

Two Republican Traditions

Philip Pettit

Recent exercises in the renewal of republican theory have focused on the Italian–Atlantic tradition of republicanism and on its demise with the rise of classical liberalism in the early nineteenth century.¹ The focus on this tradition has been theoretically fruitful in generating a novel way of thinking about freedom and government in the contemporary world. But there is a distinct Franco–German tradition of republicanism, developed from the time of Rousseau and Kant, and it is important not to confuse this with the older way of thinking on which neo-republicans focus. My aim here is to reduce the risk of confusion by laying out the key differences between the two traditions and putting them in historical context. Inevitably I have to stylize the traditions I discuss but I hope that I do no serious injustice to the figures I address.

While Rousseau and Kant remained faithful to some core ideas in the Italian–Atlantic tradition of thinking – in particular, as we shall see, to the idea of freedom as nondomination – the way of thinking about citizens and the state that they ushered in was as inimical to the tradition as classical liberalism. Indeed, as liberalism came to displace traditional republican doctrine as the main ideology of the English-speaking world, the name “republicanism” came to designate the new Franco–German doctrine. It is primarily with this doctrine, rather than the Italian–Atlantic tradition, that critics of liberalism like Hannah Arendt (1958; 1973) and Michael Sandel (1996) identify, for example.² And it is this version of republicanism that is rejected, along with liberalism, in the work of Jürgen Habermas (1994; 1995).³ Moreover, it is this doctrine that self-described liberals often focus on – certainly it is part of what they focus on – in arguing for the merits of their own approach (Brennan and Lomasky 2006).

My paper is in five sections. In the first, I review the story about classical republicanism that is broadly taken for granted among neo-republicans, distinguishing between the ideological ideal of equal freedom as nondomination that it hails and the twin institutional ideals of a mixed constitution and a contestatory citizenry; in the course of doing this, I also describe the classical liberal opposition that formed in response to Italian–Atlantic republicanism. In the second section I look at the way that Rousseau and Kant conceived of freedom, arguing that they remained faithful to the ideal of equal freedom as nondomination. The third section is an interlude in which I review the absolutist opposition in Bodin and Hobbes to the institutional ideals of republicanism, in particular that of the mixed constitution, since I believe that Rousseau and Kant were deeply influenced by these authors. Then in section four I look at the theory of the constitution in Rousseau and Kant, highlighting their opposition to the mixed constitution. And in section five I look at their view of the role of the citizenry, highlighting their opposition to the contestatory ideal. I use a brief conclusion to set up the contrast between the Franco–German, broadly communitarian version of republicanism, and the classical, Italian–Atlantic version that neo-republicans build on.

I. REPUBLICANISM AND LIBERALISM

The Italian–atlantic tradition

Three ideas stand out as landmarks on the terrain of traditional republican thought. While the ideas received different interpretations and emphases in different periods and among different authors, they constitute points of reference that were recognized and authorized by almost everyone, down to the late eighteenth century, with a claim to belong to the tradition.

The first idea is that the equal freedom of its citizens, in particular their freedom as nondomination – the freedom that goes with not having to live under the power of another – is the primary concern of the state or republic. The second is that if the republic is to secure the freedom of its citizens then it must satisfy a range of constitutional constraints associated broadly with the mixed constitution. And the third idea is that if the citizens are to keep the republic to its proper business then they had better have the collective and individual virtue to track and, if necessary, contest public policies and initiatives: The price of liberty is eternal vigilance.

The mixed constitution was meant to guarantee a rule of law under which each citizen would be equal with others, a separation and sharing of powers that denied control to any one governing individual or body, and a degree of representation, whether by rotation or lottery or election, that gave each sector a presence in government. The contestatory citizenry was the civic complement to this constitutional ideal: It was to be a citizenry committed to interrogating the other elements of government and having its own say in the determination of law and policy. These institutional measures were taken to be essential for organizing a government that would promote the equal freedom of citizens without itself becoming a master in their lives – in other words, that would protect against private domination without perpetrating public.

Freedom as nondomination, the mixed constitution and the contestatory citizenry were all represented in Roman republican thought and practice, and they were articulated in different ways among the many writers who identified with Roman institutions (Wirszubski 1968). These authors included the Greek historian, Polybius, the orator and lawyer, Marcus Tullius Cicero, and the native Roman historian, Titus Livius or, as we know him, Livy. While they drew on earlier Greek sources, including Plato and Aristotle, they were united in the belief that it was Rome that first gave life and recognition to the key republican ideas.⁴

Leading thinkers in medieval and Renaissance Italy drew heavily on Polybius, Cicero and Livy when, more than a thousand years later, they reworked the republican ideas in seeking a political philosophy that would reflect the organization and experience of independent city-states like Florence and Venice (Skinner 1978). The neo-Roman framework of thought that they crafted in the course of this exercise – in particular the framework outlined in Nicolo Machiavelli's *Discourses on Livy* – served in turn to provide terms of political self-understanding for northern European countries that resisted or overthrew absolute monarchs. These included the Polish republic of the nobles in the sixteenth and seventeenth centuries, the seventeenth- and eighteenth-century Dutch republic and the English republic of the 1640s and 1650s.

While the English republic was the shortest lived of these regimes, it had the widest influence and the deepest impact. The republican ideas that emerged in the thought of defenders such as James Harrington, John Milton and Algernon Sidney, became a staple of political thought in eighteenth-century Britain and America, albeit often adapted to make room for a constitutional monarchy (Raab 1965). However differently

interpreted or applied, the ideas were more or less common property to the Whig establishment in eighteenth-century Britain; to their Tory opposition, at least as that was formulated by the first Viscount Bolingbroke (Skinner 1974); to radical Whigs who were a constant sting in the side of every establishment (Robbins 1959); and of course to the American colonists, and their British apologists, who came to feel that the Westminster parliament ruled its colonies in a manner that betrayed the “commonwealthman” or republican heritage (Bailyn 1967; Reid 1988). Republican ideas provided the framework for the arguments made in support of the cause of American independence – including arguments made by English supporters such as Richard Price (1991) and Joseph Priestley (1993) – and for the arguments put forward in the constitutional debates between federalists and anti-federalists (Madison, Hamilton and Jay 1987; Ketcham 2003).

Among the three ideas associated with the republican tradition, the conception of freedom as nondomination is the most distinctive. If you are to enjoy freedom as nondomination in certain choices, so the idea went, then you must not be subject to the will of others in how you make those choices. And that means that you must not be exposed to a power of interference on their part, even if they happen to like you and do not exercise that power. The mere fact that I can interfere without serious cost in your choices if I want to do so – the mere fact that I can track the choices and intervene when I like – means that you depend for your ability to choose as you wish on my will remaining a goodwill. You are not *sui juris* – not your own person – in the expression from Roman law. You are unfree, as the eighteenth-century republican, Richard Price (1991, 26) explained, because your access to the options will depend on an “indulgence” or an “accidental mildness” on my part. To quote from a seventeenth-century republican, Algernon Sidney (1990, 17), freedom in this tradition requires “independency upon the will of another.” Or, in an equivalent slogan from a popular eighteenth-century tract: “Liberty is, to live upon one’s own terms; slavery is, to live at the mere mercy of another” (Trenchard and Gordon 1971, Vol. 2, 249–50).

In arguing that the state should be concerned in the first place with the equal freedom of its citizens, republicans held that citizens should each be assured of enjoying nondomination in a sphere of choice required for being able to function – (Sen 1985; Nussbaum 2006) – in the local society; this sphere might be described as that of “the basic liberties” (Pettit 2008a). They thought that a state organized under a mixed

constitution, and disciplined by a contestatory citizenry, was the best hope of promoting this ideal.

The citizenry was traditionally restricted to mainstream, usually propertied, males and, under the republican vision, a citizen would be a *liber* or a free-man insofar as he enjoyed sufficient power and protection in the sphere of the basic liberties – and a corresponding normative status – to be able to walk tall among others and look any in the eye, without reason for fear or deference. John Milton (1953–82, Vol. 8, 424–5) captured the idea nicely in arguing that in a “free Commonwealth,” “they who are greatest ... are not elevated above their brethren; live soberly in their families, walk the streets as other men, may be spoken to freely, familiarly, friendly, without adoration.” In the vision of contemporary republicans, this ideal ought to be extended to an inclusive citizenry; freedom ought to be secured for all more or less permanent residents, independently of gender or property or religion.

The early liberal opposition

These remarks constitute the broadest of brush strokes but the pattern that they project onto the intellectual and institutional swirl of political history is not a capricious imposition; it is not like the figures that we may think we see in the snow or in the clouds or in the stars. The Italian–Atlantic tradition described constitutes a firm reality that endured across classical, medieval and modern times (Pocock 1975). The best sign of its independent importance is that the set of ideas described constituted a vivid and salient target of attack for those who espoused a rival way of thinking about liberty – a way of thinking that eventually gave rise to classical liberalism – in the later eighteenth century. The main figures here were utilitarians like Jeremy Bentham and William Paley (Pettit 1997, chap. 1).

Hobbes had already set himself against the republican way of thinking about freedom in the 1640s, offering a somewhat complex alternative – although not one that had a lasting influence – in its place (Pettit 2008b, chap. 8; Skinner 2008). Without explicitly drawing on that earlier precedent, Bentham reported in the 1770s “a kind of discovery I had made, that the idea of liberty, imported nothing in it that was positive: that it was merely a negative one: and ... accordingly I defined it “the absence of restraint”” (Bentham cited in Long 1977, 54). On this definition you are free in a given choice just insofar as others do not restrain the selection of

any option: not the option you actually prefer, for sure, but also – at least on what came to be the standard reading (Berlin 1969, xxxix; Pettit 2011) – not any option you might have preferred but didn't. This conception makes the absence of interference enough for the freedom of a choice; it does not require the absence of a power of interference on the part of others. Even though you avoid interference only because of my being goodwilled and indulgent, then still – even though you can choose as you wish only because I permit it – on this approach, that will be enough to make you free.

Bentham and Paley and their ilk were reformers, committed to having the state cater for the freedom – and more generally for the utility or happiness – of the whole population, not just the freedom of mainstream, propertied males that government had traditionally protected. So why would they have weakened the ideal of freedom so that it is not compromised by having to live under the power of another, only by active interference? My own hunch is that it was more realistic to argue for universal freedom if freedom was something that a wife could enjoy at the hands of a kind husband, a worker under the rule of a tolerant employer, and did not require redressing the power imbalances allowed under contemporary family and master-slaver law, as a universalized freedom as nondomination would have required (Pettit 1997, chap. 1). It may be for this reason that Paley (1825, 168) described freedom as nondomination – an idea that “places liberty in security,” in accord with “common discourse” (164–5) – as one of those versions of “civil freedom” that are “unattainable in experience, inflame expectations that can never be gratified, and disturb the public content with complaints, which no wisdom or benevolence of government can remove.”

The rejection of freedom as nondomination raised a question about the linked ideas of a mixed constitution and a contestatory citizenry. Those devices were required on the traditional, republican way of viewing things because they were supposed to ensure that when the republic makes laws that protect its citizens against domination, it does not impose those laws in the dominating manner of an independent agent with an independent will. The idea was that if the interference imposed by the state is itself subject to the control of those on whom it is imposed, then it will not be dominating: It will not involve subjecting people to the will of a distinct, independent agent. It will be a nondominating – or, as it was often called, a nonarbitrary – form of interference. Once freedom came to be construed as noninterference, however, it was no longer clear why such constraints were necessary.

Every system of law coerces and penalizes its subjects – and every system of law presupposes taxation – so that there is no law without interference. If freedom means noninterference, therefore, then there is no freedom-based requirement to make the interference nondominating, as the mixed constitution and the contestatory citizenry promised to do. The best system will be that in which there is the least overall interference, public or private. And it may just be that the best system is one in which a benevolent despot coerces people so that they don't interfere with one another, yet keeps the coercion practiced to a minimum. William Paley, surely Bentham's most clear-headed associate, embraced the point when he noted as early as 1785 that the cause of liberty as noninterference might be as well served, in some circumstances, by "the edicts of a despotic prince, as by the resolutions of popular assembly." In such conditions, he said, "would an absolute form of government be no less free than the purest democracy" (Paley 1825, 166).⁵ And, by his lights, no less free than the most classical republic.

While Bentham and Paley were mainly interested in advancing the utilitarian program, they shaped the way in which early nineteenth-century liberals thought about freedom and the requirements of freedom. We might define liberalism – somewhat tendentiously, in view of the many meanings given to the term – as any approach to government that makes freedom as noninterference paramount or central. And in that sense it contrasts quite sharply with the republican approach in which freedom as nondomination plays the central role. Liberalism in this sense may be right-of-center, as classical liberals or libertarians generally were, making freedom as noninterference into the only concern of government. Or it may be left-of-center, making freedom as noninterference into just one of government's goals: perhaps a goal derived from the broader concern with happiness, as in the case of utilitarians; perhaps a goal that is paired with a separate concern like equality, as in the case of John Rawls (1971; 1993; 2001), Ronald Dworkin (1978; 1986) and other egalitarians.⁶

No matter which form liberalism takes, it contrasts with republicanism on how to understand freedom, a value to which each approach gives a prominent place. On the republican construal, the real enemy of freedom is the power that some people may have over others, whereas on the liberal understanding, asymmetries in interpersonal power are not in themselves objectionable. Right-of-center liberalism is happy to tolerate such imbalances, so long as active interference is avoided. And left-of-center liberalism rejects them only insofar as they have unwelcome effects

on equality or welfare or whatever other value is invoked to supplement the ideal of freedom.

But the conflict between republicanism and liberalism should not be overdrawn. For while Paley and others had seen that freedom as noninterference does not strictly require a mixed constitution or a contestatory citizenry, almost every form of liberalism has endorsed the main elements in the idea of the mixed constitution and given some recognition to the contestatory role of citizens. The rule of law, the separation of powers, and the liberties of speech and expression are reflections of those earlier institutional ideals. Republicanism differs from liberalism in espousing a more radical ideal of freedom, in arguing for a distinctive connection between freedom in that sense and its twin institutional ideals, and in giving a distinctive interpretation of those ideals, particularly that of a contestatory democracy. But nonetheless there are definite, discernible continuities between the traditions.

2. ROUSSEAU AND KANT ON FREEDOM

As mentioned earlier, this sketch of republicanism and liberalism summarizes the way of thinking about the two doctrines that is reflected in much contemporary work on neo-republicanism, my own contribution included. But the sketch says nothing about the republican way of thinking that was associated with Jean-Jacques Rousseau and to a somewhat lesser extent, Immanuel Kant.

I described Italian–Atlantic republicanism in terms of three ideas: freedom as nondomination, the mixed constitution and a contestatory citizenry. The Franco–German alternative was fostered in the first place, as we shall see, by a departure from the idea of the mixed constitution. But before commenting on that departure and on its affect on the other ideas, it is worth stressing that both Rousseau and Kant kept faith with the idea that the state should be founded in a concern for the equal liberty of its citizens and, in particular, that such freedom or liberty consists in not having to live under the will of another: that is, not being subjected to, or dominated by, another.

For Rousseau the un-freedom from which the ideal state should protect citizens equally is, as he suggests in a number of places, “personal dependence” or “individual dependence” (Rousseau 1997, 1.7.8; 2.11.1). While he may understand “dependence” more widely than subjection to the will of the other, such subjection is certainly the paradigm of dependence in

his view. And so the equal freedom that people are invited to expect – achievable only via reliance on the state – is clearly a variant of freedom as nondomination: It requires “that every citizen be perfectly independent of all the others” (2.12.3). Thus he says that that “which ought to be the end of every system of legislation is ... freedom and equality,” where equality is valued “because freedom cannot subsist without it” (2.11.1).

The freedom that Rousseau has in mind here is “civil freedom,” as he calls it, rather than “natural freedom.” It consists in having a recognized and enforced right of choice in a closed domain as distinct from an unprotected right of choice in an open domain. As a parallel, Rousseau directs our attention to the way property consists in having a recognized and enforced right of ownership across a limited range of goods rather than a claim asserted on the basis of “force or the right of the first occupant” (1.8.3) to a more extensive range. He clearly thinks that civil freedom is better than natural, as ownership proper is better than uncertain possession.

Where Rousseau talks about civil as distinct from natural freedom, Kant talks of the “external freedom” that individuals can enjoy in relation to one another as distinct from the internal freedom of the will that each may achieve on their own. This external freedom, as he thinks of it, requires “independence from being constrained by another’s power of choice” (Kant 1996, 393).⁷ As Rousseau makes civil freedom the first concern of the state, so Kant represents external freedom as “the only original right belonging to every man by virtue of his humanity.” As Rousseau links civil freedom with equality, so Kant says that external freedom is “not really distinct from ... equality; that is, independence from being bound by others to more than one can in turn bind them.” And as Rousseau takes civil freedom to be established on the basis of law and right, so Kant holds that external freedom consists in a person’s “being his own master (*sui juris*)” and in “being authorized” to act as he or she likes within certain limits: within a sphere of basic liberties that can be protected at once for all (Kant 1996, 393–4).

The line taken by Kant, even more clearly than that espoused by Rousseau, is perfectly consonant with the Italian–Atlantic conception of freedom. That is made especially clear in a passage written by Kant in his private notes on *The Social Contract*, where he demonizes precisely the sort of dependence on the will of another that all republicans had deplored.

Find himself in what condition he will, the human being is dependent on many external things ... But what is harder and more unnatural than this yoke of necessity is the subjection of one human being under the will of another. No misfortune can be more terrifying to one who is accustomed to freedom.

(Kant 2005, 11)

The right to freedom in the sense of nonsubjection to the will of another is, by many accounts, the fundamental idea in Kant's legal and political thought (Ripstein 2009).

While both of these thinkers sign on to the idea of freedom as non-domination, however, it is worth remarking that Rousseau promises to support a more radical interpretation of what it requires. On the face of it, freedom as nondomination is going to be undermined in the presence of poverty and economic inequality, since the poor are bound to be vulnerable to domination. Rousseau (1997, II.11.2) is clearly open to acknowledging this, as when he requires (in order to avoid "trafficking in public freedom") that "no citizen be so very rich that he can buy another, and none so poor that he is compelled to sell himself." He registers the same requirement when he says elsewhere that "the social state is advantageous for men only insofar as all have something and none has too much of anything" (I.9.8, fn). In making these remarks, and yet suggesting that the rich and poor should all be citizens, Rousseau may be taken to support a state that regulates wealth and perhaps redistributes it.⁸

Kant takes a different line on this issue. He allows that freedom requires that people be "all equal to one another as subjects," so that "no one of them can coerce any other except through public law." But he insists that "this thoroughgoing equality of individuals within a state, as its subjects, is quite consistent with the greatest inequality in terms of quantity and degree of possessions," and consistent therefore with dependency: It is possible that "the welfare of one is very much dependent upon the will of another (that of the poor on the rich)" (Kant 1996, 292). Thus the equality of all subjects does not entail their freedom, since freedom rules out the "subjection of one human being under the will of another." Should the state seek to ensure the independency and freedom of all subjects, making them worthy of citizenship proper? Kant thinks not, arguing that citizenship should only go to the relatively wealthy. "The quality requisite to this, apart from the natural one (of not being a child or a woman), is only that of being one's own master (*sui juris*), hence having some property (and any art, craft, fine art, or science can be counted as property)" (295). On this front – and, as we shall see, on others – Kant offers a

more conservative interpretation of Franco–German republicanism than Rousseau.

But while Rousseau and Kant kept faith, in their different ways, with the republican conception of freedom as nondomination, and with the commitment to the equal freedom of citizens, they broke with that tradition on the two institutional ideals by which I characterized it. In place of the mixed constitution, they hailed the idea of a popular or representative sovereign. And in place of the contestatory citizenry, they installed the idea of a people whose primary job was to participate in the creation and sustenance of that sovereign assembly, to take Rousseau’s version, or in Kant’s more circumspect account, to elect the members of that body and then treat the body as a collective spokesperson that should have to brook no individual resistance.

These departures from the republican tradition are hardly going to be intelligible, however, except against the background of absolutist, institutional thinking in the sixteenth and seventeenth centuries. Jean Bodin, Thomas Hobbes and a number of other writers had attacked the institutional ideals of republicanism over that period, and I believe that they had an enormous influence on Rousseau’s and Kant’s attempts to explore the institutional implications of implementing equal freedom as nondomination. I outline their critique of republican ideals – in particular, their attack on the idea of the mixed constitution – in the following section and then return in sections four and five to the institutional ideals embraced by Rousseau and Kant.

3. BODIN AND HOBBS ON THE INSTITUTION OF THE STATE

Bodin

Bodin wrote his major anti-republican work, *The Six Books of the Republic*, just a few years after the St Bartholomew’s Day massacre of Huguenots in 1572, at a time of great religious and civil strife in France. Hobbes wrote his equally anti-republican tracts in or about the 1640s – *The Elements of Law*, *De Cive* and *Leviathan* – in Parisian exile from an England beset by civil war. Goaded by the fear of civil strife, both argued vehemently that whatever individual or body held power – or at least the supreme power, as they saw it, of legislation – it had to operate as a unitary agent or agency, it had to carry the highest authority, and it could not embody

separate, mutually checking elements within itself. Each believed that in the absence of such a unitary, absolute and indivisible sovereign, there was bound to be continuing dissension and, as Hobbes (1994b, 13.9) famously stated it, a relapse into a war of all against all: a state of nature in which no one owes any obligations to others and life is “solitary, poor, nasty brutish and short.”

Bodin begins from the assumption that among the functions of government, the making and giving of law is supreme, so that whoever has this power is in charge of other governing authorities: “All the other attributes and rights of sovereignty are included in this power of making and unmaking law” (Bodin 1967, I.10.44). His argument for the necessity of a unified sovereign derives from the further assumption that every law is a command, issuing from the will of the law-maker or sovereign: “Law is nothing else than the command of the sovereign in the exercise of his sovereign power” (I.8.35). The idea is that if the law is command, and so the expression of will, then there has to be a sovereign commander – a single or unitary agent, individual or corporate – such that law reflects that agent’s will.

But why think that the sovereign, qua source of law, has absolute power? Bodin offers three observations that support this further claim. The first is that the sovereign cannot count as a commander if the effectiveness of sovereign commands is conditional on the agreement of another agency. “The first attribute of the sovereign prince therefore is the power to make law binding on all his subjects in general and on each in particular. But to avoid any ambiguity one must add that he does so without the consent of any superior, equal, or inferior being necessary” (I.10.43). The second observation is that the sovereign, as the source of law’s commands, cannot be subject to those very commands: “[I]t is impossible to bind oneself in any matter which is the subject of one’s own exercise of free will” (I.8.28). And the third is that while the sovereign ought ideally to conform to moral and sometimes even customary demands, the failure to do so should be taken as a sign of bad sovereignty, not nonsovereignty: “[T]he tyrant is a true sovereign for all that” (I.8.26; see too VI, 4).

The unitary, absolute sovereign for which Bodin argues can assume any of the three forms distinguished by Aristotle. It may be an individual king, as Bodin himself would prefer; or an elite, aristocratic committee; or a democratic committee-of-the-whole. “[T]here are only three states, or commonwealth, monarchy, aristocracy, and democracy” (II.1.51). Where sovereignty belongs to a multimember body, he explains, decisions should

be made by majority voting among the members who choose to attend. No matter what the character of the sovereign, however, the sovereignty that characterizes a state should be distinguished in Bodin's novel view from the government of the state. "It is important that a clear distinction be made between the form of the state, and the form of the government, which is merely the machinery for policing the state, though no one has ever considered it in that light" (II.2.56). Thus, a monarchical sovereign may entrust government to the people as a whole, and a popular, democratic sovereign may entrust government to a monarch, and so on; in each case the sovereign will retain sovereignty to the extent that the delegation of power is reversible.

But not only does Bodin think that every proper state has to be organized around a unitary, absolute sovereign, he also maintains that this sovereign cannot contain conflicting, mutually checking components among which the sovereignty is divided. In his view, sovereignty is not just unitary and absolute, it is indivisible. This picture leads Bodin to oppose one single constitutional form with great vehemence: the mixed constitution, so beloved of the older republican tradition.

Under the mixed constitution some legislative powers may be separated, as when either of two or more bodies can make law, or they may be shared, as when two bodies are each required to endorse any bill that is to become law. Bodin opposes any such weakening of authority. The main ground he cites is that no one can be expected to be a law-giver in one respect, a law-taker in another. He asks how it is possible that "a prince, a ruling class, and the people, all have a part in" sovereignty. The answer, he thinks, is obvious. "The first attribute of sovereignty is the power to make law binding on the subject. But in such a case who will be the subjects that obey, if they also have a share in the law-making power?" (II.1.52). Weak though this consideration appears to be, Bodin takes it to undermine the very idea of a mixed constitution: "[N]one such has ever existed, and could never exist or even be clearly imagined" (II.1.55).

While often adopting the language of sovereignty that Bodin introduced, a number of commentators threw doubt on his rather weak case against the mixed constitution; they thought that a system that operated via different agencies – broadly, under a mixed constitution – may still have the status of a unified, absolute authority with a single will (Franklin 1991). Thus various German critics, anxious to make sense of the way the Emperor's powers were constrained by the different German "estates,"

pointed out that there were many ways in which law-making might be shared among different individuals or bodies, or divided out among them (Besold 1618, 279–80). But Bodin’s critique of the mixed constitution did not wither away. And this, in great part, may be because of the further support that Thomas Hobbes provided for the critique.

Hobbes

Hobbes followed Bodin in making a case for a unitary, absolute, indivisible sovereign. The case he made was quite original in a number of respects – see Pettit (2008b, chap. 5) – but what marks it off most deeply from Bodin’s is the novel framework for thinking about constitutional issues that he developed. This framework supported the case for thinking of the sovereign as unitary, absolute and indivisible. From our point of view it is important in particular for the way Hobbes used it to criticize and mock the mixed constitution.

Hobbes argued that we should think of the commonwealth, whatever form it assumes – monarchical, aristocratic or democratic – as a corporate body on the model of “a company of merchants” (Hobbes 1998, 5.10). In a monarchy – the constitutional form that he, like Bodin, prefers – the multitude of the people is incorporated into a body for which, by unanimous consent, the king or queen speaks. In an aristocracy or democracy, they are incorporated into a body for which, again by unanimous consent, an elite or popular assembly speaks. Prior to incorporation, according to Hobbes, the people in a country constitute just a multitude of dissonant voices: an “aggregate” or “heap” of agents (Hobbes 1994a, 21.11), “a disorganized crowd” (Hobbes 1998, 7.11), a “throng” (Hobbes 1994b, 6.37). After incorporation the people comes into existence as a proper agent. It forms a will and assumes the status of an agent or person via the single authorized voice of its spokesperson, whether that be the individual voice of a monarch or the majoritarian voice of an aristocratic or democratic assembly.

According to Hobbes, it is this spokesperson that constitutes the sovereign in any commonwealth. And because the sovereign plays a spokesperson role, it has to be a unitary, absolute and indivisible individual or body. In order to play that role, to take the first of these characteristics, the sovereign must operate as a single or unitary agent or agency; only a single person, after all, can speak with one voice. In Hobbes’s view the sovereign has a unity that extends by courtesy to the multitude personated or represented within the state: “[I]t is the unity of the representer, not the unity

of the represented, that maketh the person one ... and unity, cannot otherwise be understood in multitude” (Hobbes 1994b, 16.13).

But in order to play a spokesperson role, the sovereign also has to be given more or less absolute or unconstrained authority. According to Hobbes’s view of the world, the individuals in a multitude must consent to being personated, forming a contract to establish a sovereign. They cannot make this contract with the sovereign, however, since they must already have a sovereign – they must already be a corporate spokesperson – before they can do something like making a contract (Hobbes 1994b, 18.14). Thus they have to contract with one another to recognize a sovereign, relying on that very sovereign to enforce the terms of the contract on each. But this means that the contract itself cannot contain any clause that limits the sovereign, for no sovereign could be expected to enforce such a self-denying ordinance. Subjects have no justiciable right to contest the sovereign.

If any one or more of them pretend a breach of the covenant made by the sovereign at his institution, and others or one other of his subjects, or himself alone, pretend there was no such breach, there is in this case no judge to decide the controversy: it returns therefore to the sword again.

(Hobbes 1994b, 18)

And so the contract they make will expose people to the power of the sovereign in the fullest measure to which they can rationally contract to be exposed. The sovereign will have more or less absolute authority in relation to subjects.

But not only is the Hobbesian sovereign unitary and absolute; using the same framework of thought, Hobbes argues that the sovereign must also be indivisible. Thus he sets himself squarely against the mixed constitution: “mixarchy,” as he mischievously calls it (Hobbes 1990, 16). Hobbes’s complaint is, predictably, that the mixed constitution authorizes a number of different spokespersons, thereby undermining the possibility of a commonwealth. It supports “not one independent commonwealth, but three independent factions; nor one representative person, but three” (Hobbes 1994b, 29.16; see too 1998, 7.4; 1994a, 20.15). His argument is straightforward: “[I]f the king bear the person of the people, and the general assembly bear also the person of the people, and another assembly bear the person of a part of the people, they are not one person, nor one sovereign, but three persons, and three sovereigns” (Hobbes 1994b, 29.16).

This critique of the mixed constitution, in full dress, relies on three distinct theses. First, the incorporation thesis, that the existence of a state or commonwealth requires the incorporation of the people. Second, the consent thesis, that incorporation involves the contractual acquiescence of its members in the identity of a group spokesperson, individual or otherwise. Third, and most crucially, the majoritarian thesis, that the only nonindividual spokesperson that a people might have is an assembly, aristocratic or democratic, that resolves issues by majority voting. If we go along with these claims, then it is very hard indeed to see how a state or commonwealth could operate under a mixed constitution.

I believe that even if we accept the incorporation and consent claims, we should reject the majoritarian. Groups that do not have an individual dictator may operate under many different modes of organization, not just via majority voting in an assembly. Ironically, indeed, it is demonstrable that they could not operate satisfactorily under majoritarian decision making; such an arrangement would be hostage to inconsistency in group judgments and policies (Pettit 2008b, chap. 5, appendix; List and Pettit 2011). In the present context, however, our interest is not in the flaw in Hobbes's argument but in the extent to which his claims, building on those of Bodin, affected the views of Rousseau and Kant.

4. ROUSSEAU AND KANT ON THE CONSTITUTION

Rousseau

Rousseau follows Bodin and Hobbes in taking the legislative authority, rather than the executive or judicial, to be the sovereign, on the grounds that the work of any other agency is the "application of the law," not the making of law (Rousseau 1997, II.2.3). Following Bodin's novel distinction, however, he allows that there is a difference between sovereignty and administration, so that the people can be the sovereign without themselves constituting the administration or government (III.7.4). A regime in which the people served administratively as well as legislatively would count in his language as a democracy and, as we shall see, he rejects such a homogenous system in favor of a republic in which the sovereign is the people and the administration is delegated to appointed magistrates. Those magistrates may be divided among themselves and may constitute a "mixed government," a regime that is sometimes to be recommended (III.7.4). But this idea is very different from that of a mixed constitution.

Unlike the mixed constitution, mixed government is quite consistent with the indivisibility of the sovereign.

Rousseau joins Bodin and Hobbes in arguing for a single, absolute, indivisible sovereign. He inveighs against defenders of the mixed constitution who, failing to see that there has to be a single will at the origin of law, represent it as the work of independent bodies. Although he does not mention examples, he would have certainly rejected the English system – as represented in Montesquieu’s (1977) *The Spirit of the Laws* – under which law is created by the king, the lords and the commons in combination. And equally he would have been opposed to the Roman system, as we understand it, under which a law might be created by the *Comitia Tributa*, for example, or by the *Comitia Centuriata*; he followed Bodin in denying that Rome had a mixed constitution, insisting that, at least when it lived up to its republican credentials, “the Roman people was genuinely sovereign both by right and fact” (Rousseau 1997, IV.4.21).⁹ Perhaps he has these two sorts of mixed systems in mind when he complains about those who divide sovereignty between different partial bodies that “sometimes they mix up all these parts and sometimes they separate them” (IV.2.2). The English mix them up and, as we understand them today, the Romans separate them.

Asserting that sovereignty is indivisible, Rousseau deploys all his rhetorical skills against his opponents.

[T]hey turn the Sovereign into a being that is fantastical and formed of disparate pieces; it is as if they were putting together man out of several bodies one of which had eyes, another arms, another feet, and nothing else. Japanese conjurors are said to carve up a child before the spectators’ eyes, then, throwing all of its members into the air one after the other, they make the child fall back down alive all reassembled. That is more or less what our politicians’ tricks are like; having dismembered the social body by a sleight-of-hand worthy of the fairground, they put the pieces back together no one knows how.

(Rousseau 1997, II.2.2)

In developing this case against the mixed constitution it is fairly clear that Rousseau is following in the steps of Bodin and Hobbes. In particular, he goes along with all three of the claims invoked in Hobbes’s argument: the claims I described as the incorporation, the consent, and the majoritarian theses.

Thus, to take the first thesis, the existence of a state, as distinct from enslavement to a despot (I.5.1), presupposes association or incorporation: “[T]his act of association produces a moral and collective body made up of

as many members as the assembly has voices, and which receives by this same act its unity, its common *self*, its life and its will” (I.6.10; italics in the original). Moreover, as in Hobbes, this incorporation has to be supported by the consent of all: “There is only one law which by its nature requires unanimous consent. That is the social pact: for the civil association is the most voluntary act in the world” (IV.2.5). And, finally, the way for a group to make its decisions when it does not have an individual spokesperson is via majority voting: “Except for this primitive contract, the vote of the majority always obligates all the rest; this is a consequence of the contract itself” (IV.2.7).

The big break with Hobbes, and with Bodin, comes in Rousseau’s claim that majority voting is the only legitimate way, not just one way among others, in which the people can make laws. There is no sovereign other than the popular sovereign that is given life within the assembly. Prior to publishing *Leviathan* in 1651, Hobbes suggests that when a state forms by explicit agreement or institution, a democracy will form at a first stage and then at a second stage one of two things will happen: either democracy will be upheld, with the assembled people retaining the role of sovereign, or, alternatively, that democratic sovereign will cede its sovereignty, giving itself over to the rule of an aristocratic body or a monarch (Hobbes 1994a, chap. 21; 1998, chap. 7). Rousseau probably did not know *Leviathan*, since it had not been translated in his time, and the argument in favor of popular, majoritarian sovereignty starts from this earlier suggestion.

Where Hobbes had envisaged the possibility of the popular or democratic sovereign transferring sovereignty to an aristocratic committee or to a monarch, Rousseau insists that sovereignty is inalienable, challenging Grotius rather than Hobbes on the point (Rousseau 1997, I.5.2). He argues that for any agent or agency “it is absurd for the will to shackle itself for the future,” tying itself to what someone else “is going to will tomorrow;” this, he says, would be to deny its own nature as a will (II.1.3). And that premise leads him to his central anti-Hobbesian conclusion. “If, then, the people promises simply to obey, it dissolves itself by this very act, it loses its quality of being a people” (II.1.3; see too I.7.3). No individual man could give himself to another in this way and count still as being of sound mind. And thus neither could a whole, incorporated people.

To say a man gives himself gratuitously is to say something absurd and inconceivable; such an act is illegitimate and null, for the simple reason that whoever does

so is not in his right mind. To say the same of a whole people is to assume a people of madmen; madness does not make right.

(Rousseau 1997, I.4.4)

We can see from this account of the linkages with Bodin and Hobbes that while Rousseau may have preserved the republican idea of freedom as nondomination, he totally betrayed the earlier tradition in espousing the idea of popular sovereignty. In Rousseau's idealized republic – a version of what Bodin and Hobbes called a democracy – individuals are confronted by the single powerful presence of “the public person,” which “formerly assumed the name *City* and now assumes that of *Republic* or *body politic*” (I.6.10; italics in the original). While Rousseau envisages an ideal under which people are independent of one another as private persons, in line with the received conception of freedom, he thinks that this mutual independence is attainable only at the cost of a form of submission to the public person – specifically, to the general or corporate will of the public person – that would have been wholly at odds with Italian–Atlantic sentiments. While every citizen should “be perfectly independent of all the others,” he says, this is only going to be possible insofar as each is “excessively dependent on the City” (II.12.3). The totally novel, consciously outrageous assumption introduced by Rousseau is that “each, by giving himself to all, gives himself to no one” (I.6.8).

It would be unfair to Rousseau, however, to suggest that he breaks with Bodin and Hobbes insofar only as he restricts legitimacy to a regime under which the assembled people make the law. For he reintroduces one element in the traditional idea of the mixed constitution by adding that the way the assembly should work is on the basis of a rule of law: as “an empire of laws, not of men,” as James Harrington (1992, 8) had described it in the seventeenth century. In this image, the law-making assembly looks only to the good of citizens qua citizens and, being impartial in that sense, is not moved by the affect its decisions may have on this or that individual or faction as such; “the law considers the subjects in a body and their actions in the abstract, never any man as an individual or a particular action” (II.6.6).

This ideal means that if the people are to perform properly as a people – a body in which they all have equal standing – then they must each think as citizens, focused impartially on their common interest; they must vote, not out of personal or factional attachment, but on the impersonal basis that “it is advantageous to the State ... that this or that opinion

pass” (IV.1.6). The majority vote will reflect the general will properly only when such a condition is fulfilled: “[W]hat generalizes the will is not so much the number of voices, as it is the common interest which unites them” (II.4.7). Thus, the “more concord reigns in assemblies, that is to say the closer opinions come to unanimity, the more the general will also predominates; whereas long debates, dissensions, disturbances, signal the ascendancy of particular interests and the decline of the State” (IV.2.1). It is for this reason, indeed, that Rousseau rejects the idea that the people should serve both as sovereign law-maker and as executive authority, in what he calls a democracy. He argues that such an arrangement might corrupt members of the assembly into focusing on the personal or factional effects of the laws they implement, betraying rule-of-law impartiality (III.17.5).

Kant

Kant gives a greater role to the executive and judiciary than Rousseau.

[T]he general united will consists of three persons: the sovereign authority (sovereignty) in the person of the legislator; the executive authority in the person of the ruler (in conformity to law); and the judicial authority (to award to each what is his in accordance with the law) in the person of the judge.

(Kant 1996, 457)

But this is not because of any affection for “so-called mixed constitutions” (479). He treats the executive authority – and by implication the judicial – as “the organ of the sovereign” (462): the agent who gives the legislator a presence in the lives of people, promulgating and enforcing the law. In Kant’s picture, it is as if the legislator is a silent, background power – a force akin to gravity – that becomes incarnate and visible only through the actions of its executive and judicial organs. More on this point later.¹⁰

Kant is quite explicit about the primacy of the law-maker in relation to other authorities, especially the executive: “[T]he ruler is subject to the law and so is put under obligation through the law by another, namely the sovereign” (460). Since the sovereign punishes offenders via the ruler, Kant says that the sovereign cannot punish the ruler as such: that is, while keeping the relevant individual or body in office. But this is scarcely a restriction, since the “sovereign can also take the ruler’s authority away from him, depose him, or reform his administration” (460). For these reasons Kant praises Frederick II of Prussia for the fact that,

acknowledging his subordination to the law, he “at least said that he was only the highest servant of the state” (325).

On this basic issue, then, the match between Kant and Rousseau is rather good. And it is reinforced by the fact that while treating the sovereign as the supreme and presumptively undivided authority in the state, he agrees with Rousseau that it is best that the people of the sovereign and the executive be distinct (324–5). However, that common commitment still leaves room for a major divergence.

On our account of Rousseau’s views, the general will has two conflicting aspects. On the one hand, it is the corporate will formed under majority voting by the only legitimate spokesperson he acknowledges: the assembled people. On the other hand, it is the impartial will that is formed by people who put aside their personal interests and make decisions impartially in light of the common good. When Rousseau refers to the general will of the people he sometimes appears to refer to their actual corporate will, however impartially or factionally formed, and sometimes to the will that they would form were they impartial. Kant registers this ambiguity, however implicitly, and uses it to build a variation on Rousseau’s themes that preserves the indivisibility of the sovereign law-maker.

Kant follows Rousseau in thinking that the will that lies behind law has to be the will of the people, understood corporately, not the will of any individual or set of individuals: This is the will of the people “as a commonwealth,” as he says, and not their will “as a mob” (300, fn). But taking this observation as his premise, he sticks with Hobbes rather than Rousseau in arguing that whenever a state exists, however imperfect in his or in Rousseau’s terms, the will of the sovereign law-maker – or the will of the ruler or head of state qua “organ of the sovereign” (Kant 1996, 462) – represents the will of that incorporated people. Thus the people as individuals “cannot and may not judge otherwise than as the present head of state (*summus imperans*) wills it to” (462).

Kant supports this sacralization of the status quo on a distinctively Hobbesian ground. He says that if the people as an unincorporated set of individuals were entitled to challenge the sovereign or ruler on any public matter – on any matter where the people’s will ought to rule – then the matter, as we put it earlier, would not be justiciable: There would be no one to judge between the competing sides, and no single will would be present. Or if there was to be someone to judge between the sides, than that person or body would count as the sovereign: the spokesperson for the incorporated people. Thus, speaking of the people as individuals, he

holds that “in an already existing civil constitution the people’s judgment to determine how the constitution should be administered is no longer valid” (298–9). His argument for that claim is as follows:

[S]uppose that the people can so judge, and indeed contrary to the judgment of the actual head of state; who is to decide on which side the right is? No one can make the decision as judge in its own suit. Hence there would have to be another head above the head of state, that would decide between him and the people; and this is self-contradictory.

(Kant 1996, 299)

While Kant is on Rousseau’s side, then, in acknowledging that the law has to be backed by the corporate will of the people, he follows Hobbes in thinking that that will may be legitimately formed in any of a variety of ways, not just on the basis of assembly voting. But unlike Hobbes, he holds that the corporate will is ideally formed on a popular basis, not on the basis of an individual ruler’s judgment. Thus he says that whereas the rule of the ideal sovereign is “absolutely rightful,” the less than ideal sovereign only enjoys a “provisional right”: a right that belongs to that sovereign, presumably, only provided there is nothing better in contention (481).

But what does the ideal of popular sovereignty mean for Kant? He thinks that it is impossible for all citizens – even on his narrow construal of the citizenry (294–5, 457–8) – to take part in legislation, and argues that a representative regime “is all that can be foreseen as attainable” (296). Thus he holds that “any true republic is and can only be a system representing the people” (481; see too 325). This breaks with Rousseau’s ideal of a people that assembles and makes laws at regular intervals (Rousseau 1997, III.13–14) – an ideal under which it is axiomatic that “any law which the people has not ratified in person is null” (III.15.5). But the position is fully in line with the Bodin–Hobbes tradition to which they are each indebted. For Bodin and Hobbes the sovereign people may delegate government to an individual or an elite and there seems to be no deep reason why the government it authorizes should not have a legislative as well as an executive and judicial function. After all, in Kant’s ideal republic the people would still have the power of being able to dismiss such a government and would remain sovereign in that traditional sense.

We have seen that while Kant thinks like Rousseau that there has to be a sovereign, indivisible will at the origin of the law in any society, this will may be legitimately formed in any manner, monarchical, aristocratic

or popular; and that while popular will-formation is the ideal, as for Rousseau, in his view this supports a representative rather than a participatory system of decision making.

Notwithstanding these differences on the nature of the corporately formed will that shapes the law, Kant is absolutely on Rousseau's side in arguing that the will that shapes the law in that sense ought ideally to be impartial. The will expressed in law ought to be "the united will of a whole people" (Kant 1996, 296). Only such an impartial will, he says, could be expected to identify laws that would meet the demands of equal, universal freedom, giving each a freedom that "can coexist with the freedom of every other in accordance with universal law" (393).

How can Kant be relatively undemanding about the nature of the corporate will that is in actual charge of the law and yet very demanding about the need for it to be impartial? The reason, on reflection, is straightforward. He thinks, like Hobbes, that no matter what the form of sovereignty and government, the will that shapes the law always counts as the corporate will of the people. Thus he ignores or denies the distinction marked by Rousseau (1997, I.5.1) between "subjugating a multitude and ruling a society," where the individual who subjugates "remains nothing but a private individual" and realizes "neither public good, nor body politic." Given that the legislative will always counts as the will of the people, Kant's normative focus has to be on the content that that will assumes, not on how it is formed. What is important for him is that the legislative will, however it is formed, should have an appropriately impartial content.

How to identify a suitably impartial content? Here Kant invokes the idea of the social contract on which Rousseau and indeed Hobbes rely so heavily, but he gives it quite a different role from that which they envisage. Where they thought of the social contract, however implicit or virtual, as required for establishing the corporate people with a common will – Rousseau talked of it as "the act by which a people is a people" (Rousseau 1997, I.5.2) – Kant thinks of it as a theoretical device that serves to direct us to the content that the corporate will would have were it truly impartial.

The original contract is "only an idea of reason," he says, not something that has to be "presupposed as a fact" (296). The role it plays is to instruct the sovereign legislator on the content that the law ought to have. It binds "every legislator to give his laws in such a way that they *could* have arisen from the united will of a whole people" (296; italics in the

original). It imposes an obligation on “the constituting authority to make the kind of government suited to the idea of the original contract” (480). What it provides, then, is not a template of how law ought to originate but “the touchstone of any public law’s conformity to right” (297); “a rational principle for appraising any public rightful constitution” (301).

This reworking of Rousseauvian ideas means that every actual regime should aspire to the ideal republican form that might have been chosen in an original contract: “[E]ven if this cannot be done all at once, it is under obligation to change the kind of government gradually and continually so that it harmonizes *in its effect* with the only constitution that accords with right, that of a pure republic” (480; italics in the original). Such a self-improving regime may not actually become a pure republic, he suggests, but it should treat that republic at least as a regulative ideal, looking for the same effect – the same sort of law – that a republic would provide.

What institutional form would an ideal Kantian republic take? It ought to privilege institutions that are disposed, as Kant sees it, to encourage the formation of an impartial corporate will, giving all citizens equal freedom: that is, “independence from being bound by others to more than one can in turn bind them” (393–4). Kant singles out two institutional constraints in particular that a republic ought to satisfy. First, it ought to be a popular regime and so, on pain of infeasibility, a representative one (296); it ought to be a regime run “by all the citizens united and acting through their delegates (deputies)” (481; see too 325). And second it ought to separate out “the executive power (the government) from the legislative power” (324), avoiding the possibility of despotism that arises when the administration, inevitably focused on its particular policy objectives, doubles as sovereign and can formulate purportedly impartial law with an eye on achieving those ends.

The ideal of the mixed constitution fades just as effectively in this Kantian political theory as it does in Rousseau’s. The popular sovereign that rules over people in the ideal republic, even the sovereign that rules over people in less than perfect regimes, has an unchallengeable authority to speak for the people in its corporate presence and to dictate what the constitution ought to be. And this sovereign is clearly meant to speak with a single voice, not to be the precipitate of rival, mutually checking powers, as under the mixed constitution.

While granting priority to the sovereign, as we saw earlier, Kant speaks as often of the ruler or head of state – “the organ of the sovereign” (462) – as he does of the sovereign power itself. This is because he tends to

think of the sovereign, or at least the sovereign in the ideal republic, in abstract terms, as a power that “belongs not to human beings but to the laws” (491). He suggests that, shaped by impartial, rule-of-law constraints – shaped by the constraints of giving equal freedom to all – the legislature would generate law so inexorably that we can think of the law as an impersonal sovereign. Thus he says that at least in the ideal republic “the sovereign, which gives laws, is, as it were invisible; it is the personified law in itself, not its agent” (294, fn) – “law itself rules and depends on no particular person” (481).

5. ROUSSEAU AND KANT ON THE CITIZENRY

Rousseau

Rousseau’s allegiance to the tradition of Bodin and Hobbes not only leads him to break with the ideal of the mixed constitution, it pushes him into thinking of the citizenry in quite a novel, non-republican manner. In the Bodin–Hobbes picture, adopted by Rousseau and Kant, the indivisibility of the sovereign means a ruling out of the mixed constitution, as we have seen. And as we shall now see, the absolute power that the sovereign enjoys rules out a contestatory citizenry.

Rousseau explicitly invokes a Hobbesian style of argument for the absolute power of the sovereign – one that we have already seen Kant invoke – invoking the lack of justiciability in support of denying the right of citizens to contest sovereign decisions. He claims that “if individuals were left some rights ... there would be no common superior who might adjudicate between them and the public” (I.6.7). The idea is that there has to be one, final spokesperson on what the law is and that if we allowed the people to contest the legislature’s decisions, we would have to establish another body to rule between them. That being impossible, so the idea goes, the legislature has to have an absolute, incontestable standing in the lives of its subjects. Once the legislative assembly has spoken, then, it falls to individuals to comply, not complain.¹¹

In the Rousseauvian representation of the members of a state, “they collectively assume the name of *people* and individually call themselves *citizens* as participants in the sovereign authority, and *subjects* as subjected to the laws of the state” (I.6.10; italics in the original). The crucial shift here is from the role of contestor to that of participant. Citizens are no longer invigilators of government, alert to any possible misdoing and

ready to challenge and contest the legislative, executive and judicial authorities. Rousseau's citizens are law-makers, not law-checkers, generators of law, not testers of law. They serve in the production of public decisions, not in controlling for the quality of those decisions.

As Rousseau elaborates on this new image of the role of citizens, emphasizing the need for majority decision making, the gestalt switch from the older model of republicanism is quite dramatic. Far from every law being a fair target for civic critique and challenge, each comes draped in an authority and majesty that brooks no individual opposition. Having been party to the creation of the popular sovereign no one as an individual retains the right of contesting decisions of the collectivity, even if those decisions were ones that the person argued against in assembly.

While it may seem incredible that individual people should be denied the right of contesting the decisions of the collective people, it makes some sense on the basis of an assumption, central to Rousseau's thought, that no law supported by the general impartial will "can be unjust, since no man can be unjust toward himself" (II.6.7). The idea is that the sovereign people, enacting a corporate or general will in the formation of which each citizen participates, cannot deal unjustly toward any member, although it can make mistakes and may need the guidance of a legislative counselor (II.7).

This jars deeply with the older republican way of thinking but is a faithful echo of Hobbes.

[B]y this institution of a Commonwealth every particular man is author of all the sovereign doth; and consequently he that complaineth of injury from his sovereign complaineth of that whereof he himself is author, and therefore ought not to accuse any man but himself; no, nor himself of injury, because to do injury to oneself is impossible.¹²

(Hobbes 1994b, 18.6)

Kant

Just as Rousseau casts the citizens of his ideal republic as participants in law-making, and denies them individual rights of contestation, so Kant enforces a similar line. He casts the citizens of his ideal republic as having a "colegislator" (Kant 1996, 294) status in virtue of their "right to vote" for legislative delegates (296). And on this basis he denies them any right of individually contesting what the legislative body formulates as law or what the executive – the ruler or head of state – does in promulgating or

enforcing this law: “[A]ny resistance to the supreme legislative power, any incitement to have the subjects’ dissatisfaction become active, any insurrection that breaks out in rebellion, is the highest and most punishable crime within a commonwealth, because it destroys its foundation” (298).

Why would allowing resistance of the kind envisaged – resistance, as Kant thinks of it, “in word or deed” (303) – destroy the foundation of the commonwealth? The telling consideration, as in Rousseau, is that the sovereign has to have an absolute status in deciding the law and the ruler or head of state – the organ of the sovereign – has to have an absolute standing in applying that law. Suppose that there is a complaint made by the citizens about the head of state. Who is “to decide the issue?” he asks. “Only he who possesses the supreme administration of public right can do so, and that is precisely the head of state; and no one within a commonwealth can, accordingly, have a right to contest his possession of it” (299).

Kant spells out his line of thinking more precisely when he argues elsewhere that it would be self-contradictory for the constitution to give the people the right to resist the sovereign or the sovereign’s agents.

For a people to be authorized to resist, there would have to be a public law permitting it to resist, that is, the highest legislation would have to contain a provision that ... makes the people, as subject, by one and the same judgment sovereign over him to whom it is subject. This is self-contradictory and the contradiction is evident as soon as one asks who is to be the judge in this dispute between the people and sovereign.

(Kant 1996, 463)

It may not be surprising to see Bodin and Hobbes argue in the France and England with which they were familiar that there could not be any arrangement that made the same people subject in one respect, sovereign in another. But it is surprising to see Kant argue a similar line in a period when he must have been aware of the mixed constitution that was successfully operating in contemporary Britain. He does comment on the “limited constitution” exemplified in Britain but takes this only to allow the people “by means of its representatives (in parliament)” – and parliament is presumably the sovereign, in his view – to refuse to accede to “every demand the government puts forth” (465). He insists, however, that “a so-called moderate constitution, as a constitution for the inner rights of a state, is an absurdity,” maintaining that “a people cannot offer any resistance to the legislative head of a state which would be consistent with right” (463).

The position that Kant takes here may be explained, as in Rousseau, by

his adherence to the Hobbesian view that the law cannot do wrong to the people insofar as it expresses the people's own will.

[A] public law that determines for everyone what is to be rightfully permitted or forbidden him is the act of a public will, from which all right proceeds and which must therefore itself be incapable of doing wrong to anyone. But this is possible through no other will than that of the entire people (since all decide about all, hence each about himself); for it is only to oneself that one can never do wrong.

(Kant 1996, 294–5)

The idea is that the people are identical with the legislative sovereign, at least when that sovereign is ideally formed, so that there is no room for the possibility of the people doing wrong by its members. Those members, therefore, need not worry about being wronged by the sovereign; if the sovereign represents the united will of the people, it cannot do them wrong.

This is as unpersuasive in its Kantian form as it is in the form it assumes in Hobbes and Rousseau. It may be axiomatic, even analytic, that an impartial will cannot do wrong to an individual in the sense in which doing wrong would mean not treating the person impartially. But it is hardly axiomatic that people cannot individually do wrong to themselves and it is certainly not axiomatic that people cannot corporately – that is, in their collective decision making – do wrong to themselves as individuals. Still, however unpersuasive, the argument may at least explain why Kant, like Rousseau, did not think it so objectionable that the citizenry should be denied the contestatory status accorded in the Italian–Atlantic tradition.

On Kant's view of the citizenry of the ideal republic, then, it is no part of their duty to challenge and contest what the sovereign and ruler decide, resisting their laws and decrees "in word or deed" (303). But neither in fairness is their role reduced just to that of voting for their legislative representatives. Kant insists in at least one context that "a citizen must have, with the approval of the ruler himself, the authorization to make known publicly his opinions about what it is in the ruler's arrangements that seems to him to be wrong against the commonwealth" on the grounds that the head of state might "err or be ignorant of something" (302). This "freedom of the pen ... is the sole palladium of the people's rights" (302). The important difference between its exercise and a challenge to authority is that it is not designed to generate "unrest in the state," being offered in the manner of a loyal subject's advice: a form of counsel guided by "esteem and love for the constitution" (302).

This completes the account of how the citizens of a Kantian republic are meant to relate to the state – the sovereign and the government – and like the account in Rousseau, it makes clear that the citizenry of the Franco–German republic do not have the contestatory rights of their Italian–Atlantic counterparts. But in conclusion it is worth mentioning that Kant, in line with his view on constitutions in general, goes well beyond denying contestatory rights to the citizens of a well-ordered republic. He also thinks that the subjects of an oppressive regime lack such rights. In particular, they do not as individuals have the right to challenge and overthrow the authorities in power. Rousseau prudently ignored the issue of how the subjects of an oppressive regime are entitled to behave. Kant is bold enough to address the issue but is prudent enough to take a view that must have endeared him to the Prussian authorities under which he lived.

We saw that on Kant’s view “any resistance to the supreme legislative power” in the ideal republic “is the highest and most punishable crime within a commonwealth.” And we noted that this is because it would allegedly destroy the foundation of the commonwealth, putting in question the need for a single absolute authority to embody the people’s will. But this injunction against resisting the legislative power is not meant by Kant to be restricted to the ideal republic. The “prohibition is unconditional,” he says,

so that even if that power of its agent, the head of state, has gone so far as to violate the original contract and has thereby, according to the subjects’ concept, forfeited the right to be legislator inasmuch as he has empowered the government to proceed quite violently (tyrannically), a subject is still not permitted any resistance by way of counteracting force.

(Kant 1996, 298)

Our earlier discussion of Kant’s view of constitutions makes this position intelligible. He holds that in every state, no matter how imperfect, the people’s corporate will is embodied in the sovereign – the sovereign law – and its agents. Assuming that there is such a will, as he thinks there always must be, then that is the obvious place for it to reside. And so he argues that the people cannot set themselves up as individuals against the sovereign or the ruler without giving the lie to that principle. For a people to challenge the sovereign or head of state in that way would be to presuppose “another head above the head of state, that would decide between him and the people; and this is self-contradictory” (299). Thus, if the people kill a head of state, as in the case of Charles I of England or

Louis XVI of France, then “it is as if the state commits suicide;” this, he notes, is “a crime from which the people cannot be absolved” (464, fn). The Hobbesian note is unmistakable.

While Kant rails against revolution in this way, he is quite clear that many existing regimes are appalling. True, he maintains on the grounds just reviewed that “the people never has a coercive right against the head of state (insubordination in word or deed)” (301) and that “the sovereign has only rights against his subjects and no duties (that he can be coerced to fulfill)” (462). But equally he holds that “a people too has its inalienable rights against the head of state, although these cannot be coercive rights” (301). And of course he recognizes that there are many defective constitutions in which those rights are not satisfied. Where his constraints bite is in his insistence that while the imperfections of government always call for redress, this redress can only come by way of internal reform, not revolution from without. “A change in a (defective) constitution, which may certainly be necessary at times, can therefore be carried out only through reform by the sovereign itself, but not by the people, and therefore not by revolution” (465).

Kant’s holds that when a revolution occurs “the previously existing constitution has been torn up by the people, while their organization into a new commonwealth has not yet taken place,” giving rise to “the condition of anarchy” and its “horrors” (300, fn). But he is ready to admit that when the people get around to establishing a new constitution, then that new regime may be a great improvement on the old. And he freely acknowledges that whether or not it is an improvement, it is binding on the citizenry.

[O]nce a revolution has succeeded and a new constitution has been established, the lack of legitimacy with which it began and has been implemented cannot release the subject from the obligation to comply with the new order of things as good citizens, and they cannot refuse honest obedience to the authority that now has the power.

(Kant 1996, 465)

Kant can take this paradoxical viewpoint, because he is a nonconsequentialist about the duties of citizens, as he is a nonconsequentialist about duties in general. For citizens to rise up against a government is, in his view, to act against right – against “the concept of duty in its complete purity” – and that is quite consistent with acting in a way that happens to have excellent consequences, producing a better constitution and more overall “happiness” (287).

6. CONCLUSION

We have seen that while Rousseau and Kant remained broadly faithful to the Italian–Atlantic notion of freedom as nondomination, they transformed the earlier republican vision by dropping the institutional ideals of the mixed constitution and the contestatory citizenry. Rousseau put an ideal of popular sovereignty in place of the mixed constitution and an ideal of a participant, law-making citizenry in place of a contestatory citizenry. Kant hailed a similar ideal of popular sovereignty and linked it with a thinner, representative or electoral ideal of citizenship. According to each, individual contestation amounts to resistance or rebellion; such resistance is condemned unconditionally by Kant but not, presumptively, by Rousseau. And according to each there is a communitarian emphasis on the ideal of citizens in legislating for themselves, whether directly or indirectly, although the communitarianism is universalist in character, not particularistic. That emphasis replaces the older emphasis on the need to keep the state contestable – by virtue of a mixed constitution – and on the contestatory role of a vigilant citizenry.¹³

The different claims by those in the Italian–Atlantic tradition and by these two thinkers are mapped in the following table.

	Italian–Atlantic	Rousseau	Kant
Freedom	Nondomination	Nondomination	Nondomination
Constitution	Mixed constitution	Popular assembly	Representative assembly
Contestation OK?	Yes	Equals resistance	Equals resistance
Resistance OK?	With non-republic	With non-republic	Never

In the vulgar, primarily Rousseauvian form in which his communitarian set of ideas came to be represented, the conception of freedom as nondomination also disappeared. Benjamin Constant was probably the major figure in accomplishing this final step, although he did so as a critic, not a defender. Himself attracted to what was seen as a brand of liberalism – although one that in many respects kept close to the older republicanism – he gave a famous lecture in 1819 that described the supposedly ancient way of thinking about politics and freedom with which the liberal view has to compete (Constant 1988). According to this ancient way of

thinking, he says, the people in a commonwealth constitute the sovereign, the role of citizens is to participate as officials or electors in sovereign decision making and – this is the alteration from the Rousseauvian and Kantian picture – freedom consists in nothing more or less than the right to participate in such communal self-determination: the right to live under a regime of law that one has a certain participatory or electoral role in creating.¹⁴

With this final twist, the followers of Rousseau and Kant became associated with a set of ideas that differ on every front from the defining ideas of the Italian–Atlantic tradition. This new communitarian ideology replaced freedom as nondomination with freedom as participation – the paradigm of Isaiah Berlin’s (1969) positive liberty. It replaced the institutional ideal of the mixed constitution with that of a popular sovereign, whether participatory, as in the Rousseauvian version, or representative, as in the Kantian. And it replaced the ideal of a contestatory people with that of a legislative or elective citizenry who had no rights as individuals to contest community decisions.

It is important to recognize that despite their differences in other respects, Rousseauvians and Kantians are both exemplars of the new Franco–German republicanism. Frameworks of ideas that are characterized by abstract commitments of the kind rehearsed can assume very different shapes, and by keeping both Rousseau and Kant in the picture we highlight this inherent plasticity in the communitarian vision. Such plasticity is also found, of course, within the classical, Italian–Atlantic tradition, since representatives vary in how radically they construe the independence in which freedom is said to consist; in how mechanically they interpret the two institutional ideals; and in how far they give priority to one or other of those ideals or treat them more or less on a par. While the two forms of republicanism are distinct, they each exemplify a broad style of thinking, not a sharply defined, substantial set of commitments.¹⁵

REFERENCES

- Arendt, H. (1958). *The Human Condition*. Chicago: University of Chicago Press.
 Arendt, H. (1973). *On Revolution*. Harmondsworth: Pelican Books.
 Bailyn, B. (1967). *The Ideological Origins of the American Revolution*. Cambridge, MA: Harvard University Press.
 Berlin, I. (1969). *Four Essays on Liberty*. Oxford: Oxford University Press.
 Besold, C. (1618). *Politicorum Libri duo*. Frankfurt: J. A. Cellii.

- Bodin, J. (1967). *Six Books of the Commonwealth*. ed. M. J. Tooley, Oxford: Blackwell.
- Brennan, G. and L. Lomasky (2006). "Against Reviving Republicanism." *Politics, Philosophy and Economics* 5: 221–52.
- Cohen, J. (2010). *Rousseau: A Free Community of Equals*. Oxford: Oxford University Press.
- Constant, B. (1988). *Constant: Political Writings*. Cambridge: Cambridge University Press.
- Dworkin, R. (1978). *Taking Rights Seriously*. London: Duckworth.
- Dworkin, R. (1986). *Law's Empire*. Cambridge, MA: Harvard University Press.
- Franklin, J. (1991). "Sovereignty and the Mixed Constitution: Bodin and his Critics." In: *The Cambridge History of Political Thought 1450–1700*. eds J. H. Burns and M. Goldie, Cambridge: Cambridge University Press: 298–345.
- Habermas, J. (1994). "Three Normative Models of Democracy." *Constellations* 1: 1–10.
- Habermas, J. (1995). *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*. Cambridge, MA: MIT Press.
- Harrington, J. (1992). *The Commonwealth of Oceana and a System of Politics*. Cambridge: Cambridge University Press.
- Hobbes, T. (1990). *Behemoth or the Long Parliament*. ed. F. Toennies, Chicago: University of Chicago Press.
- Hobbes, T. (1994a). *Human Nature and De Corpore Politico: The Elements of Law, Natural and Politic*. Oxford: Oxford University Press.
- Hobbes, T. (1994b). *Leviathan*. ed. E. Curley, Indianapolis: Hackett.
- Hobbes, T. (1998). *On the Citizen*. ed. and trans R. Tuck and M. Silverthorne, Cambridge: Cambridge University Press.
- Holmes, S. (1995). *Passions and Constraint: On the Theory of Liberal Democracy*. Chicago: University of Chicago Press.
- Kant, I. (1996). *Practical Philosophy*. trans. M. J. Gregor, Cambridge: Cambridge University Press.
- Kant, I. (2005). *Notes and Fragments*. ed. P. Guyer, Cambridge: Cambridge University Press.
- Ketcham, R. (ed.) (2003). *The Anti-Federalist Papers*. New York: Signet Classic.
- Laborde, C. and J. Maynor (eds) (2008). *Republicanism and Political Theory*. Oxford: Blackwell.
- List, C. and P. Pettit (2011). *Group Agency: The Possibility, Design and Status of Corporate Agents*. Oxford: Oxford University Press.
- Long, D. C. (1977). *Bentham on Liberty*. Toronto: University of Toronto Press.
- Lovett, F. and P. Pettit (2010). "Neorepublicanism: A Normative and Institutional Research Program." *Annual Review of Political Science* 12: 11–29.
- Machiavelli, N. (1965). *The Complete Work and Others*. Durham, NC: Duke University Press.
- Madison, J. A., A. Hamilton and J. Jay (1987). *The Federalist Papers*. Harmondsworth: Penguin.
- Maynor, J. (2003). *Republicanism in the Modern World*. Cambridge: Polity Press.
- Milton, J. (1953–82). *Complete Prose Works of John Milton*, Vols 1–8. New Haven: Yale University Press.
- Montesquieu, Baron de (1977). *The Spirit of Laws*. Berkeley: University of California Press.
- Nelson, E. (2004). *The Greek Tradition in Republican Thought*. Cambridge: Cambridge University Press.
- Nozick, R. (1974). *Anarchy, State and Utopia*. Oxford: Blackwell.

- Nussbaum, M. (2006). *Frontiers of Justice*. Cambridge, MA: Harvard University Press.
- Ober, J. (1996). *The Athenian Revolution*. Princeton, NJ: Princeton University Press.
- Paley, W. (1825). *The Principles of Moral and Political Philosophy*, Vol. 4, Collected Works. London: C. and J. Rivington.
- Pettit, P. (1997). *Republicanism: A Theory of Freedom and Government*. Oxford: Oxford University Press.
- Pettit, P. (1998). "Reworking Sandel's Republicanism." *Journal of Philosophy* 95: 73–96.
- Pettit, P. (2001). "Non-consequentialism and Political Philosophy." In: Robert Nozick. ed. D. Schmidtz, Cambridge: Cambridge University Press: 83–104.
- Pettit, P. (2008a). "The Basic Liberties." In: *The Legacy of H. L. A. Hart. Legal, Political and Moral Philosophy*. eds M. Kramer, C. Grant, B. Colburn and A. Hatzistavrou, Oxford: Oxford University Press: 201–24.
- Pettit, P. (2008b). *Made with Words: Hobbes on Language, Mind and Politics*. Princeton: Princeton University Press.
- Pettit, P. (2011). "The Instability of Freedom as Non-Interference: The Case of Isaiah Berlin." *Ethics* 121: 693–716.
- Pettit, P. (2012). "The Inescapability of Consequentialism." In: *Luck, Value, and Commitment: Themes from the Ethics of Bernard Williams*. eds U. Heuer and G. Lang, Oxford: Oxford University Press: 41–70.
- Pocock, J. (1975). *The Machiavellian Moment: Florentine Political Theory and the Atlantic Republican Tradition*. Princeton: Princeton University Press.
- Price, R. (1991). *Political Writings*. Cambridge: Cambridge University Press.
- Priestley, J. (1993). *Political Writings*. Cambridge: Cambridge University Press.
- Raab, F. (1965). *The English Face of Machiavelli: A Changing Interpretation 1500–1700*. London: Routledge and Kegan Paul.
- Rawls, J. (1971). *A Theory of Justice*. Oxford: Oxford University Press.
- Rawls, J. (1993). *Political Liberalism*. New York: Columbia University Press.
- Rawls, J. (2001). *Justice as Fairness: A Restatement*. Cambridge, MA: Harvard University Press.
- Reid, J. P. (1988). *The Concept of Liberty in the Age of the American Revolution*. Chicago: University of Chicago Press.
- Ripstein, A. (2009). *Force and Freedom: Kant's Legal and Political Philosophy*. Cambridge, MA: Harvard University Press.
- Robbins, C. (1959). *The Eighteenth Century Commonwealthman*. Cambridge, MA: Harvard University Press.
- Rousseau, J. J. (1997). *Rousseau: "The Social Contract" and Other Later Political Writings*. trans. V. Gourevitch, Cambridge: Cambridge University Press.
- Sandel, M. (1996). *Democracy's Discontent: America in Search of a Public Philosophy*. Cambridge, MA: Harvard University Press.
- Sen, Amartya (1985). *Commodities and Capabilities*. Amsterdam: North-Holland.
- Sidney, A. (1990). *Discourses concerning Government*. Indianapolis: Liberty Classics.
- Skinner, Q. (1978). *The Foundations of Modern Political Thought*. Cambridge: Cambridge University Press.
- Skinner, Q. (1998). *Liberty before Liberalism*. Cambridge: Cambridge University Press.
- Skinner, Q. (2008). *Hobbes and Republican Liberty*. Cambridge: Cambridge University Press.
- Skinner, Q. M. (1974). "The Principles and Practice of Opposition: The Case of

- Bolingbroke versus Walpole." In: *Historical Perspectives: Studies in English Thought and Society in Honor of J. H. Plumb*. ed. N. McKendrick, London: Europa: 92–128.
- Spitz, J.-F. (1995). "Le republicanism, une troisieme voie entre liberalism et communautarianisme." *Le Banquet* 7 (2eme semestre): 215–38.
- Spitz, J.-F. (2010). *Philip Pettit: Le Republicanisme*. Paris: Michalon.
- Trenchard, J. and T. Gordon (1971). *Cato's Letters*. New York: Da Capo.
- Viroli, M. (2002). *Republicanism*. New York: Hill and Wang.
- Weinstock, D. and C. Nadeau (eds) (2004). *Republicanism: History, Theory and Practice*. London: Frank Cass.
- Wirszubski, C. (1968). *Libertas as a Political Ideal at Rome*. Oxford: Oxford University Press.

NOTES

1. See, for example, Pettit 1997; Skinner 1998; Viroli 2002; Maynor 2003; Weinstock and Nadeau 2004; Laborde and Maynor 2008; Lovett and Pettit 2010.
2. In discussing this conception of the republic in earlier work, in particular the conception as it appears in Sandel, I have sometimes described it as neo-Athenian (Pettit 1998). I regret that usage now, since as a matter of history – if not in later representations – Athens had many of the characteristics of a mixed constitution; it was not a city ruled by an assembly with Rousseauvian powers. See Ober 1996.
3. For the record, I think that Habermas's own views come close to counting as broadly republican in my sense.
4. Eric Nelson 2004 has identified a Greek tradition in later republican thought that coexisted with the neo-Roman tradition in which I am interested. I do not give attention to this tradition here.
5. Notoriously, this point is admitted in Isaiah Berlin's 1969, 130–1 claim that the "connection between democracy and individual liberty is a good deal more tenuous than it seemed to many advocates of both." For arguments to the effect that, under plausible empirical assumptions, negative liberty of this kind may make further constitutional demands, see Habermas 1995; Holmes 1995.
6. A further distinction within liberal doctrines in this sense is that between those in which freedom is taken as a goal – as I think that freedom as nondomination should be taken as a goal; see Pettit 1997, chap. 3 – and those in which the rights associated with freedom are taken in non-consequentialist form as side-constraints; the best example of the latter approach is Nozick 1974. For a discussion of consequentialist and non-consequentialist approaches in political philosophy, see Pettit 2001; 2012.
7. In the translation by Mary J. Gregor that I reference, "Willkuer" is translated simply as "choice" rather than "power of choice." I think that the latter is more faithful to Kant's meaning.
8. Rousseau's radicalism in this respect may explain why republicans in nineteenth-century France often called for economic and workplace reform. I am grateful to Genevieve Rousseliere for drawing my attention to this connection.
9. It is also worth noting the contrast between the Rome of Machiavelli (1965) in which the adversarial relation between the rich and the poor was so important and the Rome that Rousseau describes, where "even in the stormiest times, the people's plebiscites

- passed quietly and by a large majority, when the Senate did not interfere. The citizens, having a single interest, the people had but a single will": IV.2.2.
10. This aspect of Kant's picture may explain why he uses "such a variety of terms," as the translator, Mary Gregor, puts it (cited in Kant 1996, 457, n. h), for the authorities in the state. If the head of state or the ruler may be taken either as a physically embodied person or as the voicebox of the sovereign law, then context may often allow the expression now to refer to the legislative authority, now to the executive.
 11. But how, Rousseau asks, "are the opponents both free and subject to laws to which they have not consented?" His response is "that the question is badly framed. The citizen consents to all the laws, even to those passed in spite of him, and even to those that punish him when he dares to violate any of them": IV.2.8.
 12. As Rousseau allows that the sovereign may make mistakes – and should therefore seek the guidance of a legislative counselor – so Hobbes allows that the sovereign may deal with subjects in a way that conflicts with the laws of nature, laws that he conceives of as "dictates of self-interest": Hobbes 1994b, 15.41. But Hobbes 1994b, 18.6 insists that while "they that have sovereign power may commit iniquity," in this sense, they cannot commit "injustice, or injury in the proper signification." In this comparison I emphasize the assumption in Rousseau and in Hobbes – as I later emphasize it in Kant – that no one can do wrong to himself or herself. Note, however, that there is a separate assumption shared among these thinkers that might equally support their view about the justice of the sovereign: viz., that it is only the sovereign who can define what is just or unjust, strictly understood. If this is so, then there is a distinct reason why the sovereign can do nothing wrong or unjust to subjects.
 13. Jean-Fabien Spitz has long cast traditional republicanism – a republicanism, however, that he sees as a continuing part of the French tradition – as an alternative to liberalism, on the one side, and communitarianism on the other. See Spitz 1995; 2010. Notice that while Joshua Cohen 2010, 21, 95 describes Rousseau's position as communitarian, he does so on somewhat different grounds from those invoked here.
 14. Yiftah Elazar has persuaded me that while he may preserve other aspects of the Italian–Atlantic tradition, the eighteenth-century thinker, Richard Price (1991), had also begun to emphasize this self-legislative theme.
 15. I am grateful for the very helpful comments I received on an earlier draft from Yiftah Elazar, Melissa Lane, Genevieve Rousseliere and Philipp Schink and from participants at a seminar where the paper was presented in Stanford University in March 2011. I am grateful also to Richard Tuck for many conversations on the influence of Hobbes on Rousseau; I had access to the manuscript of a forthcoming book on Rousseau.