up, both as a concept and as a concrete historical and political reality.

Thus, in defining a "community" Lawson gives an abstract definition, borrowed from the continental sources he knew, but then provides a concrete definition for the particular case he wishes to address, that is, the case of England. He quotes approvingly Johannes Forsterus' definition of the Hebrew word *'am*: "a multitude of people or society, which being joined together have the same name, language, laws, religion, polity."<sup>236</sup> The definition is not perfect for his purposes, Lawson himself notes, for a pre-political community, by definition, is not yet a "polity." The essential point is that the pre-political community is not just an aggregate of individuals inhabiting the same space. *Pace* Hobbes, a multitude of individuals does not miraculously become a community when its members agree to establish a sovereign over them. As he says in the *Examination* "This community must be associated and united not only in vicinity of place, which is convenient, but also in some stricter bond."<sup>237</sup> A common name, language, laws, and religion may form a multitude into a community, or it may not. But these are the sorts of things which, when held in common, generally distinguish communities from mere multitudes. For a genuine community capable of establishing its own government to exist, the members "must associate and be united together; for they make up this body, not severally considered, but as joined together in one; for *Genus* is a society. This society first presupposeth

union, and is a communion, whereby they communicate in something common to the whole; as in an organical body, there are many members.”<sup>238</sup> Lawson should perhaps not be faulted for being rather vague here. In reality, it is hard to quantify what it is that makes a community a community. For Lawson, only a community whose members have a sense of belonging to things common to them all, who have cares that go beyond the particular interests that concern each of them severally, has potential to establish its own government. The description of the community as an “organical body,” that is, of one “Genus,” is suggestive of the idea of a common ethnic origin. The language of communion suggests a religious bond. Indeed, in his remarks on England, Lawson says that his national community has two focal points: the English interest, and the Protestant Christian interest. Englishness and Protestantism, attachment of all members to the “substance” of these things, are what make the inhabitants of England a community. The pre-political community thus has two guises: it is a community of blood and custom, and a community of faith. This is the foundation. Those other elements that one finds in Lawson’s conception of community which Locke would later privilege, to the exclusion of all others, to wit “propriety of goods, liberty of persons, equality of the members” are for Lawson the “adjuncts of a community.”<sup>239</sup> Members of a community acknowledge the rights of fellow members to these things, but such rights are not the foundation of the community as Locke would have us believe.

It may be possible for almost any diverse or barbarous multitude to have some sort of government, but the nearer affection of members of the same community for each other is essential if a people is to enjoy *self*-government, if it is to govern itself as what Lawson calls a “free state.” Reiterates Lawson, the “fitness, capacity, and immediate disposition to a form of civil government doth not arise so much from the multitude of the persons, or extent and goodness of the place of their habitation, but from their good affections one towards

another...<sup>240</sup> Where these affections, this union and communion are lacking, a free state is not possible. In his Epistle to the reader, Lawson notes the divisions among the English nation: “Men of English blood, and of the same Protestant profession continue obstinate in their errors, rigid and high in their opinions, resolved in their different designs, admire their own models of government in church and state...”<sup>241</sup> Writing as he was in the final years of the Protectorate, he finds the interests, affections and judgments of Englishmen so disparate “that the same language, laws, religion, common country cannot firmly unite us together; but we are ready every moment to fly asunder and break in pieces, if we were not kept together rather by the sword of an army, than by any civil power and policy, or good affection.”<sup>242</sup> The concept that Lawson is grappling with here, homogeneity, is a tricky one, and he clearly understands the difficulties of it. The fact of common blood, laws, religion and country, supposing it could be objectively verified, is no guarantor of unity. The people have to acknowledge and value such commonalities; to perceive themselves as one nation, and desire cooperation with their fellow countrymen. If they cannot acknowledge and make a priority of the things they share with each other, then they cannot rule themselves through a “civil policy and good affection.” The only answer for a community that has lost its spirit of “union and communion,” or a mere multitude that has no internal sources of union, is rule by the sword. This, of course, was Hobbes’ answer to the problem of disunity, which he thought endemic to all human populations.

For a community to actually be prior to the state, and to demand that the state serve the common good, said community must be a nation, whose members have care for one another and for the community they share, care based on perceived ties of kinship, language, religion, customs and laws. It is this sort of “community civil considered abstractively and antecedently to a form of government not yet introduced, or upon a dissolution of a former model, or upon a

failure of succession in a time doth virtually contain a supreme power, and hath liberty and right to determine upon what form they please, so that it be good.”<sup>243</sup> Lawson’s theory of sovereignty grants the community supreme power to determine the form of government it prefers. But the theory can make sense only if it can indeed be asserted that, of the two entities, community and government, only the former is a permanent body. Regardless of the state of the government, “any community... retains the nature of a community, as the matter and subject of the commonwealth, wherein every subject must be considered, first as a *civis*, a member of the community, before he can be conceived, as *subditus*, a member of the commonwealth.”<sup>244</sup> The community is antecedent to the state, and it continues to exist with its own bonds of membership, regardless of the condition of the state, whether it has grown despotic or is in abeyance. Membership in the community (the nation) is permanent, whereas membership in the state, which we today call citizenship, is a contingent membership, which may be dissolved.

When Lawson applies his concepts to England, it becomes clear that by “community” he means the English nation.<sup>245</sup> He establishes the sovereignty of the English people, independent of kings and parliaments, by looking back to the time before these organs of government were instituted. But this “time before” is neither a Hobbesian nor a Lockean state of nature. In his refutation of *Leviathan*, Lawson dismisses Hobbes’ “covenant of every one with every one for to design a Sovereign” as “but an Utopian fancy,” and “a chimera.”<sup>246</sup> He likely would have regarded Locke’s abstract theory of the social contract with similar contempt. A multitude of individual atoms with nothing in common other than a generic capacity to reason and a desire for “peace and plenty” would not have sufficient unity to join together for the establishment of a national government.<sup>247</sup> However, a multitude of men of the same “genus”, who shared the same ancestral customs, and saw themselves as one nation, would. And this, he asserts, was indeed the

case: “there was indeed a time, even after the Saxons were settled in this nation, when there was no king, but forty lords, who at length chose a king which should have no peer....And after that we find one king and parliaments, and this before the Conquest.”<sup>248</sup> Here stands the pre-political English community, the English nation, a distinct body of men of common blood and custom, whose existence was denied by Hobbes, and strangely forgotten by Locke: forty Anglo-Saxon lords representing forty counties of *Angle-land*, who had sufficient unity of purpose to elect a king and to govern jointly with him in parliaments.

This idea of a coherent pre-political body of men united by blood and custom before the establishment of a civil government is analogous to the body of Christian believers united by common doctrine and worship before the establishment of an ecclesiastical government.<sup>249</sup> Writes Lawson, “Many of the primitive Christians, after their conversion continued for a certain time without any set form of external government, or perfect rules of New Testament worship, except to word and prayer, was settled. Hence those words of the Apostle, “the rest will I set in order when I come” (1 Cor. 11. 34).”<sup>250</sup> The first body of Christian believers existed as a coherent community before any institutional structure had been erected. This historical fact confirms Lawson’s theoretical claim that a Christian community is, properly speaking, prior to any ecclesiastical government, for “the matter is before the form.”<sup>251</sup> The same may be said, Lawson tells us, of England as a whole, for England is a Christian nation: “A community of Christians may be said to be national [...] in several respects: As when all the Christians of one and the same nation, do associate and unite in one body; when these Christians are the major part of the people; when the whole nation, or the generality thereof have received and do profess the same Christian faith.”<sup>252</sup> This “same Christian faith” which the “major part” or the “generality” of Englishmen profess is “the substance of the Protestant religion” which consists not “merely in

a separation from the church of Rome...(for this is but negative); but in certain positives of doctrine, worship and discipline clearly agreeable to the gospel.”<sup>253</sup>

The existence of a concrete, historical pre-political community is the foundation of Lawson’s argument that governments, both civil and ecclesiastical, are held in trust. Regarding England’s civil government, he can assert “That form of government was first constituted by the community of England, not by a parliament, much less by a sovereign king. For the community and people of England gave both king and parliament their being.”<sup>254</sup> Since the community of England is the original source of sovereignty, reasons Lawson, the nation alone has the right to alter the constitution: “if they [king and parliament] meddle with the constitution to alter it, they destroy themselves, because they destroy that whereby they subsist.”<sup>255</sup> The English nation thus possesses what would later be called “constituent power,” the power to establish a constitution by which it may be governed. This is the sense of Lawson’s assertion that only the community of England has “real majesty” or sovereignty. Personal majesty is given by the people to King and Parliament in trust: “Personal majesty [is] fixed in some persons, who are trusted with the exercise of it, and may, and many times do forfeit to God, and in some cases forfeit it to the community or the people... The person or persons trusted with the majesty and power are bound to seek the good of the whole people, and for that end they are trusted with it, and no otherwise.”<sup>256</sup> King and Parliament exercise the power of the nation in trust. If the King and Parliament fail to keep their trust, they forfeit their power to the nation, the ultimate repository of sovereignty. Similarly, England’s ecclesiastical government is held in trust from the community of Protestant believers, which proposition Lawson asserts by way of an analogy to the state. Just as the “chief power” is reserved in the “whole community” so that “if the trustees do abuse their power, they may remove them or reform them: so it should be done in the church.”<sup>257</sup>

One of Lawson's chief aims in writing *Politica Sacra et Civilis* was to establish on philosophical and historical grounds the power and the right of the people to appoint a *Concilium sapientum* or Convention Parliament to restore the English constitution which had been so badly marred as a consequence of the Civil War.<sup>258</sup> Unlike Locke, however, he understood implicitly that such a power could have no reality where there was not already an established community, to which the power could indeed revert. To ground his argument Lawson could provide "evidence" from national history and by analogy to the history of the church that the English were a nation, whose members had in ancient times coalesced of their own accord to form a government. This community here, with these racial, cultural and spiritual bonds, and these ancient traditions of government may reframe its civil and ecclesiastical constitutions for the common benefit, as it has done before. But as his more general reflections on the nature of the communal bond suggest, such a demonstration would not be sufficient by itself. For the people must actually care about and be prepared to make a priority of the fundamental "matter" or "substance" of their union. Thus, Lawson's argument is also grounded in a moral appeal for national unity for the sake of those collective interests. He writes

In all our sad divisions which happened from first to last, and are not wholly yet ended to this day, two things are worthy the serious consideration of wiser men than I am: What party for time past hath been most faithful to the English interest; and what course is to be taken for to settle us more firmly for time to come. For the first, we must understand what the English interest is. The English interest is twofold, civil and ecclesiastical; for we are Englishmen and Christians. The civil interest is *salus populi Anglicani*... The interest ecclesiastical is the Protestant religion and the preservation of the substance thereof.<sup>259</sup>

A community that is to resolve its internal differences and reframe its constitution for the benefit of all must be able to unite around a common English and Protestant interest that trumps all factional and denominational interests. Reinforcing this point he says "Let no man think that the public interest, either ecclesiastical or civil, of England is the interest of any one person or

family, or any few persons or family, much less any sect, party, faction.”<sup>260</sup> Individual and factional differences must be overcome by a greater loyalty to national interests.

Thus, on Lawson’s account, the concept of popular sovereignty is senseless without a concept of nationhood. According to Locke’s theory of sovereignty, the constituent power could be claimed by any of the factions with pretensions to forming their own community. Both Filmer and Hobbes identify the problem with this argument. Locke never addresses their valid objections, and, indeed, his theory of popular sovereignty makes it impossible for him to answer them. Lawson, however, can answer Filmer and Hobbes. In his conception, popular sovereignty is rooted in concrete attachments men feel to their native country. As Lawson expresses it “every subject is first bound to be faithful to their Country, then unto their King, who swears to maintain the Laws, Liberty and Religion by Law established.”<sup>261</sup> When one makes such a concept foundational, one assumes “a higher obligation of fidelity, not only to God, but *their own native country*, to which they are to be faithful under any form of government or personal sovereign whatever.”<sup>262</sup> Where there is no genuinely felt national community, to which individuals and factions are willing to sacrifice their particular interests, then one must turn to Hobbes for a solution, or let the factions go their separate ways.

#### **Lawson on Constitutionalism and the Liberties of Englishmen**

One cannot argue for popular sovereignty without appealing to the nation as an established community with certain collective interests. Similarly, one cannot advocate a particular form of constitutional discipline, and particular rights to be protected by that constitution, on the basis of mere abstract principles as Locke attempts to do in *The Second Treatise*. In this case too, Lawson, like most defenders of English liberty of his time, appeals to

landmarks in the nation's past, and to the memory of heroic ancestors who fought for English liberties. For Lawson, "modern" principles such as government by the consent of the governed, protection of individual rights, the division of sovereign power, all have their origin in England's ancient past, all are components of "this model of ours [which] began in the time of the Saxon kings, and was brought to perfection, some say before; some say, in Edward the Confessor's time."<sup>263</sup>

The fundamental cause of conflict in the civil war was, as Lawson saw it, disagreement concerning the form of civil and ecclesiastical government in England. Lawson does not attempt in his work to sort out all the particulars.<sup>264</sup> But he does endeavour to re-establish a consensus on the fundamentals of England's "ancient constitution." There are significant differences between the *Examination* and the *Politica* owing to the different circumstances in which they were written.<sup>265</sup> In the first, Lawson's task is to repudiate absolutism, in the second, to encourage his countrymen to put aside partisanship and seek national reconciliation. Yet, the same spirited, and sometimes intemperate advocacy of English liberty prevails in both. In making this case, he employs a very familiar narrative and form of rhetoric. On the liberties of the subject, and the constitutional limits on the power of King and Parliament, Lawson admits no compromise. In the *Examination*, he states bluntly "For the English alwaies desired to be governed as men, not as Asses."<sup>266</sup> In the *Politica*, he frequently condemns advocates of any form of absolutism as "ignorant," "foreign" or both—such opinions contrary to English liberty, he says, "we Englishmen cannot well brook."<sup>267</sup>

Unlike Locke, Lawson defends not the rights of man, but the rights of Englishmen. Lawson's Englishman looks backward to his heroic ancestors, and sees in them, and in their example, the best protection of his freedoms. "English liberty" he says, "is their birthright." "We

do not learn it out of the Greek and Roman Histories, nor from the Athenians or Romans, but from our own laws, which are far different from theirs, and far more agreeable to the written laws of God.”<sup>268</sup> It has been the Englishman’s understanding of his own native laws, derived to him by right of birth, that has enabled him to preserve his own rights as a subject, and the right of his nation as a collective to rule itself. This, Lawson asserts, has been the case throughout English history. Referring to the ancient political philosophers, he says “most of those who have controlled the just acts of sovereigns, never read, much less understood, those authors.”<sup>269</sup> Englishmen know their rights from “the original constitution of the state, Magna Charta, the Laws, and the Petition of Right.”<sup>270</sup> Throughout English history, Englishmen have been a people zealous for liberty, and have fought to preserve the rights won for them by their ancestors: “much more the English liberty is to be valued, and ever was by our ancestors, who obtained it, recovered it, kept it, though with the blood of many thousands.”<sup>271</sup>

For Lawson, Englishmen are a nation apart, distinguished from others precisely by the powers, rights and privileges they have inherited from their ancestors: “The liberty of the subjects of this Nation is very great, and such, . . . [that] the ordinary and common subjects of other Nations are but slaves unto them. Our Freeholders have the choice of their Knights and Burgesses for the Parliament, so that neither any Laws can be made, nor moneys imposed upon them, without their verbal consent, given by their Representatives. In all causes, civil, criminal, capital, no Judgement can pass against them but by the verdict of a jury made up of their neighbours, which in itself is an excellent priviledge.”<sup>272</sup> Compared to English freeholders, the common subjects of other nations are little better than “slaves”. England’s ancient constitution provides members of the nation with the power to participate in lawmaking through their representatives in Parliament and protects their freedom as individuals through the institution of

trial by jury of one's peers.

The ancient constitution of England not only empowers the common people and guarantees their individual liberties. It also limits the power of the three estates that compose of the government. The power of Kings of England is strictly limited by the constitution, and has been so since the beginning. In the *Examination*, Lawson declares with gusto that any King of England who claims absolute power by right of conquest may be deposed by force. Following other writers who made much of the right of conquest, Lawson insists that English law does not recognise such a right, and that Englishmen have never before suffered any ruler to treat them as a vanquished nation: "What William the Conqueror here in England did, it matters not much. For if he did derive his title from Edward the Confessor...then he was no Sovereign. If he did act as Conqueror, then all compact and right upon covenant is void, as his successors, who insist upon that title of conquest, give full liberty to the English to fight against them, and depose them if they can and deal with them as enemies."<sup>273</sup> In the *Politica*, Lawson avoids any direct assertion of a right of resistance, but he emphasises the constitutional limits on the power of the king, and offers the phenomenon of Englishmen curbing tyrannical kings as fact of English history. An English king, he says, has "no power of the purse." He is sworn to "corroborate the just laws and customs, which the people had chosen." In the parliament, he is the third party, and "neither in acts of laws or judgement" can "he do anything without the peers and commons...As kings have sometimes curbed parliaments, so parliaments have kings, and disposed of the militia, the navy, the ports, the chief offices. Nay, sometimes they have judged kings, accusing them of acting against the fundamental constitution, and challenging such power as tended to the dissolution of the same, and have deposed them."<sup>274</sup>

The English Parliament, composed of Commons and Peers, though it possesses very great

authority, is also limited by the fundamental laws of the nation, and always has been so. For instance, no parliament can forbid future parliaments to repeal its acts and judgments. What is more, no mere parliament can alter the constitution of the kingdom, for the constitution prescribes parliament's powers as well as those of the king. "They cannot alter the government, nor take away divers things belonging to the crown, because they did not give the prerogatives of the crown at first."<sup>275</sup> Both King and Parliament may overstep their bounds, in which case, the obedience of the subjects of the realm is no longer due them: "The personal majesty of a king with us, whilst he lives, and governeth according to law, requires subjection, but...upon tyranny in exercise, or acting to the fundamental dissolution of the constitution, he ceaseth to be a sovereign, and the obligation as to him ceaseth. A parliament turning into a faction, acting above their sphere, wronging king or people, cannot justly require, nor rationally expect for subjection."<sup>276</sup> An English king who rules tyrannically, without regard to law or the constitution, ceases to be a king. Likewise, a Parliament that oversteps its constitutional authority, or becomes a faction that does not genuinely represent the interests of the nation as a whole, also loses the authority to demand obedience to its laws. Lawson says that such a Parliament as this may be called to account and judged by later Parliaments.

In the *Politica* Lawson propounds the coordination thesis, which he sometimes calls "polyarchical sovereignty."<sup>277</sup> According to the ancient constitution, such powers as the three estates of the realm have, they possess jointly, and only on condition that they, as representatives of the nation, pursue the common good. Says Lawson, "The personal majesty primary was in king, peers, and commons jointly: in the whole assembly as one body."<sup>278</sup> This is confirmed by the traditional manner of enacting legislation in England: "Be it therefore enacted by the King's most excellent Majesty, by and with the assent and consent of the Lords spiritual and temporal,

and by the Commons in this present Parliament assembled, and by authority of the same.”<sup>279</sup> The particular genius of this arrangement, as we have seen before in Hunton, was that no law could be passed without the consent of all three estates, King, Peers and Commons, the interests of the whole realm must be taken into account, and the exorbitances of one portion of the nation could be checked and moderated by the others. On the authority of Sir Edward Coke, the antiquary Henry Spelman, and the *Modus tenendi Parliamentum*, Lawson affirms that this coordinated legislative power of the estates can be traced back to the Saxons.

#### **Lawson on Ecclesiastical Government**

The English nation was also divided on the question of ecclesiastical government. A large part of the chapters in Lawson’s *Politica* devoted to religious questions are concerned specifically with establishing England’s authentic tradition of ecclesiastical government. The religion of the kingdom, as earlier Englishmen had insisted was a constitutional matter, a matter subject to the common laws of the nation.

In his discussion of the religious question, Lawson begins by distinguishing the Church of England from the Church of Rome. Condren has noted the rhetorical advantages of such an approach: nearly all Englishmen would be united in regarding the Bishop of Rome their common enemy.<sup>280</sup> In reference to the Pope, Lawson remarks “some say, that he is that second beast which came out of the earth, and had two horns of a lamb, but spake as a dragon, and exerciseth all the power of the first beast before him (Rev. 13.11, 12). His name is *Satanos*, his number twenty-five.” Yet this is not merely a rhetorical move on Lawson’s part. It reflects the longheld association in the English mind of Catholicism with not only superstition and idolatry, and other things belonging to the substance of religion itself, but also with despotic forms of government both in church and state. Lawson declares that the Roman Pontiff is one who will “storm” at

anyone “who shall presume to examine” his title and prerogative, whose “court is very magnificent, and cannot be maintained without a vast revenue.”<sup>281</sup> The comparison to absolute civil sovereigns is unavoidable. Lawson claims that according to the theory of Roman Catholic thinkers, and the practice of the Roman church, “monarchy is best ...[and] amongst monarchies despotical excels.” What is more, if monarchy be the best, then surely the government of the church is monarchical” and so the Pope as “universal monarch” becomes the “proper subject of plentitude of all ecclesiastical power.”<sup>282</sup>

Unlike the papacy, England’s ancient ecclesiastical government resembles its civil government in that it is polyarchical, disposing power to different authorities to be exercised jointly by them all. Lawson begins by drawing upon secular theories of the state and the history of the church to justify this claim. Christ said “tell the church,” thus, the power of the keys is not “in it monarchically, nor aristocratically, nor democratically, or any pure way of disposition; but in the whole, after the manner of a free state or polity.”<sup>283</sup> Bishops of the primitive church, he says, did not act without the assent of presbyters and people. Considering the history of the church more broadly, bishops in many nations were advised by presbyters, but not bound by the advice, yet “the English bishop is something different from all these.”<sup>284</sup> Thus, Lawson also points to an authentically English ecclesiastical order, quite unlike the episcopal absolutism in that had arisen in foreign nations. The English episcopacy he describes as “singular”, unique in two respects: its power of ordination was shared with presbyters, and it made canons with the assent not only of presbyters, but also of king and parliament, which represented the people.<sup>285</sup> Says Lawson, “the canons and injunctions made by the clergy, though confirmed by royal assent, without the parliament have been judged of no force.”<sup>286</sup> The best form of government for the national church is thus a combination of primitive Christian and peculiarly English elements, that

is a division of power between, on the one hand, a convocation of bishops, presbyters and people—like the ancient convocations of Israel or the “Wittena Gemot,” the civil government of the Saxons—and king and the two houses of Parliament on the other.<sup>287</sup> To Lawson, this type of constitutional arrangement is as necessary to the preservation of the church as it is to the state. For “if the church once make any party the primary subject of this power, then they cannot use it to reduce them.”<sup>288</sup> Dividing the power of governing the church between different authorities is the only way to ensure that no authority would become absolute and tyrannise over the community as a whole.

#### **Lawson and the Restitution of the Ancient Constitution in Church and State**

All of the civil constitutional forms that Lawson defends are found to have their origin in the historical English community, and even the ecclesiastical constitution is seen as one peculiarly suitable to the English national character. This points to another crucial difference between Lawson and Locke, or at least Franklin’s interpretation of Locke. Although Lawson considers the nation to have a right to make and remake its government, he does not recommend that the English nation seek constitutional innovation. For Lawson it was precisely innovation that led to the civil war, and the troubles of the interregnum. James and Charles had been wrong to alter the doctrine and discipline of the national church, not only because the alterations introduced by King and bishops were “abuses, innovation, superstitions”, as some adjudged them to be, but also because the alterations were imposed “without law and authority of parliament.”<sup>289</sup> Just as the innovations in the church were illegal, so were the forced loans and other alleged sovereign acts of those kings in civil government which bypassed parliament. After King Charles had been

deposed, parliament, and later Cromwell introduced other innovations in church and state. In Lawson's words "to pull down one arbitrary power to erect another...to erect new models of their own brain can be no act of fidelity."<sup>290</sup> And indeed, none of the three new constitutional models attempted by parliament during the interregnum were able to acquire legitimacy in the eyes of the nation.

A lasting settlement of the nation would require two things. First, the people of England must remember that they are a nation, and that they thus owe their first loyalty to the nation as a whole, and not to a faction, for "without unity of the whole, or at least of the major part, the business will hardly be effected." Second, "the foundation to be laid is to find out the ancient constitution before it was corrupted too much, and understand the great wisdom of our ancestors, gained by long experience in the constitution of our state." This "finding out" of the authentic ancient constitution of the realm would be the work of "experienced statesmen, and antiquaries in law." In Lawson's view, then, the foundations of a settlement for a nation accustomed to constitutional self-government are united popular will *and* the accumulated wisdom of ancestors. The ancient constitution would not only be the most efficacious in its operation, once recovered, but it would also have more authority. A new constitution constructed out of whole cloth on the basis of the judgments of the present generation will not have as much legitimacy, will not elicit necessary feelings of loyalty. If those charged with ruling the kingdom are not anchored by an authoritative constitutional tradition, they will "spend their time of every several parliament in moulding their government anew."<sup>291</sup>

Franklin points to the right that he sees Lawson granting to representatives of the counties of England to remodel the constitution in a national convention and presents this account as a precursor to the Lockean theory, which permits a Convention Parliament representing the whole

people to “new-model” the constitution however it pleases.<sup>292</sup> He acknowledges, however, that this sort of Constitutional Convention most likely would have been a bridge too far for Lawson. My point is that, here once again, Lawson’s argument makes more sense, and is closer to historical reality, than that of Locke. Acts of popular sovereignty need a firm grounding in the particular historical experience of a nation.<sup>293</sup> This is confirmed by Lawson’s understanding of the problem of achieving a constitutional settlement for England. What is important for the legitimacy of a constitutional settlement is not merely that it be made by a “convention parliament” representing the whole nation, rather than an ordinary parliament. The sanction of the “real majesty” of the people represented in one convention at one moment in time is not by itself a sufficient source of legitimacy for a constitutional order. The wisdom of ancestors, the old laws, the old forms, these are no less important, perhaps more so, for legitimacy. As far as Lawson was concerned, any convention parliament would be duty bound to study the ancient constitution with the help of “antiquaries in law”, and ground their formulations firmly in the national tradition. Indeed, he warned against the “vain and presumptuous” conceit that the present generation, without understanding “the great wisdom of our ancestors, gained by long experience in the constitution of this our state,” might be clever enough to produce something better.<sup>294</sup> One might say that, from his point of view, not only the consent of the present generation, but also the consent of ancestors would be required for a lasting settlement. Indeed, one finds that it was in this spirit that the English people received Charles II at the Restoration, and rejected James II in favour of William of Orange in 1689.<sup>295</sup>

## **9. The Exclusion Crisis and the Glorious Revolution**

### The Conquest Theory Strikes Back

At the Restoration, the reconstituted Long Parliament did not deign to offer, and Charles II did not presume to demand, anything resembling an absolute power in the government of the kingdom.<sup>296</sup> On the contrary, Charles II himself promised to reinstate the ancient constitution, and to summon a parliament, the members to be chosen by free elections under the old franchise, once he had been enthroned.<sup>297</sup> What is more, this parliament, and succeeding parliaments, though overwhelmingly of the Cavalier persuasion, showed little inclination to allow Charles II to rule after the fashion of an absolute monarch.<sup>298</sup> The Triennial Act of 1664 confirmed what, it seems, Englishmen almost universally believed by this time, that it was the ancient custom of the realm, that the King must summon parliaments composed of a freely elected House of Commons and a House of Peers, regularly to dispatch, together with the King, the most weighty affairs of the kingdom, the *ardua regni* as the coronation oath had it.<sup>299</sup>

The crisis came nearly twenty years into Charles II's reign. Up to this time Charles II had been using his dispensing power sparingly to free certain Roman Catholics who had shown him personal loyalty from the burdens and exclusions imposed upon them by parliament's Act of Uniformity. He also over time assembled round himself a Catholic entourage. These actions raised suspicions, but not outrage. Outrage ensued when Charles II declared in 1672 that his prerogative entitled him to suspend the Act of Uniformity altogether. The response of Parliament in 1673 was to pass the Test Act, the effect of which was to exclude all committed Roman Catholics from public office. Charles II chose tactical retreat and gave his assent to the Test Act. Crisis had been averted, but many members of Parliament now began to fear that the accession of James II, a Catholic, to the throne, upon the death of his elder brother, would spell disaster for England. Janelle Greenberg states that we cannot know which of the abuses of Charles II, and later, James II were more offensive to the English nation—the pro-Catholic policies, or the

blanket application of the dispensing power.<sup>300</sup> In other words, one cannot say which was the catalyst for the Exclusion Crisis, and then the Glorious Revolution: fears of the imposition of Catholicism on a Protestant nation, or the violation of England's ancient constitution. But to describe these abuses as separate causes rather misses the point. As I have shown in this chapter, English fears of Catholicism and monarchical absolutism were inextricably intertwined. A Catholic King, it was thought, would, like the Kings of France and Spain, seek not only to impose Catholic doctrine and discipline upon the national church, but also seek to rule the civil state as the Pope of Rome ruled the Catholic church, that is, without any restraint by the laws of the civil constitution or parliament. Catholic-leaning Charles II in many instances confirmed Englishmen in this prejudice of theirs, and James II, an open Catholic and despot, proved its veracity to them beyond any doubt.

From 1678 to 1681, three parliaments either passed or came close to passing the Exclusion Act. The exclusionists justified their right to alter the succession by reference to the ancient constitution. John Somers, for instance, argued in 1680 that, when one considered the history of the Saxon kings, and later, of the Normans also, it was "no strange thing to hear of a parliament's meddling with the succession."<sup>301</sup> Charles II responded by dissolving these parliaments. By 1681 Charles II had evidently resolved not to send out another writ of summons so long as he lived. Tracts by Robert Filmer and Robert Brady, the one published in 1680, the other in 1681, when the last of Charles II's parliaments was dissolved, added to the ominous feeling. According to Filmer's *Patriarcha*, Parliament was, properly speaking, no more than an advisory council of the King, and that the privileges of both Houses had no origin other than the King's grace.<sup>302</sup> What is received by grace, as Sir Edward Coke had noted back in 1628, may by grace be taken away.<sup>303</sup>

Brady deployed the old conquest thesis to justify absolutism. According to Brady, William had entered England with an army, had despoiled the Saxons of their estates and handed them over to his French barons. Such actions proved William had become king by conquest, and bequeathed an absolute power to all his descendants. Brady's new tracts were not the only works of this kind circulating at the time.<sup>304</sup> It has been noted that Brady's account of William I's conquest of England was, by 20<sup>th</sup> century standards of historiography, the most factually accurate of the age.<sup>305</sup> But those engaged in political struggle rarely gain anything from being factually correct. The best historiography can be, and in this case was, politically stupid. In the words of the commoner John Hare, author of the pamphlets examined above, the idea that England was a conquered nation, and what is worse, a nation conquered by a French bastard, was one "at the sound whereof every true English mans stomack may well rise".

#### **The Argumentum Anti-Normanicum reasserted**

The dissolution of exclusionist parliaments, and the publication of absolutist tracts, ignited a new pamphlet war. Hunton's *Treatise of Monarchy* was republished in 1679 and 1680 (and again in 1689). Bacon's *Uniformity of the Government of England* was reprinted in 1682, which led to the prosecution of the publisher. Many other tracts from the 1640s advancing similar claims about England's past and its form of government also were reprinted in this period. There were of course new tracts written. Below I shall consider one of them, whose title helpfully summarizes the entire argument: *Argumentum Anti-Normannicum, or an Argument proving from Ancient Histories and Records That William, Duke of Normandy Made no absolute Conquest of England by the Sword, in the sense of our Modern Writers* (1682). This tract, thought to have been written by one Edward Cooke,<sup>306</sup> has been described as "one of the most

important statements on ancient constitutionalism of the late Stuart era;” it was widely cited by Whigs in the 1680s and reprinted during the Glorious Revolution.<sup>307</sup>

To make his case that English was a limited monarchy, founded on a social compact, the author of *Argumentum Anti-Normannicum* drew on a vast number of sources, both ancient and recent, from the original texts of the Saxon and Norman coronation oaths to works of Sir Edward Coke and John Selden. But the book is much more than a dry recitation of precedents. The main thrust of the tract was to remind Englishmen of what sort of people they were. In the Dedication, the author hit out those who think, speak and act like subjects of a conquered nation:

But yet worse Beasts within thy Bowels are,  
Who would thy Rights and Ancient Glories tear.  
Those having lost their Liberty of Mind,  
From vanquish'd Sires a weak excuse would find.  
Are these thy Sons? Or marks of thy disgrace?  
Who own themselves a slavish conquer'd Race?

Those who acquiesce to arbitrary power in the King, are, the author suggests, none but cowards hiding behind a weak excuse. Those who justify such power, especially on the basis of William's supposed conquest, insult the nation's ancient rights and glories. Such men, he declares, are a disgrace to the English race.

*Argumentum Anti-Normannicum* makes four assertions. First, William of Normandy was not a conqueror, and never pretended to be absolute ruler of England. Second, he did not abolish, but rather he confirmed the laws of St. Edward, and swore an oath to govern the kingdom in accordance with them. Third, that he did not take the estates of all Saxon barons and freeholders and give them to his Normans, but, but on the whole, was forced to respect the rights of Englishmen to their inheritances. Finally, he held common councils, or parliaments at which the English nobility and commons were present. He had sworn to rule according to the law of the land, and when he later broke his oath, Englishmen rose up against him to put him in his place.

In the Dedication the author intimates that the present King of England, as a descendant of William of Normandy, would do well to take note of all this:

That Title which his Great Successor hath,  
Came from the Pact, not from the Breach of faith,  
That gives the Bounds to all incroaching Might,  
And sets the Banks about the Subjects Right.

The central argument of the text is summed up in the explanation of the frontispiece, which gives a symbolic representation of the compact between king and people, concluded in this instance between “the Community of Englishmen (*Communitas Anglorum*)” and the Duke of Normandy. Lady Britannia, representing the English Nation, hands a copy of the laws of St. Edward to William, while Bishops standing on either side of the Duke present the crown and the coronation oath. The coronation does not proceed before “the English” are asked “by the Bishop if they assent to have the Duke their king.” Lady Britannia, significantly, sits on a pedestal far above the throne upon which the king sits. The priority of the nation and its ancient rights over the prerogative of the king is thus made clear. The battle between the Duke of Normandy and King Harold, which the latter lost, is relegated to the background. For the quarrel between those two men, asserts the author, had been “more personal than National.”<sup>308</sup> Harold’s claim to the throne had been no more legitimate than William’s, and so in coming to England, William conquered Harold and his party, but not the English nation as a whole.

William, Duke of Normandy, argues the author, entered into “a kind of mutual Agreement and express compact” with the English people, and swore to “rule and govern by law.”<sup>309</sup> The coronation oath he took was “the very same with that which the ancient Saxon Kings used likewise to take upon their coronations,” and by this oath he was bound to “keep the law of the Realm.”<sup>310</sup> Thus, concludes the author

William, when he came in, gained not such an absolute Victory as is pretended, over this Nation, (for when he came in, he had not subdued the fifth part of it) but came to the Crown by

the Election and Consent of the Clergy and People. And, *foedus pepigit*, he made a Solemn Covenant with the English, to observe and keep those Laws, which were *bonae et approbatae & antiquae Leges Regni*.<sup>311</sup>

St. Edward's laws were thus confirmed as the law of the land, which William would keep.

Englishmen were to hold their estates under the same titles they had before.

The author offers a variety of evidence for these claims, including the records of the coronation oaths, accounts to various chronicles, the Domesday book and other sources. To give one example, he cites William's Charter to the City of London, written in Latin and Anglo-Saxon. There is no doubt something to be said for the emotional effect of citation of a text in the ancient vernacular.<sup>312</sup> William had made promises to the Saxons in their own language. A literate Englishman, though he could not fully parse it, would at least recognize many of the words of his Saxon ancestors.

Williem King grete William Bisceop & Godfred Porterefan & ealle ya Burghworn binnen London Frenchise & Englise frendlice, & Ic kiden eoy, yeet Ic wille yeet git ben ealra weera la gayweord ye get weeran on Eadwerds daege Kings & Ic wille yeet aelc child by his Fader yrfnume, aefter his Faders daege. And Ic nelle ge Wolian, yeet adnig man eoy aenis wrang beode. God eoy heald.<sup>313</sup>

[King William greets Bishop William & Godfred Porterefan & all the Burgesses in London, French and English alike, & I grant you, that I will that ye be all your law's worth, that ye were in King Edward's days & and I will that each child be his Father's heir after his Father's days. And I shall not allow that any man do any of you wrong. God keep you.]

This and other charters of King William were consistent with the oath he took at his coronation the preserve St. Edward's laws, and not to meddle with the inheritances of Englishmen, turn them out of their estates, or otherwise trespass on their traditional rights and franchises.

Such were William's solemn promises to the English nation. But he did not keep them.

The price for this was an English revolt:

This William the First, with his French and Normans, putting many hardships upon the English, which occasioned great Disorders and Convulsions in the State; several of the Saxons chief Nobility took themselves to Arms for the sake of their *Avitae Consuetudines*, to which they bore an immutable and immortal love.<sup>314</sup>

Here follows the story from *Leges Edwardi Confessoris*, recounted by Coke and Selden above. In response to the rebellion, William summoned “twelve of the most discreet and wise Men in every Shire throughout all England” to appear at a general council and explain the laws and customs of England to him. William tried to convince these English representatives to accept his Norwegian laws, they refused to submit to him under the yoke of a foreign law code: “King William finding there was no Remedy... at last in a Common Council of his Kingdom yields; and by his Magna Charta, (the groundwork of all those that after followed) he confirmed to them their Ancient Laws...” The only remedy for William was to give the English people what they wanted, that is, to confirm their ancestral laws. The author concludes “Thus we see the Mighty Conqueror is himself conquered, and solemnly renouncing all Arbitrary Will and Power, submits his will to be regulated and governed by Justice, and the ancient Rights of the English Men.”<sup>315</sup>

*Argumentum Anti-Normannicum* puts particular emphasis on the Saxon revolts against William I. William did not keep his oaths, did not obey the laws of the land, and the price for betrayal of the English nation was “such continual Revolts, as suffered him not sheath his Sword all his Reign.” William could subdue Harold and the party of men who supported him, but he could not conquer the English nation by force. For a King of England could govern only “by the voice and suffrage of the people.” In spite of all William’s betrayals, all force, all deception, “the Nation continued, *nescia vinci*; so that whenever he was Tyrannical and Arbitrary, they were continually vexing him with their Revolts.”<sup>316</sup> Conquest of England’s king did not mean conquest of the English Nation. The nation continued, and demanded recognition of its ancient rights.

Those ancient rights included a coordinate legislative power in which elected representatives of the Commons had an undeniable share: “Our government by a King and

Estates of Parliament is as ancient as anything can be remembered of the Nation. The attempt of altering it in all ages accounted Treason, and the punishment thereof reserved to Parliament 25 Ed. 3.” To the extent that the laws and the constitution could be altered at all, such was to be done by the “Assent of Lords and Commons in Parliament.”<sup>317</sup>

### **The Revolution of 1688**

As it became clear that Charles II did not intend to summon another parliament, and would rule the kingdom alone, spirits ran high enough among some Englishmen to attempt, unsuccessfully, to blow up Charles II and Crown Prince James in what was later named the Rye House Plot. The nation at large, however, remained quiescent. But James II, though he began his reign with acts of conciliation, soon proceeded to violate the laws of the land far more brazenly than even Charles II had. After dissolving his first and only parliament, James II remodeled town corporations to prevent free elections in parliamentary constituencies, thrust Catholics into every branch of government service, suspended entire statutes without parliamentary consent, and arbitrarily reinstated a royal ecclesiastical court, previously abolished by an Act of Parliament, and used it to bully the Church. By this time, all Whigs were for deposing James II. Half the Tories agreed in practice, if not in principle, with the Whig idea that rebellion was justified against a King guilty of egregious violations of the contract between King and People. The other half of the Tories would at least not defend James II “in word or deed.”<sup>318</sup> And indeed, at least in England proper, not even James II’s own army would fight for him.

The historically conscious English cannot but have been aware of the interesting historical parallel to their decision to invite William of Orange to bring an army from the continent to help depose James II. Once again, a prince named William was to cross the channel in hope of being crowned King of England. But Englishmen would set the terms of the

accession, as they believed their ancestors had done in 1066. By an assembly of members from Charles II's last parliament, William of Orange was granted executive power temporarily to restore order, but before he could become king, he would have to summon a convention parliament, the members of the Commons to be chosen by free elections. This Convention Parliament, like the one envisaged by George Lawson, was to reach a constitutional settlement in the name of the people.

There were many disagreements at this convention, which had to be resolved by compromises. But on some points there was in the end virtual unanimity, at least as far as vote tallies are proof of unanimity. One of the fundamental questions on which all the others hinged, was whether there indeed was, according the laws of England, an original contract between King and People. The rights of subjects and powers of Parliament ultimately declared in the Bill of Rights of 1689 would not be secure unless general agreement could be reached on this point. Many Tories in the House of Lords were skeptical, but ultimately, they, like their colleagues in the Commons, voted almost unanimously that James II had broken this original contract.<sup>319</sup> What convinced them? According to Pocock, various legal counsels called to testify made "vague and inconclusive" inferences from abstract philosophy, which, the judges agreed, did not prove the existence of such a contract in English law.<sup>320</sup> Enter William Petyt, one of the pamphleteers of the Exclusion Crisis whose *Antient Right of the Commons Asserted* had presented claims similar to those of *Argumentum Anti-Normannicum*. Only a sketch of Petyt's testimony remains:

The original of our government came from Germany. When they came they settled a heptarchy, and that settled in one. Spelman. Kings should be elected *per sacerdotium et populum*. There you have laws made by what we call a Parliament, as well the laity as the clergy. All the kings acted and transacted by what we call a Parliament. In Selden's *Titles of Honour* you had the oath before any did homage. The King took the oath of maintaining the Church, do right between man and man and do justice. The disputes about the crown were treated there thus till William I. Edward Confessor was chosen in a Parliament. D[uke of] Normandy comes to be

crowned at London; the Archbishop of Canterbury demands of the English, will you be pleased to have this King? They said “Yes”, with one voice, as inspired. Rufus, Henry I, Stephen, Henry II, Henry III, all these claim no right but by Parliament... There was always an agreement in the Saxon’s times, and so it continues. 25 Ed. III, that settles the right of the crown. He is bound by his oath to make remedy and law to his people in removing mischiefs.<sup>321</sup>

Here, Petyt, like those before him, found the rights of Englishmen neither in a universal law of nature, nor in philosophy generally. The rights of Englishmen were in the English nation itself from antiquity. And with this argument, it seems, the Lords, many of whose ancestors had been parties to these ancient acts and confirmations, could agree.

## **10. 1688 and After: Algernon Sidney on Constitutional Self-Government**

Algernon’s Sidney’s *Discourses on Government*, though written sometime before their author was beheaded in a judicial murder in 1683, were not published until 1698. Therefore, they cannot have significantly influenced the events in the 17<sup>th</sup> century. However, this book was a valuable source of ideas for succeeding generations of Englishmen, and was one of three books selected for special praise by the founding fathers of the United States. America’s founders also traced their liberties to the Saxons.<sup>322</sup> And in any event, as I have made clear from the outset, my purpose has been not only to explain how views of a nation’s past impact political developments, but also to recover, to some extent, how early modern Europeans understood “self-government”, what the prerequisites were for it to be worth even attempting, and what conditions had to be met for it to be legitimate. Sidney’s work addresses these questions more comprehensively than other writers of his time. It will be noted that Algernon Sidney speaks of rights and virtues in a universalist vein, especially in the first book of his *Discourses Concerning Government*. But one sees in this work that, on the whole, the natural rights claimed for Englishmen are buttressed and limited by the particular rights and privileges of their ancestors just as the virtues prescribed for

Englishmen of the present are made concrete by reference to the deeds of ancestors. Indeed, without this context, the natural rights ascribed and the virtues prescribed to men are, one might claim, as shadowy and lifeless as the Kantian categorical imperative and the UN Charter on human rights.

For Sidney it is questionless that self-government can have no existence where citizens lack virtue. “The publick interests and the concernments of private men in their lands, goods, liberties and lives ...cannot be preserved by one who is transported by his own passions or follies, a slave to his lusts and vices.”<sup>323</sup> Sidney here refers specifically to a monarch transported by passion and follies. But as he makes clear elsewhere, government will be little better if it is in the hands of citizens or representatives who are of a slavish nature, or if it is in any way incumbent upon slavish citizens to regulate it. Those who lack virtue, seek not liberty, but rather the protection of powerful persons or institutions which are in a position to supply them with things to satisfy their lusts and vices. The security of an absolute monarch depends most of all on corrupt citizens who will sell their liberty, their country and their neighbors in exchange for private advantages from the government.

The absolute monarch who governs for himself, and chiefly seeks his own preservation, looks upon the strength and bravery of his subjects as the root of his greatest danger, and frequently desires to render them weak, base, corrupt, and unfaithful to each other, that they neither dare to attempt the breaking of the yoke he lays upon them, nor trust one another in any generous design for the recovery of their liberty.<sup>324</sup>

Constitutional monarchies and popular governments may be less vulnerable to this sort of corruption, owing to their institutions, but they are not immune to it:

Something like to this may befall regular monarchies, or popular governments. They who are placed in the principal offices of trust may be treacherous; and when they are so, they will always by these means seek to gain partizans and dependents upon themselves. Their designs being corrupt, they must be carried on by corruption.<sup>325</sup>

Institutional mechanisms alone cannot prevent this sort of corruption. Among citizens there must be culture of courage and virtuous independence from power and trust and faithfulness to fellow citizens, a commitment to liberty and the common good, that will not be abandoned at the promise of special privileges or perquisites from those who employ political power to serve their own private ambitions.

According to Sidney, the ancient republics and well-governed states of the present era have inculcated precisely this sort of virtue:

Hence it is that in well-govern'd states, where a value is put upon virtue, and no one is honoured unless for such qualities as are beneficial to the publick, men are from the tenderest years brought up in a belief, that nothing in this world deserves to be sought after, but such honors as are acquired by virtuous actions. By this means virtue itself becomes popular, as in Sparta, Rome, and other places.<sup>326</sup>

For virtue to become popular, it must have popular examples, that is, *national* and *ancestral* examples. Sidney, like the many English political writers who came before him, understood this well. His *Discourses*, on the whole, are a political education in English civic virtue. Throughout history, there have been two kinds of nations. Sidney writes

It has been hitherto believed in the world, that the Assyrians, Medes, Arabs, Egyptians, Turks, and others like them, lived in slavery, because their princes were masters of their lives and goods: Whereas the Grecians, Italians, Gauls, Germans, Spaniards, and Carthaginians, as long as they have any strength, virtue or courage amongst them, were esteemed free nations, because they abhorred such a subjection. They were, and would be governed only by laws of their own making.<sup>327</sup>

Throughout the book, there is a running narrative which aims to prove that the English people have always been among those free nations and possessed the requisite strength and courage to preserve their freedom. "We," he says, "are descended from such as have ... valiantly defended their rights against the encroachments of Kings."<sup>328</sup> Like the many authors who preceded him, as Sydney singles out the resistance to William the Conqueror as a signal example of English civic heroism, which the English people continued to display through the ages:

He [William of Normandy] was crafty, bold, and elated with victory; but the resolution of a brave people was invincible. When their laws and liberties were in danger, they resolved to die or to defend them, and made him see he could no otherwise preserve his crown and life than by the performance of his oath, and accomplishing the ends of his election. They neither took him to be the giver or interpreter of their laws, and would not suffer him to violate those of their ancestors. In this way they always continued; and tho perhaps they might want skill to fall upon the surest and easiest means of restraining the lusts of princes, they maintained their rights so well, that the wisest princes seldom invaded them, and the success of those who were so foolish to attempt it was such, as may justly deter others from following their unprosperous examples.<sup>329</sup>

### **On the Ancient Constitution**

Sidney asserts frequently that mixed constitutions are best, and that the checking and balancing of power is their most important advantage. "Those hitherto esteemed wise men [sought ] to proportion the powers of several magistracies, that they might all concur in procuring the publick good or to divide the powers between the magistrates and the people, that a well-regulated harmony might be preserved in the whole."<sup>330</sup> The creation of good constitutions, he says, "has never been done otherwise, than by balancing the powers in such a manner, that the corruption which one or a few men might fall into, should not be suffered to spread the contagion to the ruin of the whole."<sup>331</sup> But he differs from the other thinkers considered in the chapter on the precise balance of powers in that constitution.

He acknowledges the coordination thesis, noting that kings are thought to "have a negative voice upon that which is agreed by the parliament, and to be "entrusted with a power equal in that point to that of either house..."<sup>332</sup> But that negative voice, he says, is actually "no more than an elusion; and he that does by art obliquely elude, confesses he has not a right absolutely to refuse."<sup>333</sup> Thus, for Sidney, the King does not have a power equal to that of the other two estates. Elsewhere he says "I will avow, that where the nobles and commoners have an equal vote, they may join and overrule or limit the power of the King."<sup>334</sup> Later he says a king "is not created to make laws, but to govern according to such as are made, and sworn to assent to

such as shall be proposed."<sup>335</sup> This is the position he consistently avows, that the lawmaking power of the nation is better entrusted primarily to "an assembly of nobility, with a house of commons composed of those who are best esteemed by their neighbours in all the towns and counties of England," that the King ought to assent to and enact what the two houses have decided.<sup>336</sup>

This theory, making the king an unequal partner in the government, whose is function is to execute the policies prescribed by the two houses of parliament is consistent with his interpretation of the Saxon constitution before the coming of the Normans. In Chapter III, section 28, a lengthy genealogy of the Anglo-Saxon form of government, Sidney asserts that the kings of the German tribes, from whom Englishmen descend, had less power than is claimed for kings of England today. The ancient Germans, he says, citing Tacitus "lived free under such magistrates as they chose, regulated by such laws as they made, and retained the principle powers of the government in their general or particular councils." The first Saxon "kings" in England, Hengist and Horsa, "were only temporary magistrates chosen upon occasion of present wars."<sup>337</sup> He concludes

I affirm, that the variety of government, which is observed to have been amongst the Saxons, who in some ages were divided, and others united; sometimes under captains, and other times under kings; sometimes meeting personally in the micklegemotes, sometimes by their delegates in the witenagemotes, does evidently testify, that they ordered all things according to their own pleasure; which being the utmost act of liberty, it remained inviolable under all those changes, as we have already proved by the confession of Offa, Ine, Alfred, Canute, Edward, and other particular as well as universal king.<sup>338</sup>

These "confessions" of the Saxon kings Sidney takes from various mediaeval English chronicles. For example, citing Matthew Paris and Polydore Virgil, he says "Offa acknowledged *that he was chosen for defence of their liberty, not from his own merit, but by their favour*; and in the *Conventus Pananglicanus*, at which all the chief men as well secular as ecclesiastical were present, it was decreed by the king, archbishops, bishops, abbots, dukes, and senators, that the

kings should be chosen by the priests, and by the elders of the people.” The rest of the Saxon kings were also elected by the consent of nobility, clergy and people, as the chronicles recorded, and some of them were deposed by the Witanagemotes.<sup>339</sup> Sidney’s emphasis on the elective character of Saxon kingship was not to assert that kings could not come to the throne by hereditary right, but that inheritance by itself was not a sufficient claim; the consent of the estates was also necessary, and these two estates could change the succession if they thought fit to do so. Moreover, as Sidney interprets these confessions, the Saxon kings served at the favor of the estates representing the nation: “the nobility and people reserved to themselves the disposition of the greatest affairs, even to the deposition and expulsion of such as should not well perform the duty of their oaths and office.”<sup>340</sup> This suggests that according to the ancient Saxon constitution, the king was set in motion the will of the estates representing the nation, he was a captain or executive, who had no right to defy the decisions of nobility and people.

In the early 18<sup>th</sup> century a custom arose, according to which Parliament selected the King’s ministers, which had the effect of making the two houses of parliament the drivers of policy. As we see from Sidney’s reflections on the constitutional balance of power, it was possible for Englishmen to believe this to be restoration of the more ancient Saxon constitutional balance.

#### **Rule by Consent of the Governed**

The central idea of social contract theory is that government is legitimate only if it rules with the consent of the governed. One finds this much in Locke, but he never explains it. Sidney does. In his view, liberty is not an absence of external impediments *pace* Hobbes. If one is speaking of civilized men, one must say that “He is a free man who lives as best pleases himself, under laws made by his own consent.”<sup>341</sup> In England, Sidney says such freedom was assured

while the Anglo-Saxons were divided into smaller communities. They could each gather all of their members in great assemblies, which they called a mickle gemotes. The “mickle gemotes, which were general assemblies of the noble and freemen, who had in themselves the power of the nation.”<sup>342</sup> Decisions for the common good were made by the consent of each member present at the meeting. But when, the freemen “grew to be so numerous that one place could not contain them, or so far dispersed, that without trouble and danger they could not leave their habitations, they deputed such as should represent them.”<sup>343</sup> At this point they formed much larger assemblies that were composed of the nobility, clergy, and deputies chosen to represent the freemen—these were the Witan gemotes. On the question of consent, was the representative rule of the Witan gemote the equivalent of the direct rule of the mickle gemote? Can those who send representatives be said to have consented to the laws that those representatives enact? Sidney answers in the affirmative: “When a people is, by mutual compact, joined together in a civil society, there is no difference as to right, between that which is done by them all in their own persons, or by some deputed by all, and acting according to the powers received from all.”<sup>344</sup> But this is so only if we understand representative government in the right way. The last part is crucial: for representatives to represent the will of the people who elected them, they have to act according to the powers they received from all. Direct government and representative government are equal only if the representatives use the powers they have received as their electors intended.

How does one ensure that the actions of these public servants actually correspond to the wishes of those who hired them? One way to ensure this would be to allow the electors to give their representatives instructions on how they should vote when they take their seats in Parliament. And Sidney says “we always may, and often do give Instructions to our delegates.”

But, Sidney tells us, if these instructions were always followed to the letter, representative government would not serve its purpose. Individual representatives cannot be bound to blindly obey all the instructions they receive in advance from their constituents. He gives two reasons for this. First,

the powers of every county, city and borough of England, are regulated by the general law to which they have all consented, and by which they are all made members of one political body... Every county does not make a distinct body, having in itself a sovereign power, but is a member of that great body which comprehends the whole nation. 'Tis not therefore for Kent or Sussex, Lewis or Maidstone, but for the whole nation, that members chosen in those places are sent to serve in parliament.<sup>345</sup>

Representatives are chosen not just to represent the interests of the counties, cities and boroughs that sent them, but the interests of the nation as a whole. Their primary duty is to the nation as a whole. The particular interests of the constituents who sent them have some place among the interests all the other parts of the country. But representatives would betray their trust to the nation, and to their electors as well, if they followed the instructions of their electors blindly.

For representatives

cannot foresee what will be proposed when they are all together; much less resolve how to vote till they hear the reasons on both sides. The electors must necessarily be in the same ignorance; and the law which should oblige them to give particular orders to their knights and burgesses in relation to every vote, would make the decision of the most important matters to depend on the judgement of those who know nothing of the matters in question, and by that means cast the nation into the utmost danger of the most inextricable confusion.<sup>346</sup>

Neither the representatives nor the people who elected them, can know what the interests of the nation as a whole are, until the representatives actually take their places in parliament and begin to discuss the affairs of the nation. The representatives have to be free to weigh the interests of their own constituents and those of the nation as whole and make the right decision for the nation, though this will usually mean not following at least some of their constituents' instructions.

What then does this mean for the idea of consent? If representatives not only are not required, but are actually obligated not follow all their constituents' instructions to them, then how can constituents be said to have consented to their representatives' votes in parliament? According to Sidney's model of representative government, constituents have two holds on their representatives. The first one is obvious and needs no explanation: "The people do perpetually judge of the behaviour of their deputies. Whensoever any of them has the misfortune not to satisfy the major part of those of those that chose him, he is sure to be rejected with disgrace the next time he shall desire to be chosen."<sup>347</sup>

But as far as Sidney is concerned, this power to vote one's representative out of office is not enough for consent. If this were the only bond between the constituent and representative, then this would mean that constituents express their consent only during the minute or two that it takes to cast a ballot. Voting is not enough for an expression of consent. Something more is needed before we can say that representatives truly vote with the consent of their principals.

Says Sidney

Many in all ages, and sometimes the whole body of the commons, have refused to give their opinion in some cases, till they had consulted with those that sent them: The houses have been often adjourned to give them time to do it; and if this were done more frequently, or that the towns, cities and counties, had on some occasions given instructions to their deputies, matters would probably have gone better in parliament than they have often done.<sup>348</sup>

What Sidney describes here is an actual practice of English parliamentarians which he thinks ought be done more often. It has often been the case, he says, that members of Parliament have refused to vote on an important measure being considered by the Commons until they have had a chance to consult with the people who elected them. Sometimes the whole house has been adjourned to allow all the members time to consult with their principals before casting their votes. It may seem that Sidney is trying to have it both ways here. He wants representatives to be accountable both to the national interest, and to the wishes of their constituents. But this is

precisely how the two sets of interests are made to come together, if at all. For representatives to pursue the interest of the nation, and at the same time remain faithful to their constituents, they have to come back to their counties, cities, and towns and tell the people who elected them what measure is being debated in parliament, what the issues are, what the arguments are, how the measure will affect them, how it will affect the rest of the country, and how they are inclined vote. And then, we have to assume, follows a dialogue between the representative and his principals. The aim of that dialogue, ideally, is to come to a decision most of them will consent to. It is by this process that local interests can come to converge with the national interest. The people are made of aware of how their local interests fit together with the broader interests of the nation, and then willingly make concessions if necessary.

Freedom is preserved if people make concessions voluntarily, in the belief, and the hope, that their concessions will redound to the benefit of the nation. This means that they have to actually feel that they belong to one nation, and care about what happens to their compatriots in other parts of the country. Where citizens are not, in the words of Lawson, "united by the same language, laws, religion, common country", where they have not "good affections one towards another", or in Sidney's words, where they have not "trust and faith" in each other, the idea of government by consent of the governed loses its meaning. Some are merely outvoted by others.

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<sup>1</sup> Rogers, "Introduction," *Leviathan: Contemporary Responses to the Political Theory of Thomas Hobbes*. Ed. G. A. J. Rogers. (Bristol: Thoemmes Press, 1995), vii.

<sup>2</sup> Hobbes, *On the Citizen*, (Cambridge: Cambridge University Press, 2007), 95.

<sup>3</sup> Hobbes, *Leviathan*, (Cambridge: Cambridge University Press, 1994), 114.

<sup>4</sup> Hobbes, *Leviathan*, 397-8.

<sup>5</sup> Hobbes, *Leviathan*, 110.

<sup>6</sup> This, of course, was not the only justification of absolute monarchy. There were also 'designation theory' and 'patriarchalism.' See J. Sommerville, *Politics and Ideology in England, 1603-1640* (London: Longman Group United Kingdom, 1986). These theories too necessarily denied the relevance of a pre-political English community.

<sup>7</sup> C. Hill, 'The Norman Yoke,' in *Puritanism and Revolution*. New York: Schocken Books, 1970), 61.

<sup>8</sup> King James VI & I. *Political Writings* (Cambridge University Press, 2006), 74.

<sup>9</sup> C. Hill, 'The Norman Yoke,' 62.

- <sup>10</sup> M. Foucault, *Society Must Be Defended: Lectures at the College de France 1975-1976*. Trans. David Macey. (New York: Picador, 2003), 99, 111. Foucault surely overstates his case when he claims that this was the *chief impetus* behind Hobbes's formulation of an original argument in favour of absolutism.
- <sup>11</sup> Hobbes, *Leviathan*, 486.
- <sup>12</sup> See the section below on George Lawson, who asserts just this, that all kings who insist upon the title of conquest "give full liberty to the English to fight against them, and depose them if they can and deal with them as enemies"
- <sup>13</sup> Oddly, Hobbes later forgot this argument, or perhaps changed his mind, and returned to using the Norman Conquest as a justification for absolutism in *Dialogue on the Common Laws*
- <sup>14</sup> The King of England alone fears [to lay impositions without consent of Parliament]. Shall the King of England alone be confined?
- <sup>15</sup> E. Foster, *Proceedings in Parliament 1610*, (New Haven: Yale University Press, 1966), vol. 2, 102.
- <sup>16</sup> Foster, *Proceedings in Parliament*, vol. 2, 109.
- <sup>17</sup> Quoted in J. Reid, 'The Jurisprudence of Liberty: The Ancient Constitution in the Legal Historiography of the Seventeenth and Eighteenth Centuries' in E. Sandoz, Ed. *The Roots of Liberty: Magna Charta, Ancient Constitution, and the Anglo-American Tradition of Rule of Law* (Indianapolis: Liberty Fund, Inc.: 1993), 270.
- <sup>18</sup> Greenberg, Janelle. *The Radical Face of the Ancient Constitution: St. Edward's 'Laws' in Early Modern Political Thought* (Cambridge: Cambridge University Press, 2001), 80-81.
- <sup>19</sup> Greenberg, *Radical Face*, 149.
- <sup>20</sup> Bruce O'Brien, *God's Peace & King's Peace: The Laws of Edward the Confessor*, (Philadelphia: University of Pennsylvania Press, 1999), 4.
- <sup>21</sup> Greenberg, *Radical Face*, 81-82.
- <sup>22</sup> Greenberg, *Radical Face*, 94-98.
- <sup>23</sup> Greenberg, *Radical Face*, 137.
- <sup>24</sup> *William Lambarde & Local Government: His "Ephemeris" and Twenty-nine Charges to Juries and Commissions*, ed. Conyers Read, (Ithica, NY: Cornell University Press, 1962), 79.
- <sup>25</sup> J. Pocock, *The Ancient Constitution and the Feudal Law: A Study of English Historical Thought in the 17th Century, a Reissue with a Retrospect* (Cambridge: Cambridge University Press, 1987), 126.
- <sup>26</sup> J. Sommerville, *Politics and Ideology in England, 1603-1640* (London: Longman Group United Kingdom, 1986), categorizes 'ancient constitutionalism' and 'social contract theory' as separate tendencies in 17<sup>th</sup> century English political thought. The boundaries between them, however, are very fluid.
- <sup>27</sup> For instance, Craig Houston 1991 argues that there is an "unbridgeable chasm" between the view of Sir Edward Coke, that the Norman Conquest did not constitute a breach in custom, and that of Algernon Sidney, that William the first became king by consent of the people. 184-5
- <sup>28</sup> Burke, *Select Works of Edmund Burke*, Vol. 4, 21.
- <sup>29</sup> Sidney, *Discourses Concerning Government*, 35.
- <sup>30</sup> M. Foucault, *Society Must Be Defended*, 110.
- <sup>31</sup> J.A.G. Pocock argues that Coke's way of thinking was typical. Johann Somerville argues that other common lawyers were less 'insular' than Coke, and did not subscribe to his view of English history. The truth, I conceive, is somewhere in the middle. That so many English thinkers on the Parliamentary side relied on insular rhetoric does not mean that their arguments were purely historical. Their success lay in their ability to blend abstract philosophy, such as the social contract theory, and evocative memories from the national past. For important correctives to the Pocock thesis, see Sommerville, "History and theory: the Norman Conquest in early Stuart political thought," *Political Studies* 34(1986), 249-61.
- <sup>32</sup> *Selected Writings of Sir Edward Coke*, Vol. 2, 450. In the Proem to the *Third Part of the Institutes*.
- <sup>33</sup> *Selected Writings of Sir Edward Coke*, Vol. 2, 450.
- <sup>34</sup> *Selected Writings of Sir Edward Coke*, Vol. 2, 451.
- <sup>35</sup> During the reign of Edward I (1239-1307), when the status of English was less certain, it appears Englishmen were far more defensive about their national language. In any event, it is not unreasonable to infer that English language was a deeply emotive issue from the propaganda of Edward's court. To drum up support for his war with France, the King played the language card in his writ of summons for Parliament asserting that "the King of France was planning an invasion and intended to wipe out the English language—a truly detestable plan which may God avert.... A few years later Edward's government played the same card again when in 1305 William Wallace was accused at his trial of refusing to spare the life of anyone who spoke English," A. Hastings, *The Construction of Nationhood*, (Cambridge University Press, 2006), 45-46. Returning to the 17<sup>th</sup> century, it should be noted that for Levellers, and poor Englishmen generally, language was actually very important as a political issue, since the

nation's laws were for the most part written in foreign languages (French or Latin), and thus inaccessible to all who could not afford lawyers' fees.

<sup>36</sup> *The Selected Writings of Sir Edward Coke*, ed. Steve Sheppard (Indianapolis, IN: Liberty Fund, 2004), Vol. 1, 126.

<sup>37</sup> See the section on George Lawson below

<sup>38</sup> *Selected Writings of Sir Edward Coke*, Vol. 1, 95.

<sup>39</sup> *Selected Writings of Sir Edward Coke*, Vol. 1, 246.

<sup>40</sup> For comparison see O'Brien, *God's Peace and King's Peace*, 159, [prologue], also p. 193 [paragraph 34].

<sup>41</sup> In this respect, Coke is unlike other contemporary partisans of constitutional self-government in England, such as John Pym, Sir Dudley Diggs, John Selden and others who thought England's common law, as it was known in this day, began with the Saxons. See Sommerville, "History and theory: the Norman Conquest in early Stuart political thought," *Political Studies* 34(1986), 249-61. For instance Pym said in 1628: "There are plain footsteps of those laws in the government of the Saxons. They were of that vigour and force to overlive the Conquest; nay, to give bounds and limits to the Conqueror. It is true they have been often broken, (but) they have been often confirmed by the charters of Kings and Acts of Parliaments. But the Petition of Subjects, upon which those charters and Acts were founded, were ever Petitions of Right, demanding their ancient and due liberties, not suing for any new." In John Rushworth, *Historical Collections Of Private Passages of State, Weighty Matters in Law, Remarkable Proceedings in Five Parliaments: Beginning The Sixteenth Year of King James, Anno 1618. And Ending the Fifth Year of King Charles, Anno 1629. Digested in Order of Time*, (London, 1659), vol. 1, 596. The common law is thus not something apart from the English nation. It is in the nation itself, in the people's collective memory. The law itself may have breaches in it here and there. So long as the nation remembers its laws and rights, and demands to have them restored, those laws and rights continue.

<sup>42</sup> *Selected Writings of Sir Edward Coke*, Vol. 1, 299.

<sup>43</sup> *Selected Writings of Sir Edward Coke*, Vol. 1, 247.

<sup>44</sup> *Selected Writings of Sir Edward Coke*, Vol. 1, 288.

<sup>45</sup> *Selected Writings of Sir Edward Coke*, Vol. 3, 1192.

<sup>46</sup> For instance, Weston & Greenberg, *Subjects and Sovereigns*, 8. In *Caudrey's Case* Coke appropriates Henry VIII's words, that England is "absolute monarchy and empire." For Coke, however, this language is important because it is a declaration of English national sovereignty vis-à-vis the Bishop of Rome. As Selden is reported to have said "After the dissolution of the Abbeys, they did much advance the Kings Supremacy, for they car'd only to exclude the pope." Selden, *Table Talk of John Selden*, ed. Sir Frederick Pollack, (London: Quaritch, 1927), 63. Coke was a shrewd politician; he picked his battles. It is doubtful he ever really thought the King of England was an absolute monarch in the affairs of church or state, and he usually opposed the King when he thought the latter's actions were tending that way.

<sup>47</sup> *Selected Writings of Sir Edward Coke*, Vol. 1, 39-40.

<sup>48</sup> *Selected Writings of Sir Edward Coke*, Vol. 1, 102.

<sup>49</sup> *Selected Writings of Sir Edward Coke*, Vol. 3, 1190-1191.

<sup>50</sup> *Selected Writings of Sir Edward Coke*, Vol. 1, 288, 297, 299.

<sup>51</sup> *Selected Writings of Sir Edward Coke*, Vol. 2, 1080. Cf. 'King Alfred caused his counts to assemble, and ordained as a perpetual usage that twice a year or more often if need should be in time of peace, they should hold parliament in London' Andrew Horn, *The Mirror of Justices*, ed. J. W. Whittaker, (London: Ernard Quaritch, 1895), 8.

<sup>52</sup> *Selected Writings of Sir Edward Coke*, Vol. 2, 1085.

<sup>53</sup> *Selected Writings of Sir Edward Coke*, Vol. 2, 1084. A direct translation from the *Modus*, though Coke leaves out the final clause of the sentence, to wit: "and if the King permit the contrary he is perjured." *Modus Tenendi Parliamentum: An Ancient Treatise of the Mode of Holding Parliaments in England*, ed. T.D. Hardy, (London: G. Erye & W. Spottiswoode, 1846) , 44.

<sup>54</sup> *Selected Writings of Sir Edward Coke*, Vol. 2, 1110.

<sup>55</sup> Pocock, *The Ancient Constitution*, 302, 367.

<sup>56</sup> *Selected Writings of Sir Edward Coke*, Vol. 1, 248.

<sup>57</sup> *Selected Writings of Sir Edward Coke*, Vol. 1, 249.

<sup>58</sup> *Selected Writings of Sir Edward Coke*, Vol. 2, 748.

<sup>59</sup> *Selected Writings of Sir Edward Coke*, Vol. 2, 849.

<sup>60</sup> *Selected Writings of Sir Edward Coke*, Vol. 3, 1229.

- <sup>61</sup> Selden, *Tracts Written by John Selden of the Inner-Temple, Esquire*. (London, Thomas Basset and Richard Chiswell, 1683), 29.
- <sup>62</sup> Selden, *Tracts*, 29.
- <sup>63</sup> Selden, *Tracts*, 32.
- <sup>64</sup> Selden, *Tracts*, 32.
- <sup>65</sup> Selden, *Tracts*, 93.
- <sup>66</sup> Selden, *Tracts*, 93.
- <sup>67</sup> Selden, *Tracts*, 93.
- <sup>68</sup> Selden, *Tracts*, 48-49.
- <sup>69</sup> Selden, *Tracts*, 62.
- <sup>70</sup> Selden, 'Notes Upon Sir John Fortescue,' in *De Laudibus Legum Angliae written by Sir John Fortescue; Hereto are Added the Sums of Sir Ralph de Hengam, with notes by John Selden, Esq.*, (London: Abel Roper, 1660), 17.
- <sup>71</sup> Selden, *Table Talk*, 137.
- <sup>72</sup> Selden, *Table Talk*, 137.
- <sup>73</sup> *Selected Writings of Sir Edward Coke*, Vol. 1, 173.
- <sup>74</sup> *Selected Writings of Sir Edward Coke*, Vol. 3, 1190.
- <sup>75</sup> Foster, *Proceedings in Parliament*, vol. 2, 371.
- <sup>76</sup> Sommerville, *Politics and Ideology*, 125.
- <sup>77</sup> Sommerville, *Politics and Ideology*, 180-181.
- <sup>78</sup> *Writings of Sir Edward Coke*, Vol. 3, 1201.
- <sup>79</sup> *Writings of Sir Edward Coke*, Vol. 3, 1202.
- <sup>80</sup> See Barbara Malament, "The 'Economic Liberalism' of Sir Edward Coke," in *Law, Liberty, and Parliament: Selected Essays on the Writings of Sir Edward Coke*, ed. A.D. Boyer, (Indianapolis, IN: Liberty Fund, Inc., 2004), 186-223.
- <sup>81</sup> *Writings of Sir Edward Coke*, Vol. 3, 1232.
- <sup>82</sup> *Commons Debates 1628*, ed. R.C. Johnson & M.J. Cole, assisted by M.F. Keeler & W.B. Bidwell (New Haven: Yale University Press, 1977), Vol. 2, 333.
- <sup>83</sup> *Commons Debates 1628*, Vol. 2, 333.
- <sup>84</sup> *Commons Debates 1628*, Vol. 2, 357-358.
- <sup>85</sup> *Commons Debates 1628*, Vol. 2, 183.
- <sup>86</sup> *Writings of Sir Edward Coke*, Vol. 3, 1259.
- <sup>87</sup> *Writings of Sir Edward Coke*, Vol. 1, 1268.
- <sup>88</sup> Filmer, *Patriarcha and Other Political Works*, (Oxford: Blackwell, 1949), 279.
- <sup>89</sup> See Ellis Sandoz, "Fortescue, Coke, and Anglo-American Constitutionalism" in *The Roots of Liberty: Magna Carta, Ancient Constitution, and the Anglo-American Tradition of Rule of Law*, ed. Ellis Sandoz, (Indianapolis, IN: Liberty Fund, 1993), 11-20.
- <sup>90</sup> Sommerville, *Politics and Ideology*, 103
- <sup>91</sup> See Michael Mendle, *Dangerous Positions: Mixed Government, the Estates of the Realm, and the Answer to the XIX Propositions*, (Tuscaloosa, AL: University of Alabama Press, 1985), *Henry Parker and the English Civil War: the Political Thought of the Public's "Privado,"* (Cambridge University Press, 1995).
- <sup>92</sup> See Weston & Greenberg, *Subjects and Sovereigns: The Grand Controversy over Legal Sovereignty in Stuart England*, (Cambridge: Cambridge University Press, 1981), 35-86.
- <sup>93</sup> See for instance, *The Nineteen Propositions sent by the two Houses of Parliament to the King at York in Constitutional Documents of the Puritan Revolution 1625-1660*, ed. Samuel Gardiner, (Oxford: Clarendon Press, 1979), 249-254.
- <sup>94</sup> Hunton, *A Treatise of Monarchy*, (Bristol: Thoemmes Press, 2000), 13.
- <sup>95</sup> Hunton, *A Treatise of Monarchy*, 14.
- <sup>96</sup> Hunton, *A Treatise of Monarchy*, 17.
- <sup>97</sup> Hunton, *A Treatise of Monarchy*, 21.
- <sup>98</sup> Hunton, *A Treatise of Monarchy*, 24.
- <sup>99</sup> Hunton, *A Treatise of Monarchy*, 30.
- <sup>100</sup> Hunton, *A Treatise of Monarchy*, 38.
- <sup>101</sup> Hunton, *A Treatise of Monarchy*, 40.
- <sup>102</sup> Hunton, *A Treatise of Monarchy*, 42.
- <sup>103</sup> Hunton, *A Treatise of Monarchy*, 42-43.

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- <sup>104</sup> Hunton, *A Treatise of Monarchy*, 43.
- <sup>105</sup> Hunton, *A Treatise of Monarchy*, 47.
- <sup>106</sup> Hunton, *A Treatise of Monarchy*, 49.
- <sup>107</sup> Hunton, *A Treatise of Monarchy*, 49-50.
- <sup>108</sup> Hunton, *A Treatise of Monarchy*, 50.
- <sup>109</sup> The Resolving of Conscience 1642
- <sup>110</sup> Hunton, *A Treatise of Monarchy*, 51.
- <sup>111</sup> Hunton, *A Treatise of Monarchy*, 52.
- <sup>112</sup> Hunton, *A Treatise of Monarchy*, 52.
- <sup>113</sup> Hunton, *A Treatise of Monarchy*, 53.
- <sup>114</sup> Hunton, *A Treatise of Monarchy*, 54.
- <sup>115</sup> Hunton, *A Treatise of Monarchy*, 64.
- <sup>116</sup> Hunton, *A Treatise of Monarchy*, 65.
- <sup>117</sup> Hunton, *A Treatise of Monarchy*, 66.
- <sup>118</sup> Hunton, *A Treatise of Monarchy*, 67.
- <sup>119</sup> Hunton, *A Treatise of Monarchy*, 101. The grievances against Charles I Hunton lists as follows: “the long and purposed disuse of Parliaments: The arbitrary Taxes and Impositions on most of the Commodities of the Kingdom: The encroachment of the Arbitrary Courts upon the Legall: The imposition of Ship-money: And the Judges opinion that the King had power to tax the subject in times of danger, and that he is the sole Judge of that danger: The raising an Army, and forcing the subject to furnish the same with Coat and Conduct-money. The intention of bringing up the Army, to subvert, or at best, to awe and confine the Parliaments to bounds of proceeding of their owne setting”
- <sup>120</sup> Hunton, *A Treatise of Monarchy*, 82.
- <sup>121</sup> Hunton, *A Treatise of Monarchy*, 103.
- <sup>122</sup> Pocock, *The Ancient Constitution*, 124. Pocock would have been right if he had in this connection instead alluded to Sadler’s *Rights of the Kingdom and People* (1649), or the interregnum tracts of John Milton. See Greenberg, *Radical Face*, 229-42.
- <sup>123</sup> Bacon, *An Historical Discourse of the Uniformity of the Government of England*, (London, 1647), iii.
- <sup>124</sup> Bacon, *Historical Discourse*, 9.
- <sup>125</sup> Bacon, *Historical Discourse*, 48.
- <sup>126</sup> Sommerville, *Politics and Ideology*, 62.
- <sup>127</sup> Bacon, *Historical Discourse*, 50.
- <sup>128</sup> Bacon, *Historical Discourse*, 53.
- <sup>129</sup> Bacon, *Historical Discourse*, 57-58.
- <sup>130</sup> Bacon, *Historical Discourse*, 14.
- <sup>131</sup> Bacon, *Historical Discourse*, 28.
- <sup>132</sup> Bacon, *Historical Discourse*, 29.
- <sup>133</sup> Bacon, *Historical Discourse*, 112.
- <sup>134</sup> Bacon, *Historical Discourse*, 112.
- <sup>135</sup> Bacon, *Historical Discourse*, 115.
- <sup>136</sup> Bacon, *Historical Discourse*, 116.
- <sup>137</sup> To become acquainted with numerous other tellers of the Anti-Norman tale, see especially Greenberg, *Radical Face*.
- <sup>138</sup> Hare, *St. Edward’s Ghost, or Anti-Normanism: Being a patheticall Complaint and Motion in the behalf of our English Nation against her grand (yet neglected) Grievance, Normanisme*, (London: 1647), 2.
- <sup>139</sup> Hare, *St. Edward’s Ghost*, 3.
- <sup>140</sup> Hare, *St. Edward’s Ghost*, 6, 10.
- <sup>141</sup> Hare, *St. Edward’s Ghost*, 12.
- <sup>142</sup> Hare, *St. Edward’s Ghost*, 15.
- <sup>143</sup> Hare, *St. Edward’s Ghost*, 16.
- <sup>144</sup> Hare, *St. Edward’s Ghost*, 19-20.
- <sup>145</sup> Hare, *St. Edward’s Ghost*, 21.
- <sup>146</sup> Hare, *Englands Proper and onely way to an Establishment in Honour, Freedom, Peace and Happinesse, or, The Normane Yoke Once more uncased...* (London: 1647).
- <sup>147</sup> Hare, *St. Edward’s Ghost*, 13.
- <sup>148</sup> Hare, *St. Edward’s Ghost*, 17.

- <sup>149</sup> Overton, *A Remonstrance of Many Thousand Citizens* (1646) in *The Levellers: The Putney Debates*, ed. G. Robertson & P. Baker, (London: Verso, 2007), 12.
- <sup>150</sup> Overton, *A Remonstrance*, 13. In fact, Overton was more right than he knew about impressment. What the case was before the Conquest, no one can know, but as John Selden had argued in Parliament, the practice was not very old, and thus contrary to England's ancient constitution. See P. Christianson, *Discourse on History, Law, and Governance in the Public Career of John Selden, 1610-1635*, (University of Toronto Press, 1996), 128.
- <sup>151</sup> *Certain Articles for the Good of the Commonwealth, Presented to the consideration of his Excellency Sir Thomas Fairfax, and to the Officers and Soldiers under his command*, in *Puritanism and Liberty: Being the Army Debates (1647-9) from the Clark Manuscripts with Supplementary Documents*, ed. A.S.P. Woodhouse, (University of Chicago Press, 1974), 336.
- <sup>152</sup> Walwyn, *The Large Petition* in *The Levellers*, 23.
- <sup>153</sup> Wildman, *An Agreement of the People*, in *The Levellers*, 54.
- <sup>154</sup> *Apology of the Soldiers to their Officers* (1647) in *Puritanism and Liberty*, 396: "We your soldiers... have served under your commands, with all readiness to free this our native land and nation from all tyranny and oppressions whatsoever... God hath been pleased to crown us with victory in dispersing our common adversaries... so that justice and equity, according to the law of this land, should have been done to the people, and that the meanest subject should fully enjoy his right, liberty, and properties, in all things."
- <sup>155</sup> *The Putney Debates* (1647), in *Puritanism and Liberty*, 96.
- <sup>156</sup> Quoted in Appendix to *Puritanism and Liberty*, 388.
- <sup>157</sup> Brailsford, *The Levellers and the English Revolution*, ed. C. Hill (London: Cressett Press, 1961), p. 130
- <sup>158</sup> *The Putney Debates*, in *Puritanism and Liberty*, 14.
- <sup>159</sup> *The Putney Debates*, in *Puritanism and Liberty*, 21.
- <sup>160</sup> *The Putney Debates*, in *Puritanism and Liberty*, 109.
- <sup>161</sup> Wildman, *The Case of the Army Truly Stated*, in *Puritanism and Liberty*, 434.
- <sup>162</sup> *The Putney Debates*, in *Puritanism and Liberty*, 111.
- <sup>163</sup> *The Putney Debates*, in *Puritanism and Liberty*, 112.
- <sup>164</sup> *The Putney Debates*, in *Puritanism and Liberty*, 118-119.
- <sup>165</sup> *The Putney Debates*, in *Puritanism and Liberty*, 103.
- <sup>166</sup> *The Putney Debates*, in *Puritanism and Liberty*, 118.
- <sup>167</sup> *The Putney Debates*, in *Puritanism and Liberty*, 120.
- <sup>168</sup> *The Putney Debates*, in *Puritanism and Liberty*, 104.
- <sup>169</sup> *The Whitehall Debates*, in *Puritanism and Liberty*, 172.
- <sup>170</sup> *An Agreement of the People of England*, in *Puritanism and Liberty*, 361-365.
- <sup>171</sup> *The Whitehall Debates*, in *Puritanism and Liberty*, 131.
- <sup>172</sup> *The Whitehall Debates*, in *Puritanism and Liberty*, 141.
- <sup>173</sup> *The Whitehall Debates*, in *Puritanism and Liberty*, 144.
- <sup>174</sup> *The Whitehall Debates*, in *Puritanism and Liberty*, 146.
- <sup>175</sup> *The Whitehall Debates*, in *Puritanism and Liberty*, 149.
- <sup>176</sup> *The Whitehall Debates*, in *Puritanism and Liberty*, 131.
- <sup>177</sup> *The Whitehall Debates*, in *Puritanism and Liberty*, 160.
- <sup>178</sup> *The Putney Debates*, in *Puritanism and Liberty*, 52-53.
- <sup>179</sup> *The Putney Debates*, in *Puritanism and Liberty*, 65.
- <sup>180</sup> Selden, *Table Talk*, 89. Selden himself did not think this arrangement unjust. He shares the conventional hierarchical view of representation voiced by Ireton: 'All consent civilly in a Parliament: Women are involv'd in the men, Children in those of perfect age,--Those that are under 40s. in those that have 40s. a yeare, and those of forty shillings in the Knights.'
- <sup>181</sup> It should however be noted that this description includes only the heads of households, and not persons considered economically dependent, such as laborers, paupers, women and servants. See Christopher Hill, *The Century of Revolution*, (New York: W.W. Norton & Company, Inc., 1961), 131.
- <sup>182</sup> *The Putney Debates*, in *Puritanism and Liberty*, 67.
- <sup>183</sup> *The Putney Debates*, in *Puritanism and Liberty*, 72.
- <sup>184</sup> *The Putney Debates*, in *Puritanism and Liberty*, 70.
- <sup>185</sup> *The Putney Debates*, in *Puritanism and Liberty*, 66-67.
- <sup>186</sup> *The Putney Debates*, in *Puritanism and Liberty*, 67.

<sup>187</sup> This is not to say that land must be merely a material interest. But that is the implication of Ireton's argument, for he makes no attempt to connect ownership of land with any non-individualistic, not material notion suggestive of a larger ancestral and communal bond to the nation.

<sup>188</sup> *The Putney Debates*, in *Puritanism and Liberty*, 67.

<sup>189</sup> *The Putney Debates*, in *Puritanism and Liberty*, 54.

<sup>190</sup> *The Putney Debates*, in *Puritanism and Liberty*, 69.

<sup>191</sup> *The Putney Debates*, in *Puritanism and Liberty*, 67.

<sup>192</sup> *The Putney Debates*, in *Puritanism and Liberty*, 58.

<sup>193</sup> *The Putney Debates*, in *Puritanism and Liberty*, 62-63.

<sup>194</sup> *The Putney Debates*, in *Puritanism and Liberty*, 63.

<sup>195</sup> *The Putney Debates*, in *Puritanism and Liberty*, 59.

<sup>196</sup> *The Putney Debates*, in *Puritanism and Liberty*, 63.

<sup>197</sup> *The Putney Debates*, in *Puritanism and Liberty*, 82-83.

<sup>198</sup> *A Letter from Several Agitators to their Regiments* (1647), in *Puritanism and Liberty*, 452.

<sup>199</sup> Wolin, *Politics and Vision: Expanded Edition*, (Princeton University Press, 2006), 279.

<sup>200</sup> *Oliver Cromwell's Letters and Speeches: With Elucidations, in five volumes*, ed. Thomas Carlyle, (London: Chapman and Hall, Ltd.), Vol. 4, 49.

<sup>201</sup> Goddard, 'Guibon Goddard's Journal: November 1654', in *Diary of Thomas Burton esq, Member in the Parliaments of Oliver and Richard Cromwell from 1656 to 1659*, ed. by J. T. Rutt, (London: Henry Colburn, New Burlington St., 1828), vol. 1, xxii.

<sup>202</sup> *Oliver Cromwell's Letters and Speeches*, vol. 4, 58.

<sup>203</sup> Goddard, *Guibon Goddard's Journal*, vol. 1, xliv-xlv.

<sup>204</sup> Goddard, *Guibon Goddard's Journal*, vol. 1, xlvi.

<sup>205</sup> Barry Coward, *Oliver Cromwell*, (London: Routledge, 47).

<sup>206</sup> Coward, *Oliver Cromwell*, 46.

<sup>207</sup> *Oliver Cromwell's Letters and Speeches*, vol. 4, 202.

<sup>208</sup> *Oliver Cromwell's Letters and Speeches*, vol. 4, 199.

<sup>209</sup> *Oliver Cromwell's Letters and Speeches*, vol. 4, 200.

<sup>210</sup> See Stuart Prall, *The Bloodless Revolution*, (Madison, WI: University of Wisconsin Press, 1985), 18-19, 37. Also, Jacob Levy, Unpublished manuscript, p. 29

<sup>211</sup> William Prynne, *A Summary Collection of the Principal Fundamental Rights, Liberties, Proprieties of all English Freeman*, (London, 1656), 34.

<sup>212</sup> Quoted in Coward, *Oliver Cromwell*, 77.

<sup>213</sup> *Diary of Thomas Burton*, vol. 1, 398.

<sup>214</sup> Robertson, 'Introduction,' *The Levellers: The Putney Debates*, xxxii.

<sup>215</sup> *Diary of Thomas Burton*, vol. 1, 404.

<sup>216</sup> *Diary of Thomas Burton*, vol. 2, 22.

<sup>217</sup> *Diary of Thomas Burton*, vol. 2, 385.

<sup>218</sup> *Diary of Thomas Burton*, vol. 2, 388.

<sup>219</sup> *Diary of Thomas Burton*, vol. 2, 395.

<sup>220</sup> *Diary of Thomas Burton*, vol. 2, 381.

<sup>221</sup> *Diary of Thomas Burton*, vol. 2, 412.

<sup>222</sup> *Oliver Cromwell's Letters and Speeches*, vol. 5, 127.

<sup>223</sup> *Somers Tracts: A collection of scarce and valuable tracts, on the most interesting and entertaining subjects: but chiefly such as relate to the history and constitution of these kingdoms. Selected from an infinite number in print and manuscript, in the Royal, Cotton, Sion, and other public, as well as private libraries; particularly that of the late Lord Somers.* (London, Printed for T. Cadell, W. Davies [etc.], 1809-15), vol. 6, 356.

<sup>224</sup> *Somers Tracts*, vol. 6, 356.

<sup>225</sup> *Cromwell's Letters and Speeches*, vol. 5, 105.

<sup>226</sup> *Cromwell's Letters and Speeches*, vol. 5, 112.

<sup>227</sup> *Cromwell's Letters and Speeches*, vol. 5, 114.

<sup>228</sup> See C. Condren, *George Lawson's Politica and the English Revolution* (Cambridge: Cambridge University Press, 1989), 173- 195; J. Franklin, *John Locke and the Theory of Sovereignty: Mixed Monarchy and the Right of Resistance in the Political Thought of the English Revolution.* (Cambridge: Cambridge University Press, 1978), 53-130. A.H. Maclean, 'George Lawson and John Locke', *Cambridge Historical Journal*, 9:1 (1947), 69-77.

<sup>229</sup> Locke, *Two Treatises of Government*. (Cambridge: Cambridge University Press, 1994), 325.

<sup>230</sup> *Ibid.*, 333. James Tully treats the ‘political individualism’ of Locke and the ‘political holism’ or ‘collectivism’ of George Lawson as the most essential difference between the two thinkers. He regards the former as an advance in the theory of popular sovereignty, but does not consider the potential weaknesses of Locke’s individualism. See Tully, ‘Current Thinking on Sixteenth and Seventeenth Century Political Theory,’ *Historical Journal*, 24:2 (1981), 480-483; ‘Locke,’ in ed. J.H. Burns with the assistance of M. Goldie, *The Cambridge History of Political Thought 1450-1700*, (Cambridge University Press, 1991), 622.

<sup>231</sup> Filmer, *Patriarcha and Other Political Works*, (Oxford: Blackwell, 1949), 286. Filmer was in fact responding to Philip Hunton’s *Treatise of Monarchy* (1643). As I have shown above it is an unfair critique of that work. But in response to Locke the critique seems entirely justified.

<sup>232</sup> According to Rabkin: ‘Revolution, in Locke’s account, is an act of the whole people, or at least of most people, who must retain some coherence to establish a new government. So Locke says that political communities arise, in the first place, among those with special affinities...’ J. Rabkin. *Law without Nations? Why Constitutional Government Requires Sovereign States* (Princeton: Princeton University Press, 2005), 59.

<sup>233</sup> Locke, *Two Treatises of Government*, 339.

<sup>234</sup> The editions of the two Lawson texts used here are as follows: G. Lawson, *Political Sacra et Civilis*, ed. C. Condren, (Cambridge University Press, 2006); G. Lawson, *An Examination of the Political Part of Mr. Hobbes his Leviathan*. In *Leviathan: Contemporary Responses to the Political Theory of Thomas Hobbes*. Ed. G. A. J. Rogers. (Bristol: Thoemmes Press, 1995).

<sup>235</sup> C. Condren, ‘Confronting the Monster; George Lawson’s Reactions to Hobbes’s *Leviathan*,’ *Political Science*, 40:1 (1988), 73.

<sup>236</sup> *Politica*, 23.

<sup>237</sup> *Examination*, 18.

<sup>238</sup> *Politica*, 24.

<sup>239</sup> *Politica*, 29.

<sup>240</sup> *Politica*, 25.

<sup>241</sup> *Politica*, 4.

<sup>242</sup> *Politica*, 26.

<sup>243</sup> *Politica*, 30.

<sup>244</sup> *Politica*, 30.

<sup>245</sup> He sometimes uses other terms, such as ‘country,’ ‘native country’ or ‘community,’ instead of nation, but the underlying notion is the same. Lawson uses the terms country, community, nation as interchangeably as modern journalists and politicians do.

<sup>246</sup> *Examination*, 24, 29. According to Condren, Lawson ‘naively’ misreads Hobbes’ contract theory ‘as an empirical one.’ Condren, *Confronting the Monster*, 72. However, one could just as well credit Lawson for having the good sense to dismiss a political theory based on a mere thought experiment.

<sup>247</sup> Lawson begins his refutation of Hobbes with this statement: ‘To think that the sole or principal Cause of the constitution of a civil State is the consent of men, or that it aims no further than peace and plenty, is to mean a conceit of so noble an effect,’ *Examination*, 16.

<sup>248</sup> *Politica*, 99. See also the *Examination*, 42, for a more explicitly contractarian account of the founding of the English state by the 40 Saxon lords. Lawson’s source for this was the *Mirror of Justices*.

<sup>249</sup> Brian Tierney has shown that for Lawson, as for many of the political thinkers who precede him, church and state are ‘analogous’ institutions. Lawson combines secular and religious ideas in his conceptualisation of civil and ecclesiastical constitutions. It is also certainly true that in Lawson’s conception the nation and the *ecclesia* are analogous pre-political communities. See Tierney, *Religion, Law, and the Growth of Constitutional Thought*, (Cambridge University Press, 1982), 97-102.

<sup>250</sup> *Politica*, 205.

<sup>251</sup> *Politica*, 36-7. Condren argues that Lawson’s reflections on the church as a ‘matter’ existing before ‘form’ are the source of his theory of the nation as a continuous community existing prior to the state and after its dissolution, suggesting that the ecclesiastical analogy is more coherent than the idea of a Saxon nation existing prior to the English civil constitution. See Condren, ‘Sacra before Civilis,’ *Journal of Religious History*, 11:2 (1981), 528-529. It is worth noting, however, that the notion of an Anglo-Saxon nation existing prior to the state was already a well-worn trope by Lawson’s time. See the first half of this chapter. It is safe to say in any case that Lawson’s religious and secular notions of a pre-political communities are mutually reinforcing, and that it is thanks to his ability to

draw these analogies that his formulations are clearer and more thoughtful than those of earlier and later writers (such as Locke) who did not.

<sup>252</sup> *Politica*, 203.

<sup>253</sup> *Politica*, 217.

<sup>254</sup> *Politica*, 108.

<sup>255</sup> *Politica*, 108.

<sup>256</sup> *Politica*, 49.

<sup>257</sup> *Politica*, 175.

<sup>258</sup> This is the main focus of Franklin's discussion of Lawson in *John Locke and the Theory of Sovereignty*.

<sup>259</sup> *Politica*, 112.

<sup>260</sup> *Politica*, 123.

<sup>261</sup> *Examination*, 26.

<sup>262</sup> *Politica*, 64.

<sup>263</sup> *Politica*, 99.

<sup>264</sup> He had done so in another work which he was prepared to release after gauging the reception of the *Politica*, but the Restoration beat him to it. That work is now lost. See Condren *George Lawson's Politica and the English Revolution* (Cambridge: Cambridge University Press, 1989).

<sup>265</sup> Condren catalogues the differences in 'Confronting the Monster,' 71-74 and *George Lawson's Politica*, 95-116.

<sup>266</sup> *Examination*, 42.

<sup>267</sup> *Politica*, 103.

<sup>268</sup> *Politica*, 60.

<sup>269</sup> *Politica*, 60.

<sup>270</sup> *Politica*, 58.

<sup>271</sup> *Politica*, 55.

<sup>272</sup> *Politica*, 55.

<sup>273</sup> *Politica*, 70.

<sup>274</sup> *Politica*, 57.

<sup>275</sup> *Politica*, 107.

<sup>276</sup> *Politica*, 226.

<sup>277</sup> The English constitution fits Lawson's category of 'polyarchical sovereigns who are many physically, but considered as one person morally, as jointly invested with one power sovereign.' Lawson, *Politica*, 54. On the coordination thesis, see Weston & Greenberg, *Subjects and Sovereigns: The Grand Controversy over Legal Sovereignty in Stuart England*, (Cambridge: Cambridge University Press, 1981).

<sup>278</sup> *Politica*, 108.

<sup>279</sup> *Politica*, 110.

<sup>280</sup> Condren, *George Lawson's Politica*, 82.

<sup>281</sup> *Politica*, 127.

<sup>282</sup> *Politica*, 128.

<sup>283</sup> *Politica*, 167, 175.

<sup>284</sup> *Politica*, 138.

<sup>285</sup> *Politica*, 146-7.

<sup>286</sup> *Politica*, 134

<sup>287</sup> *Politica*, 210. On the respective powers of the church government in episcopacy, presbytery and people, and the civil government in king and parliament concerning religion, see *Politica*, 133.

<sup>288</sup> *Politica*, 175.

<sup>289</sup> *Politica*, 258.

<sup>290</sup> *Politica*, 121.

<sup>291</sup> *Politica*, 123. In the last quotation in the paragraph, Lawson has in mind the recent experience of the Commonwealth and Protectorate parliaments, all of which insisted on remodeling the constitution in one way or another.

<sup>292</sup> Franklin, *John Locke and the Theory of Sovereignty*, 74-5, 121.

<sup>293</sup> Even according to Renan, it is not just the 'daily plebiscite' that holds a nation together, but also 'the possession in common of a rich legacy of memories. See B. Yack, 'The Myth of the Civic Nation,' *Critical Review* 10: 2 (1996), 198.

<sup>294</sup> *Politica*, 123.

<sup>295</sup> Lawson's *Politica* 'displays those attitudes which facilitated the traumatic but relatively bloodless shifts from Commonwealth to Stuart Restoration and to Williamite regime.' Condren, *George Lawson's Politica*, 37.

<sup>296</sup> Pocock, *The Ancient Constitution*, 336.

<sup>297</sup> Prall, *The Bloodless Revolution*, 3-4.

<sup>298</sup> G.M. Trevelyan, *The English Revolution 1688-1689*, (Oxford University Press, 1970), 13.

"The Cavalier Parliament stood up for parliamentary rights hardly less effectually than Pym and the rest had before."

<sup>299</sup> Greenberg, *Radical Face*, 245-6. "We can assume that by the 1660s, the language of the radical ancient constitution had become so routine that the resolutions seemed unexceptional, perhaps even conventional."

<sup>300</sup> Greenberg, *Radical Face*, 268.

<sup>301</sup> Greenberg, *Radical Face*, 262-263.

<sup>302</sup> Pocock, *The Ancient Constitution*, 152.

<sup>303</sup> "I delight in the King's grace, but will you have Magna Carta as a grace? Our petition is a petition of right, and the king is to do it in right," Coke, *Selected Works of Sir Edward Coke*, vol. III, 1267.

<sup>304</sup> Edward Cooke in *Argumentum Anti-Normannicum* mentions two texts, apart from Robert Brady's *Full and Clear Answer*, which he sought to refute: *The Law of Nations* by Fulbec Pandects, another text by "one Blackwood", probably Adam Blackwood, whose *Apologia Pro-Regibus* was first published in 1581, as I have noted above.

<sup>305</sup> Pocock, *The Ancient Constitution*, 199, 204; Greenberg, *The Radical Face*, 257.

<sup>306</sup> Not to be confused with Sir Edward Coke.

<sup>307</sup> Melinda S. Zook, *Radical Whigs and Conspiratorial Politics in late Stuart England*, (University Park, PA: University of Pennsylvania Press, 1999).

<sup>308</sup> *Argumentum Antinormannicum*, (London: Printed by John Darby, 1682), ix.

<sup>309</sup> *Argumentum Antinormannicum*, x, xvi.

<sup>310</sup> *Argumentum Antinormannicum*, xi, xvii.

<sup>311</sup> *Argumentum Antinormannicum*, xxii.

<sup>312</sup> Benedict Anderson has something to say about the emotional effect of the vernacular in his book on nationalism.

This should be part of your theory of about the connection to the past.

<sup>313</sup> *Argumentum Antinormannicum*, lxxiv-lxxv.

<sup>314</sup> *Argumentum Antinormannicum*, xxv.

<sup>315</sup> *Argumentum Antinormannicum*, xxvi, xxviii, xxx.

<sup>316</sup> *Argumentum Antinormannicum*, xlix, xxxiv, l.

<sup>317</sup> *Argumentum Antinormannicum*, xcv, clxiii.

<sup>318</sup> G.M. Trevelyan, *The English Revolution*, 51.

<sup>319</sup> Prall, *The Bloodless Revolution*, 263.

<sup>320</sup> Pocock, *The Ancient Constitution*, 229.

<sup>321</sup> Pocock, *The Ancient Constitution*, 229-230.

<sup>322</sup> Doubters should refer to Trevor Colbourn, *The Lamp of Experience. Whig History and the Intellectual Origins of the American Revolution*, (Indianapolis, IN: Liberty Fund, 1998) and see that my assertion is not to be gainsaid.

<sup>323</sup> Sidney, *Discourses Concerning Government*, (Indianapolis, IN: Liberty Fund, 1996), 465.

<sup>324</sup> Sidney, *Discourses*, 185.

<sup>325</sup> Sidney, *Discourses*, 257.

<sup>326</sup> Sidney, *Discourses*, 253.

<sup>327</sup> Sidney, *Discourses*, 17.

<sup>328</sup> Sidney, *Discourses*, 18.

<sup>329</sup> Sidney, *Discourses*, 473.

<sup>330</sup> Sidney, *Discourses*, 6.

<sup>331</sup> Sidney, *Discourses*, 559.

<sup>332</sup> Sidney, *Discourses*, 476.

<sup>333</sup> Sidney, *Discourses*, 476.

<sup>334</sup> Sidney, *Discourses*, 299.

<sup>335</sup> Sidney, *Discourses*, 573.

<sup>336</sup> Sidney, *Discourses*, 532.

<sup>337</sup> Sidney, *Discourses*, 480, 481.

<sup>338</sup> Sidney, *Discourses*, 483.

<sup>339</sup> Sidney, *Discourses*, 376-378.

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- <sup>340</sup> Sidney, *Discourses*, 377-378.  
<sup>341</sup> Sidney, *Discourses*, 440.  
<sup>342</sup> Sidney, *Discourses*, 482.  
<sup>343</sup> Sidney, *Discourses*, 530.  
<sup>344</sup> Sidney, *Discourses*, 102.  
<sup>345</sup> Sidney, *Discourses*, 564.  
<sup>346</sup> Sidney, *Discourses*, 569.  
<sup>347</sup> Sidney, *Discourses*, 531.  
<sup>348</sup> Sidney, *Discourses*, 532.

# Chapter IV – Russia

## 1. Introduction

In previous chapters, I have traced certain patterns of nationalist thinking which, I have argued, are necessary conditions for the establishment and preservation of constitutional self-government. My task in this chapter is somewhat different. Although academic opinion is never unanimous on any question, the general consensus today of scholars of democratization appears to be that Russia is not a constitutional democracy, and that present trends show it to be moving ever farther from that form of government.<sup>1</sup> Thus, part of my task is to show how nationalist thought and nationalist passion, which in my view are the only possible vehicles for constitutional self-government in the modern world, developed differently in Russia. But the other part of my task is to show how it might have been, and might still be, otherwise. Thus, I include in this chapter an examination of the writings of the Decembrists, who attempted in 1825 to establish a constitutional government in Russia by means of a military coup. The Decembrists are interesting not so much on account of their rebellion, which was a spectacular failure, but because of their alternative conception of Russian history.

In essence, this chapter considers three different stories about Russian history and the Russian national character, and three corresponding constitutional models. The first is the statist school, whose central thesis is that the Russian state was established as an autocracy (absolute monarchy), and that such an autocracy is the only form of government that has ever been able to rule the country effectively. I focus here on the account of N.M. Karamzin, for it is primarily with him that the Decembrists, and later, the Slavophiles, engage. But the statist school begins long before Karamzin and continues long after him. Many of the Muscovite tsars asserted that they possessed autocratic power, but even the most tyrannical of them, Ivan IV, acknowledged

certain customary limits to this power.<sup>2</sup> One might well say that the statist thesis begins with the writings of Tsar Peter I's chief propagandist, Feofan Prokopovich (1681-1736). Prokopovich defended absolute monarchy in a Hobbesian vein with arguments drawn from general reflections upon the nature of human beings and scripture. Like Hobbes, he makes the stark assertion that all order and community among human beings depends on obedience to an absolute monarch. This, he says, is lesson confirmed also by history in general, and Russian history in particular.<sup>3</sup>

The autocracy thesis was repeated and expanded in the works of early Russian historiographers, as Hans Rogger has shown. N.V. Tatishchev, who compiled the first comprehensive account of Russian history from ancient times to the present, incorporates the legend of the coming of the Varangians into his account of the founding of the Russian monarchy. The rule of these foreigners, by his account princes from Finland, "weighed heavily" on the Slavs, but was nonetheless to their benefit. This supports the general aim of his narrative, which, he says, is intended to demonstrate "how much more useful to our state monarchy is than all other forms, and how it increases the wealth, the power, and the glory of the state, while others diminish and ruin it."<sup>4</sup> Eighteenth century Russia's most revered scholar M.V. Lomonosov, though not partial to the Norman thesis of the founding of the Russia state, expresses complete agreement on the overarching lesson of Russian history: whereas ancient Rome had risen to glory by a republican government, "the dissidence of opinion which freedom brought to Russia almost caused her total ruin; autocracy, her strength from the beginning, restored and increased her and made her illustrious. We are confident of the welfare of our fatherland, seeing in the rule of single man the pledge of our happiness."<sup>5</sup>

If the Decembrists are known at all outside of Russia, the general perception seems to be that these were army officers who, having marched all over Europe during the Napoleonic wars,

were so mightily impressed by the benefits of Western European enlightenment that they resolved, upon returning home, to ‘Westernize’ their fatherland. This perception is only partly true. In fact, in many ways, the Decembrists have more in common with the Slavophiles and pan-Slavists of the later nineteenth century, than with the so called “Westernizers” of the same period.<sup>6</sup> The essential point for us, of course, is that, whatever they may have borrowed from Western thought and example, the Decembrists were Russian nationalists through and through. This is not to say, however, that the Decembrists were the first Russian nationalists. As in many other European nations, national sentiment in Russia ebbed and flowed throughout many centuries, animated by a great variety of irritants and aspirations.<sup>7</sup> I concern myself with the Decembrists because they are the first Russian nationalists to manifest the same basic patterns of thought and action as their early modern counterparts in the Netherlands, England, France, and other Western European nations.

The aspirations of the Decembrists to constitutional self-government were of a decidedly nationalist color. They opposed Tsar Alexander I, not only because he was autocratic, but also because he seemed in many ways to have alienated himself from his fatherland. They resented his constant grand-standing on the international stage to the neglect of the internal affairs of the Russian nation, his appointment of foreigners to government posts, and his failure to promote Russian industry. Many of the Decembrists were annoyed by the use of the French language in government. Their constitutional aspirations were a part of a broader nationalist agenda.

Like Europeans in the other nations I have considered, these Russians, moreover, thought of the project of establishing constitutionalism, and protecting liberty, as a duty owed not only to present and future generations, but also to ancestors. Russia, they were convinced, had its own traditions of limited monarchy, and even republicanism, some form of which now ought to be

*restored*. The constitutions of many ancient Russian cities, especially the city of Novgorod, they averred, had been republican in character. Even after all of Russia had been subjected to the rule of Muscovite princes, those princes still summoned *zemskie sobory*, or land assemblies, the Russian equivalent of the estates general or parliaments of Western European nations, to decide on important matters of state. This practice had ended with Peter I. Serfdom also, to which they were inalterably opposed, was, they thought, not nearly as old a practice as court historians of their time claimed. This condition had been unknown in ancient Russia, and so the abolition of serfdom also was seen as a restoration of ancient Russian liberty.

Although constitutional formulations of the Decembrists were substantially original, they drew upon symbols and stories that were already well-established in Russian literary culture as Nicolai Petro has shown. Their chief symbol was the city of Novgorod, which had purportedly enjoyed republican freedom. Since the conquest of Novgorod by Moscow, the memory of “Novgorod’s wealth, power, and fierce love of freedom” was preserved in oral poems. In the mid-eighteenth century, the Novgorod legend entered Russia’s national literature in the form of a play, A.P. Sumarkov’s “Sinav and Truvor,” (1750) which contains many allusions to the suffering of the Novgorodians under the tyranny of the Varangians, the legendary Norman founders of the Russian monarchy. The story of Vadim the Brave, a legendary Slavic nobleman who rebelled against the foreign monarchy evidently became popular enough that Empress Catherine II felt the need to disarm it. In her play *Historical Images from the Life of Ryurik* (1786), she asserted that Novgorod had been a monarchy long before the arrival the Varangians, and that Vadim was in fact not a native Slav, but a Varangian. Yakov Knyazhnin brought these claims into dispute with his tragedy *Vadim of Novgorod* (1789), portraying Vadim as a native Novgorodian, who, after failing to overthrow Ryurik in an armed coup, laments his nation’s loss

of freedom and virtue and descent into slavery under a foreign scepter.<sup>8</sup> Catherine's Senate ordered all copies of the play to be burnt by the public hangman, but the order was never carried out. These and other literary allusions to Novgorodian freedom evidently inspired the Decembrists. What is more, the symbols of ancient Russian freedom to which they appealed were well enough known to the Russian public, that, had they ever become more than a secret society, it seems entirely possible that their message could have gained wide popularity.

The final narrative is that of the Slavophiles, who might be seen to occupy a position intermediate to that of the defenders of the autocracy and that of the Decembrists. This, however, is not to say that they saw their account of Russian history and the authentic Russian constitution as a synthesis of these two extremes. The writings of the Decembrists were not available to them. Though the entire 18<sup>th</sup> century might be seen as a preparation for their cultural nationalism and their conception of the Russian national character, their account of the Russian constitution has no obvious precedents in that period.<sup>9</sup> Adopting Karamzin's thesis that the Russian Tsar, though autocratic in affairs of state, was prohibited by custom from interfering with the culture and habits of the people, the Slavophiles added to this another customary obligation, that in matters of great importance to the nation the tsar should consult with deputies of the people, and allow them full freedom to express their opinion. This customary right manifested itself in the land assemblies of Muscovy, which had only a consultative, not a legislative power, and thus preserved both the advantages of autocracy and the freedom of the nation.

This chapter concludes with an examination of the political thought of two 20<sup>th</sup> century Russian émigré writers, both of whom hoped for the eventual collapse of the Soviet regime, and offered prescriptions for Russia's post-Soviet political development. One, Ivan Ilyin, represents a

continuation of the Slavophile tradition, which is very much in vogue in Russia today, and the other, Georgii Fedotov, that of the Decembrists.

## **2. Russian Autocracy and Serfdom**

### **Autocracy and the Russian National Character in the Eyes of a Court Historian**

Before turning to a detailed examination of the political thought the Decembrists, it is necessary to consider the narratives which prompted their own reflections on Russian history and the character of the Russian nation. The most important source of absolutist narratives in the early 19<sup>th</sup> century was the work of court historian Nikolay Karamzin. In all fairness, as an historian and political thinker Karamzin himself was, to use a common Russian expression, not at all an unambiguous figure.<sup>10</sup> For example, although he consistently defended autocracy in principle, he described the reigns of some tsars as “tyrannical.” His account of the “pernicious side” of Peter I’s reign was largely derivative of earlier critiques of the founder of St. Petersburg, for instance, those of Prince Shcherbatov.<sup>11</sup> Both the Decembrists and the Slavophiles found Karamzin’s condemnation of Peter’s assault on Russian customs and manners so apt that they reiterated, generally without attribution, most of his theses in their own writings. It is therefore fitting lay out the key theses of Karamzin upon which the Decembrists and the Slavophiles drew, reformulating them each in their own way.

Peter I’s error, according to Karamzin, was that he had sought to transform Russian society wholesale, instead of introducing only those reforms which were necessary for the continued health of state and society. Apart from bringing Western arts, crafts and sciences to Russia, a worthy endeavor if carried out properly, he had attempted to purge the Russian nobility

and gentry of their national habits and customs. In doing so, said Karamzin, Peter enervated the natural patriotism of Russians and, thereby, made the foundations of the state more precarious.

Peter, he wrote,

was unable to realize that the national spirit constitutes the moral might of states, which, like physical [might], is necessary for their stability. This national spirit, together with the faith, saved Russia in the days of the Pretenders; it is nothing other than an attachment to a particular – nothing other than respect for our national dignity. By uprooting ancient customs, making them appear ridiculous and stupid, by praising and introducing foreign [ones], the sovereign of Russia humiliated Russian hearts. Does contempt for oneself predispose a man and a citizen to great deeds? Love for the fatherland is nourished by these national particularities, harmless in the eyes of the cosmopolite, beneficial in the eyes of thoughtful statesmen. Enlightenment is commendable, but in what does it consist? In the knowledge of things that bring prosperity: arts, crafts and sciences have no other value. The Russian dress, food, and beard did not hinder the founding of schools... Two states may stand on the same level of civil enlightenment although their customs differ. One state may borrow from another useful knowledge without borrowing its customs.

Thus, in one respect, Peter was guilty of an error in judgment, which a more thoughtful statesman would never make. A Russian Tsar could successfully introduce Western arts, crafts and sciences to his nation, as previous Tsars had done, without laying violent hands on the customs and manners of the people, the national particularities which were the ultimate source of the affections Russians had for each other and their common fatherland, the inspiration for their contributions and sacrifices to the common good.

But Peter was guilty of more than poor judgment. In attacking Russian customs and manners, he had in fact exceeded his legitimate authority as the sovereign of Russia:

These customs may change naturally, but to prescribe statutes for them is [an act of] violence, illegal even for an autocratic monarch. The people, in their original covenant with their kings, had told them: "Guard our safety abroad and at home, punish criminals, sacrifice a part to save the whole." They had not said: "fight the innocent inclinations and tastes of our domestic life."<sup>12</sup>

On Karamzin's account, autocratic monarchs in Russia were bound by an original covenant, concluded between their ancestors the Rurikid princes and the ancient Slavs from whom the Russian people were descended. Russian tsars had absolute authority in foreign policy and the administration of justice at home, but their authority did not extend to the domestic customs and habits of the people.

Peter also eliminated two ancient institutions which had played an important role in the government of the realm. He abolished the title of *Boyar* (Noble) and eliminated the council in which the Nobility assembled to advise the Tsar, the *Boyarskaya Duma*. He also eliminated the Patriarchate, perceiving in it a threat to unlimited autocracy, and declared himself head of the Russian Church. Karamzin did not assert that either of these reforms was illegal, nor did he advocate the restoration of the Boyarskaya Duma and the Patriarchate. But he thought these changes "needless" and harmful in their effects. The Nobility, he said, "never had been anything other than a brotherhood of outstanding men serving the grand princes or tsars."<sup>13</sup> The Church had never contended with the grand princes or tsars for power:

it served [authority] as a useful tool in state affairs and as its conscience in its occasional departures from virtue. Our primates had one right: not to act, not to rebel, but to preach the truth to the sovereigns, – a right which carries blessings not only for the people, but also for the monarch whose happiness consists in justice.<sup>14</sup>

At most then, the Patriarch had exercised moral restraint on tsars when they left the path of virtue, which was a benefit to both tsar and people. The old Nobility had provided counsel and service. Both the Patriarchate and the Boyar Duma had served the nation well. They were loyal to the Tsar, but their independence was the foundation of their virtue and honor. The post-Petrine dependence of the clergy and gentry on the crown, as well as the cultural deracination of the gentry, ensured that both classes would be filled with sycophants and xenophiles, rendering them

less useful as servants to the state, and less able to inspire the common people to acts of virtue and humility, the nobility by displays of magnanimity, the clergy by its sacred character.

All of these elements of Russian liberty from Karamzin's account—the independence of nobility and clergy, the right of the Patriarch to “preach the truth” to the tsar when he strayed from virtue, and the right of the people not to have their customs and manners meddled with by the state—were of great interest to both the Decembrists and the Slavophiles. As I have said, both drew on these arguments often without crediting their source. However, the general tenor of Karamzin's historical works went against liberty. What is more, though he ascribed certain limited customary rights and freedoms to the Russian people, he categorically denied that they had any right to resist the tsar in the event that he should violate these freedoms. For these reasons, the Decembrists in particular usually treated him as an enemy.

The main thesis of Karamzin's advice to Tsar Alexander I, *Note on Ancient and Modern Russia* (1811), and a pervading theme of his 12 volume *History of the Russian State* (1816), was that autocracy was Russia's only indispensable institution. As much as Karamzin criticized Peter I, he never questioned autocracy in principle. With Peter's evisceration of Russia's only other centers of authority, the Patriarchate and the independent Nobility, “autocracy,” concluded Karamzin, “became more essential than ever for the preservation of order.”<sup>15</sup>

Karamzin stated his claim most succinctly in the *Note on Ancient and Modern Russia*: “Russia was founded by conquests and monarchy, perished from polyarchy, and was saved by wise autocracy.”<sup>16</sup> In this work, and in his *History*, he provided evidence for this claim from the beginnings of the Russian state in the 9<sup>th</sup> century to the interregnum and “time of troubles” of the early 17<sup>th</sup> century. He repeated, with certain embellishments of his own, the then well-established Norman myth about the founding of the Russian state in 862 AD. According to this

story, the ancient Slavic tribes of that era had been unable to govern themselves effectively, and therefore called upon Scandinavian princes to rule over them and provide them with order.

Karamzin emphasized the savageness of the ancient Slavs, the absence of useful arts, industry and trade among them. Before the Norman Conquest, Russia, he averred, had been a “multitude of weak, quarrelling democratic states.” The Norman princes, “brave and redoubtable conquerors” that they were, introduced arts and trade to the Slavs, but more importantly, they established monarchy (*edinovlastie*), which soon proved indispensable to the maintenance of peace, stability and prosperity.<sup>17</sup>

In *History of the Russian State*, Karamzin singled out Novgorod for criticism on several occasions. He noted that this city in particular had resisted early Norman rule and persisted in its wild Slavic freedom longer than others. The local nobility managed to whip the common people into a frenzy, and with the help of the mob, drove the Normans out. But this action resulted in nothing good for the people. The nobles soon fell to contending with each other for power and the city descended into anarchy. In the end, he said, “exhausted by internecine conflicts”, weary of the “horrors of anarchy”, the Novgorodians had remembered “profitable and peaceful Norman rule: the need for good order and quiet commanded them to forget their national pride.”<sup>18</sup>

Speaking of ancient Russia as a whole, Karamzin argued that the nation continued prosperous as long as the monarchy, established by the Norman conquest, remained strong. Unfortunately, Russia failed to “protect herself from the common political plague of that time, communicated to Europe by the Germanic peoples: I speak of the appanage system.”<sup>19</sup> The introduction of this decentralized form of rule, in which each prince had essentially his own fiefdom, led to disastrous internal squabbles, and left Russia vulnerable to her external enemies.

These evils followed directly from the disintegration of the monarchy. First, the appanage princes began to contend with each other for power, and then the people, losing respect for their “weak” princes, attempted to restore their republican institutions, especially the popular assembly (*narodnoe veche*), and to lord it over their princes. By Karamzin’s account, these republican institutions “had not prevented Oleg, Vladimir, or Yaroslav from ruling Russia autocratically.”<sup>20</sup> Under the appanage system, however, the local princes were not strong enough to restrain “popular impetuosity.” In these conditions, then, the *veche* could actually exercise supreme legislative power, and even depose princes. According to Karamzin “this spirit of license” was to blame for the conquest of Russia by the Mongols. In short, Russia’s experimentation with decentralized and democratic rule had been nothing less than a calamity.

The grand princes of Moscow saved Russia by establishing autocracy on firmer foundations than those that had existed in the period of the first Russian monarchy. And this autocracy “took root” among the people. Wrote Karamzin,

No one apart from the monarch could either judge or make grants; all authority was derived from that of the monarch. One’s life and estate depended on the arbitrary will of the tsars, and the title of tsar’s servitor replaced the titles of prince and boyar as the highest in the land. The people, delivered by the princes of Moscow from the calamities of internecine strife and the foreign yoke, felt no regrets for the ancient *veche*, or the officials who used to restrain the sovereign’s authority; satisfied with the uses of authority, the people did not argue about rights. Only the boyars, who had been magnificent in their appanage domains, grumbled at the severity of autocracy...<sup>21</sup>

Autocracy, the force that had first brought prosperity to Russia, and had delivered it from the Mongols, was accepted by the people. Only the boyars were initially dissatisfied with the new order, and they, on Karamzin’s account, did no more than grumble.

As proof that autocracy had taken root in Russia, Karamzin emphasized the passivity of the Russian people when faced with the tyranny of the later years of Tsar Ivan IV’s reign:

The boyars and the people, deep in their hearts not daring to plot anything against the monarch, merely prayed humbly that the Lord would calm the tsar's fury, this scourge for their sins! Except for the villains known to history as the Oprichniks, all those who were eminent by virtue of their wealth or office prepared themselves for death, and took no steps to save their lives! What a memorable time and disposition! At no other place and time has such awe-inspiring autocracy presented such cruel temptations for national virtue, loyalty or obedience; yet this virtue did not even hesitate in choosing between death and resistance.<sup>22</sup>

According to Karamzin, the nonresistance of the nobility and people to the tyranny of Ivan IV was a sign of their special character and their virtue as a nation. Provoked by the cruelest torments, they did not undertake any action against their autocrat, for they saw his actions as a punishment sent from on high, and, moreover, they evidently had learned from the historical experience of their nation that "arbitrary dispensations of justice by the people can be more harmful to civil societies than the personal injustices or aberrations of the sovereign."<sup>23</sup>

In his account of the time of troubles, Karamzin made a point of castigating Vasilii Shuiskiy for his experimentation with limited monarchy. Upon ascending to the throne, Shuiskiy "solemnly betrayed autocracy by swearing to execute no one, to deprive no one of his estate, and not to declare war without the assent of the Boyar Duma." This attempt to constrain the authority of the sovereign led to predictable consequences: "The boyars saw the semimonarch as their own handy-work, and wanted, so to speak, to perpetuate this state of affairs, restricting his authority more and more."<sup>24</sup> Shuiskiy was thus unable to govern effectively and was soon deposed. An attempt at collective leadership by the boyars followed Shuiskiy's ill-fated experiment with limited monarchy. This too soon failed, and the disorder continued.

Russia's time of troubles came to an end only after the nation returned to the one form of government that had allowed it to prosper throughout its history, autocracy. Said Karamzin, "the sorrows caused by the rebellious aristocracy had enlightened the citizens as well as the aristocrats themselves. Both unanimously, in voice and in spirit, proclaimed Mikhail [Romanov]

an autocrat, an unlimited monarch; both, fired with love for the fatherland, exclaimed merely ‘God and the Sovereign.’” History had taught both nobility and people that autocracy was the only form of government suitable to their national character and their circumstances. It was a lesson that Russians today must not forget. Whereas democracy and various forms of polyarchy had brought Russia nothing but the calamities of internecine strife and the horrors of the foreign yoke, “autocracy founded and resurrected Russia.”<sup>25</sup> Therefore, the absolute power of the tsars was under no circumstances to be made subject to any formal, legal restrictions, and the people were not to deceive themselves that they had a right to resist the tsar, even if he should exceed his legitimate authority as Peter I had done, or pursue any other unjust or aberrant policy.

#### **Karamzin on Serfdom**

Karamzin never claimed that Russian serfdom was as ancient as Russian autocracy, though other historians of the period did. Serfdom as it existed in his time, he acknowledged, was only about 200 years old. He praised Boris Godunov, then regent to Tsar Feodor Ivanovich, for introducing the practice in 1597: "the well-intentioned lawgiver eliminated the free movement of peasants without doubt desiring good not only for the landowners, but also for the country workers, desiring to declare between them a permanent union, as if familial, founded on the unity of profit, on general mutual well-being"<sup>26</sup> Freedom of movement had been detrimental to the peasants, because, Karamzin said, they would constantly move from one landowner to another. As a consequence, neither the owners nor the peasants could count on one another, which resulted in a much more exploitative relationship. It was often the case, said Karamzin, that free peasants worked for themselves only two days a week, far worse than the average for enserfed peasants.<sup>27</sup> On Karamzin’s account, then, the personal freedom of the Russian peasants had been

as detrimental to themselves and the landowners as the political freedom of nobility and people had been to the inhabitants of some ancient Russian cities.

### **3. The Political Vision of the Decembrists**

#### **Decembrist nationalism: political, economic and cultural**

In the following section I shall consider in detail how the Decembrists refuted the lessons Karamzin had drawn from Russian history. But first, I must show, as I have in the other chapters, that the liberty agenda did not appear by itself, but was accompanied by other nationalist passions. I turn therefore, to some of the transcripts of the interrogations and the memoirs of the Decembrists, in which they explained their motivations.

The Decembrists had many specific grievances against Tsar Alexander I. But taken together, the actions of the autocrat amounted to treason, for in their view, the Tsar seemed to be advancing the cause of foreigners, both at home and abroad, rather than promoting the interests of Russians. In his memoirs I. D. Yakushkin documented the process of estrangement between himself and other future Decembrists and Tsar Alexander I. At the conclusion of the war with Napoleon in 1813, wrote Yakushkin, “Emperor Alexander ceased to be Tsar of Russia and turned into the Emperor of Europe.” Yakushkin put particular emphasis on the mercy Alexander had shown France. While all the allies had desired to fall upon France like a pack of wolves, Alexander had “saved her; had even allowed her to choose what form of government she thought suitable... and had imposed upon Louis XVIII an irrevocable duty to grant his people rights.”<sup>28</sup>

Soon rumors spread containing instances of the Tsar’s “contempt” for the Russian people. For example, at a meeting with the Duke of Wellington, who had praised the Russian army, Alexander had supposedly replied that he was, in that case, beholden to the “foreigners

who served under him.” He had also supposedly been heard to say that every Russian was “either a cheat or a fool.” In 1815, continued Yakushkin, he had handed over the government of Russia to a favorite, Count Arakcheev, so that he could attend to European affairs. Said Yakushkin, “His soul was in Europe; in Russia he was concerned more than anything else about increasing the size of the army.”<sup>29</sup> In pursuance of the latter end, the Tsar proceeded to establish “military settlements” throughout the country, a very unpopular policy which moved peasants from their existing habitations to military bases where they were to perform agricultural labor for the state and train for war at the same time. The introduction of military settlements occasioned fierce resistance from the peasantry which was put down by force. Comparing the Tsar’s activities at home and abroad, Yakushkin concluded “Emperor Alexander in Europe was a protector and almost a coryphaeus of liberals [but] in Russia was not only cruel, but what is worse, a senseless despot.”<sup>30</sup>

M.A. Fonvizin added to this narrative in his own memoirs. He surmised that Tsar Alexander had introduced the military settlements so that he could be “first in Europe” in military might at the lowest cost to state revenue.<sup>31</sup> On Fonvizin’s account, Tsar Alexander I had begun his reign well, but the war with Napoleon had altered him much for the worse. “Ambitious desires for military glory entered the heart of the young emperor: claims for playing a leading role in the political system of Europe.”<sup>32</sup> Having achieved such status as an outcome of the war, Alexander had abandoned his own people in favor of foreigners. Continued Fonvizin, “The obvious preference given by the emperor to all manner of foreigners before his subjects offended Russians, for whom he did not conceal his own disrespect.”<sup>33</sup> Fonvizin noted Alexander’s gifts to Finland early in his reign, and to Poland after the war. Though annexed to the Russian empire, the Finns had been permitted to keep those native privileges of self-government which they had

enjoyed under the King of Sweden.<sup>34</sup> To Poland he “granted constitutional establishments of which he considered Russia unworthy.”<sup>35</sup>

P.G. Kakhovsky, one of the five Decembrists ultimately hanged for their part in the violent, but abortive uprising of 14 December 1825, expressed his outrage at the disrespect of Russians by their tsars in series of letters addressed to Tsar Nicholas I from his prison cell in the Peter and Paul Fortress. “How long it has been,” he declared “since we Russians dared to pronounce the word ‘fatherland’; in the reign of Paul I, it was forbidden,—the word ‘state’ replaced it, and Colonel Tarasov, unaware of the prohibition, mentioned it in a letter to the emperor, fatherland,—sat in the fortress for it.”<sup>36</sup> Alexander I, succeeding his father to the throne, had “killed our hopes and our national pride. It is painful for Russians not to have a nation, and to invest everything in the Tsar alone.”<sup>37</sup>

“A monarch,” declared Kakhovsky, “ought to be a father of the fatherland.”<sup>38</sup> But Alexander had not been father of the Russian nation, for he had been too busy playing Emperor of Europe, in which role he ceded Russian interests to foreign nations. “What profit did [the Tsar’s] visits to the Congresses [of Europe] bring us?” he demanded to know. “Anything beside the export of our money from the fatherland?”<sup>39</sup> Alexander, Kakhovsky insisted, had sacrificed Russian prosperity and prestige not only to foreigners abroad, but also to foreigners living in Russia. “Foreign and domestic trade has been ruined by oppression, monopolies and private tariffs. Our capitalists have gone bankrupt, and what trade remains has gone into the hands of foreigners.”<sup>40</sup> Equally lamentable, affirmed Kakhovsky, was the Tsar’s reliance on foreigners in government service. He referred to one instance that had apparently impressed itself upon his mind. The Corps of Engineers for Water Transport, he said, had been filled with foreigners on government salaries, but

there is little profit from them, or, I should say, none at all. All the work is done by Russian engineers... [The foreigners] are good theoreticians, but what hinders you from sending our Russian young officers to sail? They could observe the work, learn, and be an asset to the fatherland... As a devoted son of the fatherland it is pardonable for me to hope that eventually Russians should be found to fill all the government places which now are held by foreigners. It is very natural that such a preponderance offends the ambition of Russians, and that the people lose faith in the government.<sup>41</sup>

The “preponderance” of foreigners in the government, especially in high government posts, and the problem of foreign influence generally, was a very emotive question for the Decembrists. Count Dmitriev-Mamonov went well beyond the moderate proposal of Kakhovsky to replace over time all foreigners in government service with Russians. In his prescriptions for the reform of the Russian government Dmitriev-Mamonov called for “depriving foreigners of any influence on government affairs” and “the final downfall, and if possible, the death of foreigners occupying government posts.”<sup>42</sup> Other Decembrists proposed constitutional prescriptions to prevent the Tsar from being captured by foreign influences. N.M. Murav’ev in his *Constitutional Project* reasoned as follows: “while distant from the Fatherland, the emperor very well may follow the convictions of foreign flatterers and become the instrument of their evil designs; therefore, the emperor must on no account have the right to depart from the borders of the Fatherland, even to the overseas possessions of the Fatherland.”<sup>43</sup>

The Decembrists were animated not only by the favoritism of their Tsar toward foreign nations and foreign persons, but also by the influence of foreign culture. Language was an especially important consideration for them. For instance, N.I. Kutuzov wrote “Foreigners, in order to reign over our minds, attempt to engender coldness and contempt for our ancestral tongue. Language includes within itself everything that joins man with society; the smallest nuances speak powerfully to the heart of the patriot and are alien to the foreign slave.” In their personal correspondence, some declaimed against the habit of much of the gentry and

government officials to speak and write in French. Several of the Decembrists, moreover, followed in the footsteps of Russian Academy president A.S. Shishkov, formulating plans to purge the Russian language of foreign borrowings.<sup>44</sup> It is also reported that, like many of the Slavophiles of a later period, some Decembrists made a point of adopting old Russian styles of dress, including full beards, which Peter I had forced his noblemen and gentlemen to shave off, and rejecting Western European cuisine in favor of native foods.<sup>45</sup>

#### **The ancient liberties and the ancient constitutions of Russia**

As I have indicated above, one of the grievances of the Decembrists against the Tsar was that he had granted constitutional rights to other nations, some within the Russian Empire, others without, but had declined to grant such rights to his own people. But for the Decembrists this was not so much a question of equity and fairness, or of certain allegedly “self-evident truths” about humanity. It was not even a question of broken promises, though many of the Decembrist writings did mention, some in very bitter tones, the widely known conversation supposed to have taken place between Alexander I and Madame de Stael, in which the tsar had said “I have not managed yet to grant Russia a constitution.”<sup>46</sup> Most important of all was the Decembrist belief that Russia merited a constitution because the Russian nation was as fit for liberty as any other European nation, and it was the chronicles of their ancestors that convinced them of this.

This does not mean that their interpretation of Russian history was correct according to 20<sup>th</sup> century standards of historiography, any more than the interpretations of Dutch or English advocates of liberty of their own national histories had been. The Decembrists were certainly aware of the kinds of historical arguments that Western Europeans had made, and no doubt learned from them, just as Dutch, English and French writers had learned from each other.<sup>47</sup> But

there is no evidence that they were consciously engaged in myth-making, any more than earlier Western European authors had been.<sup>48</sup> It appears they believed what they wrote, and considered pro-autocracy Russian historiography to be genuinely false. For example, N.M. Murav'ev responded as follows to the opinion of the French historian Rulhière that Russia had been an absolute monarchy from the beginning: “Ryurik, Oleg, Igor’, Svyatoslav—absolute sovereigns? Ignoramus!”<sup>49</sup>

The most comprehensive affirmations of the ancient freedom of the Slavs, and the ancient Russian constitution are found in two texts, N.M. Murav'ev's historical notes to M.S. Lunin's *Examination of the Report of the Secret Investigatory Commission to the Sovereign-Emperor in 1826*<sup>50</sup> and M.A. Fonvizin's *Review of the Manifestions of Political Life in Russia*.<sup>51</sup> In the following I shall focus, in the main, on these texts. But I shall fill in the gaps in these accounts from other sources on the supposition that, had the Decembrist movement not been stopped short by the spectacular failure of the uprising of 1825, its members surely would have formulated, like other Europeans had, more complete genealogies of their ancestral liberties and institutions.

Neither of the two main texts specifically mentioned Karamzin's Norman thesis, that the wild and benighted ancient Slavs had been brought to order and civilization by conquering Normans, who had established themselves from the beginning as absolute monarchs. But in their various unfinished papers, many Decembrists directly refuted this claim. For instance, N.M. Murav'ev in his unfinished *Note on Karamzin's History*, sketched an account of the ancient Slavs as a courageous people who had won and maintained their freedom against terrible odds. He left notes for himself to “mention the wars of the Slavs on the Danube. Their greatness of soul [that of the Slavs] is not pretense like that of the Avars [a Turkic tribe]. They [the Slavs] fought successfully without a main chief.”<sup>52</sup> The Slavs, he recounted, had always been

surrounded by innumerable enemies, and thus built their settlements in such a way that, when outnumbered by invaders, they could easily escape and hide their valuables and their food from the enemy. “Such a people,” he declared, “must have remained free and independent!” The Slavic people, he said, the most ancient ancestors of Russians, was ignorant and unlettered, socially and politically primitive, yet “great in soul and enterprising; possessed within itself all the qualities of a master—a wondrous aspiration to greatness.” Several other tribes had tried to destroy them, worst of all, the Mongols. “They withstood them all, and, rising above all in moral strength, the Slavs at last annihilated their oppressors. They were annihilated in Northern Germany, conquered in Bohemia, Moravia, Illyria and Serbia, but those who remained formed the Russian people!”<sup>53</sup> The courageous, freedom-loving Slavs had carved out territory for themselves in Russia, and there they had withstood all invaders and maintained their independence and their ancient customs and laws which they had struggled so long to preserve. Karamzin’s account of the autocracy of the Norman princes, then, was not to be credited. If the Slavs had indeed summoned these princes, it was so that the latter might “rule them according to right, i.e. govern them according to laws.”<sup>54</sup> Other Decembrists refuted Karamzin’s thesis in other ways.<sup>55</sup>

As I have already suggested, the ancient city of Novgorod became the most prominent symbol of the ancient liberties of Russians in the Decembrist writings. The distinguishing characteristic of this city, they believed, was its republican form of government, in which the affairs of the city were decided by a “popular assembly” (*narodnoe veche*) composed of nobility, clergy, merchants and commoners. The assemblies were summoned by the famous “assembly bell” (*vechevoi kolokol*). Karamzin had dismissed this legacy by describing Novgorod as disorderly and violent, its insistence on self-rule bringing more harm than good. But Decembrists

refuted this claim with allusions to Novgorod's military prowess and material prosperity. Count Dmitriev-Mamonov, for instance, pointed out that "the Novgorodians anciently and during their [period of] republican rule had colonies in Ladoga by the Baltic Sea."<sup>56</sup> The ability to maintain colonies was evidence not only of their martial prowess, but also their material wealth, which was based primarily on trade.<sup>57</sup>

The most important thing about Novgorod as a symbol, however, was that it represented, in the Decembrist view, the way all of Russia had been before a certain point in history. The two main despotic institutions, to which they imputed most of Russia's present ills, autocracy and serfdom, had arisen relatively late in Russian history, and could on no account be proven to have been in existence from the beginning. I have already given the year in which serfdom was formally instituted. According to N.M. Murav'ev "in the charters of [Tsar Vasiliy] Shuiskii we find for the first time the word *autocrat* [*samoderzhets*] in imitation of the Byzantines."<sup>58</sup> Before 1605 or so, then, the word *autocrat*, signifying an absolute prince, had not been a regular usage.<sup>59</sup> What is more, as Murav'ev pointed out, it was of foreign origin, borrowed from the Byzantines, among whom the monarch was styled "emperor" (in Greek *autokrator*). But even more importantly, the form of government then prevalent in Russia could not be squared with autocracy.

Murav'ev explained in some detail the type of government that had existed in this earlier period, and its consequences:

Popular assemblies, which had arisen throughout Russia, could not be compatible with autocracy. The assembly bell went silent only in 1570 (in Pskov). Elected magistrates were found throughout Russia, and even in Moscow before Dmitry Donskoi. The republics of Novgorod and Pskov continued round about six centuries (those of Khlynov and Vyatka about three). The latter yielded to an army of sixty thousand. Power, wealth, trade, population—disappeared together with liberty. This disproves the baseless opinion that the Russian people is not able, like others, to be master of its own

affairs. The saying “Novgorod the Great is our sovereign” bears witness that the idea of popular sovereignty was not alien to Russia.<sup>60</sup>

In Murav’ev’s view, then, republicanism had been the most common form of government in Russia for many centuries, and the consequences of this republican freedom had been power, wealth, trade and increase of population. This proved not only that Russians had had self-government, but also that they had governed themselves *successfully*. The introduction of autocracy had robbed Russians of these advantages. In this account, as in the others, Novgorod remained the most important symbol. As the old saying confirmed, Novgorodians had not been the subjects of any sovereign prince; rather, they themselves, as a body, had been sovereign.

In one of his pamphlets, a dialogue written with a view to popularizing the Decembrist political ideology, Murav’ev provided a sketch of the ancient Russian popular assemblies:

In each city at the sound of the assembly bell gathered the people, or representatives; they consulted about affairs common to them all; proposed demands, formulated laws, appointed how many soldiers to get, and where to get them; by common consent imposed taxes; ordered their deputies to their law-court, whenever they robbed or oppressed the residents. Such assemblies were in Kiev on Podol, in Novgorod, in Pskov, Vladimir, Suzdal’ and in Moscow.<sup>61</sup>

The city assemblies, then, possessed all the powers of sovereignty. Murav’ev’, moreover, emphasized the power of the assemblies to try their appointed deputies should they abuse their power. For, he affirmed, “our ancestors said ‘we shall seek ourselves a prince, who will govern according to law, and not according to arbitrariness, self-will, and caprice.’”<sup>62</sup> Thus it had been in Novgorod, where princes and archbishops, both of whom exercised executive functions, were elected and dismissed by the popular assembly.

The cities of Russia had enjoyed republican freedom for many centuries before the last assembly bell ceased to ring. What, then, explained the decline of this freedom? According to Murav’ev, “the grand princes of Moscow, like those of Kiev and Suzdal’ before them, aspired to

monarchy, which eventually they mixed with absolute monarchy or autocracy.”<sup>63</sup> The drive to consolidate the Russian regions under one monarchy was not bad itself, but the trouble was that the Muscovite Tsars increasingly aspired to autocracy rather than a limited monarchy. And this aspiration to autocracy, as Murav’ev and other Decembrists insisted, was at its foundation inspired by an unhealthy admiration of foreign customs. Murav’ev noted that the term *autocrat* itself was borrowed from the Byzantines. But, as he wrote in his pamphlet, the actual practice had been learnt from Russia’s enemies, the Tatars, who had conquered much of Russia for a time, and the Turks: “the sovereigns little by little, by all manner of deceit, arrogated to themselves unlimited power, imitating the Tatar Khans and the Turkish Sultan.”<sup>64</sup> Autocracy was thus not only a foreign form of rule, but precisely that form of rule to which Russians and other Slavic nations had been subjected by foreign conquerors, the Tatars and the Turks.

But Russian liberty had not been so easily subdued. Though the Muscovite Tsars had aspired to rule Russia as the Tatar conquerors had, they never achieved this. As Murav’ev put it, the Muscovite Tsars “acknowledged the right of the people to participate in law-making.”<sup>65</sup> Throughout the Muscovite period, there was an established way of providing for such participation. Muscovite Tsars generally sought the advice of the Council of the Nobility (*Boyarskaya Duma*), and to examine matters of great weight to the whole nation, such as waging war or altering the laws, they periodically summoned a Council of the Land (*Zemskaya Duma*). During his reign, noted Murav’ev, Tsar Ivan the Dread<sup>66</sup> had summoned three such Councils of the Land. He sent out his first writ of summons in 1549, and his second a year later. The second Land Assembly was charged with “consideration and confirmation of the laws he had proposed, and the establishment everywhere of trial by jury after the custom of Novgorod.”<sup>67</sup> Ivan summoned his third Council of the Land in 1556 to ask the advice of his subjects on whether to

make peace or wage war with the Polish King Sigismund. The Council, said Murav'ev, was composed of members of the "clergy, nobility, gentry of the first and second rank, merchants, and landowners from other cities, to the number of 399."<sup>68</sup>

During both of the interregnums of this roughly 200 year period, the Council of the Land was summoned by the Council of the Nobility "for the election of a Tsar." The Land Council that elected Boris Godunov in 1598 was composed "apart from high clergy and nobility, no less than 500 representatives. Vasily Shuiskii, however, "ascended to the throne hastily according to the wish of the nobles and residents of Moscow. He was not, like Godunov, elected by the *Great Land Council*. Many thereafter did not consider him the lawful tsar, which hastened his overthrow."<sup>69</sup> Only a full assembly of the land, as a representative of nation, then, had the authority to elect a new tsar. The interregnum also revealed the importance of the Council of All the Land in making laws: "Summoning Vladislav to the throne, the Russians declared that correction and amendment of the *Sudebnik* [the laws of the land] must depend: 1) on the sovereign; 2) on the Council of the Nobility; 3) on the Land Council. Through this they expressed that they considered the participation of the people in legislation to be a necessary stipulation."<sup>70</sup>

After the Time of Troubles (1600-1613), and the election of Mikhail by the Council of the Land as Tsar, the Council of the Nobility acquired a regular role in the day to day governance of the nation. According to Murav'ev, "All declarations of Sovereign executive and judicial authority began with the words 'the nobles have resolved, and the Tsar has commanded.'" Moreover, for the resolution of matters of great import, full Councils of the Land continued to be summoned:

Matters of foreign policy, war with Poland, the annexation of Azov by the Cossacks, the taking of Little Russia under the protection of Russia, the introduction of the Charter,

the elimination of *mestnichestvo*<sup>71</sup>—all of these questions in a succession of three reigns (Mikhail, Aleksei, Feodor) were examined in the Councils of the State [i.e. the same Councils of the Land] by representatives of the whole of Russia.<sup>72</sup>

Autocracy, then, as a practice was never realized in Muscovite Russia. The sovereign law-making power of the nation was shared by the Tsar, the Council of the Nobility, the Ecclesiastical Council, and the Council of the Land, which included representatives from the throughout the country.

Murav'ev insisted that the arbitrariness of Ivan the Dread in the latter part of his reign had not been a manifestation of autocracy. Admittedly, the Tsar had caused subjects to be killed without formal charge or trial “according to his own whim,” but this was “tyranny, and not autocracy”, and, contrary to Karamzin’s claim about the passivity of the Russian people, tyrannical rule in Muscovite Russia was met with resistance. The most sustained resistance to Ivan IV’s tyranny came from clerics. As Murav’ev wrote

Christian teaching does not permit anything unrestrained in man. Relying upon the word of truth, the clergy checked the stormy gusts of authority. Father Silvester, prelates, holy fools resisted the furious ruler. Ivan wanted to force Moscow to accept his right to hand down arbitrary punishments, without appeals from the clergy. But St. Philip rose for the sake of innocent blood, and perished, resisting the administrative police (*oprichnina*) and defending Novgorod. Nikolay the Holy Fool saved Pskov in 1570.<sup>73</sup>

All of this showed that, contrary to Karamzin’s account, tyranny was not simply endured by Russians of this period. Moreover, the clergy was not limited, *pace* Karamzin, to “preaching the truth” to the tsar. Rather high clergymen were within their rights according to divine law and Russian custom to resist the tsar actively, and when provoked by grave injustices, they did so. The Church served as an important check on the authority of the Tsar.

In summation then, the Muscovite period boasted two foundations of national authority apart from the Tsar: “*first*, the assembly of representatives, under the title of Council of the

Land... which could have become a parliament if its meetings had been periodic at set times, the sphere of its activities defined, and internal organization placed upon sensible foundations necessary for a legislative assembly. The second foundation was the clergy of the time.”<sup>74</sup> But Peter I, disdaining any institution independent of his own power, eliminated both the Councils of the Land and the independence of the Church in the course of his reign. It was here, then, on Murav’ev’s account, that the ties to ancient Slavic liberty had been finally severed.

M.A. Fonvizin’s *Review of the Manifestions of Political Life in Russia* told a similar story about the ancient liberties of Russians. On the first page Fonvizin presented his work as a commentary on a 5-volume French *History of Russia* by Esneaux and Chennehot, which he had found to be generally free of the hostility most Western European historians harboured for Russia, though lacking in many respects because of its authors’ ignorance of the Russian language and Russian historical documents. But after the first few pages all mention of the Esneaux and Chennehot ceases and Fonvizin tells his own story about Russia’s past. In one respect at least he thought these French authors had been correct, that is, in pointing out that

in the middle ages, Russians were at a higher level of civilization than the rest of Europe—obviously before the Mongol invasion—that the ancient republics of Novgorod, Pskov and Vyatka enjoyed political freedom—that in other regions of Russia the people had stood for their rights when the power of princes threatened them, that municipal institutions and freedoms were in ancient Russia in full strength while Western Europe remained under the yoke of feudalism.<sup>75</sup>

There had been a time, then, when Russia had been not only free and prosperous, but more so even than Western Europe. “Impartial history,” he averred, bore witness, “that ancient Russia knew neither political nor civil slavery”—that is, neither autocracy nor serfdom—and that “both the one and the other took root in her gradually and by force as a consequence of unfortunate circumstances.”<sup>76</sup> But this gradual loss of freedom was reversible, for “the spirit of freedom is

alive in peoples whom it has at one time animated.”<sup>77</sup> If the Russian people had once been free, they could become free again by awakening in themselves the spirit of their ancestors.

Fonvizin began his account with the ancient Slavic tribes who were, he said, much like their neighbors, the ancient Germanic tribes, “half-savage, but free, and in the social custom of the Slavs predominated a democratic-communal element.”<sup>78</sup> This love of freedom native to the early Slavic tribes formed the basis of the democratic and commercial spirit and institutions of the ancient free cities of Novgorod, Pskov and Vyatka. Three things distinguished these cities: their independence, their democratic institutions, and their prosperity. Novgorod was the most prosperous of them all. Novgorodians traded with Germans in the West, and Asians in the East. In time, “brave teams of Novgorodian hunters and craftsmen” managed to “conquer” Northern Russia “up to the stone belt.” Novgorod’s freedom went hand in hand with the bravery and prosperity of its people.<sup>79</sup>

Fonvizin wrote at length of the popular assembly, in which the legislative power of ancient Russian cities was vested, and the elective character of all major executive offices:

The saying frequently mentioned in the chronicles ‘Novgorod the great is our Sovereign!’ is no fiction, rather it shows clearly that the source of all power was then in the people, who gathered in assembly at the summons of the famous assembly bell for the consideration of their common affairs. All leaders of the community: the mayors, city militia commanders, nobles, leaders of the army, even the archbishops of Novgorod were elected by the popular assembly which possessed the totality of legislative power. Novgorodian princes, always drawn from the descendants of Riurik, and also replaced by the assembly, were only the executives of its [the assembly’s] determinations. A similar municipal constitution existed in Pskov and Khlynov, which at first depended on Novgorod. In the latter, there were no princes. But in other regions of ancient Russia in which both grand and local princes of the Riurik dynasty ruled, the municipal constitution was preserved for a long time. In all ancient cities popular assemblies gathered for the consideration of their common affairs—often by order of the assembly princes were themselves expelled and in their place others were summoned to rule, and the assembly acted entirely at its own will. This was so in Kiev, Chernigov, Galich,—even in Vladimir and Klyaz’m, Rostov and elsewhere. The mayors, city militia commanders and church elders everywhere were elected by the people.<sup>80</sup>

Like Murav'ev, then, Fonvizin saw the saying "Novgorod the great is our Sovereign" as an affirmation of the principle of popular sovereignty. The legislative power of the community in Novgorod and other mediaeval Russian cities was vested entirely in a popular assembly composed of deputies from all social classes. Moreover, all officials exercising executive powers were elected by this same assembly, and held accountable to it. Though princes were drawn only from the descendants of Riurik, they could not exercise authority in a Russian city without the assent of the popular assembly, and if they exceeded their authority, they could be deposed. Such was the liberty of Russians before the invasion of the Mongol Horde.

The Mongol invasion was devastating not only because of the immediate destruction it caused to most of Russia, but also because it altered the character of Russian princes: "Russian princes truckled to the Horde; they returned thence as dread, severe masters and took out their humiliation on their subjects."<sup>81</sup> Forced to kowtow to their Asiatic masters, Russian rulers came to demand the same obsequiousness from their own people. The Mongol invasion also had the indirect consequence of centralizing political power in Russia. Ivan Kalita rose to prominence as a collector of tribute for the Horde. The privilege granted to him by the Mongol Khan to keep a portion of the money he collected allowed him to amass land and followers. It was from this initial consolidation that a strong centralized Russian monarchy emerged, which, as it strove to expel the Mongols, also sought to deprive Russian cities of their ancient rights to self-government.

Self-government in Russian cities did not survive the Mongol yoke and the consolidation of the Russian monarchy. However, like Murav'ev, Fonvizin pointed to manifestations of political liberty in Muscovy. Liberty was not extinguished by the Mongol yoke, or by the aspiration of Muscovite Tsars to autocracy. Throughout this period Tsars frequently summoned a

Great Council of the Land (*Velikaya Zemskaya Duma*) which consisted of archbishops, nobles, and elected deputies from the landed gentry and merchant classes of the whole nation. This Assembly of the nation, when it sat, and the more frequently summoned Councils of Nobility and Clergy, shared legislative power with the Tsar, were protectors of the rights of Russian subjects, and, during interregnums, chose new Tsars.

The customary joint sovereignty of Tsar and the Council of the Nobility, he said, was confirmed, for instance, by the observations of the government clerk Grigorii Kotoshikhin during the reign of Aleksii Mikhailovich, who wrote that

previous tsars from Ivan Vasilievich [Ivan III] were elected to the tsardom, and to many of them letters were read that they be not cruel or violent, without trial and without charge not to punish anyone for anything, to confer with the nobles and members of the *Duma* in all matters, and without informing them not to do any deeds secretly or openly. The present Tsar, Aleksii Mikhailovich was elected, yet he did not allow any letter to be read...But his father of blessed memory Tsar Mikhail Feodorovich, although he was called 'autocrat', yet without the Council of Nobility he could do nothing.<sup>82</sup>

The Tsar was not to act in matters of state without the advice and consent of the Council of Nobility. Moreover, said Fonvizin, essentially repeating what Murav'ev had earlier written, when the ambitious Patriarch Filaret held sway in Moscow, he still summoned Land Assemblies for the consideration of especially weighty matters, listened to the opinions of the assembled deputies from all of Russia and formulated government policy together with them.<sup>83</sup> Such examples as these showed that it was an established custom in Muscovite Russia that the Tsar, although he ascended to the throne by hereditary right, was also subject to the nation's approbation, as expressed through the broadly representative Land Assembly, and through representatives of the nobility and gentry in the Council of Nobility (*Boyarskaya Duma*), that the Tsar could not violate the rights of his subjects, or take sovereign decisions without their consent.

The Muscovite political system, according to Fonvizin, was proof that the Mongol invasion had not extinguished Russian liberty. Russia had remained sharply different from the Asiatic despotisms to the East, and retained her similarity to her Western European cousins: “The existence in Russia of the State Council, or Land Assembly has a purely European character—nothing of the kind ever existed among the peoples of Asia, chained in their thousand-year torpor. This was the same sort of institution as the *Etats generaux* which assembled in France, or the English parliaments.”<sup>84</sup> Had the Land Assemblies met more frequently and regularly, Fonvizin speculated, perhaps Russia today “would enjoy constitutional provisions limiting the arbitrariness of the sovereign power.”<sup>85</sup> Unfortunately, after the ascent of Peter I to the throne, all of these assemblies had ceased to meet altogether.

All the governing institutions of Muscovy which had enjoyed independence from the throne, to wit, the Council of Nobility, the Church, and the Land Assemblies were eliminated by Peter. Fonvizin’s denunciation of Peter I is sharper than that of Karamzin, and, unsurprisingly, presents a critique the tsar’s policy that is focused more on Peter’s assault on liberty. By Fonvizin’s account, Peter I replaced the Council of Nobility with a Senate packed with loyalists, and, following the model of Western absolute monarchs, made himself head of the Church in place of the Patriarch, thus removing from positions of power any eminent persons who might have attempted to restrain him. For Fonvizin, all of this was evidence of Peter’s despotic character. Having consolidated his power, he sought not to promote the well-being of the Russian people, but rather invested his genius and his energy in “the development of the immense might of his own empire” and the introduction to Russia of some of the trappings of Western European civilization. But these achievements were of questionable value: “Was the Russian people made any happier from this? Did its moral or material condition improve at all?

The majority [of the people] remained in the same condition in which it had been in for 200 years.”<sup>86</sup> Even worse, liberty had no place in Peter’s transformative projects: “The spirit of this civilization [i.e. Western civilization]—lawful freedom and citizenship, was alien, even revolting to this despot.”<sup>87</sup> He brought to Russia many things that contributed to the might of the state, but the one thing he did not want was “educated, thoughtful people, acting not from slavish fear, but from a sense of duty and rational conviction—such people could not please Peter, but rather must have seemed to be witnesses, troublesome and even dangerous for his iron autocracy, disapproving of the tyrannical actions to which he often had recourse.” “Tortures and executions,” he continued, “served as the means of the glorious reform of our state, and many perished for the honor of [wearing traditional] Russian robes and beards.”<sup>88</sup>

After offering this condemnation, Fonvizin went back on it somewhat with the suggestion that such despotism had been beneficial in that it had shaken Russia from its “deathly condition of listlessness” and exposed the country to the external forms of Western social life, which could have inspired Russians to seek the more essential advantages of Western European civilization, namely, liberty and the rule of law.<sup>89</sup> But his own account of the history of Russia after Peter I does not bear out this faith in Western culture. The most “enlightened” post-Petrine autocrat, Empress Catherine II, inspired by the French Encyclopedists to summon a “parliament,” disbanded that body as soon as its members dared to express thoughts of their own.<sup>90</sup> The other post-Petrine autocrats were only worse. For Fonvizin then, as for Murav’ev, the limited monarchy of Muscovy and the republican freedom of Novgorod and other mediaeval Russian cities provided the only Russian historical models for a restoration of Russian liberty and constitutionalism. And indeed, it was to these two models that the Decembrists referred in their constitutional projects.

### **The liberties of the peasant—the Decembrists on Serfdom**

As I have already suggested, both N.M. Murav'ev and M.A. Fonvizin, as well as many other Decembrists, made similar historical arguments against serfdom. According to Aleksandr Bestuzhev, before the Mongol invasion “our common people (apart from slaves), the serfs villaines, and other peasants without doubt must have been far more clever than the serfs of the middle ages. They did not form a part of the land: they had their village meetings, they went to war with princes, neither of which existed in Europe.”<sup>91</sup> The practice of tying peasants to the land had begun after the Mongol invasion, and had first received legal sanction much later, during the reigns of Boris Godunov and Vasily Shuiskii. Thus, serfdom was neither an ancient institution in Russia, nor did it have its origin in the Slavic people; rather, it was a manifestation of Asiatic slavishness, brought by the Mongol invasion, which had been incorporated into the Muscovite political order. For the Decembrists, then, the elimination of serfdom also was understood, at least in part, as a project of restoration, a return to the personal freedom enjoyed by the common people in ancient Russia.

### **The Russian Nation and the Doctrine of Popular Sovereignty**

As I have demonstrated in previous chapters, the development of constitutional self-government as a coherent political doctrine depended in part not only on the discovery of ancient free constitutions and ancient examples of national unity and solidarity, but also on certain basic nationalist conceptual assumptions. All of the foregoing provides ample evidence that the Decembrists had a strong national consciousness. The Decembrists also understood, and expressed, the necessary assumption for constitutional self-government, that “the nation” is prior to the state, both in time and in worth. The nation is a permanent, self-creating community, with

its own characteristics and traditions, its own natural sources of unity, whereas the state and its administrators are creations of the nation, which the nation may dissolve or alter. Without this assumption, neither the doctrine of the sovereignty of the people nor the idea of constitutionalism makes any sense.

The most complete of the surviving constitutional projects of the Decembrists, those of N.M. Murav'ev and P.G. Pestel' clearly established the priority of the nation over the state. The first chapter of Murav'ev's *Constitutional Project* was headed "Concerning the Russian people and governance." The first two articles were as follows: "1. The Russian people, free and independent, cannot be the possession of any person or any family. 2. The source of sovereign power is the people, to whom belongs the exclusive right of making *fundamental decisions* for itself."<sup>92</sup> P.G. Pestel' asserted the same principles in his work entitled *Russian Justice (Russkaya Pravda)*. "Government," he wrote, "exists for the good of the people and has no other foundation for its existence and formation except the good of the people." According to the will of the Almighty, the world was composed of nations. Every nation existed for itself, and thus had a right to pursue its own good. Thus "the Russian people is not the possession or property of any person or family. On the contrary the government is the possession of the people and it is instituted for the good of the people; the people does not exist for the good of the government."<sup>93</sup>

More than any other Decembrist, Pestel' elaborated what he took to be the necessary preconditions for such a notion of peoplehood and popular sovereignty. On the one hand, Pestel' was clearly under the influence of French and British rationalists such as Bentham and Fourier. Owing to the influence of this statist political philosophy he came very close to annihilating his own precept that the nation was prior to the state. For instance, in chapter 2 "On the tribes inhabiting Russia" he wrote "The truest instructors of peoples are the laws of the state: they

form, and, as it were, rear peoples, and according to them they receive their customs, habits, notions, form and activity.”<sup>94</sup> In this conception then, the state and its laws are the source of the customs, habits, and notions of a people; the state, in essence, creates the people. This is hardly compatible with the notion that the nation is prior to the state. According to the earlier Dutch and English writers, nations had their own customs, habits and notions, their own national character and way of life, and, over time, instituted governments which were a reflection of the existing traditions of an already self-conscious people. The nation creates the state.

In spite of the strong vein of statism running through his work, however, Pestel’ argued that the Russian state depended ultimately on the natural unity of its largest tribe, the ethnic Russian core, or Russian root (*korennoi narod russkiy*) which was composed of three elements, Great Russians (*velikorosiiane*), various communities of Little Russians (*malorosiiiane* or *ukraintsy*), and White Russians (*belorustsy*). All of these subgroups had three essential characteristics in common: first “their language is everywhere one and the same: only the dialects vary, and these even in the Great Russian provinces are not everywhere identical, indeed there is no great people, whose language does not have various dialects.” Second, their “faith is one and the same: Orthodox in all those provinces, as in the Great Russian ones...” Third, the “social condition in those provinces is perfectly identical to that in the Great Russian provinces, for there exist the same classes with the same rights.”<sup>95</sup> Thus, the Russian people with their common language, religion, and social condition constituted the core of the political community.

The unity of the core Russian population was such that its members ought to be able live together in liberty and, through their elected representatives, share the sovereign power of the nation. However, from Pestel’s point of view the diversity of the subject peoples of the empire, as it currently stood, necessarily complicated the task of restoring liberty and constitutional self-

government to Russia. In those epochs in which Russia had been more free, that is, the period of the free cities before the Mongol invasion and the Muscovite period, she had also been more homogeneous. Freedom and participatory government for all members of the Russian state would necessitate cultural assimilation of the non-Russian peoples. Without this, the Russian state would break up. In reference to the non-Russian parts of the empire Pestel' wrote: these regions "not only are governed by different institutions, not only are judged by different laws, but they speak entirely different languages, practice entirely different religions, their inhabitants are of different descent, they have at one time belonged to different states." Without a unitary national government empowered to carry-out the assimilation of these peoples, "it is easy to foresee that these diverse regions will soon secede from core Russia..."<sup>96</sup>

Furthermore, according to Pestel', not all the subject peoples were equally assimilable. To illustrate Pestel's thought on this matter, I will discuss two examples here, the Poles and the Jews. Pestel' was convinced no attempt should be made to absorb the Polish people into the Russian nation, and that the Poles ought to be granted independence, albeit, with significant restrictions.<sup>97</sup> His reasoning was as follows:

Poland enjoyed through many centuries complete political independence and constituted a large independent state. It could even today receive strong existence if it joined again into a common state all of its parts taken away by powerful neighbors. From this it follows that with regard to Poland the right of nationhood should by pure justice take priority over the rights of convenience.<sup>98</sup>

In Pestel's view, then, the Polish people were both accustomed to the idea of existing as an independent nation, and owing to the extent of their ancestral lands and the size of their population, were entirely capable of surviving as sovereign nation-state. Justice, in his view, required that any people capable of existing as an independent state ought to be granted that

right, if they so willed. Given Poland's history, it was likely that the memory of independence would remain strong. Russia would be wise to accept this fact.

Pestel' also suggested that the Jewish population in the Russian empire might not be assimilable. His assertions about the character of the Jewish people do not differ in any significant way from the sorts of accusations that have been leveled against Jewish diasporas for centuries. The influence of Voltaire is particularly evident in Pestel's remarks on the Jews. "The Jews," he wrote, "differ from other like peoples in that they maintain among themselves an extremely close bond, never betray one another in any circumstances or situations and are always prepared for anything that might be profitable or advantageous for their society." Pestel' listed six reasons for the existence of this "close bond" among the members of the Jewish population. It is hardly worth listing all of them. The first is sufficient to give one the general idea of all the rest. As Pestel' asserted, "Jews have their own faith which convinces them that they are destined to conquer and dominate all other peoples."<sup>99</sup> At the base of the Jewish religion then, was the idea that the Jews were God's chosen people destined to rule over all other peoples. Their tendencies toward exclusivity and separateness followed from this.

Because of its national character, the Jewish population too often found itself at odds with Russian Christians. The allegations Pestel's levels against them resemble in some ways the accusations Dutch Catholics and Protestants made against each other, and English Protestants against Catholics. They reveal the sort of distrust between different populations which can hinder the development of a sense of mutual obligation of all citizens to each other, upon which constitutional self-government depends. Pestel' wrote:

There are no deceptions or fraudulent activities which they would deny themselves. In this rabbis enable them further, saying that to deceive a Christian is not a crime and basing on their law the right to give false oaths if only it is good for a Jew. The friendly bond between them has the consequence that as soon as they are allowed into any place

they immediately become monopolists and drive all others out. This we see clearly in those provinces where they take up residence. All trade is in their hands and there are few peasants who are not in their power on account of debts.<sup>100</sup>

Interestingly, in spite of this very negative portrayal of the Jews, Pestel' expressed no hostility toward them. His claim was merely that they were different, and that they behaved in a manner that offended Russian Christians, partly because of that cultural difference, and partly because of ill-conceived laws which had granted them special privileges. Jews themselves could not be blamed for these problems, but, be that as it may, the present state of affairs could not be allowed to continue:

Taking all these conditions into account one may clearly observe that Jews form in the state, as it were, their own special entirely separate state, and, in addition, have more rights than the Christians. Although one cannot blame the Jews themselves for maintaining such a close bond among themselves, or for taking advantage of the greater rights granted to them by the previous government, but even less can such an order of things [be allowed] to go on any longer...

From Pestel's point of view, the Jews were a self-conscious nation of their own, separate from the Russian population. Their bonds were strong enough that they constituted, in effect, a separate state within the state. Thus, two potential solutions presented themselves. Either one could attempt measures, whose "aim is to eliminate the close bond maintained among the Jews, which is harmful to Christians, directed against Christians, and separates them from all other citizens," or one could seek to "assist Jews in founding a special, separate state in some part of Asia Minor."

Pestel's reflections on the Poles and the Jews are, whatever else one might say, consistent. His policy on nationalities derived from the conviction that constitutional self-government depended on national unity, which had its foundations in commonalities of ethnicity, culture, language, religion, and a sense of common historical destiny. The Poles, owing to their historical memory, and the size of their population and historic territory, were a self-conscious

nation and would therefore insist on political independence. It did not matter to an autocratic government that the nations subject to it did not want to live together or share power with each other. It held them all together perforce in its iron grip, and could play them against each other in order to deflect popular anger from itself. But a Russia with a free constitution would be at pains to manage such national divisions. The Jews, though a much smaller population, were also an additional self-conscious nation within the Russian state. If nothing could be done to ameliorate their exclusivity and separateness and improve relations between them and Russian Christians, then it would be best to assist them in forming their own independent state, where they could govern themselves by their own laws.

#### **Decembrist Constitutional Reconstructions**

The Decembrists were never afforded an opportunity to enact any of their constitutional or other reforms, and, indeed, after the spectacular failure of their revolt, all of the papers detailing their ideas about the nation's past and their plans for its future were locked away in government archives, there to remain for the next several decades. Nevertheless, it is interesting to consider their constitutional reconstructions in the light of the experience of the other European nations that we have examined. According to the defenders of liberty in the Netherlands and England, their nation had one authentic ancient constitution, whose form was discernible from countless ancient charters, laws and treaties. In France there were competing versions of the ancient constitution. In the writings of the Decembrists, there were also competing versions of Russian constitutionalism.

There were certainly many commonalities among the proposals for reform offered by various Decembrists. Almost all, for instance, insisted that serfdom should be abolished, and that

the liberated serfs should be able to acquire a certain portion of the land for themselves. But when it came to the future shape of the government, various Decembrists proposed radically different constitutional models, and, by the accounts of the members, their deliberations on this matter never led to any firm or lasting agreement. For instance, according to P.G. Pestel', the Southern Society held a vote of its members on whether Russia should remain a monarchy or become a republic. At the conclusion of their deliberations, "all voted unanimously for republican rule." But this vote did not resolve anything:

[I]n general in the union from the very beginning to the very end there was not a single rule in effect with any constancy and there was not a single thought in the memory of the members with any constancy, and very often what was decided today would again tomorrow be brought up for discussion and argument, and so one absolutely cannot say with any certainty at all what form of rule the union actually would have chosen in the end.<sup>101</sup>

Very likely, this lack of agreement would have been a serious problem, possibly a fatal one, had the Decembrist movement succeeded in overthrowing the autocracy. For, as we have seen in the other cases, an ancient constitutional tradition is useful not merely because it proves the possibility of constitutional self-government in a given country, but also because, in the best cases, it provides a single model for the realization of self-government that need not be deliberated upon endlessly. Such a constitution is legitimate in virtue of its being the choice of many generations of ancestors rather than the arbitrary choice of one mind, or of several minds voting at one time in a constitutive assembly.

Russian history, as the Decembrists understood it, offered two constitutional models, first, the federation of republican states that existed before the Mongol invasion, and second, the unitary conjoint rule of the nation by tsar and the estates: nobility, clergy and people. In short, there was the Novgorod model and the Moscow model.

Nikita Murav'ev's *Constitutional Project* was inspired, at least in part, by the legacy of Novgorod and the appanage system of pre-Mongol Russia.<sup>102</sup> The names of the organs of government and the titles of its various offices were drawn from ancient Novgorod. All branches of government were to be composed of elected officials, as had been the case—or so Murav'ev and others believed—in Novgorod. Murav'ev, however, thought it necessary under present conditions to subject the right to vote and hold office to property qualifications. Russia was to be divided into thirteen states and two regions, each of which would have an elected *tysyachksii* and two chambers of elected representatives, and significant autonomy in regard to its own provincial affairs.<sup>103</sup> At the national level, supreme legislative power was to be vested in the National Assembly (*Narodnoe Veche*), consisting of two chambers, a Supreme Council, whose members were selected by the state governments, and a house of popular representatives chosen by the nation at large.<sup>104</sup> The chief-executive was to remain a hereditary office, but the emperor was to be limited to executive functions, to obey the constitution and to enforce the laws created by the *Narodnoe Veche*.<sup>105</sup> In extraordinary cases of abuse of power, the *Veche* could issue a law to depose the emperor and appoint a regent.<sup>106</sup> One must note, however, that the actual connection between this constitutional project and the constitution of Novgorod or pre-Mongol Russia as a whole was rather tenuous. In fact, the content of Murav'ev's document had more in common with the constitution of the American Republic than with any form of government from Russian antiquity.

Other Decembrists, such as G. S. Batenkov, drew heavily on the Muscovite model of conjoint rule by Tsar and the Estates in their constitutional projects. Batenkov reasoned that “in the space of a thousand years no part of Russia, not excluding even the two republics, in good times and in times of calamity, was able to get by without sovereigns. Respect for tsars was

always beyond measure and became solidly rooted.”<sup>107</sup> Russia, therefore, ought to be ruled by monarchy, but by no means by an absolute monarchy:

History bears witness, that Russia always prospered under monarchs, who, although strong, had various stipulations. On the one side, where a monarch stood before democracy, disgraces of rebellion were constant; on the other side, where all the stipulations for the monarch disappeared, a tyrant appeared who violated the common and the private good.<sup>108</sup>

Orderly rule and prosperity, then, had been provided by a mixed constitution in which the nobility, “respected by the people and strong in their affairs” moderated the passions of the people, and prevented the monarchy from becoming a tyranny.<sup>109</sup> Batenkov’s outline of a constitution was thus composed of three elements: the emperor, an upper house and a lower house. In the upper house hereditary nobles would preponderate, but there would also be some members of the clergy appointed by the tsar. Members of the lower house were to be elected by townspeople and by landowners in the provinces. In composition, then, the two houses resembled the land assemblies summoned periodically by the Muscovite tsars. However, these assemblies were to be more regular, and each element of the legislative power of the nation, Tsar, Nobility and Clergy, and People, was to have a power of veto on the rest.<sup>110</sup>

By far the most creative and innovative constitutional project—and therefore the one least likely to have a chance of success—was undoubtedly that of P.G. Pestel’. Pestel’s *Russian Justice* laid out a plan for an all-embracing transformation of Russian society from top to bottom, which he justified on the basis of various axiomatic truth claims. Indeed his work stands out from that of most others in its extreme rationalism and its inattention to history and precedent. His constitutional project was in the same vein with the rest of his ideas for reform. The only connection that one finds in his proposed *State Covenant* to the Russian past, as described by Murav’ev and Fonvizin, is the use of certain historical Russian terms. The content of the

constitution was all of his own imagining. His government had three branches, legislative, executive and judicial. The legislature (*Narodnoe Veche*) was to be a unicameral body of elected representatives from every province. The executive (*Derzhavnaya Duma*) was to be a committee of five men chosen by the legislature from a list of candidates proposed by the heads of the provinces. The judicial branch (*Verkhovnyi Sobor*) was to be composed of men called *boyare*, nobles, but they did not bear the remotest resemblance to any order of nobility known to Russian history; these were 120 men appointed for life terms by the *Veche* from lists of candidates from the heads of the provinces, to serve as a supreme court of the nation.<sup>111</sup>

The particulars of Pestel's project for reform are not especially interesting for themselves. What is interesting is the way he justified his approach. Pestel' could not help but be keenly aware of the failures of the French Revolution, of the fact the many constitutions penned by the consummate rationalist and hater of "dusty parchments" Emmanuel Sieyes had been cast aside by the French nation one after the other, until the dictatorship of Napoleon brought an end to such schemes. But, apparently, he believed that these failures were, at least in part, the result of impatience. As he wrote in *Russian Justice*:

All the events that have occurred in Europe in the last half century prove that peoples who have dreamt about the possibility of sudden actions and rejected gradualism in the course of reforming the state have fallen into the most terrible calamities and are once again subjected to the yoke of autocracy and lawlessness.<sup>112</sup>

Had these reformers, such as the revolutionaries in France, proceeded more gradually, perhaps they might have avoided reigns of terror, chaos and the eventual return of the yoke of autocracy.

Equally important, to Pestel's mind, was the failure of past reformers to effectively communicate their ideas to the officials who would be charged with the execution of the reforms, and to the people at large. Pestel' thought that his *Russian Justice* would serve this purpose:

And so Russian Justice is an order or instruction to the provisional high government for its actions and also an announcement to the people from what they ought to be liberated and what they can expect. It contains the duties laid upon the provisional high government and serves for Russia as a guarantee that the provisional high government will act only for the good of the fatherland. Insufficiency in such a document has thrown many states into the most terrible calamities and internecine strife because in them the government could always act according to its own arbitrariness, according to personal passions and private views not having before it a clear and full instruction according to which it was obligated to operate and the people in the meantime never knew what actions were being taken for them, never saw in a clear way at what goal the actions of the government aimed, and were animated by various fears, and then by various passions, often took disordered actions and finally produced internecine strife. Russian Justice averts by its very existence all of these evils and brings the reform of the state to a positive course and action by defining everything and laying out the fundamental rules for all matters.<sup>113</sup>

Pestel' asserts that if one could merely prescribe and promulgate the goals of the reform, then factional squabbles and popular unrest could be averted. Of course, one is forced to ask in such cases, who gave Pavel Pestel' the right to make such prescriptions? Why should anyone accept his axiomatic truth claims as the Truth? When the rationalist philosopher says something must be done because it is in accordance with reason, all he really says is "this must be done because I say so." "One clever man says so" is almost never as powerful a source of legitimacy as "many generations of our venerable ancestors have said and done so." One can say with near certainty that Pestel's approach would not have avoided factionalism in his own circle or popular unrest in the nation at large.

By itself the reluctance of one of the most ardent reformers in the Decembrist circle to view his national past not just as a source of inspiration, but also as a source of practical wisdom and stories that could confer legitimacy on his proposals, raises serious doubts about the actual potential the Decembrists had for success. The variety of opinions of the others on the lessons of the past, and the inability of the group to settle upon an authentically Russian constitution of

liberty, which could be held up as the wisdom of many generations of ancestors, adds to the doubt.

#### **4. Official Nationalism and the Breakup of the Liberty Agenda**

Although the Decembrists did not achieve their political, social or economic aims for the Russian nation, they did effectively force the autocracy to Russify itself, not in appearance only, but in certain respects, also in substance. In fact, we may thank the commission tasked by Tsar Nicholas I with investigating the Decembrist rebels for examining and preserving their writings and testimony with such care. The tsar ordered such a thorough investigation because he intended to make use of it. Indeed, in the first years of Nicholas's reign, special committees were formed to address some of the grievances to which the Decembrists had given expression.<sup>114</sup> It fell to Nicholas's minister of national enlightenment, Count Sergey Uvarov to craft an alternative nationalist narrative for Russia in which the state was to be seen as the protector and promoter of the rights of Russians and of Russian national culture, and to make that story a reality as far as possible, yet without in any way altering Russia's form of government. This narrative was summed up in the famous slogan "Orthodoxy, Autocracy, Nationality."

Accounts of Count Uvarov's formulation of "official nationalism" quote the tsar's and the minister's official pronouncements, which emphasize the danger of foreign ideas. Tsar Nicholas, it is shown, blamed the revolt on "foreign influences" and a "fatal indulgence in pseudo-knowledge."<sup>115</sup> In response, then, national education, wrote Uvarov, must "inspire young people with a closer inclination to the history of the Fatherland" and "pacify the stormy gusts for the alien, the unknown, the cloudy regions of politics and philosophy."<sup>116</sup> And indeed, such pronouncements tell at least half of the story. For instance, at times, as I have demonstrated,

Pestel' reads like Sieyes in Cyrillic script. But the tsar and his minister were too well informed and too clever not to perceive the nativist accounts of Russian constitutional self-government and the wounded national pride constantly on display in the writings and the testimony of the Decembrists. That no explicit discussion of such matters is found in official reports and statements is hardly surprising. Yet we are left with certain facts. There was a drive throughout the Russian government to shed foreigners in favor of natives, especially natives of the nobility and gentry. Uvarov led the effort to replace foreign professionals at all levels of the Russian education system with newly trained natives.<sup>117</sup> What is more, shifting the humanities curriculum toward native culture, language and history not only served Uvarov's stated goal of inculcating in the nation's youth a love of the fatherland. This also meant, at all events, that the study of Russianness would no longer be left to mere chance; the government could give it direction, could head off dangerous interpretations of Russian culture, or so Uvarov hoped. The Decembrists had of their own volition interpreted Russia history in a way that was unfavorable to the autocracy. Uvarov sponsored the production of history textbooks generally following Karamzin's interpretation of Russia's past for university and grammar school instruction.<sup>118</sup>

Uvarov himself was a progressive of sorts. According to his theory of history, which anticipates that of Hegel, each nation would experience three stages in its political development, absolute monarchy, enlightened monarchy *de facto* limited by law, and finally constitutional monarchy. Every nation would proceed along this path at its own pace, drawing upon its own particular national experience.<sup>119</sup> But the engine of such progress toward freedom, in Uvarov's view, was the state. Signs of such progress in Russia's history were evident since the reign of Peter I. The autocratic state was duty-bound to prepare the nation for liberty through education, but it was left to the autocrat to decide when the nation had been sufficiently educated to make

good use of civil and political rights.<sup>120</sup> His conception of the relationship between state and nation was thus thoroughly statist: “Instead of regarding the people as actively informing the content of nationality and possessing the traits a government should reflect, Uvarov reversed the flow and believed the state, from its all seeing perch, should define, guide, and impose ‘true’ national values upon a passive and acquiescent population.”<sup>121</sup> Not all of the scholars of Russian history whom Uvarov sponsored shared his view of progress, but even the nationalists, such as Mikhail Pogodin, were statist.

The autocracy’s partial adoption of a nativist agenda could not but influence the development of new intellectual movements, whether the members of such groups desired to alter the form of government wholesale or merely sought to shape government policy in one way or another. During the reign of Nicholas I, the publication of treatises or journal articles explicitly treating political subjects was not generally permitted. But such ideas were considered in public lectures and discussions at the universities, and, what is more, according to Alexander Herzen, significant numbers of philosophical, historical and political tracts were written, copied and exchanged between intellectuals in the cities and the provinces.<sup>122</sup> By the time censorship rules were relaxed at the start of the reign of Alexander II, intellectual camps had already formed; ideas that had been exchanged for years already finally saw the light of day.

Broadly speaking, the liberty agenda that had found a bold nationalist voice in the Decembrists was now divided among at least three different groups. Radical Westernizers such as Belinsky, Ogaryev, Mikhailov, Dobrolyubov, Uspensky, and Herzen continued to call for revolution. Interestingly, these men, Herzen especially, often appealed to the symbols of the Novgorod Republic in an attempt to legitimate their agenda. But they were cosmopolites at heart, and the nativist veneer was at odds with their underlying message. It hardly needs to be said that

when the government has taken a staunchly patriotic position, it is even more impossible for the opposition to be cosmopolitans, for the government can easily brand them as traitors to the fatherland. What is more, as Nicolai Petro points out, in the decades before, just as in the decades after the Decembrist Revolt, Novgorod was for most Russians a symbol of republican freedom. As the Westernizing radicals drifted toward socialism and anarchism their appeal to this native symbol became more and more incongruous.<sup>123</sup>

Liberal Westernizers such as Katkov, Chicherin, Kavelin, Solov'ev, Gradovsky and Mel'gunov were very similar to Uvarov in their views on constitutional matters, and their belief in the state as the engine of progress. Many of them supported quite extensive reform measures such as the introduction of local self-government and freedom of the press, the liberation of the serfs, and the reform of the judicial system, but such reforms must take place under the guidance of an enlightened autocrat. Westernizers had mostly unqualified admiration for Peter I, and hoped the present tsar would use his autocratic power as his ancestor had done to bring Russia closer to the European standard of enlightenment and prosperity. Constitutional government would come to Russia eventually as it had to Western European nations, when enlightenment had spread, when the gentry and people had gained experience in self-government at the local level, and the nation as a whole had grown sufficiently mature, but this was not on the agenda for the present. As Mel'gunov put it "We need not constitutional experiments, but sovereign reforms... We do not chase after guarantees on parchment and are prepared to trust in the personal guarantee of the royal mind...."<sup>124</sup>

This leaves the Slavophiles as the group with the most potential to formulate an authentically Russian view of constitutional self-government. I say only 'potential,' because they never explicitly prescribed such a thing. However, their advocacy of the reform agenda they

shared with the liberals—especially the “restitution” of the ancient right to freedom of speech and of self-government at the local level and the liberation of the serfs—was grounded in a conception of national history and national sentiment. They were true nationalists, unlike the liberals, for the state in their view was obligated to reflect the pre-existing traits and aspirations of the nation. Like Karamzin, the Slavophiles insisted that the tsar was not at liberty to re-shape the nation according to some scheme of his own. Finally, the Slavophiles wrote in great detail about Russia’s pre-Petrine constitutional history. In spite of his own pronouncement in a letter to Tsar Alexander II that the Russian nation was “non-sovereign,” Konstantin Aksakov, the Slavophile with the most pronounced predilection for political theory, highlighted periods of Russian history when her people played a very active role in politics. All of these things make the Slavophiles fit subjects for our study. The elements of their thought that conform to the general pattern I have laid out for the development of constitutional self-government are as instructive as their departures from it.

## **5. The Political Vision of the Slavophiles**

### **Yuri Samarin on the Priority of the Nation over the State**

That the Slavophiles were motivated by nationalist sentiments requires no special demonstration. I shall therefore begin by examining the relationship between their nationalism and their political thought. The clearest statement of the priority of the nation over the state occurs in an unpublished tract by Yuri Samarin entitled “The sovereign power in Russia: upon what it is founded and how it is defined.”<sup>125</sup> Samarin never published the piece, very likely because it states too explicitly a principle that underlies all the political writings of the

Slavophiles, namely, that the power of Russia's autocratic state is not, in fact, absolute. Echoing Karamzin's *Note on Ancient and Modern Russia*, Samarin makes his case with two related arguments, one prudential and the other normative.

The argument suggested by prudence is that government relies on the national and religious feelings of its people, what Karamzin called the "moral might" of the nation, for its strength and stability. A government, therefore, cannot be purely cosmopolitan, cannot be "simply a government, abstracting itself from any tribal identification." If the government refuses to recognize its obligation to a particular nation, then the members of that nation will cease to recognize their obligations to the government: "Liberating itself from any national identification, the government deprives itself of the ability of disposing that might which the people draw from their love for their native land, and sympathy for the members of their tribe."<sup>126</sup>

A government also cannot be "multicultural." Samarin obviously does not use this term of late 20<sup>th</sup> century origin, but such is the sense of his words. He imagines a multinational empire in which the government expresses "equal good will toward all" nationalities, and, like a nimble actor, alters its appearance behind the curtains to suit every particular audience, addresses itself to every nationality wearing the national dress and speaking the language of that nationality: "Every appearance on the stage inevitably elicits, simultaneously, applause and jeers, and in the end the audience may surmise that he who is capable of taking on so many different roles views all of life as a mere role."<sup>127</sup> He gives another example, which he also claims to be hypothetical ("imagine a Christian state, somewhere on the edge of the earth, in which Muslims live"), but it is clear he has in mind Russia itself. It would be unwise, he asserts, for such a state to give equal recognition and support to all of the religious groups within its territory. Suppose, he says,

the Muslims not only worship freely, but also enjoy the patronage of the [sovereign] authority: it builds them mosques, trains mullahs for them, prints copies of the Koran for them; and what else besides? They are satisfied and at all events fall all over themselves giving pronouncements of their loyalty. A time arrives to prove this in practice. A war breaks out, a war to save Orthodox [Christians] from a Muslim yoke. What will these Muslim subjects of an Orthodox state do? Whose side will they take? Recalling the many evidences of care about their welfare, will they stand under the banner of the cross, in the columns of that government to which they swore heartfelt oaths, or will not the crescent-moon shining before their eyes draw them in the opposite direction?<sup>128</sup>

The only wise policy for a government, concludes Samarin, is to identify itself with the majority nationality and the majority religion, and to rely on the majority as the source of its might. This does not mean that other nationalities and religions should be subjected to oppression, only that their culture should not receive special recognition and patronage from the state. Such, believed the Slavophiles, was the traditional relationship between the Russian state and minorities.<sup>129</sup>

From this prudential argument about the nation as a source of strength for the government, Samarin moves in the direction of a normative argument about the duty of the government to the nation. For the government to be able to rely on the might of the nation, it must have the people's sympathy. Therefore, the government must identify itself with an element or substance with which the people can sympathize. From the existence of such a requirement, continues Samarin, "it follows that the relationship of the government to the fundamental elements of its union with its subjects is a relationship of subordination, in other words, a relationship of service."<sup>130</sup> The government is beholden to and must serve these fundamental elements that constitute its union with the nation. Having made this declaration, Samarin addresses the sort of objection he would expect an absolutist defender of autocracy to raise: "with this you deprive the government of its independence, and you presuppose boundaries to its actions, you limit it." Indeed, continues Samarin, this is precisely the meaning intended. Even an autocratic government is limited: "Our government is autocratic and absolute, but it calls itself

an Orthodox and Russian government. May the government alter the national faith, close the [Orthodox] churches, and convert them into Catholic or Lutheran churches? May the government eliminate the official use of the Russian language and replace it with French? May it join Russia to a Germanic union and subordinate her actions to the Frankfurt Parliament?"<sup>131</sup> Insofar as no one would claim that the Russian government had the authority to do such things, it is clear, avers Samarin, that "our government is not absolute." For "whoever acknowledges a defined purpose of authority thereby presupposes its limits."<sup>132</sup>

If the government were absolute, then it would be possible to demand that Russians "meet with the same feeling government measures tending to the advantage of the church and the exaltation of Russia and measures harmful to the church and humiliating for Russia such as those that carried out or prepared in the times of Ivan IV, Biron on Peter III."<sup>133</sup> It is possible, says Samarin, to force a nation to accept measures humiliating to their national pride, such as these men did, but "not for long." Indeed, the latter two tyrants, Biron and Peter III, were deposed by force. If the government is not limited, not required serve the fundamental interests of the Russian nation, then "authority...is only power...its relationship to subjects can be called nothing other than violence. Look for its personification not in Ivan III, but in Ghengis Khan, not in Mikhail Romanov, but in the Rebel of Tushino, not in Emperor Alexander in Moscow, but in Napoleon in Vilna."<sup>134</sup> The authority of a tsar who does not recognize his duty to serve Russian interests and be responsive to the opinions of the nation is based on nothing but naked force; such a man is indistinguishable from a foreign conqueror.

Although even Russia's first tsar Ivan III had absolutist aspirations, as evidenced by his pronouncements on the right of succession, unconstrained rule, Samarin insists, has never been Russia's established tradition of government, and could never become so. Peter I attempted to

make himself absolute and formulated a theory of government that supported that aspiration. Samarin quotes from Peter's *Eternal Charter*: "Supreme authority, called majesty, is not subject to the laws of men, though they be good, and serve the common benefit; and thus an autocratic tsar is not obligated to keep the law of man, and for the violation of the law of man cannot be judged." Samarin comments: "Could one with greater clarity condemn the *Eternal Charter* to death?"<sup>135</sup> Samarin declares such a view of sovereign authority as absurd on its face, and, impossible to sustain, which assertion he demonstrates through an examination of evolution of Russia's laws on the right of succession. A government not beholden to the fundamental substance and interest of the Russia nation is not possible and is no part of Russia's tradition.

We see here that although Samarin claims no formal, legal limits on the authority of the tsar, much less a right of resistance, and, indeed, expresses no desire for such, his tract clearly establishes the priority of the nation over the state. In spite of his skepticism toward Western forms of constitutionalism, which the other Slavophiles shared, his nationalism makes the idea of absolutism untenable, even unthinkable. If the nation has certain pre-existing qualities, such as a national religion and language, and certain permanent interests which are tied to those national characteristics, then the authority of the state rests on its ability to promote and defend that national substance and those national interests. Otherwise, the sovereign might as well be a foreign conqueror.

#### **Konstantin Aksakov: Constitutional Self-Government in Russian History**

All of the Slavophiles wrote about Russia's traditional self-governing and consultative institutions, but none in more detail than Konstantin Aksakov. Aksakov's reflections on Russia's traditions of government are also more open to interpretation than those of his fellows. His

theory of the authentic Russian form of government, as laid out in his *Note on the internal condition Russia*, which he addressed in the form of a letter to Alexander II on the occasion of the latter's accession to the throne in 1855, is uncomplicated, if considered by itself. But his other writings, many of them not explicitly political, suggest a much wider range of possibilities for the national character of Russians and constitutional reconstructions. The existence of this material also suggests that Aksakov may not have said everything that he meant in his letter to his sovereign. For this reason, I will first consider his review essays on Russian historiography. These essays were written from 1851 on in the form of commentaries on Sergei Solovyov's multi-volume *History of Russia*, and polemical essays by the same author. Aksakov's main objection to the work of Solovyov, a Russian liberal and historian of the statist school, was that the latter failed to see the continuity throughout Russia's history of what he (Aksakov) considered to be the most distinctive trait of Slavic peoples in general, and the Russian people in particular, namely *obshchinnost'* or communality.

In the Western academic literature, this term, together with its analogue in Eastern Orthodox theology, *sobornost'* or conciliarism, is generally treated as an opposite of individualism, which indeed it is. But the standard trope in academic literature on the unbridgeable gulf between Western individualism and Russian collectivism is misleading, and for my purposes, unproductive. In the first place, as I have shown, the political ideas which gave rise to constitutionalism in early modern Europe were very far from Lockean individualism. Dutch and Englishmen of the 16<sup>th</sup> and 17<sup>th</sup> centuries thought their rights and privileges inhered in them as members of particular communities, not as individuals. Their political thought began with ancestors and the nation, with reflections on the duty of man to God and the fatherland, not with sovereign rights-bearing individuals in a state of nature. They were concerned with the

preservation of a particular national way of life, of which a particular constitutional order was but one part, and thought the notion that the state existed merely to provide peace and plenty for individuals “too mean a conceit of so noble an effect.”<sup>136</sup> The Slavophile understanding of the relationship of the individual to the community is indeed opposed to 19<sup>th</sup> century Western individualism, but it is not so far removed from the ideas of earlier Western political thinkers such as those in England who thought the individualistic doctrine of Hobbes absurd and bestial.

As Aksakov puts it,

the people [or nation] is that great power, that living connection between men without which and outside of which the individual man would be a useless egoist, and all humanity a barren abstraction. The divisive egoistic element of personality is moderated by the higher element of the living national union.... In the communal union personalities are not annihilated; rather they merely renounce their exclusivity in order to form a concordant whole....

According to the Slavophile doctrine, then, the egoistic element of each person is merely “moderated” by national consciousness, and what follows from it: a sense of duty to one’s nation.

The point I emphasize here is that for Aksakov communality means, among other things, self-government. In his view of Russian history, such communality is to be found in various forms at all levels of Russian society, from the village to the national state. Though Aksakov’s notion of communality is certainly similar to Khomyakov’s conciliarity, derived from Eastern Orthodox theology, Aksakov traces this communal spirit not to the church but to the ethnic character of Slavs generally. “The characteristic of communality,” he says, “is essentially a characteristic of the Slavic tribe and in particular of the Russian people...” When Christianity arrived in ancient Rus, it “sanctified and enlightened” this trait which was already, so to speak, in their blood.<sup>137</sup>

Aksakov's objections to the work of the statist historian Solovyov in general center on the latter's view of Russian history as a progressive development toward greater centralization of political power and the fading away of old customs and habits of self-government. Solovyov's history, argues Aksakov, is written with a view to justifying the present order, and all of the changes in history, especially since the Petrine revolution, tending in the direction of the present state of things. This, he declares, is the attitude of a "minion," who is happy to bow to the present spirit of the times as though it were the culmination of truth. But "truth," he insists, "is not a minion, and does not depend on time."<sup>138</sup> From Aksakov's point of view, Russian history demonstrates the continuity of the communal, self-governing tendency in the Russian people, which, together with other longstanding customs and habits, was broken by Peter I.

In his polemics with Solovyov, Aksakov highlights at least four striking manifestations of Russian "communality" in pre-Petrine Russia. The first is the tribal organization of the ancient Slavs prior to the arrival of the Varangians in Rus', which, Aksakov claims, resembles the present organization of peasant communes in Russia. The second is the municipal and national government of Kievan Rus'. The third is the consultative Land Assemblies of the Muscovy. The fourth is the sovereign Land Assemblies during the Time of Troubles, which governed the nation in the absence of a tsar, and then elected new tsar. All of these examples constitute different models of government, but for Aksakov they are all particular manifestations of the same authentically Russian national character.

According to Aksakov, the meetings of Russian peasant communes can be traced back to the most ancient form of self-government among the Slavic peoples. In the 19<sup>th</sup> century these meetings, attended by a member from every family in the community, would decide on matters of common concern. Aksakov brings out this connection in his dispute with Solovyov "On the

ancient way of life of the Slavs in general and the Russians in particular” (1852). Solovyov claims that ancient Slavs lived in clans, with all members of the extended family subject to the authority of a patriarch. When it was necessary to coordinate the clans for some common endeavor, these patriarchs would meet for that purpose. Such an assertion certainly could be seen to be politically suggestive. As we have seen earlier, England’s Sir Robert Filmer based his theory of absolute monarchy on the model of the patriarchal household. Neither Solovyov nor Aksakov explicitly draw a connection between the patriarchal household and Russian autocracy. Yet one sees that Aksakov’s rebuttal also might have implications for Russia’s autocracy. In any event, Aksakov insists that Solovyov misinterprets his own evidence. Byzantine observers of ancient Slavic tribes in the 6<sup>th</sup> century AD said something rather different. Mauritianus had said that the Slavs had “many potentates” but “no government.” Procopius wrote that “Slavs do not obey one man, and originally live by popular rule.” The reference to “potentates”, argues Aksakov, is not sufficient evidence for Solovyov’s clan patriarchs, and, what is more, Procopius ascribes to these tribes an unwillingness to follow one man and a democratic mode of government.<sup>139</sup> These “potentates,” he surmises, were more likely “aldermen, who could exist within a democratic form of rule, or princes, [subject] to the will of the people, such as later the Novgorod princes were at certain times.”<sup>140</sup>

Solovyov also misreads his other piece of evidence, the “Judgment of Libushi” a Czech poem thought to describe an event in the 8<sup>th</sup> or 9<sup>th</sup> century. According to the poem, the Czech princess summons a popular assembly to resolve a dispute between two brothers concerning their inheritance. Princess Libushi recites “the law of the old gods” that brothers ought to have joint ownership of their deceased father’s estate, or divide it equally between themselves, whereat, she is called upon to put the question to a vote: “Gather the votes, glorious princess, of your people.”

The assembly votes that the brothers should have joint ownership of their father's estate. For Aksakov, this poem is further evidence of the democratic customs of the ancient Slavs. In the first place, though the assembly is summoned by the princess, the controversy itself is decided by popular vote. The assembly, says Aksakov, "has an entirely autonomous character...such was the Novgorod *veche* in relation to the prince."<sup>141</sup> What is more, he sees evidence that the assembly was composed not only of patriarchs. Rather, the assembly is composed of elders, and perhaps, persons who received a specific summons from the prince, as well as representatives from every family. This means, concludes Aksakov, "that every family sent to the meeting its own representative: anyone who knows the organization of our meetings will see that this custom has been preserved to this day among the people; either the eldest in the household, or a member of the household chosen by the family goes to the meeting."<sup>142</sup> Thus we see that the earliest form of government among the Slavs, by Aksakov's account, was democracy. Each family sent a representative to common assemblies, which decided controversies for the whole community. Moreover, elements of this ancient tradition have been preserved at least among the common people in Russia, who continue to govern their communities through meetings attended by representatives of every family.

The earliest history of the Slavs, then, provides ample evidence of their "communal" or self-governing character. The Kievan period is, by Aksakov's account, no less indicative of this tendency in Russians. In the same essay, Aksakov offers several examples of the power of the *veche* in Kievan Rus'. For brevity's sake, I shall quote only the first one:

During the reign of Izyaslav I, already we hear the loud voice of the community in Kiev. In 1067, when Izyaslav and Vsevolod, defeated by the Turks, fled to Kiev, the Kievans gathered a *veche* on the square and sent a message to the prince: Turks have dispersed throughout [our] land; prince, give us arms; we want to carry on fighting with them. Izyaslav did not listen. The people freed the imprisoned Vseslav and made him their prince. Izyaslav fled.<sup>143</sup>

This instance clearly shows not only the power, but also the wisdom and the courage of the assemblies. When Izyaslav I failed to defend Kiev from the enemy, and ignored the command of the assembly to supply citizens with arms that they might contribute to their own defence, they deposed him and chose another prince to coordinate their campaign to expel the Turkish interlopers from their land.

In another review essay, “Concerning Volume IV of Solovyov’s *History of Russia*” (1856) Aksakov offers a more comprehensive analysis of the form of government in Russia in this period. Granted, one could not speak of a “Russian state” at this period. But the Russians were a nation, and thus one could speak of customs common to all the people: “Russia was one as a single Russian land, united by faith, language, and a way of life.”<sup>144</sup> Contrary to Solovyov’s account, and, for that matter, Karamzin’s account as well, the government in this period was *never* understood to be a monarchy. Summoned by the Slavs, the first three Varangian princes arrived with their war bands (*druzhinniki*) and settled in different cities. Thus, “from the first we see a phenomenon completely contrary to monarchy: now there appear three princes. During the reigns of Oleg, Igor and Svyatoslav, it appears that monarchy arises, but entirely by accident, for these princes had no brothers... Eventually, when the princely clan multiplied, all of Russia was governed by the entire princely clan, by all of the princes present.”<sup>145</sup> Thus, monarchy was never the established form of government in Kievan Rus’. Power was shared by all members of the princely clan. What is more, on Aksakov’s account, the power of these princes was substantially limited in two ways. As has been suggested already, the princes were limited first of all by the assemblies of each city. The princes themselves often entered into conflicts with one another, but the city assemblies dealt with each of them according to their own interests. On occasion, the cities would take the side of one prince or another, especially when “their ceaseless battles did

too much harm to their material welfare, in which case the people expelled the prince who was the cause of the quarrel; or when a prince personally suited them, in which event the people armed themselves for his sake, as, for instance, Kiev did for Izyaslav Mstislavich.”<sup>146</sup> The princes thus served and inhabited Russian cities at the pleasure of the *veche*.

Each prince was also limited by his own war band (*druzhina*). Even a “grand prince” was by no means autocratic, but rather “an elder.” The prince’s war lords formed his council:

he valued their opinion and followed their counsel; there was no direct limitation of the authority of the prince, but only by the force of habit, the war lords had constant weight in his aspirations and undertakings, and were themselves independent; a war lord possessed the right to go from one prince to another. The war lords, from their side, as we said, though only by the force of habit, moderated the personal rule of the prince.<sup>147</sup>

Here Aksakov emphasizes the informal, moderating influence of the war lords on the grand princes of Kievan Rus.’ However, in another essay published the next year, “Notes concerning Solovyov’s article ‘Schloezer and the antihistorical tendency’”, he revises this interpretation: “the custom of consultation entered the relations of the prince with his war lords so strongly that the lords were, after a fashion, his legal and indispensable council in all affairs (except personal ones).” Evidence for this, he says, abounds in the chronicles from the period. For example, when conspirators attempted to start a quarrel between Mstislav Izyaslavich and David Rostislavich by spreading rumors that the former was hatching a plot against the latter, Mstislav informed his lords, and received the following response, as recorded in the chronicle: “Thou art true before God and man, *without us it was not permissible for you to design or bring to pass such a thing*, but we all know your sincere love for all our brethren.”<sup>148</sup> Such instances, Aksakov argues, indicate that the prince was bound not only to consult with, but even to obtain the consent of his council of lords before proceeding with any important undertaking.

It is significant that unlike statist historians such as Karamzin, Aksakov never condemns the faults of the decentralized, and, admittedly, rather chaotic form of government of the Kievan period. Karamzin declared the city assemblies capricious and incompetent, and lay the blame for the Mongol yoke squarely on the disorderliness of the appanage system. Aksakov has no such axe to grind. He says

some will say such a constitution was burdensome to the people, it had many flaws: there is no dispute, but what [sort of constitution] does not have [flaws]? And so, as any constitution has its flaws, the Russian land tolerated this constitution, attempting where possible to reduce its inconveniences and take measures against them, by not participating in princely quarrels and sometimes putting an end to them, or by commanding the prince to depart.<sup>149</sup>

Granted, neither Aksakov nor any of the other Slavophiles ever praises the Kievan system of government, much less advocates its restoration. Indeed, other Slavophiles judge the Kievan period in general, and the Novgorod republic in particular, more harshly in tones reminiscent of Karamzin.<sup>150</sup> Nevertheless, were one so inclined, one could draw the following two lessons from Aksakov's account of the Kievan constitution: first, that Russians have had experience governing themselves and limiting the power of their princes, and, second, that, through their organ of self-government, the *veche*, they responded with considerable courage and acumen to the inconveniences of the political system of that era.

On Aksakov's account, the Muscovite period of Russian history reveals the abiding strength of the communal trait in the Russian national character. There were institutional changes resulting of necessity from new circumstances, most importantly, the creation of a monarchical state which took on the task of governing a vast territory, and the disappearance of the city assemblies, or *vecha*, but, contrary to the opinion of Solovyov, who saw this as a significant break in Russian history, Aksakov emphasizes continuity:

Solovyov says that Russia abandoned her parliamentary (*vechevoi*) way of life in order to coalesce into one state; from which it follows that this self-governing or communal way of life, in his opinion, disappeared completely. But in the coalescence of the state into one whole there was no need for the community, hitherto separate, to be annihilated, it need only expand to the community of all the land, and what is more, the separateness of the communities, now subject to an all-embracing, all-Russian community, could be preserved.<sup>151</sup>

The *vecha* may have disappeared, but their essence continued in a new form. The communities were no longer independent, but they continued to exist as distinct communities and continued to have a voice in government. This continuity was made possible through the institution of the *Zemskii sobor*, the Land Assembly.

The Assembly of All the Land, Aksakov takes great pains to demonstrate, was a well-established custom in Muscovy. Though records are sometimes spotty, he says, there is evidence to suggest that all Muscovite tsars summoned them, from Ivan IV to Feodor Alekseevich. In his account, he focuses on some of the lesser known Land Assemblies. For instance, he deems it very likely that Ivan IV's successor consulted with representatives of the whole nation concerning a peace treaty with Poland. In the records from that diplomatic mission led by members of the Nobility, the representatives of the Russian side reportedly said, regarding the proposal for peace, "concerning this our sovereign must consult with all the land, first with the metropolitan and with the whole sacred Council, then with the nobles and all the state councilors, with the generals and with all the land; to such a council it will be necessary for persons to travel from distant places."<sup>152</sup> Far more detailed records exist of later land assemblies. During his reign Mikhail Feodorovich summoned at least twelve land assemblies, some of which were asked to consider new taxes. One of Aleksii Mikhailovich's assemblies was summoned to consider a proposed reform of the laws of the realm. The deputies stayed in Moscow a long time, and "presented their opinions with special papers called *chelobitnye* [petitions]. In the end, the

written *Ulozhenie*, or codex of laws, was read to the representatives, and they put their signatures to it, as it is written in the old Act concerning the *Ulozhenie*, “so that all of the *Ulozhenie* should be firm and secure.”<sup>153</sup> Thus, by Aksakov’s account deputies from all corners of the nation assembled to consider some of the most important affairs of state, such as questions of war and peace, taxation, and legislation.

What is more, these deputies were indeed representatives, selected with the consent of their own communities and given instructions by them. Aksakov declares that, given other evidence of the communal character of Russians, it would be impossible to believe otherwise. But there are also indications in some of the charters of Mikhail Feodorovich of “local,” “preparatory” councils in the cities and provinces “at which the representatives received instructions from the local community that elected them.” The charters in question were writs of summons for a special Land Assembly in 1612 during the interregnum for the election of a new tsar, the choice eventually falling on Mikhail Feodorovich Romanov. The writ includes the following language: “that for the election of a sovereign, persons of all cities and of all ranks should come to Moscow, having sought strict instructions in the cities and having taken from all sorts of persons full instructions concerning the election of a sovereign.”<sup>154</sup>

As much as Aksakov insists on the representative character of the land assemblies, the frequency with which they were summoned, the great importance of the affairs they considered and the high regard in which the elected deputies were held by the tsars, there is a crucial difference between this and earlier Russian assemblies, between the relationship of prince, knights and people in the Kievan period and earlier, and that of tsar, nobility, clergy and people in Muscovy. According to Aksakov's interpretation, the land assemblies, as well as the councils of the clergy and nobility were consultative bodies only. Whereas “the ancient provincial *vecha* did not always remain within

the confines of [expressing] their opinion, but not infrequently admixed the use of crude external force” the land assembly, he says, “had a purely moral power [to express its] opinion without any admixture of external coercion.”<sup>155</sup> When the tsar consulted deputies at a land assembly, the typical formula of their reply was “How to proceed in this matter, your majesty, it is thy will; but our thought is as follows.”<sup>156</sup> Such was the case also with the Council of Nobility (*Boyarskaya Duma*), which replaced the independent war lords. “Noble counselor” (*Dumnyi boyarin*) became a government post. “The tsar consulted with them, observing custom, but freely, not being obligated to consult.”<sup>157</sup> Aksakov says nothing about the role of the church in the Muscovite constitution. Aleksey Khomyakov, however, notes in his essay “*Vremya velikikh pobed*” that, according to custom, the clergy could formally denounce the tsar with “a word of truth and Scripture for the violation of laws divine and human,” as, for instance, Silvester did in an attempt to restrain Ivan IV, and succeeded, if only for a time. But the power of clergymen, and of the church council as a whole, was, also only a “moral” power.<sup>158</sup> In accordance with custom, then, it was expected that tsars should consult with nobility, clergy and deputies from all the land, granting them complete freedom to express their opinion, and the tsars of Muscovy all did so. But no institution could impose its will on the tsar, none shared in the tsar’s sovereignty. All of the original Slavophiles shared this interpretation of the political system of Muscovy.<sup>159</sup>

It should be noted that this is entirely different from the Decembrist interpretation of the Muscovite constitution. The Decembrists argued that the tsar was bound to obtain the consent of his Council of Nobility in any matter touching on the rights of his subjects, or, indeed, any weighty matter. The land assemblies, when they sat, had conjoint legislative sovereignty with the tsar. The Slavophiles thus offer a fundamentally different understanding of the Muscovite government.

However, according to the Slavophiles, there were times when the land assemblies expressed

not only their opinion, but also their will. In the absence of a tsar, the assembly of the land was sovereign. Indeed, according to Aksakov, when the throne was vacant, only a full assembly of the land had the authority to elect a new tsar. Thus, Aksakov, *pace* Karamzin, imputes the fall of tsar Vasily Shuiskii not to the latter's concession to the nobility to limit his own power, but to the illegitimate means by which he ascended to the throne. In his review-essay "Concerning Volume VIII of Solovyov's 'History of Russia,'" Aksakov writes "For the election of a tsar to a vacant throne, a Land Assembly could and ought to have been summoned, so that this election would be a legal act. Such an act could and ought to have been considered and discussed by all the land. No Assembly, neither of the Land, nor of Moscow, was summoned, and thus Vasily Shuiskii did not ascend the throne in accordance with the will of the people."<sup>160</sup> Instead Shuiskii came to power with the support of a mere faction, and, thus, as the testimony of Prince Feodor Obolensky confirms, never gained legitimacy in the eyes of the nation.<sup>161</sup>

By Aksakov's account, the land assembly also exercised all other sovereign powers in the absence of a tsar. He notes that when the land assembly sent members of the nobility to negotiate with the Polish king on the election of his son Tsar of Muscovy, they took it upon themselves, for the security of the nation, to alter the traditional relationship between tsar and people by prescribing legal limits on the power of this prospective foreign sovereign: they stipulated that "alteration of the laws depends on the nobles and all the land."<sup>162</sup> According to this arrangement, then, the new tsar would not be able to alter the laws without the consent of the nobility and people. In the end, offering sovereignty to a Pole was revealed to be a blunder under any terms. During the struggle to expel the Poles from Moscow, the Russian militia took its direction ultimately from "all the land." All sovereign acts were promulgated in the name of the land, or the nation; they were carried out by an assembly composed of nobles and deputies from all the

land, as official documents from that time reveal. Aksakov selects the following examples from the “Order of Lyapunov’s Militia” proclaimed on June 30<sup>th</sup>, 1611 outside of Moscow:

Charters concerning *all* matters are to bear the seal of *the land*, but concerning large affairs of the land the charters shall be signed by the nobility; nobles are not to put anyone to death on any charge or send men to other cities unless so ordered by all the land; if any man shall kill another without an order from the land, that man himself shall be put to death; if the nobles whom we have chosen by all the land to the government for all affairs domestic and martial shall not take care of domestic affairs and shall not dispense punishment in all things according to justice, and shall not carry out all affairs domestic and martial according to the order of the land: then we by all the land are at liberty to remove the nobles and generals, and in their place elect others, having consulted with all the land who for the martial and domestic affair shall be suitable.<sup>163</sup>

It was this sovereign assembly of the land that administered justice in Muscovy and directed the war effort against her enemies when the state had collapsed. What is more, it was just such a sovereign assembly that restored the state after the enemies of the nation had been expelled.

More striking evidence of the political significance of “the land,” itself a manifestation of ancient “communal” tendency in the Russian people, could scarcely be found.

#### **The Slavophile Constitution—the Autocracy and the Land**

I reiterate, Aksakov’s historiographical essays are descriptive. They show the tendency of the Russian nation to communality, which in many periods of history, at least by Aksakov’s account, manifests itself as a robust capacity for self-government. The essays provide, moreover, a great wealth of material from which various constitutional reconstructions might have been derived, some of them comparable to Western European models of constitutional self-government. Thus, based on their own understanding of their nation’s history, it is clear that the Slavophiles could have formulated an authentically Russian constitution compatible with the basic principles of the Western European model, a division of the sovereign power among various estates, including a popular element, a charter of rights limiting the reach of the national government into local self-government and the private sphere, and a theory justifying resistance

in the event that the established constitutional form should be subverted, or the traditional rights violated. But they did not. For on the whole, such thinking was antithetical to their conception of the Russian national character and Russian history. They argued that Russia had enjoyed many rights and privileges in the past according to custom, and that these freedoms should, in some form, be restored, but they declared Western constitutional theory alien to the Slavic race and Russian historical experience, and thus unworkable on Russian soil. Their narrative is worth considering for two reasons: first, because its shortcomings are instructive, and second, because its basic concepts and myths have survived into 20<sup>th</sup> and 21<sup>st</sup> century Russia, and, as we shall see below, continue to influence the understanding and the aspirations of Russian nationalists.

Although there is no single all-encompassing statement of Slavophile political theory, the two most systematic tracts, Konstantin Aksakov's "Note Concerning the Internal Condition of Russia", and Ivan Kireevsky's "On the Character of European Enlightenment and its Relation to Russian Enlightenment," supply the essential arguments. I shall supplement their theses with the commentaries of Aleksei Khomyakov, and of Konstantin's younger brother, Ivan Aksakov.

Konstantin Aksakov begins his account of an authentic Russian theory of politics with a thesis that will perhaps be surprising in light of his historiographical writings. "The Russian people," he says, "is a non-sovereign people, i.e. a people that does not aspire to political power, does not desire for itself political rights, does not have within itself even a germ of popular lust for power."<sup>164</sup> Part of the difficulty has to do with the translation of the word *negosudarstvennyi*, "non-sovereign" as I have rendered it above, but literally "non-state." However one translates the term, the point is that such a people has no lust, no ambition for state power. The Russian people, then, does not seek the height of state power, is not disposed to self-government at the national level. This, he explains, is evident from some of the most signal events in Russian history,

including the founding of the Russian state. This founding consisted in the “voluntary summoning of a foreign state authority in the person of the Varangians, Ryurik and his brothers.” Thus, the first sovereign act of the Russian people was to invest a band of foreign warriors with all the powers of sovereignty. One should by no means conclude from this that Russians are incapable of performing all the functions of a national government themselves. Indeed, in 1612 “when there was no tsar and the whole constitution of the state lay smashed to smithereens,” the nation itself rose up, armed itself and liberated Moscow. But once that was accomplished “this mighty and victorious people” which had elected prince Pozharskiy and a mere commoner, the butcher Kozma Minin, to work its will, instead of keeping the sovereign power in its own hands, sought to confer “state authority” on another; as it had at the founding of the Russian state in 862, the people “elected a tsar and entrusted its fate to him without limit,” and then “peacefully disarmed itself and went home.”<sup>165</sup> These two signal events, and indeed the rest of Russian history, demonstrate that, as a rule, Russians have no ambition to exercise “state authority” themselves and thus prefer to entrust it absolutely to a tsar. Moreover, they feel no need to acquire guarantees of any of their customary rights and privileges from their tsar.

Ivan Kireevsky, with far more sophistication and detail than Aksakov himself, explains this perplexing trait of the Russian people by contrasting Russia’s cultural and political development with that of Western European states. Apart from ethnic or racial characteristics specific to each tribe, three factors, he says, account for the general assertiveness of the members of Western nations, and their consequent lust for political power: first, their reception of Christianity through the Church of Rome, second, their assimilation of ancient pagan learning, especially Roman culture and Roman law, and third, the manner in which their states were initially formed. All three of these influences, according to Kireevskii, inculcated in Western

nations a spirit of materialism, individualism and factionalism.

From its beginning, asserts Kireevskii, Roman Catholic theology placed an emphasis on “the logical connection of concepts.”<sup>166</sup> This is most evident in the works of its greatest theologian, St. Augustine, who surpasses all other Church Fathers in his “love for the logical concatenation of truths.” “Some of his works,” continues Kireevskii, “are, so to speak, one sinuous, unbroken, close, iron chain of syllogisms.”<sup>167</sup> Western theologians such as Augustine, says Kireevskii, placed so much emphasis on logical argumentation, that, by the 9<sup>th</sup> century, “the Western church [had] planted within itself the inevitable seed of Reformation, which placed that very church before the judgment of the very same logical reasoning, raised by [the Western church] itself above the consciousness of the Universal Church.”<sup>168</sup> This faith in the power of logic produced not only a revolution in the church, but also helped spawn revolutions in politics. As a consequence of this development, Western man would come to “believe that by his own abstract reasoning he could now create for himself a new rational life and build heavenly felicity on land by himself transformed.”<sup>169</sup> Such belief could empower any individual to develop his own philosophy of life and then form a party for political agitation.

The assimilation of Roman history, literature and law also instilled in Western nations an overriding interest in the perfection of the external conditions of life, individualistic self-assertion and a predilection for faction. The essence of the Roman spirit was “physical domination of the world.”<sup>170</sup> Roman civil law, he says, is “in its essence nothing other than development of the absoluteness of the right” of property. The emphasis on unconditional property rights was a constant reminder to Westerners of their individual independence. “The same rationalistic character,” he continues,

we note in Roman morals, where the external activity of a man was rated so highly and so little attention was given to its internal meaning; where pride was virtue; where each

man's individual logical conviction was the only guide for his actions; where, therefore, each individual conceived of himself not as a unique person, but as someone different from other individuals, and understood no other relationship to others except one derived logically from the external conditions of life. Thus the Roman knew almost no other connection between men but the connection of common interests, no other unity, but the unity of party.<sup>171</sup>

In Kireevskii's account ancient Roman civilization appears to be essentially a mirror image of 19<sup>th</sup> century European nations, with their sacred property rights, personal ambition, materialism, secularism, individualism, lack of unity on the basis of some affective or spiritual tie, and proclivity for party-political intrigue.

The origins of the state in Western Europe also explain the character of Western peoples: "European society by some strange historical accident almost everywhere arose violently, from a struggle to the death between two hostile tribes: from the oppression of the conquerors and the resistance of the conquered, and finally, from those accidental conditions that were the external result of the conflict between hostile, disproportionate powers."<sup>172</sup> Here Kireevskii undoubtedly has in mind, in particular, the conflicts between Normans and Saxons in England, between Franks and Gauls in France. Western states such as England and France began with violent foreign conquests, which provoked the resistance of natives, and eventually resulted in a constitutional balance of forces reflecting the relative strength of each tribe and their deep mistrust toward one another. It should be noted, of course, that as we have seen, early modern European defenders of liberty and constitutionalism did not see their own history in this way. Dutchmen and Englishmen ascribed to their forefathers a spirit of national unity and solidarity which allowed them to restrain their own native leaders, when those strayed from their duty, and to expel foreign conquerors, or at least to preserve their native customs in spite of the intrusions of foreign princes.

In Kireevsky's telling of Western political history, there never was any national or

spiritual unity among the people of Western states. They were forged by violence, the struggle of hostile tribes, and the abiding spirit of disunion and distrust among them could be mitigated only by strict and exhaustive codices of laws regulating all relations between man and man at all levels of society and government. Kireevskii sums up the political culture of Western peoples as follows:

Having begun with violence, European states had to develop through revolutions, for the development of the state is nothing other than disclosure of the internal bases on which it was founded. Therefore European societies, founded by violence, bound together by the formality of individual relations, suffused with the spirit of single-minded rationalism, had to develop in themselves not a social spirit, but a spirit of individual separateness, bound by the knots of private interests and parties.<sup>173</sup>

The Western European lust for political power arose naturally from its foundations in violence and hostility, its faith in abstract reason, and its Roman spirit of individualism and factionalism.

Russia's development, according to Kireevskii, was entirely different. In the first place, as Aksakov's retelling of the Varangian tale suggests, the Russian state was not founded by conquest. Kireevsky explains:

the coming [of the Varangians] was not by any means an invasion of a foreign tribe, nor could it have been by any means a conquest, for if some 150 years later it was possible to expel them from Russia or at least a significant portion of them, then how could they have conquered her so easily before? How could they have held on to her quietly against her will? During their reign, the development of [Russia's] social and political relations occurred calmly and naturally, without any forcible innovations, emerging exclusively from the internal structure of her moral conceptions.<sup>174</sup>

The Varangians were not enemies. They did not impose their arbitrary will on the Russians. But most importantly, they did not interfere with the existing customs of the Russian people. The Russian nation was thus able to develop naturally, in accordance with its own unique character. As the Varangians did not force any innovations upon them, the Russians had no cause to use force against their princes in response. According, the Kireevskii, none of Russia's enemies, not even the Mongols, interfered with her "internal development."<sup>175</sup>

Second, unlike the Western mind, it was under the guidance of “the Holy Fathers of the Orthodox Church” that “the native Russian mind was formed and brought up.”<sup>176</sup> “The tribal particularities of the Slavic way of life”, says Kireevskii, made the Russians especially amenable to the assimilation of Christian teachings.<sup>177</sup> But it was ultimately Orthodoxy itself that came to define the Russian national character. The Orthodox Church instilled in Russians tendencies contrary to the spirit of pagan Rome and the Church of Rome. Above all, the Eastern Church, as the single source of all enlightenment in Russia, created even greater unity among the people by inculcating in all orders of society the same beliefs and convictions. The Russian land, says Kireevskii,

was covered with a single, unbroken network of countless secluded monasteries connected with each other by the sympathetic ties of spiritual communication. From them uniformly and unanimously there poured out the light of consciousness and science to all the separate tribes and principalities. Not only the spiritual ideas of the people emerged from them, but also all moral, social and juridical ideas, passing through their formative influence, returned again to the consciousness of society, having acquired one general direction.<sup>178</sup>

In consequence, says, Kireevskii, all classes of Russian society were “suffused by a single spirit.”<sup>179</sup> To Kireevskii’s imagination, ancient Russia appears as a great collection of small communities, united by spiritual uniformity, extending outward to larger and larger circles of region and tribe, and finally to the great overarching unity of “all the Russian Land” which “has above it the grand prince of all Russia, who is affirmed the entire roof of the social edifice, upon whom rely all the ties of its supreme structure.”<sup>180</sup> Amid such unity of belief and custom, “there could be a difference of opinion in one or another private matter, but in essential questions, one hardly meets any traces of a difference of opinion.”<sup>181</sup> Indeed, differences on fundamental questions would be deeply disturbing and tragic.

The content of Orthodox Christian enlightenment was also very different from that of

Roman Catholic enlightenment. In Orthodox theology, there was no privileging of abstract logical argumentation. Orthodox theologians had not proclivity for “single-minded rationalism,” torn “from the other powers of the spirit.” They did not attempt to demonstrate the truth primarily by the construction of trains of syllogisms, and so, no such excessive faith in rationalism developed among Russians, and hence, no tendency among individuals to seek to transform all of society according to the fantasies of their own brains. Moreover, whereas Western enlightenment focused more on the practical, material arrangements of life, Orthodox enlightenment put much greater emphasis on “the inner wholeness of being.”<sup>182</sup> This too had a profound impact on the development of the Russian national character. As Kireevskii puts it, whereas “Western man sought by the development of external means to ease the burden of internal deficiencies”, “Russian man strove by internal exaltation over external needs to escape the burden of external necessity.”<sup>183</sup> In the face of deficiencies, Western man sought material, external solutions, for instance, in political activity. Russian man, however, saw problems as primarily spiritual in nature, and looked inward, shunning external action.

Thus, by his account of the purportedly deep differences between the development of the Western European and the Russian mind, Kireevskii makes intelligible Konstantin Aksakov’s claim about the absence among Russians of a lust for political power. Their unity of faith and custom, never disturbed by foreign invasions, the absence of influences tending toward individualism, their own inclination to seek salvation in the purification of the soul rather than in external activity, all militate against ambition in politics or a desire to strictly codify social and political relations. We see, then, how Russia’s ancient constitution, so different from that Western states, emerged.

According to Aksakov there arose in Russia, over time, a mutual understanding between

the state authorities and the people, not a social contract per se, but a division of responsibilities, defined by custom, between the state and the land (*gosudarstvo i zemlya*). The state was responsible for the administration of the government apparatus at home, and the prosecution of wars abroad. Its authority in these areas was “unlimited.” But the customs, the way of life of the people, with its spiritual, social and economic dimensions, were affairs of the *land*, or, we might say, of the nation. Thus, “the first relation between the government and people is a relation of *mutual non-interference*.”<sup>184</sup> This does not mean that the government can have no involvement in affairs of the land. On the contrary, the “positive duty of the government with respect to the people is the defense and protection of the people’s way of life” and the “provision of such capacities and means” as will allow the people to flourish.<sup>185</sup> This, according to Aksakov, Russia’s pre-Petrine tsars did, when necessary bringing in foreign technology and specialists for the benefit of the nation. But the government is not to attempt to impose on the people laws that interfere with its established way of life. Peter I’s forcing of his nobles to change their form of dress and shave their beards in Aksakov’s account, like in that of Karamzin, serves as a symbol the state’s violation of the established custom of non-interference, or at least avoidance of coercion in the religious, social, and economic affairs of the people. In essence, then, we have a reformulation of Karamzin’s “covenant between tsar and people.” However, Aksakov’s formulation leans farther in the direction of theory of popular sovereignty. In the first place he, like Samarin, explicitly establishes the priority of the nation over the state: “It is not a matter of dispute that the government exists for the people, and not the people for the government.” The tsars of Muscovy, according to Aksakov, accepted this fundamental priority of the nation, and thus, never presumed to trespass on “the autonomy of national life and the national spirit.”<sup>186</sup>

According to Aksakov, the government is also obligated by custom to seek the opinion of

the people, and to allow them full freedom to express it. This goes well beyond Karamzin's covenant, but also falls well short of the Western European common law social contracts. "Our wise tsars," he says, understood that "if one has a sincere and rational desire for the happiness and prosperity of the country, one must know and, in certain instances, ask its opinion." This they accomplished by summoning land assemblies, which represented to the sovereign the opinions of the whole nation:

To the Land Assemblies were summoned not only people of the land, but also servitors or men of the state: nobles, ministers and members of the tsar's retinue, gentry and others; but they were summoned in the capacity of representatives of the land, of the nation, for advice. At the land assembly the clergy also was present, necessary for the general completeness of the Russian Land. Thus, at this assembly gathered, so to speak, all of Russia, and all assembled, received at this hour its fundamental meaning, the Land, on account of which the assembly was called "of the land."<sup>187</sup>

The right of the members of this assembly of all the estates was no more and no less than the full and free expression of their opinion. It is perhaps significant that Aksakov uses the word "right" (*pravo*) here, which he usually avoids: "Action," he says, "is the right of the state: opinion is the right of the country... The Land did not restrict the Sovereign's actions... [and] the Sovereign did not restrict the Land's [voicing of its] opinion."<sup>188</sup>

Other Slavophiles shared and defended this interpretation of the land assembly as a consultative body. Ivan Aksakov in his essay "On the right of petition in ancient Rus'" insists that the tsars were not bound by the votes of the land assemblies.<sup>189</sup> Indeed, "pre-Petrine Russia did not know counting of votes, evaluated a vote not by quantity, but by quality; and there was no need for a count, for it was necessary only to know their opinion."<sup>190</sup> He then recounts a case in which Tsar Mikhail Feodorovich sided with the opinion of a mere thirty-two merchants, mayors, and representatives from the black hundreds and free villages over that of 160 gentlemen and servitor-nobles. The tsar could grant the petitions of any of the estates, or not

grant them, as he saw fit. Legislative authority was, indeed, vested solely in the tsar. But such a constitution as this was compatible with freedom and the advancement of the common good. Because of the this consultative element, of which the land assembly was the most striking manifestation, the Muscovite form of government could not be compared to “German absolutism” or “Asiatic despotism.” The Russian nation, in its wisdom, had understood the dangers of unalloyed absolutism, and thus “to compensate for the inadequacy of monarchical unlimited authority in determining the needs and wants of the people it acknowledges for the land, in its ideal, complete freedom of domestic and spiritual life, unlimited freedom of opinion or criticism, that is, of thought and speech.”<sup>191</sup>

By Ivan Aksakov’s account, Muscovy came very close to this ideal. The old charters, he says, demonstrate that Russians frequently exercised an unrestricted freedom of speech and freedom of petition. According to one of Mikhail Feodorovich’s writs of summons, each estate was to send deputies “who would be able to relate grievances and violations, and devastations, and how to make the State of Muscovy whole.” When the deputies arrived “we, our majesty the Sovereign, with our father and confessor, the most holy patriarch Filaret Nikitich, having taken advice by their petitions, begging God’s mercy, shall undertake to care for the State of Muscovy, in everything to mend so it shall be better.”<sup>192</sup> In a writ of summons to the city of Tot’ma in 1682, Tsar Feodor Alekseevich requested deputies “about everything to declare their whole truth.”<sup>193</sup> Such examples, he says, show that “pre-Petrine Russia can justly in many respects take pride before the political system of Western European states of the same era – in that freedom granted to her subjects to state their opinions before the sovereign authority, and the demand for that free opinion which lived in the consciousness and the custom of that authority.”<sup>194</sup>

The old unity between tsar and people—and the old freedoms which it represented—was

broken by Peter I. On this point, the brothers Aksakov do not mince words. Konstantin describes the reign of Peter I as a “revolution.” This “great genius” looked upon his nation “as an architect looks upon bricks.” “With Peter began that bane, which is the bane of our time as well. Like any untreated bane, it intensified with the passage of time, and constitutes a dangerous and fundamental evil of our Russia.” Peter did what the tsars of Muscovy understand they must not do: he “trespassed against the people, interfered with their life, their culture, forcibly altered their morals, their customs, even their clothing; trespassed, through the police, on their assemblies; exiled to Siberia even clothiers for sewing Russian-style clothing.”<sup>195</sup> Peter’s revolution robbed the Russian people of their traditional freedoms, and in doing so, fundamentally altered the relationship between tsar and nation, and between Russia’s estates:

Thus was brought to pass the breach between the tsar and people, thus was destroyed this ancient union of land and state; thus, in the place of the prior union there arose a yoke of the state over the land, and the Russian land became, so to speak, conquered, and the state its conqueror. Thus a Russian monarch received the status of despot, and the freely-subject people the status of unwilling slave on his own land!<sup>196</sup>

Ivan Aksakov describes the transformation more succinctly: “the essence of the Petrine revolution was that the land (*zemskii*) type of state was replaced by a police type of state.”<sup>197</sup> He suggests, moreover, that, underneath the guise of “Orthodoxy, Autocracy and Nationality” the government of Tsar Nicholas I was the same sort of “system of police-chancellor dictatorship or foreign Caesarism.”<sup>198</sup> Here, the Slavophile account resembles the constitutional narratives we have seen in early-modern Western Europe. A tyrant denies the nation its ancient liberties and privileges, and, as though he were a foreign conqueror, imposes on it the yoke of a foreign model of government and foreign customs, in effect, reducing the people, hitherto content to obey a government that acknowledged and protected their ancient liberties, to a condition of slavery. In this case, Peter is seen to have inflicted German absolutism on the Russian nation; his

establishment of a new capital-city, “St. Petersburg, to which he gave a German name,” becomes the pre-eminent symbol of this foreign yoke.<sup>199</sup>

However, as, according to the Slavophiles, the Russian notion of liberty is different, their response to foreign despotism is also different. According to Aksakov, Peter’s foreign despotism corrupted the Russian people in two ways. First, although Peter’s intrusions into the domestic, cultural and spiritual life reached all the estates, to some extent, even the peasantry, they had their greatest impact on the upper classes. Peter’s service gentry became deracinated, “deprived of national soil.” “Contempt for Russia and the Russian people soon became, so to speak, the possession of the educated Russian man.” Thus arose the great spiritual and cultural rift and disunion between different segments of the nation, the upper classes and the lower, who, for the most part, remained rooted in the authentic Russian way of life. Second, the deracinated and “newfangled” Russians of the upper classes “subjected to oppression from the state even in the domestic and moral aspects of their lives, and placed in a new, slavish relationship to authority, discovered in themselves a lust for political power.” By robbing upper class Russians of their traditional “internal, social” freedom, Peter’s government “forced them in the end to seek external, political freedom.” In other words, by treating Russian nobles like a conquered people, it evoked in them a spirit of resistance and ambition, on Kireevskii’s account, was common in Western Europe, but, until then, unknown in Russia. From this moment, then, members of the nobility began, from time to time, to seek political power by various means. As the culmination “of the non-Russian elements introduced by Peter, there occurred the uprising of 14<sup>th</sup> December, an uprising of the upper class, torn away from the people.”<sup>200</sup> Aksakov thus traces the Decembrist Revolt back to the Petrine Revolution, which deprived Russians of their traditional non-political liberties.

The fundamental difference between the narrative of Ivan Kireevskii and the brothers Aksakov on the one hand, and that of early-modern Westerners on the other, is that the former saw in ancient Russia an absence of political conflict, of the struggle for power, owing to the essential spiritual and cultural unity of the tsar and the estates. Echoing Kireevskii, Aksakov writes “In the West, there is constant hostility and dispute between the state and people... In Russia there was no such hostility and dispute. The state and people, not meddling with each other, lived in a prosperous union.”<sup>201</sup> This national unity, and the natural disinclination of the Slavs to exercise sovereign power, made it possible for the non-serf portion of the population to enjoy freedom without ever entering into conflict with their sovereign, without the need even to present to the sovereign a charter of their rights and privileges. Freedom, under those conditions, was compatible with autocracy. Once the tsar, in the person of Peter I, ceased to be properly Russian and began to interfere with traditional Russian liberties and customs, as a foreign conqueror would, the balance was upset, the spiritual and cultural unity destroyed, and contending for political power came to be seen by many in the nobility as the only means of restoring lost liberty.

However, the idea of contending for power and rights, and the construction of institutions to manage such contention, remained, in their view, something alien to the Russian soul, the prospect of a national constitution more of a danger to traditional Russian liberties and customs than a means of protecting the same from an overweening government. This was not the Russian tradition. The ancient constitution of Russia was an informal understanding between tsar and people whose chief guarantee was the spiritual and cultural unity that suffused all members of the nation. The Muscovite Land Assembly was an appropriate institutional expression of the relationship between government and the nation in Russia. A Western style constitution would

be suitable only for an individualistic, ambitious and contentious people like the nations of Western Europe

Ivan Kireevskii expresses most concisely the Slavophile antipathy toward Western constitutional governments:

To desire a parchment with prescriptions on it of the limitations of sovereign authority, supported by disputation between hostile parties, to desire two houses with a struggle of conflicting interests, to desire, as though this were indispensable, an opposition aspiring as a duty incumbent upon its position to impede all the actions of the government with the aim grabbing the reins for itself—this would be completely mad, because [it would be] completely impossible. The whole fashionable mechanism of Anglo-French constitutions is directly contrary to the very nature of Slavic peoples, except for the Poles, and, perhaps, some part of the Czech nation.<sup>202</sup>

The Slavic soul, shaped by Eastern Orthodoxy preferred unity and had found unity with a government by the descendants of Rurik. Political contestation was alien and hateful to them, and could never develop in a salutary way on Russian soil.

What is more, according to Samarin and Aleksandr Koshelev, the social strata which formed the power-bases of the different sources of authority in a Western constitutional government, an independent nobility and a robust middle class, simply did not exist in Russia. In the words of Samarin “any attempt to limit autocracy in Russia at the present time we consider madness, because it is impossible, though if it were possible, we should call it a calamity and a crime against the people. We have called this deed impossible because there is in Russia no such force upon which one could rely for the limiting of the other force—autocracy.”<sup>203</sup> According to Koshelev: “we do not have the aristocratic and democratic elements that struggle with each other in the West... therefore there is no need to concern oneself with the balancing of these two social forces and there is no necessity for the Sovereign to be an impartial figure holding these eternally hostile forces in balance. We are profoundly convinced that in Russia the people is one and should remain so.”<sup>204</sup>

There was a consensus among the Slavophiles that the Muscovite land assembly was the only national representative organ that was suited to the Russian national character and to the nation's present circumstances. However, at least in their public writings, there was no consistency in promoting the restoration of this institution. In his *Note on the internal condition of Russia*, Konstantin Aksakov sets the tone for this inconsistency by being equivocal. Initially he says that "to summon a land assembly at the present time would be useless." In the first place, there would not be enough unity of purpose between the Westernized gentry and merchant deputies on the one hand and the Russian peasant deputies on the other. This national-cultural rift would hinder the spirit of collegiality. Second, none of the members would have sufficient experience, least of all the peasants, to act as the voice of the Russian nation. Instead, Aksakov proposes two alternatives to a land assembly: first, that the tsar summon deputies from each estate separately on occasion to give their opinions on matters of concern to their class, and second, that the tsar allow full freedom of speech and of the press, strictly limiting censorship to cases of libel and slander, and thus allow "public opinion" to communicate the needs of the nation to the government.<sup>205</sup> Later on, however, Aksakov clarifies a land assembly would not be useful "*at the present moment,*" but "only a little time will have to pass for the government to be able to take advantage of the wise prescription from ancient Russia and summon a Land Assembly."<sup>206</sup>

It should be noted, of course, that in the 1850s and 1860s the Slavophiles could not have published in any licensed Russian journal an essay or petition requesting that a land assembly be summoned. But the tsars' censors were neither omnipotent nor omnipresent. They could have published such materials abroad. After his letter to Tsar Alexander II in 1855 went unanswered, Konstantin Aksakov made no attempt to popularize his proposals. Aleksandr Koshelev, on the

other hand, did. He published a series of such pamphlets in Leipzig, the first of which appeared in 1862 with the proposal that a Muscovite-style land assembly (*Zemskaya дума*) be summoned immediately. The tsar would summon deputies from all classes and provinces of Russia, and ask their opinion concerning all legislative proposals. According to this scheme, says Koshelev, “the tsar reserves for himself the right to confirm the opinions of the minority,” as the Muscovite tsars sometimes did, not being bound to agree with the opinion of their subjects, yet “without discussion in [the land assembly], no law shall be passed... and no-one without charge shall be subject to punishment or search.” Furthermore, all the deputies would have the right to initiate debates in the assembly and present petitions to the tsar.<sup>207</sup> Koshelev, however, was alone in offering specific proposals for the restoration of the land assembly.

Ivan Aksakov, who is rightly credited as the most important popularizer of Slavophile ideas, was in favor of summoning a land assembly in the 1880s, and tried, in complete secrecy, to use his connection to the tsar’s minister, Count N.P. Ignatyev, to bring this to pass.<sup>208</sup> The failure of this clandestine attempt to restore an ancient Russian institution for the expression of public opinion should not come as a surprise. What is more, Aksakov’s public writings dwell on the dangers and inadequacies of Western constitutionalist ideas that were being discussed at this time by other public intellectuals and members of the nobility, but do little to elucidate or promote the Slavophile alternative. For instance, in one dispute with the liberal professor of law and history A.D. Gradovskii, Aksakov argues that the concept of a “legal order,” (*pravovoi paryadok*) which constitutional liberals tout, can in no way guarantee that a government will acknowledge limits to its power, or pursue a policy consistent with the dictates of morality:

The French terror with its bloody orgy and all its methods of execution was as legal and lawful as can be, and must be acknowledged as such from the point of view not of “moralists” but of “humble jurists.” Everything was done by the decision of the legal majority in the convention, and the convention consisted of legal, entirely legal,

representatives of the French people, who committed this violence supposedly in its name and on the strength of the principle of popular sovereignty legally proclaimed by them.<sup>209</sup>

Aksakov's assertion that abstract principles can and have justified the worst horrors is indisputable. His larger point, that legal principles and laws are empty and fruitless unless they grow out of or pass into the customs and habits of a nation, is one of the main insights of the Slavophiles, and also has much to recommend it. But in the absence of any but the vaguest of positive formulations, the upshot of Aksakov's argument seems to be that, rather than take the risk of subjecting the nation to a French reign of terror, it would be better not to undertake any alteration of Russia's national form of government at all. The essay by Samarin cited above, which Aksakov published in the same year, leaves one with the same impression.

The Slavophiles thus leave Russia with a complex and peculiar legacy. As nationalists, they affirmed the priority of the nation over the state, a position which forced them to acknowledge that even an autocratic government must be limited. Konstantin Aksakov's researches revealed that ancient Russians had a robust capacity for self-government. Yet, their understanding of Russian history taught them that Russians did not like to exercise sovereign power, that the customary constraints on a tsar were sufficient to protect their rights as a nation, and did not need to solidify into rigid laws, or be fortified by a theory justifying resistance in extreme cases. They formulated a political theory puzzling to Westerners, but consistent with their view of Russian history and the Russian national character, that, provided there is sufficient spiritual and cultural unity, personal and cultural freedom, and a fruitful relationship between society and state, are entirely compatible with an autocratic form of government. They thus softened Karamzin's harsh tale of autocracy as

the only force that could prevent Russia from descending into anarchy, and presented the possibility that it could be combined with a form of popular representation. In their own time, they filled a position in Russian social and political discourse that had long been vacant as defenders of Russia's native treasures, of the ancient wisdom of their Slavic and Russian ancestors, and from that perch, were able to ridicule Russian liberals, often with justice, as naïve rationalists and superficial imitators. In this role, they, and their intellectual descendents, undoubtedly hindered the development of constitutionalism in 19<sup>th</sup> and early 20<sup>th</sup> century Russia, and provided ideological cover for the autocracy which Ivan Aksakov equated to a "police state," though the latter was no part of their intention. They remain important in the 21<sup>st</sup> century, for, on the whole, it is their ideas, rather than those of the Decembrists, that continue to define Russian nationalism.

There is, however, one great service to the cause of liberty with which the Slavophiles may be credited. The Slavophiles in general, and Yuri Samarin in particular, were instrumental in the promotion and the execution of Tsar Alexander II's Edict of Emancipation, freeing tens of millions of serfs from bondage. Their desire to liberate these men was not based on a belief in universal human rights, or general humanitarian sentiment. The serfs were their fellow Russians and fellow Orthodox Christians. Moreover, in their view, Russian serfs had preserved among themselves certain customs and dispositions from Russia's ancient past which the deracinated upper classes had lost, for instance, their spirit of "communality" and the "common law" by which they regulated their affairs.<sup>210</sup> The Slavophiles saw the serf population as true representatives of the Russian national character, and thus desired to have them as partners in the quest to return Russia to her true path.

## 6. Afterword on 21<sup>st</sup> Century Russia

### **Muscovite Autocracy and the Novgorod Republic Revisited**

In the final section of this chapter, I shall do something I have not done in the others. I shall speak at some length about the relation of ideas from the past to 21<sup>st</sup> century political processes. To reach the 21<sup>st</sup> century there is much that I must pass over in almost complete silence. I shall not discuss the Soviet period (1917-1991) for the simple reason that the internationalist Marxism-Leninism of the Bolsheviks could not have produced a national “bourgeois” constitutional order. It is notable that, like any regime whose leaders have a will to survive, the Soviet government did appeal to the national feelings and the national memory of its people when necessary. The “leader of the global proletariat” (Lenin) wrote of the Decembrists, great Russian noblemen and national chauvinists that they were, in the most enthusiastic tones. Paraphrasing Alexander Herzen’s description of them, he wrote “These were a sort of knights forged out of pure steel from head to foot, warrior-brothers who went willingly to certain death to awake the younger generation to a new life, to cleanse children born in an environment of butchery and servility.”<sup>211</sup> When the Nazi armies marched on Russia in 1941, “the father of the nations” (Stalin) famously allowed the churches, closed as soon as Bolsheviks were sufficiently established to impose their will, to be opened, addressed his compatriots in the traditional Orthodox Christian manner (“Brothers and Sisters”) and declared “may you be inspired in this war by the manly image of our great ancestors, Aleksandr Nevsky, Dmitri Donskoy, Kuzma Minin, Dmitry Pozharsky, Alexander Suvorov, Mikhail Kutuzov.” In a real crisis, the cosmopolitan mask invariably falls off and instinctive nationalism expresses itself without the slightest embarrassment, or, as the case may be, the genuine cosmopolitan is forced to put on a

nationalist mask to maintain the loyalty of this people.

Russia's short-lived constitutional government (1906-1917) is certainly interesting and worthy of study. In form, the regime bore a resemblance to Western style constitutional monarchies, with certain Russian peculiarities.<sup>212</sup> However, it was variously understood by various factions. The Tsar believed he was still an autocrat, a position that Slavophiles and absolute monarchist factions supported. Other factions, however, believed that the elected Duma possessed legislative sovereignty, and could thus overrule the Tsar. Still others wanted to abolish the monarchy.<sup>213</sup> Rather than investigating how these disagreements contributed to constitutional failure and the collapse of the state, a task I must for now leave to others, I propose to examine this failure only in the light of evolving political-historical narratives. The importance of this failed Russian experiment in constitutional government for 20<sup>th</sup> century Russian emigres, whose ideas now inform post-Soviet Russian political thought, cannot be denied.

In the following pages I will consider the evolution of the two main narratives examined in this chapter in the writings of two 20<sup>th</sup> century Russian emigres, Ivan Ilyin, and Georgii Fedotov. I have selected the former because of the undeniable hold his thought has on Russia's current ruling elite, and the nationalists groups that oppose it. I have chosen the latter because his ideas, though not popular today, seem to present the most viable alternative to the political narratives now dominant in Russia.

#### **Ivan Ilyin and the Slavophile Constitution**

Ivan Ilyin is, without doubt, one of the most influential political thinkers in post-Soviet Russia. Expelled from Russia in 1922 by the Bolsheviks, he spent the rest of his life in exile. After his death in 1954, his writings continued to be read and reprinted, together with many

essays of the original Slavophiles, in émigré nationalist journals such as *Veche* and *Russkoye vozrozhdenie*, which, in the late 1980s, began to be circulated in Russia. The first volume of a collection of his complete works was published in Moscow in 1993; the thirtieth and final volume is to be released in 2014. His main works on politics, philosophy, and religion continue to be available in mass market editions. His works on politics are taught in political science departments at Russian universities and are the subject of many doctoral dissertations. Since 2004, at least three documentaries on his life and work have been shown on Russian state television, the latest one (2011) narrated by Russia's most famous living film director, Nikita Mikhalkov. In October 2005, Ilyin's remains were transported from their resting place in Switzerland to the cemetery at Donskoy Monastery outside of Moscow, where they were reburied alongside the remains of General Anton Denikin. The funeral service was attended by the President's representative in the Central Federal District Georgii Poltavchenko, as well as prominent members of Russia's ruling party, Edinaya Rossiya, and presided over by the Patriarch of the Russian Orthodox Church Aleksii II. In the following year, Ilyin's archive, kept at Michigan State University, was transported on a chartered flight, paid for by Kremlin loyalist oligarch Viktor Vekselberg, to Moscow State University. The archive is now being catalogued with a view to creating electronic copies of all the documents and making the former available to the public via the internet.

According to Sergei Markov, a member of the Public Chamber who is close to the Kremlin, the return of Ilyin and his archive to Russia was "initiated from the upper echelons of state power." As president, Vladimir Putin quoted Ilyin in two of his annual Addresses to the Nation. Other prominent members of the Russian political elite have also taken to quoting Ilyin in their speeches.<sup>214</sup> An unnamed high ranking Kremlin official is reported to have said,

Ivan Ilyin is not only one of the most perspicacious of Russian thinkers, who has been honoured with the most extensive republishing of his works, but also, in essence, he is the only Russian philosopher who spoke in his works about the post-Soviet [state] system. It is precisely for this reason that he is relevant to the current government.<sup>215</sup>

Russia's governing elite are, however, not the first group in Russia to see value in Ilyin's work. He has been a hero of Russian nationalists since his writings first began to appear in the USSR in the nationalist journals mentioned above. Aleksandr Turik, editor of the nationalist publication *Russkiy Vostok*, which has on occasion advocated the overthrow of the Putin regime by force, wrote the following in 2001:

The work of Ivan Ilyin is deservedly regarded to be at the apex of Russian national- patriotic thought. [He] managed in the deepest, fullest, and most detailed way with love and talent, to comprehend the national catastrophe which befell Russia and the Russian people in the 20<sup>th</sup> century, and to show the way to awakening, national action, and rebirth.<sup>2</sup>

In 2006, another nationalist, Andrey Savel'ev, chairman of the unregistered political party Velikaya Rossiya, praised Ilyin and denounced members of the governing elite for misappropriating his legacy:

Now some of those people who find themselves at the highest levels of government are beginning to quote Ivan Ilyin, probably the greatest philosopher of the 20<sup>th</sup> century. But they quote selectively from his legacy, wishing to appear as patriots and statesmen. Ivan Ilyin was an out-and-out monarchist. He loved Russia in such a way that he [Putin?] who 'from above' tells us about his [Ilyin's] ideas will never be able to love her.

Savelev then proceeded to explain how the members of his own movement were among the first to speak of Ilyin's ideas in the late 80s and early 90s.<sup>216</sup>

The foregoing should suffice as evidence of the importance of Ilyin in post-Soviet politics. I emphasize his embrace by both the governing elite and the nationalists for one simple reason. As I have shown, in Western European nations it was nationalists who led the revolts against absolutist princes and established constitutional governments; they gained mass support by successful appeals to the memory of heroic ancestors and the sacred traditions of the nation.

For Russia to follow this same path, its nationalists first would have to embrace constitutionalism. But if Russian nationalists are beholden to a different tradition, then there is no other force capable of mounting a constitutional challenge to the established government. Supposing the nationalists were able to replace the current elite, they would not necessarily change Russia's form of government. What is more, the government can divide the nationalist opposition by adopting its rhetoric, and sometimes its policies.

That Ilyin was in fact a nationalist scarcely needs to be demonstrated. Ilyin defends nationalism in general, on religious and secular normative grounds, and Russian nationalism in particular. "Nationalism," he writes,

is the confident and strong feeling that my people also has received the gifts of the Holy Spirit; that it has accepted them through its own instinctive sense and creatively implemented them in its own way; that its strength is abundant, and called to further creative accomplishments; and that for this reason cultural independence is for my people guarantee of greatness.<sup>217</sup>

Nationalism, moreover, arises naturally from and satisfies a deep psychological need in human beings: "According to a general socio-psychological law, likeness unites people, communion increases the likeness, and the joy of being understood opens souls and deepens the communion. This is why the national creative act brings people closer to each, awakens in them a wish to open themselves, to express themselves, to "give their own testament" and find an echo in others."<sup>218</sup> On these grounds alone nationalism would be justified. But nationalism is also necessary for political action.

For Ilyin, "Russianness" is primarily a cultural and spiritual category, but it is, he notes, the creation of a specific tribe. As Ilyin puts it, "The Slavic-Russian tribe" inhabited an expanding territory together with many other tribes, but united under its own single political authority and speaking a single language for a period of a thousand years.<sup>219</sup> "Out of this single

and common ‘material’ of life and conditions,” he continues, “the Slavic-Russian tribe, confessing the Christian-Orthodox faith, created and carried forth that unique spiritual-creative act, by which Russian national culture was created and established.”<sup>220</sup> “Russian nationalism” for Ilyin, is “love for the historical make-up and the creative act of one’s people,” or more simply put, love for the distinctive national culture of one’s people.<sup>221</sup> Ilyin’s nationalism is integrated into a broader Christian cosmology. He occasionally defines his doctrine as “Christian nationalism.” The Russian state of the future, Ilyin writes, should be seen as “a national state, protecting and serving Russian national culture”.<sup>222</sup>

Most important for us, here, however, are Ilyin’s reflections on the lessons of Russian history, and his prophecies and prescriptions for the ordering of post-Soviet political life. The perceived accuracy of Ilyin’s predictions concerning the collapse of the USSR and its aftermath have undoubtedly contributed to the interest in his historical claims and his political prescriptions. Convinced that the Soviet Union was flawed from its inception, he confidently predicted the collapse of the Bolshevik regime, even when the USSR appeared to be at the height of its power. He argued insistently that following the collapse of the Bolshevik regime, Russia would not be ready for democracy. Decades of communist tyranny had “sapped all of the necessary preconditions of democracy, without which the only thing possible is the riotous conduct of the mob [and] universal venality and mercenariness”.<sup>223</sup> Having “lost of the art of being free” the people of Russia would be “overtaken by two classical dangers, anarchy and despotism.”<sup>224</sup> In accordance with the classical formula, they would first experience the former, and when this became intolerable, they would have recourse to the latter.<sup>225</sup>

Ilyin’s description of the “anarchy” resulting from a premature attempt at establishing democracy tends to match what most Russians remember from the 1990s. He said Russians

would emerge from the Soviet collapse poor, exhausted, and embittered, and with an acute feeling that they had been robbed. Their currency would quickly become debased and would have little purchasing power. The collapse of the Soviet government would release from responsibility bands of predatory bureaucrats prepared to exploit the people, cooperate with foreign organizations, and generally sell out the country to foreign interests. Masses of foreign missionaries and assorted foreign adventurers would descend on the country. Ethnic tensions would erupt into violence, civil war and, possibly, the complete dismemberment of the country along ethnic lines. There would be a general “chaos of [population] transfers, returns, acts of vengeance, pogroms, breakdown of infrastructure, unemployment, hunger, cold, and anarchy.”<sup>226</sup> One could argue that it hardly required genius to make such predictions, but after the wide-eyed optimism of the Perestroika years, Ilyin’s pessimism appeared to many to have been prophetic.

Should the democracy induced anarchy be allowed to continue, Ilyin foresaw the emergence of a “totalitarian tyranny from the right,” a “violent extreme-right tyranny”—this is how he elsewhere characterized the Nazi German regime—or perhaps a succession of “anticommunist tyrants...lacking patriotism, honor, and conscience”, like those of analogous historical periods in ancient Greece and Rome, and in Italy during the Renaissance.”<sup>227</sup>

To avoid the dangers of anarchy and extreme right tyranny, Ilyin recommended the establishment of a transitional enlightened dictatorship with military-backed power to prevent civil war and a patriotic mission to educate the people in the values necessary make possible a post-Soviet society with the involvement of citizens in state affairs, local self-government and private enterprise. The first essential task of this dictatorship, following the collapse of the Soviet regime would be to restore order. The post-Communist dictatorship was to resemble the well-known institution in ancient Rome: “The Romans knew the salving effect of autocracy, and were

not afraid of dictatorship, granting it full powers to resolve particular states of emergency. Dictatorship has a direct, historical purpose—to put a stop to disintegration, to block the way to anarchy, to cut short the political, economic and moral collapse of the country.”<sup>228</sup>

Beyond ending the emergency, the task of this “firm, national-patriotic, and, in principle, liberal dictatorship...” would be to “help the people select out and raise up their genuinely best powers, and inculcate in the people sobriety, free loyalty, self-government and organic participation in state-building.”<sup>229</sup> The project of rebuilding the Russian state must be guided by two general rules. Like Ilyin’s other pronouncements, these rules probably appeared prophetic to many in light of the experience of the 1990s. Ilyin wrote that the constitutional system of post-Soviet Russia must be based on two premises: “foundational principles”, and “concrete data.” The latter included questions about the territorial boundaries of the state, and the particular social, economic, and other conditions at the moment of the Soviet collapse. Since such information was not available, Ilyin would not comment on these matters. However, it was possible, he said, to formulate the “foundational principles” of the post-Soviet project, not by turning to abstract ideals of any kind, but by thinking “realistically and historically.” “To think realistically” wrote Ilyin, “means proceeding from Russian history, [from] the national, sovereign, and psychological given, in that form in which we have inherited it”.<sup>230</sup> “Every people,” he wrote, “has its own, unique, individual state form and constitution, which is appropriate for itself and only for itself.”<sup>231</sup> Thus, foreign constitutional models could not be torn out of their historical context and mechanically implanted in another country. Those who wish to rebuild Russia must take into account its specific national character and the lessons of its history. The assertion that Russia’s leaders could not imitate America, or Britain, or France, but

must come to grips with Russia's unique history and national character, was a plausible one for many who lived through the 1990s.

Interestingly, Ilyin himself appears to have had no use for such "realism" before 1917. When Tsar Nicholas II issued the manifesto in 1905 declaring Russia a constitutional government, the 23-year-old Ilyin embraced this reform with enthusiasm. In 1906, he published two brochures intended to explain the new system to new voters, "Freedom of Assembly and Popular Representation" and "What is a Political Party?" In his illustration of principles of democracy and the role of political parties in protecting rights and expressing the popular will, he used Western European, and primarily, English examples.<sup>232</sup> In his next series of political pamphlets, published after the February Revolution in 1917, he still expresses a belief in the principles of Western constitutional democracy, but his tone has changed. He criticizes the "maximalism" and the divisiveness of political party programs. He says that the February Revolution was made possible by "unity, evoked by the war [with Germany] which has brought with it great danger for the whole people; the threat and the danger awakened in our souls *the ancient feeling of motherland* instilled state-popular unity in our consciousness." The various political forces in Russia, he says, must now draw upon this ancient and instinctive patriotic feeling and allow it to guide them toward greater political unity, lest the revolution fail and autocracy return.<sup>233</sup> By October 1917, Ilyin's faith in the ideals of the liberal-democratic February Revolution is gone. In a pamphlet entitled "Whither goes revolutionary democracy?" he exclaims "As if by a demon, spiteful and greedy, blind and deaf, is our Russia possessed, and the paths followed by the popular masses, encouraged by demagogues, are, in essence, the paths of violence and disgrace."<sup>234</sup>

In his later writings from exile, Ilyin describes the February revolution as “a series of acts and events fatal for Russian history.”<sup>235</sup> Its leaders were the descendants of Russia’s 19<sup>th</sup> century liberals, who were “sentimental anarchists” and “dilettantes,” and therefore concentrated their efforts on dismantling the hierarchical command structure of the army, and reducing the coercive power of the state, lest it should use that power “inhumanely,” and succeeded only in unleashing anarchy.<sup>236</sup> Russian liberals, whom he more often calls “half-baked intellectuals” (*poluintelligenty*) were not, and never had been, realists. Though he almost never cites any of them, it is from Karamzin and the Slavophiles that Ilyin derives his “realism” about the political lessons of Russian history and the Russian national character.

For Ilyin, the chief lesson of Russian history is that Russia is not suited to Western style constitutional self-government. His most concise statement of this thesis occurs in an essay whose title poses a simple question “When was Russia a republic?” which is answered in the first line: “from ancient times right up to the February Revolution – *never*: neither in the Kievan period; nor in the Suzdal’-Muscovite period; nor in the Time of Troubles; nor, much less, in the Imperial epoch of Russian history.”<sup>237</sup> In Kievan Rus,’ the governments of the cities had republican characteristics, but the *veche*, properly understood, was an institution of “municipal self-government;” it never was, nor could it ever become a national institution. Ilyin counters the idyllic depiction of the *veche* by the Decembrists as a model of democratic government with certain details about the workings of this ancient assembly. The *veche* could indeed assemble on its own initiative, and exercise the broadest of powers, such as electing and deposing princes and declaring war and peace. It was not, however, democratic in the modern European sense of the term. At any assembly “the one who issued the summons put the question for debate. Votes were not counted: they sought unanimity: ‘until they be and stand as one’. If unanimity was not

reached immediately, then they fought until it was established (this was experienced as a sort of trial by battle), for the dissenting, but beaten-up minority submitted.”<sup>238</sup> What is more, the choice of a prince did not always depend on the *veche*; sometimes the local prince was appointed by the Grand Prince, or gained his position by conquest. In any event, princes, whether by appointment, election or conquest, all belonged to the ruling dynasty. Thus, concludes Ilyin, “one has to admit that the constitution of ancient Rus’ combined republican with monarchical characteristics. An impartial historian will define the ancient Russian ‘city’ as a monarchy, limited by direct democracy.”<sup>239</sup>

Novgorod, however, did not fit this pattern of monarchy limited by direct democracy. The power of the *veche* was more extensive, that of the prince, subject to greater limitation. In Novgorod

the mayor was appointed not by the prince, but by the *veche* (from 1125); without the mayor, the prince no longer issued charters, nor made administrative or judicial appointments, nor did he remove anyone without charge and trial; his financial position was regulated ever more tightly and strictly; he lost the right to ‘remove people’ (for settlement in different places) and to acquire landed property in Novgorod.<sup>240</sup>

Echoing Karamzin and Khomyakov, Ilyin argues that Novgorod’s exceptional republican constitution was a credit neither to itself nor to Russia as a whole. Because the power of Novgorod princes was so limited, the best members of the ruling dynasty were loath to take up the post, or soon found it intolerable and departed. “Precisely this republican tendency ruined the independence of Novgorod.” For “the immense territory of the Novgorod North demanded *strong authority*, and, moreover, the authority of ‘His Lordship Novgorod the Great’ was weakened from an internal stratification into classes and from party dissensions and intrigues.”<sup>241</sup> Divided against itself, the “*parliamentary bulk did not grasp the organic connection of Novgorod with the rest of Russia*: it sought its own ‘caprice’ and intended to ‘express itself’ at its own

risk.” The annexation of Novgorod by Moscow was thus an “organic necessity.” “The republicanizing *veche* of the Novgorod separatists was doomed and perished (1478 in the reign of Ioann III), while in many other Russian cities (apart from Pskov) we still find for a long time these municipal parliamentary assemblies, even in the Time of Troubles (17<sup>th</sup> century).”<sup>242</sup>

According to Ilyin, then, Russia’s most republican ancient city was a failure on several accounts. Its popular assemblies, with their brawls and beatings, hardly resembled the rational deliberative bodies imagined by liberals. Wanting strong authority, Novgorod was divided against itself, wracked by the sorts of party dissensions and intrigues typical of modern Western societies, and thus unable to manage the vast territory beyond its walls, or to cooperate with the other parts of the Russian nation. Because Novgorodians insisted on too much freedom, to the point of caprice, they lost their municipal self-government, unlike other cities whose *vecha* had been more moderate. Thus, like Karamzin, Ilyin disposes of the most potent symbol of Russian republicanism.

By Ilyin’s account, the rest of Russian history reveals no traces of republicanism. In the Time of Troubles there were no aspirations to republicanism. The masses oscillated between two tempers, one monarchic, the other anarchic. For this reason, some fifteen pretenders were able to gain a following among some portion of the population. The essence of the political strivings of this period was that “everyone sought a Tsar.” The imperial period was equally devoid of republicanism. “Not a single one” of the court coups d’etat “had a republican character.” “The idea of a dictatorial republic appears only with Pestel’ and disappears after his execution into the underground of Russian intellectual dreaming. This idea was brought to Russia by the storm of the French Revolution and the rationalistic ‘enlightenment’ of the 18<sup>th</sup> century with its faith in abstract doctrinarianism.”<sup>243</sup> Thus, Ilyin dispatches the Decembrist

legacy as well, describing Pestel' much as Tsar Nicholas I and Count Uvarov had, as a ring-leader of rebels confused and enflamed by absurd foreign and abstract ideas.

Concerning the popular masses in general, Ilyin says that throughout Russian history they have displayed two propensities: first, "state-building, with faith in monarchy, with trust in the Tsar, and readiness for selfless service to the nation" and second, "state-destroying, with a dream of anarchy, or at least, of 'unburdensome authority', with a thirst for destruction and seizure of property and a 'faith' in all manner of disloyalty. This second propensity to anarchy has exploded four times in Russia in a national conflagration: in the Time of Troubles, in the time of Razin, of Pugachev and of Lenin."<sup>244</sup> Lenin was only the latest rebel to make a successful appeal to the Russian proclivity for anarchy, and it was the attempt by Russian liberals to establish a republican form of government that provided him with the opportunity. Before 1917, Russia had never attempted a national republican government, and had no republican tradition. "Republicanism gave Russia ...[the] 'February' [revolution] and even now the Russian nation has yet to disentangle itself from the consequences of that 'gift.'"<sup>245</sup>

Ilyin writes in more detail about the "state-building" propensity of the Russian people in the essay "On strong authority" (*O sil'noi vlasti*). Weak, decentralized state power, says Ilyin, is a luxury that nations can afford only under certain conditions. A democratic and federal government is only possible for a people with a strong "legal consciousness" or "conscience of law" (*pravosoznanie*) This is an important and complex concept in Ilyin's thought, but, in essence, it is the internalization of a legal order in the individual soul, the adoption of the laws of the land as rules of one's conscience.<sup>246</sup> "Russian legal consciousness," he says, "has a difficult historical legacy: the strife among the appanage princes, the Mongol yoke, the Time of Troubles, the nomadic and brigandish south-east, the rebellions of Razin and Pugachev, court putsches, the

revolutionary movements of the 19<sup>th</sup> and 20<sup>th</sup> century, the rule of the Bolsheviks. All of this has generated that particular disposition of the soul which one could characterize as ‘the lack of discipline of the plainsman,’ as ‘Slavic individualism’ and the ‘Slavic attraction to anarchy,’ as a natural temperamentalness, as *the breath of Asia*. All of this, taken together, created in the Russian people a sort of legal consciousness to which only strong authority appeals....<sup>247</sup> The Russian has the capacity to excel at all the duties of citizenship, but that capacity can be activated only by “strong and worthy state authority.”<sup>248</sup> The sovereign authority must be unitary, personal, and unlimited. “A dependent authority will enjoy neither respect nor trust.”<sup>249</sup> “Not possessing himself a strong-willed character, the Russian demands will from his ruler.”<sup>250</sup>

True to the Slavophile legacy, Ilyin’s Russian autocracy is not tyrannical. It does not rely on mere coercion, and is entirely compatible with freedom in the broadest sense. “He who loves Russia,” he says “will desire her to have freedom.” He lists three freedoms: national sovereignty, the right of Russians, as a nation, as a collective, to freely express and develop their national culture, and the rights of Russians, as individuals, protection of their lives, property and conscience, to broad spiritual, creative, and economic liberty.<sup>251</sup> Russian autocracy, he insists, is not absolutism. It is not a power without limits. Rather it is a power, founded on law, which knows its own limits.<sup>252</sup> Like any other ruler, an autocrat must on occasion have recourse to coercion. “But the true power of authority consists in its ability to call without threatening, and receive a loyal response from the people.”<sup>253</sup> Genuine autocracy leads the nation with minimal coercion and allows broad scope for local self-government.<sup>254</sup>

Freedom depends ultimately not on conflict between different centers of power, but on unity, between one citizen and another, and between citizens and their national government.<sup>255</sup> Western style institutions of national self-government would be more likely to destroy such

unity. Like Ivan Kireevsky and Ivan Aksakov before him, Ilyin is extremely critical of the Western model of divided sovereignty in which power is won and exercised by competing political parties:

False are all those theories and doctrines, which try to convince us that at the basis of politics lies an eternal and unending struggle of citizens with state authority: for, they say, authority means ‘domination’ and ‘oppression,’ whereas citizenship means ‘freedom’ and ‘independence’. All these theories are of revolutionary origin and of an anarchic nature. On the contrary, the state is based on and rests on, on the one hand, voluntary acknowledgement of authority on the part of citizens and respect and trust of state authority toward citizens on the other. One cannot build a state on hostility.<sup>256</sup>

When political parties become the main channel through which politics is pursued, national unity is fractured, the state becomes a “mechanistic equilibrium of private (personal and party) passions.” Such “mechanistic competition of private passions from the very beginning prepares in souls the possibility of civil war.”<sup>257</sup> From Ilyin’s point of view, it was the attempt to rebuild the state in the midst of party competition that led to civil war and the eventual seizure of power by the Bolsheviks.

What Ilyin proposes for the involvement of citizens in the national government of post-Soviet Russia is, in essence, a Slavophile constitution. The section on the rights of citizens includes the usual liberal freedoms which the Slavophiles advocated in their own time, to wit, freedom of religion, freedom of speech and of the press, freedom of petition and assembly, the sanctity of the home and protection of property. The article on political parties is interesting:

Citizens of Russia have the right to form political parties subject to mandatory registration. Parties that are anti-social, anti-state, or revolutionary are forbidden. Members of political parties are forbidden any state or public service, and election or appointment to legislative bodies. Anyone appointed to such service, elected or appointed to such bodies, must leave his party and swear an oath that he will consider in his activity not the instructions of his former party, but the benefit of the Fatherland and the state.<sup>258</sup>

Thus, evidently, Ilyin hoped to make those in state service independent from political parties. Elected legislators would, however, depend on the satisfaction of their electors in the cities, towns and provinces. The interest of particular communities may be represented in the national assemblies, but not that of parties.

The main pillar of the state, according to this constitution is the Supreme Ruler, an interim leader who would perform all the functions of the head of state until a tsar could be lawfully elected. Article 2 states that “sovereign power in Russia belongs to an individual, personal Head of State, from whose person emanates all legislation, administration, judicial authority, command and control.”<sup>259</sup> The Supreme Leader exercises legislative power “in conjunction with” two bodies, the Land Assembly (*Zemskii Sobor*) and the Council of State. Members of the Land Assembly are chosen on the basis of universal male suffrage from all the cities, towns and provinces through a very complicated, graduated election process.<sup>260</sup> Members of the Council of State are elected by members of the Synod of the Orthodox Church, institutions of the intellectual and military elite and local government.<sup>261</sup> One can see in this an attempt to approximate, under new circumstances, the composition of the land assemblies of Muscovy, attended by Clergy, Nobility and deputies of the people.

These legislative assemblies have the right to initiate legislation. What is more, all other organs of government, prominent persons such as the Patriarch of the Orthodox Church, corporations and individual citizens have the right to propose laws to the legislative assemblies and the supreme ruler. But the legislative power remains ultimately in his hands. Any legislation vetoed by him cannot be proposed again during the same legislative session. When the supreme leader proposes legislation to the assemblies, they may twice refuse to assent to it. But in that case, the constitution authorizes him to sign the same measures into law as emergency decrees if

he deems it necessary.<sup>262</sup> These formal stipulations add, perhaps, some sort of normative weight to the decisions of the legislative bodies. Their will can be ignored only as an extraordinary measure. Yet, in effect, these bodies look more like a formalized version of the purely *consultative* assemblies of the Muscovite government, as the Slavophiles understood them to be, than *legislative* bodies, as they are understood in the Western tradition.

It should be noted that Ilyin is not dogmatic in his prescriptions for the constitution of post-Soviet Russia. He allows for the possibility that Russia could become more democratic. Owing to Russia's "difficult historical legacy" he says in the essay "On strong authority" weak or divided authority "will long continue" to "elicit in Russia the feeling that all is permissible and social collapse."<sup>263</sup> "Long" is not the same as "forever," and, indeed, one of the most important tasks of a post-Soviet government, in his view, was to improve Russian legal consciousness through education. The more developed a people's legal consciousness, he frequently argues, the more capable it is of governing itself after the fashion of a "corporation," that is, on the basis of "voluntary cooperation and compromise."<sup>264</sup>

Ilyin's legacy thus suggests a variety of possibilities for Russia's future political development. In the first place, it is conceivable that, either under the direction of the present political elite or of the nationalists now in opposition, Russia could in time develop a form of government that genuinely reflects the ideals of the Muscovite/Slavophile tradition—insofar as actual political institutions ever conform to historical or philosophical ideals of any kind.<sup>265</sup> Second, Ilyin's legacy points to the possibility of a gradual introduction of Western style constitutional democracy, including a more independent civil society and more competitive politics, yet still somehow manifesting Russia's unique national character. According to this scenario, the transition must be managed from above by a strong leader, tasked with laying the

necessary groundwork in the areas of law and education, and wielding the coercive power of the state against “extremist” factions and parties who would derail the process. This is how President Putin’s one-time chief propagandist, Vladislav Surkov, has characterized Putin’s agenda.<sup>266</sup>

Third, Ilyin’s legacy could be used merely as a justification, on the grounds of Russian history and the Russian national character, for the continuation of Russia’s political status quo, as the slogan “Orthodoxy, Autocracy, Nationality” was for Russia’s 19<sup>th</sup> century tsars.

#### **Georgii Fedotov and the Novgorod Constitution**

To justify a Western style path to Western style constitutional self-government, one would need a very different account of Russian history and the Russian national character. Such a narrative is provided by another Russian émigré and contemporary of Ivan Ilyin, Georgii Fedotov. Fedotov enjoys nothing like the popularity of Ilyin in post-Soviet Russia, and that in itself is significant. However, if advocates of constitutional self-government in Russia were wise, they would seek to popularize a narrative like his. Fedotov was an opponent of monarchists such as Ilyin, and thus looked to ancient Novgorod for inspiration, as the Decembrists had done. However, his account differs from theirs in two ways. First, the Novgorod constitution, as he describes it, bears closer resemblance to Western European constitutions. Second, he attacks Muscovite political culture as nothing less than a slavish Asiatic perversion of the pristine Orthodox Russian way of life.

Regarding the political system of Kievan Rus’ in general, Fedotov says, like the Decembrists, and Konstantin Aksakov: “the ancient Russian prince did not possess the fullness of power. He was bound to share it with the nobility, the *druzhina* and the *veche*.”<sup>267</sup> Under these

circumstances it was possible for “the creation in Novgorod of a one-of-a-kind Orthodox democracy.” Here, again, Novgorod symbolizes all the best qualities of the Kievan political order. For Fedotov, however, unlike for the Decembrists, the most important element of the Novgorod constitution, from the point of view of preserving freedom, was not the “sovereignty of the *veche*.” The *veche*, he says, could be as “arbitrary” and “capricious” as a prince with the lives and property of fellow citizens. “But the division of powers, which in Novgorod went farther than anywhere else, between the prince, the lords, the *veche*, and the archbishop, here gave more opportunities for personal freedom.”<sup>268</sup>

Fedotov defends the Novgorod legacy against the criticisms of such as Ivan Ilyin. First of all, he refutes claims of Novgorod’s insignificance as merely “one city and its outskirts.” “The territory of Novgorod was immense: under its power and law lived all of Northern Rus’, all the way to the Urals, and even reaching the edge of Siberia.”<sup>269</sup> Thus, Novgorod could justly be regarded as a model for the government of all of Russia. Novgorod, he says, was indeed a republic for a period of 350 years, as is evident from the fact that the *veche* could expel the prince from the city at any time. But this power was not a source of disorder:

Those who speak of Novgorod commonly exaggerate the disorder and disorganization of [its] parliamentary [*vechevoi*] government. We know little about the normal flow of affairs. The chronicles speak only of the violations of it. The traditional images of brawls on Volkhovsky bridge were a relatively rare exception. For the most part the archbishops were able to reconcile hostile parties before any bloodshed. But the main thing that is forgotten is the existence of the “lords”, the upper house, leading all present affairs, and preparing the most important decisions for the *veche*. This house consisted of officials [сановники] elected by the *veche*, present and former, under the chairmanship not of the prince, but of the archbishop... It is no accident that in the Council of Lords presided the archbishop. In essence, he was precisely the “president” of the republic, if one seeks contemporary analogies. The mayor was the prime minister, the head of the victorious party. The archbishop stood above parties and expressed the unity of the republic. To make his independence real, candidates elected by the *veche* were subjected to drawing of lots. Three lots on the throne of the Cathedral of St. Sophia symbolized God’s will in the fate of the city-state.<sup>270</sup>

The image of the Novgorodian political system presented here is one that successfully combined the power of a genuinely popular assembly and an executive council, elected by the popular assembly, but nevertheless independent and authoritative. This balance of power was stable and effective in all but a few exceptional moments in the history of the republic, and most importantly, it protected the freedom of the people.

Fedotov defends Novgorod on other grounds as well. Not only was its form of government effective and free, but also, culturally, it represented the true Russia: “Here was formed and in its greatest purity preserved the Great-Russian type, far from Tatar passivity and slavery.” Novgorod was the “most Russian,” the “most pure from Tatar admixture, and thereby, as it were, containing within itself the possibility of future free and cultural development.”<sup>271</sup>

Novgorod, with its free government and vibrant literary, musical and artistic culture, represents the true Russian character, uncontaminated by any foreign taint from the East. Other accounts also emphasize Novgorod’s great wealth and prosperity.<sup>272</sup> And this authentic, pure Russian spirit is still alive in Russians today. The evidence is that the literature of “Kievo-Novgordian Rus” has never lost its appeal to them: “Who among us, even now, can indifferently turn the pages of the Kievan chronicle, who does not experience a shiver up his back from the lines of the eternal ‘Tale of Igor’s Raid?’”<sup>273</sup>

The true Russian character, affirms Fedotov, needs to be liberated from the Mongol yoke imposed upon it, not by the Mongol invasion itself, but by Muscovy. The Muscovite type represents a corruption of the authentic Russian by an admixture of the cultural and political practices of the Tatar-Mongols. Fedotov is insistent on this point. Moscow rose to prominence by means of the “Tatarophile and treasonous policy of its first princes.” “In Muscovite land itself, Tatar systems were introduced in government, the courts, and tribute collection...In the 15<sup>th</sup>

century thousands of christened and unchristened Tatars entered the service of the Muscovite prince, spilling into the ranks of the servitor class, the future gentry, infecting it with Eastern conceptions and the steppe way of life.”<sup>274</sup> The Muscovite princes also adopted the Byzantine model of church-state relations, in which the church was subordinate to the state, and the Byzantine title of the head of state, autocrat. For Fedotov, then, Muscovite autocracy is the result of foreign contamination.

As I say, this narrative is by no means popular in Russia as a whole. But this may be only because it is scarcely known. Nicolai Petro has shown that the legacy of the ancient Novgorod republic is well-known to residents of the Novgorod region itself. He argues, moreover, that its popularization in Novgorod since 1991 has had a salutary, democratizing effect on municipal politics.<sup>275</sup> Whether the Novgorod model and myth has a chance of becoming dominant in Russia as a whole is another question. In any case, history suggests that advocates of Western style constitutional self-government in Russia will have to formulate some such nationalist narrative. They could begin with the utterance of Decembrist Vladimir Raevskii: “Our free ancestors would look upon the contemptible condition of their descendants with horror!”<sup>276</sup>

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<sup>1</sup> See Steven Fish, *Democracy Derailed in Russia: The Failure of Open Politics*, (Cambridge University Press, 2005); Michael McFall & Sergei Markov, “How Democratic is Today’s Russia?” (Washington, DC: Carnegie Center for International Peace, 2006); Kotkin, Stephen, “Russia Under Putin: Toward Democracy or Dictatorship,” Foreign Policy Research Institute, 2007.

<<http://www.fpri.org/enotes/200703.kotkin.russiademocracdictatorship.html>> (Accessed 3 March 2007); Henry Hale, *Why Not Parties in Russia?: Democracy, Federalism, and the State*, (Cambridge University Press, 2007); Richard Sakwa, *The Crisis of Russian Democracy: The Dual State, Factionalism and the Medvedev Succession*, (Cambridge University Press, 2011).

<sup>2</sup> See N. Petro, *The Rebirth of Russian Democracy: An Interpretation of Political Culture* (Cambridge, MA: Harvard University Press, 1997), 191n.10. See also chapter 2 generally.

<sup>3</sup> See for example, “Slovo o vlasti i chesti tsarskoi” in Feofan Prokopovich, *Sochineniya*, pod redaktsiei I.P. Eremina, (Moskva: Izdatel’stvo akdemii nauk SSSR, 1961), esp. 87, 91-92, and *Pravda voli monarshei*

<sup>4</sup> Quoted in Hans Rogger, *National-Consciousness in Eighteenth-Century Russia*, (Cambridge, MA: Harvard University Press, 1960), 199.

<sup>5</sup> Quoted in Rogger, *National-Consciousness in Eighteenth-Century Russia*, 215-216.

<sup>6</sup> On this point, see Sergei Sergeev, “Vosstanovlenie svobody: Demokraticheskiy natsionalizm dekabristov” *Voprosy natsionalizma*, No. 2, 2010, p. 116-117. Generally, my choice of primary sources for the Decembrist portion of this chapter owes as much to the above article as to the Soviet era monograph: S.S. Volk, *Istoricheskie vzgliady dekabristov*, (Moskva-Leningrad: Izdatel'stvo akademii nauk SSSR, 1958).

<sup>7</sup> Many Russian historians point to manifestations of Russian national consciousness in the second decade of the 17<sup>th</sup> century when armies led by Koz'ma Minin and Prince Dmtriy Pozharsky liberated Moscow from Polish occupiers and a Land Assembly elected a new Tsar, Mikhail Romanov. According to one report from a century later, the Moscow nobility, outraged by Peter I's love of European manners and his “government of foreigners” hatched a plot to depose the Tsar and place his Tsarevich on the throne, burn St. Petersburg to the ground and return the capital to Moscow, undo all of Peter's reforms in church and state, and execute all foreigners. See Rogger, *National-Consciousness in Eighteenth-Century Russia*, 10.

<sup>8</sup> For these and other 18<sup>th</sup> and 19<sup>th</sup> century literary manifestations of the Novgorod symbol, see Nicolai Petro, *Crafting Democracy: How Novgorod Has Coped with Rapid Social Change*, (Ithica: Cornell University Press, 2004), 134-138.

<sup>9</sup> For 18<sup>th</sup> century precursors to Slavophile cultural nationalism and populism, see Rogger, *National-Consciousness*.

<sup>10</sup> The Russian phrase is “neodnoznachnaya figura”

<sup>11</sup> Prince Mikhail Shcherbatov (1733-1790) published his criticisms of Peter I in his novel *Journey to the Land of Ophir*. See Rogger, *National-Consciousness*, 14-16.

<sup>12</sup> Nikolay Karamzin, *Karamzin's Memoir on Ancient and Modern Russia*, transl. Richard Pipes, (Cambridge, MA: Harvard University Press, 1959), 121-122; N.M Karamzin, *A Memoir on Ancient and Modern Russia: The Russian Text*, ed. Richard Pipes, (Cambridge, MA: Harvard University Press, 1959), 22-23. Of all the Russian texts treated in this chapter, Karamzin's *Note on Ancient and Modern Russia* is the only one that has ever been translated into English. In my citations to this text I refer first to the pages of the translation, and then to those of the original Russian. I have frequently modified Pipes' translation to bring it closer to the original Russian.

<sup>13</sup> Karamzin, *Memoir on Ancient and Modern Russia*, 200; 113

<sup>14</sup> Karamzin, *Memoir on Ancient and Modern Russia*, 125; 27

<sup>15</sup> Karamzin, *Memoir on Ancient and Modern Russia*, 127; 30

<sup>16</sup> Karamzin, *Memoir on Ancient and Modern Russia*, 110; 9 Pipes translates *raznovlastie* as “division of authority.” If Karamzin had wanted to say that, he could have written *razdelenie vlasti* or even *razdelenie vlastei*, though the latter is a more modern usage. *Raznovlastie* is a term intended to describe a type of regime that is distinct from both monarchy and autocracy. In this case, Karamzin has two things in mind: first, the decentralized rule of Russia in the late Kievan period by a multitude of appanage princes (*udel'nye knyaz'ya*) and the local sharing of power between these princes, their war lords (*druzhinniki*) and the municipal assemblies (*vecha*) of the great cities, and second, the disordered rule of the interregnum period known as the Time of Troubles, which saw, by Karamzin's account, an ill-fated experiment with limited monarchy in the reign Tsar Vasily Shuiskiy, and a disastrous attempt at collective leadership by Boyar Duma. “Polyarchy,” signifying merely a regime in which many rulers share power in various ways, I believe, better encompasses all of this complexity.

<sup>17</sup> Volk, *Istoricheskie vzgliady dekabristov*, 309.

<sup>18</sup> Volk, *Istoricheskie vzgliady dekabristov*, 309.

<sup>19</sup> Karamzin, *Memoir on Ancient and Modern Russia*, 105; 3

<sup>20</sup> Karamzin, *Memoir on Ancient and Modern Russia*, 109; 7

<sup>21</sup> Karamzin, *Memoir on Ancient and Modern Russia*, 112; 11-12. Pipes translates *zhalovat'* as “invest”, which is not necessarily wrong, but it is definitely confusing in this context. I have translated it as “to make grants.” By this account of the Muscovite autocracy, only the tsar could grant lands, privileges, offices, pensions and all other honors. In reality this was not entirely true, but that, of course, is immaterial.

<sup>22</sup> Karamzin, *Memoir on Ancient and Modern Russia*, 112-113; 12-13

<sup>23</sup> Karamzin, *Memoir on Ancient and Modern Russia*, 115; 15

<sup>24</sup> Karamzin, *Memoir on Ancient and Modern Russia*, 115-116; 16

<sup>25</sup> Karamzin, *Memoir on Ancient and Modern Russia*, 139; 43

<sup>26</sup> Volk, *Istoricheskie vzgliady dekabristov*, 351.

<sup>27</sup> Volk, *Istoricheskie vzgliady dekabristov*, 357.

<sup>28</sup> *Izbrannye sotsial'no-politicheskie i filosofskie proizvedeniya dekabristov*, Otv. red. I.Ya. Shchipanov, (Moskva: Gosudarstvennoe izdatel'svo politicheskoi literatury, 1951), t. 1, 98.

<sup>29</sup> *Izbrannye proizvedeniya dekabristov*, t. 1, 100.

<sup>30</sup> *Izbrannye proizvedeniya dekabristov*, t. 1, 105.

- <sup>31</sup> M.A. Fonvizin, *Obzrenie proyavlenii politicheskoi zhizni v Rossii i drugie stat'i*: N. Murav'ev, *Proekt Konstitutsii*, (Moskva: Izdanie "Biblioteki dekabristov," 1907), 88.
- <sup>32</sup> Fonvizin, *Obzrenie proyavlenii politicheskoi zhizni v Rossii*, 56.
- <sup>33</sup> Fonvizin, *Obzrenie proyavlenii politicheskoi zhizni v Rossii*, 87.
- <sup>34</sup> Fonvizin, *Obzrenie proyavlenii politicheskoi zhizni v Rossii*, 54-5.
- <sup>35</sup> Fonvizin, *Obzrenie proyavlenii politicheskoi zhizni v Rossii*, 87.
- <sup>36</sup> *Gosudarstvo*, the word Paul I required to be used instead of *otechestvo* (fatherland), is the standard Russian word for "state." But the etymology, (from *gosudar'*—"prince or sovereign") suggests more the meaning of "principality" or "kingdom." *Iz pisem i pokazanii dekabristov: kritika sovremennogo sostoyaniya Rossii i plany budushchego ustroistva*, Pod. red. A.K. Borozdina (Sankt-Peterburg: Izd. M.V. Pirozhkova, 1906), 14.
- <sup>37</sup> *Iz pisem i pokazanii dekabristov*, 30.
- <sup>38</sup> *Iz pisem i pokazanii dekabristov*, 19.
- <sup>39</sup> *Iz pisem i pokazanii dekabristov*, 30. Though Kakhovsky does not elaborate here, he is clearly referring to the repeal of the tariff of 1810 which had been designed, in the words of Decembrist V.I. Shteingel, to encourage Russians to "turn their capital not to the consumption of foreign luxuries, but to the advantage of the fatherland." After reaching a deal with European powers, Alexander had repealed this tariff in 1816 "to the advantage of Austria, Poland and Prussia" (p. 58)
- <sup>40</sup> *Iz pisem i pokazanii dekabristov*, 19-20.
- <sup>41</sup> *Iz pisem i pokazanii dekabristov*, 20-21.
- <sup>42</sup> *Iz pisem i pokazanii dekabristov*, 147.
- <sup>43</sup> *Izbrannye proizvedeniya dekabristov*, 319.
- <sup>44</sup> Sergei Sergeev, "Vosstanovlenie svobody: Demokraticheskiy natsionalizm dekabristov" *Voprosy natsionalizma*, No. 2, 2010, 109.
- <sup>45</sup> Sergei Sergeev, "Vosstanovlenie svobody: Demokraticheskiy natsionalizm dekabristov" *Voprosy natsionalizma*, No. 2, 2010, 114.
- <sup>46</sup> For example Fonvizin, *Obzrenie proyavlenii politicheskoi zhizni v Rossii*, 52.
- <sup>47</sup> Volk shows that many Decembrists were familiar with the historical essays of 19<sup>th</sup> century French authors Augustin Thierry and Francois Guizot, who recounted how Gallic and Anglo-Saxon liberty had prevailed against Frankish and Norman conquests, 136-41, 321.
- <sup>48</sup> Though it is true that some 19<sup>th</sup> century French authors, including Thierry and Guizot, openly admitted that their historical narratives were crafted to fit preconceived political ideas.
- <sup>49</sup> Volk, *Istoricheskie vzglyady dekabristov*, 311.
- <sup>50</sup> "Razbor doneseniya tainoi sledstvennoi kommissii gosardaryu imperatoru v 1826 godu" in M.S. Lunin, *Sochineniya is pis'ma*, (Moskva, 1988).
- <sup>51</sup> Fonvizin, *Obzrenie proyavlenii politicheskoi zhizni v Rossii*,
- <sup>52</sup> *Literaturnoe nasledstvo—Dekabristy-literatory I*, Red. A.M Egolov, (Moskva: Izdatel'stvo Akademii Nauk SSSR, 1954), T. 59, s. 593-4.
- <sup>53</sup> *Dekabristy-literatory*, 595
- <sup>54</sup> Volk, *Istoricheskie vzglyady dekabristov*, 311.
- <sup>55</sup> Volk, *Istoricheskie vzglyady dekabristov*, 311-313, 317-319.
- <sup>56</sup> *Iz pisem i pokazanii dekabristov*, 157
- <sup>57</sup> Volk, *Istoricheskie vzglyady dekabristov*, 312, 341.
- <sup>58</sup> *Primechaniya k "Razboru,"* 76.
- <sup>59</sup> This claim, unfortunately for Murav'ev, is patently false.
- <sup>60</sup> *Primechaniya k "Razboru,"* 76
- <sup>61</sup> "Lyubopytnyi razgovor" in *Izbrannye proizvedeniya dekabristov*, t. 1, 332.
- <sup>62</sup> "Lyubopytnyi razgovor" in *Izbrannye proizvedeniya dekabristov*, t. 331
- <sup>63</sup> The synonyms Murav'ev uses here are *samovlastie* and *samoderzhavie*.
- <sup>64</sup> "Lyubopytnyi razgovor" in *Izbrannye proizvedeniya dekabristov*, t. 331.
- <sup>65</sup> *Primechaniya k "Razboru,"* 76.
- <sup>66</sup> i.e. Tsar Ivan IV, who is often called Ivan the Terrible. But Ivan IV's epithet *grosnyi*, really means "dread" in the archaic sense "to be held in respectful awe." James I of England was at times called "the dread Sovereign," the very same meaning being intended. Whether Ivan IV, or James I for that matter, were actually terrible, is a separate question which has no relation at all to their epithets. This typical English translation is, therefore, *terrible*, as are all the scholars who use it.

- <sup>67</sup> *Primechaniya k "Razboru,"* 76.
- <sup>68</sup> *Primechaniya k "Razboru,"* 76.
- <sup>69</sup> *Primechaniya k "Razboru,"* 77.
- <sup>70</sup> *Primechaniya k "Razboru,"* 77.
- <sup>71</sup> Allotment of administrative posts by hereditary rank.
- <sup>72</sup> *Primechaniya k "Razboru,"* 77.
- <sup>73</sup> *Primechaniya k "Razboru,"* 76.
- <sup>74</sup> *Primechaniya k "Razboru,"* 77.
- <sup>75</sup> Fonvizin, *Obozrenie proyavlenii politicheskoi zhizni v Rossii*, 2.
- <sup>76</sup> Fonvizin, *Obozrenie proyavlenii politicheskoi zhizni v Rossii*, 3.
- <sup>77</sup> Fonvizin, *Obozrenie proyavlenii politicheskoi zhizni v Rossii*, 6.
- <sup>78</sup> Fonvizin, *Obozrenie proyavlenii politicheskoi zhizni v Rossii*, 3.
- <sup>79</sup> Fonvizin, *Obozrenie proyavlenii politicheskoi zhizni v Rossii*, 4.
- <sup>80</sup> Fonvizin, *Obozrenie proyavlenii politicheskoi zhizni v Rossii*, 4-5.
- <sup>81</sup> Fonvizin, *Obozrenie proyavlenii politicheskoi zhizni v Rossii*, 5.
- <sup>82</sup> Fonvizin, *Obozrenie proyavlenii politicheskoi zhizni v Rossii*, 8.
- Grigorii Kotoshikhin defected to Sweden and there wrote a book entitled, *On Russia during the reign of Aleksii Mikhailovich*. Fonvizin misspells the author's surname ("Koshikhin"), and appears to have quoted from memory, as the quotation is not exact. "Tsars were elected to the throne" (*tsari obirany na tsarstvo*). The verb *obirat'* is the 17<sup>th</sup> century form of the modern Russian verb *izbirat'* to elect.
- <sup>83</sup> Fonvizin, *Obozrenie proyavlenii politicheskoi zhizni v Rossii*, 9.
- <sup>84</sup> Fonvizin, *Obozrenie proyavlenii politicheskoi zhizni v Rossii*, 9.
- <sup>85</sup> Fonvizin, *Obozrenie proyavlenii politicheskoi zhizni v Rossii*, 10.
- <sup>86</sup> Fonvizin, *Obozrenie proyavlenii politicheskoi zhizni v Rossii*, 10.
- <sup>87</sup> Fonvizin, *Obozrenie proyavlenii politicheskoi zhizni v Rossii*, 10.
- <sup>88</sup> Fonvizin, *Obozrenie proyavlenii politicheskoi zhizni v Rossii*, 11. A good portion of Fonvizin's language here is lifted directly from Karamzin's *Note on ancient and modern Russia*, see the Pipes editions, 124; 26.
- <sup>89</sup> Fonvizin, *Obozrenie proyavlenii politicheskoi zhizni v Rossii*, 15.
- <sup>90</sup> Fonvizin, *Obozrenie proyavlenii politicheskoi zhizni v Rossii*, 27-28. Fonvizin does not seem to be aware that "enlightened despotism" would have met with the approval of many Encyclopedists, especially Voltaire, for instance.
- <sup>91</sup> Volk, *Istoricheskie vzglyady dekabristov*, 356.
- <sup>92</sup> *Izbrannye proizvedeniya dekabristov*, I, 296.
- <sup>93</sup> *Vosstanie dekabristov*, t. 7, 116.
- <sup>94</sup> *Vosstanie dekabristov*, t. 7, 138.
- <sup>95</sup> *Vosstanie dekabristov*, t. 7, 139.
- <sup>96</sup> *Vosstanie dekabristov*, t. 7, 127.
- <sup>97</sup> Though he said Poland ought to be an independent state, he insisted that the Poles must gain their independence only when Russia sees fit to grant it, that Poland must adopt the same constitution as Russia, and maintain a military alliance with her.
- <sup>98</sup> *Vosstanie dekabristov*, t. 7, 123.
- <sup>99</sup> *Vosstanie dekabristov*, t. 7, 146.
- <sup>100</sup> *Vosstanie dekabristov*, t. 7, 147.
- <sup>101</sup> *Iz pisem i pokazanii dekabristov*, 110-111.
- <sup>102</sup> The influence of the legacy of the Novgorod Republic is perfectly obvious. Although it is by no means evident from the text itself that Murav'ev had the appanage system in mind, Pestel' tells us that Murav'ev's constitution "resembled the ancient appanage system." *Iz pisem i pokazanii dekabristov*, 129.
- <sup>103</sup> *Izbrannye proizvedeniya dekabristov*, T.1, 304-308.
- <sup>104</sup> *Izbrannye proizvedeniya dekabristov*, T.1, 308-316.
- <sup>105</sup> Murav'ev preferred an elected chief executive. The preservation of hereditary monarchy in this constitutional project was a concession to the other Decembrists.
- <sup>106</sup> *Izbrannye proizvedeniya dekabristov*, T.1. 316-321.
- <sup>107</sup> *Iz pisem i pokazanii dekabristov*, 47. The "two republics" to which Batenkov refers are probably Novgorod and Pskov.
- <sup>108</sup> *Iz pisem i pokazanii dekabristov*, 48.

- <sup>109</sup> *Iz pisem i pokazanii dekabristov*, 48.
- <sup>110</sup> *Iz pisem i pokazanii dekabristov*, 49.
- <sup>111</sup> *Vosstanie dekabristov*, t. 7, 213-215.
- <sup>112</sup> *Vosstanie dekabristov*, t. 7, 118.
- <sup>113</sup> *Vosstanie dekabristov*, t. 7, 119.
- <sup>114</sup> C. Whittaker, *The Origins of Modern Russian Education: An Intellectual Biography of Count Sergei Uvarov, 1786-1855*, (DeKalb, IL: Northern Illinois University Press, 1984), 87.
- <sup>115</sup> Whittaker, *The Origins of Modern Russian Education*, 128. See also R. Pipes, *Russian Conservatism and its Critics: A Study in Political Culture*, (New Haven, CT: Yale University Press, 2005), 97-101.
- <sup>116</sup> Whittaker, *The Origins of Modern Russian Education*, 109. Uvarov was a strong proponent of the classics; Greek and Latin continued to be an important part of school and university curriculum. But Russian culture received more emphasis during his tenure than ever before.
- <sup>117</sup> Whittaker, *The Origins of Modern Russian Education*, 135, 160. It should be emphasized that Uvarov never sought to eliminate foreign scholars or teachers from Russia's educational institutions, only to reduce their numbers.
- <sup>118</sup> Whittaker, *The Origins of Modern Russian Education*, 147, 163.
- <sup>119</sup> Whittaker, *The Origins of Modern Russian Education*, 40-41.
- <sup>120</sup> Whittaker, *The Origins of Modern Russian Education*, 53.
- <sup>121</sup> Whittaker, *The Origins of Modern Russian Education*, 108.
- <sup>122</sup> N.M. Pirumova, *Zemskoe liberal'noe dvizhenie: sotsial'nye korni i evolyutsiya do nachala XX veka*, (Izdatel'stvo Nauka: Moskva, 1977), 53.
- <sup>123</sup> N. Petro, *Crafting Democracy: How Novgorod Has Coped with Rapid Social Change*, (Ithica, NY: Cornell University Press, 2004), 137-138.
- <sup>124</sup> Pirumova, *Zemskoe liberal'noe dvizhenie*, 55. See p. 56 for similar statements from Kavelin, Katkov, Chicherin and Gradovskiy.
- <sup>125</sup> *Na chyom osnovana i chem opredelyaetsya verkhovnaya vlast' v Rossii*
- <sup>126</sup> Yu.F. Samarin, *Pravoslavie i narodnost'*, Red. O. Platonov, (Moskva: Institut russkoi tsivilizatsii, 2008), 270.
- <sup>127</sup> Yu.F. Samarin, *Pravoslavie i narodnost'*, 270.
- <sup>128</sup> Yu.F. Samarin, *Pravoslavie i narodnost'*, 271.
- <sup>129</sup> In *Zapiska ob otnoshenii russkogo naroda k tsarskoi vlasti* (1855) Ivan Kireevskii states the position of the Slavophiles on minority religions and ethnicities more explicitly: "One must not think that the Orthodox faith or the spirit of the Russian people demands the persecution of other faiths or other nationalities. From the very beginning of Christianity in Russia to the Petrine Revolution among her Orthodox inhabitants there always lived pagans also, and Mohammedans, and various heretics calling themselves Christians, who were neither oppressed nor persecuted, though they had no perceptible influence whatever on the general constitution or the general character of her morals and convictions, being of vanishing insignificance under the dominion of her Orthodox and Russian education. Never did the people demand from their governments either the forcible conversion of dissenters or the oppression of other ethnicities. They merely did not desire their dominion, and when they suspected it, as, for instance, in the Pretender, they considered such authority illegal, and expelled it." I.V. Kireevskii – P.V. Kireevskii, *Polnoe sobranie sochinenii v 4-x tomakh*, (Kaluga: Izdatel'skii pedagogicheskii tsentr "Grif", 2006), t. 1, s. 156
- <sup>130</sup> Yu.F. Samarin, *Pravoslavie i narodnost'*, 272.
- <sup>131</sup> Yu.F. Samarin, *Pravoslavie i narodnost'*, 272-273. The terms I have translated as "autocratic" and "absolute" are *samoderzhavnoe* and *polnovlastnoe* in the original.
- <sup>132</sup> Yu.F. Samarin, *Pravoslavie i narodnost'*, 273.
- <sup>133</sup> Yu.F. Samarin, *Pravoslavie i narodnost'*, 273.
- <sup>134</sup> Yu.F. Samarin, *Pravoslavie i narodnost'*, 274.
- <sup>135</sup> "Eternal Charter," i.e. *Vechnyi ustav*. "Majesty" is my translation of *velichestvo* (*velichestvom naritsaemaya*); it could also be translated as "sovereignty." Samarin, *Pravoslavie i narodnost'*, 276.
- <sup>136</sup> See George Lawson's pronouncement to this effect in Chapter 3.
- <sup>137</sup> K.S. Konstantin Aksakov, *Gosudarstvo i narod*, Red. O. Platonov, (Moskva: Institut russkoi tsivilizatsii, 2009), 195. Though Khomyakov speaks more of the contribution of the church in forming the Slavic tribes into one Russian nation, he essentially agrees with Aksakov that Orthodoxy helped to improve and harmonize Slavic traditions that were already in place. See his "O starom i novom" in Khomyakov, *Vsemirnaya zadacha Rossii*, O. Platonov, (Moskva: Institut russkoi tsivilizatsii, 2010), 216.
- <sup>138</sup> *Istina — ne vremenshchik i ot vremeni ne zavisit*. Aksakov, *Gosudarstvo i narod*, 459.
- <sup>139</sup> K.S. Aksakov, *Gosudarstvo i narod*, 362-363.

- <sup>140</sup> K.S. Aksakov, *Gosudarstvo i narod*, 365.
- <sup>141</sup> K.S. Aksakov, *Gosudarstvo i narod*, 367.
- <sup>142</sup> K.S. Aksakov, *Gosudarstvo i narod*, 369.
- <sup>143</sup> K.S. Aksakov, *Gosudarstvo i narod*, 400.
- <sup>144</sup> K.S. Aksakov, *Gosudarstvo i narod*, 428.
- <sup>145</sup> K.S. Aksakov, *Gosudarstvo i narod*, 427-428.
- <sup>146</sup> K.S. Aksakov, *Gosudarstvo i narod*, 429.
- <sup>147</sup> K.S. Aksakov, *Gosudarstvo i narod*, 429.
- <sup>148</sup> K.S. Aksakov, *Gosudarstvo i narod*, 496 (italics in the original).
- <sup>149</sup> K.S. Aksakov, *Gosudarstvo i narod*, 429.
- <sup>150</sup> Khomyakov describes the ancient Russian cities, and Novgorod in particular, as “willful, proud, egoistic, and accustomed to their own separate political life.” As a consequence, they left Russia vulnerable to the Mongol invaders, for there was no one in Russia who could say “I am a representative of Russia, I am her center, I concentrate in myself her life and strength.” Khomyakov, *Vsemirnaya zadacha Rossii*, 216. Ivan Aksakov describes the *vecha* as “noisy and riotous.” I.S. Aksakov, *Otchego tak nelegko zhivetsya v Rossii*, 646.
- <sup>151</sup> K.S. Aksakov, *Gosudarstvo i narod*, 488.
- <sup>152</sup> K.S. Aksakov, *Gosudarstvo i narod*, 438.
- <sup>153</sup> K.S. Aksakov, *Gosudarstvo i narod*, 439.
- <sup>154</sup> K.S. Aksakov, *Gosudarstvo i narod*, 440.
- <sup>155</sup> K.S. Aksakov, *Gosudarstvo i narod*, 434-435.
- <sup>156</sup> K.S. Aksakov, *Gosudarstvo i narod*, 435.
- <sup>157</sup> K.S. Aksakov, *Gosudarstvo i narod*, 433.
- <sup>158</sup> Khomyakov, *Vsemirnaya zadacha Rossii*, 224.
- <sup>159</sup> For comparison, see Khomyakov’s “Vremya velikikh pobed” in Khomyakov, *Vsemirnaya zadacha Rossii*, 226-227; Ivan Aksakov’s “Istoricheskie sud’by zemstva na Rusi” in I.S. Aksakov, *Otchego tak nelegko zhivetsya v Rossii*, (Moskva: Rossiiskaya politicheskaya entsiklopediya, 2002), 642-648.
- <sup>160</sup> K.S. Aksakov, *Gosudarstvo i narod*, 558.
- <sup>161</sup> K.S. Aksakov, *Gosudarstvo i narod*, 559.
- <sup>162</sup> K.S. Aksakov, *Gosudarstvo i narod*, 566.
- <sup>163</sup> Preserving all the explicit references to “the land” in the original Russian would have made the English translation too clumsy: “domestic affairs” is my rendering of *zemskie dela* – “affairs of the land.” K.S. Aksakov, *Gosudarstvo i narod*, 566-567.
- <sup>164</sup> “Zapiska K. S. Aksakova o vnutrennem sostoyanii Rossii,” *Rus’*, No. 26, (1881), 11.
- <sup>165</sup> “Zapiska K. S. Aksakova o vnutrennem sostoyanii Rossii,” *Rus’*, No. 26, (1881), 11-12.
- <sup>166</sup> “O kharaktere prosveshcheniya Evropy i o ego otnoshenii k prosveshchenii Rossii,” I.V. Kireevskii, *Polnoe sobranie sochinenii*, t. 1, 80.
- <sup>167</sup> I.V. Kireevskii, *Polnoe sobranie sochinenii*, t. 1, 88.
- <sup>168</sup> I.V. Kireevskii, *Polnoe sobranie sochinenii*, t. 1, 89.
- <sup>169</sup> I.V. Kireevskii, *Polnoe sobranie sochinenii*, t. 1, 74.
- <sup>170</sup> I.V. Kireevskii, *Polnoe sobranie sochinenii*, t. 1, 82.
- <sup>171</sup> I.V. Kireevskii, *Polnoe sobranie sochinenii*, t. 1, 86.
- <sup>172</sup> I.V. Kireevskii, *Polnoe sobranie sochinenii*, t. 1, 83.
- <sup>173</sup> I.V. Kireevskii, *Polnoe sobranie sochinenii*, t. 1, 92.
- <sup>174</sup> I.V. Kireevskii, *Polnoe sobranie sochinenii*, t. 1, 106-107.
- <sup>175</sup> I.V. Kireevskii, *Polnoe sobranie sochinenii*, t. 1, 84. Khomyakov also insists that “our earliest history is not burdened by the stain of conquest” in “O starom i novom” in Khomyakov, *Vsemirnaya zadacha Rossii*, 221.
- <sup>176</sup> I.V. Kireevskii, *Polnoe sobranie sochinenii*, t. 1, 104.
- <sup>177</sup> I.V. Kireevskii, *Polnoe sobranie sochinenii*, t. 1, 84.
- <sup>178</sup> I.V. Kireevskii, *Polnoe sobranie sochinenii*, t. 1, 104.
- <sup>179</sup> I.V. Kireevskii, *Polnoe sobranie sochinenii*, t. 1, 109.
- <sup>180</sup> I.V. Kireevskii, *Polnoe sobranie sochinenii*, t. 1, 109-110.
- <sup>181</sup> I.V. Kireevskii, *Polnoe sobranie sochinenii*, t. 1, 109.
- <sup>182</sup> I.V. Kireevskii, *Polnoe sobranie sochinenii*, t. 1, 87.
- <sup>183</sup> I.V. Kireevskii, *Polnoe sobranie sochinenii*, t. 1, 118.
- <sup>184</sup> “Zapiska K. S. Aksakova o vnutrennem sostoyanii Rossii,” *Rus’*, No. 26, (1881), 14.

- <sup>185</sup> “Zapiska K. S. Aksakova o vnutrennem sostoyanii Rossii,” *Rus’*, No. 26, (1881), 14.
- <sup>186</sup> “Zapiska K. S. Aksakova o vnutrennem sostoyanii Rossii,” *Rus’*, No. 26, (1881), 14.
- <sup>187</sup> “Zapiska K. S. Aksakova o vnutrennem sostoyanii Rossii,” *Rus’*, No. 26, (1881), 14.
- <sup>188</sup> “Zapiska K. S. Aksakova o vnutrennem sostoyanii Rossii,” *Rus’*, No. 26, (1881), 15.
- <sup>189</sup> *O prave chelobitnykh v drevnei Rusi*.
- <sup>190</sup> I.S. Aksakov, *Otchego tak nelegko zhivetsya v Rossii*, 292.
- <sup>191</sup> “Russkoye samoderzhavie—ne nemetskii absolutizm i ne aziatskii despotizm” in I.S. Aksakov, *Otchego tak nelegko zhivetsya v Rossii*, 463.
- <sup>192</sup> I.S. Aksakov, *Otchego tak nelegko zhivetsya v Rossii*, 291.
- <sup>193</sup> I.S. Aksakov, *Otchego tak nelegko zhivetsya v Rossii*, 293.
- <sup>194</sup> I.S. Aksakov, *Otchego tak nelegko zhivetsya v Rossii*, 293.
- <sup>195</sup> “Zapiska K. S. Aksakova o vnutrennem sostoyanii Rossii,” *Rus’*, No. 27, (1881), 17.
- <sup>196</sup> “Zapiska K. S. Aksakova o vnutrennem sostoyanii Rossii,” *Rus’*, No. 27, (1881), 17.
- <sup>197</sup> “O zapiske K.S. Aksakova, podannoii imperatoru Aleksandru II,” in I.S. Aksakov, *Otchego tak nelegko zhivetsya v Rossii*, 467.
- <sup>198</sup> “Chto znachit: vyiti nashemu pravitel’stvu na istoricheskii narodnyi put’?” in I.S. Aksakov, *Otchego tak nelegko zhivetsya v Rossii*, 362.
- <sup>199</sup> “Zapiska K. S. Aksakova o vnutrennem sostoyanii Rossii,” *Rus’*, No. 27, (1881), 17.
- <sup>200</sup> “Zapiska K. S. Aksakova o vnutrennem sostoyanii Rossii,” *Rus’*, No. 27, (1881), 17.
- <sup>201</sup> “Zapiska K. S. Aksakova o vnutrennem sostoyanii Rossii,” *Rus’*, No. 27, (1881), 17.
- <sup>202</sup> I.V. Kireevsky, *Polnoe sobranie sochinenii v 4-kh tomakh*, t. 1, s. 151.
- <sup>203</sup> “Po povodu tolkov o konstitutsii,” in Yu.F. Samarin, *Pravoslavie i narodnost’*, 314.
- <sup>204</sup> “Kak možno podat’ golos protiv konstitutsii i za samoderzhavie,” in A.I. Koshelev, *Samoderzhavie i Zemskaya дума*, red. O.A. Platonov, (Moskva: Institut russkoi tsivilizatsii, 2011), 32-33.
- <sup>205</sup> “Zapiska K. S. Aksakova o vnutrennem sostoyanii Rossii,” *Rus’*, No. 27, (1881), 19.
- <sup>206</sup> “Zapiska K. S. Aksakova o vnutrennem sostoyanii Rossii,” *Rus’*, No. 28, (1881), 13.
- <sup>207</sup> “Kak možno podat’ golos protiv konstitutsii i za samoderzhavie,” in A.I. Koshelev, *Samoderzhavie i Zemskaya дума*, 39.
- <sup>208</sup> Stephen Lukashovich, *Ivan Aksakov: A Study in Russian Thought and Politics*, (Cambridge, MA: Harvard University Press, 1965), 154-155.
- <sup>209</sup> “Otvét g. Gradovskomu na ego razbor Zapiski K.S. Aksakova.” I.S. Aksakov, *Otchego tak nelegko zhivetsya v Rossii*, 482.
- <sup>210</sup> See for instance, “O selskoi obshchine” in A.S. Khomyakov, *Vsemirnaya zadacha Rossii*, and “O prave obychnom” in I.S. Aksakov, *Otchego tak nelegko zhivetsya v Rossii*.
- <sup>211</sup> Quoted in I.Ya Shchipanov, “Vstupitel’naya stat’ya” in *Izbrannye proizvedeniya dekabristov*, t.1, 7-8.
- <sup>212</sup> Compare Koshelev to Petro’s description in *Rebirth*
- <sup>213</sup> See *Programmy politicheskikh partii Rossii. Konets XIX-XX vv.*, otv. sostaviteli V.V. Kriven’kii, N.N. Tarasova, (Moskva: ROSSPEN, 1995).
- <sup>214</sup> For instance: former Presidential Aid Vladislav Surkov, Chief Justice of the Constitutional Court Valeriy Zorkin, Minister of Justice Vladimir Ustinov, Deputy Prosecutor General Aleksandr Averintsev, Deputy Leader of the Parliamentary Faction Edinaya Rossiya Liubov Sliska, Senator Boris Shpigel Coordinator of Pro-Putin Youth Group Molodaya Gvardiya, Ivan Demidov. In June 2008, a conference on “The Teaching of Ivan Ilyin on Law, Government, and Social Culture” was held in the Federation Council. It was led by Chairman of the Committee on Constitutional Law, Senator Aleksey Aleksandrov, with Presidential Advisor Yuri Laptev, as well as assorted senators and clerics of the ROC in attendance.
- <sup>215</sup> “Ильин день // Власть и бизнес вернули в Россию архив философа Ивана Ильина,” *Коммерсантъ*, № 94/П(3425) от 29.05.2006. <<http://www.kommersant.ru/doc.aspx?DocsID=677459>>
- <sup>2</sup> (Русский Востокъ, 2001).  
<<http://rus-vost.irk.ru/arhiv/50/documents/turik.htm>>
- <sup>216</sup> Андрей Савельев: “У нас три главные ценности: вера, нация и держава.” 2006. *Стенограмма XI съезда КРО/09.12.2006* <<http://www.rodina.ru/article/show/?id=616>>

- <sup>217</sup> Ilyin, *Sobranie sochinenii v 10 tomakh*, sostavitel' Yu.T. Lisitsa, (Moskva: Russkaya kniga, 1993-1999), T. 2, kn 1, 363.
- <sup>218</sup> Ilyin, *Sobranie sochinenii v 10 tomakh*, T. 2, kn. 1, 364.
- <sup>219</sup> Ilyin, *Sobranie sochinenii v 10 tomakh*, T. 9-10, 321.
- <sup>220</sup> Ilyin, *Sobranie sochinenii v 10 tomakh*, T. 9-10, 322.
- <sup>221</sup> Ilyin, *Sobranie sochinenii v 10 tomakh*, T. 9-10, 363.
- <sup>222</sup> Ilyin, *Sobranie sochinenii v 10 tomakh*, T. 2, Kn 1: 359.
- <sup>223</sup> Ilyin, *Sobranie sochinenii v 10 tomakh*, T. 2, Kn 1: 448
- <sup>224</sup> Ilyin, *Sobranie sochinenii v 10 tomakh*, T. 2: Kn. 1: 450
- <sup>225</sup> Ilyin, *Sobranie sochinenii v 10 tomakh*, T. 2: Kn 1: 172
- <sup>226</sup> Ilyin, *Sobranie sochinenii v 10 tomakh*, T. 2, Kn. 1: 326-7, 335, 446-8
- <sup>227</sup> Ilyin, *Sobranie sochinenii v 10 tomakh*, T. 2, Kn 1: 24, 172, 449
- <sup>228</sup> Ilyin, *Sobranie sochinenii v 10 tomakh*, T. 2, Kn. 2: 456
- <sup>229</sup> Ilyin, *Sobranie sochinenii v 10 tomakh*, T.2, Kn 2: 176
- <sup>230</sup> Ilyin, *Sobranie sochinenii v 10 tomakh*, T. 2, Kn 2: 71
- <sup>231</sup> Ilyin, *Sobranie sochinenii v 10 tomakh*, T. 2, Kn 1: 48
- <sup>232</sup> See Ilyin, "Svoboda sobranii i narodnoe predstavitel'sto" and "Chto takoe politicheskaya partiya?" in *Sobranie sochinenii v 10 tomakh*, T. 9-10.
- <sup>233</sup> Ilyin, *Sobranie sochinenii v 10 tomakh*, T. 9-10, 77.
- <sup>234</sup> Ilyin, *Sobranie sochinenii v 10 tomakh*, T. 9-10, 175.
- <sup>235</sup> Ilyin, *Sobranie sochinenii v 10 tomakh*, T. 2, Kn 1, 183.
- <sup>236</sup> Ilyin, *Sobranie sochinenii v 10 tomakh*, T. 2, Kn 1, 187-188.
- <sup>237</sup> Ilyin, *Sobranie sochinenii v 10 tomakh*, T. 2, Kn 1, 291.
- <sup>238</sup> Ilyin, *Sobranie sochinenii v 10 tomakh*, T. 2, Kn 1, 292.
- <sup>239</sup> Ilyin, *Sobranie sochinenii v 10 tomakh*, T. 2, Kn 1, 292.
- <sup>240</sup> Ilyin, *Sobranie sochinenii v 10 tomakh*, T. 2, Kn 1, 292-293.
- <sup>241</sup> Ilyin, *Sobranie sochinenii v 10 tomakh*, T. 2, Kn 1, 293.
- <sup>242</sup> Ilyin, *Sobranie sochinenii v 10 tomakh*, T. 2, Kn 1, 293-294.
- <sup>243</sup> Ilyin, *Sobranie sochinenii v 10 tomakh*, T. 2, Kn 1, 295.
- <sup>244</sup> Ilyin, *Sobranie sochinenii v 10 tomakh*, T. 2, Kn 1, 295.
- <sup>245</sup> Ilyin, *Sobranie sochinenii v 10 tomakh*, T. 2, Kn 1, 295-296.
- <sup>246</sup> Ilyin provides a complete explication of this concept in one his longer treatises *O sushchnosti pravosoznaniya*. See *Sobranie sochinenii v 10 tomakh*, T. 4.
- <sup>247</sup> Ilyin, *Sobranie sochinenii v 10 tomakh*, T. 2, kn. 1, 409.
- <sup>248</sup> Ilyin, *Sobranie sochinenii v 10 tomakh*, T. 2, kn. 1, 410.
- <sup>249</sup> Ilyin, *Sobranie sochinenii v 10 tomakh*, T. 2, kn. 1, 414.
- <sup>250</sup> Ilyin, *Sobranie sochinenii v 10 tomakh*, T. 2, kn. 1, 415.
- <sup>251</sup> Ilyin, *Sobranie sochinenii v 10 tomakh*, T. 2, kn. 1, 163-164.
- <sup>252</sup> Ilyin, *Sobranie sochinenii v 10 tomakh*, T. 2, kn. 2, 237-239.
- <sup>253</sup> Ilyin, *Sobranie sochinenii v 10 tomakh*, T. 2, kn. 1, 413.
- <sup>254</sup> Ilyin, *Sobranie sochinenii v 10 tomakh*, T. 2, kn. 1, 417.
- <sup>255</sup> Ilyin, *Sobranie sochinenii v 10 tomakh*, T. 2, kn. 2, 24.
- <sup>256</sup> Ilyin, *Sobranie sochinenii v 10 tomakh*, T. 2, kn. 2, 24.
- <sup>257</sup> Ilyin, *Sobranie sochinenii v 10 tomakh*, T. 2, kn. 1, 375, 378.
- <sup>258</sup> Ilyin, *Sobranie sochinenii v 10 tomakh*, T. 7, 521.
- <sup>259</sup> Ilyin, *Sobranie sochinenii v 10 tomakh*, T. 7, 526.
- <sup>260</sup> Ilyin, *Sobranie sochinenii v 10 tomakh*, T. 7, 537-542.
- <sup>261</sup> Ilyin, *Sobranie sochinenii v 10 tomakh*, T. 7, 544-548.
- <sup>262</sup> Ilyin, *Sobranie sochinenii v 10 tomakh*, T. 7, 534.
- <sup>263</sup> Ilyin, *Sobranie sochinenii v 10 tomakh*, T. 2, kn. 1, 409.
- <sup>264</sup> See N. Petro, "The Challenge of the Russian Idea: Rediscovering the Legacy of Russian Religious Philosophy," in *Christianity and Russian Culture in Soviet Society*, ed. N. Petro, (Boulder, CO: Westview Press, 1990), 218. See also Ilyin's essay "Chto est' gosudarstvo?" in *Sobranie sochinenii v 10 tomakh*, t. 2, kn. 1; and the relevant sections of *O sushchnosti' pravosoznaniya*, in *Sobranie sochinenii v 10 tomakh*, t. 4, 276-281.

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<sup>265</sup> For the political vision of a prominent opposition nationalist and Ilyin *aficionado*, see Andrei Savel'ev, *Natsiya i gosudarstvo: teorii konservativnoi rekonstruktsii*, (Moskva: Logos, 2005).

<sup>266</sup> See V. Surkov, *Osnovnye tendentsii i perspektivy razvitiya sovremennoi Rossii*, (Moskva: Sovremennaya gumanitarnaya akademika, 2006), and "Russkaya politicheskaya kul'tura: Vzglyad iz utopii," Kreml.org (June 8, 2007, ). Available online at: <<http://www.kreml.org/opinions/152440881?mode=print>> (accessed 6/16/2007).

<sup>267</sup> G. Fedotov, *Sobranie sochinenii v dvenadtsati tomakh*, (Moskva: Izdatel'stvo "Martis," 2004), 130.

<sup>268</sup> G. Fedotov, *Sobranie sochinenii v dvenadtsati tomakh*, 131.

<sup>269</sup> G. Fedotov, *Sobranie sochinenii v dvenadtsati tomakh*, 354.

<sup>270</sup> G. Fedotov, *Sobranie sochinenii v dvenadtsati tomakh*, 355-356.

<sup>271</sup> G. Fedotov, *Sobranie sochinenii v dvenadtsati tomakh*, 354.

<sup>272</sup> N. Petro, *Crafting Democracy*, 129-131.

<sup>273</sup> G. Fedotov, *Sobranie sochinenii v dvenadtsati tomakh*, 140.

<sup>274</sup> G. Fedotov, *Sobranie sochinenii v dvenadtsati tomakh*, 132-133.

<sup>275</sup> See Petro, *Crafting Democracy*.

<sup>276</sup> Quoted in Volk, *Istoricheskie vzglyady dekabristov*, 347.

## Chapter 5: Challenges to Constitutional Self-government and a Defense of the Nation-state

I have argued on conceptual and empirical grounds that constitutional self-government depends on a robust national consciousness that both defines the community of sentiment in which citizens owe each other duties, and the institutional forms through which they govern themselves. The particular symbols and memories that form the backbone of that national consciousness may evolve over time, as they certainly have done in the nations I have discussed here. Nationhood, understood as a shared legacy, remains crucial. In chapter 1 I mentioned several 21<sup>st</sup> century challenges to constitutional self-government. I submit that among the greatest challenges is the increased pluralism that has emerged in Western states, largely on account of mass immigration in the late 20<sup>th</sup> century, and perhaps more than the fact of pluralism itself, the alternative visions of society and government that have been proposed to address this circumstance. Against the conception I have defended here, that constitutional self-government relies, in the first instance, on nationhood, or, to be more precise, an arrangement in which the state exists primarily as an expression of the political and cultural aspirations of its *Staatsvolk*, several alternative models have been proposed. I will consider four of these here, namely, agonistic pluralism, strong multiculturalism, post-nationalism (or constitutional patriotism), and statist liberalism, and explain why I find all of them inadequate. I will conclude with some reflections on the limits to pluralism and universalism that constitutional self-government presupposes.

## 1. Agonistic Pluralism

What I here, for convenience, call “agonistic pluralism,” rests on an entirely intelligible premise, which, upon examination, appears to be entirely unrealistic. According to one of its expositors, William Connolly, “late-modern life—the rapid movement of populations, ideas, technologies, identities and faiths across generations and territorial borders—works against the realization of the national imaginary,” that is, the traditional nation-state.<sup>1</sup> Therefore, he argues that “territorial unitarianism,” whether based on religious unity or any other form of “essentialism” such as organic nationalism, ought to be abandoned, and the identities supporting these forms of national-territorial community ought to be dissolved.<sup>2</sup> The circumstances of late-modern life of themselves have created an opening for such a transformation, not only in Western-European based polities, but throughout the world, including conflict zones in the Middle East. But the successful development of this new order depends ultimately on the transformation of individuals, specifically in the way they relate to their own identities and the identities of others. A significant portion of persons of various nations, confessions, and ideological persuasions must become *pluralists* first and foremost, which means that they are to acknowledge the uncertainty of all truth claims and to regard their own commitments to creed, kin and place with such ambivalence as will allow them to develop an “ethos of agonistic respect” for other persons of the most widely divergent views and commitments.<sup>3</sup> These agonistic pluralists will reach across boundaries of religion, ethnicity, race and territory and, when necessary, work together to suppress the religious, national and territorial “unitarians” of their respective communities.<sup>4</sup> Institutional details are not discussed, but, in the end, it appears that Connolly’s pluralist societies will inculcate pluralism through public education and, by means unspecified, limit the power of those who oppose pluralism.<sup>5</sup>

This proposal is unrealistic because it is, in essence, an attempt to apply a highly stylized conception of the agonistic respect between Nietzschean *Übermenschen*, who rise above communal traditions to create their own structure and meaning, to national and global politics. The ethos of agonistic respect is a disposition that some academic philosophers may wish to adopt for themselves, and, indeed, something of this sort may well be desirable among colleagues at a university, but as a basis for broader social and political relationships, it issues demands which the average everyday citizen will be unwilling or unable to perform. Connolly reveals his awareness that he is indeed asking for a full-fledged transvaluation of values with his attempt to reinterpret the creation stories of various confessions in an agonistic pluralist vein, to show us, as prophets of old have done, that his doctrine is rooted in the order of creation and our nature as human beings. In taking upon himself the task of, as it were, changing human nature, and instilling in mankind a new set of virtues and dispositions necessary for them to become bound together in mutual agonistic respect, Connolly puts himself forward as a sort of Rousseauian Lawgiver, which, as Rousseau himself warns, is a vocation at which precious few men in history have excelled:

It is not up to just anyone to make the Gods speak or to have them believe him when he proclaims himself their interpreter. The great soul of the Lawgiver is the true miracle which must prove his mission. Any man can carve tablets of stone, bribe an oracle, feign secret dealings with some divinity, train a bird to speak in his ear, or find other crude ways to impress the people. Someone who can do only that much might even by chance succeed in assembling a flock of fools, but he will never found an empire, and his extravagant work will soon perish together with him.<sup>6</sup>

## **2. Strong Multiculturalism**

The strong multiculturalism approach is by far the most internally incongruous of the four, attempting to combine, as it does, several mutually incompatible goods. In general, multiculturalists view cross-cultural contact as an innate good. They also believe that minority

individuals derive special support from membership in their ethno-religious communities, and that it is thus desirable that such communities be granted some degree of group autonomy to help them preserve their culture. Thus multiculturalists advocate a high degree of cultural mixing, on the one hand, and the preservation of distinct cultures, on the other.

Some multiculturalists, such as Bhikhu Parekh advocate a society of diverse communities with their own moral, cultural and other traditions held together by a “thin and formal” sense of political obligation. In the present age, he argues, “a well-considered theory of political obligation, as of legitimacy and authority, will necessarily have to be thin and formal, leaving sufficient moral spaces to be filled in differently by different moral traditions.”<sup>7</sup> Ian Shapiro raises a cogent objection to this model. “As a theoretical matter,” he writes, “it is hard to see why strong local attachments and trust within local civic groups should be expected to translate into trust of democratic political institutions. Rousseau... argued long ago that allegiance to ‘sectional societies’ is more likely to undermine than reinforce commitment to collective institutions.”<sup>8</sup> If the local attachments of the citizens are thick, whereas the national attachments are thin, and especially if the local attachments are based on more primordial ethnic and religious bonds, rather than on economic or other interests, then this would appear to be a serious problem for democracy at the national level. Why should these local communities make compromises with each other, and sacrifices for the common good? The bond holding them together as country will be too weak compared to the ties sustaining their communities.

Some have applied the classical argument of James Madison in *Federalist* No. 10 to the problem of multicultural pluralism.<sup>9</sup> However, as Howard Schweber puts it, “such an argument posits that the only support required for the commitments necessary to sustain a democracy is actors’ awareness of their own self-interest.”<sup>10</sup> This sort of Hobbesian or Lockean view of human

nature when its emphasis on rational self-interest fails to capture the prominence of national and religious passions that created and now, where they are in relative unity, sustain the constitutional democratic order, and where they are in conflict, present the greatest challenge to that order. Robert Dahl argues the constitutional self-government, or polyarchy, as he calls it, depends on certain social preconditions and norms and a general consensus on the scope of political power and the range of policy alternatives.<sup>11</sup> But such norms, and such consensuses, I have argued, are not free standing: they depend on a level of trust and solidarity which is found among those who share nationhood, and are further supported by national prejudices.

In the quotation above, Shapiro is responding specifically to Robert Putnam's claims about the importance of strong local attachments for democracy. Putnam's theory actually makes a good deal of sense, and has a respectable pedigree, being based on the insights of Alexis de Tocqueville and Edmund Burke. However, the theory only works when one can assume some degree of cultural homogeneity in the population. As I argued in chapter 1, the local communities, or "little platoons" Burke calls them, are like "so many images of the great country." The commonality shared by the smaller groups is immediately obvious to the people. It is this that allows them to broaden their affections to encompass the entire nation. In the sort of society described by Parekh, however, this is unlikely to happen. In fact, contact among the local groups may even increase distrust among them.

Will Kymlicka, an advocate of strong multiculturalism, is aware of this difficulty, and although he would clearly like to have it both ways, he admits that he is unable to square the circle. Kymlicka disagrees with Kant that a "race of devils" can be held together by the right set of institutions. He says that "procedural-institutional mechanisms" are not enough to sustain a liberal democratic polity, and that "some level of civic virtue and public spiritedness is

required.”<sup>12</sup> Kymlicka argues that such public spiritedness “requires that citizens have a strong sense of common identity and common membership, so that they will make sacrifices for each other, and this common identity is assumed to require... a common language and history.”<sup>13</sup> He also speaks of the importance of “mutual intelligibility” and “intergenerational bonds” in creating and sustaining such civic virtue.<sup>14</sup> Yet, all of this would seem to exclude multiculturalism.

According to Kymlicka, multinational democracies are “inherently unstable.”<sup>15</sup> Whereas refusing demands for self-government is likely to “aggravate alienation,” accepting the demands inevitably leads to a desire for “ever-increasing autonomy, even independence.”<sup>16</sup> What is to be the basis of social unity in a multinational state? Kymlicka admits he has no answers. Shared values such as “a belief in equality and fairness; a belief in consultation and dialogue; the importance of accommodation and tolerance” or a “shared conception of justice” “do not provide any reason why one or more national groups should stay together.”<sup>17</sup> In other words, universal values of whatever kind cannot, on their own, serve as the basis of a political community. Kymlicka refers to a solution proposed by Charles Taylor according to which citizens could belong to their nation in different ways, and recognize each other’s different modes of belonging. Taylor “suggests that citizens ‘might find it exciting and an object of pride’ to work together to build a society founded on deep diversity, and so be willing to make sacrifices to keep it together.”<sup>18</sup> Kymlicka points out an obvious objection: “Why would citizens find this exciting rather than wearying, given the endless negotiations and complications it entails?”<sup>19</sup> “A vague commitment to the value of cultural diversity, by itself, may not generate a strong sense of identification” between different peoples.<sup>20</sup>

Kymlicka thinks that there is a difference between multinational states, and polyethnic

states. The latter, he claims, need not suffer the same difficulties, but he does not argue this point convincingly. If an immigrant group grows large enough, why should it not, in time, begin to demand group rights, and shirk integration? Also, smaller immigrant groups that are nevertheless highly “indigestible” owing to their culture may present the same problem.

Recent empirical research makes the case for multiculturalism, and diversity in general, appear even weaker. Based on a survey of 41 communities in the United States, Robert Putnam comes to the conclusion that immigration and diversity foster social isolation and distrust. He describes this view of the effects of diversity on social connections as the “constrict theory”. The two traditional theories are “contact theory” and “conflict theory.” According to the former, contact between persons belonging to different social identities allows each side to see that the other is not so different, that, in the end, they are all human beings, which results in greater harmony among groups. According to the latter, contact produces a greater awareness of differences, and therefore spawns mutual revulsion and hostility; in essence, familiarity breeds contempt. Putnam’s constrict theory states that cross-cultural interaction produces neither solidarity nor conflict. Instead, the result is *anomie*, a decline in trust and social activity.

Putnam’s data reveal that “inter-racial trust is relatively high in homogeneous South Dakota and relatively low in heterogeneous San Francisco or Los Angeles. The more ethnically diverse the people we live around, the less we trust them.”<sup>21</sup> Putnam’s chief finding is that this lack of trust among members of diverse communities saps social capital, which, for him, is the lifeblood of democracy:

[I]nhabitants of diverse communities tend to withdraw from collective life, to distrust their neighbours, regardless of the colour of their skin, to withdraw even from close friends, to expect the worst from their community and its leaders, to volunteer less, give less to charity and work on community projects less often, to register to vote less, to agitate for social reform *more*, but have less faith that they can actually make a difference, and to huddle unhappily in front of the television.<sup>22</sup>

He notes, furthermore, that these correlations hold regardless of differences in age or income. He finds that “even comparing two *equally* poor (or equally rich), *equally* crime-ridden (or equally safe) neighbourhoods, greater ethnic diversity is associated with less trust in neighbours.”<sup>23</sup> He reports that “every successively older cohort from age 30 to age 90 showed essentially equal effects, so Americans raised in the 1970s seem fully as unnerved by diversity as those raised in the 1920s.”<sup>24</sup> These results are by no means anomalous, or unique to the United States. Recent research by the UK’s Home Office has revealed that, in that country as well, “the more ethnically diverse an area is, the less likely people are to trust one another.”<sup>25</sup>

If local communities are the places where citizens first develop, through interaction and cooperation with their neighbors, the germ of public affections and the skills required for effective self-government, then states composed of diverse communities would appear to be at a significant disadvantage. Multiculturalists may be able to find other reasons why diversity should be praised—although those arguments are also frequently dubious. But they cannot convincingly argue that deep ethnic and religious diversity is good for constitutional self-government. The evidence points more to the detriments and dangers posed by this kind of diversity.

### **3. Post-Nationalism**

“Constitutional patriotism” and the associated idea of post-nationalism were developed in post-war Germany. Although the most prominent proponent of constitutional patriotism is, without doubt, Jurgen Habermas, I will focus instead on the work of two of his disciples, Jan-Werner Muller and Seyla Benhabib, who explore in more detail the application of the concept to

countries facing the challenges of pluralism. Constitutional patriotism has two basic premises. First, it “designates the idea that political attachment ought to center on the norms, the values and, more indirectly, the procedures of a liberal democratic constitution” rather than on shared history or common ethnicity or culture.<sup>26</sup> The political community is to be based on the attachment of the citizenry to “constitutional essentials,” or, put another way “universal principles ... embodied in particular institutions or practices.”<sup>27</sup> Second, given the first premise, constitutional patriotism requires that citizens “reflect critically upon particular traditions and group identities in the name of shared universal principles.”<sup>28</sup> This means that they must take a more critical, detached view of their prior identities, national, religious and otherwise, and be prepared to “reinterpret” and “purify” these (though perhaps “attenuate” is a more accurate word here) to meet the demands of universal moral norms.<sup>29</sup>

For Benhabib, the post-nationalist approach presents the best framework for the resolution of cultural cleavages in a multicultural democracy. According to this model, what groups share is a commitment to democratic procedures that provide for ongoing, open-ended communication by which they may reach agreements “on the basis of reasons we think can be justified from the standpoint of all human beings.”<sup>30</sup> Deep cultural differences notwithstanding, conflicts need not be irreconcilable, because, in her view, as we noted before, all cultures are contested, and, moreover, because “discourses are moral *and* political learning processes.”<sup>31</sup> Constitutional patriots, who take a critical attitude toward their cultural traditions, can change their minds.

Constitutional patriotism also allows the natives of a country to become more inclusive, and thus avoid conflicts between natives and incomers. Benhabib asserts “The process of identity formation... [is] to be rendered more open, dynamic, and fluid.”<sup>32</sup> With regard to immigrants

“integration [is] not ... something done to ‘them,’ but something accomplished in common through mutual deliberative engagement (for the most part under state auspices), but above all ‘with them’— in such a way that a reconstituted ‘we’ emerges.”<sup>33</sup> The identity of the country is constantly redefined through mutual engagement between natives and newcomers.

There are several problems with this notion of constitutional patriotism or post-nationalism, some of which are acknowledged by its proponents. In the first place, the post-nationalist theorists assume the existence of a “we” and a commitment to “shared universal principles” without justifying this assumption. For instance, Benhabib writes “The basis of legitimacy in democracy is to be traced back to the presumption that the institutions that claim obligatory power to do so because their decisions represent a standpoint equally in the interests of all.”<sup>34</sup> If that is so, then do we not have to know who this “all” is in whose interests decisions are being made? If there are no prior attachments to bind together a multitude, whence the feeling of obligation to seek to understand political opponents and make compromises with them for the good of all? We are back to the problem posed by liberal nationalists such as Yael Tamir. Muller admits that “constitutional patriotism at least to some extent has to rely on already existing political units: it is not a free-standing theory of political boundary-formation, and therefore does not answer questions about political self-determination... Likewise, constitutional patriotism cannot by itself generate large degrees of social solidarity.”<sup>35</sup>

The purpose of constitutional patriotism, as Muller puts it, is to “transform” existing national communities, to reestablish them, as it were, on universalist foundations. The unanswered, and perhaps unanswerable, questions that follow from this are— Is such a transformation even possible? How will the members of existing national communities be persuaded to trade their more fixed identities for the ambivalence demanded by post-

nationalism? The ambivalent, fluid, endlessly inclusive identities that post-nationalists would like to impose on existing nations are liable to be tepid at best, and unable to generate civic solidarity, and most certainly too vacuous to inspire the feats of courage and self-sacrifice which characterize the beginnings of constitutional self-government, and may be necessary, from time to time, to restore and revitalize it. No one in his right mind would insist that the members of a political community should take an entirely uncritical attitude toward their national traditions, memories, and heroes, or that they should revolt at any perceived slight to their identity, as is indeed the case in some countries today. But the post-nationalist conception of identity takes criticism and ambivalence too far. With the emphasis on fluidity and limitless inclusiveness, it destroys the sense of intergenerational continuity that makes identities meaningful. Why should the present generation care about a future generation that may reject everything it holds dear? The post-modernist/post-nationalist conception of identity reduces human beings, in the words of Burke, to “little better than the flies of a summer.”<sup>36</sup> What is more, on what grounds does Muller base his moral imperative that a nation change its conception of itself to accommodate immigrants, whose admission into the country is by said nation’s permission? Widespread acceptance of the post-nationalist attitude, most likely, could only be achieved, if at all, by a great deal of cosmopolitan elite-inspired, and state-enforced “reeducation”, which itself is hardly compatible with the notion of self-government.

Proponents of constitutional patriotism—some of them at least—are indeed cognizant of the difficulties involved in convincing people to accept universalist, post-nationalist principles as the standards by which all else must be evaluated. Habermas’ solution, Muller explains, was to capitalize on German guilt for the Holocaust.<sup>37</sup> In Habermas’ view, the Holocaust provides a powerful lesson that national traditions can lead to moral catastrophe. German “‘forms of life’ ...,

writes Muller, paraphrasing Habermas, have facilitated the crimes of the past.”<sup>38</sup> From this awareness a strong commitment to post-nationalism arises. The link between the generations, based on traditional culture, is replaced by “collective responsibility for the past ... ‘a kind of intersubjective liability.’”<sup>39</sup> Muller suggests that this model can be replicated elsewhere. Other European countries, he says, share guilt for the Holocaust, and for colonial wrongs. The United States can turn the driving out the Indians and enslaving Africans into its own unique guilt narrative. Indeed, one observes that intellectuals and activists in most Western countries are already exerting much energy collecting and incanting these past wrongs.

Three questions arise. First, how can this transformation be brought to pass without eventually generating a backlash from members of the majority? The Germans have found it necessary to outlaw any questioning of the accepted historical account of the Holocaust, which itself is an egregious violation of the “principled ambivalence” demanded by “post-conventional identity formation.” There is not supposed to be any fixed narrative, which it is illegal to question. Second, if specific guilt narratives are to be the basis of a commitment to post-nationalism, how will immigrants, whose ancestors played no part in the past wrongs, be swayed by them? Muller suggests that the Holocaust could provide a sort of guilt narrative for the European Union as a whole. One wonders whether he has considered how Muslim immigrants to Europe might respond to this? Third, is there not something deeply disturbing about a political commitment based on national guilt, self-doubt, and continuous national self-mortification? What member of the majority really wants to live this way, and what immigrant would want to fall in with this miserable procession of self-flagellants? When this aspect is considered, constitutional patriotism seems far more akin to a sort of soft cosmopolitan tyranny than to anything like self-government.

Finally, even if we were to assume, as Benhabib does, that different cultural groups could be persuaded to deliberate with each other, in accordance with established constitutional procedures, in an attempt to resolve pluralistic conflicts, it is still unlikely that any mutually acceptable agreement could be reached on especially contentious issues. Different cultural groups can have entirely different understandings of what is “justifiable from the standpoint of all human beings.” Benhabib lists twelve contentious practices that are the source of cultural tension between the native born and immigrant populations in Western countries. It is hard to see how common ground could be found between those who practice and those who oppose the first two customs on the list: female circumcision and polygamy. Benhabib admits that it is possible for cultural groups to come to understand each other’s claims and reasons and to be more repulsed by them once they fully understand.<sup>40</sup> This seems the most likely outcome here. What sort of “reconstituted we” can emerge when one group condemns such practices as barbaric, while the other regards them as religiously sanctioned?

Granted post-nationalists and other “constructivists” are right when they insist that attitudes and identities can and do significantly change over time, but this is not much of an insight when we consider that such transformations often take decades and centuries. What is more, contrary to the assumption of post-nationalists, social identities do not necessarily evolve progressively in the direction of universal tolerance and cosmopolitanism. Even if social identities are constructed, this does not mean that “dangerous” or conflicting identities can be quickly or reliably deconstructed or brought under control through continual cross-cultural dialogue in the “ideal speech situations” described by Habermas and other members of his school. More intrusive methods of deconstructing such identities, such as public education or legal coercion, are not guaranteed to be effective either. Such methods are hard to justify from

post-nationalist principles, as elucidated by Muller and Behabib, but they are, as Muller notes, a part of political practice in the post-nationalist constitution of Germany. Even if identities could be defused or eviscerated by such means, it may not be desirable in the long run to confer upon the state a settled authority to reprogram the social identities of its citizens. Such authority might well be employed to deconstruct the culture the traditional majority, and, indeed, there are some who explicitly affirm that the authority of the state should be used for this purpose.

#### **4. Statist Liberalism**

The statist liberal approach has much in common with constitutional patriotism. According to Stephen Macedo, central to this approach “is a transformative project that includes the remaking of moral and religious communities.”<sup>41</sup> The aim of the project is to bring diverse groups to embrace the “goods of tolerance, openness to social diversity, equality of concern and respect, and free-self expression.”<sup>42</sup> Contrary to the assumption of some strong multiculturalists, these values do not arise of their own accord among particular cultural and religious communities that happen to share liberal democratic institutions. Thus, democracies with high levels of cultural diversity in particular cannot be left to regulate themselves. Such democracies need a strong, shared civil religion to govern the interactions between groups and maintain solidarity among them. As Macedo puts it:

A liberal democratic polity does not rest on diversity, but on shared political commitments weighty enough to override competing values. The mere celebration of diversity and difference is no substitute for a shared public morality: the abstract ideals of liberal justice lay claims of mutual respect on every group in society, whereas the claims of particularity advanced by pluralists create no necessary claim for tolerance or respect.<sup>43</sup>

The political commitments of members of a democratic country must be strong enough to outweigh other values, and provide for mutual respect and cooperation among groups with moral

and cultural differences.

The ideals of liberal justice must reign supreme in a democracy, and since they do not arise naturally, they need to be inculcated. The inculcation, argues Macedo, should take place in schools. Schools are not only a place where young citizens may have the tenets of the liberal civil religion instilled in them. They are also an environment where diverse individuals will come into contact with each other and learn to appreciate each other's differences. Macedo is evidently a believer in the "contact theory" mentioned above. Schools should teach "toleration and knowledge of our society's diversity" and the doctrine of multiculturalism itself.<sup>44</sup>

Apart from the doctrines listed above, the young must be taught to understand and respect the public-private distinction. Macedo explains:

It is...a profoundly important achievement for society to converge on the notion that religious values and practices belong in a private sphere that is distinguishable from the sphere of political power. It is an accomplishment to come to a rough agreement that there are distinctively public reasons and purposes, in contrast to other reasons and purposes not properly pursued via political means.<sup>45</sup>

Macedo is not offering anything new here. This is an old liberal tradition, according to which peace and mutual cooperation may be maintained in a democracy so long as citizens keep their religious, moral or other culturally distinctive practices to themselves. Political projects are legitimate only if they can be justified to other citizens on the basis of common civic principles. Political projects based on culturally specific values and aspirations are dangerous for democracies with diverse populations, as they bring into the public sphere ideas and practices that are potentially inflammatory and not amenable to compromise. It is Macedo's hope that inculcation and experience living in a liberal society will eventually liberalize the private sphere as well and lead to a whole-hearted endorsement of liberal doctrines by all citizens.<sup>46</sup> But until then, illiberal citizens must have "divided selves", that is, they must keep their religious and

cultural aspirations separate from their political aspirations.<sup>47</sup>

In short, Macedo would solve the problems of diversity by instilling in everyone a set of political principles, including “a shared belief in the legitimacy of democracy constrained by respect for basic liberties, due process and the rule of law, and at least a basic safety net” (essentially, Rawls’ freestanding consensus on constitutional essentials) as well as an abstract appreciation of diversity itself, reinforced by experiences with members of different groups.<sup>48</sup>

As with the other approaches, various objections can be raised to statist liberalism. In the first place, it suffers from the same deficiency as all the other approaches. Abstract values such as tolerance and diversity, and belief in liberal democratic principles do not make a people. They cannot offer the sense of intimacy and intergenerational continuity that ethnic and religious identities provide. The civic culture that Macedo touts is too thin to generate mutual solidarity among diverse communities.

What is more, it becomes clear from Macedo’s arguments that the embrace of diversity involves certain trade-offs. The first trade-off is that in proportion as societies become more diverse, individuals, including both immigrants and members of the native majority, will have to have increasingly divided selves. Universalist rhetoric notwithstanding, civic nations have always had civic cultures that reflected and, at least unofficially, expressed the deeper cultural attitudes and aspirations of the majority ethnic. In a more homogeneous country, citizens can pursue political projects that reflect their deeper cultural aspirations without fear of inciting irresolvable conflicts. The right of a people to preserve its own distinctive qualities and to generate national solidarity on that basis must be curtailed as a country becomes increasingly diverse.

The second trade-off has to do with the liberties of the individual and the nation. For my

part I do not propose to speak of common schools or of education policy here. However, Macedo's designation of schools as microcosms of the larger society is a plausible one, and therefore I shall accept his analogy for the sake of argument. As he puts it, "In their permissiveness and their extreme individualism, public schools in big cities mirror some of the tendencies of the liberal society as a whole, rather than counteracting, balancing, or tempering those tendencies."<sup>49</sup> Diversity has given us increasingly anomic and atomized schools, and a larger society which, in the aggregate, reflects this. Macedo also notes that homogeneous schools manage more easily to avoid these difficulties:

It is hardly surprising that schools serving more cohesive communities may have an easier time generating trust among students, teachers, and indeed parents. After all, in common schools—schools containing students from diverse religious, racial, ethnic, and class backgrounds—a certain amount of energy will have to be expended to build trust and mutual understanding that more homogeneous schools can (to a greater degree) take for granted.<sup>50</sup>

Diverse schools require much more energy from teachers and administrators, and from the curriculum, to harmonize groups that would otherwise have more difficulty getting along and cooperating in order to realize the common goal, which is that they should all gain a satisfactory education and learn to be good citizens. We may thus also extend Macedo's metaphor and say that, much like his common school, a more diverse society is one that possesses less naturally occurring social capital, and less of a capacity for self-regulation, which means that such a society will be in greater need of interference from the state to harmonize the population and direct it toward the common good.

We may indeed observe that as Western countries have become more diverse as a result of immigration policies, states have invariably introduced and expanded bureaucratic controls to deal with it. In response to the intractable legacy of slavery and the continuing racial divide, the United States enacted constitutional amendments mandating Federal regulation of relations

between races in the states. Such regulations now apply to new minorities as well. In Europe “quangos”<sup>51</sup> have arisen, which monitor inter-community relations and issue commands to citizens about whom they should employ in their businesses, where they should send their children to school, and what sorts of things members of different groups are allowed to say about and to each other. This trend toward greater bureaucratic interference in civil society is in no way compatible with the old balance between local and national self-government. Growing pluralism is driving it, or at least providing a justification for it.

## **5. The Error of Universalism and the Limits of Pluralism**

John Locke, it seems, could scarce have been aware what sorts of claims his abstract and universalist theory of political obligation would later inspire. Other thinkers of the epoch explicitly stated a proposition that Locke’s theory only assumed, that humanity was divided into nations, and that members of a nation had a greater duty to their compatriots than to the rest of humanity. As George Lawson affirms, human communities are necessarily particular and limited. The “things, acts, rights, privileges, interests” which the members of one community have in common “differ from those which are common unto other creatures, or mankind in general.” In language that would be especially evocative to his own national audience, he continues:

Society was ordained of God for the benefit of mankind and tends much unto their good and happiness temporal at least. For God saw at the first creation, that it was not good for man to be alone, therefore he created woman, who together with man, was the root and the original of all human societies (Gen. 2.18). Two saith the preacher are better than one, and ‘woe to him that is alone’ (Eccles. 4.9, 10). Where his principal intention is to show the excellency and benefit of society, yet he presupposeth love, humanity, and a nearer affection to those of one and the same society than to all mankind in general.<sup>52</sup>

A community presupposes affection, ties and obligations for members, which are not extended to outsiders. When a community organizes itself into a state, this same preference for its own members and exclusion of outsiders is written into the laws of the land: “In every well-constituted and well-order state there are certain general rights, and also privileges both real and personal, which are not due unto strangers. No rational people will subject themselves but upon condition of protection both from wrongs within the state and from violence of foreigners.”<sup>53</sup>

In the penultimate chapter of *The Claims of Culture*, Seyla Benhabib attempts to dislodge the “wedge” that Carl Schmitt, drove— erroneously in her view—“between liberal and democratic conceptions of equality” in his book *The Crisis of Parliamentary Democracy*. She quotes Schmitt roughly as follows:

Every actual democracy rests on the principle that not only are equals equal, but unequals will not be treated equally. Democracy requires, therefore, first homogeneity and second—if the need arises—elimination or eradication of heterogeneity [...] Equality is only interesting and valuable politically so long as it has substance, and for that reason at least the possibility and the risk of inequality [...] Every adult person, simply as a person, should *eo ipso* be politically equal to every other person. This is a liberal, not a democratic, idea; it replaces formerly existing democracies, based on substantial equality and homogeneity, with a democracy of mankind.<sup>54</sup>

Schmitt’s essential point is that democratic equality distinguishes between members and non-members, and awards equal rights on that basis. As democracy arose in the modern age, the rights of citizens were derived from membership in the nation. Liberalism, on the other hand, declares all human beings equal bearers of human rights, and cannot justify, on its own principles, granting equality to members, and denying the same to non-members. Liberalism, if taken seriously, would lead to a “democracy of mankind”, which, in Schmitt’s view, has never existed, and cannot exist.

Benhabib regards Schmitt’s account as a misreading of modern constitutional self-

government. From her point of view, “‘The Rights of Man’ and ‘The Rights of the Citizen’ are coeval for the moderns.”<sup>55</sup> Nevertheless, she writes that there is “a constitutive dilemma in the attempt of modern nation-states to justify their legitimacy through recourse to universalist moral principles of human rights, which then get particularistically circumscribed.”<sup>56</sup> In other words, there is indeed a wedge between constitutional self-government and liberalism. Perhaps it would be more accurate to speak of the universalist rhetoric in the American *Declaration of the Independence* and the French *Déclaration des droits de l'Homme et du citoyen*, not as a “constitutive dilemma” but as a constitutive error, or perhaps a constitutive delusion. That these two so called “universal” or “proposition” nations have, on occasion, retreated from these universal principles when they perceived that the protection and the benefit of their own citizens demanded it, points to the tenuousness of universalist commitments in general. It is worth remembering the words of Hannah Arendt, who, in spite of her sympathy for “the stern Jacobin concept of the nation based upon human rights” was forced by the experience of World War II to admit “the paradox involved in inalienable human rights [which] reckoned with an abstract human being who seemed to exist nowhere,” and to concede to Edmund Burke “that it was much wiser to rely on an ‘entailed inheritance’ of rights which one transmits to one's children like life itself and to claim one's rights to be ‘the rights of Englishmen’ rather than the inalienable rights of man.”<sup>57</sup>

Schmitt obviously overstates his case concerning democratic homogeneity. No modern state has ever enjoyed total ethnic or religious homogeneity, and many constitutional self-governing nation-states with strong *Staatsvolker* have been largely tolerant of ethnic minorities and accorded them the rights of citizenship, so long as the latter were not perceived as a threat to the cultural and political dominance of the historic majority. The drive for a radical and

complete “eradication” of heterogeneity is more characteristic of some of the absolutist confessional states of early-modern Europe, and of the totalitarian regimes of the 20<sup>th</sup> century, one of which Schmitt himself served.

Practically speaking, human beings have rights owing not to their membership in the species *homo sapiens sapiens*, to but to their citizenship in nation-states. If the rights of man are not simply “nonsense on stilts,” then it is certain that the rights of citizenship are, practically speaking, prior to them, and, what is more, the rights of citizenship themselves are most secure where citizenship coincides with membership in the nation. Liberal-nationalists such as Yael Tamir posit a theory of the rights of individuals and of peoples that is consistent with the principles stated by the likes of George Lawson. Modern liberals err when they derive their notions of rights, citizenship and nationhood from the abstract formulations of Locke.

As Tamir puts it:

Modern nation-states have attempted to blur the fact that they are composed of different national groups by fostering a liberal-democratic definition of the nation. According to this definition, all who inhabit a particular territory and live under the rule of the same government are members of the same nation, but modern history has time and again refuted the claim that citizenship and membership in a nation are one and the same. No amount of conceptual manipulation can do away with the problems aroused by the presence of minorities.<sup>58</sup>

Citizenship and membership in a nation are not the same thing. The former is a legal standing in the state, whereas the latter is a membership in a people based on perceived ties of culture or kinship. In nation-states citizenship and nationhood often overlap to a large degree, and the boundaries between the core nation and minorities within the state can shift with time and changing circumstances. But ultimately, constitutional self-government depends on the cohesiveness and the commitments of the national core, and its willingness to share with minorities all the rights and duties of citizenship. The possibility of this form of government

requires the preservation of that ethno-cultural core.

The most serious objection to such a formulation, an objection which pluralists, multiculturalists, post-nationalists and liberals will all no doubt share, is voiced by Howard Schweber as follows: “When confronted by the danger of demographic pluralism, the inevitable and logically necessary consequence of defining a polity in ethnic terms is a move toward limiting the presence of others, those who, as Schmitt put it, threaten to negate the authentic character of the state by the fact of their presence.”<sup>59</sup> Such an objection demands a serious response. In the first place, we must note that the mere “presence” of a group does not necessarily suggest any particular course of action. The actions of members of that group, and the number of them, must also, to be sure, enter into one’s consideration. Second, if we are to operate exclusively on the basis of logical necessities, then *any* definition of the polity, even the most universal, must inevitably require the exclusion of those who would seek to negate the defining character of the state.<sup>60</sup> Thus, if one were to confine the legitimate use of political power in a given state to the principles, for instance, of “consensus liberalism,” this would logically require the exclusion of those who refuse to abide by these principles in public life, and could even justify limiting the presence of ethnic or religious groups, who, in the aggregate, show themselves to especially resistant to a liberal conception of politics.

Thus, we cannot confine our reasoning to logical necessities, but must also consider circumstances. Just as the theory of civic patriotism has to pass over most actual manifestations of patriotism from ancient times to the present, so does liberalism have to pass over the record of most purportedly liberal states.<sup>61</sup> The act of defining a state as a liberal or universalist polity in some sort of founding charter does not make it so. Indeed, liberal rhetoric can often conceal an underlying nationalist sentiment. For confirmation of this point one hardly needs to turn to Carl

Schmitt. The reasoning of the Father of Liberalism himself, John Locke, illustrates the shakiness of the foundations of universalist liberalism better than any enemy of liberalism could.

As many have noted, most recently Anthony Marx in *Faith in Nation*, John Locke argues in support of the exclusion of Catholics from the rights of citizenship in his *Letter Concerning Toleration*.<sup>62</sup> Locke grounds his argument for exclusion on liberal principles, but in doing so, he also reveals the limits of liberal tolerance in a self-governing nation-state. Generally, Locke argues that granting all subjects equality before the law and equal respect will ensure a peaceful society. But this is not possible in all cases. Among his principles justifying exclusion are the following two. First, the state should not tolerate any religion whose members owe their primary allegiance to a foreign prince or other foreign authority.<sup>63</sup> Second, the state should not tolerate any group that believes it has a right to dominate other members of society, or that its members should be exempt from the civil laws which all citizens are bound to obey.<sup>64</sup>

Three Catholic doctrines, he suggests, run afoul of these rules. First, the doctrine that “dominion is founded in grace” allegedly absolves the Catholic believer of any duty to obey a non-Catholic magistrate. Second, Locke says that Catholics believe “that faith need not be kept with heretics” which would permit them to swear false oaths, and to break covenants and promises they have made with those they consider to be heretical. Finally, Locke says that Catholics are bound to obey a Papal bull, that is, a decree by the Pope which asserts that “Kings excommunicated forfeit their crowns and kingdoms.”<sup>65</sup> Locke concludes with a rhetorical question “what do all these and the like doctrines signify, but that those men may, and are ready upon any occasion to seize the government, and possess themselves of the estates and fortunes of their fellow-subjects; and that they only ask leave to be tolerated by the magistrate so long, until they find themselves strong enough to effect it?”<sup>66</sup> In view of such doctrines, and a history of

hostility and Catholic conspiracy which confirmed them to be principles of action for some portion of the Catholic population, from the assassination attempts against Elizabeth I to the machinations of the James II, Locke declares that any plea for toleration from Catholics must be regarded with suspicion. They only bide their time until they are strong enough to start an insurrection and try to impose their will on the country. Locke grounds his treatise on toleration on universal and liberal principles, but circumstances lead him to take the part of his fellow Englishmen, that the protection of the ancient liberties of the English nation and Protestant religion demand a suspension of the rights of man with respect to Catholics.

Some three hundred years later there is no question that differences between Protestants and Catholics no longer generate the sort of hostility capable of dividing men into friend and enemy groupings, except perhaps in Northern Ireland. Similarly, the hostility between Dutchmen and Spaniards, which I examined in depth in chapter two, obviously no longer exists some four hundred years later. That the British or Dutch states might in the 21<sup>st</sup> century find cause to suspend the rights of descendants of their former enemies who currently live amongst them is simply inconceivable. But we should not draw the wrong conclusion from the waning of particular hostilities. Perceptions of foreignness, and feelings of hostility differ depending on immediate circumstances, cultural memory and a variety of other factors. The last four hundred years offers little evidence to support the Kantian thesis that mankind is advancing ineluctably toward enlightenment, cosmopolitanism and universal peace. On the contrary new circumstances and new encounters have only generated new friend and enemy groupings.<sup>67</sup>

Given abiding human difference and divisiveness, the nation-state continues to provide the best framework for the realization of constitutional self-government. As Margaret Canovan notes “it is not clear what are the institutional forms appropriate to a state which respects cultural

diversity and does not seek to bolster or embody any specific form of cultural identity. In the past, states which have managed to command allegiance without such communal solidarity have been monarchies, empires or religious institutions.”<sup>68</sup> Such institutions, for the most part, did not allow for self-government, and often managed pluralism very badly all the same.

If a constitutional self-governing state requires a *Staatsvolk*, as my argument suggests it does, then this prescribes some limits for pluralism. A constitutional self-governing state cannot become a microcosm of the diversity of the globe; there can be no “democracy of mankind.” The conditions in the state must be suitable for the spontaneous reproduction and transmission of the culture of the historic majority, not at the direction of the organs of state power, but at the initiative of civil society, which means that the “little platoons” that are the germs of that society must remain intact.<sup>69</sup> To be somewhat more precise, two types of limits to pluralism suggest themselves. The first is the practical limit, the outer limit, the exceeding of which can have dire consequences. This is when pluralism reaches such proportions that the historic majority of a nation-state perceives it as a threat to the continuity of the existing cultural and political order, and undertakes to curtail or suspend the rights, whether *de facto* or *de jure*, of minorities it no longer trusts. This cannot be viewed solely from the standpoint of morality. Rather it is a question of expediency, of avoiding the collapse of law and the eruption of violence, as the fear of being overwhelmed demographically by a rival group is a leading cause of ethnic conflict.<sup>70</sup> The second is a normative limit. It is reasonable for a people who value their culture, their liberties and their institutions to decide, purely on the basis of self-interest, whom they wish to allow to join their polity.

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<sup>1</sup> William Connolly, *Pluralism*, (Durham, NC: Duke University Press), 7-8.

<sup>2</sup> Connolly, *Pluralism*, 28-30, 61-62.

- <sup>3</sup> Connolly, *Pluralism*, 123-124.
- <sup>4</sup> Connolly, *Pluralism*, 125.
- <sup>5</sup> Connolly, *Pluralism*, 40-41.
- <sup>6</sup> J.-J. Rousseau, *The Social Contract and other later political writings*, trans. V. Gourevitch, (Cambridge University Press, 2007), 71.
- <sup>7</sup> Bhikhu Parekh, "Theorizing Political Theory," in *The Nature of Political Theory*, Ed. D. Miller & L. Siedentop, (Oxford: Clarendon Press, 1983), 254.
- <sup>8</sup> Ian Shapiro, *The State of Democratic Theory*, (Princeton: Princeton University Press, 2003), 92-93.
- <sup>9</sup> See, for instance, the reformulation of Madison's thesis by Robert Putnam et al., *Making Democracy Work: Civic Traditions in Modern Italy*, (Princeton University Press, 1992), 87.
- <sup>10</sup> Howard Schweber, *Democracy and Authenticity: Toward a Theory of Public Justification*, (Cambridge University Press, 2012), 7.
- <sup>11</sup> Dahl, *A Preface to Democratic Theory*, 125, 132, 135.
- <sup>12</sup> Will Kymlicka, *Multicultural Citizenship*, (Oxford: Oxford University Press, 1996), 176.
- <sup>13</sup> Kymlicka, *Multicultural Citizenship*, 77.
- <sup>14</sup> Kymlicka, *Multicultural Citizenship*, 89.
- <sup>15</sup> Kymlicka, *Multicultural Citizenship*, 182.
- <sup>16</sup> Kymlicka, *Multicultural Citizenship*, 183, 186.
- <sup>17</sup> Kymlicka, *Multicultural Citizenship*, 187, 188.
- <sup>18</sup> Kymlicka, *Multicultural Citizenship*, 190.
- <sup>19</sup> Kymlicka, *Multicultural Citizenship*, 190.
- <sup>20</sup> Kymlicka, *Multicultural Citizenship*, 191.
- <sup>21</sup> Robert Putnam, "E Pluribus Unum: Diversity and Community in the Twenty-first Century," *Scandinavian Political Studies*, 30 (2) 2007, 147.
- <sup>22</sup> Putnam, "E Pluribus Unum," 150-151.
- <sup>23</sup> Putnam, "E Pluribus Unum," 153.
- <sup>24</sup> Putnam, "E Pluribus Unum," 155.
- <sup>25</sup> Mark Easton, "Does diversity make us unhappy?," *BBC News*, 30 May 2006, [http://news.bbc.co.uk/2/hi/programmes/happiness\\_formula/5012478.stm](http://news.bbc.co.uk/2/hi/programmes/happiness_formula/5012478.stm) (Accessed 5 June 2009)
- <sup>26</sup> Jan-Werner Muller, *Constitutional Patriotism*, (Princeton: Princeton University Press, 2007), 1.
- <sup>27</sup> Muller, *Constitutional Patriotism*, 53, 65.
- <sup>28</sup> Muller, *Constitutional Patriotism*, 28.
- <sup>29</sup> Muller, *Constitutional Patriotism*, 27.
- <sup>30</sup> Seyla Benhabib, *The Claims of Culture: Equality and Diversity in the Global Era*, (Princeton, N.J.: Princeton University Press, 2002), 145.
- <sup>31</sup> Benhabib, *The Claims of Culture*, 145.
- <sup>32</sup> Muller, *Constitutional Patriotism*, 32.
- <sup>33</sup> Muller, *Constitutional Patriotism*, 89.
- <sup>34</sup> Benhabib, *The Claims of Culture*, 105.
- <sup>35</sup> Muller, *Constitutional Patriotism*, 48.
- <sup>36</sup> Burke, *Select Works of Edmund Burke*, Vol. 2, 191.
- <sup>37</sup> Muller, *Constitutional Patriotism*, 33.
- <sup>38</sup> Muller, *Constitutional Patriotism*, 37. To one who has read Hannah Arendt's *Origins of Totalitarianism* and Karl Jaspers' *On the Question of German Guilt*, Habermas' thesis will appear absurdly simplistic. It makes as much sense, if not more, to view Nazism as a break from German national traditions, or a gross perversion of them. Moreover, the other totalitarian monster, whose ideology was based not on nationalism at all, but on internationalism, was no less murderous.
- <sup>39</sup> Muller, *Constitutional Patriotism*, 37.
- <sup>40</sup> Benhabib, *The Claims of Culture*, 121.
- <sup>41</sup> Stephen Macedo, *Diversity and Distrust: Civic Education in a Multicultural Democracy*, (Princeton University Press, 2003), x.
- <sup>42</sup> Macedo, *Diversity and Distrust*, 25.
- <sup>43</sup> Macedo, *Diversity and Distrust*, 134.
- <sup>44</sup> Macedo, *Diversity and Distrust*, 203, 220.
- <sup>45</sup> Macedo, *Diversity and Distrust*, 15.

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- <sup>46</sup> Macedo, *Diversity and Distrust*, 215-216.
- <sup>47</sup> Macedo, *Diversity and Distrust*, 222.
- <sup>48</sup> Macedo, *Diversity and Distrust*, 173.
- <sup>49</sup> Macedo, *Diversity and Distrust*, 258.
- <sup>50</sup> Macedo, *Diversity and Distrust*, 263.
- <sup>51</sup> Quasi-non-governmental organizations, top-down, state-funded operations generally run by cosmopolitan activists.
- <sup>52</sup> Lawson, *Politica Sacra et Civilis*, 25.
- <sup>53</sup> Lawson, *Politica Sacra et Civilis*, 222.
- <sup>54</sup> Benhabib, *The Claims of Culture*, 175. The full quotation is in Carl Schmitt, *The Crisis of Parliamentary Democracy*, trans. Ellen Kennedy, (Cambridge, MA: The MIT Press, 1988), 9-11.
- <sup>55</sup> Benhabib, *The Claims of Culture*, 175.
- <sup>56</sup> Benhabib, *The Claims of Culture*, 176.
- <sup>57</sup> Hannah Arendt. *The Origins of Totalitarianism*. (New York: Harcourt, Inc., 1976), 106, 291, 299.
- <sup>58</sup> Y. Tamir, *Liberal Nationalism*, 143-144.
- <sup>59</sup> Schweber, *Democracy and Authenticity*, 125.
- <sup>60</sup> Schmitt suggests that any political goal, even, or, perhaps, especially, the most liberal and cosmopolitan, can justify exclusion, armed conflict, and even extermination. Any value that makes a universal claim is bound to find an opponent, whether it be a particular interest, or another incompatible value with a universalist aspiration. Universal values, in other words, have a tendency to become political, that is, to divide human beings into groups of friends and enemies. As Schmitt puts it “Whoever sets a value, takes a position against a disvalue by that very action. The boundless tolerance and neutrality of the standpoints and viewpoints turn themselves very quickly into their opposite, into enmity, as soon as enforcement is carried out in earnest.” Schmitt most often targets the humanitarian ideals of preserving human life and establishing world peace. The proponents of such ideals have little trouble justifying violent means to serve their noble ends: “A thinker of objective values, for whom the higher values represent the physical existence of living human beings, respectively, is ready to make use of the destructive means made available by modern science and technology, in order to gain acceptance for those higher values.” See Schmitt, *The Tyranny of Values*, trans. Simona Draghici, (Corvallis: The Plutarch Press, 1996), 23-24.
- <sup>61</sup> See Canovan, *Nationhood and Political Theory*, 92.
- <sup>62</sup> Marx, *Faith in Nation*, 175-179, 183-184.
- <sup>63</sup> Locke, *A Letter Concerning Toleration and Other Writings*, ed. Mark Goldie, (Indianapolis, IN: Liberty Fund, Inc., 2010), 52.
- <sup>64</sup> Locke, *A Letter Concerning Toleration*, 53.
- <sup>65</sup> Locke, *A Letter Concerning Toleration*, 50-51.
- <sup>66</sup> Locke, *A Letter Concerning Toleration*, 51.
- <sup>67</sup> See Anthony Smith, “The Supersession of Nationalism?” *International Journal of Comparative Sociology* XXXI, 1-2 (1990), 1-31.
- <sup>68</sup> Canovan, *Nationhood and Political Theory*, 43.
- <sup>69</sup> Burke, *Select Works of Burke*, Vol. 2, 136-7.
- <sup>70</sup> Such is the conclusion scholars of ethnic conflict such as Donald Horowitz, *Ethnic Groups in Conflict*, 2<sup>nd</sup> ed., (Berkeley & Los Angeles: University of California Press, 2000); *The Deadly Ethnic Riot*, Berkeley & Los Angeles: University of California Press, 2002).