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# Who are "The People"? Locating Popular Authority in Postrevolutionary America. A Review of: Constituent Moments: Enacting the People in Postrevolutionary America

Johann N. Neem

Western Washington University, [johann.neem@wwu.edu](mailto:johann.neem@wwu.edu)

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## WHO ARE “THE PEOPLE”? LOCATING POPULAR AUTHORITY IN POSTREVOLUTIONARY AMERICA

Johann N. Neem

**Jason Frank.** *Constituent Moments: Enacting the People in Postrevolutionary America.* Durham, N.C. : Duke University Press, 2010. xii + 346 pp. Illustrations, notes, bibliography, and index. \$89.95 (cloth); \$24.95 (paper).

The challenge of defining “the people,” political theorist Jason Frank writes, “haunts all theories of democracy and continually vivifies democratic practice.” The phrase “the people” haunts because, like a specter, it claims to speak for something that never was and is always in formation. Yet it “vivifies” democratic theory because the American political tradition’s legitimacy derives from popular sovereignty, and thus outsider groups can use the idea of the people to claim a role for themselves within our democracy.

But who are the people? For some constitutional scholars, including political scientists and theorists, the people are the constituent sovereign who, in conventions, design their government. From this perspective, the most important outcome of the American Revolution was the convention as a mechanism to enact the social contract. But many have challenged this conclusion. As Progressive historians and their heirs remind us, the Constitution was itself contested, did not fully embody popular will, and was an elite backlash against more popular democracy. These two perspectives created a theoretical and practical problem that played out in the postrevolutionary decades. If the state authorized by “the people” cannot speak for the people, how can elected leaders represent the public will? Alternatively, if others in civil society have a stronger claim to represent the people, how can representative government be legitimate?

Given this conundrum, it is no wonder that Daniel Rodgers in *Contested Truths* (1987) considers “the people” one of America’s “contested truths,” a phrase that can be used by those in power and by outsider groups—as in populist uprisings—who claim to represent better the people than elected leaders do. It is into these confusing waters that Frank wades. He hopes to contribute to democratic theory by exploring how postrevolutionary Americans struggled with this fundamental problem, which is, ultimately, one of the relationship between representative government and civil society. Frank’s answer draws

on Jacques Derrida's famous essay on the Declaration of Independence. To Derrida, the Declaration simultaneously created "the people" and spoke in the name of a preexisting people.<sup>1</sup> The Declaration thus enacted what it claimed already was. Frank believes the same "paradox" is true of all representative government (p. 31). All claims made on behalf of the people invoke the very thing that they, in their claims, create.

Central to Frank's thesis is his idea of a democratic "constitutive surplus" (p. 3). The "surplus" derives from the fact that all claims to represent the people are partial, leaving space for others to generate claims for inclusion. These claims happen in "constituent moments" when outsiders assert a right to speak for a people that they are simultaneously invoking and creating anew each time. Frank moves beyond Bruce Ackerman's argument in *We the People* (1991) that certain pivotal elections are like constitutional conventions in which voters accept new ground rules to include the populist expressions of grassroots activity in civil society, namely postrevolutionary crowds and the emergence of democratic societies in the 1790s.

Given that all claims made for the people are assertions, some historians have been convinced that republican government is not that different from other forms of government. To Edmund Morgan in *Inventing the People* (1989), popular sovereignty is a "fiction" that historically has enabled not the many to challenge the few but, instead, the few to govern the many. "Government requires make-believe," Morgan argues. Once we believed that the King was divine; now we "make believe that the people *have* a voice or make believe that the representatives of the people *are* the people." Anticipating Frank, Morgan concludes that the fiction remains useful and potentially redemptive if the people use it to demand a better alignment between the realities of their rule and popular sovereignty's aspirations.<sup>2</sup>

Many scholars agree with Morgan that postrevolutionary representative governments were really bodies of elite rule. Such scholars take as more authentic the proclamations made by ordinary people in civil society. This is populism's essence, as Ronald Formisano makes clear in his recent study of early national political movements, *For the People* (2008). Larry Kramer's *The People Themselves* (2004) and Saul Cornell's *The Other Founders* (1999) urge scholars to take as seriously dissenters' popular constitutionalism as we do official constitutions and elected representatives. Christian Fritz in *American Sovereigns* (2008) concludes that between their Revolution and Civil War, Americans believed not only in the existence of the "collective sovereign" but that it could and would act independent of elected leaders, as it did during the Shays and Dorr rebellions. Sean Wilentz's *Chants Democratic* (1984) and Michael Kazin's *The Populist Persuasion* (1995), influenced by E. P. Thompson, trace how ideas of republicanism and populism were used by workers to conflate themselves with "the people" in their conflicts against elite capitalists

and politicians. James Morone considers efforts by Americans to align more closely their governing institutions with popular will in *The Democratic Wish* (1990). All these scholars are united in an effort to find in popular and populist political movements expressions of "the people" challenging elite control in the name of democracy.

Frank believes that we must abandon the search for the authentic, actual popular voice. Instead, Frank urges readers to embrace the fundamental paradox of democratic theory: appeals to the people always rely on the constitutive surplus and creatively rework the very category on which they rely for their authority.

Frank develops his argument by examining both grassroots activity and elite writers. He hopes to explain why the constitutive surplus serves democratic public life. His first chapter clears space for his discussion via a critical reading of Hannah Arendt's distinction between the American and French revolutions. Arendt argued that Americans refused to embrace the Rousseauian idea of a single general will, thus preserving freedom from Jacobin tyranny. Frank brings the two revolutions closer to suggest that France's dilemma—whether the state is the voicebox of a republican people—was an important theoretical and practical problem in the new United States.<sup>3</sup>

His second chapter examines postrevolutionary crowd action. Frank argues that crowds' claims to speak for the people "poses a challenge—theoretical and historical—to the Habermasian model of the public sphere." Crowds, to Frank, challenged Habermas' ideal of a "disembodied and socially unmarked public based on rational argumentation" (pp. 68–69). The issue concerns when and how "the people" speak. To Habermas, public opinion ought to develop out of rational discussions in the public sphere. In reality, Frank counters, real people with embodied class identities demanded that their voices be taken seriously. Yet unlike some historians who have idealized the crowd as the true popular voice, Frank argues that the tension between Habermas' ideal and the crowd demonstrates "the failure of any attempt to definitively represent the people." Crowds, no less than elected leaders, creatively imagine "the people" in whose name they act, demonstrating the inadequacy of all such claims, but also the democratizing potential such claims can have even if, ultimately, they are "a way of keeping the people present in their absence" (p. 100).

In chapter three, Frank shifts his lens to Philadelphian Dr. Benjamin Rush's theory of crowd activity and social contagion. Shaped by his Edinburgh education, Rush believed that crowds were dangerous because popular passions passed through mass bodies much like sympathy or disease between two individuals. Rush hoped to transform Americans into "republican machines"—his famous phrase—in order to limit the crowd's dangers. Struggling to create an idealized public in his image, one closer to Habermas' ideal, Rush's vision constantly was challenged by the actual crowd. Rush's ideal people, no more than the crowd's people, were imagined species.

The tension between these two perspectives finally snapped during debates over the democratic societies, a network of political clubs organized to voice opposition to the Federalist Party's leadership and to promote the cause of Jeffersonian republicanism.<sup>4</sup> To Federalist leaders, the clubs threatened representatives' ability to speak—to *re-present*—the people by offering a counter-people in civil society. They were right. One Massachusetts club supporter, writing in Boston's *Independent Chronicle* (September 8, 1794), defended the right of "the people to convene themselves together" in civil society. Calling them "spaces of insurgent citizenship," Frank argues that the clubs raised profound questions about popular voice. How could citizens organize against their representatives who, after all, spoke for them? This theoretical cul-de-sac is, for Frank, a highway because it demonstrates how the clubs took advantage of the constitutive surplus to carve out a space for oppositional politics. Frank concludes that scholars should therefore move beyond neo-Tocquevillian accounts of voluntary associations as mediating institutions that promote "conflict resolution" to understand their more important role of "conflict articulation" (p. 131). By claiming to speak for the people, the clubs "enacted a citizenship that was self-created and self-authorizing" (p. 143).<sup>5</sup>

Frank then shifts back to elites and offers extended readings of Charles Brockden Brown's *Wieland*, Walt Whitman's poetry, and Frederick Douglass' famous Fourth of July speech. Each chapter explores how each author negotiated the constitutive surplus. Brown's 1798 *Wieland* concerns how disembodied voices—echoes—caused actors to do things they would otherwise reject. To Brown, these voices reflected the ambiguity of popular sovereignty. Brown wondered whether a society grounded on such a foundation—effectively no foundation at all—could maintain order. Whitman was more optimistic. In Whitman, Frank finds inspiration for a post-populist democracy because Whitman recognized that the people are a "poetic construction," always becoming yet never present. It is Whitman's "constitutive futurity" (p. 183)—that the people are never here but always possible—that Frank considers the primary strength of his own discursive approach to constituent moments.

Frank tests his optimism and his theory on Frederick Douglass. Douglass, Frank argues, challenged those who would speak for the people without acknowledging that each representation is an imperfect image. In his famous "The Meaning of July Fourth for the Negro" (1852), delivered to a mostly white Rochester audience, Douglass exemplified the possibilities of the constitutive surplus. Douglass made two moves in his speech, the same moves Frank theorizes. First, Douglass asserted that his presence on stage included him as one of the people. Second, Douglass noted that, as a formerly enslaved black man, he remained outside the official constituted people. Taking advantage of the space between the two conceptions, Douglass sought a people that had yet to become. Rather than comfort his audience's liberality, Douglass "set himself

apart from his audience" (p. 215). In doing so, he enlarged the boundaries of the people in an act of "democratic self-creation" (p. 223).

Frank uncovers the dynamic that makes ambiguous any claims to speak for the people. Frank is right that no institutional expression of the people—whether in state halls or in civil society—can fully represent the entire population. It's impossible. For historians, however, a challenge remains; as Formisano, Fritz, and others demonstrate, ordinary Americans took seriously their invocation of the people. Can, and should, historians continue to search for the people? Is there a way to evaluate the relative legitimacy of various popular movements' claims? One possibility is to reframe the issue from one of representation to one of consent, as John L. Brooke does in his recent work on civil society and the public sphere.<sup>6</sup> In doing so, we can also move beyond theoretical questions about "the people" to how a diverse society translated the words and actions of myriad individuals and groups into political power and public policy.

Brooke invokes Habermas in his framework. Frank rejects Habermas because Habermas claims that legitimate public opinion must emerge from disembodied rational public deliberation. Brooke, however, is more interested in the sociological construct than the ideal. Habermas, Brooke notes, recognizes the imperfections of his theory in practice, and even points to ways in which nonideal influences shape (illegitimately, from Habermas' perspective) public deliberation. Brooke rejects the ideals and accepts the point. Different social groups with different identities and levels of access to formal political institutions influenced policy formation in different ways. The more ideal Habermasian deliberation might take place among legal equals—say enfranchised voters or members of Congress—but much happens in what Brooke calls the realm of "persuasion," where culture, grassroots mobilization, the state's hegemonic power, and other forms of collective action shaped the hearts, minds, and motives of those with legal access to formal political power. Beyond persuasion lies force, and grassroots rebels and enslaved people used the threat of violence to influence political action. To Brooke what matters is how these diverse forces, pressures, and groups affected public policy by influencing those with access to the deliberative public sphere. While all claims to popular voice may be partial and creative, Brooke's framework suggests that historians still can and must analyze the relationship between the consent of the members living in a given territory and formal political outcomes.

As important, Frank ignores the importance of collective identity, or nationalism. Much recent historical work has focused on American nationalism's development in the postrevolutionary era, examining in particular how institutions from the state to political parties and churches connected individuals to a larger imagined community. This work has taught us how and why so

many people living in the territory governed by the United States came to see themselves as American. For these people, appeals to “the people” were made on behalf of a bounded group to which they felt emotionally attached. When Frederick Douglass invoked the creative power of the constitutive surplus, he did so to an audience of Americans who saw the Fourth of July as a sacred moment in their collective history. What made Douglass’ and other popular, and populist, claims politically efficacious is that these claims were heard by others who shared the same identity. As sociologist Craig Calhoun has written in *Nations Matter*, democratic politics “requires thinking of ‘the people’ as active and coherent and oneself as both a member and an agent.”<sup>7</sup>

Nationalism, then, is vital to understanding the history of “the people.” Frank would find this point discomforting. In his conclusion, he rejects all efforts to house democracy in tradition. To Frank, constituent moments must look forward rather than backward, to a people never fully achieved rather than to founding moments that work themselves out through history. The narratives of constituent moments—whether expressed in street politics or elite writings—“transmit a prospective rather than a retrospective orientation to time, an orientation enlivened by a sensitivity to the unanticipated and emergent” (p. 249). The history of American popular movements suggests otherwise. Instead, what makes appeals to the people politically viable and, at times, transformative is precisely that such appeals both look forward to a different future and rely on the past, on a historically constituted people who understand themselves as part of a shared project. The constitutive surplus focuses on who is speaking, but perhaps more important is who is listening. If popular appeals are made to others who share membership in an identifiable imagined community, then perhaps those appeals will resonate in ways that make democratic politics possible.

Johann N. Neem is associate professor of history at Western Washington University, and author of *Creating a Nation of Joiners: Democracy and Civil Society in Early National Massachusetts* (2008) and “American History in a Global Age,” *History and Theory* 50 (2011), 41–70.

1. Jacques Derrida, “Declarations of Independence,” *New Political Science* 07 (1986), 7–15.

2. Edmund S. Morgan, *Inventing the People: Rise of Popular Sovereignty in England and America* (1988), 13, 306.

3. On the French dilemma, see Pierre Rosanvallon, *The Demands of Liberty: Civil Society in France since the Revolution* (2007).

4. Frank’s discussion draws heavily on Albrecht Koschnik’s pathbreaking essay, “The Democratic Societies of Philadelphia and the Limits of the American Public Sphere, circa 1793–1795,” *William and Mary Quarterly* 68 (2001): 615–36.

5. It is worth noting that Alexis de Tocqueville, in *Democracy in America*, argued that voluntary associations served both roles Frank assigns them. On the one hand, associations mediated conflict by creating social spaces in which “feelings and ideas are renewed, the

heart expands, and the human spirit develops only through the reciprocal action of human beings on one another." On the other hand, Tocqueville argued that associations enabled a political minority "to bring all its moral force to bear on the material power that oppresses it." In short, Tocqueville's civil society was a site of both mediation and conflict. See Tocqueville, *Democracy in America*, trans. Arthur Goldhammer (2004), 598, 218–19.

6. John L. Brooke, "Consent, Civil Society, and the Public Sphere in the Age of Revolution and the Early American Republic," in *Beyond the Founders: New Approaches to the Political History of the Early American Republic*, ed. Jeffrey L. Pasley et al. (2004), 207–50.

7. Craig Calhoun, *Nations Matter: Culture, History, and the Cosmopolitan Dream* (2007), 147.