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Populism and the People

THE rise of populism has been a major theme in normative democratic theory as well as in the empirical study of democracies. This has led to a vibrant debate about what populism is, what explains its rise, and what dangers, if any, it poses for democracy. In normative democratic theory, the debate often centers on the concept of the "people" and what it means for the people to rule. This in turn resolves itself into two axes of analysis. One has to do with the contrast between the people and an elite. Populism always champions people power and spotlights the ways elite actors undermine or usurp that power. On this axis, parliaments, representatives, and parties as well as economic and technocratic elites come under particular scrutiny and suspicion. The second axis focuses on popular sovereignty and identifying who exactly are the people and how do they rule. In this chapter, I take up this second debate. In the next chapter, I take up the first question of representation and political parties.

Populism and democratic theory

Populism as a political phenomenon and an object of academic study has been around a long time. But until recently it had been thought to arise with threatening force mainly in fragile and new democracies, primarily in the global South (de la Torre 2019). It is generally associated with direct appeals to the masses, often couched in nationalist rhetoric that circumvents representa-

tive institutions, weakens checks and balances, and empowers a strong, directly mandated charismatic leader. Juan Perón in Argentina is a classic example from the middle of the twentieth century. What is new – and what has sparked an extraordinary explosion of scholarship and debate about this phenomenon – has been its significant inroads and successes within established and consolidated democracies, from which it had long faded until recently. For both champions and critics alike, the rise of populism beginning in the 1990s and continuing into the first decades of the twenty-first century is a sign of deep crisis within democratic orders (Kaltwasser et al. 2017).

Populism has very few champions in the field of normative democratic theory. Ernesto Laclau (2005), Chantal Mouffe (2018), and perhaps Margaret Canovan (1999) are exceptions defending theoretical versions of populism (rather than actual populist regimes) that they argue promote and enhance democracy. Others seek a type of neutrality, arguing that populism can be good or bad for democracy depending on many variables (Mudde and Kaltwasser 2012). But criticism, anxiety, and concern are the more common responses to populism within democratic theory. These criticisms sometimes take aim at the theory of populism, but more often populism is seen as a political phenomenon sweeping over, or at least on the rise within, liberal democracies. As a political phenomenon, normative democratic theory reconstructs populism into a set of underlying principles, logic, or defining features and then evaluates those principles, logic, or features from some point within a larger theory or ideal of democracy.

The literature on populism has been growing at an exponential rate, and our purpose here is not to review this entire field of research. Instead, this chapter concentrates on normative democratic theory's response to populism. The debate about "What is populism and what is bad/good about it?" is also a debate about "What is democracy?" because the two are so closely linked. Populism is a political phenomenon that thrives and takes root only in democracies and is steeped in a "democratic imaginary" that includes a central appeal to popular sovereignty and the rule and power of the people (Arato and Cohen 2022: 107). Rather than begin with my own full definition of populism, I start instead with identifying the political phenomena that have many people

concerned and worried about the future of democracy without committing myself to saying that these phenomena represent the true character of populism.

The phenomena in question are right-wing (and sometimes left-wing) populists who have come to power within established or stable democracies and who deploy democratic appeals and concepts to justify authoritarian-leaning institutional reforms. Some twenty-first-century examples are Recep Erdoğan (Turkey), Viktor Orbán (Hungary), Narendra Modi (India), Nicolás Maduro (Venezuela), and Donald Trump (United States). These cases and more are what has democratic theory in a lather because it is not simply that these regimes and leaders are toying with and perhaps sliding into authoritarianism; it is that they defend those moves with appeals to the people, popular sovereignty, democratic participation, and majority rule. In effect, they challenge democratic theory to deny that they are not fully democratic and simply exercising their own and legitimate forms of political autonomy. For now, I stay agnostic about whether these cases, as Andrew Arato and Jean Cohen argue, illustrate the inherent authoritarian logic of all populisms (Arato and Cohen 2022). There might be other movements and parties that could be described as populist which do not or have not headed down authoritarian paths (Mansbridge and Macedo 2019). Or populism as an opposition movement may represent salutary correctives to a representative system of government deeply out of touch with the people (Mudde and Kaltwasser 2012). Or right-wing populists in power may in theory be a subset of populism or populism gone wrong, as Chantal Mouffe argues (Mouffe 2018). Or, finally, there is a widespread dissatisfaction with institutions of representative democracy and political elite, for example, leading to the uptick in referendums and support for citizens' assemblies. This dissatisfaction is not inaccurately described as a populist sentiment, even though it need not be connected to support for authoritarian-leaning right-wing populists. Despite the lack of agreement on what is the core of populism, all democratic theory is united in acknowledging that the rise and popularity of a Donald Trump, Victor Orbán, Marine Le Pen, or Geert Wilders are signs of a crisis and pose a threat to the health of democracy.

What is the nature of the threat posed by this group of twenty-first-century leaders? In what follows, I look at three broad under-

standings of the core features of the threat under the headings of constrained democracy, left populism, and democratic pluralism. I then connect those assessments to underlying normative views of democracy, especially views about popular sovereignty and the rule or role of the "people" in a well-ordered democracy.

Popular sovereignty is the doctrine that the people possess ultimate authority or power. The nature and site of that authority, as well as who or what is the entity the "people," are highly contested questions. Although these questions have been on the agenda of political theory since at least the sixteenth century (Tuck 2016), the threat of populism in the twenty-first century has given new life and relevance to this debate.[1]

At the core of the debate are two issues. The first has to do with how upstream or downstream (or in the background or foreground, to use a different metaphor) one understands the idea of "ultimate authority," invoked by ideas of popular sovereignty, to be. An upstream view would be something like this: although ultimate authority can be traced to rare and exceptional founding moments undertaken in the name of the people, this ultimate authority to constitute a government has little or no role to play in everyday decision making, which in modern democracies is majoritarian, representative, indirect, and mediated. Here popular sovereignty is part of an origin story but not part of governing. Far downstream from this is the view, often associated with populism, that the people's ultimate authority to constitute (that is, to make and change constitutions) is or ought to be ever present in day-to-day decision making. On the downstream view, popular sovereignty is not limited to a background constitutional principle embodied in constitutional preambles like "We the people of the United States," but is a principle of democratic governance and legislation. For the downstream view, the people exercise ultimate authority, which is to say they rule, via plebiscitary and electoral mechanisms. The use of a referendum to amend the Turkish Constitution in 2017, for example, was defended on this downstream view: "Now for the first time the people will make its own constitution" (Yazici 2017). Constituent power (the power to make and change constitutions) and constituted power (the power of majorities to act within the constitution) are joined in the idea of the rule of the people.

The second and connected issue is who or what is the "people," and in what sense can the people rule, act, or will. Even syntax points to the dilemma. Do we think of the people in the singular or plural? Does the people act, or do they act? Is the people a universal category that encompasses all citizens as equals, or does the people refer to the common folk or the masses to be distinguished from the elite? Do we associate the people with an historically identifiable group as in the French people/nation, or can it be divorced from any strong collective identity? The people is always something that must be invoked in some way (Olson 2017). This means first that someone has to speak on behalf of the people. The people cannot speak the way, say, a head of state can speak. Even appeals to the people that point to concrete visible events, for example, declaring that in a referendum the people have spoken or identifying mass protest as the people rising up, are contestable claims, not descriptive statements. When a king speaks, we might question his claim to be the rightful king or indeed the claim that kings have a right to rule at all, but there is no question that he spoke (Morgan 1989: 153). The obvious problems with conferring sovereignty (meaning having the final say) to a collective agent have led some to talk about the people as fiction, myth, or imagined (Olson 2017). But for others who want to operationalize the rule of the people in concrete terms, it has led them to identify the people with concrete segments of the population. This is often referred to as the problem of embodiment. Are the people an abstract concept underpinning our theories of democracy, or are the people flesh-and-blood voters having the final say?

The embodiment/non-embodiment question is connected to a second dilemma about the people. As we have seen in other parts of this book, political equality is a central principle of democracy. Can political equality be squared with the idea of the rule of the people? Political equality suggests that the people must be everybody. But in modern democracies characterized by pluralism, disagreement, and competition, it is difficult to imagine the whole people acting, willing, or choosing anything as one unified agent. But the moment one identifies the people with some part rather than the whole, one introduces exclusions from the people, and this seems to violate the principle of political equality.

These then are the issues that animate the debates that have arisen in response to populisms. I now outline three broad approaches to the ideals of popular sovereignty and the rule of the people.

Constrained democracy

A widespread concern among many students of democracy has been the rise of illiberal democracy associated with populism. The term "illiberal democracy" was coined by Fareed Zakaria in 1997 to describe regimes in which competitive multi-party elections produce governments that tout their democratic credentials at the same time as they pursue policies that chip away at the liberal guardrails, constraints, and checks and balances that make democracy safe for modern constitutional orders (Zakaria 1997). The trend is to move toward strong executives under the banner of direct popular mandates and to weaken civil and constitutional protections in the name of the exercise of popular sovereignty (Waldner and Lust 2018). Often riding waves of nationalist or anti-immigrant sentiment, these regimes depict liberal constraints (for example, minority rights enforced by an independent judiciary) as roadblocks and obstacles put in the path of the people's will by unaccountable or "cosmopolitan" elites who are out of touch with and unresponsive to the real people. Also in evidence is the gradual dampening and stifling of the full force of civil society and the public sphere as instruments of opposition and criticism. The weakening of oppositional and contestatory voices often falls short of doing away with free speech and freedom of association altogether but aims to tilt the playing field in the public sphere in favor of the populist party or leader in power.

Identifying the primary danger of populism as a weakening of constraints, guardrails, and checks on direct plebiscitary and majoritarian power has its roots in democratic theory that has a skeptical and cautious view regarding strong ideas of popular sovereignty and the will of the people (Riker 1988; Weale 2018). The very term "illiberal democracy" offers a hint of that skepticism. The term suggests that there is a regime type that is indeed a democracy but simply not a liberal one and that liberalism is

something added and external to democracy that restrains and checks the popular will (Mounk 2018). The view that liberalism and democracy, or constitutionalism and popular sovereignty, are in inherent tension with each other is shared by both the liberal critics of populism as well as populists themselves. Indeed, some populist leaders are happy to divorce democracy from liberalism, arguing that throwing off stifling liberal constraints on the people's will is precisely what they seek. As Hungarian Prime Minister Viktor Orbán put it in a much-quoted 2014 speech, "We need to state that a democracy is not necessarily liberal. Just because something is not liberal, it still can be a democracy" (Tóth 2014).

The illiberal democracy critics of populism have then what could be called a "constrained" view of democracy, where democracy is primarily embodied in the representative institutions of electoral democracy that channel and aggregate majority preferences but operate within strong constitutional limits (Wolkenstein 2019). Although this reproduces the same tension between liberalism and democracy that is embraced by populists, the underlying idea of democracy is very different. Two features of the populist view of democracy are particularly problematic from the "constrained democracy" view. The first is that the people rule through majoritarian institutions with as little mediation as possible. The second is that the people (now understood as speaking through the majority) have ultimate authority (sovereignty) in establishing all rules, procedures, and laws with little constraint on this authority.

For populists, democracy is rule by and for the people, and representative institutions are only democratic to the extent that they directly express or channel the people's will. Despite some rhetoric about the superiority of direct democracy to representative democracy, modern forms of populism are all representative in some sense (Urbinati 2019). A directly elected president is still a representative, no matter how charismatically they embody the aspirations of the people. Referendums and plebiscites are shaped and dominated by the voices of party and movement leaders – in other words, representatives – who speak for the people. Populist regimes do not for the most part seek to overthrow representative democracy. They seek to make representative democracy more responsive to the people and sometimes more "like" the people.

Thus the people rule through majoritarian-decision procedures, and this in turn leads to a conflation of majoritarian outcomes with the people's will. So, for example, in the aftermath of the 2016 Brexit referendum in which a slim majority approved the UK exit from the European Union, critics of the outcome and procedure were branded as "enemies of the people" by pro-Brexit press and political representatives (Van Crombrugge 2020: 7). This conflation is weaponized when attached to a strong idea of popular sovereignty. As Margaret Canovan notes, "once the notion of popular sovereignty is available in politics it is hard to avoid attempts to translate the abstract constituent sovereignty of a collective people into political action by concrete individuals" (Canovan 2005: 93; Yack 2001). Populism thus gives rise to constitutional change and amendment legitimized by simple majority mechanisms – referendums, directly elected executives, or majorities in parliament – that undermine the liberal logic of constitutions which, among other things, limits the power of majorities. Conferring constituent power to majorities also undermines strong ideas of the rule of law.

As I noted above, overarching concern with the need to constrain democracy is often rooted in a democratic theory skeptical or anxious about investing the people with too much power or a more extreme view that implies that democracy is inherently populist (Riker 1988). I outline two theoretical strategies open to liberals to underpin and justify the constrained democracy view. The first alternative questions the coherence of any ideas of popular sovereignty. Here we will briefly return to minimalist ideas of democracy discussed in chapter 5. The second strategy does not give up on popular sovereignty, and indeed often champions it as the most important founding principle of modern democratic orders, but limits popular sovereignty to a hypothetical status with only very limited availability for workaday majoritarian politics. I draw on some arguments of public reason liberals as an illustration of this second strategy.

Minimalist theories of democracy argue that, as an empirical fact and metaphysical principle, there is no popular will, only various competing ways to aggregate individual wills, and that no aggregative mechanisms can plausibly construct a collective will. Ideas of popular sovereignty are dangerous fictions because

they always amount to some group's arbitrary claim to ultimate authority or power. Democracy is not actual rule by the people; democracy is one way to choose rulers that is stable, relatively peaceful, and compatible with modern commitments to human rights. Thus, from one point of view, minimalists completely reject populist claims to be instantiating the will of the people but, from another point of view, they often have no democratic reasons to criticize populist actors. As Adam Przeworski puts it, "populist parties are not anti-democratic in the sense that they do not advocate replacing elections by some other method of selecting governments" (Przeworski 2019: 88). Populist parties in power are often, however, decreasingly liberal, and to the extent that stabilizing rules of the game – for example, a neutral umpire in the form of an independent judiciary – are weakened, these regimes threaten the delicate balance of power that maintains peace. Although the rhetoric in populist regimes draws on the democratic imaginary of participation and people power, the intent of many reforms is to solidify the populists in power (Müller 2016). Minimalists' democratic bottom line is electoral turnover. As soon as populist attempts to solidify power threaten electoral turnover, most obviously by refusing to leave office or claiming victory where there was none, they have stepped over into anti-democratic territory.

Minimalists do not offer much conceptual help in combatting the appeal of populist claims. Part of the success of populist parties within established democracies is certainly that they tap into a common understanding of democracy as rule by and for the people. That is to say, they tap into popular frustration that government is not responsive to ordinary people (not "for" the people) and that the people have no or little control over what governments do (not "by" the people). Minimalist theories, which are also sometimes called elitist theories, of democracy need not stand against responsiveness, but they usually do stand against any strong idea of popular control. Indeed, as the name elitist theory suggests, they often side with leaving as much of the governing as possible to competent elites.

A second line of liberal argument to address the problems raised by populist appeals to the ultimate sovereignty of the people does not jettison popular sovereignty but constitutionalizes it. The "people" is the final source of authority, but the people as a truly

inclusive category encompassing all citizens as equal members can only be thought of in hypothetical, counterfactual terms and never as an embodied agent acting in the political world. The people appear in the preamble to constitutions or embodied in a set of principles and arguments but not on the political stage of day-to-day politics. This can be seen in the arguments of public reason liberals. Public reason, we will recall from chapter 3, is a form of reasoning or a set of reasons that "all can reasonably accept." Public reason shifts the grounds of legitimacy from consent and will to a type of justification that is inclusive of all reasonable interests and claims and looks for a point of consensus. Public reason is the reason of the "people" understood not as an aggregation of natural individuals but rather as a hypothetical construction of reasonable persons guiding and constraining the sorts of proposals and claims we can legitimately make. Rather than consult all the real people, public reason asks us to incorporate the idea of all people as equals into our reasoning. The ideal is that laws and policies should be grounded as much as possible in principles that everyone can reasonably accept. In modern, complex, pluralist democracies, those principles will be few and very general. They will be constitutional principles.

Public reason liberals then tend to constitutionalize the people. Christopher Eisgruber, for example, describes the Supreme Court as "a kind of representative institution well-shaped to speak on behalf of the people about questions of moral and political principle" (Eisgruber 2001: 3). Samuel Freeman argues that for a Rawlsian "when the court effectively maintains the higher law enacted by the people, it cannot be said to be anti-democratic for it executes the people's will in matters of basic justice" (Freeman 1994: 661). But talk of "willing" and "enacting" is somewhat misleading or highly metaphorical because the higher law, or the constitution, is the expression of the people's will only to the extent that constitutional principles can be justified by public reason, not because any actual people endorsed it in a vote. This view flips the populist logic. Populists see the modern liberal constitution as a counter-majoritarian and so counter-democratic institution. Public reason liberals see the modern liberal constitution as the ultimate expression of the sovereign people. Constitutions are only legitimate to the extent that their principles and applications

can be mutually justifiable or acceptable to all. This view then places the abstract, universal, and hypothetical will of the people (what all could accept) against the empirical, partial, and temporal will of the majority. The former, because it can come closer to inclusivity and universality, is a more morally acceptable view of the people while the latter is always potentially exclusionary and partial (Ochoa Espejo 2017). On this view, then, "We the people of the United States" sets limits to constrain the future actions of majorities which cannot claim the mantle of the people. From this view, populists are wrong to think that liberal constraints are external to the exercise of popular sovereignty; constitutional constraints are justified and flow from the proper view of popular sovereignty.

What these two liberal views have in common is the rejection of the claim that outcomes of majoritarian voting can embody the will of the people. For minimalists, this is because there is no will of the people, and, for public reason liberals, this is because only a hypothetical people can be inclusive. Strong constitutions and liberal constraints are important principles for both views but for slightly different reasons. Minimalists see the constraints as guaranteeing the rules of the game that maintain stability; public reason liberals see these principles as publicly justified, that is, as acceptable to all (the people).

The constrained democracy view seeks to reinstate liberal constraints and stop or reverse the backsliding in populist-led regimes. Critics of this view often point out that there is an assumption here that things were fine before the backsliding. The thrust of the illiberal democracy argument is that we need to return to some status quo ante. This fails to take seriously the democratic deficits that have contributed to the rise of populism in the first place. I turn now to two alternative responses to populism, both of which explicitly address democratic deficit.

Left populism

"The effacement of the theme of popular sovereignty in liberal democratic societies constitutes the first important element for apprehending the current rise of right-wing populism" (Mouffe

2008: 54). For Chantal Mouffe and Ernesto Laclau, right-wing populism taps into and is energized by an anger and frustration with the democratic deficit of liberal democratic orders, a deficit that Mouffe and Laclau think has been facilitated by many of the arguments that I have just canvased. They want to replace right-wing populism with left-wing populism. The primary threat of right-wing populism is not in the "people" overriding constitutional limits in the name of popular sovereignty but in a problematic substantive conception of the people. "The problem lies in the way this 'people' is constructed. What makes this populist discourse right-wing is its strongly xenophobic character, and the fact that in all cases immigrants are presented as a threat to the identity of the people" (Mouffe 2008: 69). In *For a Left Populism* (2018), Mouffe attempts to construct an idea of the people not on nativist, anti-immigration, or white nationalist terms, but on a coalition of those disempowered and marginalized by the forces of neoliberalism. Thus the threat and problem with right-wing populism is not that it invests the people with too much constituent power but that it constructs the people on a right-wing narrative that ultimately reproduces the structural pathologies of neoliberalism. In *For a Left Populism*, Mouffe gives clear ideological and normative content to populism. She is *for* left-wing populism and *against* right-wing populism. This view, however, is built on a broader understanding of populism that she shares with Ernesto Laclau that is normatively neutral (it would appear) between different types of populisms. From this broader perspective, both right-wing and left-wing populism are fundamentally democratic.

In *On Populist Reason*, Laclau does not consider populism to be merely a movement or a political phenomenon among other political phenomena (2005: 117). Instead, he argues that populism is what politics and democracy are all about. Indeed, only populism can revive the political and invigorate authentic democracy. In order to understand this, we need to start with his critique of representative democracy and the welfare state, which he argues have depoliticized and de-democratized modern governance structures.

In the normal course of events, individuals and groups develop grievances and claims for which they seek redress from the state either via institutions of representative democracy or by making claims on the welfare state (Laclau 2005: 75). These grievances

are heterogenous, meaning that there is a great deal of variation and difference among the grievances. Think about the sorts of claims made by, for example, the urban poor, ethnic minorities, parents of school-age children, steel workers, farmers, the list could go on indefinitely. Representative democracy, as well as the technocratic welfare order, treats these grievances and demands as differentiated and so addresses them as so many separate if interconnected problems to solve. The extreme of differentiation is to think about and treat the grievances that arise in society as individual demands that can be bundled by way of mediating institutions like parties, the public sphere, and parliaments.

What is wrong with this way of doing things? Laclau says, first, it is neither political nor democratic. The more that the modern state deals with grievances in a differentiated way – as so many memos crossing someone's desk – the less this process is political and the more it is technocratic. Politics, or the political, is essentially about struggle and clashing of power. Liberalism and technocracy both seek non-antagonistic strategies to resolve problems, the former seeking consensus and the latter rational and efficient policy solutions. Thus both liberalism and technocracy seek to exclude the political from governance.

Now one might think that the depoliticized administrative state might not seem such a bad thing if it did indeed meet all the demands and answered all the grievances that society threw at it. But the crisis of representative democracy sees growing inability and unwillingness to answer demands. This failure has a lot to do with the lack of politics. The more grievances are presented as differentiated and segmented, the less political power they have. Differentiation creates a power vacuum that is exploited by neo-liberal elites who pursue their own agenda and are unresponsive to ordinary people's grievances. That agenda involves globalization that further multiplies the grievances of ordinary people. The liberal state is eventually unable to adequately address grievances, and we see a crisis of representative democracy developing to which populism is the response. Populism replaces differentiated and powerless heterogenous grievances circulating in society with the united will of the people (Laclau 2005: 85). Only in uniting into a powerful actor on the political stage – that is, only in turning grievances into something political – can ordinary

people back their demands for redress with the power needed to get results.

Power requires a united homogenous actor: the people. But the question now is how to create the people out of all these heterogenous claims and grievances? Laclau argues that it is possible to link heterogenous grievances together – to make them equivalent to each other but not identical to each other – by first identifying an "antagonistic frontier" and, second, articulating a set of (sometimes vague) demands that, although only articulating part of all those grievances, can stand in for the whole (Laclau 2005: 74).

> If I refer to a set of social grievances, to widespread injustice, and attribute its source to the "oligarchy", for instance, . . . I am constituting the "people" by finding the common identity of a set of social claims in their opposition to oligarchy . . . This is why an equivalential chain *has* to be expressed through the cathexis of a *singular* element: because we are dealing not with a conceptual operation of *finding* a common feature underlying all social grievances, but with a performative operation constituting the chain as such. (Laclau 2005: 97)

The people only exist to the extent that they are mobilized, and they are mobilized only by the image of an antagonist ("enemy") that is viewed as an obstacle to the achievement of redress. The second move is to place a vague and under-specified set of demands to stand in for the whole. This Laclau refers to as the empty signifier (2005: 69–71).

The "people" is constructed via a narrative. Laclau wants to insist that it is a mistake, however, to think of that narrative as a mere fiction or as having no embodiment or presence. He challenges the common trope that I used above that contrasts the concrete presence of a king to the invoked fiction of the people. For Laclau, the difference is between one body and many bodies, but there are always bodies. In other words, the narrative brings the people into being as a concrete embodied force in politics. Bringing the people into being as a political actor is bringing democracy into being. "So the very possibility of democracy depends on the constitution of a democratic people" (Laclau 2005: 171). Democracy is rule by the people. To be *for* democracy and popular sovereignty, one must be *for* populism that is

for the creation of the people. "[D]emocracy is grounded only on the existence of a democratic subject, whose emergence depends on the horizontal articulation between equivalent demands. An ensemble of equivalential demands articulated by an empty signifier is what constitutes a 'people'" (2005: 171).

The rise of populism within liberal democratic orders has spurred and given content to a particular critique of that order. The left-populist response has two important features. The first is that it suggests that the most effective way to combat right-wing populism is to mobilize the very same frustrated and angry citizens but for progressive causes, including and especially the environment. The second is that it offers a criticism of the liberal administrative state and the depoliticizing and disempowering rise of technocratic governance. These two dimensions of the argument are appealing to many theorists as well as political activists. Leading figures in left-wing opposition parties in Europe (Syriza in Greece and Podemos in Spain) have claimed to be influenced by Laclau (Peruzzotti 2019: 40).

What is highly criticized is the claim that the people and hence democracy can only be brought into being through an antagonistic frontier. The concept of "antagonistic frontier" draws on two sources. One is Saussurean semiotic theory, which postulates that linguistic systems depend on contrast and opposition between signs to produce meaning and value. And second is the work of Carl Schmitt, who argued that all politics involves drawing lines between friend/enemy. As we have seen, this opens the door for the vilification of "enemies of the people." This runs up against ideals of political equality and inclusion, on the one hand, and democratic pluralism and disagreement, on the other hand. The next group of democratic theorists I discuss explicitly challenge the idea of an "antagonistic frontier."

Democratic pluralism

In the face of populism, this final group I canvas reconceives popular sovereignty as dispersed across time and space and proceduralized through an interdependence of democracy and constitutionalism (Abts and Rummens 2007; Arato and Cohen 2022;

Habermas 1996; Müller 2016; Ochoa Espejo 2017; Rosanvallon 2007, 2021; Rostbøll 2023; Rummens 2017; Urbinati 2019). This critique of populism focuses on authoritarian-leaning populist attacks on pluralism, opposition, the public sphere, and civil society. I label this group democratic pluralists because they place anti-pluralism at the center of their criticism of populism, but also because, in developing alternative ideas of popular sovereignty, they stress the multiple and plural institutional means through which citizens exercise popular sovereignty. I call this dispersed popular sovereignty. This idea of dispersed popular sovereignty has many affinities with "contestatory proceduralism," which I discussed in chapter 4. Both dispersed popular sovereignty and contestatory proceduralism are part of a trend in contemporary democratic theory to decenter ideas of ruling and weaken but not abandon the place of majorities in democratic rule.

Although many in the democratic pluralism group, like the constrained democrats we looked at above, are worried about the erosion of rule of law and constitutional limits, they do not articulate that worry in terms of an inherent danger to a liberal order from unchecked popular sovereignty or people power. They take issue with the idea of "illiberal democracy," arguing that democracy and liberalism are mutually constitutive. Like left populists, democratic pluralists worry that we are in a crisis of representation in which popular sovereignty is losing ground as technocracy and financial interests steer governance and neutralize the voice of the people. But they reject and find dangerous the left-populist story about the constitution of the people as a democratic agent. As we will see, they find the invocation of an "enemy," as well as the part standing for the whole, particularly problematic.

This group begins its critique of populism not with the dangers of backsliding but with the dangers of populist conceptions of the people. They start here because their goal is to reinvigorate popular sovereignty, strong democracy, and even conceptions of the people that are democratic (or popular) but not populist. "To proceduralize the notion of popular sovereignty is not to abandon the idea that the people can and should rule themselves, but to provide a very different interpretation of the idea than we find in populism" (Rostbøll 2023: 141). The problem with populism then is not that it is illiberal, but that it is a false, disfigured,

or counterfeit view of democracy (Rosanvallon 2021; Urbinati 2019).

Several scholars in this group have zeroed in on a particular way that the people are invoked as a defining feature of contemporary populism (Arato and Cohen 2022; Müller 2016; Rummens 2017; Urbinati 2019). There are four features of the populist idea of the people that come under criticism. The first is the most important and the very thing that Laclau sees as essential in constituting the people as an agent of democracy: embodiment. For Laclau, the people can only be sovereign to the extent that it has power, and it has power only to the extent that it is an agential and agonistic force in the political world. The problem with embodiment is that the acting agential people will always only be a part of the whole people, who are never a singular agent but a plural amorphous idea. Here pluralists often invoke Claude Lefort's famous dictum that a "revolutionary and unprecedented feature of democracy" is that "the locus of power becomes *an empty space*" (1988: 17). This means, first, that the people are a permanently contested, negotiated, plural, ever-changing fiction that can never be fully or unitarily embodied. And, second, modern democracies are made up of complex counterbalancing institutions, electoral turnover, competition, revisability, mediation, and generally an institutional structure that seeks to disperse power.

Populists reject Lefort's view of democracy, explicitly in the case of Laclau (2005: 170), and seek to fill up that space. Populists seek "the closure of that place of power in favor of a fictitious image of the people as a homogeneous and sovereign body" (Abts and Rummens 2007: 415). "The claim to exclusive moral representation of real or authentic people is at the core of populism" (Müller 2017: 592). Populism involves "the symbolic representation of the whole of 'the people' by a mobilized part" (Arato and Cohen 2022: 13). "Populism is a phenomenology that involves replacing the whole with one of its parts" (Urbinati 2019: 13).

The second problematic feature of a populist conception of the people is that populists in power make their claim to be pursuing the will of the people by pointing to success at the polls, whether that be elections or plebiscites and referendums. Thus there is always a conflation between the majority and the people. Third, the mobilizing power of appeals to the people is maintained via

a rhetoric of enemies of the people. Those enemies are often identified as any and all opposition voices in the public sphere, and this results in and feeds off of polarization. Finally, this view of the people is loaded into a strong idea of popular sovereignty. Populists, it is argued, invest the people with a type of permanent constituent power such that referendums and simple electoral majorities are used to amend constitutions. All constitutional limits and constraints exist at the pleasure of the people, and if these are thwarting the people and limiting their ability to act, then they can be removed.

These four elements of populist appeal to the people then result in a type of democracy that is exclusionary, majoritarian, anti-pluralist, and claims an almost unlimited constituent authority of majorities to lay down the rules of the game. Democratic pluralists propose an alternative view of the people. Given the criticism of populism, this alternative conception of the people would have to have four features. The people would have to refer to the whole, meaning it is inclusive of all citizens as political equals; majority outcomes could not be identified with the will of the people; opposition and contestation would have to be folded into the exercise of popular sovereignty and rule by the people; and popular sovereignty would have to be conceptualized as self-limiting in some way or, as Arato and Cohen put it, as "self-government under law" (Arato and Cohen 2022: 111). Attempts to meet these four criteria are the defining feature of the group I call democratic pluralists. The first three criteria are met through the introduction of a dispersed or proceduralized conception of the people. The fourth criterion is met by a proceduralized view of the people that attempts to reconcile the tension between liberalism and democracy by making them co-dependent.

Jürgen Habermas is a contemporary German social and political philosopher whose discursive conception of democracy is probably the most prominent example of a dispersed and proceduralized conception of the people and is an important influence on many in this group. In his reconceptualization of democracy, "popular sovereignty is no longer embodied in a visible identifiable gathering of autonomous citizens. It pulls back into the, as it were, 'Subjectless' forms of communication circulating through forums and legislative bodies" (Habermas 1996: 135–6). Habermas also

calls this idea "fully dispersed sovereignty" and "intersubjectively dissolved popular sovereignty" (1996: 486). This conception of sovereignty forgoes "overly concrete notions of a 'people' as an entity" (1996: 185), and can be described as "communicatively fluid sovereignty" (1996: 186). Rosanvallon refers to "a generalized and expansive sovereignty of the people" (Rosanvallon 2021: 11) and Paulina Ochoa Espejo describes it this way:

> [the people are] not a collection of individuals, but a procedure of decision-making and opinion formation, by which individuals interact with each other mediated by legal civil society institutions that channel popular demands and force representatives to adopt views and make decisions. In the long term, these procedures can be recognized as "the Popular will" and, thus, we can eventually think of them as popular sovereignty. (Ochoa Espejo 2017: 615)

Christian Rostbøll recently echoed this view: "the people never appear as one, but only as a dispersed and diverse plurality. They act together only through shared procedures that connect millions of diverse and dispersed citizens, their opinion formation in civil society, and their will formation in elections and formal representative institutions" (Rostbøll 2023: 141).

The dispersed idea of popular sovereignty is not the same as the hypothetical idea of popular sovereignty we looked at above. This brings us back to the idea of embodiment and Lefort's empty space. The hypothetical popular sovereignty of "We the people" is rarely embodied in everyday democratic politics and does not add up to the rule of the people. It is an upstream view of popular sovereignty. Dispersed popular sovereignty is exercised in everyday democratic politics by real people, so in this sense it is embodied. But that embodiment is understood synchronically across multiple institutions and locations as well as diachronically across time in which elections, for example, punctuate an ongoing open-ended process. Elections are important, but so are citizens challenging state actors through the courts; a critical and free press that asks hard questions; an active civil society that can organize and identify salient issues; street politics and protests that channel, articulate, and publicize grievances and injustice; innovative and effective forms of citizen consultation at all levels of government (for example, citizens' assemblies); and independently minded

bureaucrats pursuing public goods. These are just some of the ways that citizens exercise constraint on and demand responsiveness from the state, which is to say exercise and protect popular sovereignty. Populists attempt to simplify democracy and have all power pass through the ballot box; democratic pluralists suggest that "democratic progress implies making democracy more complex, multiplying its forms" (Rosanvallon 2021: 159).

Democratic pluralism presupposes an interdependence between constitutionalism and democracy that makes the concept of illiberal democracy nonsensical. Koen Abts and Stefan Rummens have a clear articulation of this somewhat complex idea:

> [L]iberal *individual rights* are constitutive elements of the constitutional democratic logic because they guarantee the irreducibility of the diversity of society and prevent the despotic imposition of a tyrannical will of the majority. The *sovereignty of the people*, on the other hand, refers to the fact that the democratic process generates temporary interpretations of the essentially open identity of the people. This identity does not reflect the singular will of the people as a collective but rather reflects the identity of a community which respects the irreducible individuality and diversity of its citizens . . . Only the mutual interdependence of individual rights and the democratic construction of temporary interpretations of the will of the people allow for the realization of the *diversity-in-unity* which defines constitutional democracies. (Abts and Rummens 2007: 413)

Something like this view is endorsed by all democratic pluralists. As Arato and Cohen note, rights and rule of law are "functionally intertwined institutional predicates of a democracy today (call it democratic constitutionalism or constitutionalist democracy) that must be guaranteed if one is to speak of a democratic regime" (Arato and Cohen 2022: 118).

Democratic pluralists often acknowledge that twenty-first-century democracies are suffering from multiple deficits that have pushed many into the arms of populists. The democratic deficit means that citizens "are not being heard, not being included in decision-making processes; it signifies that ministers are not assuming their responsibilities, that leaders are telling lies with impunity; it signifies that corruption reigns, that there is a political class living in a bubble and failing to account adequately for

its actions, that the administrative function remains opaque" (Rosanvallon 2021: 158).

How to address these deficits? The solution is complex – literally. Dispersed popular sovereignty involves "a plurality of avenues for voice, action, and participation while refusing both the restriction of popular sovereignty to acts of voting and its re-mythologization in populist imaginary of the unitary people incarnate and acting in and through a leader" (Arato and Cohen 2022: 188). Intermediary institutions, for example, social movements (Arato and Cohen 2022), reimagined political parties (Müller 2021), interactive representation (Rosanvallon 2021), regulated public sphere and media (Habermas 2009, 2022), and redesigned referendums (Chambers 2019), are on this pluralist agenda. In the next three chapters, I look at some proposals for institutional renovation to address democratic deficits.

Conclusion

Contemporary democratic theory is shaken by but also obsessed with populism. I have only reviewed a small fraction of the scholarship and research that attempts to pin down this troubling phenomenon. Part of what is driving this scholarship is the thought – made palpable by the January 6, 2021, violent attempt to overturn a presidential election in the oldest stable democracy in the world – that populism might spell the end of democracy. Less dramatically, this scholarship – including those who are positively disposed toward populism – is motivated by the idea that if we can get a handle on the rise of populism, we can get a handle on what really ails our democracies. Much more would need to be said to come close to explaining the rise of populism. Indeed, I did not set out to explain the causes of populism or investigate the economic, social, and cultural forces that have contributed to citizens being open to and mobilized by the rhetoric of the people taking back power from a corrupt elite. Instead, I analyzed alternative understandings of popular sovereignty and suggested that democratic theory must take seriously the popular appeal of giving power back to the people. In doing that, democratic theory is tasked with thinking through and laying out how the rule by the people can be

squared with equality and pluralism. Although I have not talked about economic and cultural sources of distress and anti-system anger, I have suggested that a real lack of responsiveness on the part of our democratic institutions is certainly part of the story and a legitimate complaint in many democratic systems.

Before turning directly to questions of responsiveness, there is one more dimension to debates about the people that I wish to mention, if only to explain why I do not take up this question in any detail. A perennial puzzle in democratic theory has been dubbed the boundary problem (Song 2012). The boundary problem is about how to decide who is to be included (given a say) in democratic decisions. The territorial borders of nation-states are the products of contingent historical factors. Therefore, the boundaries of our citizen bodies or the demos are also the product of arbitrary historical factors that created the present system of nation-states. Is using the borders of a territorial nation-state as the boundary of the people legitimate or morally justified? Broadly speaking, there are two competing principles put forward to solve the boundary problem: the all-subjected principle and the all-affected principle (Fung and Gray forthcoming). The former states that all people who are subject to coercive laws ought to have a say in the making of those laws. The latter and more widely accepted principle – at least in political and moral philosophy – states that all those affected by a decision should have a say in that decision. The all-affected principle pushes in a cosmopolitan direction but can have minimal impact on present arrangements or offer a radical critique of nation-states. On the minimal view, an all-affected principle might suggest that citizens and representatives in nation-states ought to take the concerns and interests of all affected, which might include persons outside the borders of the nation-state or future unborn generations, into consideration in decisions. The all-affected principle does not in itself stipulate if all affected must have an equal say. At the other end of the spectrum is the idea that many national-level decisions have repercussions for people outside national borders and those people ought to have a real say, a vote. At the extreme, then, the all-affected principle suggests that "the demos is unbounded and that virtually everyone in the world ought to be included" (Song 2012).

This chapter has focused on the question of the people in rela-
tion to populism, and the boundary problem is not directly raised
by the populist challenge. The boundary problem is particularly
salient when we think about democracies making decisions about
their borders, immigration, asylum seekers, and refugee policies
(Abizadeh 2008). It is also relevant in thinking about different
ways to determine voting rights, for example, giving residents in
cities voting rights in municipal elections irrespective of their citi-
zenship status at the national level (Lenard 2021). But ultimately
the boundary problem points outward to questions of globaliza-
tion and our cosmopolitan moral obligation to people, irrespective
of what passport they hold. As I discuss briefly in the conclusion
of this book, I have not thematized questions of transnational
democracy or the challenges of globalization. I have focused on
democratic crisis and erosion within the nation-state, assuming
that there is no future for global democratization without strong –
or at least not failing – democracy at the national level.

9

Representation

THIS chapter describes and explains new developments in theories of political representation, including the ways that political parties represent citizens within electoral democracy. The backdrop to this discussion is sinking trust in traditional representative institutions: elected representatives, political parties, and parliaments (Dalton 2004). Sinking trust levels are often thought to be tied to two interconnected senses in which elected representatives fail to represent citizens. The first we might call the populist complaint: elected representatives are heavily drawn from elite sectors and do not look like most ordinary citizens. The second is the corruption complaint: in developing policy agendas, elected representatives are responsive to economic heavy hitters rather than the interests of ordinary citizens.

Mass democracies are representative democracies in the sense that citizens do not, or do not often, directly rule themselves, but rather they elect legislators and support parties that represent their interests, aspirations, or identities. Sinking trust in these institutions has led to an uptick in support for referendums and plebiscites. Traditionally (and also in the popular imagination), referendums and plebiscites have been thought to be examples of direct democracy, meaning a democracy where citizens rule themselves directly and bypass the need for representation. Ancient Athens, in which every adult male citizen could participate in legislation, is often the template for this imaginary in which direct democracy is presented as a challenge and an alternative to representative democracy. Much of recent democratic theory questions

this stark contrast, however, with many theorists suggesting that all politics involves representation (el-Wakil and MacKay 2020; Landemore 2020). Referendums and plebiscites are deeply entangled with representation, first because campaigns for and against questions on the ballot are led by people who claim to represent one side or another in the contest, but also because these mechanisms need to be integrated into the larger representative system (Invernizzi-Accetti and Oskian 2022). Many referendums, for example, are consultative, which means that any action to result from the referendum must be undertaken by elected representatives; special one-off referendums, as in the case of Brexit, have to be brought into being by votes of Parliament; binding plebiscites have to be designed and questions set (that is, what people will actually be voting on), often with no citizen input; bottom-up initiatives that begin with a signature campaign can be captured by wealthy stakeholders. Thus the study and conceptualization of referendums and plebiscites falls more and more within the broader study of representative democracy rather than within a competing model of direct democracy (Van Crombrugge 2021).

Rather than positing a contrast between direct and representative democracy, another way to approach falling trust levels in representatives is to posit that governing always involves the creation of a political elite. Ancient Athens had its powerful and influential orators, for example. According to a simple but intuitively appealing model of democracy, this elite should be responsive to the interests, concerns, and grievances of citizens. On this view, then, the crisis of representation involves both the failure of the elite to be adequately responsive to citizens and the growing perception on the part of citizens of this lack of responsiveness. In this chapter, I look at three new directions in democratic theory that speak to this crisis of responsiveness.

The first set of theories, and in some ways the most radical, argues that electoral democracy, as it was conceived of at the end of the seventeenth century and then handed down to all liberal democratic orders, was never designed to be truly responsive to ordinary citizens. Elections are inherently aristocratic, meaning they select a governing elite who are chosen because of their virtue or superior ability, or perhaps oligarchic, meaning that the rich and powerful tend to get elected and rule. In the place of election,

here we see the endorsement of sortition, or random selection, as a democratic means of choosing representatives. These theories introduce the idea of citizen representatives.

The second body of work I canvas might not look like a new direction as it focuses on political parties, an ever-present institution in the study of democracy. But, for a long time, normative democratic theory had very little interest in parties. The new turn that I discuss here attempts to breathe new normative life into the salutary function of partisanship in democratic politics. This view is in stark contrast to the sortition view in which partisanship is one of the elements overcome by randomly selected representative assemblies.

The final view reconsiders the standard idea of responsiveness and, in doing so, rethinks the way we evaluate and judge whether representatives are doing a good job. This new wave of normative theories of representation, dubbed constructivism, suggests that citizens' views, opinions, and preferences are (to some extent) constructed by representatives themselves, thus reversing the causal direction implied by ideas of input and responsiveness and indeed questioning the ideal of responsiveness as an adequate or realistic measure of democracy.

Citizen representatives and the return of sortition

Sortition is a method of choosing members – of an assembly, jury, or committee, for example – by drawing lots or random selection. Its most common use today is in the selection of a jury pool. There is currently a great deal of interest in sortition, and that interest spans many areas of democratic theory (Sintomer 2018). Assemblies or deliberative bodies chosen by random selection are called deliberative mini-publics or citizens' assemblies. Their use within representative democracies to address all sorts of problems is growing, as is their popularity among ordinary citizens (Curato et al. 2021; Wike et al. 2021). In chapter 11, I look at and discuss some of these experiments under the heading democratic innovation. Although the popularity of these initiatives might be fueled by a crisis of representation, for the most part these are consultative bodies that do not challenge the centrality or role of elected

representatives in democratic systems. In this chapter, I look at normative theories that propose sortition as either a better method than election for choosing legislators or as a necessary complement to elections in order to counter pathologies inherent in electoral democracy (Abizadeh 2021; Gastil and Wright 2019a; Guerrero 2014; Landemore 2020; Van Reybrouck 2016).

The defense of sortition begins with a criticism of electoral representation. That criticism has two sources. The first is a revisionist history of electoral democracy coupled with a normative deconstruction of elections that together suggest that elections were adopted and defended precisely because of their elitist tendencies. The second source is contemporary empirical evidence of what has been called the oligarchization of representative institutions.

Bernard Manin's 1997 book *The Principles of Representative Government* is a central text appealed to for the revisionist narrative, although he is not alone in making this assessment (Manin 1997). Manin points out that the founders of the new republics in America and France at the end of the seventeenth century were very clear in their opposition to democracy, which they associated with mob rule, the domination of the passions, and sortition. Up until this time, sortition or selection by lot was thought the core of democracy and election the heart of aristocracy or oligarchy (Manin 1997: 79, 134). This view goes all the way back to Aristotle and is reproduced in Montesquieu and other influential political theorists of the seventeenth and early eighteenth centuries. Election is a method of selection that seeks and then establishes distinctions. Voters look for people who stand out and are thought more gifted or more competent than the average person, and then election elevates them to a position of authority (Huq 2020: 32; Landemore 2020: 89; Manin 1997: 139). Underpinning the new seventeenth- and eighteenth-century enthusiasm for election over lot was the modern stress on the legitimizing role of consent. The rejection of sortition in favor of election reflects the fact that "this regime form has historically consisted in privileging the idea of people's *consent* to power over that of the people's exercise of power" (Landemore 2020: xiv). The ideal, very clearly articulated in Madison's defense of the new constitution in 1789, was to put the very best and the very brightest in positions of power to pursue reasonable and well-thought-out policies that served the

public interest.[1] The fact that this elite was mostly drawn from a wealthy class was irrelevant, according to Madison and his fellow Federalists, as they argued that one need not be from a particular class in order to defend the interests of that class. But many democratic theorists challenge this view and argue that not only do representatives not look like ordinary citizens, but they also do not appear to be pursuing policy agendas in the interests of ordinary citizens (Guerrero 2014). This they back up with empirical evidence.

Although all liberal democracies guarantee an equal right to run for office, access to candidacy and election are significantly skewed along socio-economic, educational, and identity lines. This is particularly pronounced in the United States, where money plays such an oversized role in elections, but it is a fact across all democratic systems. The wealthy and already powerful are much more likely to run for and win office, which is indicative of a skewed candidate selection process (Bonica 2020; Carnes 2018). Popular culture is full of references to this skewing. Here is an excerpt from the comedian Chris Rock's *Saturday Night Live* monologue in October 2020: "We've agreed in the United States that we cannot have kings, yet we have dukes and duchesses running the Senate and Congress making decisions for poor people. That's right. [applause] Rich people making decisions for poor people. That's like your handsome friend giving you dating advice" (Rock 2020).

But is it true that the wealthy cannot look out for the interest of the less wealthy? There is a large and contested literature about how to measure the responsiveness of democratic institutions (Sabl 2015). Defenders of sortition often appeal to research that documents a large disconnect between the opinions and interests of lower- and middle-class constituents and the policy agendas, endorsements, and voting records of their elected representatives (Crouch 2004; Gilens 2012; Gilens and Page 2017; Hacker and Pierson 2011). Even more troubling, this research finds a strong correlation between business and financial interest lobbying and legislative policy agendas. Thus low- and middle-income citizens are doubly denied access to power, first, through skewed candidate selection and, second, through lack of influence over agenda setting.

When representatives fail to do their job and instead pursue the interests of an economic elite, then we should be able to throw the bums out of office and so create a system of accountability that incentivizes good representative behavior. But there is also some empirical evidence that suggests that policy agendas are very complicated, and elections are dominated by spin, framing, and misinformation, and all this is compounded by voter ignorance (Achen and Bartels 2016). Sometimes these accountability mechanisms work in egregious cases of a violation of public trust, and we throw the bum out. But very often that does not happen. So not only do these mechanisms of accountability not function the way they are supposed to, but elites also know that they do not function that way, so they know that there are ways to avoid being punished for pursuing policy agendas that favor the well-off rather than citizens in general.

How accurate is this assessment of the crisis of representation? This contains two questions. First, to what extent are existing representative institutions in fact oligarchic, measured along the three dimensions of candidacy selection, agenda setting, and responsiveness? And the second, slightly different question: to what extent do citizens feel like the system is rigged to benefit the rich and already powerful? The correct answer to both questions is "to some extent." But it makes a difference whether one thinks that the extent is so immense as to compromise any claim to democratic legitimacy on the part of electoral representative institutions or whether one thinks that oligarchic tendencies can be mitigated without doing away with elections all together.

There is a growing section of democratic theory that is convinced that competitive elections are a very poor instantiation of political equality as they inherently favor the wealthy, and elected representative assemblies are always on a slippery slope to oligarchy (Landemore 2020; McCormick 2006). This is not a new argument. The anti-Federalists had many of the same worries, and the American populist tradition of the late nineteenth century also made this argument. We are, however, seeing a new way to address it in the rise of sortition. Lottocracy has now entered our democratic lexicon to denote an alternative to electoral democracy.

Sortition, as I noted above, is selection by lot or random selection. It was used in Ancient Athens and (we think) other Greek

democracies to choose executive or agenda-setting assemblies (Ober 2017). What features make it preferable to elections? There are three dimensions along which sortition is evaluated as superior to election. First, it is thought to be a better instantiation of political equality; second, it embodies a preferable ideal of representativeness; and, finally, it is epistemically superior in the sense that deliberation of such an assembly would be substantively better than that of an elected assembly and therefore have better outcomes.

"Lotteries express a strict principle of equality as well as a principle of impartiality between citizens. Random selection, unlike election, does not recognize distinctions between citizens because everyone has exactly the same chance of being chosen once they have entered into the lottery" (Landemore 2020: 90). The equal chance to hold office is a statistical equality that is justified by a deeper commitment to political equality. If we are committed to political equality, so the argument goes, then we should be committed to equalizing access to the exercise of power. Elections cannot do that not simply because of skewed candidacy selection, but because of the nature of competitive elections. With sortition there is no campaigning, no money, no parties, no celebrities, no robocalls, no fake news involved in the selection process. Even in political contexts with strict campaign regulation especially regarding money, it is not possible to create a perfectly level playing field. Good-looking people have an advantage in the election game. Is that really fair? Sortition is a perfectly level playing field. Given the state of electioneering in many democracies, this is an attractive prospect to some.

Replacing people's equal vote with a statistically equal chance to hold power is a radical move that requires an argument that connects the chosen representatives to the people (Warren 2008). In what sense does a citizens' assembly represent the people at large? The first and most obvious way is again statistically. Like a representative survey sample, a randomly selected assembly would reproduce a cross-section of the population. This is the idea of mirroring. The idea here is that legislators are "like me." There is some evidence that citizens at large favor citizens' assemblies and trust them because they do look like ordinary citizens. This trust is partly built on the thought that ordinary people are

not subject to the same corrupting influences as elites, but also on the idea that they understand the trials and tribulations of the common person.

One common criticism of this idea of representation is why even have an assembly; why not simply use randomly sampled opinion polls to choose legislation? The answer, of course, is that members of the assembly deliberate. In fact, deliberation, or the epistemic dimension of citizens' assemblies, is their strongest selling point. Citizens' assemblies involve facilitated deliberation, meaning that it usually involves, first, an information stage where members hear from experts on a topic or issue and sometimes from stakeholders and civil society groups. Then, there is a deliberation phase where professional facilitators ensure that deliberative norms of civility and equality as well as epistemic norms of staying on topic and problem solving are maintained. There are four features of citizens' assembly deliberation that recommend this type of body: impartiality, diversity, equality, and track record. Participants are not members of parties, they do not represent groups, they are not beholden to a special constituency. All this means that they are free from partisanship and approach problem solving in the assembly from a place of impartiality. They are chosen at random and so the assembly will have a broad cross-section of ordinary people. Recalling the arguments we covered in chapter 7, many champions of sortition appeal to a diversity-trumps-ability intuition to argue that an elected assembly where, for example, more than half the members are drawn from the law profession will do a much poorer job at problem solving than a diverse cross-section of the population. Third, internal debate and deliberation is relatively non-hierarchical, meaning there is no seniority, no whips, no powerful committee sinecures, and so on. Finally, we have 30 years of experiments in citizens' assemblies and mini-publics to draw on as evidence that citizens do a good job at problem solving using evidence-driven argument (Curato et al. 2021; Fishkin 2009). But these initiatives have been consultative and not legislative. Are these arguments enough to justify replacing elections with sortition? The consensus in democratic theory is unsurprisingly no. Indeed, there is a rush to denounce lottocracy as a very dangerous trend in democratic theory. Here I look at three arguments against lottocracy.

One counterargument to the epistemic defense of sortition is the accusation that this is a form of technocracy. This might appear counterintuitive. Citizens' assemblies are popular precisely because many people feel that technocratic government is out of touch with how ordinary people live and feel. But if the biggest selling point of citizens' assemblies is that they get better answers to problems because they are not blinded by either partisan biases or the influence of money, then it would seem that their claim to rule is an epistemic one, just like technocrats. On this argument, we listen to them because they produce better policy, not because they are in some sense democratic. Here we can see that the claim to be representative and the claim to produce good outcomes are in tension. Significant and substantive deliberation within an assembly relying on expert informants and facilitators moves the resulting opinion away from what would be garnered in an opinion poll. But this also means that assembly members look less like ordinary citizens and more like experts as they deliberate. James Fishkin has argued that we need to think of deliberation in hypothetical terms (Fishkin 2009). The results of well-structured citizen deliberation represent the conclusions that ordinary citizens would have come to if they had had the same opportunity to deliberate. But we cannot take this logic too far, for example, to the point of suggesting that a randomly selected assembly produces the "will of the people." This is so first for purely technical reasons. They are not, nor can they ever be, perfectly random. Because they are voluntary, there will inevitably be an element of self-selection involved. Each group is different and has a different identity. Each deliberation is unique. This means there can be no strong claim that the outcomes of a citizens' assembly really are what everybody would decide if they had had the chance to deliberate. But even if this were not the case, claiming that a decision in which I took no part, not even voting for the people who are making the decision, was somehow my will is problematic (Lafont 2020). This introduces the second set of criticisms: citizenship loses its agential component.

Both voting and sortition instantiate political equality by recognizing "each citizen as equally entitled to render authoritative judgments as to how to organize and regulate all citizens' common life" (Wilson 2019: 49). But only voting calls on citizens

to regularly exercise that judgment. Although under a purely sorted system, individual citizens might be encouraged to follow the deliberations and policy enactments of a lottocratic chamber, and these chambers would be mandated to engage in broad consultation, the lack of involvement in the selection process severely diminishes citizens' reasons to inform themselves or to connect their own political judgments to outcomes. This might make them less ready to exercise legislative power if called up to serve in a citizens' assembly. But there are more reasons to value voting than its instrumental worth as potential preparation for being selected to serve in a citizens' assembly. "One person, one vote" is a more robust recognition that each person's judgment counts equally in a democracy (Schwartzberg 2014: 111) than having an equal chance to be chosen to exercise judgment. Thus voting recognizes each citizen's agency in a way that sortition does not.

The final argument draws on some insights from minimalist theories of democracy but has non-minimalist implications. Minimalists suggest that democracy is stable because losers know that they will get another chance to be winners at the next set of elections. No such chance is available to losers in a lottocracy. This will lead, according to a minimalist logic, to growing frustration and dissatisfaction on the part of losers that will bleed into anti-system and violent interventions in order to have their positions heard. On this logic, a pure lottocracy will lead to civil war (Abizadeh 2021).

The impartiality envisioned in a sorted assembly is both a selling point for a randomly selected assembly as well as a reason why it would be inadequate (perhaps even disastrous) as the sole legislative chamber. Social groups need outlets to make claims and demand action. Social movements might still have a civil society and public sphere presence in the absence of elections, but their activity would have much less impact without parties and the electoral politics that can channel, aggregate, and articulate group interests via partisan agendas. Gastil and Wright, who endorse sortition as a method of choosing representatives in a second chamber, argue that "given the nature of power and inequality in contemporary societies, there are conflicts of interest that cannot be resolved simply through disinterested deliberation . . . Bargaining needs highly articulated expressions of interests with

authorized representatives who can forge compromises" (Gastil and Wright 2019b: 33). This calls for parties and partisanship.

It is unclear what a public sphere would look like minus competitive electoral politics. Clearly, some communicative pathologies associated with competitive elections would disappear. But the potential for a type of generative public opinion and will formation would also, it seems to me, be diminished. The clash and competition of agendas, ideas, and positions are part of a process through which citizens come to have opinions and through which they come to understand their own interests. Partisanship, whether it is tied to a party or a cause, mobilizes and engages citizens in activities that get them thinking about politics, justice, and public issues. Can a democracy maintain the transformative potential of the public sphere as a place where new ideas emerge without regular elections and the contestation that comes with them? I think it is unlikely.

Before moving on to parties, there is one last observation to be made about the debate over sortition. The mounting criticism of the sortition turn (or against lottocracy) tends to target the minority of theorists who think that electoral democracy is unsalvageable, and we need to radically rethink democracy, including in ways that would do away with voting and elections (Lafont 2020). Critics say that the use of citizens' assemblies as integrated consultative mechanisms is fine but not as a replacement for elections. But the radical lottocrats are an easy target. Many critics fail to take seriously the much more interesting and reasonable proposals that agree with all the reasons why we cannot get rid of elections but argue that lottocratic institutions may be an important corrective to the oligarchic drift of electoral institutions. These proposals see citizens' assemblies as second chambers or integrated into assemblies that use multiple methods of selection (Abizadeh 2021; Gastil and Wright 2019b; Owen and Smith 2018). These suggestions seem a more interesting subject of debate.

Parties, partisans, and partisanship

Political parties have not been a traditional focus of normative democratic theory but a constant subject of interest for empirical

political science. Why have parties been neglected until recently by normative theory? Since the ascendency of John Rawls and his type of ideal theorizing beginning in the 1970s, political philosophy has been dominated by the search for core principles rather than studying institutions (Waldron 2016). Justice, impartiality, neutrality, reasonableness, consensus, and the common good were the concepts at the center of political philosophy in the 1980s and 1990s, and political parties did not fit neatly into this narrative. In addition, many models of democracy – deliberative, participatory, agonistic, direct – were conceived as alternatives to the business-as-usual of electoral politics. This led to a focus on alternative sites of democratic participation – "social movements, civil society associations, deliberative experiments, spaces for local participatory government, and direct popular participation" (Muirhead and Rosenblum 2020: 96).

But the last 20 years or so has seen new interest in and defense of parties in normative democratic theory (Bonotti 2017; Invernizzi-Accetti and Wolkenstein 2017; Muirhead 2014; Rosenblum 2000, 2008; White and Ypi 2016). What accounts for this? Three things, I think. First, the interest in the normative dimension of parties is part of a larger trend in political philosophy swinging the pendulum back from the ideal theory alluded to above and toward empirically informed, institutionally anchored, and problem-driven political theory. The discussion of parties translates many of the abstract principles we reviewed in chapters 3, 4, and 5 into concrete institutional terms. Second is an empirically well-documented crisis of party democracy (Dalton and Wattenberg 2002; Mair 2013). Parties, like many institutions of representative democracy, have fallen on hard times. Sinking voter turnout is coupled with declines in party identification, membership, and respect, all of which indicate that citizens are not getting what they want from parties. Parties are either seen as all alike with no clear distinguishing policies or programs, or as focused so exclusively on gaining and maintaining power that they have lost touch with what citizens need and want. Normative theory has stepped in to remind us of what parties at their best can do and to argue that democracy is unthinkable without parties. This connects directly to the final reason for a newfound interest in parties: as a counterweight to the growing interest in and defense of sortition.

I will look at four dimensions of parties and party democracy that are getting attention. The first is a reassessment of partisanship and its positive contribution to democracy. Then there are three separate, but not mutually exclusive, views of the important function that parties play in democracy: to regulate rivalry, to create a linkage between citizens' interests and preferences and government, and as vehicles of public justification. Let me begin with partisanship.

Partisanship often has a negative connotation in popular discourse but also in some political philosophy. In popular discourses, it often means one-sided or biased and unwilling to compromise or listen to the other side. Many contemporary democratic theorists seek to rehabilitate partisanship and develop an ideal ethics of partisanship (Muirhead 2014; Rosenblum 2008; White and Ypi 2016). Partisanship can be broken down into four elements. First, it means that one has a cause, takes a side, or cares about something strongly. Thus one must be *for* something to be a partisan. This should be distinguished from polarization, which often means being simply against the other side, independent of the substantive content of their platform or position. So partisanship is tied to a cause, ideology, or substantive platform. It is difficult to imagine political mobilization and democratic participation without some degree of partisanship. This most basic understanding of partisanship and the first plank in its defense is used to question lottocratic ideals of politics without partisans and parties.

The second dimension of partisanship is that it mobilizes for a cause with others in a group. One is not a partisan alone or in the service of one's own individual preferences. A partisan takes up a cause with others in a party. A party joins people together and represents people with similar causes and interests. Partisans are *members* of parties. Group membership can have an educative function (schools of citizenship) that begins to encourage modern individuals to think in terms of group and collective interests.

A partisan mobilizes for a cause. The content of that cause is a set of policies or a political platform that is defended and campaigned for on the grounds that it is the best plan for the community to pursue. In other words, partisanship is about supporting an interpretation of the common good. This is the third plank in

the picture of partisanship at its best. Partisanship according to its defenders is not about the pursuit of narrow sectoral interest. That is factionalism. The partisan claim, according to White and Ypi, is "to be adopting principles and aims that are *generalizable*, i.e., irreducible to the beliefs or interests of particular social groups" (White and Ypi 2016: 5). Partisans pursue the common good. Why do we need parties and partisans to pursue the common good? Because in modern democracies there will be disagreement about what the common good is. Thus, ideally, each party puts forward their sincere and committed view of policies that would make everybody better off. In party democracy, then, parties vie for partisans by articulating a picture of the common good. And in embracing elections and electoral turnover as the means of doing so, the partisan accepts that all political claims are contestable. Thus the final characteristic of partisans is that they accept pluralism and differences of opinion in matters of the common good. Partisans acknowledge "their partiality, that they do not and cannot speak for the whole" (Rosenblum 2008: 124).

To sum up: partisans have a cause that is a conception of the common good, pursue that cause with like-minded people in a party, and accept that their conception of the common good is contestable. This final picture of partisanship looks very different from what we see in the popular press as well as in the behavior of partisan actors on the political stage. Thus it is more of a critical yardstick to evaluate how our parties and partisans are failing to live up to the ideal than a description of contemporary partisan politics (Invernizzi-Accetti and Wolkenstein 2017). But it is also meant to suggest that, even if party politics look ugly, factional, and polarized now, this is not the essential or necessary core of party politics. Not everyone who is set on rehabilitating the normative desirability of party politics has such an idealized view of partisanship, but they do all see a positive function of parties and the partisans who join them. The function of parties is articulated in three ways. These are not mutually exclusive, and some theories endorse all three. Parties are an essential component of regulated rivalry, they serve as a linkage between opinions and interests of citizens and government action and legislation, and, finally, parties engage in public justification and in so doing they

are an essential component in maintaining democratic legitimacy (Muirhead and Rosenblum 2020).

The first defense of parties starts from an acknowledgment of pluralism and disagreement. We have seen this before. But here the argument is not so much about how to come to a fair decision procedure among equals who disagree, but rather about how to avoid destructive conflict in a world of divergent and competing interests. Thus some defenses of parties, for example Russell Muirhead's and Nancy Rosenblum's, have more in common with some minimalist realist arguments than moral procedural arguments. The goal is to avoid violence and conflict. The goal is achieved through "regulated rivalry."

> Transforming pluralism into ongoing, managed, institutionalized conflict among parties is a hard-won and fragile historical development. The legitimacy of the other side to compete for power is acknowledged. Rotation in office entails a method of determining winners and acceptance of the results by losers, including the acceptance of the policies they oppose . . . Regulated party rivalry for office distinguishes party opposition from sedition, treason, conspiracy, rebellion, or civil war. (Muirhead and Rosenblum 2020: 100)

Some dislike for party politics rests on the inherent divisiveness of party competition. But Muirhead and Rosenblum suggest that all aspirations for unity are dangerous and problematic because such unity will always exclude some group who then might take up alternative means to have their vision come to power. What party democracy does, then, is to channel pluralism rather than let it descend into a literal battleground for power. The regulated rivalry view of parties puts forward a strong argument for why ideals of unity or impartiality will always face the challenge of pluralism and competing interests. But this view does not offer much help in confronting the crisis of party democracy. It points out the risks and dangers of channeling democratic politics away from parties but does not address the hollowing out of parties and citizens' dissatisfaction with party politics. The second way to conceive of the function of parties does address these questions more directly.

Parties perform the essential function "of linking society to the state, or more precisely of *mediating* the relationship between

them in a way that allows political power to be exercised from the 'bottom up' as well as 'top down'" (Invernizzi-Accetti and Wolkenstein 2017: 97). The idea, then, is that parties absorb social grievances, claims, and demands and translate these into party platforms and public policy. These platforms are then presented to citizens at election times as competing responses to preferences and claims bubbling up from civil society. The linkage/responsiveness view of parties is the standard view of the function of parties that has dominated empirical political science for almost 50 years (Kirchheimer 1967; Sartori 1976). So, in what sense is this new? Many of the empirical claims were of the type "this is what parties do." With the crisis of parties, it appears that parties are either not doing this or doing a very poor job. In the context of failing linkage, mediation, and responsiveness, normative theory articulates why it is so important to revitalize the linkage and how these linkages are the backbone of any claim to self-government and democracy (Müller 2021). Thus they translate the descriptive theory into a normative register and connect it to normative ideas of value, legitimacy, and self-government. Many theories that stress linkage are Kelsenian proceduralist. Here they argue that under conditions of complexity, scale, and pluralism, only parties acting as "transmission belts" can approximate ideals of popular rule.

But the second thing that normative theory does is suggest ways to reverse the erosion of party support. One account of weakening linkage points to the move toward catch-all parties. In search of ever increasing their vote share, parties attempt to be all things to all people and end up being unable to appeal to anyone. Parties become empty shells. One answer to this is the development of intra-party democracy. The idea here is to open parties up to participation and more input from ordinary citizens, and this will undo alienation and create a more flexible responsive party structure (Invernizzi-Accetti and Wolkenstein 2017). More realist-minded theorists make the opposite argument: parties have strayed from the ideal of vehicles for the common good because they have been captured by the most radical elements of the base, and that capture has been facilitated by the democratization of parties (Rosenbluth and Shapiro 2018). Parties need more elite discipline to stay democratically functional. The American

primary system, for example, is sometimes blamed for bringing Trump to power and sending the US Republican Party into a hard-right tailspin (Jacobs 2022). It is impossible for normative democratic theory to adjudicate this sort of difference of opinion. Political parties and the electoral, social, and cultural context in which they operate vary too much.

The mediation or linkage function of parties focuses on the way parties receive and are open to messages from civil society. The final function of parties looks more closely at the reverse direction of messaging. Here parties present and justify policies and legislative agendas to voters. This function is reimagined in terms of public justification and sometimes public reason. Parties, on this view, are important institutions contributing to "the process of public justification, that is, the process through which laws and policies are not merely implemented based on majoritarian decisions but also justified to all those who will be subject to them" (Bonotti 2022: 588). Recalling our discussion of mutual justification in chapter 3, one puzzle that we left unresolved was how to realistically scale up this ideal in modern mass democracies. Parties become the agents of public or mutual justification. Thus parties do not simply bundle interests and claims and translate them into legislative agendas. Parties also justify these agendas to a broader public. One might think that developing democratic theories that make parties the home of public justification and public reason pushes the debate about parties back onto an abstract level of ideal and principle. But we do have some informal expectations in the public sphere that political elites offer public reason. What would we think if the leader of a political party announced to the public: "I support this important piece of legislation because it will make me rich"? We would probably find this odd, foolish, and inappropriate (even if we think that it might be true). People usually do not talk like this in public, especially if they want to get reelected. There are certain expectations about what are, and what are not, appropriate reasons to support public policy. These expectations often vary from context to context. So, for example, what would we think if, in a private conversation, our neighbor said, "I think I will vote for X because those new tax policies will make me better off"? We still might not think that this was a particularly worthy reason, but it does not appear

to be as inappropriate or as troubling as the representative saying it. We hold public actors, including party elite and spokespeople, to a higher standard, and I want to suggest that that standard has something to do with bringing forward reasons that are public in the sense of reasons for others and not just for me or people like me.

Our original disapproval of the representative who appealed to her own well-being as a reason for public policy is more than simply a recognition of political ineptitude. The rhetorical expectations that we place on our public figures reflect a deeper moral intuition. We generally think that our political leaders should seek forms of justification that are broadly inclusive. It is not the fact that the legislation benefited the party leader (or any particular individual, for that matter) that is at issue; it is using this fact as a justification that is the problem. Her own well-being might be a reason for her (as it was for the neighbor above), but, as a public figure, she ought to be offering justifications for us – that is, for the public. Public figures are under an obligation to justify policy and law to a public, and this calls for public sorts of reasons. This is to suggest that reading parties as agents of public reason is compatible with a realistic and grounded view of the function of parties.

Representatives and the constructivist turn

Almost every introduction to political science class has a section on what is a representative. And they almost always start with a standard set of definitions and distinctions. Focusing primarily on elected representatives, the class begins with the principal/agent distinction. The citizen or voter is the principal, and the representative is the agent. Getting a handle on how citizens are related to the people who actually pass the laws is the next topic on the agenda. Here the standard view of representation is trotted out: delegate and trustee. On the delegate model, representatives should follow the instructions given to them by the voters very closely. Agents are messengers passing on the directives and commands of the principal. The trustee model, most famously championed by Edmund Burke, points to a certain amount of independence on the part of representatives. Voters choose repre-

sentatives that they trust to make good decisions. Thus the representative does not have instructions for every vote. And in some or perhaps many cases, the representative will use her judgment about what is the correct or proper way to vote on legislation. When or if the representative votes in a way that the constituent disagrees with, they try to elect someone else. It is difficult to imagine elected representatives as purely one or the other of these ideal types. Modern legislative agendas are too packed and busy to imagine that pure delegation would work. Pure trusteeship runs afoul of intuitive ideas of responsiveness.

This standard narrative is being challenged in two different ways in contemporary democratic theory. The first is the development of more complex and nuanced views of the different ways political representatives relate to voters. The second is more dramatic, and it involves questioning the principal/agent model underlying most ideas of political representation in democracy.

An important contribution to the first challenge was Jane Mansbridge's influential article "Rethinking Representation" (Mansbridge 2003, 2011; Rehfeld 2009, 2011), in which she offered a new typology to replace the delegate/trustee model. Mansbridge's typology introduced four categories of representation: promissory, anticipatory, gyroscopic, and surrogate. These identify four ways of understanding the accountability between the principal and agent and dispense with the dimension of binding versus non-binding that connected delegate and trustee. Promissory representation involves the promises that a representative makes regarding how she will act and vote. These promises can be specific votes on specific measures, but they could also be promises to be honest and always listen to her constituents. Making these promises creates a public and perhaps moral obligation between representative and voter. Anticipatory representation involves the representative looking forward to reelection time (or the voter looking back at the record during election time) and acting in such a way as to get or maintain the support of voters or to avoid punishment and sanction by losing electoral support. Anticipatory representation can lead to responsiveness, and, indeed, many models of electoral accountability rely on a retrospective model where voters evaluate the record and reward those who have done a good job or pursued courses of action that voters

like. If this accountability mechanism is working, then it should create incentives for attentiveness and responsiveness. But there is also evidence (which I review in more detail below) that citizens are not always perceptive judges of performance or, more worrisome, are easily manipulated by questionable communicative strategies. This means that representatives are always anticipating the next election, and they construct narratives and sometimes misrepresent the record to better their chances of getting reelected. Thus, although they do contain normative standards of evaluation (did she keep her promises? did she do a good job?), both promissory and anticipatory representation can also be subject to distortion and manipulation.

The third category Mansbridge introduces she calls gyroscopic. Promissory and anticipatory principal/agent relationships both rely on an external mechanism – a promise or anticipation of electoral loss – to motivate the representatives to do their jobs. Therefore, both could countenance an instrumental relationship between principal and agent. Candidate A promises to do X to get elected or passes Y to stay elected. But how does candidate A feel about X or Y? In gyroscopic representation, candidates are internally motivated (imagine we each have an inner gyroscope directing our actions) to pursue public goals or a legislative agenda. Voters then choose representatives whose public goals and legislative priorities align with their own interests or identity and then withdraw support when there is no longer alignment. Gyroscopic representation is based more on trust than sanction. As Mansbridge notes, "Most actual representative–constituent relations mix elements of promissory, anticipatory, and gyroscopic relationships in greatly varying degrees, contingent on available degree of warranted trust" (Mansbridge 2020: 38).

Mansbridge's final conception is surrogate representation. Here there is no direct electoral link between principal and agent, but nevertheless a citizen feels represented by an official, or an official feels that they represent a group, or both. A classic and important case of surrogate representation can take place via descriptive representation. Descriptive representation happens when the experiences or background of a representative resembles that of citizens in an important way, for example, race, class, or gender (Phillips 1995; Williams 1998). A descriptively similar surrogate represent-

ative "can still give citizens the feeling, often warranted, of having a contact and an advocate on their behalf in the government who understands their backgrounds, perspectives, and interests. Citizens may have no power over their surrogate representatives but may contact them and see them correctly as advancing their collective interests in the legislature" (Mansbridge 2020: 38–9).

There has been an ongoing debate that further fine-tunes the different ways that representatives represent the principal (Rehfeld 2011; Wolkenstein and Wratil 2021). Although leaving the delegate/trustee distinction behind, this new direction in normative theories of representation is still wedded to the traditional view that representation primarily involves some principal–agent relationship and that this in turn means that democratic representation involves responsiveness. Responsiveness means that democratic governments ought to respond to, address, or listen to the grievances and claims of citizens. Democracy is not only by the people but for the people. A crude essentialist view of responsiveness says that governments should simply reflect or channel the opinions of citizens; legislative output should correlate to public opinion. Some empirical efforts to measure responsiveness do simply correlate public opinion to policy output. But no normative theory of democracy embraces a pure correlation view of responsiveness (Sabl 2015). So far, all the views we have looked at see the process of representation in a feedback loop where representatives or parties articulate claims that surface in civil society and then present them to the public, who then perhaps refine their views, and so on. Responsiveness is thus filtered through deliberation, justification, public debate, development of party platforms, and many other mechanisms that link the plural and often conflicting interests scattered throughout civil society to legislation. Often the meaning of ideal democratic responsiveness will involve improving, refining, and educating public opinion. But despite the embrace of ideas like loops, feedback, two-way processes, and interdependence, all these views believe the direction of the circle is or ought to be from the bottom up. Or, more precisely, democracy is working properly when institutions of government respond to the real concerns, interests, and claims of the people, whether those concerns have been articulated in a citizens' assembly, through a party platform, or in the legislative

record of representatives. Thus citizens are still in some sense the principals, and the citizen-representatives, parties, or elected representatives are the agents. The final view I look at departs from this model.

The opening chapter of Lisa Disch's book defending a constructive view of representation is entitled "Responsiveness in Reverse." On this view, representatives do not respond to citizens and voters; citizens and voters respond to the narratives constructed by representatives. "Most people form opinions and political preferences based on the messages they receive from sources they trust – candidates, political parties, nongovernment organizations, advocacy groups, opinion shapers in the mass media or on social media, celebrities, and more" (Disch 2021: 1). Representatives mobilize and bring into political existence constituencies. "Political representation does not merely reflect social constituencies but participates in constituting them" (2021: 94). Disch's reversal of the standard view of responsiveness rests on combining a constructivist turn in representative theory inaugurated most clearly by Michael Saward with empirical data about political knowledge and preference formation (Saward 2010).

Saward is interested in thinking about representation beyond elected representatives. The mechanisms that make some into representatives and others into the represented in the political sphere are elections, but representation goes on in many different areas of life and society. Thinking about representation more broadly might help us get at its core. Hannah Pitkin, in a treatment of representation that was considered authoritative for close to 30 years, famously formulated representation as "*re-presentation*, a making present again" or "making present in some sense of something which is nevertheless not present literally or in fact" (Pitkin 1967: 8–9). On this view, there is a presence that precedes and forms a substrate for the act of re-presenting: "the represented must be somehow logically prior; the representative must be responsive to him rather than the other way around" (Pitkin 1967: 140). Saward challenges this view by suggesting that when people or groups claim to represent some constituency, that constituency exists as a constituency only insofar as the claim is accepted. I could claim to speak for "Canadians who reside in the USA" and make that claim public, say, via social media and

advocate on behalf of "Canadians who reside in the USA." It is an empirical fact that there are Canadians who reside in the USA, so my claim does not bring that category of people literally into existence, but "Canadians who reside in the USA" as a *constituency*, with collective interests to be pursued, is brought into existence by someone making the claim on their behalf. "Rather than speak and act for a constituency (represent in the typical sense), claims-making solicits a constituency to recognize itself in a claim and to support the person who made it" (Disch 2019: 7–8). Without representation – which is to say, without some people and groups making representative claims on behalf of some group – society is a swirling aggregate of multiple interests, identities, and grievances without political coherence. "Absent representation, there may be a population but there cannot be a people, constituency or group" (Disch 2019: 9).

Saward highlights the entrepreneurial function of representation and the possibility that the claim to represent a constituency might bring the constituency into being (Castiglione and Pollak 2019: 3). Disch connects this entrepreneurial idea of representation to empirical research on citizens' opinion formation to reverse the standard view of responsiveness. On a standard view of responsiveness, according to Disch, citizens are assumed to have preferences which they form in society prior to engaging in politics. They bring these preferences into the political arena, and then the democratic system responds to them. Empirical research on preference formation, however, tells a very different story. "Rather than form preferences prior to acts of representation, people shape their interests and demands in response to political communication that occurs over the course of the representative process" (Disch 2021: 16; see also Druckman 2014). A prime example is framing. Framing refers to the way a speaker or political communication more generally presents an issue or problem. A classic example is a study that compared framing a hate-group rally in terms of free speech or in terms of public safety. Opinion of the event varied dramatically depending on which frame was employed (Druckman 2014: 474). This suggests that preferences or opinions are deeply endogenous to the communicative context, meaning they are determined by that context. Endogeneity further complicates or perhaps even undermines claims of responsiveness.

To the feedback loops and interdependence suggested in more traditional views of representation, we now add the power of a political elite to shape the very preferences that they are supposed to be responding to.

What is the normative takeaway from the constructivist view of representation? One important question is, "What about manipulation?" (Talisse 2022). Manipulation not only reverses the responsiveness relationship, but it also denies the autonomy of citizens and makes them pawns of elite interests. This suggests that on a radical constructivist reading, most of what goes on in the political sphere and in the processes of preference formation is a form of manipulation. Disch prefers the term mobilization to manipulation. She is careful to note that elites might want to exploit framing and other communication strategies to create the constituencies they need to gain and stay in power, but it is in fact very difficult to do this successfully. "Manipulation is a false concern because politicians cannot script electoral cleavages however they please" (Disch 2019: 11). But the fact that successful manipulation is not that easy to pull off is not the same as saying it is a false concern. Observers of American democracy cannot but be amazed at the success of the completely fabricated "stop the steal" narrative to mobilize a constituency of active citizens.

It is hard to deny (and few people do deny) that the representative relationship plays a role in constituting the interests being represented (Warren 2019: 41). The question that Disch's constructivism raises is whether that endogeneity makes all talk about responsiveness and autonomy meaningless. Responsiveness speaks to a core pillar of normative democratic theory. On the one hand, most theory rejects a crude view of responsiveness, a view that equates it with a correlation of raw public opinion and legislative output, as being an undesirable as well as an implausible picture of the representative relationship (Sabl 2015). On the other hand, few want to give up entirely on the idea that good democratic government is supposed to respond to the real needs, interests, and concerns of citizens who ought to be treated as autonomous agents. This leads to the development of complex views of the feedback loops between citizens and representatives in which reflexivity and publicity function to expose the con-

structivist dimension of the relationship in such a way that it can be evaluated and justified if need be. For example, there are experiments that show that conversations and critical exchanges between citizens can weaken elite framing effects (Druckman and Nelson 2003). On a more normative dimension, Mansbridge has developed a recursive ideal of political representation where citizens play an active role in the process that constitutes the interests to be represented (Mansbridge 2019). This all suggests that the dividing line between constructivists and non-constructivists is on neither the question of endogeneity nor the recognition of the power that elite players have in how endogeneity plays out. The dividing line is often about assessing the power that reflexivity, publicity, and justification possess to include citizens in the process of construction. The more constructivists side with realist assessments of citizen competence, the less confidence they have that construction itself can be democratized.

Conclusion

One of the upshots of new theories of representation is to make the category of representative democracy less coherent as a self-contained alternative model to other forms or models of democracy. All imaginable democratic forms of governance involve multiple and complex representative claims and relationships. One sees more and more reference to the representative system rather than to representative government. "The network of people both elected and unelected who promote interests and respond to preferences can be thought of as a system of political representative" (Hutton Ferris 2022: 1; see also Mansbridge 2019; Rey 2020). This diversification of points of representation goes hand in hand with other trends we have followed in this book, for example, contestatory proceduralism covered in chapter 4 and dispersed popular sovereignty reviewed in the last chapter. Thinking about political representation as involving a complex system of relations also expands one's view beyond the elected representatives sitting in a national legislature. Using the idea of a system, one can then think about local and subnational representative relationships as well as supra-national and international

representative relationships as interconnecting within a system. This has inspired interesting scholarship that integrates research about associations, NGOs, and global social movements into debates about democratic representation nicely captured in the title of Lara Montanaro's book *Who Elected Oxfam? A Democratic Defense of Self-Appointed Representatives* (Montanaro 2017).

11

Innovation and Disobedience

IN this chapter, I discuss democratic innovation and civil disobedience. At first sight, this might seem like an unlikely pairing of topics. Democratic innovation literature is full of critical optimism and energy regarding the possibility of improving democracies. Theorizing about protest and civil disobedience often involves thinking through the place of anger, disappointment, and, sometimes, desperation in our failing democracies. But there are a number of points of contact between these two literatures. First, both bodies of theory connect to practitioners and activists in a way that we do not often see in democratic theory. Democratic innovation is all about designing, testing, and implementing new institutions. Many of the theorists involved in this debate are also practitioners in the field setting up real-world initiatives (Neblo, Esterling, and Lazer 2018; Smith 2009). And this literature has a real-world, non-academic audience looking for normative and theoretical guidance as they build innovative venues of citizen participation. Something similar can be said about the relationship between civil disobedience studies and activism. Alexander Livingston describes the new wave of civil disobedience theory as "drawing theoretical insights from protest movements themselves" that result in "mutual entanglement in a mediated process of co-constitutions" between activist practices and scholarly discourse (Çidam et al. 2020: 540, 541).

The second common feature between these two research areas is that both study bottom-up citizen participation in democracy. The democratic innovation field in normative theory is primarily interested in ways to bring citizens into the democratic process and not in all possible improvements to democratic procedures. Civil disobedience is also of course a bottom-up political action, and although some would question whether it is best understood as a form of democratic participation, it is nevertheless about citizens taking the political initiative and not elites. This leads to a third dimension that links the two fields. Social movements that have traditionally used protest and civil disobedience as avenues to push their agendas are now also looking toward democratic innovations as potential allies in furthering their causes. Extinction Rebellion, for example, a global environmental movement that advocates nonviolent civil disobedience, has endorsed using citizens' climate assemblies and indeed has demanded that these institutions be given more power in the fight for climate survival (Extinction Rebellion 2019).

The final common theme between these two areas of normative democratic theory is perhaps more a reflection of my framing of these two debates, especially civil disobedience, than of how the theorists themselves see the work. Both democratic innovation and civil disobedience are future oriented, and, I might go so far as to say, have an underlying logic of hope – not optimism, but hope – to them. This is most clear in democratic innovation theory, some of which explicitly claims that it is about designing institutions that are future oriented, for example, by including future generations as "participants" (Smith 2021; MacKenzie 2021). Hope also seems to be the backdrop for protest and disobedience, however. My Habermasian instincts say, why put one's life on the line in the streets of Tehran or Los Angeles if there is no hope. One answer is that acts of protest and disobedience are sometimes expressive (White and Farr 2012). They say "We are mad as hell and want everyone to know it" but with no expectation that anything will come of it except reclaiming one's own self-respect (Livingston 2021). But my reading of the democratic theory of civil disobedience points in a different direction. Far from giving up on the possibility of salutary effects of protest and disobedience, theory has retreated from the high moralism of Rawls, where it was about an individual's personal fidelity to principles, and toward a strongly instrumental focus on what works and why. This is especially clear in the debate about whether civil disobedience is to be understood

as a form of persuasion or a form of coercion. The civil disobedience discourse has moved away from romanticizing civil disobedience to a much more hardheaded picture of direct action under conditions of injustice. While, on the one hand, this contemporary direction of civil disobedience theory starts from a much grimmer assessment of contemporary conditions than did liberalism – and perhaps even than great figures of the civil rights movement – on the other hand, it produces theory that can more adequately and realistically answer the question "What is civil disobedience good for?" An instrumental approach must be concerned with the ends and this, it seems to me, means it must be concerned with bringing about some better future state of affairs.

Democratic innovation

Democratic innovation has become a thriving subfield within democratic theory. One sure-fire way to know that a research question is reaching the level of a subfield is the presence of sustained debates about definitions and boundaries as well as the appearance of handbooks on the subject and the establishment of an American Political Science Association-recognized group – all of which is going on in democratic innovation studies. The field of democratic innovation is roughly divided into case studies of actual on-the-ground innovations and debates about the theory of democratic innovation. So let me start with the theoretical debates and then move to some examples of innovation.

The questions animating the theoretical debate are, first, what is democratic innovation and then, second, what counts as innovation according to this definition? The question "What counts as democratic innovation?" has led to several typologies of innovation (Elstub and Escobar 2019; Smith 2009; Hendricks 2021). The final question on the theoretical agenda is what criteria we should use to evaluate the success, failure, or contribution of democratic innovation to a democratic system.

On the question of definition, almost everyone starts with Graham Smith's definition put forward in his influential 2009 book *Democratic Innovations: Designing Institutions for Citizen Participation*. Indeed, some think that this book launched the

democratic innovation discourse (Elstub and Escobar 2019). Democratic innovations are "institutions that have been specifically designed to increase and deepen citizen participation in the political decision-making process" (Smith 2009: 1). Elstub and Escobar offer a slightly more expansive definition but with a similar thrust: "democratic innovations are processes or institutions that are new to a policy issue, policy role, or level of governance, and developed to reimagine and deepen the role of citizens in governance process by increasing opportunities for participation, deliberation and influence" (Elstub and Escobar 2019: 11).

Some definitions leave out the participatory and citizen-focused dimensions of innovation and simply stress ideas to improve democracy (Newton 2012), but these are exceptions and often reflect more empirically oriented scholarship. The democratic innovation discourse in normative theory has been heavily influenced by participatory or deliberative democratic theory, hence its citizen-centered character.

The opposite of innovation is stagnation. Much of the democratic innovation literature either explicitly or implicitly contrasts innovation to the stagnation of traditional institutions of democratic participation, especially elections, but also unimaginative or pro forma consultation mechanisms, for example, focus groups, that fail to empower citizens. But democratic innovation theory usually does not come with deep or detailed criticism of existing institutions and instead points to the "public disillusionment" with these institutions as the reason to think hard about alternatives (Smith 2009). This disillusionment is not about democracy per se but about present institutions, practices, and elites. Here we see the assumption that falling trust in democratic institutions is fueled, on the one hand, by actual bad behavior, weak responsiveness, and poor performance but also, on the other hand, by a public that is raising the bar of what they want and expect from democratic institutions. Thus democratic innovation studies are not usually about designing institutions that will reverse apathy and withdrawal. Rather, they are about designing institutions that will meet citizens' (quite often sophisticated) demands for better democracy. Smith quotes the empirical political scientist and public opinion scholar Russel Dalton in this respect: "Even though contemporary publics express decreasing confidence in

democratic politicians, parties, and parliaments, these sentiments have not carried over to the democratic principles and goals of these regimes. Most people remain committed to the democratic ideal; if anything these sentiments have apparently strengthened as satisfaction with actual democratic politics has decreased" (Dalton 2004: 47; Smith 2009: 4).

All definitions of democratic innovation stress citizens' input as well as institutional design. Categories of types of democratic innovations vary slightly across the literature, but there is a great deal of overlap as well. The deliberative mini-public (DMP) is always one category and probably the institution that is getting the most attention and use (Curato et al. 2021). Although there is a lot of variety in design features and uses across and within democratic systems, two features are defining elements of all DMPs. The first is a random selection of participants, and the second is facilitated deliberation. Because DMPs are quite small – rarely more than 150 people – a pure random sample would never get a good cross-section of the population, and therefore the selection process is often stratified. Stratification ensures that relevant groups are represented. This in turn requires thinking through what the relevant groups are. For example, in the British Columbia Citizens' Assembly, it was important to have Indigenous peoples represented. In some DMPs in Latin America that address housing issues, stratification insures the representation of the poor. Gender is almost always a necessary line of stratification.

The other defining feature is facilitated deliberation. The actual nuts and bolts of deliberation – plenary versus breakout rooms, what sort of instructions are given to participants, how and by whom information is circulated – varies a great deal (Curato et al. 2021). But a common format involves three phases beginning with education where participants learn from neutral or impartial informants (experts) about the topic under discussion. The second phase involves hearing from stakeholders or civil society organizations. The final stage is deliberation. Many DMPs, and certainly the larger ones, end in a vote.

Although there is considerable variation among DMPs, they are highly structured and so exhibit a clear family resemblance to each other. This is contrasted to a category sometimes referred to as

popular assembly, where participation is made up of self-selected citizens, and deliberation is often less structured and facilitated. This category is very broad and includes such things as New England town hall meetings, participatory budgeting, and community policing initiatives. Collaborative governance is also a category used to capture the dimension of citizens participating with elected or other types of state representatives to problem-solve and shape policy. The contrast between random selection of DMPs and the self-selection of popular assemblies and collaborative governance has been much discussed. Many people see self-selection as a problem because it means the overrepresentation of certain types of citizens. Images of the cranky retiree with a NIMBY (Not In My Back Yard) mentality come to mind. Champions of self-selection respond with several arguments. First, all selection processes involve self-selection. Sortition can never be perfectly random because it is voluntary and not everyone wants to spend time in these assemblies. Voting also involves self-selection as not everybody shows up at the polls. Second, empirical evidence suggests that different groups are overrepresented in different types of open assemblies and that overrepresentation is not always pernicious (Curato et al. 2021). The "type" of person who shows up to open meetings is often a civic type who cares about public issues (Landemore 2020). This is exactly who you want to come to the meeting and articulate the citizens' point of view. Third, there is also evidence, especially in experiments of participatory budgeting, that if properly organized and mobilized by activists on the ground, underrepresented citizens will come to the meetings and make contributions.

The next category is direct legislation or citizen initiatives. Referendums, plebiscites, and initiatives are on the rise across all democracies, although different institutional jurisdictions make it more or less difficult to implement or add these forms of popular votes. Along with this rise, one sees a theoretically rich debate in democratic theory about the design and integration of popular vote processes into democratic systems (el-Wakil and McKay 2020). Within the democratic innovation literature, usually only bottom-up citizen-initiated popular vote processes are considered as interesting cases of innovation. Although always included in the list of democratic innovations, these initiatives garner less

interest than DMPs and popular assemblies. One reason for this is that in some places, for example the United States, bottom-up initiatives can be easily captured by corporate and elite interests. Another reason is that, although direct forms of citizen participation, initiatives are a form of aggregative participation, and there is more interest in the way citizens can make substantive contributions to decision making. Where one does see a lot of interest is in coupling DMPs with referendums and initiatives. In these cases, DMPs are used to either formulate the question that goes to a referendum or as sources of impartial information in initiative processes (Gastil and Knobloch 2020). In one of the most touted uses of a DMP, Ireland successfully amended its constitution using an innovative process that joined a citizens' assembly with a referendum (Farrell et al. 2020).

The final category in innovation literature is e-democracy or digital participation. Some of the innovations here are about thinking of ways to enhance existing forms of participation through digital interventions. For example, Michael Neblo and his co-authors have developed a very promising model for constituency town hall meetings with elected representatives in an effort to enhance the relationship between representatives and voters (Neblo, Esterling, and Lazer 2018). Also promising has been the crowdsourcing for widespread citizen input into various policy documents. This was one pillar of the Icelandic constitutional process, for example (Landemore 2015). Finally, there are proposals for designing e-voting tools that would allow for an immense amount of flexibility with what one can do with one's vote and how votes get counted. These designs often target the phenomenon of wasted votes and are intended to enhance a sense of efficacy in voting (Ford 2021).

The focus of democratic innovation literature is on institutional design that enhances and empowers citizens in the decision-making process. This emphasis means that some things get left out. Democratic innovation in firms, workplaces, and market models does not have much uptake in this literature (Malleson 2014). A second area of innovation that is left out due to the weight placed on institutions of decision making are grassroots-level informal civil society initiatives to improve the foundations of democracy (Hendriks, Ercan, and Boswell 2020).

The final topic touching on the theory of democratic innovation is about the criteria one should use to evaluate these initiatives. There is a consensus that early on in the enthusiasm for democratic innovation, there was an overemphasis on internal standards of evaluation and input legitimacy (Pogrebinschi and Ryan 2018). Both participatory democracy and deliberative democracy have been very involved in the democratic innovation debates, and this led to a focus on the participatory experience or the quality and structure of the deliberation within institutions. More recently, the evaluative frameworks have expanded to include important dimensions of efficacy and integration within the broader democratic system. As Frank Hendriks puts it, now we see an interest in input, throughput, *and* output (Hendriks 2021). Input values include such things as inclusion, equal input, popular control, and effective participation. Throughput values are deliberative process, enlightened understanding, transparency, and openness. Output values include efficiency, consequentiality, resilience, and integration. Different studies use different combinations of these or similar values to measure success and failure.

Let me return briefly to DMPs, arguably the most successful democratic innovation to date. There is a huge variety of types, sizes, uses, and designs in this category, but the exemplar that is garnering the most interest is the citizens' assembly. A citizens' assembly is a relatively large DMP that is mandated to discuss and come to a decision about a question of public policy. Democratic theory began to take an interest in citizens' assemblies after the pioneering establishment of the British Columbia Citizens' Assembly in 2004 (Warren and Pearse 2008). As we saw in chapter 9, Hélène Landemore defends these as potential all-purpose assemblies that could replace elected assemblies. One argument for their appropriateness as all-purpose assemblies is that a diversity of outlooks and perspectives is especially epistemically useful when a group will have to solve a broad variety of questions. But a more common argument in favor of integrating citizens' assemblies into democratic systems is that they are particularly good at solving a certain type of problem. These are problems where the partisanship of elected representatives hinders their ability to solve the problem adequately. The British Columbia Citizens' Assembly was tasked with discussing and

proposing electoral reform which would then go to a referendum. The logic here was that elected officials are not in a good position to make this decision because of their stakeholder status. Other possible uses are redistricting, as well as oversight functions and corruption and ethics boards. Which type of problems citizens' assemblies are good at solving then has become a central theme in innovation debates.

One type of problem that has gained a lot of interest and traction is the idea that citizens' assemblies are especially well suited to problem solving on policy that has an extended temporal dimension. This is to say that they are good at making decisions for the future, and the evidence for this is in the proliferation of citizens' climate assemblies. Denmark, France, Germany, Ireland, Scotland, United Kingdom, Austria, Luxembourg, and Spain have all either completed such an initiative or are in the process of doing so (Boswell, Dean, and Smith 2022). The assemblies are an eye-opener on the relationship of democracy to policy questions like climate change. For the most part, the recommendations of these assemblies are far more progressive, climate friendly, future-oriented, and sensitive to imminent climate disaster than those of elected assemblies. This suggests that slow action on climate policy cannot be placed entirely at the feet of democratic publics. What is it about citizens' assemblies that makes them good for deliberations on climate policy? Electoral democracy, it is argued, suffers from myopia – the tendency toward short-term thinking in democratic decision making (Mackenzie 2021; Smith 2021). Causes of myopia are various, but at the top of the list are electoral cycles and short-term profit margins. Political and economic elites have few incentives to propose long-term policy or to take the interests and concerns of future generations (who do not vote or pay for gas and heating) into consideration in policy design. Citizens' assemblies face neither of these pressures on their deliberation. There is a further consideration that contributes to future-oriented policy in citizens' assemblies that is also perhaps their Achilles' heel. These assemblies are all consultative. They make recommendations. This might mean that deliberation can be more ambitious and less constrained. This can be good because even if some of the recommendations are not immediately implementable or the goals, say for zero emissions, are too

ambitious, these assemblies move the topic-of-debate needle in the right direction. There is evidence that the general public trusts the conclusions of citizens' assemblies more than they do elected assemblies (Pow 2021). Also, as recommenders and not binding decision makers, citizens' assemblies have avoided the sort of hard lobbying and attempts at capture that would surely go on if they gained more power. But as merely consultative, the recommendations sometimes disappear into the committee systems of legislative assemblies with some public lip service but not much action. Input and throughput are good. But we are still waiting for the output. Nevertheless, citizens' climate assemblies are and will continue to play an important role in speeding up responses to climate insecurity.

Civil disobedience and protests

The contemporary interest in the democratic theory of protest stems from many of the same trends that we have discussed throughout the book (Celikates 2016; Delmas 2018; Livingston 2020; Pineda 2021; Scheuerman 2018). First there is the widespread dissatisfaction with normal channels of political participation, the glaring failures of democratically elected governments to even acknowledge the severity of many social problems, and a trend toward global democratic backsliding that has seen autocracies doubling down on repression. "Long relegated to the margins of political philosophy as the object of an exhaustive debate in the 1970s, recent waves of protest around the globe have returned civil disobedience to the center of political theory and practice" (Livingston 2019: 591). The 2010s have been dubbed the decade of protest (Çidam et al. 2020). The Black Lives Matter movement, launched in 2013, and the 2020 summer of protest in the wake of George Floyd's murder – the largest protest event in the history of the United States – have been particularly central to the new wave of civil disobedience theory.

Second, there is a critical rethinking of the views that dominated the post-civil rights discourse up until the end of the twentieth century. Like many of the developments I have been following in this book, this involves pushing back on Rawls's ideal theory

and the way that civil disobedience was construed within that framework and replacing it with a more realistic view of protest and the politics of power. This reevaluation of and response to past debates includes rethinking and radicalizing the tradition of nonviolent civil disobedience that goes back to Thoreau, Gandhi, and Martin Luther King Jr. The radicalization is not simply about offering new interpretations of these canonical figures; it is also about exposing how the mythologizing of nonviolent civil disobedience has been used ideologically to in fact suppress and tame protest.

Finally, much of the democratic theory of protest follows the trend that we have been tracing that develops dispersed and contestatory ideals of democracy that displace elections as the core institutional feature of democratic theory. This third trend tends to rethink the role and function of protest and civil disobedience from an occasional remedial and unfortunate corrective in an otherwise well-functioning system to a full and permanent, if also episodic, expression of democratic sovereignty.

Protest versus civil disobedience raises somewhat different questions for democratic theory. All democratic theory includes the protection of protest and assembly as an important civil liberty and form of political participation and expression. Variations in democratic theory have to do with what role or function protest plays in a democratic system. Deliberative democracy, for example, will tend to think about protest (as well as civil disobedience) as contributing to public debate and discourse by getting topics on the agenda, including excluded voices, or educating the public about an issue (Mansbridge et al. 2012; Smith 2012). Protest itself may not look very deliberative and may involve various levels of disruption and incivility, but the justification is always tied back to furthering and strengthening the underlying ideal of deliberative legitimacy. More radical democrats that I discuss below might take a tougher line and see protest as a necessarily disruptive force that employs threats and coercion (not persuasion and reason giving) to push back against a recalcitrant system. While civil disobedience is often included in these democratic function debates, it raises additional questions of the limits to legitimate protests. Civil disobedience involves breaking the law and transgressing public norms. Black Lives Matter protests

have been generally peaceful but also included stone throwing, vandalism, and looting, as well as unruly behavior and speech that does not comport with the traditional picture of *civil* disobedience. Civil disobedience calls for another layer of justification, as well as a discussion about limits. Protest as a form of sanctioned political participation and expression takes place within the constituted order and is often compared to voting. Civil disobedience is at the other end of the spectrum and involves stepping out of the constituted order and as such is often compared to revolution and insurrection.

Because civil disobedience involves breaking the law, debate about its meaning and justification often strays from democratic theory into legal and moral theory about obligation to obey the law. In what follows, however, I stay as much as possible within the framework of democratic theory to discuss the issues and avoid some of the intricacies of the philosophical debate. Following William Scheuerman, I take civil disobedience to be an essentially contested concept, meaning both that there is an unresolvable plurality of definitions and also that we should not worry too much about that fact (Scheuerman 2021). The question that concerns me is: What functions do civil disobedience and protest play in a democracy? I begin with a radical democratic answer to this question. In the second part of this section, I discuss a trend toward a realist answer to this question.

I begin with a discussion of radical democracy because, as we will see, disobedience has a special role to play in that view of democracy. What is radical democracy? This is a difficult question as the meaning of radical democracy is quite elastic, and the term is invoked by many theorists who often do not have a great deal in common. Habermas, for example, in *Between Facts and Norms*, claimed to be outlining a theory of radical democracy, and in 2004 Joshua Cohen and Archon Fung defended deliberative democracy as a form of radical democracy (Cohen and Fung 2004; Habermas 1996). My brief discussion of dispersed popular sovereignty in chapter 8, as well the two-track model of democracy in chapter 10, did not suggest radicalness, however, if by radical we mean a politics of revolutionary transformation or opposition. In particular, the central institutions of constitutional democracy – elections, parliaments, state bureaucracies,

constitutions, and the courts – remain intact but with a call to be more receptive to citizens' claims and considered opinions. Today, few would call deliberative democracy radical. That name is used for theories influenced by a generation of postmodern and Marxist theory that includes Chantal Mouffe, Ernesto Laclau, Étienne Balibar, Jacques Rancière, William Connolly, James Tully, and many more. There is a great deal of variety and depth to these thinkers to which I am unable to do justice here. But let me see if I can articulate some very general overarching themes in their views of democracy. To do this, it might be helpful to go back to what Habermas meant by radical democracy because there is a connection.

By radical democracy, Habermas meant a foundational principle of popular sovereignty. There are no external sources of authority, legitimacy, or justification beyond the people. Democratic government is self-constituting. Democracy in a sense goes all the way down. But Habermas added something to this picture. "The rule of law cannot be maintained without radical democracy" (Habermas 1996: xlii). Modern law needs justification, and the old sources of justification (God, King, Nature, Natural Law) are no longer available. Democracy becomes the source of justification of the law. But the rule of law is also the precondition of democracy. The people are the source of all authority and justification only if the people can act in a way that maintains their freedom and equality. Thus Habermas makes constitutions, including the way that constitutions structure institutions of representative government, the precondition upon which democracy has its constituting power. Habermas's co-original thesis, which serves to balance democracy and constitutional constraint, tames and circumscribes the radical self-constituting power of democracy but without postulating an external justificatory authority outside democracy itself.

Radical democrats start from the same idea of the self-constituting power of democracy and denial of external foundations or justifications of that power. They dispense with the other half of the equation, however, namely, the part that insists only people acting within a set of institutionalized rights and established procedures can be said to wield the self-constituting power. Instead, radical democrats suggest, in one way or another, that

the existing institutions of representative government, including some dimensions of constitutional rights, cannot be said to bind and limit democracy because democracy *really* goes all the way down. This is a radical view. No institution can claim to be settled. Constituent power is ever present, ever active, ever the final word.

Two features stand out in the radical view of democracy. The first is the claim to continual and present constituent power vested in democratic actors. In the radical democratic theory associated with hegemony, as we saw in chapter 8, that constituent power is vested in a constructed collective agent – the people (Laclau 2005; Mouffe 2018). But more common in radical democracy is a rejection of the populist framing in favor of a radically plural framing of constituent power that itself can always be contested. This suggests that constituent power is exercised in fragmented, episodic, partial acts remaking democratic orders and not in large acts of constitution making.

The second important feature is the idea that democracy stands in an antagonistic relationship to all settled and stable orders. Democracy does not aim to bring about an ideal form or regime; instead, it is an essentially destabilizing force pitted against what Robert Michels at the beginning of the twentieth century famously called "the iron law of oligarchy" (Michels 1962). All organizations, including ones committed to democracy, inevitably rely on, and therefore cede power to, an elite. As Rancière puts it, democracy is "the public activity that counteracts the tendency of every State to monopolize and depoliticize the public sphere. Every state is oligarchic" (Rancière 2005: 71). Étienne Balibar echoes this view by defining democracy as "a process of permanent anti-oligarchic 'insurrection' rather than a stable regime" (Balibar 2008: 522). Democracy "is not an established reality or a constitution in the material sense of the term, but also not a mere ideal: it is rather a permanent struggle for its own democratization and against its own reversal into oligarchy and monopoly of power" (Balibar 2008: 528). Democracy is a destabilizing force that involves permanent struggle or permanent "insurgency." This second feature introduces an ambivalent normativity to radical democracy. In the version that Rancière endorses, democracy is a permanent struggle because "every state

is oligarchic." But one might want to embrace radical democracy because all states within our neoliberal capitalist context are more or less oligarchic. This second reading of the source of oligarchy opens the door to the possibility that there are modes of collective organization that might not be oligarchic or at least might be less so.

This view of democracy is obviously contestatory. But we have seen a number of democratic theories claim that title which do not go quite as far as to suggest that democracy is a form of permanent popular insurgency that serves as a bottom-up counterweight to the inevitable top-down logic of the state. For radical democrats, either because of the nature of states in general or because of the nature of liberal democratic states in the twenty-first century, contestation, resistance, dissent, and insurgency are the core elements of democracy in action. From this view, then, it becomes clear that protest and civil disobedience are an important expression of democratic politics.

I want to turn to how Robin Celikates places civil disobedience in this frame and how he juxtaposes it to a liberal understanding of civil disobedience. In the liberal view, civil disobedience is justified when there has been a violation of rights or fundamental principles of justice (Kaufman 2021; Rawls 1971). Civil disobedience is a response and corrective to unfortunate failures of the constitutional order to live up to internal standards of justice. In this picture, democracy itself is often the source of this failure:

> Civil disobedience is justified because a just constitutional regime will require a democratic form of government, and democratically elected legislatures will predictably enact at least some unjust legislation. When the legislation enacted is sufficiently unjust – when it violates fundamental rights or liberties – the injustice outweighs the duty to obey unjust law that is usually effective under a nearly just constitution. (Kaufman 2021: 103)

Radical democrats take issue with this view on many fronts. First, on the question of justification of civil disobedience, radical democrats are suspicious of the claim that philosophy can lay out clear justificatory criteria for civil disobedience. Justification itself is subject to contestatory democratic debate and arguments (Celikates 2021: 138). Second, and more important, is that

radical democrats, to the extent that they do justify civil disobedience or propose justifications for debate, justify it in terms of democracy rather than rights, and this in turn broadens the grounds for disobedience. "The main radical democratic claim is that civil disobedience is legitimate not as constraint on, but rather as an expression of, a democratic practice of collective self-determination. It opens up possibilities of contestation and participation for citizens and other subjects where and when regular institutional channels for articulating their claims are blocked or ineffective" (Celikates 2021: 139). On this view, civil disobedience is an "episodic, informal, and extra-institutional or anti-institutional form of political action" that serves as an expression "of a democratic practice of collective self-determination" (Celikates 2016: 41).

For radical democrats, civil disobedience does not get triggered by aberrant rights violations but is a legitimate response to a wide variety of failures of democratic states, from failures to address climate crisis to persistent and growing economic inequality. Radical democrats reject the Rawlsian view of civil disobedience, which is developed against the backdrop of an imagined ideally just political order. For Rawlsians, civil disobedience has a remedial function made sadly necessary by misbehaving majorities but which one could imagine never needing to have recourse to in the ideal state. For radical democrats, disobedience is not remedial, or never purely so. As an expression of self-determination, it is generative and transformative and the conduit through which citizens can exercise constituent power. For example, protest and disobedience undertaken by migrants and undocumented residents challenge and expand our view of the agent of constituent power and enlarge our idea of the source of legitimate democratic action.

If the justification of civil disobedience is anchored in the constituent power of citizens vis-à-vis all constituted orders and institutions, then what limits are placed on the means and ends of acts of civil disobedience? Celikates insists that civil disobedience must be distinguished from revolution or full insurrection. He interprets the "civil" of civil disobedience not as a call for civility but as suggesting that it is action undertaken by citizens in a political arena and not, for example, a type of military intervention or

extra-political strike force. Thus, despite being an exercise of constituent power, disobedience undertaken by *citizens* is still in some sense within the constituted order or at least is not seeking to destroy or completely overthrow that order. "In acting as citizens, they acknowledge some kind of bond with their adversaries, which goes hand in hand with certain forms of self-limitation and self-restraint" (Celikates 2021: 134). But drawing the line is difficult. Every act of civil disobedience is contextually situated, calling for different types and levels of tactics and actions.

Celikates joins many other contemporary theorists of civil disobedience, not all of whom embrace radical democracy, in rethinking what limits ought to be placed on direct action by claiming that it must be civil (Delmas 2018). More particularly, there is a deep interrogation of the tradition that, to use Scheuerman's words, sees "nonviolence as a *sine qua non* of civil disobedience" (Çidam et al. 2020: 519). First, contemporary theory broadens the repertoire of acts of civil disobedience beyond spiritual passivism and admits that "violent" is a difficult standard to measure at the margins. Although there is variation about where the line is to be drawn, there is also a consensus that "being civil . . . does not require disobedience be strictly *nonviolent*, only *less violent*" (Livingston 2021: 254). But the debate about nonviolence does not primarily focus on tallying up tactics on one side or the other of the violence/nonviolence line. Does smashing a window fall in or out of the repertoire? These are context-specific calls that are evaluated on a scale of proportionality, often with some line between property and persons. The debate about nonviolence often takes up questions of the ideological function of the call for nonviolence. New theory in civil disobedience often sets itself against an interpretation of nonviolence as suggesting that action be primarily symbolic and communicative rather than physical and confrontational. But the rethinking of nonviolence also leads to a questioning of the liberal appropriation and interpretation of the civil disobedience tradition. Martin Luther King Jr and the civil rights movement are a particular focus in this debate.

A generation of liberal scholars read King's defense of civil disobedience as, on the one hand, primarily about laying the grounds for legitimate law breaking and, on the other hand, about tactics that would appeal to the moral conscience of the white majority.

All the qualities that made King a revered figure in liberal circles are being reassessed in a time that sees how little headway the civil rights movement has made against white supremacy and structural racism. This re-reading often does not involve rejecting King as a false role model for struggle, but instead involves both articulating why dominant interpretations of King have functioned to suppress and domesticate resistance, as well as offering a new interpretation of nonviolence (Delmas 2018; Livingston 2020). The theme of this new direction is to question the idea that the civil in civil disobedience is supposed to circumscribe law breaking by understanding it as part of a strategy of persuasion.

Juliet Hooker revisits the civil rights-era civil disobedience tradition in light of, or rather under the glare of, unaddressed police violence against black people that suggests that, for many Americans, black lives do not matter. She questions the romanticization of nonviolence, which sees that the function and purpose of turning the other cheek was to activate white conscience through exemplary acts of sacrifice. "The common assumption that black sacrifice will induce shame among white citizens, which will in turn produce a re-orientation to racial justice, is thus predicated on a particular account of white psychology that fails to take the effects of racialized solidarity into account" (Hooker 2016: 460). Here Hooker takes an instrumental view and asks, first, if the sort of sacrifice connected to nonviolence is actually effective and, second, how could it possibility be considered fair or reasonable to ask black citizens to undertake such an asymmetrical sacrifice when they have been the "perpetual losers in US democracy" (Hooker 2016: 449). Others have revisited the civil rights era to suggest that King's (and Gandhi's) tactics were more realistic than has been thought and less reliant on an idealized idea of an appeal to moral consciences (Livingston 2020; Mantena 2012). Still others have suggested that the mythologizing of nonviolence is an ideological move intended to blunt the force of resistance (Delmas 2018).

One way to understand some of the new thinking about civil disobedience is to see it as a debate between understanding civil disobedience as a form of persuasion or as a form of coercion. For many, the pendulum has swung away from thinking about civil disobedience as primarily a way to persuade fellow citizens to take

notice of injustice. Civil disobedience is instead about disruption and cost (Hayward 2017). Things change not because the majority or those in power have a moment of epiphany and shame. Change happens in order to get things back to normal or to reassert some level of stability. Livingston calls this the "coercive turn" in civil disobedience theory and suggests that it coincides with the growing embrace of more realist views of politics and democracy (Livingston 2021). Rather than seeing civil disobedience as a symbolic expression of dissent, that is, as a form of communication, the coercive turn in theories sees civil disobedience as an exercise of disruption, that is, as a flexing of a power potential on the part of dissenters.

Embracing the coercive dimension of disobedience does not require one to reject the persuasion dimension altogether. Indeed, it often rests on questioning the sharp dichotomy between persuasion and coercion articulated in the ideal of the unforced force of the better argument. Coercive tactics can be used to force power holders to come to the table and so open the possibility of persuasion. Livingston notes King's tactics involved "learning to use the tools of coercion as tools of persuasion." For example, "the campaign of mass withdrawal from riding busses leveraged economic costs on bus companies, provoked violent disruption, and ultimately mobilized the coercive power of the federal government with the Supreme Court striking down segregation on city buses" (Livingston 2020: 860). The realist perspective leans toward forcing an outcome rather than forcing a conversation to happen. Here, "The purpose of direct action is to impose harm" (Livingston 2021: 261). But Livingston notes that realist logic also places significant limits on action. If the object is change (and not the expression of rage or the overthrow of the system), then consideration about how violent action might elicit backlash or entrenchment must be part of the calculation. And that calculation inevitably leads back to some idea of civility or self-limitation. Both realist logic, as well as deliberative logic, suggests that effective and normatively limited disobedience needs to find a middle position between disruption and civility: "Disobedience, particularly the disruptive kind championed by the coercive turn, escalates conflict. It deepens animosities, hardens identities, and triggers reactive counterforce. Civility, by contrast, entails respect,

keeping identities fluid, and limiting reaction by seeking understanding" (Livingston 2021: 267).

Conclusion

I opened this chapter by suggesting that there were several points of interesting comparison between democratic innovation and civil disobedience. But there are also some tensions. The radical democratic reading of civil disobedience has an anti-institutional dimension to it that sets it apart from other contestatory theories of democracy. With contestatory proceduralism as well as democratic pluralism, we saw a view of democracy in which citizens access and exercise "ruling" or popular control via multiple entry points. To be sure, many of these sites work against each other, as when majorities lean in one direction and protest leans in another. But the counterbalancing is exactly what the system is supposed to be doing. On these views, democratic innovations become part of the repertoire and one more point of access into the democratic system. Radical democrats privilege unstructured informal extra-institutional action over institutionalized action. Thus it is difficult to see how radical democratic theory could envision protest and citizens' assemblies as working together collaboratively or even being different but equally legitimate ways to exercise democratic agency. Erin Pineda worries, for example, that radical democracy focuses too much on the insurgent event and not enough on building the social movements that underpin and sustain direct action. She worries about "elevating protest, disobedience and demonstration – as a mode of expression, petition or disruption – as the hallmark of radicalism or privileged means of social change, severing it from less visible, longer-term processes that enable people to build and sustain power" (Çidam et al. 2020: 536).