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How to cite this publication

Please cite the final published version:

Wolkenstein, F. (2019). Agents of popular sovereignty. *Political Theory*, 47(3), 338-362.
<https://doi.org/10.1177/0090591718786232>

Publication metadata

Title:	Agents of popular sovereignty
Author(s):	Fabio Wolkenstein
Journal:	<i>Political Theory</i> , 47(3), 338-362
DOI/Link:	https://doi.org/10.1177/0090591718786232
Document version:	Accepted manuscript (post-print)

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Agents Of Popular Sovereignty

Popular sovereignty is the doctrine upon which modern democracy is built. Typically it is interpreted to mean “that the ultimate wielders of political power are the citizens themselves and that the institutions of the state are the agencies through which they act.”ⁱ Contemporary democratic theory offers two different models of how citizens might achieve that, both of which have a long pedigree in the history of political thought. The first contends that popular sovereignty properly conceived can be exercised only directly and by the people as a whole, as in a nation-wide (constitutional) referendum.ⁱⁱ I call this the *radical approach to popular sovereignty*. The second perspective conceives the exercise of popular sovereignty in indirect terms, that is, as exercised not directly by the people but by authorised representatives who seek to generate a general will in parliamentary procedures.ⁱⁱⁱ I call this the *indirect approach to popular sovereignty*.

In this paper, I begin by arguing that neither of these approaches to popular sovereignty are adequate from the point of view of citizens’ agency. The radical approach to popular sovereignty is susceptible to becoming a mere mechanism of acclamation that ordinarily excludes citizens from determining the issues on which they are to make a sovereign decision. The indirect approach, on the other hand, makes the exercise of agency on the part of the citizenry essentially superfluous, since it insists on a strict division of democratic labour between representatives and represented that leaves little room for citizens’ active engagement in political life. To be sure, this may not in and of itself be problematic so long as representative institutions reliably facilitate a close linkage between citizens and their political representatives. But that is arguably not the case in the democracies of our age. Since traditional representative mechanisms are widely failing, what we need is a more robust mechanism for connecting citizens to government.

The paper then goes on to reclaim an alternative account of popular sovereignty that appears better placed to facilitate the effective exercise of citizens’ agency than the two standard approaches. The figure to whom it looks for inspiration is Hans Kelsen, who is widely known for dismissing the

notion of popular sovereignty as a “political fiction” that only serves to legitimise the autonomy of parliament, but in fact developed a distinctive theory of popular sovereignty centred on inclusive and participatory political parties.^{iv} Kelsen maintained that parties that permit citizens to channel their interests and values into comprehensive political agendas and shape collective decisions accordingly provide the agent able to connect the real people we can expect to find in existing democracies to the ideal conception of the sovereign people who actively govern themselves. I take these ideas as my primary guide.

The model of popular sovereignty through parties is importantly unlike the two conventional approaches. In sharp contrast to the radical approach, it does not decouple the people from deciding the terms of their own empowerment, and it leaves space for different groups within the citizenry to exercise collective agency in a consequential fashion. And contrary to the indirect approach, it sees citizens not only as selectors of political representatives whose task it is to manufacture a general will, but as capable of continuously influencing the behaviour of representatives and the larger agenda upon which they act through participatory partisan associations. In so doing, the party-centred account of popular sovereignty significantly strengthens the role of citizens in the process of lawmaking, transforming them from passive recipients of others’ decisions into agents of popular sovereignty.

What does it mean to say that citizens “act”?

As noted at the outset of the paper, the essence of popular sovereignty is that citizens are the ultimate wielders of political power, and that the institutions of the state are the agencies through which they act. To fully understand the relative merits of the party-based account of popular sovereignty that I want to introduce in this paper vis-à-vis the two standard accounts of popular sovereignty (the *radical* and the *indirect* one), we must first get a fix on what it means in a democracy for citizens to “act” to begin with. For only when we have a clear idea of what acting entails can we evaluate different

conceptions of popular sovereignty according to their ability to allow citizens to act “through the institutions of the state” in a meaningful fashion.

At a general level, the exercise of agency requires a “me” that directs the causal order of behavioural events and is capable of critically reflecting on them. As one author puts it, “[w]hat makes us agents rather than mere subjects of behaviour (...) is our perceived capacity to interpose ourselves into the course of events in such a way that the behavioural outcome is traceable directly to us.”^v This talk of “behavioural outcomes” typically refers to the actions of individuals, but it can plausibly be “extrapolated” to democratic life. Accordingly, to say that citizens act through the institutions of the state means that they perceive the general laws and policies as traceable to themselves.^{vi}

The perception desideratum: In order for general laws and policies to be considered an expression of citizens’ agency, citizens must perceive the content of those laws and policies as traceable to themselves.

That citizens perceive certain political outcomes as traceable to themselves is necessary for them to act through the institutions of the state in a way that establishes their status as the ultimate wielders of political power, but is not sufficient. For citizens to plausibly be called “the ultimate wielders of political power,” there must also exist some actual causal connection between their attitudes or preferences and general laws and policies. However modest the influence of a single person may be, she must be able to make a contribution to those decisions.

The causality desideratum: In order for general laws and policies to be considered an expression of citizens’ agency, citizens must be capable of causally contributing to decisions shaping those laws and policies.

To say that citizens must have causal impact on laws and policies invites the familiar objection that democracy, realised in accordance with the principle of popular sovereignty, actually condemns

citizens to “causal impotence.”^{vii} For insofar as political power is distributed equally, and each vote (or voice) counts the same, no individual has a causal effect on the collective decision. But this objection misconceives the type of causality underlying democratic action. To exercise causal influence in a democracy is not to single-handedly decide an election, say, as implied by the objection from causal impotence, but to contribute to a political decision jointly together with others. The type of causal influence at work may be characterised as what has been called “contributory causation”^{viii} (or “redundant causation” — *redundant* because an agent can cause something to happen even if, were she not to perform the relevant action, another agent could take her place^{ix}). This type of causation is difficult to understand in terms of the standard counterfactual analysis of causality, but there is nothing unfamiliar about it. As one scholar illustrates the point: “When a large majority of persons votes to humiliate a fellow citizen, is it plausible for the victim to view this decision [as one where nobody had any causal effect]? If you were the target of such abuse, would you accept the claim that none of the millions of citizens who voted to grossly mistreat you had any ‘causal effect’?”^x Clearly it would be implausible to deny any causal connection here.

To better understand why both the perception and the causality desideratum must be satisfied, consider the following cases. Imagine first a state run by a charismatic leader who claims to speak for the people as a whole. That leader has the last word about the meaning of the general will and stands above democratic procedures and representative institutions. Suppose further that citizens *perceive* the leader’s decisions to be genuinely “theirs,” for instance because they identify with the leader, as in Ernesto Laclau’s model of populist democracy.^{xi} If so, the perception desideratum is easily satisfied. Yet, since citizens are unable to causally influence the decisions of the leader (because the leader stands above democratic procedures and representative institutions), we would be hard pressed to attribute to them the status of ultimate wielders of political power (and hence to call the state in question a properly *democratic* state).^{xii} It seems uncontroversial that the satisfaction of the perception desideratum is, by itself, insufficient.

Imagine next a polity where a causal link between citizens’ preferences and political decisions appears to exist, but citizens regard themselves as disempowered. One example of such a polity is the

European Union. Though there is ample evidence that governments usually decide in line with domestic public opinion when acting at the EU level, being as they are constrained by domestic electoral incentives (this is the causal mechanism), citizens tend to perceive themselves as having scant influence on EU policy.^{xiii} One's initial inclination will be to say that the widespread perception of powerlessness poses a very real problem for the democratic credentials of that polity. This is so because our perceived capacity to interpose ourselves into the course of events is just as central to the notion of agency as the *de facto* capacity to shape outcomes, as established from the third-person perspective of an observer (say, a researcher). Again, it seems clear that both desiderata must be satisfied.

How can the citizens' agency obtain tangible expression in a democratic polity, such that they may plausibly be characterised as the ultimate wielders of political power? To what institutions and practices should one look? Democratic theory offers two different responses to this question, one that emphasises direct participation by the people as a whole (the *radical* view of popular sovereignty), and one that emphasises the necessity of a division of labour between citizens and political representatives (the *indirect* view of popular sovereignty). It is to these views that we will now turn.

Radical Popular Sovereignty

A radical answer to the question of how the people can effectively become the ultimately wielders of political power and act through the institutions of the state has emerged around the time of the French Revolution. It contends that the citizenry as a whole — “the people” — must assert its will *directly*. Two hypotheses are at work. Firstly, democracy and representation are incompatible. Since the general will is inalienable and indivisible, the exercise of collective agency must be direct in order for the people to be sovereign. (Rousseau is the patron saint of this view.^{xiv}) The second hypothesis, closely related to the first, is that the people properly conceived form a single collective agent with a unified

will. Rousseau's judgment is famous: "When particular interests begin to make themselves felt and sectional societies begin to exert an influence (...) the common interest becomes corrupted."^{xv}

The remnants of this view can still be traced in contemporary accounts of radical popular sovereignty. While very few of these accounts question that representation and democracy are compatible, they all assume that the people are only *truly* sovereign when they act directly and in a more or less unified fashion.^{xvi} Even if direct participation may not be the only way in which norms, laws, and policies can be made responsive to citizens' values and preferences, popular sovereignty makes itself visible only in moments when the citizenry of a given political community acts as one. Such "people events"^{xvii} or episodes of "higher lawmaking"^{xviii} are rare, to be sure; in the pluralist societies of our age, the people only seldom come together as one to assert their sovereign will. Yet such instances of sovereignty do occur, and it is to these moments that we must look in order to discover the true will of the people.

Does the radical view of popular sovereignty satisfy the two agency desiderata set out above? Instinctively one thinks that the answer must be yes. For it seems that there is simply no more effective way for citizens to determine the direction of the state than via a direct-democratic vote. It enables citizens to causally determine decisions (thus satisfying the causality desideratum); and it certainly also makes them perceive the decision as directly traceable to themselves, not least because there appear to be no intermediary bodies like parties or parliament standing between the "popular will" and the decision (thus satisfying the perception desideratum). It is for this reason that, "[a]sked to say what the exercise of popular sovereignty means, many citizens of modern democracies would point to referendums and other practices that are usually summed up under the heading of 'direct democracy.'^{xix}

But this argument is deceptive. It overlooks that referenda are not typically designed by the people themselves, but by political elites who tend to have axes to grind. This need not undermine the radical account's capacity to satisfy the perception desideratum: citizens may still perceive the outcome to be genuinely "theirs." But it raises doubts about its capacity to satisfy the causality desideratum. To see this, consider that the political question that is referred to the people for a direct

decision in a plebiscite is hardly ever actually formulated by citizens, but by officials. As Carl Schmitt correctly observed, ordinarily “[t]he people (...) cannot pose a question, but can only answer with yes or no to a question placed before them.”^{xx} Without means by way of which the people can determine the issues over which a choice is being made, however, their capacity to causally shape decisions is severely circumscribed. The people are granted direct causal impact on a political decision, yes, but they have little impact on the nature and content of the decision, which is predetermined by elites.^{xxi} Moreover, political elites usually also possess the resources to influence public debate so as to shape the final outcome of the referendum. Especially when there is widespread agreement among elites as to the most desirable outcome of the referendum, dissenting voices are bound to get rather little publicity. Schmitt for these reasons went so far as to suggest that, in a plebiscite, the causality of democratic decision-making is actually inverted, in the sense that referenda are but a mechanism of acclamation: decisions are de facto made by political elites, while the people are relegated to head-nodding or -shaking.^{xxii}

To be sure, referenda are not always or necessarily cementing the power of elites. There may certainly be cases of direct-democratic decision making where citizens are granted more control over the issues that are being decided (or where the public debate prior to the referendum is genuinely inclusive). But on the whole, it seems indisputably the case under contemporary political conditions that the power to decide on the substantive content of referenda rests not with the citizens but with their government. Indeed, it is difficult to think of referenda in which that has not been the case. It is therefore also no surprise that, if we inquire into the reasons for why certain political questions are made the subject of a nationwide majority vote, or why the exact question over which a choice is being made is formulated as it is, typically we find that, “because the people wanted a referendum on that particular question” is an insufficient explanation. The much-discussed Brexit referendum in 2016, for example, was initially suggested by the British Conservative Party in order to appease the Eurosceptic wing of the party and to avoid a flight of voters to the populist right-wing United Kingdom Independence Party (UKIP). Even if the British public has consistently been the most Eurosceptic electorate in the EU ever since the UK joined in 1973, it would therefore be misleading to say that an

in-out referendum has been straightforwardly “demanded by the British people.” Similar things may be said about the Scottish Independence referendum in 2014, another major recent “people event.” This had its origins not in the desire for the people to decide fundamental constitutional matters, but in the Labour Party’s rather clumsy response to the rise of Scottish nationalism, and the hope that a referendum victory for the Labour-backed pro-UK side would make it go away.

The conclusion to take from examining these arguments is that the radical approach to popular sovereignty does not provide an appropriate way of enabling citizens to act “act through the institutions of the state.” Though it appears *prima facie* empowering, on closer inspection it compromises citizens’ capacity to act by excluding the people from deciding on the terms of their empowerment.

Indirect Popular Sovereignty

The second approach to popular sovereignty that is found in democratic theory conceives popular sovereignty in *indirect* terms, appealing to the necessary division of labour between the people and their political representatives. A highly influential figure in the history of this approach was the moderate, anti-Jacobin clergyman and writer Emmanuel Joseph Sieyès, who broke decisively with the understanding of popular sovereignty endorsed by Rousseau and his Jacobin followers, criticising in particular its aversion to representation.^{xxiii} As István Hont points out, Sieyès “saw representation as a fundamental fact of modern society, as something indelibly inscribed in the division of labour and commercial sociability, and political representation as a permanent necessity in any large and populous country in which it was virtually impossible to unite the voice of the people directly.”^{xxiv}

On this perspective, elections are essentially a means for creating two peoples: a group of citizens who make the laws for all and a group of citizens who obey those laws — but this reallocation of direct decision-making power does not (*pace* advocates of the radical approach) undermine the sovereignty of the people. It only changes the mechanism through which the people can make their

collective agency felt: rather than relying on direct rule, the “generation of a collective national will” is made “dependent upon the unity of a national representative body (...) whose representatives [have] constituted power (...) to act in the name of the people.”^{xxv} Thus the people exercise agency by way of authorising in elections representatives to act on their behalf.

This conception of representative government remains highly influential in contemporary democratic theory, which tends to take for granted both the inevitability of a division of democratic labour between citizens and their representatives and the legitimacy of that division of labour.^{xxvi} By making the divide between citizens and their elected representatives a constitutive feature of democratic government, then, the indirect approach to popular sovereignty “puts an end to the sovereign as an ontological collective entity that proclaims its will (...) and makes room for sovereignty as an inherently plural unifying process”^{xxvii} that involves giving collective shape to myriad individual interests, preferences, and conceptions of the common good.

Facilitating that process are political parties. Parties mediate between individual principles and projects and the good of the whole, in that they “refine and generalize particularist appeals by casting them in terms appropriate to public reason,”^{xxviii} and make these appeals the basis of general laws and norms that are created in parliamentary compromises engineered by the representatives of different (competing) parties.^{xxix} This allows parties to master the apparent paradox that representatives are both supposed to make laws that all citizens must obey *and* be responsive to the values and demands of those who elected them, such that the latter can perceive the content of laws and norms to be traceable to themselves.

Does the indirect account of popular sovereignty satisfy the two agency desiderata? The answer is that it can, but only under particular circumstances. Firstly, the indirect account can satisfy the causality desideratum if (1) citizens possess the right to an equal share in determining the political will via elections, with the incentive for representatives to get re-elected ensuring that representatives and parties are reasonably attentive to citizens’ concerns and expectations. This requirement seems not especially arduous. After all, its demands are no more exacting than those of Schumpeterian minimalist democracy. But, secondly, there are two further, more demanding requirements that must be met in

order for the perception desideratum to be satisfied. Since, as one prominent theorist of representative democracy puts it, the indirect view makes “apathy, not agency, the main quality of popular sovereignty” and “citizens’ participation during the period between elections superfluous,”^{xxx} it requires (2) that the people are in principle content with non-participation between elections, and (3) that representatives continually maintain an informal sympathetic relation with their constituents, in the sense of an “*interpretative or artificially created similarity*” that instils in the latter the sense that they are closely connected to decision-making.^{xxxi}

Can these requirements be met in practice? Whether requirement (1) can be met in contemporary democracies is difficult to answer. Political scientists disagree over the extent to which real-world parties and governments are responsive to citizens, and about the main causal factors involved. Evidence tends to point in different directions, depending on the methods used to study responsiveness and the countries studied.^{xxxii} An answer to the question of whether requirements (2) and (3) can be met seems more readily available.

Let us begin with requirement (2), that which is concerned with citizens’ willingness to accept non-participation between elections. That this requirement can be met is, *prima facie*, doubtful. Research indicates that across established democracies, the decline of class cleavages and the concomitant rise of post-materialist and self-expression values set in motion a transformation of citizens’ participatory demands that rendered people dissatisfied with institutionalised forms of collective action that leave little or no room for individual voice. While in the age of class conflict and mass parties many citizens readily accepted non-participation between elections, not least because they felt adequately represented by parties that reliably stood up for their group interests, nowadays citizens tend to prefer different, more individualised forms of participation.^{xxxiii} The indirect model offers however little in the way of channels for more active, or different forms of, participation and thus risks leaving citizens feeling disconnected from the institutions through which they are supposed to act.

That representatives are capable of maintaining an informal sympathetic relation with their constituents (3) in contemporary democracies seems equally unlikely. The just-mentioned decline of class cleavages and rise of self-expression values has triggered a crisis of representation and

accountability that is marked by a growing disconnect between representatives and represented. Schmitter describes the cause of that crisis in terms of the “generalized loosening of the links between interests and organizations,” understood as the unravelling of the interests that emerged out of the grand cleavages of religion and class and were mediated by Christian, social democratic and communist parties.^{xxxiv} What has arisen in their place is a seemingly unaccountable and technocratic sort of politics whose main agents often appear more concerned with holding onto office and minimising the costs of losing it than with promoting principled agendas that are responsive to citizens’ political aspirations and expectations. A powerful indication of this is that, in the face of declining memberships and weak partisan alignments, many established political parties have begun increasingly to rely on the state’s bureaucratic apparatus (courts, regulatory agencies, independent commissions) for their power and legitimacy.^{xxxv} This has instilled in many citizens the belief that officials and representatives form an undifferentiated political class that rules in unrepresentative ways.^{xxxvi} This belief, reinforced by populist parties and movements that fervently oppose established politics, undercuts citizens’ sense of being able to exercise political agency.

In sum, there is a very real sense in which the indirect account of popular sovereignty falls short of satisfying the two agency desiderata that must be satisfied if citizens are to meaningfully act through the institutions of the state. Its heavy reliance on mechanisms of representation, and the accompanying circumscription of popular participation, is bound to weaken citizens’ perception of being able to exercise collective political agency, especially in this age of individualisation and the decay of traditional political conflict lines.

Popular Sovereignty Through Parties

An alternative account of popular sovereignty is available, one that is better placed to satisfy the two agency desiderata specified above. This starts from the presumption that the traditional indirect

account of popular sovereignty is insufficient in terms of enabling citizens to act through the institutions of the state since it mainly regards them as passive recipients of others' decisions. Reacting to this, it stresses the central importance of internally democratic political parties for achieving popular self-rule, arguing that such parties can connect citizens to government in a more direct and continuous fashion. Like the two more familiar accounts of popular sovereignty, this is first and foremost a *normative* model. But unlike them, it has rarely been realised in practice. As we shall see, however, it provides a powerful prescriptive account of how citizens can engage with collective political agency so as to rule themselves democratically.

The basic elements of this complementary model of popular sovereignty are found in the democratic theory of Hans Kelsen. Kelsen may at first appear like an unlikely point of reference. After all, he is notorious for dismissing the notion of popular sovereignty as a “political fiction” whose sole purpose it is to legitimise the division of labour between citizens and their representatives.^{xxxvii} Furthermore, although he accepted the argument that a division of labour between political elites and citizens was inevitable in modern societies, he was far from unsympathetic to the Rousseauvian trope that democracy and representation are essentially incompatible.^{xxxviii} Finally, Kelsen denied that there exists such a thing as “the people” to begin with. The people, he insisted, are not a collective of citizens sharing a common history and purpose, but a purely artificial entity, “a system of individual human acts regulated by the state legal order.”^{xxxix} That is, the people are that group of individuals that is granted political rights by a particular state — but no more than that, contrary to ordinary folk imagination.

However, in spite of his deep-seated scepticism towards many of democracy's more central concepts, Kelsen did not rule out altogether that citizens could govern themselves in a sovereign fashion. This appears in the 1929 edition of Kelsen's treatise *On the Essence and Value of Democracy* — especially the section addressing the concept of the people, where a focus on the relationship between the “ideal conception of the people” and the “real people” is intended to unveil the possibilities of popular sovereignty in modern democracies. Kelsen there suggests that “[a]mong those who in fact exercise their political rights by participating in government, one would have to differentiate between

the mindless masses who follow the lead of others and those few who — in accordance with the idea of democracy — decisively influence the governmental process based on independent judgment.”^{xl} The latter, he continues, are those who come closest to instantiating the ideal of a self-governing people in the real world: the people as active shapers of the general will — “a ruling, and not a ruled, People.”^{xli}

Where may those self-governing people be found in real-world democracies? Kelsen’s answer is that they are found in particular political associations, namely in political parties, which bring “like-minded individuals together in order to secure them actual influence in shaping public affairs.”^{xlii} His argument is as follows. If the people are to rule actively, then a form of association that promotes and supports the ongoing pursuit of particular political goals is essential. Parties provide such an association, supplying citizens with an institutional channel through which their principles and goals can be connected to the relevant legislative and executive mechanisms. It is this unique quality of parties that makes them the main enablers of popular-self rule. Kelsen follows this thought to its logical conclusion: “the ‘people’ does not actually exist as a viable political force prior to its organisation into parties”; it is only the “integration of isolated individuals into political parties” that “unleashes social forces that can be reasonably referred to as the ‘People.’”^{xliii} Popular self-rule thus “rests on political parties, whose importance grows the more the democratic principle is realized in practice.”^{xliv}

So Kelsen uses the concept of the people in two different senses. The people in the first sense is meant to refer to all those who a given state grants political rights. One may call this the “legally defined demos.” The people in the second sense then are those members of the people in the first sense who actively exercise their political rights, and exercise them not only by voting in elections but by participating in political parties. It is this second conception of the people that I am interested in here. It is Kelsen’s central conceptual innovation and sharply distinguishes his account of popular sovereignty from alternative accounts.

The people in this second sense is a group of individuals who actively participate in democratic self-rule but do not form a *single* collective agent, as in the radical account of popular sovereignty. Nor does this concept of the people however describe a loose collection of individual citizens who

stand in no particular relationship to each other and whose collective will only emerges through the mediation of elected representatives, as in the indirect account of popular sovereignty. Rather, Kelsen's self-governing people is a people that divides into *several different collective agents* who associate as partisans so as to influence political decisions in accordance with their principles and interests. Now it is of course true that parties also figure in the indirect account of popular sovereignty. But note that while indirect accounts operationalise parties as "mere" representation-enablers run by professional politicians, the Kelsenian model conceives parties as *participatory organisations* that directly implicate citizens into their internal decision procedures, thus giving them the opportunity to become active shapers of common rules.

That Kelsen favoured internally democratic parties is a feature of his democratic theory that easily goes unnoticed, for he does not elaborate much on it. I interpret Kelsen to think that parties have to be internally democratic first and foremost because it is difficult to see how citizens could otherwise effectively use parties as channels for collectively exercising influence in the way he describes. But there is further support for this interpretation, namely in Kelsen's reference to Robert Michels' classic study *Political Parties* (which demonstrated that the 'mass parties of integration' that became the dominant democratic forces throughout Europe in the early twentieth century were democratic only in appearance, but oligarchic in reality).^{xlv} Kelsen expressly agrees with Michels that "even parties pursuing a radically democratic programme" often organise the "processes of collective will-formation that occur within [them]" in "an explicitly aristocratic-autocratic" fashion, and takes issue with this in that he approvingly notes that, "anchoring political parties in the constitution provides the possibility for democratising the aspects of the governmental process that occur within the parties' sphere of influence."^{xlvi} (I will return to this point later.)

Against this interpretation, it might be argued that Kelsen's project is not primarily or necessarily to make political parties more open and receptive to ordinary party members, but to strengthen the control of party machineries over their elected party officials. This alternative interpretation is supported by several passages in chapter four of *On the Essence and Value of Democracy*, where Kelsen proposes that parties (i) should be able to recall their elected representatives,

and (ii) that representatives should be forced to resign once they decide to leave the party.^{xlvi} These mechanisms are intended to prevent individual candidates from using parties as a taxi to get into representative institutions and then change their party affiliation based on their own personal contingent ambitions and interests, thus disfiguring the role that parties ought to play in parliamentary democracies.^{xlvi} Yet, however much Kelsen was concerned about these dangers, it remains the case that his understanding of popular sovereignty would make little sense without an inclusive and participatory conception of political parties. As I said, it is hard to see how citizens could use parties as vehicles for influencing laws and policies in the way Kelsen describes if they are not organised democratically. Ultimately, there may well be tensions between a participatory understanding of parties and the ambition to make representatives more accountable through such institutional mechanisms as recall. To deny altogether that Kelsen envisioned parties that allow for internal democratic participation strikes me as implausible, though.

As I conceive it, then, the party-based account of popular sovereignty expands the indirect account in important ways. Similar to the indirect account, which regards parliament as the site in which the general will is engineered, it ascribes to parliamentary deliberation and negotiation the function of mediating between the collective wills of the multiple different “peoples” who associate in parties. By *mediating* is meant the achievement of a compromise between competing partisan demands, a “synthesis” resulting from the “dialectical process within parliament.”^{xli} But in contrast to the indirect account of popular sovereignty, the democratic and participatory organisation of parties that the party-based account prescribes permits citizens to assume an active role in that process, contributing to the outcome of parliamentary procedures in a continuous and coordinated fashion. Citizens who associate in parties assume this active role (for example) insofar as they jointly shape the platform of their party, or deliberate with elected officials over a particular parliamentary negotiation strategy. In this way, they can influence the nature and the scope of the compromises pursued, as well as specify positions on which no compromise is acceptable.

Because of its distinctive participatory features, the party-based account of popular sovereignty is well-placed to satisfy the two agency desiderata specified earlier. That it can satisfy the causality

desideratum should be evident. The fact that those who engage in parties can actively shape the agenda the party ought to pursue, and so bring their principles and projects to bear on decisions taken in parliament, creates a tight causal link between citizens' concerns and collective decisions.¹ It creates a causal link that is much tighter than in the two traditional models of popular sovereignty. In the indirect account of popular sovereignty, citizens can only be said to "cause" the actions of officials insofar as the latter have a strong incentive to be re-elected (or at least be popular), and correspondingly are responsive to public opinion — but citizens cannot contribute much to more general political agendas. In the radical account, citizens produce a mandate by way of taking a direct decision on a single political issue; but as we saw, they are not involved in determining what this issue exactly involves and what courses of action must be pursued after the collective decision has been made.

The party-based account of popular sovereignty also satisfies the perception desideratum. It does so because, when parties are thoroughly democratic and permit their members to shape the party's more general direction, those committed to the party and its wider political project will likely perceive its decisions (including negotiated bargains and agreements) as "theirs." Of course, internal disagreements over, say, the correct interpretation of core principles, or the most appropriate electoral strategy, are likely to persist even within the most democratically organised parties;^{li} and so there will also always be party members who refuse to support their party's decisions without reservations or protest. But so long as dissenting voices can weigh in and be heard, the notion that it is possible to link one's action to collective decisions retains credibility, sustaining party members' belief in the worth of engaging with political agency so as to exercise collective self-rule.

Notice that I have argued that internally democratic parties may increase the likelihood that *those committed to a given party and its larger political project* will perceive the party's decisions as "theirs." This formulation deliberately includes sympathetic non-members, who do not participate actively in partisan politics. Why? One straightforward reason is that internal party democracy can help parties reconnect with their constituencies, realigning their programmatic outlook with many principally sympathetic non-members who were alienated by the growing rift between representatives and represented that has resulted from the unraveling of the links between interests and organisations

that has occurred across established democracies over the last four decades or so (see above).^{lii} In short, parties that permit those in whose name they claim to speak to determine their political agenda may also significantly increase the extent to which non-members perceive the party's decisions as traceable to themselves.

It is worth underlining in this connection that genuinely participatory and democratic parties also cater especially well to citizens' shifting participatory preferences. Recall that the decline of class conflict and the rise of self-expression values has triggered a transformation of participatory demands: citizens in Western societies have grown increasingly dissatisfied with limiting their political participation to voting every couple of years, and they tend to want to have a say on a more regular basis. By providing a channel for meaningful and consequential political participation beyond periodical elections, internally democratic parties could go a long way in satisfying these demands, drawing in the renewed involvement of traditional constituencies and mobilising new ones (and thus also address one of the key causes of the present crisis of party democracy).^{liii} This capacity to elicit participation constitutes a significant advantage of the party-based approach to popular sovereignty relative to the indirect approach. It powerfully counteracts the risk of making citizens feel disconnected from political agency that the latter inevitably brings with it.

What role, one may wonder, does the account of popular sovereignty defended here ascribe to citizens who choose not to participate in party politics? Are those who Kelsen unflatteringly calls the "mindless masses who follow the lead of others" bound to be dominated by those who "decisively influence the governmental process"? The answer to this question is two-pronged and part of it has already been anticipated. On the one hand, there is of course a power differential between those who do participate in parties and those who don't. That those who actively seek to harness institutional power have a greater impact on collective decisions is ultimately inescapable in democratic politics. On the other hand, however, the aforementioned capacity of the party-based approach to reconnect parties with their constituencies, together with the additional participatory incentives it engenders, can offset these differences in de facto influence. To the extent that those who participate in parties ensure that the party's agenda and decisions track the preferences of those in whose name it claims to speak,

internally democratic and participatory parties can therefore tether Kelsen's "mindless masses" closer to the democratic process, situating them in the circumstances of agency.

So, to sum up, the party-based account of popular sovereignty sees the people as consisting of several collective agents — political parties — who seek to influence the general will in accordance with their interests and normative commitments. The account acknowledges that a distribution of democratic labour is inevitable in complex modern societies; it accepts the principle of representation and emphasises the ultimate importance of parliamentary deliberation aimed at compromise. What renders it unique is that it operationalises parties as participatory associations through which citizens can exercise influence on collective decisions in a more continuous and immediate fashion. This not only makes for a much stronger causal link between citizens' preferences and collective decisions compared with the familiar radical and indirect accounts of popular sovereignty. It also delivers on the important concern that the meaningful exercise of political agency requires that citizens perceive outcomes as connected to their intentional attitudes.

Concluding Thoughts On Popular Sovereignty Through Parties

One obvious worry concerning the argument presented above is that it is excessively sanguine about the potential of contemporary parties to adopt democratic and participatory institutional designs. Making parties internally democratic in practice requires the consent, or at least acquiescence, of partisan elites, and given that they are likely to try to hold on to power it is difficult to see how the vision of popular sovereignty through parties could become a reality. Does the party-based account of popular sovereignty provide a prescriptive model that is blind toward the role of power within parties? Is it, therefore, simply unrealistic?

As we saw, Kelsen's own response to this challenge was to argue for "anchoring political parties in the constitution."^{liv} In this way, he thought, "the amorphous structure of the parties," due to

which “the political processes that occur within them take on an explicitly aristocratic-autocratic character,” could be reshaped into a manifestly democratic one, counteracting those “inner workings of the party” that undercut “democratic self-determination.”^{lv} Promising though this proposal might have sounded in 1929, when Kelsen wrote these lines, none of the several waves of party constitutionalisation that have occurred throughout Europe since the end of World War II have palpably strengthened internal party democracy. Quite the opposite has been the case. As scholars of party law have documented, the constitutional codification of parties has often been strategically promoted by the parties themselves in order to “provide for their own collective survival,” rather than to advance democratic organisational reforms.^{lvi} That is to say, parties have pushed for enshrining their democratic importance in constitutions so as to legitimise their existence in the face of declining memberships and growing public dissatisfaction with party politics. This, together with their increasing ability to access public money for the purpose of funding their organisations, has made parties less dependent on their members’ activism and participation, diminishing incentives for internal democratisation.^{lvii}

In fairness to Kelsen, he could not have possibly foreseen these developments. But it seems safe to say now that his suggestion of anchoring parties in the constitution is not a fruitful direction. A more promising approach for promoting intra-party democracy would be to experiment with different intra-party participatory institutions which are designed in such a way as to be sensitive to citizens’ changing participatory demands. Exploring how exactly such participatory channels might look would take us too far from the contents of the present paper; but if what I have said above about the changing structure of civic and political engagement is correct, then it seems that they must allow for more individual self-expression and debate. In other words, parties must allow citizens to participate in their internal decision making as individuals who are not only committed to a particular political project but also willing to contribute with ideas of their own or challenge the party leadership.^{lviii} Participatory institutions that achieve this could go a long way in helping to realise the party-based account of popular sovereignty.

This returns us to the starting point of this final section: the resistance of party elites to internal reforms. To be sure, this is a major obstacle to the democratisation of parties, and insofar as parties have established effective ways of minimising the costs of losing office it will be hard to overcome. However, we must resist thinking about these obstacles in a deterministic fashion, assuming that the status quo of partisan associations is unchangeable. Importantly, deterministic thinking is not only implausible when it comes to parties; it is also intellectually hazardous, in that it easily leads one to deny the possibility of shaping and designing institutions in accordance with political ideals, and so to be seduced by the false promises of radical solutions that might lead to outcomes that differ from, perhaps even contradict, those which one has initially favoured. The biography of Robert Michels, the great scholar of intra-party democracy, should serve as a warning example: frustrated by his deterministic belief that parties cannot be internally democratic (Michels famously spoke of an “iron law of oligarchy” in this connection), and that an emancipatory mass politics can therefore take no democratic shape, he eventually sought refuge in Mussolini’s fascism.^{lix}

Note that adopting an anti-determinist stance does not imply having to renounce one’s critical assessment of contemporary parties. One can retain the view that party elites are self-interested and power-seeking while accepting that, at critical moments at least, they can adjust their preferences and make consequential choices than run counter to our most pessimistic expectations. This has in fact been a long-standing objection to disenchanted accounts of party organisation (like Michels’s) which see oligarchy and elite domination as inevitable: they overlook very real possibilities for organisational innovation and renewal.^{lx}

It is not without irony that Kelsen presented his theory of democracy as a *realist* theory that gets the empirical analysis of how political parties work right.^{lxi} Today, one is bound to be accused of nostalgia or utopianism if one defends the normative and empirical significance of parties for the exercise of popular sovereignty, and the view that internally democratic parties can help citizens establish their status as ultimate wielders of political power in a democracy seems even more susceptible to criticism of this sort. However, there is at least one point to be made about the argument of this paper that might resonate even among today’s most hard-nosed realists. If it is true, as I have

argued, that parties are strong thanks to party control over state resources, and thus perhaps more consolidated than ever before in their ability to influence government and the structuring of legislative chambers, it seems odd to deny that the ability of citizens to act through the institutions of the state is closely bound up with their ability to shape the decisions political parties make. And if we can agree on that, then there can also be little disagreement about the plausibility of a model of popular sovereignty that puts internally democratic parties front and centre.

Notes

ⁱ Allen Buchanan, "Political Legitimacy and Democracy," *Ethics* 112 (2002): 689-719, at p. 708.

ⁱⁱ Bruce Ackerman, *We the People: Foundations* (Cambridge, MA: Harvard University Press, 1991); Bruce Ackerman, *We the People: Transformations* (Cambridge, MA: Harvard University Press 1998); Margaret Canovan, *The People* (Cambridge: Polity 2005); cf. also Paulina Ochoa Espejo, *The Time of Popular Sovereignty* (University Park, PA: Penn State University Press, 2011); Richard Tuck, *The Sleeping Sovereign* (Cambridge: Cambridge University Press, 2016). Note that the radical approach to popular sovereignty is not synonymous with the much broader notion of "direct democracy." While the latter is typically thought to involve all sorts of more or less unmediated decision-making mechanisms that may be implemented at different levels in the political system, the former emphasises the participation of the people *as a whole* in a direct decision (usually on matters to do with the constitution).

ⁱⁱⁱ Jürgen Habermas, "Popular Sovereignty as Procedure," in *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* (Cambridge: Polity, 1996), 463-490; Philip Pettit, *On the People's Terms* (Cambridge: Cambridge University Press, 2012); Nadia Urbinati, *Representative Democracy: Principles and Genealogy* (Chicago, IL: University of Chicago Press, 2006); Nadia Urbinati, "Representative Democracy and Its Critics," in *The Future of Representative Democracy*, eds. Sonia Alonso, John Keane and Wolfgang Merkel (Cambridge: Cambridge University Press, 2011): 23-49.

^{iv} Hans Kelsen, *The Essence and Value of Democracy*, eds. Nadia Urbinati and Carlo Invernizzi Accetti (Lanham, MD: Rowman & Littlefield, [1929] 2013).

^v J. David Velleman, *The Possibility of Practical Reason* (Oxford: Oxford University Press): 128.

^{vi} This idea is as old as the idea of democracy, but it has re-appeared in recent philosophical work building on a metaphysics of group agency, a notion broadly modelled on individual agency. E.g. Christian List and Mathias Koenig-Archibugi, "Can There Be A Global Demos? An Agency-Based Approach," *Philosophy and Public Affairs* 38, no. 1 (2010): 76-110, at 89. For a more traditional view of the demos as a group agent, see David Miller, "Democracy's Domain," *Philosophy and Public Affairs* 37, no. 3 (2009): 201-228, at 208-209.

^{vii} Adam Przeworski, *Democracy and the Limits of Self-Government* (Cambridge: Cambridge University Press, 2010): 110.

^{viii} Eric Beerbohm, *In Our Name: The Ethics of Democracy* (Princeton, NJ: Princeton University Press, 2011): 67-72.

^{ix} Richard Tuck, *Free Riding* (Cambridge, MA: Harvard University Press, 2008).

^x Beerbohm, *In Our Name*, 68.

^{xi} Ernesto Laclau, *On Populist Reason* (London: Verso, 2005).

^{xii} Maria Paula Saffon and Nadia Urbinati, "Procedural Democracy, the Bulwark of Equal Liberty," *Political Theory* 41, no. 3 (2013): 441-481.

^{xiii} See e.g. Sara Hagemann, Sara B. Hobolt and Christopher Wratil, "Government Responsiveness in the European Union: Evidence From Council Voting," *Comparative Political Studies* 50, vol. 4 (2017): 850-876. None of this is to suggest, of course, that the institutional design of the EU is sufficiently democratic.

^{xiv} Jean-Jacques Rousseau, *The Social Contract* (New York, NY: Penguin [1762] 1968).

^{xv} Rousseau, *Social Contract*, 99.

^{xvi} To pick one prominent example, Jeffrey Green argues that "what really allows one to hear the 'voice of the people' is always a direct vote by the whole people": *The Eyes of the People: Democracy in the Age of Spectatorship* (Oxford: Oxford University Press 2010): 8. Also see Ackerman, *We the People: Foundations*; Ackerman, *We the People: Transformations*; Canovan, *The People*, chap. 5; Ochoa Espejo, *The Time of Popular Sovereignty*; Tuck, *The Sleeping Sovereign*.

^{xvii} Ochoa Espejo, *The Time of Popular Sovereignty*.

^{xviii} Ackerman, *We the People: Foundations*.

^{xix} Canovan, *The People*, 108. Cf. also Bernard Manin, *The Principles of Representative Government* (Cambridge: Cambridge University Press, 1997).

^{xx} Carl Schmitt, *Legality and Legitimacy* (Durham, NC: Duke University Press, [1932] 2004): 89.

^{xxi} Some scholars have suggested that this is indeed an "inevitable" consequence of plebiscites, so for example Thomas Christiano (*The Constitution of Equality*, Oxford: Oxford University Press, 2007: 105). For an insightful empirical account of how the powerful skew referenda outcomes, see Elisabeth R. Gerber, *The Populist Paradox: Interest Group Influence and the Promise of Direct Legislation* (Princeton, NJ: Princeton University Press, 1999).

- ^{xxii} His conclusion was that plebiscites thus belong in an authoritarian state, rather than in a democracy. Schmitt, *Legality and Legitimacy*, 90.
- ^{xxiii} Urbinati, *Representative Democracy*, ch. 4.
- ^{xxiv} István Hont, “The permanent crisis of a divided mankind: Nation state and nationalism in historical perspective,” *Political Studies* 42, no. s1 (2004): 166-231, at 198.
- ^{xxv} Duncan Kelly, “Popular sovereignty as state theory in the nineteenth century,” in *Popular Sovereignty in Historical Perspective*, eds. Richard Bourke and Quentin Skinner (Cambridge: Cambridge University Press, 2016): 270-295, at 276.
- ^{xxvi} See, e.g., Christiano, *The Constitution of Equality*; Jürgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* (Cambridge: Polity, 1996); Urbinati, *Representative Democracy*.
- ^{xxvii} Urbinati, “Representative Democracy and its Critics,” 45.
- ^{xxviii} Russell Muirhead and Nancy Rosenblum, “Political Liberalism vs. ‘The Great Game of Politics’: The Politics of Political Liberalism,” *Perspectives on Politics* 4, no. 1 (2006): 99-108, at 104.
- ^{xxix} Manin, *Principles of Representative Government*, 212-213.
- ^{xxx} Urbinati, “Representative Democracy and its Critics,” 25.
- ^{xxxi} *Ibid.*, 44.
- ^{xxxii} For a comprehensive overview of the ambiguities of the vast responsiveness literature, see Christopher H. Achen and Larry Bartels, *Democracy for Realists: Why Elections Do Not Produce Responsive Government* (Princeton, NJ: Princeton University Press, 2016). For an influential recent study that shows that parties are, by and large, responsive to citizens, see Russell J. Dalton, David M. Farrell, and Ian McAllister, *Political Parties and Democratic Linkage: How Parties Organize Democracy* (Oxford: Oxford University Press, 2011).
- ^{xxxiii} One indication of this is the veritable explosion of new forms of unconventional political participation, from the emergence of new social movements and transnational advocacy networks that is sometimes referred to as the “rise of global civil society.” For an overview treatment of the problem, see Carlo Invernizzi-Accetti and Fabio Wolkenstein, “The Crisis of Party Democracy, Cognitive Mobilization, and the Case for Making Parties More Deliberative,” *American Political Science Review* 111, no. 1 (2017): 97-109, esp. 99-100.
- ^{xxxiv} Philippe C. Schmitter, “The Changing Politics of Organized Interests,” *West European Politics* 31, no. 1-2 (2008): 195-210, at 208.
- ^{xxxv} Katz and Mair note that, across established democracies, there has since the 1980s been an increase in the use of “public money to fund party organizations and the parties in parliament”; a proliferation of “party laws, which had often accompanied the introduction of state subventions”; and parties generally started to enjoy ever-greater “access to the state machinery” as “a source of patronage and support.” Richard Katz and Peter Mair, “The Cartel Party Thesis: A Restatement,” *Perspectives on Politics* 7, no. 4 (2009): 753-766, at p. 755. On this point, also see Peter Mair, *Ruling the Void* (London: Verso, 2013); Piero Ignazi, *Party and Democracy: The Uneven Road to Party Legitimacy* (Oxford: Oxford University Press, 2017).
- ^{xxxvi} Mair, *Ruling the Void*.
- ^{xxxvii} Kelsen argues that traditional theories of popular sovereignty serve a “political purpose,” namely “making those [citizens] who are (...) excluded from lawmaking believe that they still determine the will of the state, if only by being represented by parliament. To the extent that [those theories of popular sovereignty] succeed, they justify the power (*Machtstellung*) of parliament.” This passage is found in: Hans Kelsen, *Allgemeine Staatslehre*, in *Verteidigung der Demokratie*, eds. Matthias Jestaedt and Oliver Lepsius (Tübingen: Mohr Siebeck [1925] 2006), § 43 D.
- ^{xxxviii} Kelsen, *Essence and Value*, 58-59; cf. also Urbinati, “Representative Democracy and its Critics,” 39-40.
- ^{xxxix} Kelsen, *Essence and Value*, 36.
- ^{xl} *Ibid.*, 38.
- ^{xli} *Ibid.*
- ^{xlii} *Ibid.*
- ^{xliii} *Ibid.*, 40.
- ^{xliv} *Ibid.*, 38.
- ^{xl} Robert Michels, *Zur Soziologie des Parteiwesens in der modernen Demokratie* (Stuttgart: Kröner, [1911] 1989).
- ^{xlvi} Kelsen, *Essence and Value*, 41.
- ^{xlvi} *Ibid.*, 60-61.
- ^{xlvi} At one point Kelsen also suggests that, to ensure that parties are accountable to their electors, representatives must be legally obliged to execute the will of the represented, and the fulfilment of the representative’s obligation must be legally guaranteed through recall. This legal (and highly restrictive) notion of representation

he calls the “true relationship of representation,” contrasting the latter favourable with the “fictional” political conception of representation, according to which the representative is bound to act in accordance with the electors’ will *only* by voluntary commitment. Kelsen, *Allgemeine Staatslehre* § 43; Kelsen, *Essence and Value*, 58-59.

^{xlix} Ibid., 70.

ⁱ For an analysis of how this works in practice, see Robin T. Pettitt, “The ‘how’ of election manifestos in the British Labour Party: A source of ongoing controversy,” *Party Politics* (forthcoming).

^{li} For an empirical account of these processes, see Fabio Wolkenstein, “Intra-Party Democracy Beyond Aggregation,” *Party Politics* (forthcoming).

^{lii} On this point, see the comprehensive study of party reforms by Anika Gauja (*Party Reforms: The Causes, Challenges, and Consequences of Organizational Change*, Oxford: Oxford University Press, 2017).

^{liii} This thesis is elaborated for example in Invernizzi-Accetti and Wolkenstein, “The Crisis of Party Democracy.” There, it is also suggested that intra-party democracy must be structured around deliberative procedures in order to conform to citizens’ current preferences concerning political participation. Given space constraints, I will bracket the question of appropriate institutional design here.

^{liv} Kelsen, *Essence and Value*, 41.

^{lv} Ibid., 41.

^{lvi} Ingrid van Biezen, “Constitutionalizing Party Democracy: The Constitutive Codification of Political Parties in Post-war Europe,” *British Journal of Political Science* 42 (2012): 187-212, at p. 211.

^{lvii} Katz and Mair, “The Cartel Party Thesis.”

^{lviii} Cf. recent scholarship on intra-party democracy, e.g. Gauja, *Party Reform*; Fabio Wolkenstein, “A Deliberative Model of Intra-Party Democracy” *Journal of Political Philosophy* 24 (2016): 297-320.

^{lix} See the biographical preface in Michels, *Zur Soziologie des Parteiwesens*.

^{lx} Angelo Panebianco, *Political Parties: Organization and Power* (Cambridge: Cambridge University Press, 1988): 17.

^{lxi} Kelsen, *Essence and Value*, 39.