



Virtue against sovereignty

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I

The modern political order is based upon a refusal of the founding of political order in virtue. That has to be the starting point for any consideration of the question of virtue in public life today. If one is a Kantian, a utilitarian, or an advocate of the ethics of sympathy, then it is possible to suggest an increased moralisation of a current political order seen as being inevitably about power and pragmatic purpose in the first place. But if one is any sort of virtue ethicist, in an antique, Patristic or mediaeval tradition, that is impossible.

For an ethics of virtue, this conception of the political, by marginalising the ethical, misconstrues at once the political, and also the ethical as having a centrally political dimension. This follows because the ethical is not, for this outlook, a kind of 'add on' to the normally human, but concerns specifically human purposes as such. These are acting in such a way as to bring about a good and noble flourishing, and to develop habits of persistence in such action. It is impossible to understand what a good flourishing is solely at the individual level, since man is a social and political animal and purpose must first be understood socially and politically, in a sense that includes the priorities of a religious community. To act ethically is therefore to aim towards a particular kind of community whose goodness is its justice. Justice consists in the appropriate distribution and proportioning of roles, tasks and rewards. And it is only with reference to political justice that the individual can fully discern what her own appropriate and so ethical role might be. Conversely, a political order not concerned to foster the living out of

such roles in good character is not simply an order lacking in virtue, it is, by that very token, also an order lacking in the quality of the *political* as such.

For this reason, a politics of virtue refuses the usual modern contrast of realism with idealism. They are not, at the most fundamental level in tension with each other, because only the genuinely ideal which is always a situated ideal, will work, while conversely that which cannot work is not truly an ideal, but an escapist fantasy. But what is then the consequence of such an observation for our assessment of our contemporary political order and the possibility of its increased ethicisation?

As already indicated, this order refuses the primacy of virtue for the primacy of power, will, comfort and convenience. Does that then mean that any hope to morally improve it is hopeless, as Alasdair Macintyre tends to imply? Is the project of a politics of virtue rather a revolutionary one? In one sense, the answer to that question has to be yes, if we mean not so much revolution as a thoroughgoing and fundamental transformation. This follows, because so long as a politics has refused its basis in classically understood virtue, it cannot, for the virtue ethicist be significantly moralised.

On the other hand, such a drastic verdict can covertly stress too one-sidedly the 'ideal' dimension of the 'ideal realism', the realism of objectively real forms and ideas, to which virtue ethics is inherently linked ever since Aristotle and Plato. For if 'virtuous' is as much a description of all human life as such, as it is a recommendation and prescription, then it follows that, while a society may deny the basis of politics in virtue, this is not just to debase itself, but also to tell itself a lie, and a lie even, to a degree about its own politics insofar as it remains vestigially a

politics at all. In other words, if the virtue approach is true, we can never quite depart from virtue as much as we think and to some degree theory must misdescribe practice, which can never be as fully modern as we imagine. For example, it may well be true that courts much more assume in their deliberations the exigency of distributive justice, than theoretically avowed positivisms, formalisms and theories of the basis of justice in subjective rights would seem to allow. In the face of this observation, the project of infusing public life with more virtue might be given a more reformist, besides a more drastically transformative cast. But it might then become a matter of discerning the most promising points of entry for future change. I will return to this point eventually.

II

For the moment, I want further to substantiate the idea that modern politics is a refusal of the basis of politics in virtue and for that reason of its basis in the ethical as such. In fact, I want to argue that the main lines of modern political theory and to a degree modern political practice, involve a reversion to barbarism, in contrast to the medieval gothic modification and development of the classical outlook.

This becomes most apparent if we examine the prime concept of modern politics, which is sovereignty. For many commentators, for example the legal theorist Martin Loughlin, this notion is a mark of modern sophistication of which the medievals were not quite capable. For sovereignty is taken to be a notion of authority at once resting in and yet over the whole political body and yet abstracted from any particular personal or even institutional site of the

exercise of such authority. On Loughlin's account, this means that Jean Bodin, the main modern instigator of sovereignty doctrine, failed adequately to distinguish it from absolutism, regarded as a medieval survival. Of course, to say this is to commit a scholarly howler, because absolutism is as modern as sovereignty, which is its twin, and was equally unknown to the Middle Ages. But Loughlin can commit this blunder because he is making an *a priori* assumption about the essential rationalism and objective abstraction of the modern perspective.

For just the same reason he also claims that sovereignty picks out for the first time the differentiated essence of the political as the abstract relationship of binding authority between government and people that is, beyond feudalism, at last distinguished from power relationships involving material property. Yet he immediately finds himself in some confusion when forced to concede how closely tied up the thinking about sovereignty and the thinking about property right is in a thinker like Thomas Hobbes and is once more forced to imply an insufficient development of a distinction already sufficiently there in germ. Yet once again and as I shall presently argue, it is just the other way round: it is rather modernity, not the Middle Ages, that tends to conflate entirely notions of ownership with notions of ruling.

In these respects, evidences of the barbaric at the outset of the modern appear, to a conventional establishment thinker like Loughlin, to be so counter-intuitive that they must be speedily glossed over. By the same token, he cannot even consider the possibility that the mark of the modern might not be its distinguishing of the specifically political from other social relationships, but rather, as Hannah Arendt contended, its suppression. For that would follow if politics as legitimate rule is only possible as the rule of virtue and if the prime purpose of ruling is the promotion of virtue. This paradigm immediately implies that there is no centre of rule,

nor even necessarily any civic or national circumference of rule. Legitimate rule is to be exercised by the practically wise, in whatever numbers and in whatever social position. That in turn implies that rule is fundamentally shared and distributed. Indeed, it further implies that to rule is to give the possibility of participation in rule, both as the government of others and of oneself. For this paradigm therefore, there is a certain continuity (however sometimes drastically qualified) between the rule of families, villages, other corporate bodies and the city itself. Rule is dispersed just because it is coterminous with the entire social body, just as virtue is taken to be coterminous with a fully human existence. At the centre of government itself, there has to be an 'aristocratic' sharing of rule to the degree that the valid rulers are equal in virtue.

From these assumed circumstances, the notion of 'mixed polity' that we find in Plato, Aristotle and Polybius and that were conventionally echoed through the Middle Ages and beyond, naturally arises. The architectonic role of the 'one' ruler at the top can never be avoided to the degree that a polity is like a single organism and must be unified both continuously and in an emergency. But this rule is generally to be shared with relative equals in virtue, save in the problematic case of an outstanding god-like persona whose emergence presents very grave problems, as discussed by Aristotle. Polities are normatively mediated by an aristocracy of 'the few' and this tends to render deliberation amongst the wise politically fundamental, rather than the location of a single indefeasible origin of power to which all must submit. Where virtue is more widespread then much greater democracy becomes valid, as it does equally if virtue more or less lacking, since the corruption of the many tends to temper the corruption of the elite. The ancients were of course not blind to the pure power-play element of politics, nor

even to its normal human prevalence, but they did not think that a just, and because just stable, order could be erected on the assumption of its normativity.

This, however, is exactly the modern and barbaric move. Sovereignty was offered, first by Bodin and later by Hobbes as a salve against endemic civic conflict and failure to agree about fundamental religious and moral norms. Hobbes erected this circumstance into a sceptical anthropology and denied that human beings can ever achieve fixity over their opinions and legitimate preferences without the exercise of an absolute authority – an opinion, shocking to relate, later (as Richard Tuck rightly starts to see) fully shared by Immanuel Kant, for whom the categorical imperative as such finally reduces to the imperative to obey the state just because we can never be quite sure of our own purity of motive in electing norms that may become the subject of universal and external moral legislation and so require this externality to be backed by decision and force. Sovereignty is here required not just as a salve against human tendencies to rivalry and conflict but also as a salve against an inherent human ignorance of the true and the good. Since we have no access to any absolute here and such an absolute may not even be available, we require a substitute absolute which is the absolute of the monopolisation of force. In the case of Hobbes, it is this monopoly alone which can now mediate to us the divine absolute in every respect as touching human social existence, including the public interpretation of scripture.

Ostensibly the doctrine of sovereignty, in despair of the rule of virtue, is the result of a purely rational consideration, purged of all feeling, which Hobbes in any case reduced to an amalgam of evidence and efficient impulse to motion. Yet in reality the doctrine of sovereignty was

entirely cobbled together from ancient and primitive elements and from a later Middle Ages already turned neo-primitive.

From the outset, Bodin declared that his novel sovereignty was also ancient Roman *majestas*. In this way he linked it with a certain supervenient, imperial claim to overriding glory and the capture of territory. It is true that Bodin did not, like Hobbes, see the sovereign as something 'artificial' standing over-against the people, and indeed curiously promoted a kind of pluralism of guild and corporate sharing in government which would seem to us to be the opposite of sovereignty-doctrine, just because he denied an Aristotelian breach between familial economic and public political authority. In this way, sovereignty is kept by him within a given and organic national boundary. Yet the same assimilation of the king to supreme paternity could also later endorse a spilling over this boundary, if all the ultimate right to decide has been alienated to him, rendering him equivalent to a lone individual, potentially able to roam over the world and constrained only by his own liberty.

In this respect Bodin adhered in part to a group of often Protestant late, Tacitean humanists, who tended to advocate a 'reason of state' beyond the constraints of virtue and who celebrated in a more unconstrained way the Roman imperial pursuit of glory. It was within this current, as with Alberico Gentili, an Italian Protestant professor of this university, that the Spanish New World ventures tended to be entirely justified, against the qualms of the Spanish second scholastics. Pre-emptive war was held, after Cicero, to be valid and war to enslave people simply on the grounds of their primitive or supposedly immoral character.

From this historical linkage one can suggest that, if the basis of sovereignty lies in an unconstrained source of power, that while on the one hand it is inherently linked with the newly autonomous modern state, on the other hand from the outset this was not a securely bounded state, unthreatening to its neighbours. On the contrary, it was an inherently proto-imperial state, almost immediately to become such, as with Spain, France and England in the early modern period.

It is with the thought of Hugo Grotius, historically wedged between Bodin and Hobbes that we see the full linkage of the national with the international and the individual with respect to sovereignty and dominion, as Richard Tuck has pointed out. For Grotius, in an unprecedented fashion, not just the state but even a trading company, in this case crucially the Dutch East India company can be thought of as entirely like an individual person. Thus he was able seamlessly to fuse Roman private, ferial and natural law with the *ius gentium*. In all these cases law concerns fundamentally the protection of property and property, whose ownership the Romans already tended to see as total, is defined by the right of first occupation. Here the wild and barbaric become primarily normative, because Grotius takes his first principles from thinking about the open sea, naturally free to passage, and supposedly virgin lands, free to be seized and farmed as they are supposedly not occupied by hunter-gatherers or else supposedly just 'gardened' by women. Political sovereignty on this model, involves an absolute ownership of people as well as terrain, constrained only, as for Bodin, by a partial refusal of oriental 'eminent domain' in terms of an unviolable respect for private property rights.

Since the basis of all legal and political normativity lies in occupation and since the public and the private person have been equated, the problematic co-absoluteness of sovereignty with

private right has to pertain. Just as Grotius in the Tacitean lineage justified the right to enslave through war and the right of any person to sell himself into slavery, so likewise his account of state authority hovers close to one of the enslavement of all subjects, qualified only by their indefeasible rights also to be masters on a smaller scale.

From all this one can see the proximity of not a minor but the major current of modern political thought, the current that gives us our normative 'liberalism', to a revived paganism, indeed to a revival of a later and debased Roman paganism, of the kind which Augustine denounced. To point this out is not to indulge in a meaningless and actually dangerous denunciation of all imperialism as such, but it is to indicate the frequent proximity of modern liberal nationalism to a particularly unpleasant mode of the imperial.

III

However, this neo-paganism is not the only aspect of modern political barbarity. The other aspect is a perverted Gothicism. If one reads Loughlin or the much more percipient Tuck, then one has the impression that sovereignty doctrine is the upshot of a sheerly rational consideration of how a state is constituted in the first place, as opposed to how it is governed, and in the case of Tuck a consideration with a bias to democracy, to the founding will of the people, even in the case of Bodin and the early Hobbes and even if the immediate alienation of popular to monarchic rule is both noted and recommended by them.

Here it is notable that one gets a very different picture if one reads the work of the French scholar Jean-François Courtine and notable also that the Anglo-Saxon scholars he cites are

Figgis, Wilks, Post, Ullmann and others from an older generation, rather than exponents of the current Cambridge school of political thought, whose historicism so oddly seems to exclude or downplay religion and theology. As Courtine stresses, one cannot ignore the archaeology of sovereignty doctrine. Notions of *majestas* imply height and remoteness that sometimes, as the Italian philosopher Giorgio Agamben has stressed, invoked notions of a divine cosmic monarch who reigns but does not rule and images of an empty throne, denoting a continuity of the Crown through time, beyond any personal occupancy. The thematic of the King's two bodies as famously discussed by Ernst Kantorowicz, his literal one and an undying mystical one was a variant of this *topos* in the Middle Ages, specifically invoked by Bodin, as Tuck ignores. For this reason the association of sovereignty with a royal absolutism more than with popular or constitutional rule was not accidental.

Nor was it a mere primitive survival insofar as it is the precisely the primitive, personal and material character of rule that is now foregrounded in the face of real material anarchy as over-against the greater abstract constitutional legacy of the Middle Ages. In other respects also it is the personal character of ruling that now gets more emphasised. There is first of all the circumstance, as underscored by John Neville Figgis, that royal absolutism was not something primarily asserted *within* a realm, where in reality, whether in James I's England or Louis XV's France, it was always constitutionally diluted, but asserted over-against the external power of the Pope of Rome.

It was first of all popes, as shown by Figgis and Wilks, who elaborated the ideas both of 'the state' and of 'sovereignty', which all commentators agree to be of co-birth and inseparable. The grades of *status*, according to Augustine of Ancona, require a supreme status of 'the one' at the

top, whose power must be unlimited if it is to prevail. In this way sovereignty doctrine emerged already in the Middle Ages within the Church, which became thereby the first 'state' as Figgis famously said. But already in that case this emergence involved a withering of ecclesiastical and so of Christian virtue, because, as the theologian Henri de Lubac pointed out, the Gelasian higher *auctoritas* of the Church which was largely moral and suasive got debased effectivity into the Gelasian *potestas*, the forceful coercion of the imperial and secular arm.

In posing their counter forceful power to imperial power the later medieval popes were inclined both further to secularise the latter in order to reduce its dignity and to raise the status of the non-imperial states which they nonetheless aspired themselves to command. A drastic resistance to that ambition explicitly started to involve a mimicry and appropriation of the Papal, besides, to a degree, the imperial claims, on the part of the Atlantic seaboard kingdoms. It is for this reason that Kingship started to assume a form which pervertedly blended the highest sacral claims with a greater monopoly of coercive force. This was surely to rewrite the religion of the cross in letters of crucifying command.

In this respect, any historiographical narrative focused on the beginnings of the modern state as secularising will tend to miss this crucial transfer of the sacral which alone gives to the modern sovereign state its final legitimacy and has later tended to be re-invoked, in often sinister forms, right up to our own time. This dimension coalesced from the outset with a second dimension of 'distorted gothic' order which has been frequently noted by a plethora of commentators, including Francis Oakley and Jean Bethke Elshtain. This is the implicit and sometimes explicit reference of sovereignty doctrine to the contrast between the absolute and ordained power of God, typical of the *via moderna*.

That theology of divine power impinged in two respects. First, it traced God's ordained order to his arbitrary will and so underwrote the idea that one can only know of this will through the sovereign monarchs he has ordained and what they happen to will in turn. Second with respect to an echoing on earth of the absolute and ordained power distinction in terms of the contrast between sovereignty which authorises a state and government which is its executive exercise and may take a mixed constitutional form as both Bodin and the early Hobbes of *De Cive* allow, despite the absolutist state foundation. The earthly distinction would seem also remotely to invoke the ancient pagan contrast of reigning and ruling and the medieval contrast of the latent power of the king's mystical body with the exercised power of his living one.

For these reasons it is impossible to follow Tuck in thinking that Bodin's sovereignty /government distinction concerns primarily a rational and even popular derivation of power in a suitably modern and proto-secular manner. Indeed, it is perhaps astonishing that he does not further ponder the genealogy of Hobbes' metaphor of 'the sleeping sovereign' which actually gives the title to his fine and probing book on this subject -- despite my hesitations concerning its thesis. Moreover, these more 'distorted gothic' aspects of the distinction fit better with what is more truly the specifically modern concern of Bodin, who significantly calls his discovery of the distinction a '*secret de police*'. This concern is not to distinguish sovereignty from government in order to safeguard the former (especially not in the mode of democracy), but rather to further permit the exercise of the latter as modern 'police'. Or in other words 'economy' or 'administration' in just the terms which Michel Foucault so famously foregrounded.

If there is one unqualified form of power, then in consequence a formal administrated order, controlling things mechanically and without virtue or participation in rule (despite the qualifying element of guild pluralism in Bodin) will now be possible in an attempt to stem the anarchy of France post the horrors Catholic *ligue*. What allows this rational machine to run smoothly is, paradoxically or not, a sheerly ancient and mystical foundation in mimicry of the late medieval Church. One can also note here that Bodin and his successors by promoting the 'economic' at once technicised and deperosnlaised the Chriistian 'pastoral rule' which had integrated household, economic affairs into the political order and *yet* by distinguishing the political from the economic reinstated in a new fashion the pagan corralling of the economic from the political arena. The Christian reversal whereby the political is for the sake of the economic is sustained, but the economic is now robbed of direct charitable care and returned to the pagan condition of the merely biological and functional, yet now *without* the pagan vision of the higher political life of participation in virtue, albeit for a male few, beyond this. Thus for this twisting of the Christian a paganism *far worse* than the original paganism that Christianity had saved and elevated is being promoted.

Tuck's attempt instead to idealise Bodin's novel distinction of the political from the economic can be further questioned in terms of the way in which he virtually ignores the point that in Bodin, Hobbes and still more later in his other hero Rousseau, political sovereignty is not *just* about constituting a state, but is equally about specific legislation which precedes and enables the executive acts. In this way, despite the possibility of a mixture and even a virtuous (though more likely a pragmatic) mixture at the level of executive government, in reality sovereignty theory is associated with much absolutism of legislation, usually grounded in divine right.

The final respect in which sovereignty doctrine is an outcome of a distorted gothic concerns its links to feudalism. As again, Figgis argued, feudalism is one source of modern contract theory. Throughout the Middle Ages there was of course a tension, besides a merging, between feudal and royal authority. Grotius is apprised of this tension when he argues that actually sovereignty can be compatible with feudal bonds. Although one might think that they tied the liege and so the ultimately the king too much to the vassal in terms of mutual obligation, as Grotius understands this obligation, the more one ascends the feudal pyramid, then the more an asymmetry ensues, until, with the sovereign power, his unilateral edict is required to ensure the enforceability of all lesser feudal obligations.

Such an analysis assumes first that the feudal tie is regarded as a formal and contractual one rather than one of reciprocal obligations to generous service, and concomitantly that, while people are tied together through property, actually a sharp separation of person and property is involved, denying any inseparable symbolic and ancestral link of *this* person with *this* land and any symbolic resonance of a piece of land as linked to a person's identity. It can be argued both that later so called 'feudalism' evolved in these ways beyond an early gift-exchange and symbolic model and also that the feudal relation was retrospectively construed in these terms by early modern lawyers.

In this sense it follows that modern sovereignty has elements of a more brutalised feudalism about it, in a way that may after all justify the soubriquet of 'feudalo-absolutism' used by Soviet historians to characterise the *ancient regime* in France. As we have already seen with Grotius, the political bond is in modern times both legalised and feudalised in the sense that *imperium* is assimilated to *dominium*, rule to ownership. This also means that legitimate rule is likewise

bastard-feudalised in the sense that it no longer a matter of the shared rule of citizen, turn by turn over each other through an exercise of virtue as described by Aristotle as defining the political as such and is instead now *much more* construed in personal, embodied terms, as the *figura* of 'Leviathan' on the frontispiece to the eponymous book illustrates.

Once more in this cases we have to do with a corrupted gothic. For canon law had invented the *persona ficta* of the corporation in order to acknowledge, on a specifically theological, Trinitarian, sacramental and episcopal model, that the populace is only united and present through its representation, while conversely the representative figure, paradigmatically the body of Christ which is the *corpus mysticum*, exists to serve and nurture each single individual. By comparison, the merely fictional and nominalist character of the Hobbesian *persona ficta* does nothing to dilute its terrible reality, but rather the inverse. The people remains but an anarchic scattered 'multitude' until united through its representation whose artifice is untrue and indeed 'Anti-Christian', as the name 'leviathan' implies (and Hobbes well knows) and yet with an untruth crucial to its allowance of a real concentration of force which has nothing to do with the nurture and everything to do with the control of Christian citizens, whose entire religion must now reduce to an eschatological expectation of the eventual breaking in of the real divine and Christological, but sheerly material and forceful order, shorn of all artifice. All this of course leaves scope for wondering with the late poet Geoffrey Hill, just what Hobbes final meaning really might be. The most crucial inventor of liberalism well knew at one level that he had invented as what he deemed to be a necessary simulacrum something horrific and even evil.

IV

We have seen, so far, the barbaric character of the modern sovereign state. But in substituting itself for a classical and medieval politics defined by the exercise of virtue, did it really establish a viable and autonomous sphere of the political? I now want to argue that it did not and that the current 'metacrisis' of the foundations of liberalism is in some ways a manifestation of the unravelling of its incoherent founding gestures and assumptions.

For a politics of virtue, the political is always already begun. Man is a political animal and therefore there is nothing at least ontologically prior to the political that is fully human. Politics assumes only its own practice which is an ongoing, handed down, traditional formation of virtue and the spatial reciprocity of mutual rule and assistance by citizens, however hierarchically qualified in terms of both pedagogic and architectonic processes, besides a scale of degree ensuant upon an ineliminable differences in the possession of talent and wisdom.

By comparison, the crucial problem for modern, liberal politics is that it must be founded as something artificial and so must be aporetically founded on a more original human nature supposedly without artifice, which Plato and Aristotle had no need to fantasise. This situation issues in two further specific aporias, both of them remarkably admitted by perhaps the most crucial and subtle of all liberal theorists, Jean-Jacques Rousseau.

First, there is the question of the transition from the supposed state of nature to that of a legal and political order. This is aporetic in that, as Rousseau points out, the good founding of a city upon a set of basic laws requires long political experience, whereas in this situation no experience exists whatsoever. To meet this problem Rousseau suggests, in terms which I think

should be taken literally, that founders like Lycurgus and Moses are truly 'sublime' and divinely inspired. The need for a *Deus ex Machina* is qualified by the suggestion that only a kind of proto-formed, relatively natural, wild and primitive people, unversed in luxury and so satisfied with a virtuous independence will be receptive to such inspired legislation. Whereas for Hobbes (as Tuck overlooks), vice and rivalry are natural, for Rousseau they are only consequent upon the civilising process that invites comparison and mimetic rivalry. Hence his conception of the social contract brings together a different, supposedly innocent because individualist barbarism with an alternatively modern sophistication that is, as it were, 'post-cultural' and concerned only to foster a rude independence for all, plus a specifically invoked Baconian cultivation of the more necessary crafts.

The problem with this conception is not only that its anthropology is false and fantasised, but also that it involves a divine intervention profoundly linked to Rousseau's Malebranchian and Leibnizian idea that sovereignty establishes a providential 'general' order that can be dualistically divided from specific actions and preferences, just as there is supposedly, in most Baroque metaphysics, a sharp division between God's general providence, and his exceptional, special one -- something at odds with a truly Thomistic understanding of the divine simplicity. Thus Rousseau thinks that once the political community has been founded in these general terms, it will be continuously easy for the office of the wise and detached 'legislator' to distil from the infinitesimal 'small differences' between peoples' preferences a more abstract order which will allow their compatibility. It is clear that this notion of a general will is neither one of majority will, nor of a universal allowance of the same rights, but something much more subtly abstract and in a bastardised fashion, Augustinian.

Yet it will not do, just because no such calculation could ever ensue without some sort of bias towards certain special interests and concerns rather than others. To judge which are valid and which not one requires the kind of debate about the human common end and substantive modes of flourishing that Rousseau does not really allow. Indeed Rousseau is specifically dubious as to ancient Athenian deliberation and thinks that it must always result in an 'oligarchy of orators'. For him true, direct democracy must take place spontaneously, literally without debate and any risk of mutual influence which always involves for him a dubious process of contaminating mimesis. Instead, any true human opinion is purely an individual one and it is from raw, wild humanity that the truth can be expected to emerge.

As both Tuck and Mark Goldie and others have shown, such a conception of popular rather than representative democracy was expressed by many of the early English whigs, by the Girondins during the French Revolution and more extremely by the Jacobins (who also wanted direct popular daily *governance*, inevitably issuing in terror), and by many more of the early American revolutionaries than we tend to think. This tension between what we might well call 'populism' and representationalism, which is resurfacing in our own day, tends to indicate that Rousseau's double appeal to the divine and to the primitive cannot adequately massage the *aporia*. For by natural right it might seem that the people should be sovereign. And yet, as Hobbes realised in his bastardisation of canon law principle, the people who should be represented are not really there at all to be represented until after that already have been, after they have pictured themselves to themselves as a unity, which must always involve some moment of arbitrary definition and probably imposition by some upon others. In this sense

representation can be justified pragmatically as being for the sake of order and for governance, but not democratically, since it will always involve some sort of usurpation. Yet without representation in some sense, even direct democracy is not really possible.

Representation can only make sense as a gothic, Christian addition to the antique repertoire, which permits an expansion and a pluralisation of order through the interaction of many free local and professional associations, in the process that the great 17th C Calvinist and creatively Aristotelian political theorist Johannes Althusius named a 'communicational symbiosis'. This is possible precisely because virtue as charity is now relatively democratised and so the popular represented and the aristocratically representing share a single teleological horizon of value. Without this shared horizon of jointly pursued and accepted virtuous ends, representation has to devolve either into mandation or to usurpation of the popular will, since without a shared cultural horizon representatives will always tend to follow their own independent views. The latter would be a denial of democracy, but the former is a false imagining that democracy can take place in what the moderate French revolutionary the Abbé Sièyes called 'the watches of the night', without daylight debate, with appeal only to a dubious spontaneity and an ignoring of the need always for detailed interpretation by those committed to a deeper pondering.

It follows from this consideration that representational governance is only valid and truly workable when it remains part of a mixed constitution, as has to some degree been the case in the United Kingdom, which has retained some more authentically gothic features than elsewhere, since it lacks any liberal notions of an alien founding of the political process which is seen as purely self-sustaining. Within this British tradition, as best understood by Edmund Burke, in order to avoid either mandation or usurpation the representatives must think of

themselves as being at once the tribunes of a somewhat virtuous people and at the same time as educators and encouragers of those people in virtue. At the same time, such a conception must not lead to a doctrine of parliamentary absolute sovereignty which is as bad as any other, as the American revolutionaries realised. In his remarkable pamphlet on the dissension between nobles and commons in Athens and Rome, Jonathan Swift accordingly sided with the Tories in favouring representation over populism and yet sided with the whigs in requiring that parliament cannot simply substitute for the popular voice as its unique organ. Any authentic, both classical and gothic notion of mixed governance requires all sorts of elements of federal and local representation and participation besides representation at the centre, along with a monarchic and prime ministerial encouragement of the most long term, unifying and at the opposite end of the scale exceptional considerations.

To the degree that the United Kingdom has been and continues to be too much a parliamentary absolutism, it is after all deficient in gothic, federal aspects that are much more evidenced on the Continent as encouraged by its Roman law tradition. Impossible as this seems in the current circumstances it is just for this reason that we require a conversation between different examples of classical and gothic survival in different places and it is just with respect to these diverse survivals that certain 'chinks' for the promotion of virtue open to view, as mentioned in my introduction.

The second *aporia* of the liberal order concerns the transition from an artificially constituted polity to the regular governance of this polity, the switch from sovereignty to government or administration. For one point of the distinction of the two is that the constituting must be general and objective and disinterested. By comparison, daily rule is always partial and

contested. So how is one to get from the one to the other, from the constituting to the governing process, especially if a unified sovereignty is indifferent as to whether actual government is monarchic, aristocratic, democratic or mixed? Again Rousseau saw this and pointed out how the English Parliament resolves this dilemma by the occasional device of forming a 'committee of the whole house', such that the governing body becomes, for a while a constituting one. But in reality what this meant, Rousseau considered, was that the legislators must become for a transitional moment the executors. Yet of course this tends to qualify at once their founding neutrality, if the those setting up the rules of the game are now the first players of that game itself. In this sense the Girondin must always toy with Jacobinism and any espoused democratic populism of foundation, whether of plebiscite, or of constitutional assembly, risks spilling over into the terroristic populism of everyday regulation and enforcement where anyone may become tomorrow the victim of a committee – pretty much like the way in which provincial universities in this country are now governed of course.

Down the other fork of the dilemma, executive government is not really rooted in a different, sovereign foundation at all, but is rather self-appointed and self-directed. In modern liberal terms this can only imply once more a usurping oligarchy. Only in ancient and medieval terms can a government without sovereign foundations be valid, because it is both virtuous and 'virtually' representative of the people by virtue of a shared horizon of custom and tradition tending to the common good, as Burke advocated.

I hope that this helps to illuminate why today, seemingly irresolvable tensions are arising between populist and representational models of democracy. The risk of the latter, without virtue, is of the rule of usurping technocratic elites. The risk of the former, without virtue, is of a

right-wing espoused, semi-fascistic atavism or else of an impossible left-wing Rousseauian programme of endlessly proliferating and unmediable rights of newly claimed 'diversities'.

V

In one third and final respect it was the brilliant Rousseau who glimpsed a further dilemma of the liberal order, as Richard Tuck has today emphasised. The more that the individual and the state are assimilated, then the more it would seem that, if the sovereign state is the answer to individual dissension whether generated by nature (Hobbes) or culture (Rousseau), then international government must be the answer to the dissensions of individuals writ large as states. Yet, as Tuck says, liberals seem on the whole adverse to this solution and attached to the nation state, as if in reality an original natural anarchy was what they most love and tend to project onto a collective level, as with the English love of their piratical modern foundations.

This attachment appears though to include Tuck himself who, in a very complex way seems to support Brexit as being, on the one hand, an induction of the British into a modern distinction of founding sovereignty from exercised government through the device of the referendum whose refusal of the EU now refounds us a properly defined modern state after all, rather than as a relic of gothic empire. On the other hand he sees Brexit as allowing us to revert to gothic parliamentary government which, as a continuous unfounded process, is singularly unlimited and makes no distinction between basic constitutional and ordinary occasional measures.

Yet if Tuck is truly supportive of the sovereignty of the people over parliament as *The Sleeping Sovereign* seems to indicate, then he cannot really, it would seem, uphold the unqualified

representative dominance of Parliament. What would rather seem to attract him is its absolutely sovereign aspect which *can* exist, as he tends to obscure, but as Grotius and later in the 17th C Samuel Pufendorf exemplify, without any clear distinction of the sovereign from the governing power. This distinction made by Bodin, is not absolutely crucial to sovereignty doctrine which more consists in the simple advocacy of a monopoly of enforceable power. Yet insofar as Tuck wishes himself to uphold Bodin's distinction, then it would seem that he desires for the future a more continuous element of direct populist intervention, perhaps by electronic means. But as I have just shown, if one does uphold Bodin's distinction, either this risks after all constant usurpation by elitist and technocratic forces, or if populism spills over into the business of government itself one risks Jacobin or Maoists or maybe even Corbynite terror.

What is more, it is unclear, as indicated much earlier in this paper, just why sovereignty should be confined within the bounds of a single nation state. If sovereignty is the self-founding of a state by a people, then what causes the people to be this people within these bounds in the first place? Part of the answer to this besides language and custom is that law and the political order are always already there, defining a people through their self-representation. But then the long term ancestral question arises in this particular context, as to who are the English? And who the British? And what is the most relevant political unit or us – is it England or Britain or perhaps rather Europe?

Once more and finally in conclusion, modern liberal politics, because it thinks normatively only in terms of the individual and of power and will, is forced to choose between the autonomous nation state as the lone anarchic self-choosing natural individual, or rather to end the state of international anarchy which is the real war of all against all, as Rousseau realised against

Hobbes, through some sort of system of world government. Nationalism or globalisation, like populism versus representation is the aporetic dilemma by which we now find ourselves transfixed, as a politics without virtue unravels before our eyes.

But *for* a politics of virtue this alternative in international relations is a false one. Just as local and civic ruling is a matter of sharing in virtue and of reciprocity of rule, turn by turn, so also, without the sovereignty doctrine we do not have to choose between the absolutely sovereign nation state on the one hand and an increasingly absolute global body or bodies on the other. Instead with Burke once again and with that Catholic tradition that sovereignty doctrine from Bodin to the Genevan Rousseau is *primarily* shaped to rebut, we can recognise the primacy of shared culture across borders and the way in which this permits all sorts of benignly tangled legal and other corporate and inter-regional cooperations to spring up.

Clearly, in the case of the EU it possesses sovereignty to some degree since it can override the decisions of national courts and cannot be thought of, as Martine Loughlin thinks of it, as a mere executor of the will of sovereign nations and nor yet can it be thought of as their merely pooled sovereignty. Rather, a highly complex sharing of sovereignty at regional, national, international and cross-border corporate and educational and scientific levels becomes possible if one thinks of political and social and economic activity as a collaboration towards continuously debated and commonly pursued aims of human flourishing.

Perhaps, to mention another chink of opportunity for the insertion of virtue, that was what the often Christian founders of the EEC and developers of the EU had in mind, in trying to qualify either a capitalist and bureaucratic globalisation process on the one hand, or national

autonomy often equally prey to these forces on the other. Clearly this virtuous goal has been considerably lost sight of, but may it soon be recovered rather than abandoned.