

ABSTRACT

Title of Document: ON POPULAR SOVEREIGNTY
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Directed By: Professor Christopher W. Morris, Department of
Philosophy

Popular sovereignty is a frequently used concept in contemporary politics. Many states, governments, or rulers claim to base their rule on popular sovereignty. Politicians use this concept often in their rhetoric. When people go to polls to cast their votes or demonstrate in the streets, they think they are exercising popular sovereignty. Popular sovereignty seems to be a well-recognized idea. However, in spite of its popularity, popular sovereignty often appears as an ambiguous notion. Could it be a myth or a fiction without much substance? Is it used only in political rhetoric, but has little objective reality? In his paper “The Very Idea of Popular Sovereignty: ‘We the People’ Reconsidered,” Christopher Morris does express skepticism about the possibility of attributing sovereignty to “the People”.

If democracy is understood as the rule by the People and for the People, then popular sovereignty is the foundation or essence of democracy. This implies that to understand and justify democracy, we have to understand and justify popular sovereignty.

If we cannot understand or justify popular sovereignty, then democracy would be problematic or impossible. Since democracy is increasingly deemed to be a universal value, clarifying and exploring its fundamental questions is not only unavoidable, but also important. An exact and thorough explication of the notion of popular sovereignty is therefore necessary. A skeptical view about popular sovereignty such as Morris's also needs to be reconsidered.

Therefore, I aim to both construct and defend a theory of popular sovereignty. While providing an exact and thorough explication of popular sovereignty, I will also argue against skepticism about popular sovereignty. Specifically, there are three primary objectives in my theory: to clarify and reshape the notion of popular sovereignty; to discuss issues in realizing popular sovereignty; to justify the People's right to sovereignty; and explore the need for popular sovereignty. The general points I want to make in my theory are: the People in any state ought to be the sovereign; popular sovereignty can not only be understood, but can also be exercised and realized.

ON POPULAR SOVEREIGNTY

By

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Dissertation submitted to the Faculty of the Graduate School of the
University of Maryland, College Park, in partial fulfillment
of the requirements for the degree of
Doctor of Philosophy
2009

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Acknowledgements

I would like to express my deepest appreciation to Dr. Christopher Morris for the great help and advice I received in writing this dissertation. As my dissertation advisor and mentor, he has been very patient and supportive in assisting me at every stage of the dissertation writing process. It is a pleasure to have worked with him. I would also like to thank my readers: Dr. David Crocker, Dr. Andrew Levine, Dr. Judith Lichtenberg, and Dr. Joe Oppenheimer, for their generous and helpful comments and criticism. A great debt is due to my dearest friends both in Taiwan and in Maryland. I could not have come this far without their long-time support and encouragement. I am grateful to my parents, who have always been very supportive and believed in me. A special debt is to Allen Greenberg, who has been a great friend and proofreader.

Table of Contents

Acknowledgements	ii
Table of Contents	iii
Chapter 1: Introduction	1
Chapter 2: Sovereignty	7
2.1 Classical Sovereignty	8
2.2 Sovereignty Today	14
2.3 Whose Sovereignty?	27
2.4 Objective Existence of Sovereignty	32
2.5 Why Sovereignty?	36
Chapter 3: The People	45
3.1 People, the People, and the Sovereign People	46
3.2 Collection and Collectivity	53
3.3 Membership	67
Chapter 4: Popular Sovereignty Reconsidered	72
4.1 Making Sense of Popular Sovereignty	73
4.2 Part and Whole	78
4.3 Can Popular Sovereignty be Exercised and Realized?	83
Institutions	87
Civic Education	95
Chapter 5: In Defense of Popular Sovereignty	104
5.1 Why “Popular” Sovereignty?	105
5.2 Why “Popular Sovereignty”?	112
5.3 Majoritarianism	119
Chapter 6: Conclusion	128
Bibliography	134
Articles from Wikipedia	138
Websites	138

Chapter 1: Introduction

Popular sovereignty is a frequently used concept in contemporary politics. Many states, governments, or rulers claim to base their rule on popular sovereignty. Politicians use this concept often in their rhetoric. When people go to polls to cast their votes or go on street to demonstrate, they think they are exercising popular sovereignty. Popular sovereignty seems to be a well-recognized idea. However, in spite of its popularity, we actually do not know much about this notion. On the one hand, we seem to know that the People should be the master of a state and are supposed to vote in elections or referendums. On the other hand, we may also be concerned about our limited power as voters. We often feel that after votes are cast, we do not have much ability or power to influence or intervene in governance or public affairs. We also complain about problems such as manipulation, corruption, lack of transparency in government, and inadequate checks and balances, etc., all of which seem to be obstacles to popular sovereignty. Therefore, we wonder in addition to being a voter, what else we can do to make ourselves sovereign. We may even question whether popular sovereignty is merely a fiction, a myth, or a slogan without much substance or reality.

If democracy is understood as the rule by the People and for the People, then popular sovereignty is the foundation or essence of democracy. This implies that to understand and justify democracy, we have to understand and justify popular sovereignty, and that if we cannot understand or justify popular sovereignty, democracy would be

problematic or impossible. Since democracy is increasingly deemed to be a universal value, clarifying and exploring its fundamental questions is not only unavoidable, but also important. An exact and thorough explication of the notion of popular sovereignty is therefore necessary. I think that a satisfactory explication of popular sovereignty should answer the following questions: What is sovereignty? Who are the People, and what constitutes “the People”? Can we make sense of popular sovereignty? How is it possible for the People to be the sovereign? Can popular sovereignty be exercised and realized? Do the People have a right to be the sovereign? And, do we need popular sovereignty? If we fail to answer any of these questions or cannot provide at least acceptable answers to them, then democracy would be questioned.

In the literature on popular sovereignty, an exact and thorough explication of popular sovereignty is rarely provided. Social contract theorists in modern times such as John Locke and Jean-Jacques Rousseau have provided us with insightful thoughts,¹ but their theories are not comprehensive enough, and I actually do not favor the contractarian approach for theorizing popular sovereignty. I think that popular sovereignty can be explicated simply in a naturalistic way, which means, without hypothetical premise, we can still construct a normative theory for popular sovereignty based on analyses of empirical facts.² As for contemporary political theories, there are more about democracy than about popular sovereignty. Some of them do express the idea of popular sovereignty,

¹ John Locke, *Two Treatises of Government* (Student Edition), ed. Peter Laslett (Cambridge: Cambridge University Press, 1988 [1690]). Jean-Jacques Rousseau, *The Social Contract*, trans. Maurice Cranston (Harmondsworth, Eng.: Penguin Books, 1968 [1762]).

² I cannot say much about my criticism of the contractarian approach in this dissertation, though I would bring it up in a few places in the dissertation. There are points needed to be developed.

though the term “popular sovereignty” is not used, but it is rare to see a thorough analysis of popular sovereignty. Recently, Christopher Morris wrote a paper reconsidering the notion of popular sovereignty,³ but I do not agree with the way he analyzes the notion and his skepticism about popular sovereignty. This skepticism is what I want to argue against in my dissertation. Margaret Canovan also has a book focusing on “the People” and popular sovereignty,⁴ but except for more thoroughly pointing out the complexity of these concepts, she does not provide much constructive responses to relevant difficulties.

Morris’s skepticism about the possibility of attributing sovereignty to “the People” is mainly based on his analysis of the modern notion of sovereignty. He characterizes the modern “sovereignty” as “the highest, final, and supreme political and legal authority (and power) within the territorially defined domain of a system of direct rule.”⁵ Given this characterization, he argues that it is hard to see how this notion of sovereignty can be attributed to “the People”, and therefore popular sovereignty is an implausible notion. Morris provides some reasons. First, it is hard to imagine how the People’s rule can be direct, and it is hard to see how the People could be a source of law or legal authority, for “[l]aw in modern states is determined by legislatures and courts, and only occasionally through direct popular consultation.”⁶ Second, aggregation of the “general will” would create some difficulty.⁷ Third, it is hard to identify “the People”.⁸ I think that these reasons may not strike down popular sovereignty right away. For example, it is true that

³ Christopher W. Morris, “The Very Idea of Popular Sovereignty: ‘We the People’ Reconsidered,,” *Social Philosophy and Policy* 17/1 (2000), pp. 1-26.

⁴ Margaret Canovan, *The People* (Cambridge, UK: Polity Press, 2005).

⁵ Morris, “The Very Idea of Popular Sovereignty: ‘We the People’ Reconsidered,,” p. 5.

⁶ *Ibid.*, p. 8.

⁷ *Ibid.*, p. 8.

⁸ *Ibid.*, p. 9.

the People cannot rule directly. Mostly, they can only rule indirectly. However, they may still be the sovereign and “rule” ultimately in some way. Perhaps, we should not stick to the modern notion of sovereignty to understand popular sovereignty. Also, although it is not entirely clear who can be included as members of the People, there is at least a group of people called citizens who are the basic members of the People and can make the discussion of popular sovereignty possible. Morris seems to give up the notion of popular sovereignty too quickly. When avoiding the notion of sovereignty and continuing to talk about associated claims or ideas about popular sovereignty, Morris also questions the idea of activist or participatory governance, for in large contemporary societies, it is hard to realize this ideal. I am not so pessimistic about the participatory ideal, because I think that whether participatory ideal is realizable would depend on how institutions are designed. As for other problems Morris mentions, such as oppression caused by majority rule and the difficulty of generating agreement among people, I think that they all have room for further discussion. Moreover, I think that the People in any state do have a right to hold sovereignty and be the sovereign. Morris does not talk about this right, but I think it important. Popular sovereignty as the fundamental idea of democracy is important and should not be dismissed so quickly. More effort should be put to clarify and defend this idea.

Therefore, I aim to both construct and defend a theory of popular sovereignty. While providing an exact and thorough explication of popular sovereignty, I will also argue against skepticism about popular sovereignty. Specifically, there are three primary objectives in my theory: to clarify and reshape the notion of popular sovereignty; to

discuss issues in realizing popular sovereignty; to justify the People's right to sovereignty; and explore the need for popular sovereignty. The general points I want to make in my theory are: the People in any state ought to be the sovereign; popular sovereignty can not only be understood, but also be exercised and realized. Below is the structure of my discussion.

What is popular sovereignty? The first part of my dissertation will tackle this question. Literally, popular sovereignty means sovereignty vested in the People. Since it consists of two concepts – “sovereignty” and “the People”, it is equally important to analyze both concepts if we want to understand popular sovereignty. I will analyze the concept of sovereignty first in Chapter 2, for “popular sovereignty” falls into the bigger concept of sovereignty. There, my main question is: what is sovereignty in our world? I will define, characterize, and clarify a contemporary notion of sovereignty, and discuss the existence of sovereignty in our current world. My analysis of sovereignty will be descriptive. Then, I will analyze the concept of the People in Chapter 3, where I will answer two questions: who are the People, and what constitutes “the People”? I will explore the nature of “the People”, and try to find the People's external and internal boundaries. After analyzing the concepts of sovereignty and the People, I will show how these two concepts can be combined coherently to form the notion of popular sovereignty. That is, I will show how the People can hold sovereignty and be the sovereign in a state. Besides, the exercise and realization of popular sovereignty have been a concern for many who would like to embrace popular sovereignty. I will show that popular sovereignty is both exercisable and realizable, and there are actually concrete ways for its exercise and realization. Both the

understanding and realization of popular sovereignty will be discussed in Chapter 4. Finally, a satisfactory theory of popular sovereignty cannot be done without explaining why the People ought to be the sovereign, and why we need popular sovereignty. Do the People have a right to be the sovereign? Can sovereignty be attributed to other kinds of entities, such as a constitution or the legislature? What difference would be made if a society realizes popular sovereignty? In addition, a derivative issue about majority rule will be addressed. The practice of popular sovereignty seems to presuppose majority rule, which is not an obvious device for decision-making, for it often implies oppression of the minority. Can majority rule be justified in some way? These questions will be answered in Chapter 5. Generally speaking, there are two aspects of discussion that constitute my dissertation: descriptive and normative. That is, based on what sovereignty is in our world (as shown in Chapter 2), I want to argue that the ideal we ought to aspire to is having the People hold sovereignty and be the sovereign.

I believe my theory of popular sovereignty can make contributions in two aspects. On the one hand, it will provide a clear notion of popular sovereignty that can better serve as a basis for democracy. On the other hand, the theory can also point a direction for people who are frustrated by political clichés about popular sovereignty, and do not know how to fight for their substantial rights, because the theory provides substantial guidelines for realizing popular sovereignty.

Chapter 2: Sovereignty

To understand what popular sovereignty is, the first thing we need to understand is what sovereignty is. Although there are sovereign states in our world and it is common to talk about (state) sovereignty, sometimes the concept of sovereignty still appears ambiguous, and people actually have different understandings or opinions of it. What I want to do in this chapter is to clarify “sovereignty” in our world so that I can use this notion to develop a normative theory of popular sovereignty. The conceptual clarification will be done in four parts. Since the current concept of sovereignty derives its meaning mainly from early modern uses, I will start, in Section 2.1, with an investigation of the classical notion of sovereignty. Then, in Section 2.2, I will reconsider “sovereignty” in the contemporary context. I will show how much this notion has evolved from its modern version. The concept of sovereignty has been invoked or manifested in various ways, so I also have to clarify what or who is sovereign or holds sovereignty. This will be done in Section 2.3. In Section 2.4, I will answer the question concerning what determines an objective existence of sovereignty in our world.

On the other hand, nowadays, when an apparently unstoppable wave of globalization is sweeping across the whole world, more and more people are questioning whether state sovereignty is weakened or will cease to exist. So, although clarifying the notion of sovereignty is necessary for a doctrine of popular sovereignty, it is also important to respond to the growing concern over sovereignty’s status in today’s global

village. If we find out that globalization may bring sovereignty to an end, then there may be no need to discuss popular sovereignty anymore, and my entire project on popular sovereignty can be discarded. Therefore, in Section 2.5, I will talk about whether the status of sovereignty would be affected by globalization, and whether sovereignty's continual existence is necessary or significant. Through this part of discussion, we may also understand sovereignty better.

In a word, this chapter mainly concerns two matters. One is clarifying the contemporary notion of sovereignty for a theoretical construction of popular sovereignty. The other is determining sovereignty's status in the contemporary global environment. Since I will focus this chapter solely on sovereignty, any statements with regard to popular sovereignty in this chapter will not be deeply discussed until Chapter 4, where sovereignty in a popular framework will be covered.

2.1 Classical Sovereignty

What is sovereignty? What is the essence and what are the attributes of sovereignty? These are not easy questions to answer, for the notion of sovereignty varies when times pass and circumstances change. However, in spite of being variable, sovereignty seems to have a core meaning, which strings together all variants of "sovereignty". The core meaning of sovereignty is rooted in the early modern Europe.¹ That is when states, a new

¹ For historians, the early modern period in Europe refers to the period between the end of the Middle Ages and the beginning of the Modern Times. It spans approximately from late 15th or early 16th century to mid-

form of political society or organization, start to develop and have sovereignty as its central attribute. Our understanding of sovereignty, therefore, has to begin with the modern notion of sovereignty.

The modern notion of sovereignty has a close relation with the state. As Francis H. Hinsley has noted, “the origin and history of the concept of sovereignty are closely linked with the nature, the origin and the history of the state.”² “[T]he rise of state forms is a necessary condition of the notion of sovereignty, ...”³ The “state” mentioned here, as a distinctive form of political organization or institution which human societies have developed, has its first appearance in early modern Europe. It then evolved slowly until the nineteenth century, when the state took the form we are now familiar with.⁴ Instead of using the term “the state”, sometimes people speak of “the modern state”, which only says more about the entity’s origin – it began its development in early modern Europe.

Although the rise of the state is a necessary condition for the concept of sovereignty, the former is not a sufficient condition of the latter.⁵ According to Hinsley, “sovereignty” and the state did not emerge simultaneously in early modern Europe. In fact, the concept of sovereignty appeared long after the state’s emergence.⁶ Hinsley provides an explanation for this. He thinks that the emergence of the state was not the result of a

18th century. Modern Times generally refers to the period from mid-18th century to today. In philosophy, there are different definitions of “modern time”. See “Early Modern Europe,” in *Wikipedia* (March 2, 2008), URL = http://en.wikipedia.org/wiki/Early_modern_europe. “Modern Times,” in *Wikipedia* (March 14, 2008), URL = http://en.wikipedia.org/wiki/Modern_times.

² Francis H. Hinsley, *Sovereignty* (Cambridge: Cambridge University Press, 1986), p. 2.

³ *Ibid.*, p.17.

⁴ Christopher W. Morris, “The Modern State,” in *An Essay on the Modern State* (Cambridge: Cambridge University Press, 1998), p. 17.

⁵ Hinsley, *Sovereignty*, pp. 17-18 and p. 21.

society's desire or need, but of men's ambition or natural urge to possess a certain kind of power to rule.⁷ However, while it was men's ambition to make the state, further development and consolidation of the state required momentum from the society itself. That is to say, the state should be integrated into the society to some extent, and should be recognized and welcomed by the society in some degree. Such integration or reconciliation not only enabled further development of the state, it was also a necessary condition for the concept of sovereignty to be formed. Since the state would encounter resistance from the society during the process toward integration, it usually took a long time to reach that turning-point of integration, and that was why the concept of sovereignty came long after the state's emergence in Europe.⁸

States emerging in early modern Europe are new because they manifest certain features that pre-modern political societies or organizations, especially those in medieval Europe, lack.⁹ Relative to the classical *polis* of Greece, the empires that followed, and the multiple forms of polities or "political" organizations in medieval times such as empire, principalities, city-republics, city-leagues, bishoprics, etc., states in early modern times are more unified entities, with a centralized, hierarchical, and supreme governing power or authority exercised within a definite territory.¹⁰ Specifically, the governance is territorial, which means the governance is essentially over people who find themselves on a particular territory or piece of land. Since the governance is territorial, subjects' membership and allegiance is also territorially determined. The state's governance is also

⁶ Ibid., p. 21.

⁷ Ibid., p. 10, p. 12, and p. 19.

⁸ Ibid., pp. 17-22.

direct and penetrates deeply into its subjects through law and administration. Governance is direct if there are no intermediaries with independent authority. The highest authority in the hierarchy of governance has authority over all other levels, and every subject is directly governed by the highest authority. Direct rule is contrary to the indirect rule in empires, where “considerable power is left to local governors and administrators,” and in medieval Europe, where “popes for the most part governed believers indirectly through clergy and kings.”¹¹ Besides, externally, the governance tends to be independent from external agents such as other states, pope, and emperor, but the states would conceive of themselves as co-existing with other states.

Among those features of the state, the most distinctive and important one is its supreme governing power or authority, which is gradually recognized as “sovereignty”. Many people have tried to define or characterize the modern concept of sovereignty. For example, Hinsley says that originally and for a long time sovereignty is “the idea that there is a final and absolute authority in the political community.”¹² In Morris, “[t]o be sovereign is to be the ultimate source of political authority within a realm.”¹³ Dan Philpott’s formulation of sovereignty is the “supreme authority within a territory.” He says that this definition catches what sovereignty means in early modern Europe, and is the core meaning of sovereignty of which most subsequent definitions or manifestations

⁹ Morris says, “[t]he distinctiveness of the modern state emerges most clearly from a contrast with the complex forms of political organization of medieval Europe.” Morris, “The Modern State,” p. 32.

¹⁰ Ibid., pp. 27-46.

¹¹ Ibid., p. 38.

¹² Hinsley, *Sovereignty*, p. 1

¹³ Christopher W. Morris, “Sovereignty,” in *An Essay on the Modern State* (Cambridge: Cambridge University Press, 1998), p. 175.

of sovereignty are a specific instance or variant.¹⁴ These definitions or characterizations of sovereignty are actually similar. All of them are composed of three elements: “(political) authority”; “final and absolute”, “ultimate”, or “supreme”; “territory”, “realm”, or “political community”.

There are more details about those three elements of the modern notion of sovereignty. First of all, sovereignty is a political authority. Political authority usually concerns the right to give directives, which are meant to be reason-providing and action-guiding for subjects. It also concerns a coercive power, a de facto capacity, to ensure its directives to be obeyed.¹⁵ Second, the political authority is exercised within a territory, a realm, or a political community that is territorially defined. Surely, the realm or political community here is the state. Third, the political authority in question has attributes of being final, absolute, ultimate, or supreme. An authority is final if it has “the last word” – just like a final arbiter.¹⁶ If an authority is unconstrained or is over “all matters within the territory unconditionally,” it is absolute.¹⁷ If an authority overrides and can (legally) regulate all other authorities within its territory (e.g. conscience, church, corporate, etc.), it is supreme.¹⁸ “Ultimate” in Morris’s sense is a more general term which could be understood as “the highest” (i.e. the highest authority in a hierarchy of authorities or in a chain of direct rule), “final”, or “supreme”.¹⁹

¹⁴ Dan Philpott, “Sovereignty,” in *The Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta (Summer 2003 Edition), URL = <http://plato.stanford.edu/archives/sum2003/entries/sovereignty/>.

¹⁵ Morris, “Sovereignty,” pp. 175-176.

¹⁶ Morris, “The Modern State,” p. 39. Morris, “Sovereignty,” p. 177.

¹⁷ Philpott, “Sovereignty.”

¹⁸ Morris, “Sovereignty,” p. 177 and p. 197.

¹⁹ *Ibid.*, pp. 177-178.

We should note that when sovereign states were developing in early modern times, ideas espousing sovereignty also gradually appeared in political thought. The definitions and characterizations of “sovereignty” shown above can actually apply to “sovereignty” both in practice and in political ideas.²⁰ There are a few philosophers who work on the idea of sovereignty prominently. Although their theories are different in some ways, their understandings of sovereignty are very much the same. Jean Bodin, a French philosopher, is the first person who explicitly and systematically deals with and espouses the concept of sovereignty.²¹ Then, there is Thomas Hobbes from England, who also embraces the idea of sovereignty.²² Due to civil wars occurring in their own states, both Bodin and Hobbes think of having a supreme and absolute authority within the realm as the only solution for a split and chaotic state.²³ Later, Rousseau develops a theory centering on popular sovereignty.²⁴ Unlike Bodin and Hobbes who think or prefer that holders of sovereignty are monarchs, Rousseau thinks that sovereignty should be and can only be vested in the People, and the People rule through laws, which embody their general will. Nevertheless, sovereignty in Rousseau is still absolute.²⁵ In addition to being absolute,

²⁰ In fact, what Morris characterizes is “the modern notion of sovereignty that is developed by Bodin, Hobbes, Rousseau, and other political thinkers.” Sometimes he also calls this notion the classical notion of sovereignty. *Ibid.*, p. 175 and p. 178.

²¹ Jean Bodin, *The Six Bookes of a Commonweale*, trans. Richard Knolles, ed. Kenneth D. McRae (Cambridge, MA: Harvard University Press, 1962 [1576]).

²² Thomas Hobbes, *Leviathan*, ed. C. B. Macpherson (Harmondsworth, Eng.: Penguin Books, 1968 [1651]).

²³ It is not unusual that in history, political thoughts and reality are often interwoven or influence each other. Both Bodin and Hobbes’s doctrines are a reaction to the environment surrounding them.

²⁴ Rousseau, *The Social Contract*.

²⁵ Sovereignty in Rousseau is absolute in the sense that it does not have external limits, but sovereignty in Rousseau still has internal limits that are based on the contractarian nature of sovereignty. Rousseau says, the sovereign power “may not impose on the subjects any burden which is not necessary to the community; ...” Also, “the sovereign power...does not go beyond and cannot go beyond the limits of the general covenants; ...the sovereign has never any right to impose greater burdens on one subject than on another, for whenever that happens the matter becomes private and is outside the sovereign’s competence.” *Ibid.*, Book II, ch. 4, pp. 74-75 and p. 77.

sovereignty is also unique, i.e. there is only one such sovereignty, and indivisible, i.e. it cannot be divided.²⁶

Just as Bodin, Hobbes, and Rousseau develop variant ideas about sovereignty, there are various claims to sovereignty in practice and understandings of sovereignty in theory from early modern times on. Having the modern/classical notion of sovereignty in mind, we might wonder what “sovereignty” is like today. Does it still retain those early modern properties or it is already a different notion? In the next section, I will reconsider “sovereignty” in the contemporary context. I intend to find a clear and reasonable contemporary notion of sovereignty that can serve as a basis for my exploration of popular sovereignty. My concern is conceptual clarity rather than a historical review of the development of “sovereignty”. Theorists and historians have already done such review. Instead of repeating a similar work, I will only engage in conceptual reconstruction of “sovereignty” in our world. A clear notion of sovereignty that can fit into the current political environment would suffice for my project in this dissertation.

2.2 Sovereignty Today

It is a fact that sovereignty exists in our world. We not only sense it, we also experience or react to it. Virtually everyone has at least one nationality, which means he/she legally belongs to a sovereign state.²⁷ People pay taxes to their central governments. In many

²⁶ Morris, “Sovereignty,” p. 198.

²⁷ I say “virtually everyone” because there are stateless persons who do not belong to any sovereign state.

states, there are nationwide referenda by which citizens decide on national issues. Most states have military forces to defend their own territories, and in some states, citizens (mostly males) even have a duty to serve in the military. When we want to travel to other states, we may need to apply for a visa for entry and in any case must show our (one or more) national passports. Most states have certain highest agencies in charge of their internal and diplomatic affairs. Virtually all states' sovereignty is represented in the United Nations by holding a seat in the General Assembly. These empirical examples are all the embodiments of sovereignty, which may generally be defined as the highest political authority in or power over a territory. So, we live in a world of sovereign states, and people exercise or submit to state sovereignty.

Hinsley seems to have a different recognition of sovereignty. He says, “[m]en do not wield or submit to sovereignty. They wield or submit to authority or power. Authority and power are facts... Although we talk of it loosely as something concrete which may be lost or acquired, eroded or increased, sovereignty is not a fact. It is a concept which men in certain circumstances have applied – a quality they have attributed or a claim they have counterposed – to the political power which they or other men were exercising.”²⁸ I find Hinsley's idea odd. I think it is better to say that sovereignty is a concept built upon the concept of political authority or power. This means that sovereignty should be seen as a form or kind of political authority or power. In other words, sovereignty is a particular concept derived from or under the general concept of authority or power. More precisely, the essence of sovereignty is still authority or power. So, if men exercise or submit to authority or power, men also exercise or submit to sovereignty. If authority and power are

facts, then sovereignty is also a fact. The same reasoning can apply to any other form of authority/power such as paternal authority. In essence, paternal authority is still an authority. Hence, it is reasonable to say that paternal authority is exercisable.

Sovereignty exists in our world, but our knowledge of it seems scant. We may generally sense the existence of sovereignty, but we may not be able to depict or conceptualize it clearly. We do not know either whether the contemporary notion of sovereignty is a continuation or variation of the modern one. Here I will provide my own definition and characterization of the contemporary notion of sovereignty. I will also show how this notion is similar to and different from the classical version.

“Sovereignty” today can generally be defined as *the highest political authority over a territory*. First, sovereignty is a *political authority*. “Political” here also means “legal”, and “authority” often relates to a “power” or “right” to certain things. The political authority/power today is not limited to giving directives and ensuring directives to be obeyed. It has more functions. I will elaborate on this later. Second, sovereignty is the highest political authority over a *territory*, to which sovereignty is confined. Today the territory in question still refers to the state’s territory. Third, when a political authority is *the highest* over a territory, the political authority is not subject to any higher political authority from both inside and outside the territory. If a higher authority can be found within the territory, then this authority is not the highest. If this political authority is the highest internally, but still subjects to a higher political authority from the outside, then this authority is not “the highest”, either. I should emphasize that no higher political

²⁸ Hinsley, *Sovereignty*, p. 1.

authority can be found *both inside and outside* the territory, for “no higher authority from the inside” does not imply “no higher authority from the outside”, and both conditions are required to make up a genuine sense of “the highest political authority over a territory”. This also explains why I prefer to say that sovereignty is the highest political authority “over”, not “within”, the territory. The latter word might easily make people overlook that some higher authority from the outside may be over the territory.²⁹

Concretely speaking, the highest political authority over a territory works particularly in two respects: one is the governance of the territory; the other is the possession of the territory. That is, sovereignty is the highest authority both in governing and in possessing a territory. Sovereignty in these two respects is now equally recognized and exercised among states. This is different from what Morris says about how the modern states conceive of their territory – “their authority is more of a matter of jurisdiction than of ownership.”³⁰ In early modern times, since sovereign states were not yet stabilized to become nation-states,³¹ the idea of ownership might be less clear than that of jurisdiction. However, when nation-states began to prevail in the 19th and 20th centuries, the recognition changed. Those nation-states saw their territory “semi-sacred, and non-transferable,”³² an attitude that reveals the idea of ownership. Nowadays, when states claim sovereignty over a land, they do claim ownership to that land. This is

²⁹ “No higher authority from the outside” indicates one external dimension of sovereignty. See my later discussion in this section.

³⁰ Morris, “The Modern State,” pp. 16-17.

³¹ At least, when the Peace of Westphalia was signed in 1648, those participants were not nation-states. States such as the German states, actually the German state-like principalities, were even subordinate to the Holy Roman Empire, though the princes got more autonomy to determine the religion of their own lands. See “Peace of Westphalia,” in *Wikipedia* (March 15, 2008), URL = http://en.wikipedia.org/wiki/Peace_of_westphalia. “Westphalian Sovereignty,” in *Wikipedia* (February 25, 2008), URL = http://en.wikipedia.org/wiki/Westphalian_sovereignty.

particularly evident when states claim controversial lands such as some uninhabited islands, where governance is not much needed. At any rate, since sovereignty is essentially over a territory, it is equally important for the highest political authority to both govern and own the territory. Any authority over a territory cannot genuinely be the highest unless it owns the territory. The two aspects of sovereignty are well conveyed in the Chinese term of “sovereignty” – “主權”. “權” simply means “authority” or “right”, while “主” is a word with a rich connotation. “主” could mean “preside” or “direct” as a verb, “the most important” or “chief” as an adjective, “owner” or “master” as a noun, or “one’s own” indicating a possessive position. Accordingly, “主權” could mean the most important authority, the presiding authority, or the authority or right of an owner.

Since political authority concerns a right to (do) certain things, sovereignty or the highest political authority over a territory can also be understood as *the exclusive right to a territory, or the exclusive right to govern and possess a territory*. That is to say, except for the holder of sovereignty, no one can have such right, and the right is shared with no one. The right is a political and legal right, and could also be a moral right if the holder of sovereignty is so entitled. I will talk more about this in Chapter 5.

Sovereignty as the highest political authority over a territory is independent. It means that the highest political authority (1) is not officially subject to any other state’s sovereignty (I have mentioned this point earlier), *and* (2) is not controlled or intervened in by any external entity or power. This is so-called “external sovereignty”, which refers

³² See “Nation State,” in *Wikipedia* (March 22, 2008), URL = <http://en.wikipedia.org/wiki/Nation-state>.

to the relationship between a sovereign state and the external world. To put it another way, first, a sovereign state does not officially belong to or be part of another state. In legal terms, it is not within or under another state's jurisdiction. There are some kinds of entities that are not sovereign states due to their dependent or subordinate status. For example, colonies, self-governing areas within a state, dependent territories, etc. Second, under normal circumstances, e.g., when no human rights violation occurs,³³ a sovereign state cannot be controlled or interfered with by any external entity or power, unless such control or intervention is consented to.³⁴ External sources of control or intervention might be peer states, international organizations, etc. The quality of independence not only shows sovereignty's intactness, but also shows equality between states.

A complete notion of sovereignty should contain both the internal and the external senses of sovereignty (i.e. sovereignty is both internally the highest and externally independent political authority over a territory), but we should note that the two senses of sovereignty do not refer to the same thing. They are not two sides of one coin. People might have the impression that the concept of external sovereignty is derived from the concept of internal sovereignty.³⁵ However, there is no such derivation. Internal

³³ Later I will talk about constraints on sovereignty.

³⁴ Consented control can be seen in the so-called associated states. Associated states, which are either sovereign/independent states or states free to be sovereign/independent, establish a special relationship of free association with a larger state. Through this relationship, these states usually allow the larger state to provide defense and/or handle their foreign affairs. The Federated States of Micronesia, Palau, and the Marshall Islands are all such kind of states, which are in free association with the United States. See "Associated States," in *Wikipedia* (February 5, 2008), URL = http://en.wikipedia.org/wiki/Associated_state. Another example of consented control is in those member states of the European Union (EU). Each member state allows the EU to take over some of its internal affairs such as customs, agricultural policy, trade policy, etc.

³⁵ In the classical view of sovereignty, according to Morris, external sovereignty derives from internal sovereignty. For internal sovereignty is unlimited, no state can have obligation to another state. Thus, no state has a claim right against another state. See Morris, "Sovereignty," p. 224.

sovereignty in fact does not imply external sovereignty.³⁶ The highest political authority is not necessarily independent. Even if the highest political authority is not officially subordinate to any higher external authority, it is still likely to be controlled or interfered with by certain external entities or powers.

In addition to being the highest and independent political authority, sovereignty has other important features. Like the classical/modern conception of sovereignty, I think that sovereignty today is still supreme, final, unique, and indivisible. What is different from the classical conception is that sovereignty today is no longer absolute.

Sovereignty is supreme, in the sense I have mentioned earlier – it can legally regulate all other sources of authority within its territory. In early modern Europe, this means that sovereignty could regulate conscience, kin, church, corporation, syndicate, etc.³⁷ Among them, some were politically competing authorities. For example, to assert that they had a sovereign power and were the final arbiters on matters relevant to them, “states had to contest the Church’s authority. They had as well to contest the power of “internal” rivals, namely, feudal lords.”³⁸ Today, sovereignty still politically preempts and legally regulates all other sources of authority, including religious agents and conscience. Religious agents cannot contest with states for political power, and their

³⁶ Charles R. Beitz has this thought, too. He thinks that a state’s internal sovereignty, understood as having final legal authority over its people, need not imply its constitutional independence of other states. See Charles R. Beitz, “Sovereignty and Morality in International Affairs,” in *Political Theory Today*, ed. David Held (Stanford, CA: Stanford University Press, 1991), pp. 243-244.

³⁷ Morris, “Sovereignty,” p. 177.

³⁸ Morris, “The Modern State,” p. 39.

behavior or action cannot violate laws.³⁹ People's conscience is often overridden, especially during times of war when there is a need of conscription, though sometimes exemption might be allowed (by the state). This reminds us that although sovereignty politically and legally preempts other sources of authority, sovereignty is not morally supreme. What is politically or legally obligated for a state to do may be morally wrong.⁴⁰ Given this fact, nowadays almost all people would agree that even if sovereignty is politically and legally supreme, sovereignty ought to abide by morality or should be morally constrained.

Sovereignty is supreme, but sovereignty is not absolute. To explain why sovereignty is not absolute, I have to explain what "absolute" means first. It seems that there are two senses of being "absolute". First, when an authority is absolute, it means that the authority itself is not limited or constrained. That is, no conditions can be imposed on it. Second, an authority can also be absolute if there is no limit to the scope of matters the authority can control, i.e. the authority has a full control over all matters within its realm.⁴¹ "Absolute" in this sense amounts to "comprehensive" or "omnipresent". The two senses of being "absolute" represent two different kinds of limitation. Sovereignty today is not absolute because it has both kinds of limitations.

On the one hand, it is now widely accepted that sovereignty itself should be constrained by a general and fundamental moral principle – human rights. This moral

³⁹ Nowadays, it is rare to see theocratic states, in which the highest political authority is held by religious agents such as clerics. Iran should be an exception.

⁴⁰ Morris, "Sovereignty," p. 177.

⁴¹ Philpott, "Sovereignty."

constraint, however, does not diminish the degree of sovereignty. It does not make sovereignty less sovereign. The constraint as a condition only means that if there is a violation of human rights, sovereignty may not be justified and may be overridden or subject legitimately to intervention. So, sovereignty can be intact, while it is not absolute. After the Second World War, several international human rights conventions were formed to make states obligated to respect and protect human rights within their territories. The principle of nonintervention after the Peace of Westphalia was also revised to allow international intervention when serious human rights violation occurs in states.⁴² Although, as Kofi A. Annan, the former Secretary-General of the United Nations, has said, the practice of intervention sometimes is still ineffective or inefficient and has large room for improvement,⁴³ the moral constraint on sovereignty will continuously be endorsed by the international society. In most states, in fact, the moral constraint is already incorporated into states' constitutional law, but due to the character of the actual governing power, such legal constraint on sovereignty might never be enforced. One example is the People's Republic of China, whose constitution endorses human rights but only works like a decoration. In such cases, an external/international mechanism may work better for ensuring human rights to be protected. Thomas W. Pogge proposes another way for protecting human rights. He thinks that massive violation of human rights can be prevented by widely decentralizing, dispersing, or distributing (state)

⁴² Ibid.

⁴³ Kofi A. Annan, "Two Concepts of Sovereignty," *The Economist* (September 18, 1999).

sovereignty in a vertical dimension.⁴⁴ I find this idea problematic because sovereignty, in fact, cannot be divided. Later I will argue for this point.

On the other hand, nowadays, some states' sovereignty is not exercised over all matters in its own territory. Sovereignty in these states is not absolute either. A well-known example is the regional integration in Europe. The member states of the European Union (EU) agree to reduce the scope of matters over which their sovereignty is exercised. For those matters that are taken over by the EU, such as trade and currency, member states no longer have sovereignty. For the other matters that do not involve the EU, member states still retain sovereignty, and their sovereignty is still intact. It is wrong or imprecise to say that member states give away or transfer *part of their sovereignty* to the EU, for as Alan James argues, "sovereignty can only be either present or absent, and cannot exist partially."⁴⁵ Again, sovereignty is indivisible. What is given away or transferred is not partial sovereignty, but part of the matters those states' sovereignty can be exercised over. It is noticeable that the original idea behind European integration is also about states' accountability for human rights protection, especially as a reaction to the Holocaust.⁴⁶ So, in the EU's case, state sovereignty's non-absoluteness still relates to a moral constraint. Another example of non-absolute sovereignty with a limited exercising scope can be seen in states that allow another state to partially take over their

⁴⁴ Thomas W. Pogge, "Cosmopolitanism and Sovereignty," in *World Poverty and Human Rights: Cosmopolitan Responsibilities and Reforms* (Cambridge, UK ; Malden, MA: Polity Press, 2002), pp. 178-182.

⁴⁵ Here I quote Philpott's words on James's idea. See Philpott, "Sovereignty." Also see Alan James, "The Practice of Sovereign Statehood in Contemporary International Society," *Political Studies* 47/3 (1999), pp. 463-464.

⁴⁶ Philpott, "Sovereignty."

national matters, usually defense and diplomatic affairs, through special relationships or agreements. Associated states are of this kind.

Sovereignty as the highest political authority over a territory is unique. It means that there is only one such highest political authority over a territory.⁴⁷ This excludes the possibility of two or more equally highest political authorities over the same territory simultaneously. There must also be only one sovereign, or holder of sovereignty, in a territory, for one sovereign represents one sovereignty.⁴⁸ Sovereignty is the thing that makes a territory or society “one”, so there could have only one sovereignty over each territory. If there is more than one sovereignty or sovereign over a territory, serious practical problems would occur. People within that territory would not know which highest authority to obey, and other states would not know which highest authority in that territory they should interact with. In our current world, the situation of one territory with two or more sovereignties or sovereigns usually occurs in disputed territories or lands, where more than one sovereign state claims the same land. Strictly speaking, those claimed sovereignties are not real or intact sovereignties, because they usually lack either *de jure* sovereignty or *de facto* sovereignty or both. Under normal circumstances, there should be no single state with multiple sovereignties.

Sovereignty is indivisible. I just said that sovereignty is the thing that makes a territory “one”, so sovereignty must be unitary and cannot be divided. Likewise, the

⁴⁷ Here I take Morris’s definition. See Morris, “Sovereignty,” p. 198. In his text, Morris thinks of sovereignty’s uniqueness as a result of sovereignty’s indivisibility. I think what might be omitted there is another possibility that sovereignty’s uniqueness may come from lack of external claims, i.e. no other states claim or exercise sovereignty over the same territory.

sovereign, or the holder of sovereignty, must also be “one”. It may be one person, one group of people, one institution, or one body of some kind. Some people argue that sovereignty is divisible by giving the example of federal states such as the United States. For instance, both Morris and Pogge regard the American political system, i.e. the three branches of government (the executive, the legislature, and the judiciary), as a genuine example of division of sovereignty.⁴⁹ Sovereignty there is in the hands of the three branches/bodies. The three branches are each all sovereigns, each of which has the highest authority over its own matter, but for Morris there is still only one sovereignty. So, sovereignty is divided yet unique.⁵⁰ Contrary to Morris and Pogge’s view, I think that the three branches of government cannot be seen as division of sovereignty. On the one hand, if we say that the three branches are three sovereigns and yet there is only one sovereignty, that is self-contradictory because three sovereigns actually represent three sovereignties. On the other hand, there is separation of government’s powers or division of government’s functions, but there is still a unity at the governmental level and that is sovereignty. Specifically, just as Roger Scruton says, the three branches or powers of government are not entirely separate. They function in harmony. “[L]aws enacted by the legislature must be applied by the executive, and upheld by the judiciary, and if a judge acts *ultra vires*, it must be possible for the legislature to hold him to account, and for the executive to remove him from office.”⁵¹ The three powers interact with and balance each other, and none of them is really sovereign. What is sovereign is the entire governance, which is unitary and indivisible. Separation of powers or division of functions is merely

⁴⁸ Nevertheless, there could have more than one person or body *sharing* one title of the sovereign.

⁴⁹ Morris, “Sovereignty,” p. 198. Pogge, “Cosmopolitanism and Sovereignty,” pp. 178-179.

⁵⁰ Morris, “Sovereignty,” p. 198.

one form of government or governance, which implements sovereignty. It is not division of sovereignty.

In each state, no matter how its governance or government is arranged or designed (e.g., presidential system, parliamentary system, three-branch system, five-branch system, six-branch system, etc.),⁵² there is always a unity or sovereignty at its governing level. (Remember that one concrete aspect of sovereignty is in governing a territory.) Then, does this mean that the entire government is the sovereign (i.e. the holder of sovereignty), or the state is the sovereign? How about popular sovereignty? It seems that in many political systems, the People are often recognized as the sovereign. Who exactly has sovereignty? The confusion here leads to my next section, where I will deal with the issue about who or what has sovereignty.

Before closing this section, let me summarize points I have made about the contemporary notion of sovereignty. It is a fact that state sovereignty exists in our world. People exercise or submit to it. I define sovereignty as the highest political authority over a territory. It can also be understood as the exclusive right to a territory. Sovereignty works in both governing and possessing a territory. It has to be independent, which means not subjecting to other states or external intervention. There are other qualities of sovereignty: sovereignty is supreme, but not absolute; it is also unique and indivisible. As a result, contemporary sovereignty in my analysis keeps most qualities of the

⁵¹ Roger Scruton, "Separation of Powers," in *A Dictionary of Political Thought*, 2nd ed. (London: Macmillan, 1996), p. 502.

classical/modern notion of sovereignty, except for its non-absoluteness. This non-absoluteness is a significant transition in the development of “sovereignty”. I will use my understanding of contemporary sovereignty as a basis to construct a normative theory of popular sovereignty.

2.3 Whose Sovereignty?

Sovereignty is the highest political authority in governing (and possessing) a territory, but sovereignty is state’s sovereignty, not government’s sovereignty. We say “a sovereign state”, not “a sovereign government”. This should have been clear since the emergence of the concept of sovereignty. However, probably because of the powerful role and image of government in our world, people might misconceive government as a sovereign entity. It is important to distinguish state sovereignty from government or regime or administration’s authority/power. They are two different things. The government, which is merely a means or medium for realizing the state’s sovereignty, does not itself have sovereignty. Government or government’s power is changeable, but state or state’s sovereignty is always there and would not be affected by the changes in government or the governing power.⁵² Diplomatic recognition actually works in accordance with the distinction between state sovereignty and government’s power. There are diplomatic

⁵² Some states have a government system with more than three branches. For example, Taiwan/Republic of China (five-branch), Venezuela (five-branch), and Germany (six-branch). See “Separation of Powers,” in *Wikipedia* (April 1, 2008), URL = http://en.wikipedia.org/wiki/Three_branches_of_government.

⁵³ As Morris has remarked, when there is a transition between governments or forms of government, or when revolution happens, state’s existence continues and would not be interrupted by changes in leadership

recognition of (sovereign) states and diplomatic recognition of governments. Recognition of governments implies recognition of (sovereign) states, but not vice versa.

Now that we see that sovereignty and government's power are two different things, the holder of sovereignty, i.e. the sovereign, and the holder of the government's power, i.e. the actual ruler(s), should also be two different things. Only under certain circumstances, the two different kinds of power holder may overlap. For example, in an absolute monarchy, which is rare today, the sovereign is usually the actual ruler. If sovereignty were governments' sovereignty, sovereignty would easily become strongmen's sovereignty. That is, whoever can grab the power of government would also become the sovereign. Now since sovereignty is not government's sovereignty, even if a usurper invokes "sovereignty" to justify his usurpation, what he gets is still government's power, not state sovereignty. The usurpation only incurs question about the legitimacy of the government, and has nothing to do with state sovereignty.

The state has sovereignty and is sovereign, but the state itself is not the sovereign or the holder of sovereignty. The holder of sovereignty is where sovereignty comes from. That is, the source of sovereignty. "Being sovereign" and "being the sovereign" are two different conceptions. One entity can be sovereign without being the sovereign. The state is an entity with sovereignty, but its sovereignty must come from something other than the state. The reason is simply that sovereignty is a feature or an element that constitutes

or government. Since the state has a definite territory, its continuity is not only in time but also in space. See Morris, "Sovereignty," pp. 20-23 and p. 45.

the state, and as a constitutive part of the state, sovereignty cannot come from the state itself. Hence, the state cannot be the sovereign.

Then, who should be the sovereign? In my theory, the holder of sovereignty should be the People. I think that in any state, state's sovereign power should come from or belong to its People. Sovereignty should always be vested in or held by the People. To further explain the relations between the state, government, sovereignty, and the People, I would like to use a metaphor. As a political organization with a complex institutional system, the state as a whole can be seen as a machine aiming at generating a well-ordered society. To make the machine function, power is needed, and that power is sovereignty, which is given by the People. The central government is analogous to the motor of the machine which converts power into the machine's movement.

As the holder of sovereignty, what do the People do or how do they wield the sovereign authority and power? Can they also be the actual ruler? I will answer these questions in Chapter 4. I also need to explain why I think it is "the People", not other entities such as the constitution or the legislature, that should be the sovereign. This will be done in Chapter 5, where I will argue for the basis of popular sovereignty. The holder of sovereignty is a significant dimension through which we could see the evolution of the notion of sovereignty. Different kinds of sovereignty holders mean different ways sovereignty is possessed and exercised. This is already shown in the theory difference between Rousseau and other modern thinkers. Both Bodin and Hobbes think that sovereignty should vest in a single person. The sovereign monarchs are actual rulers, who

not only enact laws, but also execute laws. The possession of sovereignty has shifted from monarchs to the People or states in Rousseau (and the following American Revolution and French Revolution). For Rousseau, the sovereign people only have legislative power and do not have the power to execute laws.⁵⁴ The people exercise sovereignty in a way very different from monarchs’.

The center of my discussion is always on the state’s sovereignty, which is the typical context of using the term “sovereignty”. “Sovereignty”, however, is sometimes invoked or used in other ways, which seem to cause more confusion when we try to understand sovereignty. For example, there is “tribal sovereignty” in the United States which refers to the right or authority of the American Indian tribes or nations to exercise limited jurisdiction within their own territories. Sovereignty there actually means the right to (local) self-government or autonomy.⁵⁵ There is “personal sovereignty” in various discourses which could generally be understood as personal autonomy/freedom or a full control over one’s self. There is also “food sovereignty”, which refers to “the RIGHT of peoples, communities, and countries to define their own agricultural, labour, fishing, food and land policies which are ecologically, socially, economically and culturally appropriate to their unique circumstances. It includes the true right to food and to produce

⁵⁴ In Rousseau, the sovereign people act upon their general will, which cannot deal with particular acts or cases. Since executive power involves particular acts or cases, executive power cannot be exercised by the sovereign people. See Rousseau, *The Social Contract*, Book II, ch. 4, pp. 74-77; Book II, ch. 6, pp. 80-82; Book III, ch. 1, p. 101.

⁵⁵ In the doctrine of tribal sovereignty, the Indian tribes are regarded as sovereign states under the protection of the United States. Originally they possess all the powers of a sovereign state, but conquest renders them subject to the power of the United States and terminates their external sovereignty. Nevertheless, their internal sovereignty, i.e. their right or power of self-government, is still retained. By this right, they can prescribe the form of tribal governments, determine tribal membership, and regulate and control internal affairs. See Felix Cohen, *Handbook of Federal Indian Law* (Washington: United States Government Printing Office, 1942), pp. 122-123 and p. 125 (footnote 18).

food, which means that all people have the right to safe, nutritious and culturally appropriate food and to food-producing resources and the ability to sustain themselves and their societies.”⁵⁶ All of these various types of “sovereignty” are, in fact, an extended or analogical use of “sovereignty”. “Sovereignty” thus becomes more like an analogical term. That is to say, when the term “sovereignty” is applied in different contexts, only part of the original meaning or attributes of sovereignty is adopted. In our cases here, what is adopted is the quality of autonomy or self control of one’s own matters. The use of “sovereignty” is therefore loosened or broadened, and those loose uses of “sovereignty” are not the focus of our quest for the truth of sovereignty.

In summary, state sovereignty should be distinguished from government or regime’s authority/power. The holder of state sovereignty, i.e. the sovereign, and the holder of government’s power are also two different things, though in reality the two might overlap. The state has sovereignty and is sovereign, but the state itself is not the holder of sovereignty. This is because being a constitutive part of the state, sovereignty cannot come from the state itself. In my theory, it is the People who should always hold state sovereignty. Finally, I clarify that many other uses of “sovereignty” are actually extended or analogical uses of “sovereignty”. Although the term “sovereignty” is applied, there is only a resemblance to the original meaning of “sovereignty”. Those extended or analogical uses of “sovereignty” are not the focus of my discussion.

⁵⁶ The quote is from the homepage of IPC (International NGO/CSO Planning Committee) Food Sovereignty (<http://www.foodsovereignty.org/new/index.php>). The term “food sovereignty” comes from an international movement promoting a policy framework advocated by farmers, rural women, rural youth,

2.4 Objective Existence of Sovereignty

How do we determine whether a specific entity has sovereignty and is a state? What conditions are required in order to say that a state has sovereignty over a land? In Section 2.2, I said that in our world sovereignty exists, and we not only sense it, we also experience or react to it. Does actual operation of sovereignty alone sufficiently constitute the objective existence of sovereignty? How about diplomatic recognition, which is often thought to be a crucial factor in determining an entity's sovereign statehood?

Sovereignty today should have two layers: one is legal or *de jure* sovereignty; the other is *de facto* sovereignty. When an entity has *de jure* sovereignty, the entity has a legal right to exercise the highest political authority over its territory; when an entity has *de facto* sovereignty, it is factually exercising the highest political authority over its territory. Ideally, these two layers of sovereignty should come together. As Scruton has noted, the legal idea of sovereignty “is meant to correspond to an actual power to assert itself over the territory in question.”⁵⁷ Hence, I would hold that the two layers of sovereignty are necessary conditions for constituting an intact sovereignty. Lacking either of them would render sovereignty incomplete. Lacking both of them would render

fisherfolk, indigenous peoples, small- and medium-sized producers, environmental organizations, etc. See “Food Sovereignty,” in *Wikipedia* (March 15, 2008), URL = http://en.wikipedia.org/wiki/Food_sovereignty.
⁵⁷ Roger Scruton, “Sovereignty,” in *A Dictionary of Political Thought*, 2nd ed. (London: Macmillan, 1996), p. 522.

sovereignty nonexistent.⁵⁸ As a matter of fact, sometimes *de jure* sovereignty and *de facto* sovereignty do come apart. For example, Scruton refers to those states in Eastern Europe under the former Soviet Union as states without intact sovereignty. He says, “legal sovereignty can diverge from actual power, as in the case of the major states in Eastern Europe, which were sovereign states in international law, but which had no real power to act independently of the Soviet Union...”⁵⁹ In fact, by the same token, the former Soviet Union’s sovereignty over those Eastern European states was not intact either, because that sovereignty is merely factual.

In reality, determining whether a specific entity is a sovereign state often involves diplomatic recognition, but I would argue that diplomatic recognition should never be a decisive factor in determining the objective existence of sovereignty. As long as an entity has the right to exercise the highest political authority over a territory and is actually doing so, it has an objective sovereignty and other states’ recognition has nothing to do with that sovereignty. Consider the following examples. Taiwan, formally known as the Republic of China (ROC), is a *de jure* and *de facto* sovereign state with diplomatic recognitions from only 23 other states and without a membership in the United Nations.⁶⁰ Its lack of general diplomatic recognition and representation is due to the long-standing contentious relation with the People’s Republic of China (PRC), which often has domineering behavior toward Taiwan and exerts persistent diplomatic pressure on the

⁵⁸ If an entity “claims” sovereignty over a territory but has neither a legal right nor an ability to exercise it, the claimed sovereignty is basically nonexistent.

⁵⁹ Scruton, “Sovereignty,” p. 522.

⁶⁰ The ROC on the island of Taiwan has a legal status as a sovereign state in international law, and has a historical legal title to its territory. Although the People’s Republic of China (PRC) denies the continual existence of the ROC and claims that Taiwan is an integral part of its territory, the ROC on Taiwan is never

international community. However, although China would disagree, this situation does not affect Taiwan's intact sovereign status or diminish the degree of its sovereignty. Taiwan is still fully exercising its sovereignty and having substantive relations with more than 140 other states. Between the Kosovo War in 1999 and Kosovo's declaration of independence in February 2008, the Republic of Serbia had widely recognized *de jure* sovereignty over the autonomous province of Kosovo, but the *de facto* control over Kosovo was not exercised by Serbia, but by the United Nations. After Kosovo declared independence, some states switched to recognizing Kosovo as a sovereign state, while the Republic of Serbia still claims sovereignty over it. Diplomatic recognition seemed not significant at all throughout the transformation of the relation between Serbia and Kosovo. It never affected Kosovo's status or Serbia's attitude.

If the existence of sovereignty were determined by diplomatic recognition, some problems would arise. First, how many states' recognition is required or enough to make a sovereign state? Would one state's recognition suffice? Does lack of general recognition make a state less sovereign? Second, diplomatic recognition would make the notion of (sovereign) state subjective and relative, which means that entity X may be a sovereign state to state A, but not a sovereign state to state B. State A's recognizing X would not affect state B's not recognizing X, and vice versa. Besides, for entity X, state A and state B's divergent attitude toward its status would never affect its own self recognition as a state or change the fact that entity X is acting as a sovereign state. Third, subjectivity of recognition also means that the recognizing states may change their

under the rule of the PRC and always exists as an independent state since 1949, when China broke up into two states.

recognition based on some reason. This can be seen in Kosovo's case, and is particularly evident in Taiwan's case because some states did switch their diplomatic recognition, sometimes even more than once, between the ROC (on Taiwan) and the PRC. It seems unreasonable to say that such changes in recognition can be the basis for sovereignty.

I think that what is stated in the Montevideo Convention on the Rights and Duties of States (1933) does justice to sovereign statehood.⁶¹ The Convention's Article 1 states that "[t]he state as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with the other states." The fourth element actually implies (external) sovereignty, but we should note that "capacity to enter into relations with the other states" does not amount to "capacity to enter into official or diplomatic relations with the other states". The "relations" could be informal relations without diplomatic recognition by the other states. This is confirmed by the Convention's Article 3, which clearly states that "[t]he political existence of the state is independent of recognition by the other states." So, diplomatic recognition does not constitute a sovereign state or crucially determine an entity's legal status. Then, what is the meaning of granting recognition?

Granting recognition or not is often based on the recognizing state's self-interest or practical consideration, and occasionally based on moral concern such as human rights protection. For example, state A's recognizing entity X as a sovereign state may be because of the fact that entity X has been acting as a sovereign state for a long time, or

because it is beneficial for state A to recognize entity X. Sometimes withdrawal of recognition could also be a means for achieving something such as diplomatic sanction. At any rate, recognition seems merely instrumental regardless of the reasons for applying it. Such recognition is not only irrelevant to *de facto* sovereignty, but also unlikely to constitute an entity's *right* to a territory (i.e. *de jure* sovereignty). Recognition may, at most, show support or compromise for an existent *de jure* and/or *de facto* sovereignty, and determine the way two states interact.

In brief, there are two necessary (and together sufficient) conditions to constitute an intact and objective existence of sovereignty or a sovereign state in our world: one is *de jure* sovereignty; the other is *de facto* sovereignty. Diplomatic recognition should not be a factor in determining the objective existence of sovereignty, for it is subjective, relative, and variable. In most cases, recognition is granted as a result of self-interest or practical considerations. It is used instrumentally.

2.5 Why Sovereignty?

State sovereignty in this era has been facing challenges. There is circumscription of sovereignty through conventions on human rights and regional integrations such as the European Union. Both regional integration and globalization seem to blur state

⁶¹ Montevideo Convention is a treaty signed at Montevideo, Uruguay on December 26, 1933 at the Seventh International Conference of American States. The entire content of the treaty can be seen here: <http://www.yale.edu/lawweb/avalon/intdip/interam/intam03.htm>.

boundaries and weaken state sovereignty.⁶² These challenges raise questions about the status or future of sovereignty. Would sovereignty continue to exist? Does sovereignty have to exist? What is the significance of sovereignty's existence? In this section, I want to argue that sovereignty can survive these challenges. Sovereignty may be weakened in one sense, but it would also be strengthened in another sense. The concept of sovereignty would not be outdated or disappear. In fact, there is a good reason for sovereignty to continue to exist, for sovereignty could play an important role in coping with problems caused by globalization and maintain national autonomy and cultural diversity. This is true especially when sovereignty is held and exercised by the People.

Sovereignty today is weakened, but this does not mean that the degree of sovereignty is diminished, but that sovereignty is not as absolute as before. I have explained in Section 2.2 why sovereignty is not absolute today. On the one hand, sovereignty is constrained by the moral principle of human rights. On the other hand, in some states, sovereignty is not exercised over all matters within those states' territories. The scope of sovereignty is reduced. This can be seen in those member states of the European Union.

⁶² I understand globalization as a phenomenon or trend of large-scale interconnection between people on this globe. It is driven by technological advances, especially information technology, and policies in trade, investment, etc. My understanding basically follows Jan Aart Scholte's definition of globalization. He identifies globalization as "the spread of transplanetary – and in recent times more particularly supraterritorial – connections between people." He thinks that a respatialization of social life is the core of globalization, and that globalization cannot be treated as equivalent to internationalization, liberalization, universalization, or westernization, though there is some overlap between globalization and these older concepts. See his thorough discussion at Jan Aart Scholte, "What is Globalization? The Definitional Issue – Again," *CSGR Working Paper* No. 109/02 (December 2002), URL = <http://www2.warwick.ac.uk/fac/soc/csgr/research/workingpapers/2002/wp10902.pdf>.

Although sovereignty today is not absolute, the status of sovereignty is actually strengthened or consolidated in many respects. Here are some examples. First, sovereign states are still the basic units or components in making treaties, forming international organizations or regional unions, conducting negotiations, etc. States usually engage in these activities with their autonomy and self-interest. They can decide whether they want to enter into or withdraw from a union, an organization, or an agreement, and in what way they interact with other states. Even though international organizations or regional unions are formed to realize certain common values or interests among participating states, these organizations or unions do not replace states. As we can see in the European Union (EU), member states are still the deciding factors for its treaties or important policies. In terms of its newly signed Treaty of Lisbon (December 13, 2007), which introduces some institutional innovations making the EU more effective and efficient, each member state's sovereignty is actually strengthened, not suppressed. National parliaments will be more involved in the EU's work. Military contributions from member states to the EU are on a voluntary basis. The EU's role is to complement, not replace, member states' efforts on things such as foreign affairs and security policy when coordination or collective action is needed.⁶³ The EU is based on and works for state sovereignty.

Second, if we look at economic globalization deeply, we would find that the concept of the sovereign state is never excluded in the commercial world. Brand names are often connected with states' names. When enterprises are competing in the global market, they

⁶³ See "Treaty of Lisbon" on the EU's website, URL = http://europa.eu/lisbon_treaty/index_en.htm. The treaty still needs to be ratified by each of the EU's member state before its application.

are also competing for their states. Many states' governments actually help their native enterprises by providing advantageous conditions or environments for them to be more competitive in the global market.

Third, the current wave of globalization is not without negative consequences or impact, which could arouse or enhance those affected or disadvantageous states or people's consciousness of sovereignty. Consider the following situations. Globalization often causes great damage to the environment of many developing states. Exploitation of workers in those states also frequently happens. Unfair trade between the poorer and the wealthier states renders those poorer states even more impoverished.⁶⁴ Globalization triggers people's migration, which becomes a controversial issue for many states that are troubled by lots of illegal immigrants. Globalization also harms or poses a threat to states' traditional industry or internal job opportunity. These various consequences or impact brought by globalization would easily make the affected people or states feel offended or threatened. They may appeal to sovereignty to cope with these consequences or impact.

Therefore, sovereignty in this global era is both weakened and strengthened. This is by no means paradoxical, for there are two different perspectives from which we derive this conclusion. In view of the limited scope and the moral constraint of sovereignty, sovereignty is weakened. Meanwhile, the concept of the sovereign state has never faded

⁶⁴ The impact of globalization on weak or poor states is usually greater than on strong or wealthy states. The reason is that strong states are usually the propeller, dominator, and the main rule maker during the process of globalization. In addition, strong states and weak states do not have equal power and ability to cope with the impact or negative effects brought by globalization.

in international politics and global economy. Besides, since there is a demand for sovereignty to safeguard things such as environmental protection, social security, autonomy, and human rights within national territories, the status of sovereignty would be strengthened or consolidated. Sovereignty will conceptually and factually continue to exist, and it is important for it to continue to exist.

Sovereignty as the highest, unified, and independent political authority over a territory is supposed to have some functions. Internally, since nowadays states are a complex system with lots of public affairs to deal with, sovereignty exists to manage and coordinate these complex affairs within each state. Externally, sovereignty makes a society or a realm capable of interacting with the outside world as one body. Furthermore, and more importantly, sovereignty makes a realm autonomous and independent. That is to say, within this realm, the state and its people can pursue whatever they want to pursue, and live an autonomous life without being disturbed or hampered by outsiders. This function of sovereignty is particularly significant in our global era.

In each state's constitution, there are usually statements about what values, beliefs, ideals, doctrines, ideologies, or institutional systems are recognized and would be promoted by the state,⁶⁵ and sovereignty exists to assure that these things can be freely pursued within the state's territory. Human rights, civil rights, security, stability, freedom, and equality are things often mentioned in states' constitutions. Other things that would be pursued may include democracy, social welfare, parliamentary system, republic,

⁶⁵ Even if the British system does not have a written constitution, there are still things that would be pursued by Great Britain and are manifested in its laws.

federalism, socialism, etc. It is sovereignty that can provide an autonomous and independent space making pursuit of these things possible. With such a space, people within the realm can also engage in their own culture or way of life. So, the existence of state sovereignty can actually help maintain people's autonomous lives and cultural diversity (both in territories and in the world), which are valuable things.⁶⁶

In the global era, it is meaningful and important for sovereignty to exist. Compared to the previous eras, this world has unprecedented interconnection between people and places. The interconnection is much wider, deeper, denser, and faster, so the world becomes "one place". As Scholte says, "globalization involves reductions in barriers to transworld contacts. People become more able – physically, legally, culturally, and psychologically – to engage with each other in 'one world'."⁶⁷ When many things seem to become borderless, e.g., trade, diseases, pollution, investment, crime, immigration, human rights, etc., people need state sovereignty to keep a balance. People would hope that their life can be autonomous and less affected by those negative effects or impact of globalization. They may want to have subjectivity with their value, culture, way of living, etc. They may even want more of localization/indigenization to keep the uniqueness of their culture or way of life.⁶⁸ Sovereignty, combined with other conditions, is able to cope with those problems of globalization and provide conditions for realizing those

⁶⁶ Cultural diversity can broaden people's horizon, prevent monopoly on the truth or value and possible subsequent oppression, and make people truly free.

⁶⁷ Scholte, "What is Globalization? The Definitional Issue – Again," p. 14.

⁶⁸ It is hard to say whether globalization would obstruct or contribute cultural diversity. I tend to believe that cultural awareness would be enhanced due to cultural contacts or visibility, but how well cultures can be maintained still depends on particular circumstances.

hopes.⁶⁹ In fact, what the European Union (EU) is doing is merely conjoining sovereign states to work together to cope with common issues in this increasingly interconnected world.⁷⁰ The truth is that boundaries of physical territory and social space are still there,⁷¹ people are still more connected with (and more easily to be affected by) their own territories, and for most people, national or territorial identity is still a significant identity, which would not be eliminated either by the EU or by globalization.

So, the existence of sovereignty could not only be instrumentally meaningful, but also be morally significant. It can serve people in any territory, and help promote values such as autonomy and cultural diversity. Sovereignty today should be a positive thing. However, since mostly what people recognize as “sovereignty” is sovereignty performed by governments or the governing powers, and since governments or the governing powers often have bad performances and/or wrongdoings related to human rights, minority rights, etc., people often misunderstand or think ill of sovereignty. For example, some think that sovereignty is all about command.⁷² Some would like to disperse sovereignty to avoid massive violation of human rights.⁷³ If we can tell the difference between sovereignty and the governing authority/power, we would not view sovereignty in those ways. In the past, sovereignty was inseparable from sovereign rulers’ power, so sovereignty was very much about command. Nowadays, most states are no longer

⁶⁹ How well sovereignty can function depends on how sovereignty is really exercised or how governments, which usually serve as an agent to execute sovereignty, are doing. But that is another issue.

⁷⁰ The EU’s motto – United in Diversity – well conveys the union’s rationale.

⁷¹ As Scholte has mentioned, “social space in today’s world is *both* territorial *and* supraterritorial. Indeed, in social practice the two qualities always intersect. ... Territorial relations are no longer purely territorial, and supraterritorial relations are not wholly unterritorial.” “The present world is globalizing, not totally globalized.” Scholte, “What is Globalization? The Definitional Issue – Again,” p. 26.

⁷² Francis Sparshott has this thought. See Morris’s quotation of Sparshott’s claim, at Morris, “Sovereignty,” p. 222.

absolute monarchy, and sovereignty is detached from the rulers' power. Sovereignty should mean more – something different – than command. As for human rights violation, it is usually a problem done or caused by governments or the governing powers, not by sovereignty itself though governments or the governing powers often use sovereignty as an excuse for this violation. To prevent such violation, the solution is not dispersing sovereignty, but realizing popular sovereignty. The point is that we need to find a better way to make sovereignty fulfill what it can positively fulfill, and I think that popular sovereignty is the way.

As the world is increasingly interconnected and becoming one, people might wonder if a world government is needed to provide coordination or service for the global village. It is hard to answer this question because we do not even have a clear picture of what a world government should be like. It seems that in some areas, e.g., peace keeping, human rights protection, public health, crimes, environmental protection, sustainable economy, etc., having a world level of authority or regulation is beneficial. In the meantime, we also hope that states can still have autonomy to take care of their own needs and maintain their particular ways of living and cultures. Therefore, if the world government is one that creates a superstate, with all matters under its jurisdiction, such a world government seems unrealistic and undesirable. World government like this would overlook social differences and each society's particular needs, especially the needs of minorities. A superstate is also unmanageable simply because it is too big. Besides, we may have a great fear that a dictatorship may be formed in the world government itself. An ideal world government should be based on sovereign states and act only in areas that require

⁷³ This is Pogge's thought. I have mentioned it in Section 2.2.

states' collective action. It can be granted a legal authority/power, but cannot hinder states' autonomy. Most importantly, the world government must be democratic, without manipulation or influence from dominant states. Although such a world government is desirable, it would still be hard to get, for dominant power is actually in many places in international politics and is hard to get rid of.

In this section, I have shown that although sovereignty seems to be challenged by intense global connections, sovereignty would not disappear or be outdated. On the contrary, sovereignty would be consolidated in some ways. As a matter of fact, it is both instrumentally and morally meaningful for sovereignty to continue to exist, for sovereignty can help cope with problems caused by globalization, and maintain territorial autonomy and cultural diversity. So, sovereignty can and should be a positive thing. Nevertheless, how sovereignty is implemented or exercised is a crucial factor for its real effect. If sovereignty is not implemented or exercised properly, things would not come out positively. For a positive outcome, I think that sovereignty has to be held and well exercised by the People.

This chapter is done with a clarification of the contemporary notion of sovereignty. I have also analyzed the status of sovereignty in this global era. In the next chapter, I will proceed to explore the other subconcept of popular sovereignty, i.e. the People.

Chapter 3: The People

When talking about popular sovereignty, one big question is: who are the People that should be the sovereign? This is not an easy question to answer, because “the People” itself is an ambiguous notion, and it needs to be clarified before we can answer the question. So, there are two things I want to investigate in this chapter: what is “the People”, and who are the People?

As Canovan has noted, the ambiguity of “the People” is “a legacy of centuries of use in political controversy.”¹ “The people” has been a multifaceted concept. From ancient Roman to contemporary times, this concept has been used to refer to somewhat different things. These different usages include: the people as the plebeian citizens, the common people, the working classes, the ordinary people, the majority, or the whole polity; the people as sovereign; the people as rulers; the people as a (specific) nation; the people as human beings as such or individuals in general; and so on.² These various usages render “the people” confusing, but they are still valuable for serving as a basis for our investigation of “the People”. By reconsidering these usages, my investigation of “the People” in the following sections may be able to find a clearer conception of “the People” that can especially fit into the contemporary politics.

¹ Canovan, *The People*, pp. 2-3.

My task in this chapter is to explore the nature and scope of the People. Specifically, my job will focus on determining the meaning of “the People”, and finding both its external and internal boundaries.³ Section 3.1 will discuss the external boundary of the People. In Section 3.2, I will explore the nature of the People by analyzing an important feature of this notion – the People as a collective entity. In Section 3.3, the People’s internal boundary will be drawn.

3.1 People, the People, and the Sovereign People

What kind of people is “the People” who should be the sovereign? To individuate and recognize “the People”, we need to find both its external and internal boundary. That is, we need to know how this “People” is to be, both externally and internally, marked off from other types of “people”. In this section, I will deal with the external boundary. The internal boundary will be discussed in Section 3.3.

“The People” is a *political* concept. Its formation and meaning are greatly determined by a political society or community such as a state, but not confined to the state (e.g., a city, a county, etc.). Generally, “the People” refers to people who belong to a political society or community. In fact, the People and the political community are conceptually inter-defined or interdependent. Their existence is simultaneous. Neither of them can exist prior to the other. For example, a “state” could be defined as a political

² For a brief history of these usages, see *Ibid.*, ch. 2.

³ Here I borrow Margaret Canovan’s distinction between external and internal boundaries. See *Ibid.*, p. 3.

entity that is composed of territory, sovereignty, government, and the People; conversely, “the People” could be defined as a multitude being governed by a state, having a political status, and being one of the elements of the state. I will consistently use capital “P” to mark the political sense of “the People”. This will be distinguished from “the people”, “a people”, or even “people” (without any articles) with a lowercase “p”, which is more of a *social* concept and refers to, respectively, the multitude or the crowd of individuals in a society, an ethnic group or a nation, and human beings as such or individuals in general.⁴ When the People are detached from a political community, this collective entity would just be the multitude in a society. Thomas Hobbes has expressed the same idea. Hobbes states that “the people is not in being before the constitution of government, as not being any person, but a multitude of single persons; ...”⁵ Here Hobbes’s “the people” means a political people.

There are different views about how a political people is formed. In a discussion of this issue, Margaret Canovan suggests that a political people may not be a natural, organic growth, but it may not be an artificial construction deliberately brought into existence by leaders or elites either. Instead, it may be a contingent outcome of intersecting political actions by a multitude. The outcome is contingent because none of these political actors can foresee or control the result. The People come into existence not by being built or designed but by being mobilized.⁶ Canovan adds that this third account, which she regards as a more plausible possibility, can better describe the emergence of

⁴ “The people” and “a people” are two most confused terms. Both of them are used either as a political concept or as a social concept. My use of “the People”, which makes the political people stand out, would clear up this confusion.

political peoples in both England and America. For example, popular mobilization formed an American people in the first place. It was then perpetuated by secondary deliberate means such as socialization of immigrants and the cult of the flag.⁷ I think that what Canovan suggests might be a way to understand how a political people is formed. This way of understanding, however, might have gone too far, and is more likely to give rise to controversies.

A political people's formation can be understood in a simple way. As I have said, as long as a political society or political community is formed, a political people also forms. There is no need to consider such factors as what should be done to the multitude (e.g. deliberative construction by leaders or elites) or what situations the multitude should have gone through (e.g. political action or mobilization) in order for them to become a political people. What kind of process – natural/organic growth, artificial/deliberative construction, or popular mobilization – would lead to the existence of a political people is actually not a crucial issue. If we focus on this issue, we will only be trapped in a series of debates or arguments. For example, in response to Canovan's favor of popular mobilization as a more plausible way to form the People, a few counterexamples can be provided. In cases such as the European Union (EU), it is deliberate construction by leaders or elites, rather than popular mobilization, that plays a major role in making a European political society/people.⁸ In addition, although popular mobilization did greatly lead to the

⁵ Thomas Hobbes, *De Cive or the Citizen*, ed. Sterling P. Lamprecht (New York: Appleton-Century-Crofts, Inc., 1949 [1651]), ch. 7, para. 7.

⁶ Canovan, *The People*, p. 47 and p. 55.

⁷ *Ibid.*, p. 55.

⁸ Jürgen Habermas is a celebrated advocate of building a European people. For Habermas, a European people can be formed through the artificial creation of an EU-wide public sphere, within which people can have common experience of political engagement and deliberation. Habermas argues that since national

existence of an American people in the eighteenth century, leadership might still, to some extent, have a part during the mobilization process.⁹ It seems that we can hardly find a single way that can solely explain all or any cases of the People's formation in history and within contemporary politics. Popular mobilization in Canovan may appear to be a sufficient and necessary condition for forming a political people, but I think that popular mobilization at best could only be a sufficient condition.

On the other hand, Canovan's account of the People being a contingent outcome of popular mobilization is itself problematic. The account implies that if political action or mobilization does not take place, the People would not exist. Then, my question is: *before* the English revolutions in the seventeenth century, when popular mobilizations had not yet erupted like a storm, what were those "people" there who were governed by the English monarchs? Weren't they an English people, or they were just a multitude? Canovan might say that they were just a multitude, but it is a little odd and not entirely convincing. After all, those people already lived in a political society and were subjected to their rulers. Besides, what if political action or mobilization ceases to exist before it can achieve anything? Would the People come into existence when popular mobilization is happening and cease to exist when mobilization ends, or once a mobilization starts, the People form and exist permanently? For example, suppose that the American Revolution failed. Since popular mobilizations once appeared for a period of time before the

solidarities in the nineteenth-century Europe were themselves artificial constructions (through state education and mass conscription), there should not be a problem with deliberative expansion of an EU-wide popular solidarity led by leaders or top-down political will. A discussion of this subject, including a debate between Habermas and the opponent, is to be found in Canovan's book. See *Ibid.*, pp. 51-54.

⁹ I would say that most popular mobilizations actually more or less involved leaderships, though these leaderships might not control the process or result of mobilization as deliberately as leaderships do in the EU project.

Revolution's failure, was there an American people that once existed but disappeared later on, or there was an American people always existing there after the first popular mobilization? Does Canovan presuppose that only successful popular mobilizations can form political peoples? Oddly enough, this seems to be true, but doesn't it make more sense that a political people can be more visible during popular mobilizations, even if mobilizations do not end with good results?

If we understand "the People" simply as an entity determined by a political community, our responses to the above concerns would be more reasonable and consistent. The English people before the revolutions were still a political people, though they might not be as politically active as they were during the revolutions. Those who resided in the English colony in America before the American Revolution were also part of the English people. They then changed their identity into another political people – the American people – after the Revolution, when a new political community was founded. "The People" always coexists with a political community, and political actions or mobilizations highlight the People's political role.

Since "the People" is determined by a political community, the People should have an external boundary coinciding with that political community's external boundary. This external boundary, however, may or may not overlap with a social people's external boundary. In other words, the People of a political community may or may not be an ethnic group, a nation, a cultural community, etc. Japan does have a political people that

is also a nation or a particular cultural group,¹⁰ but the People in a state such as the United State are more easily to be described as multiethnic, multiracial, and multicultural. The European Union is a more encompassing political community. Its citizens cover people from a wide variety of cultural and ethnic background. Sometimes, a political people may merely be part of a more comprehensive cultural community. South Koreans and North Koreans are two examples. They are two separate political peoples, but belong to the same cultural community.

If “the People” and the political community constitute each other, then any political community has a corresponding “the people”. I should make it clear that what I mean by a “political community” here is one that is being built upon a concrete land. That is to say, it must have a territory, no matter how large or small the territory is. By this definition, the European Union (EU), France, and Paris are all political communities, though they are different types of political community. The EU, as a supranational political and economic entity, has a territory composed of its member states’ lands. Paris also occupies a tiny portion of France’s territory, and is a political community at a local level. A political party is, however, not a political community, although it may be another kind of “political community”. Thus, we have the People of the EU, the People of France, the People of Paris, and so on, which are all greatly bonded with a land that is always politically defined.

¹⁰ There are certainly Japanese citizens with backgrounds from other states, i.e. immigrants. However, Japan is basically not an immigrants’ state and has a discernible dominant culture.

Although every political community has a corresponding “the People”, not all of these “the People” could be the sovereign. According to my discussion in Chapter 2 (2.2), sovereignty, in a genuine or strict sense, means the exclusive right to govern and possess a territory. Since states are the only kind of political entity that essentially concerns “a monopoly of a legitimate force in a particular territory,”¹¹ only the People of states could be the sovereign people.¹² The sovereign people’s external boundary would coincide with the state’s boundary. So, the People of France could be the sovereign people, but the People of the EU or the People of Paris could not, though they might be the sovereign people in a less strict sense. The People of the EU do not have the exclusive right to possess and control the territory of the EU, because every member state of the EU still retains its sovereignty over its own territory. Similarly, the People of Paris do not own and control the land of Paris either. The land of Paris is part of France’s territory, which belongs to the entire People of France.¹³ For convenience, when talking about the sovereign people in my later discussions, I will still use the term “the People” to mean it.

Things I have established so far are that “the People” is a political concept determined by a political society or community, and it has an external boundary coinciding with that political community’s external boundary. “The People” generally refers to people who belong to a political society or community such as a state or city.

¹¹ David Miller, *On Nationality* (New York: Oxford University Press, 1995), p. 19.

¹² I should add that although states are presently the only kind of political entity exclusively having a legitimate force over territories, in the future if there is another kind of political entity that will replace states and take over its role, the People of this kind of political entity should also become a sovereign people.

¹³ Canovan mentions that before and during the American Civil War, “popular sovereignty” at the local level was used as a reason for the Southern secessionists to assert their right to self-government and slavery. That is, the right of “the people of the Southern States” to self-government and slavery. Canovan, *The People*, pp. 30-31. Here I show that there cannot be “the sovereign people” at the local level.

The *sovereign* people, however, are particularly those who reside within a *state's* boundary but are not necessarily a nation or a single cultural group. More meanings of the concept of “the People” will be explored in the next section.

3.2 Collection and Collectivity

What is “the People”? What does it mean to be the People? It is easy for us to conceive of the People as a collective entity, but what does it mean to be a collective entity? Is it a collection of individuals, or it is a single body with certain collectivity? If it is the latter, what constitutes this collectivity and turns a set of individuals or the masses into one body? The nature of “the People” has been unclear. However, to identify further who should be the members of the People, we should try to know more about the nature of “the People”, and get a sense of what it is like to be the People. Since being collective is a distinct property of “the People”, my exploration in this section will focus on this property.

The People are not only a collection of individuals in a territory, they are also a single body, one with a certain collectivity. The People as a whole or a body had long been recognized since the days in Roman Republic. The Roman *populus*, in a sense, was a much more united entity transformed from the multitude and capable of taking action. This united entity, which transcended specific individuals, classes, and generations, was

also understood as the whole political community.¹⁴ In the medieval Italian cities, there was the notion of a corporate *populus* that was more than an aggregate of individuals, and able to act as one.¹⁵ In modern times, the People as one body was a common image to social contract theorists, although there might be disagreements on the very nature of that body. For example, in Hobbes, a multitude of men are converted into *One* Person by one sovereign representative. The representation is done with every individual's consent, and "it is the *Unity* of the Representer, not the *Unity* of the Represented, that maketh the Person *One*."¹⁶ Talking about how a political or civil society is formed, Locke says that where-ever any number of men in the state of nature have, by the consent of every individual, united into a society and quitted their natural powers, they make a political or civil society, one People, one Body, or one Body Politick.¹⁷ Similarly, in Jean-Jacques Rousseau, when each individual associates with others and puts his original rights and powers into the community, a corporate body is created, and each individual becomes an indivisible part of the whole. By this act of association, the body, which is also called the public person, the *republic* or the *body politic*, acquires its unity and its will.¹⁸

While the People as a whole or a body was highly recognized throughout history, a lot still needs to be clarified about this collective body. What constitutes this body's unity or collectivity which turns a set of individuals into one body? How much content or meaning does this collectivity have? What makes the People's collectivity distinct from men's other forms of collectivity such as nationality? In social contract theories, the

¹⁴ Ibid., p. 12 and p. 98.

¹⁵ Ibid., pp. 98-99.

¹⁶ Hobbes, *Leviathan*, ch. 16, p. 220.

¹⁷ Locke, *Two Treatises of Government*, Book II, ch. 7, paras. 87 and 89; Book II, ch. 8, paras. 95-96.

People's unity or collectivity is understood through men's act of association or the so-called social contract. The stories usually start with a state of nature in which each man lives freely and seeks his own preservation. By experiencing some difficulty or inconvenience for self-preserving, men start to unite, with their own consent, to form a collective body to secure a greater protection. The collective body's unity or collectivity might come from, as Hobbes indicates, the unity of the sovereign representative (that is, the monarch), rather than that of the represented. It might also be like what Rousseau says, the People's being one comes from men's act of association directed by a general will or common interest in forming a union to gain greater protection.¹⁹ Instead of discussing whether Hobbes's or Rousseau's view on the People's unity is correct, I would directly reflect on the effect of the entire contractarian approach itself. I think that the contractarian approach is unable to provide us with a precise understanding of the People's unity or collectivity.

The social contract theory cannot provide a precise reading of the People's unity or collectivity, mainly because the entire contractarian thinking of how political societies and the People are formed is unrealistic. The social contract theory might be able to explain the formation of men's first political societies, but it cannot explain well the formation of most existing political societies. In social contract theories, political societies and the People have to be formed through individuals' consent, which hardly occurs in our current world. The truth is that every man is born into a state and subject to

¹⁸ Rousseau, *The Social Contract*, Book I, ch. 6, pp. 60-62.

¹⁹ *Ibid.*, Book I, ch. 6, p. 61; Book II, ch. 1, p. 69.

that state without choice.²⁰ If someone says that a person's residence implies his tacit consent, that is also problematic. Residence, in fact, does not imply tacit consent. As David Hume has pointed out, residence implies consent only when residence is a matter of choice,²¹ but residence is usually not a matter of choice. Just as one's being born into a state is not a choice, residing in the state and never leaving it could also be a result of having no choice. There could have various reasons for a person's not leaving his state, many of which can be regarded as having no choice. For example, lack of abilities for surviving in a foreign state; not having money to immigrate; having a strong sense of belonging or attachment to one's homeland and people there; and so forth. Hume also thinks that tacit consent itself actually never has "such influence on mankind as what is performed expressly and openly."²²

Most existing states were not formed through social contract or individuals' consent, but are a result of various causes such as conquest, occupation, colonization, bargain between dominant countries, special international situations such as the cold war structure or the end of this structure, and so on. For many existing states, their border might also be redrawn again and again throughout the history due to various causes. No one really knows what happened upon the first establishment of men's political societies or governments, but even if so, a contractarian explanation might still be unthinkable.

The general social contract theory is a theory that tries to give an ideal and conjectural or

²⁰ Here my criticism follows David Hume's criticism of consent theory or social contract theory. Hume thinks that although the obligation of obedience at first depended on men's promises or consent, after the first establishment of government men were just born to such an obedience. See David Hume, *A Treatise of Human Nature*, ed. L. A. Selby-Bigge (Oxford: Clarendon Press, 1888 [1739, 1740]), Book III, Part II, section 8, pp. 541-542 and p. 548.

²¹ *Ibid.*, Book III, Part II, section 8, p.548.

²² *Ibid.*, Book III, Part II, section 8, p. 547.

hypothetical explanation for the existence of political societies. It presupposes that the formation of political societies *should* have such a moral basis as social contract or men's consent. It is a floating theory – neat, but far away from the reality and not helpful for our understanding of the reality. I would suggest that precisely to understand the People's formation and its collectivity, it is better for us not to comprehend from a hypothetical, but from a realistic or naturalistic standpoint. That is, why not start from doing some observation of the reality and comprehend the People's collectivity on the basis of things we can sense? I think that the reality already provides us much information about the People that should not be ignored. Also, I think a good theory of political morality cannot be too distant from the reality. It should be close to the reality and able to take the imperfection and limitations of the reality into consideration.

Therefore, viewing from a more realistic or naturalistic standpoint, I think there are mainly two things constituting the People's collectivity: one is individual members' common passive political status as the governed and the fact that they are all greatly affected by the governance; the other is the common interests among individual members. These two things have a causal relation, but I would still regard both of them as elements that constitute the People's collectivity.

First, the People's collectivity is constituted by a fact that all individual members are passively under the same power structure of governance, and as the governed, they are all greatly affected by that governance. We know that “the People” is an entity that co-exists with a political society. Its formation and meaning are greatly determined by the political

society. The core of the political society is actually a power structure of governance. Members of the People share the same political status because they are all the governed, as opposed to the power-holder or the government, in that power structure.

For members of the People, they not only share the common political status as the governed, their lives are also all greatly affected by that governance. Any men who are under a power structure would be bound and affected by that power structure. This is especially true for members of the People. The People are actually a particular group of men who are tightly connected to a political society and bound and affected by its governance to the largest degree. The influence or impact from that power structure of governance on the People could be both comprehensive and profound – the influence could occur in almost all aspects of the People’s lives, and sometimes the influence is so deep that no one would even sense or notice it. Any law or command enforced, any public policy implemented, and even the power-holder(s)’ personal will(s) would determine how members or the whole body of the People behave and think with regard to their private and public life, and therefore directly or ultimately affect their personal and collective well-being. For example, an economic policy may affect a political people’s security and solidarity if it creates extreme disparity between the rich and the poor. A state’s foreign policy concerning war and peace would affect its own People’s safety and living. With or without certain cultural policies, a state may help preserve or harm a particular living culture, on which many members’ meaning of life greatly depends. In education, a government may direct the content of school textbooks or decide what should or should not be taught in schools, and this would shape its People’s thought and

behavior.²³ A regime type may even shape a political people's character. An example is that people in the communist regime usually have the tendency of distrusting each other or others.

In addition to the tight connection with a political society, another cause for the People's lives being so greatly affected by a structure of governance is that the power relation between the power-holder and the governed itself is an uneven top-down relation, and the People, as the governed, are always the only receivers of all possible effects in that relation. This is true not only in tyrannical or dictatorial political societies, but also in free or democratic societies. In democratic societies, even if the People can express their opinions and vote to decide on certain things, it does not mean that their lives would be less affected by the governance. They might play certain role in the structure of governance, but ultimately they are still the only receivers of all consequences. The impact the governance brings on them is still huge.

Second, even though the People are passively thrown into a power structure of governance, they, as the governed, would still be tied together to form a collective body and generate certain popular will or common interests, which also constitute the body's unity or collectivity. Given that all individual members of the People share the same political status as the governed, and that their lives are all greatly impacted due to the status, they form a collective body that has a common fate. Individual members, thus, go

²³ There are many such kind of cases. The Japanese government has been tampering with the content of the state's history textbooks, especially content concerning its history of wars, invasions, exploitation of people in other countries, and cruelty towards its own people. In many dictatorial states, in order to secure and

through hardships and enjoy prosperity of their political community together. They actively play citizens' role together when there is a need or when their state calls. More importantly, certain popular will or common interests would also be generated among these members. For example, they might hope for such things as security, peace, and a good life together, all of which are thought to be provided by their government or the power-holder(s). They might also think that their obedience to the government or power-holder(s) is justified only when the government or power-holder(s) can meet their common interests.

To make it easier to comprehend the People's collectivity, it may be useful to make a comparison between the People's collectivity and men's other forms of collectivity, especially collectivity of a national people or of a nation. In modern times, the People were often conceived of as a nation. Even today, people still ask if "the People" amounts to a nation. In spite of the history and today's confusion, "the People" is still a different matter from the nation. Unless we can distinguish one from the other, we cannot really understand the nature of the People's collectivity.

It is easy to conceive of the People as a nation, indeed. People have this impression probably because in reality we do find states or political peoples that are also nations, and "state" and "nation" are words often interchangeably used. Both the People and the nation (or the national people) are collective entities, but except for being a collective entity, they do not have much in common. There is no consensus among theorists about

consolidate control of the People, certain political ideologies were instilled into the People's mind through strong nationalist education.

how “nation” should be understood or defined. Particularly, there are disagreements as to whether nation is a social or cultural or political group, and whether there is an ethnic or “blood” element in nationhood. These disagreements, however, would not be much a problem preventing us from making a distinction between the People’s collectivity and a national people’s collectivity. David Miller has a characterization of a national people’s identity or nationality which seems apt.²⁴ For convenience, I will consistently use Miller’s characterization to help make the distinction. In Miller’s characterization, there are five characteristics of a national identity or nationality. I will ask if the People’s collectivity shares these characteristics.

First of all, according to Miller, nationality is constituted by a shared belief and mutual recognition and commitment among the members. That is to say, members of a nation mutually think of themselves as forming one nation. They believe that members belong together, and they wish to continue their life in common. Miller emphasizes that it is a mistake to identify nations, from an outside observer’s position, by looking to see if people in the group share some common attributes such as language or race. Instead, it is more about members’ subjective belief, recognition and commitment, identifying themselves as one nation.²⁵ The People in states, however, do not necessarily have a shared belief and mutual recognition and commitment among its members as a national people does. Many states in this world are actually composed of different ethnic groups, races, religions, religious sects, or even nations. States like these may gradually become a nation, but if there is any conflict or incongruity among the groups, members are less

²⁴ Miller, *On Nationality*, pp. 17-27.

²⁵ *Ibid.*, pp. 22-23.

likely to develop a shared belief and mutual recognition and commitment among themselves. In some cases, certain groups among the members would even seek for self-government or secession. They do not think that they and other members belong together, and they do not want to continue their life in common. Therefore, the People's collectivity would not be constituted by a shared belief and mutual recognition and commitment among the members. It is constituted merely by members' common political status as the governed and their common interest. Members may develop certain degree of solidarity based on their common political status, but that is still different from a solid unity of belief, recognition, and commitment. .

Second, Miller says that nationality is an identity that embodies a historical continuity. A nation is a community of obligation to continue forebears' work.²⁶ People in a nation have a common sense of historical continuity, and they all have a feeling of obligation to make their community stretch forwards into the future. The People in states, however, do not necessarily have a sense of historical continuity. Many states in this world are either built upon a multi-national background or built without any national background. For Peoples in states like these, they might not have a single sense of historical continuity, not to mention the feeling of obligation to continue their community's history. So, historical continuity would not be an element that constitutes the People's collectivity.

The third aspect of national identity, according to Miller, is that it is an active identity, which means that the identity is maintained through active exercises such as

people doing things together, making decisions, achieving results, and so on. Sometimes, these acts are performed by proxies such as statesmen, soldiers, and sportsmen, who embody national will when they are acting.²⁷ Is there such thing as an active identity among the People that might also constitute their collectivity? Under normal circumstances, which mean no serious conflicts or incongruity within a state, the People in a state might, more or less, be able to form a political identity, or say, a positive attitude towards their political society. However, depending on different states, the People's political identity might be strong or weak,²⁸ and it might or might not overlap with a national identity. Political identity could be an active identity, too. The People also maintain their political identity through active exercises, but all the activities should be political. In case that a state's situation is abnormal, with serious internal conflicts or incongruity, it is possible for a political people to live without a single political identity.

Fourth, a national people's identity is connected to a homeland. Usually, a national people would desire to form their own political society and control their homeland, if they currently do not have control yet.²⁹ In this sense, we may say that the notion of nation is actually a little political, not purely social. The desire to control a homeland does not pose a problem for the People in a state, because, by definition, states already have a control over a land. More importantly, controlling a homeland may not be so meaningful to a political people, especially when they do not have a sense of historical continuity and a sense of belonging and hoping to continue their life together.

²⁶ Ibid., p. 23.

²⁷ Ibid., p. 24.

Fifth, a national people must share a national character or a common public culture by virtue of which they belong together.³⁰ More specifically, a common public culture “may be seen as a set of understandings about how a group of people is to conduct its life together.”³¹ The formation of a national character or common public culture does not need to be based on biological descent,³² but it certainly requires time. So, if a state has a short history and was not built upon a national background, its People may not have formed a national character or common public culture; or even if it has formed one, the culture must be thin. However, without a national character or common public culture, the People’s collectivity can still be formed. The reason will not be repeated here.

By distinguishing the People from a national people or a nation, we now should be clearer about the nature of the People and its collectivity. Although sometimes the People are also a nation, or the People may gradually become a nation, the People and the nation are essentially two different entities. Considering those five characteristics of a national identity, we also find that the formation of a national people’s identity or collectivity is more of a natural and organic process, while the formation of a political people’s collectivity is more artificial and passive – all centering on a power structure of governance.

²⁸ It is not hard to find people in a state who do not have a political identity towards their state. They might be political dissidents, or immigrants who are yet to integrate into the new state. When there are more of such kinds of people in a state, political identity among the People is weaker.

²⁹ Miller, *On Nationality*, pp. 24-25.

³⁰ *Ibid.*, p. 25.

³¹ *Ibid.*, p. 26.

³² *Ibid.*, p. 25.

Before closing this section, I want to bring up one more feature of “the People” that should also be noted. “The People” as a collective entity actually has two aspects — one is abstract; the other is concrete. This twofold feature is a legacy of the Roman Law. Earlier I have mentioned that the Roman *populus* was a more united entity transformed from the multitude and capable of taking action. This united entity, which transcended specific individuals, classes, and generations, was also understood as the whole political community. On the one hand, since “the People” is an entity that transcends specific individuals, classes, and generations, “the People” is a timeless and spaceless, or say, abstract notion. On the other hand, “the People” is also a concrete collective body because it consists of a set of concrete individuals capable of taking action together.³³ These two aspects of “the People” may look contradictory (how could it be possible for the People to be both abstract and concrete?), but if we understand that the two aspects are actually two different levels of “the People”, the contradiction would merely be an illusion. Although there are two different aspects of “the People”, these two aspects are usually interwoven.

For those individuals who constitute the People, each of them has two kinds of status – one is public; the other is private. Individuals in one polity are not only members of the body of the People (usually they are called citizens), but also private individuals, each of whom has his own individuality. On the one hand, he is tied to the whole political community and thinks and acts as a member of the community. On the other hand, as a private individual, he still keeps his own individuality. Nevertheless, it seems more likely for an individual’s private status to be affected by his public status. As I have mentioned,

³³ Canovan, *The People*, p. 91 and p. 120.

everybody's life is greatly affected by the public environment, institutions, public policies, and so on. We may consider what Hume says about men's public and private duties which provides a proper example for us to think about. Hume argues that without personal promises (to submit to the government), government is still necessary in all large and civilized societies; but without the government, which can impose sanction, promises would have little efficacy in such societies.³⁴

I will conclude this section by summing up points I have made. The People are not only a collection of individuals in a territory, they are also a single body with certain collectivity. The social contract theories are unable to provide a precise reading of the People's unity or collectivity, because the entire contractarian thinking of how political societies and the People are formed is unrealistic. I suggest that it is better for us to understand the People's collectivity from a naturalistic standpoint. There are two things constituting the People's collectivity: one is their common passive political status as the governed and their being greatly impacted by the governance; the other is their common interests. "The People" is often conceived of as a nation, but in essence one is still different from the other. "The People" as a single body has two aspects — it is both an abstract notion and a concrete entity. These two aspects may look contradictory, but they are actually two different levels of "the People". Finally, each individual who constitutes "the People" has both a public and a private status. Each individual is both a citizen and a private person. It is, however, more likely for an individual's private status to be affected by his public status.

³⁴ See Hume, *A Treatise of Human Nature*, Book III, Part II, section 8, pp. 543-546. The original text involves a criticism of the idea that the duty of allegiance to a government is based on people's promises or

3.3 Membership

Who are the People that should be the sovereign? Who should be included as the members of the People? Where is the internal boundary of the People? How do we draw the line between members and non-members? Are the People identifiable? In the past, “the People” was often identified with the common people or members of the nonaristocratic and nonclerical classes. Gradually, it meant all members of a polity, or, sometimes, even all those subject to (the laws of) a polity including nonmember residents.³⁵ The changing identification throughout the history signifies that the People’s membership is not a simple issue.

Consider the following questions about identifying the People. Normally, the People are easily identified with the set of citizens (i.e. people with a full membership), but this may be inadequate. There are people who are colonized by states and do not have the status of membership, but whose lives are greatly affected by those states. Do people like this not count as members of the People?³⁶ In some states such as Kuwait and Monaco, there are more noncitizen residents than citizens. For states of this kind, identifying the People with the set of citizens would yield rather nonpopulist implications.³⁷ Besides, identifying the People with the set of citizens may not help resolve many issues that are

consent, but here we may skip the context.

³⁵ See Morris, “The Very Idea of Popular Sovereignty: ‘We the People’ Reconsidered,” p. 7. For more history of the identification of the People, see Canovan, *The People*, pp. 22-26 and pp. 68-74.

³⁶ Morris, “The Very Idea of Popular Sovereignty: ‘We the People’ Reconsidered,” p. 10.

troubling us, such as illegal immigrants and their children's rights, and noncitizen legal residents' rights to vote in local elections.³⁸ If the People are identified with "the governed" in a state, including citizens and all other subjects, it may still be problematic, because "in an increasingly interdependent world, there are third parties, neither citizens nor subjects, whose lives are affected in important ways by the decisions of states."³⁹ Indeed, it is a tricky problem when we try to individuate the People, but if we do not know who constitutes the People, we do not know to whom sovereignty should be attributed.

My discussions in Section 3.1 and Section 3.2 concerning the meaning of "the People" and the People's external boundary actually have outlined some criteria for identifying the People. We already know that the sovereign people have to reside in a state's territory. We also know that members of the People are not only the governed, they are also greatly impacted by the governance. This common status renders them a body sharing a common fate and generating common interests. To be greatly affected by the governance, members' long residence in the territory and a close connection with the state would all be required conditions. That is to say, members have to have been residing in the territory for a long period of time, and they should be strongly tied to the territory or having a significant relationship with the state. Therefore, it seems appropriate to

³⁷ Ibid.

³⁸ Ibid., p. 9, footnote 27.

³⁹ Ibid., p. 10.

identify the People with a particular group of the governed, who permanently reside in the territory of a state and have a strong right-duty relationship with that state.⁴⁰

According to the above characterization of the People's membership, it is problematic to identify the People with "the governed",⁴¹ which is too broad. Obviously, citizens are the primary component of the People, given their full membership. Permanent residents might be another proper subset. Based on their long-term residence and long-term relationship with states, permanent residents' lives could also be affected to a large degree by states' governance. In fact, including permanent residents as members of the People could help resolve some concerns I mentioned earlier. One concern is about whether people who are colonized by states can count as members of the People. Since colonization is an abnormal situation, which involves a distorted power relation of governance, no colonialists would see the colonized people as members of the People. Nevertheless, given that the colonized people are also the governed and are greatly impacted by colonial rule, and that the colonized lands are regarded by colonizers as part of their territory, the colonized people are in a sense like permanent residents of states and therefore may be included as members of the People. In addition, for states that have fewer citizens than noncitizen residents, including permanent residents as members of the People could also help resolve concerns about the nonpopulist implications. As for issues such as noncitizen legal residents' right to vote in local elections, including

⁴⁰ In contemporary politics, the People's relation to the state could be described as a substantive right-duty relationship.

⁴¹ "The governed" broadly includes both citizens and noncitizen subjects such as permanent alien residents, short-term alien residents, and visitors.

permanent residents as members of the People may make more room for the issue to be resolved.

Illegal immigrants and their children's right is a more controversial issue. Could they be members of the People? If we could recognize that illegal immigrants are also the governed in states, and that their lives are also affected by the governance to a large degree once they have stayed for a long period of time, during which a certain close connection with the state is also built up, we may seriously consider seeing them (or part of them) as permanent residents and including them as members of the People. However, illegal immigrants are, after all, illegal. Some might think that they are not entirely like permanent residents, and their illegal status may cause other problems in states, so it seems inappropriate to include them as members of the People.

Controversial issues such as illegal immigrants may render a concept of the People with a blurry edge, but with a solid inner part composed of citizens and, maybe, permanent residents. Perhaps, we will never be able to draw a clear and precise internal boundary for the People. Nevertheless, we should note that these controversial problems would not directly invalidate the doctrine of popular sovereignty. Although we are not sure about certain people's eligibility for being part of the People, that would not affect the fact that we still have a large number of people there, composed of citizens and permanent residents, who are eligible to be called "the People".

As for the concern about the third parties outside of the states who are neither citizens nor subjects, but whose lives are affected in important ways by the decisions of states, I would say that people like this will never be part of that state's People. "The People" in our discussion are only those who are governed by a single sovereign state. People outside of this state who are affected by it in important ways would pose another issue that is beyond our discussion here.

In a word, in this section, I tried to draw the internal boundary of the People. I identify the People with a particular group of the governed, who permanently reside in the territory of a state and have a strong right-duty relationship with that state. By this characterization, citizens are the primary component of the People. Permanent residents may also be a proper subset. There are controversial issues such as illegal immigrants' rights that render the People's internal boundary unclear. However, that would not invalidate the doctrine of popular sovereignty, because we still have a large amount of people there (i.e. citizens and permanent residents) who can be called "the People".

Chapter 4: Popular Sovereignty Reconsidered

Having analyzed the concepts of sovereignty and the People, now I will proceed to clarify the notion of popular sovereignty. What is popular sovereignty? As I mentioned in Chapter 2, popular sovereignty means that sovereignty is held by or belongs to the People. This literal definition, however, does not tell much about how the People hold sovereignty. As the holder of sovereignty, what do the People do? Are they the actual ruler? The lawmaker? Or, they are just an authority in reserve, and occasionally take action or serve as the final resort? In Section 4.1, I will discuss the meaning of popular sovereignty and its elements.

When we attribute sovereignty to the People, we mean a collective body of people or the People-as-whole. However, in reality, when popular actions take place, it is often that only a part of the concrete people, large or small, are in action. These people often self-claim to be the People when they act. Is it okay for them to claim so? Can they represent the People? When observing these people taking action, can we say that there is a sovereign people in action? There seems to be a gap between what they claim to be (the People-as-whole) and what they are (the People-as-part). This issue will be tackled in Section 4.2.

Even if we can make sense of popular sovereignty, we may wonder how possible or well popular sovereignty can be exercised and realized. Many people actually doubt the

possibility or effect of exercising and realizing popular sovereignty in our current societies. In Section 4.3, I will investigate the problems and suggest ways by which popular sovereignty can be better exercised and realized.

4.1 Making Sense of Popular Sovereignty

What is popular sovereignty? Given my characterization of sovereignty in Chapter 2 (2.2), I would define popular sovereignty as the People having or holding the highest political authority over a territory. Specifically, the People have the highest political authority mainly in governing and possessing a territory. It can also be said that the People have the exclusive right to govern and possess a territory. One clear message from my definition is that the People (ultimately) govern or rule. What is meant by “the People ruling”? How does this work? What should the People do if they rule or govern? It seems that the answer would depend on how we understand “rule” or “govern”.

It is true that the People can hardly govern or rule directly or in person. Nowadays, operation of rule or governance over a territory is mainly done by the government, which is a complex organization with powers and functions in legislation, execution, justice, etc. We know that the entire body of the People cannot sit in government to rule directly. The People have to rule through intermediaries such as delegates, representatives, and officials appointed by elected officials. Nevertheless, the entire government, including those delegates and representatives in it, is merely the People’s agent. The People

authorize and grant power to the government for it to rule, but such authorization is revocable and government can never replace the People to hold sovereignty.

The point behind the agency relation between the People and their government is that the People's exclusive right to govern and possess a territory is inalienable, which means that the right cannot be permanently and fully transferred to any other entity. The People's inalienable right to govern and possess a territory will be justified in Chapter 5 (5.1), where I will argue that the basis of this inalienable right is mainly the People's special relation with the territory that renders them an irreplaceable status toward the territory. So, authorization is not alienation. The relation between the People and their government is commission, and the government is only the People's minister.¹ Those delegates and representatives in government cannot even say "We are the People". To work effectively, the government would have its own power or force, which is coercive. That coercive power, however, is not sovereignty. The government exercises its own coercive power to operate a set of institutions that embodies sovereignty to make the entire state run.² It may look like that the government itself is exercising sovereignty, but that is an illusion. The government does not hold and exercise sovereignty, which should always reside in the People. The *agency relation between the People and their government* is the first element of the notion of popular sovereignty. It indicates that the People are not only the governed, but also should be the ultimate ruler. They ultimately

¹ Rousseau, *The Social Contract*, Book III, ch. 1, p. 102.

² Recall the metaphor I use in Chapter 2 (2.3) to describe the relation between the state, the government, sovereignty, and the People: as a political organization with a complex institutional system, the state as a whole can be seen as a machine aiming at generating a well-ordered society. To make the machine function, power is needed, and that power is sovereignty, which is given by the People. The central government is analogous to the motor of the machine which changes power into machine's movement.

govern themselves, and are their own master. I think that the agency relation should be made clear in a state's constitution.

Although the People can hardly sit in government to govern, they can “govern” or “rule” in other manners. One way is to determine the ends of their state – that is, “the end of a polity should be determined by the interests or desires of its members.”³ The People's determination is actually guiding the government as to what to do. As I had mentioned in Chapter 3 (3.2), the People as the governed in a state do have some common interests. Usually, they would desire security, peace, a good life together, etc. The People could also decide on things such as where their state wants to go or how they should be governed. At any rate, it is the sovereign people who determine. The ends of a polity are usually written into constitution. This means that the People can make, remake, and amend the constitution, and that the People can institute any fundamental changes they want. Once the ends of a polity are determined, the government should act upon them, for the government exists to serve the People and is accountable to the People.⁴ This *service conception of government* is the second element of the notion of popular sovereignty. If one government is malfunctioned or posing threat to the People's life, freedom, etc., the People can overrule and replace it with a new one.⁵

³ Morris, “The Very Idea of Popular Sovereignty: ‘We the People’ Reconsidered,” p. 12.

⁴ This means that anything done by or in the government, including policies made, laws enacted, and delegates or representatives' deeds, is for the People. The service conception of government here follows Joseph Raz's service conception of the function of authorities. That is, authorities' “role and primary normal function is to serve the governed.” Joseph Raz, *The Morality of Freedom* (New York: Oxford University Press, 1986), pp. 55-56.

⁵ About the People's right/power to amend constitution and alter government, many people already mentioned or discussed it. For example, Locke, *Two Treatises of Government*, Book II, ch. 8, para. 149; Book II, ch. 19, paras. 212-216, 220-221, 240. Thomas Jefferson, “The Declaration of Independence,” 1776. Akhil R. Amar, “The Consent of the Governed: Constitutional Amendment outside Article V,” *Columbia Law Review* 94/2 (1994), pp. 457-508. John F. Knutsen, “Popular Sovereignty,” (Revised: July 2, 2004), URL = <http://www.basiclaw.net/Principles/Popular%20sovereignty.htm>.

On the other hand, even if governance is mainly done by the government, the People can still closely monitor, control, and complement the government's governance. The People have to make sure that their government is (not) doing what it is (not) supposed to do. The People themselves also need to complement government and do what the government cannot or should not do. In other words, the People can actively participate to "govern" or "rule" as well. Available practices for popular rule in today's democratic societies include election, referendum, opinion poll, public deliberation, citizen's initiative, protest, etc. These practices, however, are often ill-used. Some of them, such as public deliberation and citizen's initiative, are also rarely used. There is large room for improvement or enhancement. Besides, these practices are far from enough, also. I think that more mechanisms should be figured out and provided for the People to rule. The People can and should participate more actively. This *participatory conception of popular rule* is the third element of the notion of popular sovereignty.

Popular sovereignty requires the People's active participation in governance. After all, popular sovereignty is inalienable. Authorizing the government to do work is not enough. The People themselves should participate to exercise their highest political authority and power. They need to get substantially involved in actual rule, and cannot just intervene occasionally in governance. As Christopher Morris says, "justified political authority requires political *power*, understood as a *de facto* ability to influence or control events (e.g. by imposing sanctions)."⁶ Morris, however, questions the practical possibility

⁶ Morris, "Sovereignty," p. 176. Also, Morris, "The Very Idea of Popular Sovereignty: 'We the People' Reconsidered," p. 16.

of establishing institutions to fulfill popular rule, at least in large societies such as the U.S.⁷ He thinks that the ideal of participatory rule is not suitable for contemporary societies, and the “activist or participatory thesis is not necessarily part of popular sovereignty.”⁸ I am not so pessimistic about the possibility of establishing institutions for popular rule in contemporary societies. After all, institutions are men’s creation, which is always full of possibilities. If people can realize that it is necessary to establish institutions for popular rule, people should use their creativity more on institutional design. I will focus my discussion on the issue of exercising and realizing popular sovereignty in Section 4.3.

Hence, rule can have different forms, and should not be confined to rule by the government. The People can rule or govern in a broader sense. Those who think that attributing sovereignty to the People would betray the pyramidal image of a hierarchy of political authorities,⁹ or that the People are “not the sort of entity that can actually rule”,¹⁰ are actually mistaken, because they conceive of “rule” as in a narrow and traditional sense. The sovereign people as both an abstract and a concrete collective body are not just an authority in reserve. This body is capable of being in action.¹¹ Its action does not appear only in unusual or temporary political mobilizations or movements. It can also appear in ordinary governance.

⁷ Morris, “The Very Idea of Popular Sovereignty: ‘We the People’ Reconsidered,” p. 16.

⁸ *Ibid.*, p. 17.

⁹ *Ibid.*, p. 24.

¹⁰ Canovan, *The People*, p. 121.

¹¹ *Ibid.*, p. 91 and p. 120.

In sum, popular sovereignty means that the People are to have the highest political authority or exclusive right to possess and govern a territory. Given the complex public affairs in contemporary political societies, the People have to rule indirectly by authorizing the government to take charge of most part of governance. The government works as the People's agent and aims to provide service for them. Nevertheless, the People still rule ultimately by setting up goals and structure for governance, and by actively participating to monitor, control, and complement government's governance. Current practices for popular participation are not well practiced, and are actually limited. More mechanisms should be created for the People to rule. In a word, the core of the notion of popular sovereignty should be that the People own the state, govern the state, and enjoy the service provided by the state.

4.2 Part and Whole

When Margaret Canovan uses the phrase "Part and Whole" in her book *The People*, she is mainly talking about the issue of the People's internal boundary -- that is, who should be included as members of the People.¹² Canovan notes that there is an ambiguity because sometimes "the People" refers to the whole polity, and sometimes, especially when there are political mobilizations or populist movements, refers to the excluded part from power (e.g., the common people).¹³ In Chapter 3 (3.3), I already drew an approximate internal boundary for "the People" in contemporary times. Basically, the

¹² Ibid., ch. 4.

¹³ Ibid., p. 65.

proper subsets of the People, i.e. citizens and permanent residents, are all the governed who have a long-time relationship with the territory in which they reside. Here I want to address the “part and whole” issue in a different way. When we attribute sovereignty to “the People”, we mean the People-as-whole or the People as a collective body. However, this collective body is also a set or collection of individuals, who often have individual or group actions in the name of the People-as-whole. Is it okay for them to claim “We are the People”?¹⁴ Can we say that there is a sovereign people present during their actions? There seems to be a gap between what they claim to be and what they are when they are in action.

Although the People are a collective or unifying body, it is common to see individual citizens or one part of population taking action and claiming to be “the People”. This often occurs in various kinds of social or political demonstrations and movements, in which only particular groups of people or part of population appear or participate, though participants always claim that they are the People.¹⁵ Are those participants entitled to claim so? Can we really see them as a sovereign people in action? To determine whether individuals or groups of people in action can claim “We are the People”, I think one critical criterion is to see if what those people are seeking can *apply to all*.¹⁶ If what they are seeking can apply to all people, then they can speak or take

¹⁴ Or, “Wir sind das Volk.” Originally, this was a slogan used by the East German demonstrators in 1989. Ibid., p. 122 and p. 135.

¹⁵ The impressive Polish ‘Solidarity’ movement in 1980 mobilized “ten million people out of a population of less than forty million.” Ibid., p. 136. The scale was striking, but still, not all members (not even a majority) in their society participated.

¹⁶ Here I use Rousseau’s words “apply to all”. “[T]he general will, ..., must be general in its purpose as well as in its nature; that it should spring from all for it to apply to all; ...” Rousseau, *The Social Contract*, Book II, ch. 4, p. 75.

action in the name of the People. Specifically, there are three kinds of situation of “applying to all”. They are spelled out as follows.

First, if people are speaking or taking action against anything that is in violation of the principle of popular sovereignty, they can claim to be the People. For example, people may protest against any official, delegate or representative’s corruption in the name of the People, for the public servant’s private interest outweighs the People’s public interest. People may also protest against any manipulated election or referendum in the name of the People, for that kind of election or referendum merely uses the People as means to reach certain private purposes, and does not treat the People as the real master.

Second, if what people are seeking is the common good, which means something good or beneficial for all, then those people in action are entitled to claim “We are the People”. Here the common good refers not only to the basic needs for people’s living such as clean water, clear air, food, etc., but also to conditions that can lead to the general public’s well-being. For example, if there are people protesting against certain policies that would endanger the People’s living environment, those protesting people can claim “We are the People”, for what they are seeking is a good environment, which is good for all people. Likewise, an individual’s act of assassinating a tyrant may be justified if the reason for the assassination is freeing the People from suffering.¹⁷

¹⁷ I borrow this example from Canovan. Canovan mentions that in the sixteen century, there were people who argued that any individual is entitled to assassinate a tyrant. Canovan, *The People*, p. 17.

Third, if what people are seeking are rights that are shared by all, then they can speak or take action in the name of the People. Popular sovereignty is actually based on the idea of equality – that is, everyone has the same natural and political status, and should receive the same respect, treatment, and concern. This entails that there are certain general or common rights that are shared by all, including basic or natural or human rights (e.g., life, liberty, property, etc.) and civil rights (e.g., free speech, participation in politics, receiving education, etc.). So, if the reason for some people’s action involves rights that are shared by all, they can claim “We are the People”. For example, if someone or some people are protesting against the oppression of freedom of speech by the government, then they can say “We are the People”, for right to free speech is shared by all. Minority people such as those native groups can also claim to be the People and protest about their marginalized social and political status, for what they are seeking usually involves many civil rights, which are supposed to be enjoyed by all.

We attribute sovereignty to “the People”, which is not only a body with unity, but also a collection of different kinds of people who have their own particular concerns or interests. For example, intellectuals or political elites are more concerned about freedom of speech or the right to participation in politics, while ordinary people are more concerned with the stability of their economic environment. We cannot say that these different kinds of people respectively hold sovereignty, because that may sound as if sovereignty is divisible.¹⁸ Nevertheless, as long as individuals or groups’ particular concerns or interests can be generalized and applied to all, they can speak or act in the name of the People.

Individuals or groups of people may be entitled to speak or act in the name of the People, but it may not be appropriate for us to say that what we see are sovereign peoples in action. Being able to speak or act on behalf of the People does not mean that there is a sovereign people in action. These are two different matters. After all, only concrete individuals are able to be physically present or in action, and unless there is a significant number of individuals in action, we cannot say that a sovereign people is in action. What is interesting here is that we cannot really expect the entire sovereign people, i.e. all individual members of the People, to be present to say that there is a sovereign people in action. That is impossible, but it seems reasonable to expect a significant amount of individuals present. Quantity still matters. Then, the next question is: how many people are enough to count as a sovereign people? Oddly enough, it is actually hard to determine the number or proportion. Ideally, there should be as many people as possible. So, people present in a large scale of demonstration could be seen as a sovereign people in action, even if they only constitute one fourth of the population. However, an individual's act of assassinating a tyrant is definitely not an act of a sovereign people, even if the assassination is done in the name of the People and welcomed by most members of the People.

A sovereign people in action does require many individuals to participate. This could happen more easily during unusual or temporary political mobilization or popular movement. Could this happen during normal times? How is it possible for us to see the People in action to rule on a regular basis? These questions would lead to my next section,

¹⁸ In Chapter 2 (2.2), I have argued that sovereignty is indivisible.

where I will consider how popular sovereignty can be exercised and realized in our normal life.

4.3 Can Popular Sovereignty be Exercised and Realized?

Now we know what the People should/can do to be the sovereign. They rule ultimately by determining goals and structure for governance, and by actively participating to monitor and control the government and do their part in governance. It seems that we can make sense of popular sovereignty without much difficulty, but can popular sovereignty really be exercised and realized? In addition to contingent political mobilizations or popular movements, can we see the People in action to exercise sovereignty on a regular basis? Is a political society fully based on popular sovereignty attainable? Earlier, in Section 4.1, I mentioned that current mechanisms for popular rule are not practiced well, and they are also limited. We may see first what problems they have, and then consider if any improvement or effort can be made.

When speaking of popular sovereignty, many people would quickly think of referendum as a device through which popular sovereignty is manifested. Undoubtedly, with this device, the People can exercise sovereignty directly. The practice, however, may not necessarily deliver a decision or an action of a sovereign people. As Canovan says, many factors would make us suspect that the result of a particular referendum can

be seen as a sovereign people's verdict, or that the People really speak.¹⁹ For example, voters may be manipulated into a voting.²⁰ A referendum may be "organized by a government for its own purposes, at its chosen time and on a question framed to suit its interest, ..." ²¹ Voters may not really know what they are voting about, or may be confused by propositions on the ballot. The public may be indifferent to a particular referendum, and the level of turnout is low. Even if most people do cast their votes, their voting may deliver mixed messages.²² Indeed, a referendum is not a guarantee of genuine exercise of popular sovereignty.

Relative to referendum, election is a more frequently and widely used device for the People to exercise their sovereignty. Many problems of election should be all-too-familiar to us. Elections are used to choose public servants, usually by a simple or relative majority ruling.²³ Since it is all about competition between candidates, elections can bring about a lot of manipulations. Voters can be bribed.²⁴ They would also receive a lot of promises from the candidates which may never be realized. Candidates may group or divide people and create conflict between them to gain votes from it. Candidates may also create issues or resort to things such as nationalism or religious beliefs to attract votes. Being a candidate or getting elected could become a privilege for certain people, such as the wealthy or those who have affiliation with a strong political party. On voters'

¹⁹ Canovan, *The People*, pp. 110-113.

²⁰ For example, a referendum can be combined with a presidential election to increase the possibility of passing a policy.

²¹ Canovan, *The People*, p. 111.

²² For example, sometimes "people seem to have paid little attention to the topic at issue but seized the opportunity to punish the government." Ibid., p. 113.

²³ A simple majority is constituted by more than a half of all votes cast. A relative majority, also known as plurality, is constituted by the largest share of all votes cast.

side, turnout for elections may be small due to popular apathy. When people vote, they may speak inconclusively²⁵ – paradox or incoherence of voting could happen when there are multiple choices.²⁶ Voters usually do not know much about their candidates before they vote, so they could elect the wrong persons. Sometimes, all candidates may be thought unqualified for a job, but voters still have to choose among them. After elections, people can hardly control their public servants. In some political societies, public servants could even have wrongdoings without being punished. With so many problems, it is hard to see how popular sovereignty can really be exercised and realized through elections.

All current practices or mechanisms for popular rule, including referendum and election, are intended to let the People express what they want. The People can decide on matters, choose delegates and representatives, propose ideas for law-making, or just voice their opinions and apply pressure to the government. Nevertheless, as the problems of referendum and election have shown, genuine popular will may not easily be revealed. Popular will could be manipulated, agitated, distorted, misled, or restricted. The will may also be ambiguous. When the People need to determine or decide on things, it may be hard to reach agreement or form a majority. This is true even on fundamental issues or conceptions.²⁷ Sometimes, the People do not really know what they want, or what they want is not really good for them. Nowadays, public deliberation is often referred to as a solution or complement for obtaining genuine popular will. That is, before any decision is

²⁴ Bribery does have some effect on voting in immature democratic societies where some, if not all, voters would vote for the briber.

²⁵ That is, preference cycles. See Morris, “The Very Idea of Popular Sovereignty: ‘We the People’ Reconsidered,” p. 8.

²⁶ For a detailed explanation of the paradox of voting, see William H. Riker, *Liberalism Against Populism: A Confrontation Between the Theory of Democracy and the Theory of Social Choice* (Prospect Heights, IL: Waveland Press, 1988[1982]), pp. 16-19.

made, there should be a process in which, with enough information, people communicate, discuss, deliberate, and persuade each other through reasoned arguments.²⁸ Public deliberation seems to be a good practice, for it not only makes individuals more like a body in action, but also turns scattered and different opinions into communication and reconciliation. Although voting may still be needed after deliberation, public deliberation can deliver decisions that are more reasonable and autonomy-based. However, the problem is that the so-called public deliberation usually takes place only when the occasion arises, and the practice is confined to a small amount of people. There is no specific form of public deliberation. It is not widely practiced, and does not become part of the institution or custom. If public deliberation is practiced only by a small amount of people, can we say that it is the People's deliberation? Is it possible to have the entire People deliberate? Can we have public deliberation as a regular practice?

It is true that although we can understand popular sovereignty without much difficulty, the exercise or realization of popular sovereignty is unsatisfactory. Under current circumstances, it is often hard to find genuine, autonomous, and reason-based popular will and make the People ultimately rule. Even so, I do not think that popular rule is an inflated expectation. On the contrary, we should keep looking for that elusive People's voices and make them rule.²⁹ As Canovan says, we cannot "wave goodbye to

²⁷ Morris, "The Very Idea of Popular Sovereignty: 'We the People' Reconsidered," p. 24.

²⁸ Amy Gutmann, "Democracy," in *A Companion to Contemporary Political Philosophy*, ed. Robert E. Goodin and Philip Pettit (Oxford: Basil Blackwell, 1993), p. 417.

²⁹ Canovan mentions that there are two responses to the fact that no arrangement can decisively capture the voice of the People. One is "to remain true to the populist project and to keep looking for that elusive people." Another response is to admit that government by the People is an inflated and inappropriate expectation. See Canovan, *The People*, p. 38.

the people as an immortal sovereign body,”³⁰ Realizing popular sovereignty is actually a matter of approaching. We hope that, horizontally, there are as many people as possible to participate in or show concern about popular rule. We also hope that, vertically, genuine, autonomous, and reason-based popular will can be revealed and take effect as much as possible. Besides, the spirit of popular sovereignty should be reflected in every part of the institution as much as possible. To exercise and realize popular sovereignty well, I think that efforts should be made simultaneously in two aspects: one is institutional design; the other is civic education.

Most contemporary states have not done well in realizing popular sovereignty. This is true even in states such as the United States, which has a long tradition and history of democracy. In my opinion, the problems lie in both institution and the People’s quality. To realize popular sovereignty well, it requires an environment supporting the idea of popular sovereignty and enabling the People to participate substantially in order to rule. This should be done through a good design of institutional systems. In addition, it also requires a well-equipped People who have sufficient political knowledge, sensitivity to issues, morals, commitment to civic engagement, and a full recognition of popular sovereignty, and who are able to think rationally and make good judgments. These conditions can be acquired through education, especially civic education. Below I will specify how institution and civic education can contribute to the exercise and realization of popular sovereignty.

Institutions

³⁰ Ibid., p. 39.

Nowadays, the People around the world often have a feeling when they face their states or governments. They feel helpless or powerless if their governments have committed wrongdoings or do not function well, or if they have needs that cannot be satisfied. They seldom feel like a sovereign people having the strength to act or make things happen. This helpless or powerless feeling can also appear in the People in democratic societies, where the political framework is supposed to be based on popular sovereignty. Therefore, to realize popular sovereignty, the helpless or powerless feeling should be stopped, and a critical way to do this is to have an institutional system that permanently assures and empowers the People. That is to say, the institutional system should make the People always feel that they are the sovereign and they do have a public force and are capable of doing things. It does not put the People's power merely in reserve, but provides the People with measures to exercise their power constantly. Certainly, the People's public force assured by the institutional system cannot be outweighed by the government's force. As Rousseau remarks, to serve the purpose for which the government is set up, the body of the government should have its own force. Such a force, however, should not weaken the People's public force.³¹ So, when the government needs more power or strength to govern, the People's public force should also be increased.³²

An ideal institutional system for the realization of popular sovereignty should have two features. First, all components in this institutional system, including constitution,

³¹ Rousseau, *The Social Contract*, Book III, ch. 1, p. 106.

³² *Ibid.*, Book III, ch. 1, p. 104.

laws, statutes, policies, mechanisms, etc., are well-organized and directed to serve the People or public interests only. They do not serve any private interest. This would imply a protection of the People's basic rights and civil rights by the institutional system. For example, since government leaders, delegates, and representatives are all public servants, their powers should not be too great and should be restrained. So, checks and balances in government are required. Thus, we need independent and effective monitoring and judicial systems to prevent or correct public servants' wrongdoings such as corruption and abuse of power. To prevent lawmaking or policymaking from being influenced by private interests, there should be careful regulations on political contribution and lobbying. People's equal right and opportunity to become public servants should be protected by laws and mechanisms, so government's power would not be held in certain politically or financially privileged people's hands.

Second, the institutional system for realizing popular sovereignty should provide sufficient mechanisms for the People or citizens to constantly participate in popular rule. That is, although there are delegates and representatives in the government to do most governing work, we the People still need mechanisms to actively monitor and control the government and do our part in governance to be the ultimate ruler. In my opinion, the existing mechanisms for popular rule are usually imperfect and incomplete. For those frequently used mechanisms such as election and referendum, they need a refinement, innovation, and extension. For those rarely used but hopeful mechanisms such as public deliberation and citizen's initiative, they need to be institutionalized or promoted. In addition, we are actually short of mechanisms for the People to directly monitor and

control the government and participate in policymaking. New mechanisms should be created for these purposes. I want to give more concrete examples to clarify what I say here.

Let us consider referendum. Although referenda are already used in many states, not all of them can deliver a decision or an action of a sovereign people. Part of the problem lies in the design of the mechanism, and part of the problem lies in the actual practice. This means that both the mechanism itself and the practice of it need to be refined or improved. For example, we know that a referendum may be “organized by a government for its own purposes, at its chosen time and on a question framed to suit its interest, ...”,³³ and voters could be manipulated into voting, so we should ask in what situation and at what time a referendum can be initiated or organized. Specific rules for referendum should be carefully made. We also know that voters may not really know what they are voting about or may be confused by propositions on the ballot, so before voting, voters should be well-informed about the background or reason for having a referendum, and propositions on ballot should be clear and free of bias.³⁴

Likewise, existing mechanisms or practices of election are often imperfect or restricted. They need to be thoroughly examined and reformed. For example, in some states, the result of certain important elections such as the presidential election is determined by relative majority rule. Such a result seems not serious or convincing enough, given the importance of electing a president. Such a result may also be more

³³ Canovan, *The People*, p. 111.

³⁴ *Ibid.*, p. 113.

likely to give us a surprise when there are more candidates competing. It seems that election of this kind should adopt simple majority rule and/or incorporate a second-round voting method. Voters could be bribed into voting, so we need effective legal mechanisms to prevent or correct it. Besides, it is important to provide complete options for voters to vote for. It is possible that voters may think that none of the candidates is qualified to be elected for an official position. So, “None is Qualified” should be an option to be included on the ballot. Such an option equally delivers a meaningful message.³⁵

Public deliberation is now widely recognized as a helpful mechanism for obtaining autonomous and reason-based popular will. It should be ideal to combine it with other participatory mechanisms such as election, referendum, and citizen’s initiative to supplement representative government. The problem is that relative to other participatory mechanisms, public deliberation has not become part of our institution or custom, though a small number of people or groups may engage in deliberation informally or occasionally. To make more people participate in public deliberation, we need institutions to secure opportunities for participation. Although public deliberation gains its popularity among theorists, most discussions about it are still theoretical. Not many people have concrete ideas as to how to institutionalize public deliberation. In addition to developing his theory of “strong democracy”, Benjamin Barber started to have several concrete proposals for institutionalizing strong democracy, including institutionalizing

³⁵ Providing complete options is also important to referendum, when questions on the ballot cannot be answered with yes or no. For any question, if all possible answers are not equally presented (e.g., available choices are reduced to two), the result would be a fallacy and could be regarded as a result of manipulation.

public talk or deliberation.³⁶ For Barber, opportunities for the People to participate in talk or deliberation, such as neighborhood assemblies and television town meetings, can be created.³⁷ Moreover, we can also have mechanisms, such as subsidization of print media and civic videotext service, to make all kinds of civic information and different views or opinions equally accessible and visible, so that people who deliberate would not be biased or manipulated.³⁸ I think that more mechanisms for promoting public deliberation are possible, but due to our inexperience in institutionalizing public deliberation, we certainly need more time to experiment with them.

Although a representative government is necessary, i.e. the People need delegates and representatives to do most governing work for them, there must be mechanisms to help the People monitor, dialogue with, and reason with the representative government. However, such mechanisms are rare. We know that the People cannot always elect qualified or reliable public servants. Even if we carefully investigate candidates' backgrounds and observe their personalities to elect the right persons, they are still likely to become corrupt once they are in power. Remember Lord Acton's words, "power tends to corrupt, and absolute power corrupts absolutely." Also, as Rousseau says, it is easy for members of the government to usurp the People's rights and enlarge their own rights.³⁹ So, public servants may do things violating public interests or involving wrongdoings. When these things happen, we may want instant correction or remedy. For example, we may want to interfere in an unpopular decision of waging a war. Instead of waiting for

³⁶ See Benjamin R. Barber, *Strong Democracy: Participatory Politics for a New Age* (Berkeley and Los Angeles, CA: University of California Press, 1984), chapter 10.

³⁷ *Ibid.*, pp. 267-278.

³⁸ *Ibid.*, pp. 278-279.

long and maybe late judicial processes to get corrupt public servants punished, we may want to remove them from their positions right away. There might be checks and balances in government, but they might not function well due to various reasons such as corruption in the entire government or negligence of duties. When talking about means of preventing government's evil, Rousseau thinks that the People should have regular assemblies, and at the opening of each assembly, there should be two votings. One is to decide whether the sovereign wants to maintain the present form of government; the other is to decide whether the People want to keep those currently in charge in administration.⁴⁰ My view is similar to Rousseau's. I think that having mechanisms for the People to directly interfere in unpopular decisions or eliminate corrupt public servants is an important part of exercising popular sovereignty, but this can be done by ways other than periodic popular assemblies.⁴¹ There are only two principles to follow when designing the mechanisms. That is, there should not be very high threshold for the People's interference, and the mechanisms should not be too complex. Both high threshold and complexity would prevent the People from acting and render mechanisms useless in helping the People exercise their sovereignty.

I have shown how important and necessary it is to have an institutional system that can support the exercise and realization of popular sovereignty. Such an institutional system should be well-designed, but there is no such thing as an absolutely perfect model. A political society can have a good institutional system, but it is good only in a relative

³⁹ Rousseau, *The Social Contract*, Book III, ch. 18, p. 147.

⁴⁰ *Ibid.*, Book III, ch. 18, p. 148.

sense. The system may be good at the present time, but may not be good in the future. Also, the system may be good for this political society, but may not be good for another. A good institutional system should be understood as one that is designed in accordance with all kinds of conditions in a particular political society at a particular time. So, it is not only relative, but also dynamic. When conditions in a political society have changed, the institutional system should also be adjusted to suit those changed conditions. Relevant conditions may include the government's structure, people's way of living, people's education level, national or public character,⁴² culture, custom, the society's size, etc. When designing or reforming specific institutions, these conditions should be taken into account, though the principle of popular sovereignty remains unchanged.

I would propose that there should be an organization in every state to take care of the whole institutional system, and this organization should be led by members of the People. The organization's job is to periodically review existing laws, policies, mechanisms, government's structure, etc. to see if anything should be revised, added, or abolished under the consideration of popular sovereignty. Basically, the objective is a well-designed institutional system which is complete, coherent, and suitable for a particular political society. Professionals among the People from every field can contribute their ideas about institutional change. When any proposal for institutional

⁴¹ In Rousseau, the sovereign can act only when they are at assemblies. *Ibid.*, Book III, ch. 12, p. 136. Nowadays, given the great advances in information technology and transportation, people certainly can act in many different ways.

⁴² Consider what Rousseau says about the relation between (Romans') voting method and people's manners or morals. "Each man gave his vote by word of mouth, and a clerk recorded; ... This was a good method so long as honesty prevailed among the citizens and everyone was ashamed to give his vote in public to an unjust cause or an unworthy candidate. But when the people grew corrupt and votes were bought, it became expedient for the ballot to be cast in secret, so that the buyers of votes might be restrained by mistrust of the

change is formally formed, it can be presented to the legislative or executive body for consideration. If nothing has been changed, citizens can initiate a popular vote or a campaign to push or oblige the legislative or executive body to accept it. Perhaps, the most difficult part of institutional change is people's awareness or consciousness of the need to change. This would involve a lot of things that I want to talk about in my next discussion.

Civic Education

We already know that the exercise and realization of popular sovereignty requires the support of institutions, especially institutions that can provide opportunities or mechanisms for the People to participate in popular rule. However, it seems that institutions alone do not necessarily lead to successful or quality participation. For example, as Canovan has noted, “offering individuals the *opportunity* to become part of a deliberative community cannot in itself induce them to attend weekly meetings and participate in the right spirit, ...”⁴³ Canovan mentions that the missing link is the collective mobilization, which alone can make people present, but it seldom happens. In my opinion, what is missing here is not the collective mobilization, but things more fundamental and lasting – that is, ideas in individuals' heads. Attending weekly meetings may be unrealistic,⁴⁴ but we can generally say that to participate in popular rule, people

sellers, and scoundrels given the chance of not being traitors also.” “[O]ne should not try to give to a corrupt people the same laws as those which suit a virtuous people.” Ibid., Book IV, ch. 4, p. 167.

⁴³ Canovan was writing in response to Barber's concrete proposals for institutions that can turn individuals into active members of a political society. Attending weekly meetings is Barber's idea. See Canovan, *The People*, p. 118.

⁴⁴ Although I advocate an active participation in popular rule for the People, a very high degree of involvement such as attending weekly meetings would not be promoted, for that is unrealistic and

should have the will to participate, and to participate in the right spirit, they have to recognize that their participation is the exercise of popular sovereignty and is critical to democracy. Without the will and the recognition, people may not participate or participate in the right spirit even though they are mobilized. In fact, even if people do participate and participate in the right spirit, they may not be able to deliberate or do it well. I think that this is very much about whether people have enough political knowledge, are sensitive to issues, are able to do logical thinking, etc.

Indeed, the exercise and realization of popular sovereignty cannot be done merely by external institutions. It requires some internal conditions in the People. A full recognition of popular sovereignty, sufficient political knowledge, sensitivity to issues, and ability to do rational thinking all seem to be required. Having sufficient political knowledge means that the People know the nature of politics, the reality of power operation, their rights and obligations as citizens, how their government works, what options they have to act as citizens or a sovereign people and how to practice those options, etc. The People also need to be sensitive to issues, so they can know why setting a limit on political contribution to candidates is necessary, or why a taxation policy favoring the wealthy should be abolished. Without sufficient political knowledge and sensitivity to issues, the People cannot think, speak, and act properly. Besides, the People have to be able to do logical thinking and make rational judgments. This is, when a politician has inconsistent statements or behaviors, or treats him and others with a double

unnecessary for most societies. It is actually hard to answer how much involvement is enough, for that would depend on different societies' situation. (I have said that institutional design should take many factors into consideration, such as people's way of living, people's education level, public character, the

standard, the People can recognize it. As for the People's full recognition of popular sovereignty, it means that the People can well understand popular sovereignty and their role as the sovereign and know how to play their role. There are three important points especially that I think the People as the sovereign should recognize. I specify them as follows.

First, the People should recognize that in democracy, they as the sovereign have an obligation to be concerned about politics and participate in popular rule, and that they are eventually responsible for the quality of the entire rule in their territory. Governments or public servants are merely the People's agent, but they are still likely to usurp the People's rights, enlarge their own powers, do little to serve public interests, and be the People's opponent. If the People do not actively participate to monitor and control the government and do their own part in governance, they are creating room for ambitious politicians and things such as corruption, and may suffer the consequences of their own inaction. In any way, the People cannot be indifferent or lazy.

I think that under normal circumstances,⁴⁵ if a person can really recognize the importance and his or her responsibility of participation in politics, he or she would show concern and participate at least to some degree, even if existing institutions are imperfect. If there are people who do not show concern or participate at all, it is mainly because they do not really know the significance and their responsibility of participation. Rousseau has

society's size, etc.) Certainly, the degree of involvement should be reasonably acceptable to the People in a political society.

⁴⁵ What I mean by "normal circumstances" here is the situation that people do not feel extremely helpless or desperate about their politics.

an insightful remark about citizens' direct participation in public service: "[w]here rights and freedom are everything, inconveniences are nothing."⁴⁶ If people can really recognize that they cannot be truly free unless they participate, they would be willing to participate.⁴⁷

Second, the People should recognize that they are the master and have their own autonomy or subjectivity, so they should not be manipulated in whatever way. In other words, the People's autonomy or subjectivity should be well maintained. If the People make a decision under the influence of manipulation, the decision would not truly reveal a popular will, and the People's autonomy or subjectivity is also harmed. In popular sovereignty, the People's autonomy or subjectivity is more fundamental and important than the People's will. Strictly speaking, popular sovereignty is not the exercise of popular will, but the exercise of *autonomous* popular will. Therefore, the People should be cautious about any information they receive, no matter if it is from the government, political parties or groups, or any individuals. In our world and in history, we do often see people thinking what manipulators want them to think or doing what manipulators want them to do. Usually, the thinking or the doing is quite narrow. Before falling into such a trap, people should think more. For example, they should think about other possible options, investigate the truth, think about manipulators' motive, etc.

⁴⁶ Rousseau, *The Social Contract*, Book III, ch. 15, p. 142.

⁴⁷ I once did a few experiments on people I know who were never or seldom concerned about politics. I told them how greatly politics is related to and influencing them, and why they have an obligation or a responsibility to be concerned about politics. Not long after I told them these, I either noticed or was told by themselves that they would at least watch or read news after realizing what I told them.

On the other hand, to maintain the People's autonomy or subjectivity, the People should have a serious attitude toward public servants and politicians. They should always be cautious about, critical of, and even skeptical about public servants and politicians, and should not overly or blindly support, adore, defend, or stand up for any of them. Although leadership is needed in any political society, and people may have expectation for particular persons, it is imprudent to create political idols and worship them. The truth is that power and people's support often make a person overconfident and could easily lead to corruption. The person would think that he/she is capable of doing anything. Eventually, people may suffer from the result. Besides, for many politicians and public servants, politics is not simply a matter of serving the public. Politics actually involves much of personal ambition, personal desire, political party's interest, etc. To maintain the People's autonomy and subjectivity and defend their own public interest, a basic attitude the People should have toward politicians and public servants is being always cautious. It may be due to human weakness, or because the history of democracy is still short, that the People often think that they have to rely on somebody to give them a bright future, without thinking of the possibility that with good institutions and self effort, they can actually control their own life and future. To realize popular sovereignty, the People's minds have to be changed. The People should have the recognition that the polity's fate or their future is in their own hands, not in any politician's hands.

Third, the People should recognize that the realization of popular sovereignty requires people always having public interest in mind, so when they are voting or deliberating, or when someday they become public servants and do their job, only public

interests can be taken into account. As Rousseau has said, “[w]hen a law is proposed in the people’s assembly, what is asked of them is not precisely whether they approve of the proposition or reject it, but whether it is in conformity with the general will which is theirs;”⁴⁸ This seems quite contrary to ordinary people’s inclination. In reality, when people are casting their votes, they often consider what is better to them or what they prefer. They seldom consider whether what they prefer is good to all or also preferred by others. Self-interest dominates most people’s thinking even if they are at a public setting. However, having public interest in mind is still important to the realization of popular sovereignty, and this should be recognized by the People.

All of the internal conditions in the People for exercising and realizing popular sovereignty are not naturally given; they have to be learned through education, especially civic education. Civic education can have two forms. One can receive civic education through both school curriculum – the subject of civic education and other subjects that incorporate civic education – and social resources. School’s civic education would be primary and more systematic, and it can be done from elementary school education to college education. Schools should teach political knowledge, train students to think logically, cultivate students’ sensitivity to issues, help students understand popular sovereignty and recognize the People’s role as citizens and the sovereign, and teach students how to exercise popular sovereignty. On the other hand, civic education can also be done through social learning. The society is just like a classroom. The People can learn political knowledge and cultivate their civic abilities by using social resources. For

⁴⁸ Rousseau, *The Social Contract*, Book IV, ch. 2, p. 153. In Rousseau, it is the People, and the People only, who are in charge of law-making. “General will” here is actually the common interest.

example, they learn by reading newspaper, magazines, or books, listening to radio, watching TV, talking with others, engaging in civic activities, etc., though this form of learning is more casual.

Civic education by schools and civic education by social resources are complementary, though the former is still primary. Without school's civic education as the basis, social learning may be shaky and risky. There are things, such as the ability of rational thinking and the recognition of popular sovereignty, that should be taught as early as possible, for people may not learn by themselves or learn quickly. For example, one may keep reading biased information from particular media without knowing that he should receive information from different sources. One may never read, watch, or listen to news because she does not know that she has the obligation to be concerned about politics or participate in popular rule. Conversely, school's civic education should be complemented by social learning. After all, students need real world experience, which provides them with lots of material to think, observe, and practice. After leaving school, social learning should continue and become the basis of citizens' participation in popular rule. It is especially helpful for enhancing citizens' political sensitivity and judgment.

Rousseau once proposed the idea of having a civil religion to make citizens love law, justice, and their duties. He says, "[t]here is thus a profession of faith which is purely civil and of which it is the sovereign's function to determine the articles, not strictly as religious dogmas, but as expressions of social conscience, without which it is impossible

to be either a good citizen or a loyal subject.”⁴⁹ Civic education actually has a similar function to Rousseau’s civil religion, but I think that in today’s world it is better to have civic education, not civil religion, to do the job. It seems more realistic to build a civil society purely based on rationality and humanity. Civic education helps cultivate a sovereign people well-equipped with capability, wisdom, and morals. Such a People would develop their own civil morality, have beliefs in their civil society, and love to do what they need to do. No religion-like beliefs are needed.

Let me conclude Section 4.3 with a summary of points I have made. The exercise and realization of popular sovereignty requires both a complete and well-designed institutional system that supports popular sovereignty and a well-equipped sovereign people. On the one hand, any laws, statutes, policies, etc. in this institutional system are all directed to serve the People and their public interests. The institutional system should also provide sufficient and effective mechanisms for the People to rule. A good design of institutions should subject to all kinds of conditions of a particular political society. In each state, it is better to have an organization led by the People to periodically review the state’s institutional system and make necessary reforms. On the other hand, the People should be well-equipped and civically motivated. They should possess sufficient political knowledge, be sensitive to issues, and be capable of thinking rationally and making good judgments. In addition, they should understand popular sovereignty and recognize their role as the sovereign. A well-equipped sovereignty people can be cultivated through civic

⁴⁹ Ibid., Book IV, ch. 8, p. 186. Rousseau’s idea of having a civil religion is proposed to contrast with religions that are antisocial or intolerant. So, in addition to positive dogmas such as the life to come, the happiness of the just, the punishment of sinners, the sanctity of the social contract and the law, etc., Rousseau says that there is one negative dogma: no intolerance.

education. Civic education can be done at schools and in society. In conclusion, we may say that institutions provide opportunities or mechanisms for individuals to act as – and learn to be – a sovereign people, and civic education creates conditions for – and motivates – individuals to be able to act as a sovereign people.

Chapter 5: In Defense of Popular Sovereignty

I have shown in previous chapters that popular sovereignty can be understood, exercised, and realized, but there are more issues that needed to be dealt with before I can conclude that popular sovereignty is an idea that should be promoted. This chapter is about the justification of popular sovereignty. That is, I will explain why it is “the People” who should hold sovereignty and be the sovereign, and why we need popular sovereignty. Besides, the practice of popular sovereignty often involves majority rule, which is not an obvious thing. I will show how majority rule can be adopted without making trouble for popular sovereignty.

The view I want to defend in this dissertation is that in any state, sovereignty should always be held by the People. Why “the People”? What makes “the People” have the highest political authority or an exclusive right to govern and possess their territory? What is the source or basis of popular sovereignty? In Section 5.1, I will argue that the People do have a right to be the sovereign, and the People are the only acceptable holder of sovereignty.

The People should hold sovereignty, but is it beneficial to have the People hold sovereignty? Can popular sovereignty do any good to our societies? In Chapter 2 (2.5), I said that sovereignty is important to a state and the People in it, for it helps manage complex public affairs within the state’s territory, makes the state capable of interacting

with the outside world as one body, and maintains the state's realm autonomous and independent so that the state and its People can pursue whatever they want to pursue, and cope with problems caused by globalization. So, sovereignty actually has positive functions. However, how sovereignty is exercised and implemented is crucial to its real effect, and I think that for better effect, sovereignty has to be held and well exercised by the People. That is, popular sovereignty is valuable for better fulfilling sovereignty's positive functions. I will articulate this point in Section 5.2. There, I will also answer doubts about popular sovereignty.

Popular sovereignty is very much about the exercise and realization of popular will, which is usually determined by the majority of the People. It seems unavoidable that popular sovereignty has to presuppose the majority principle. Majority rule is so widely accepted as a convenient, appropriate, and maybe the best workable way for making decisions. People take it for granted, but does it really go without saying? Why should the minority obey the majority's will? Is there any moral reason for us to accept majority rule? Can the majority represent the entire body of the People? Would these concerns pose a threat to the doctrine of popular sovereignty? I will discuss these questions in Section 5.3.

5.1 Why "Popular" Sovereignty?

Popular sovereignty means that the People have the highest political authority or an exclusive right to govern and possess their territory. What makes "the People" have such

an authority or right that is also inalienable? Why is it “the People”, not other kinds of entity, that should be the sovereign? What is the source or basis of popular sovereignty?

The notion of popular sovereignty originally comes from the social contract theory in modern times,¹ and popular sovereignty there always has an element of consensualism, which means that it can serve as an account of the legitimate authority of law, government, or rule. Popular sovereignty as an account of legitimate political authorities is widely recognized and adopted in contemporary times. The United Nations’ Universal Declaration of Human Rights has an article that exemplifies its popularity: “The will of the people shall be the basis of the authority of government; ...”² My sense of popular sovereignty includes the same thinking.³

The People’s consent or will is the basis of legitimate political authorities, but what is the basis of the People’s sovereignty, or what makes the People have a sovereign status to give their consent or authorization? In social contract theory, the People’s sovereignty comes from the social contract, i.e. the voluntary act of individuals’ association. It is the social contract that grants the People sovereign power and makes them sovereign.

Although I accept that the People’s will legitimizes political authorities, I do not adopt the contractarian explanation of the basis of the People’s sovereignty. When I analyzed the People’s collectivity in Chapter 3 (3.2), I already rejected the contractarian approach and took a naturalist standpoint to understand the People’s collectivity. Here I would

¹ Here the social contract theory I refer to is more of Locke and Rousseau’s versions.

² “The Universal Declaration of Human Rights” (adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948), Article 21-3. See: <http://www.un.org/Overview/rights.html>.

continue the naturalist standpoint to consider the basis of popular sovereignty. It is true that laws require the People's direct or indirect approval, and governments or rulers need to be authorized by the People. Nevertheless, the People's sovereign status does not have to be based on a social contract if we do not see the nature of society as a contractual arrangement.⁴ In my opinion, the nature of men's political societies is more of a passive but reciprocal setting than of a contractual arrangement. Contractual arrangement indicates that men actively or willfully create societies, or in contemporary versions, if they are given the chance, they should have chosen to do so.⁵ This contractual picture, as I have argued in Chapter 3 (3.2), is too ideal and theoretical, and is actually unnecessary. It is more realistic to think that individuals are passively brought into a society, but they can still recognize that they should cooperate in order to gain mutual benefit.

In any state, the People should always have the highest political authority or an exclusive right to govern and possess their territory, and this is so mainly because the People have a special relation with their territory that entitles them to an undeniable status toward the territory. I have said in Chapter 3 (3.3) that the People are a group of people who have lived in a state's territory for a long time, are tightly connected to the territory, and are greatly affected by the governance in the territory. Whatever happens in the territory as a result of governance, the People are always the direct receiver of the impact or influence. Their fate, happiness, well-being, and meaning of life are all tied to

³ In Chapter 4 (4.1), I have made it clear that the agency or authorization relation between the People and their government is one of the elements of the notion of popular sovereignty.

⁴ As Knutsen has mentioned, members of the social contract school "all postulated that the nature of society, whatever its origins, was a contractual arrangement between its members." Knutsen, "Popular Sovereignty."

the territory and the governance in it. With this situation, it seems fair to say that the People have a right to ultimately control the territory and the governance in it to determine their own fate or life. That is, since the People would be greatly affected by the territory and the governance in it, they should be able to determine how they would be affected by ultimately controlling the territory and the governance in it. It is the People's strong attachment to the territory and their passive situation as the governed that make them entitled to hold the highest political authority to govern and possess their territory. It is as if what Rousseau says, "[a] people, since it is subject to laws, ought to be the author of them."⁶ In other words, those who would be greatly affected by laws should be allowed or are entitled to self-determine how they would be affected by laws. Here the point is always the People's autonomy. If the People as the governed can only passively be the receiver and cannot self-determine their own fate and life, they would be just like slaves.⁷

Autonomy is intrinsically good and necessary to the People's happiness or well-being. Autonomy manifests values of liberty, equality, and humanity. Autonomy means that a person or a collective body can take control of his or its own life or fate, and that is exactly the manifestation of liberty in a positive sense.⁸ The People's autonomy also indicates equality. No one can naturally be subject to another's political power, but

⁵ Canovan mentions John Rawls's *A Theory of Justice* as a revival of the myth of the original contract in the twentieth century. Canovan, *The People*, pp. 125-126. Also see John Rawls, *A Theory of Justice* (Revised Edition) (Cambridge, MA: The Belknap Press of Harvard University Press, 1999 [1971]).

⁶ Rousseau, *The Social Contract*, Book II, ch. 6, p. 83.

⁷ People talk about self-determination often in the context of a nation. That is, a nation or a national people should have a right to self-determination, especially in the issue of becoming a nation-state. Here I want to argue that the People in a state also have a right to self-determination, but it is the right to self-determining how they would be governed.

⁸ The negative sense of liberty is generally understood as the lack of obstacles or constraints.

human's society does need government to manage public affairs. The only and best way to reconcile equality with government is to make the entire People ultimately govern themselves. Finally, it would be more humanistic if the People can be autonomous to determine their own life. "The People" is not only a collectivity, but also a group of people or human beings. It is human nature that they would like to control their own life. In fact, according to Knutsen, contemporary psychologists have found that "[h]appiness, confidence and success are closely related to a belief in one's ability to influence one's own fate."⁹ This should not only be true of individuals, but also true of collective bodies that individuals have formed such as the People.

The People's right to govern and possess their territory is both exclusive and inalienable. That is, except for the People, no one can have such right, and the right is shared with no one. The right cannot be permanently and fully transferred to any other entity, either. After I have shown the People's special relation with the territory, it should be easy to understand why the People's right to control their territory is exclusive and inalienable. The People are the only right-holder because they are the sole receiver of the impact or influence from the governance in the territory. Their right cannot be alienated because their special relation with the territory cannot be transferred, duplicated, or represented. The People's sovereign status toward their territory is irreplaceable.

I said in Chapter 3 (3.2) that the People as the governed in a state would have some general will or common interests; then, can we argue that it is the People's general will or common interests that make them sovereign and able to give consent or authorization,

⁹ Knutsen, "Popular Sovereignty."

and popular sovereignty is inalienable because the People's will cannot be transferred or represented?¹⁰ This way of arguing for the basis of popular sovereignty looks plausible, but is actually problematic. It is not clear why a collective body's will or interests, which are unilateral as far as the collective body is concerned, can constitute that body's own authority, which is essentially relational. From the People's will or interests to their authority, there is a gap that must be filled. It seems that authority as a kind of relation should be based on something also relational. On the other hand, although the People have general will or common interests, the will or interests are actually generated on the basis of the People's situation as the governed. In other words, there is something, i.e. the People's situation as the governed, more fundamental than the People's will or common interests. So, if we say that the basis of popular sovereignty is the People's will or common interests, it would not be convincing. As a result, the People's situation as the governed can better serve as a basis for making the People sovereign, for it is both relational and fundamental.

The People are not only entitled to hold sovereignty, as I have shown above, compared to other candidates in existing political societies, they are also the most likely entity to be the sovereign realistically. Sovereignty cannot be held by the state, for sovereignty itself is a constituent part of the state. Sovereignty cannot be vested in a state's constitution, either. If sovereignty is vested in the constitution, as Roger Scruton has made clear, that would be incompatible with two facts: first, the constitution can be amended; second, the constitution also needs to be enforced by some body, otherwise it

¹⁰ Rousseau thinks that popular sovereignty is inalienable because the People's general will, which is essential to social contract and directs the People's sovereign power, cannot be represented. Rousseau, *The*

has no coercive power.¹¹ That is to say, because the constitution can be amended and needs to be enforced, there must be some higher authority than the constitution to make the amendment and enforcement possible or desirable. Thus, the constitution cannot be the sovereign. In my context, the constitution may merely be understood as an official proclamation of the People's sovereign status. Can government or any part of the government such as the legislature or parliament be the sovereign? Sovereignty would be unstable if it is vested in the government or any part of the government, for government is changeable, sometimes even stoppable due to certain crises. Sovereignty as the soul of a state must be vested in an entity that can survive any crises and sustain the state. Nowadays, in states with a government form of constitutional monarchy, the sovereign is usually the monarch.¹² It is often thought that the monarch embodies the national character and provides constitutional continuity in times of emergency or crisis, though the monarch's sovereign status or power is mostly symbolic. Just as governments are changeable, monarchs are changeable, too. Monarchs may also be incapable due to illness or absence. Most importantly, constitutional monarchy is not a common system in our world. Most states do not have a monarch. The sovereign we need should be available in every state. Thus, the People are the most likely entity to be the sovereign. In fact, the People can better embody the national character and provide constitutional continuity in times of emergency or crisis, for as long as a polity exists, "the People" is always there.

Social Contract, Book I, ch. 6, p. 61; Book II, ch. 1, p. 69; Book II, ch. 4, p. 74; Book III, ch. 15, p. 141.

¹¹ Scruton, "Sovereignty," p. 523.

¹² Or, in the United Kingdom's case, it is Queen/King-in-Parliament.

In summary, in any state, the People should hold sovereignty and be the sovereign to legitimize laws, governments, and rulers. This is so because the People have a tight connection with their territory, and are greatly affected by the governance in the territory. As the sole and direct receiver of whatever happened in the territory as a result of governance, the People do have a right to self-determine their own life and fate by holding the highest political authority to govern and possess the territory. Autonomy is both intrinsically good as well as necessary to the People's happiness or well-being. It manifests values of liberty, equality, and humanity. Although the People would have general will or common interests, their will and interests are not the basis or source of popular sovereignty. The People are not only entitled to hold sovereignty, they are also the most likely entity to be the sovereign realistically.

5.2 Why "Popular Sovereignty"?

The People should hold sovereignty for intrinsic reasons, but is it also consequentially beneficial to have the People hold sovereignty? In Chapter 2 (2.5), I said that sovereignty is important to a state and the People in it, for it helps manage complex public affairs within the state's territory, makes the state capable of interacting with the outside world as one body, and keeps the state's realm autonomous and independent so that the state and its People can pursue whatever they want to pursue and cope with problems caused by globalization. So, sovereignty has some positive functions. Then, what would happen when sovereignty is held by the People? Below I will show that when sovereignty is held

by the People, sovereignty can better function to fulfill what it can positively fulfill. It is valuable to have the People hold sovereignty.

We can recognize the value of popular sovereignty from two different angles: domestic and global. Domestically, when sovereignty is held by the People and is realized ideally, I think that there are at least two advantages.¹³ First of all, the People should have a better life, and there should be fewer political problems than we see today. When the People truly exercise the highest political authority in a state, there would be a well-designed institutional system in which the People can determine the ends of the state and how they would be governed. All political components, including the government, laws, policies, etc., would carefully take care of the People's needs and their public interests. The People would also actively participate to monitor and control the government's governance and do their own part in the management of public affairs. This ideal institutional system should be more likely to lead to a better life. Besides, since there are good checks and balances in government, and since the People have a real force to monitor and control the government, it should be able to reduce many contemporary political problems such as corruption, power abuse, power enlargement, incompetent government, etc. That is, problems can be prevented through various preventive institutional designs, or once they have already happened, there are also available

¹³ What I want to say in this section about good things popular sovereignty would bring are mainly my conjectures, which are based on the premise that popular sovereignty has been realized *ideally* in a society. Here I do not have empirical evidences to support my conjectures, but I think it would be hard to get such evidences because my premise is an ideal situation, which has never existed in any society.

mechanisms for immediate correction. With popular sovereignty, politics should be less predatory and more toward the public good.¹⁴

Second, popular sovereignty could prevent the occurrence of tyrants and reduce extremists in a state. Basically, rulers in the government would be unlikely to become tyrants in the People-centered institutional system. It would also be hard for extremists to lead a trend. When popular sovereignty is realized well in a state, the People would not only have a better life, their sovereign or autonomous status would also make them feel more powerful and content. Under these circumstances, members of the People should be less likely to become extremists or to be manipulated by extremists. Besides, the society would be entirely open, which means that it provides no space for extremists to take advantage of and develop. There is freedom of speech, but any speech, including extremist speeches, would be subject to reason-based public review before it can be accepted by the public and become a determinant of public life. With civic education, the People are also more capable of doing rational thinking and making good judgments. They would also know that they should be careful about manipulation. Therefore, tyrants would not exist, and extremists would not have a market. As a result, the People are less likely to go to a war, or there will be less bloodshed due to any relevant reasons. The People's society would be more peaceful and stable.

Globally, when sovereignty is held by the People and is well realized in a state, sovereignty can better function to cope with problems brought by globalization. Recall

¹⁴ Canovan says that politics has been predatory in most times and places. If we want it less predatory and more focused on the public good, one precondition is a collective people that can generate and monitor

what I mentioned in Chapter 2 (2.5) about problems states are facing or encountering due to globalization. There I said, “[g]lobalization often causes great damage to the environment of many developing states. Exploitation of workers in those states also frequently happens. Unfair trade between the poorer and the wealthier states renders those poorer states even more impoverished. Globalization triggers people’s migration, which becomes a controversial issue for many states that are troubled by lots of illegal immigrants. Globalization also harms or poses a threat to states’ traditional industry or internal job opportunity. These various consequences or impacts brought by globalization would easily make the affected people or states feel offended or threatened. They may appeal to sovereignty to cope with these consequences or impacts.” Yes, sovereignty can safeguard things such as environmental protection, human rights, social security, and autonomy within national territories, for sovereignty is supposed to maintain an autonomous and independent realm for a state. However, how sovereignty is exercised and implemented is crucial to its real effect. It seems that if sovereignty cannot be held by the People, or even if it is held by the People, but cannot be well exercised and realized, sovereignty may not take effect or work well in defending a state’s autonomy.

Consider the problems I mentioned above. Clearly, governments in those affected states should take action to do something for the People. However, if governments are not based on popular sovereignty, or even if they are, but never take popular sovereignty seriously, governments may not necessarily act or act actively. This can already be seen in some states where the government is highly corrupt and does not take the People’s needs or interests seriously. On the contrary, in states that well realize popular

political power. Canovan, *The People*, p. 138.

sovereignty, the government would actively take action for the People, whose voice is also more likely to be heard. The People as the sovereign have a right to determine what they want or do not want to receive under the current wave of globalization. Since they are the direct receiver of any impact or influence of globalization, their voice would reflect more reality and is more powerful. So, when the government is carrying the People's will or voice to take action, its action would also be more powerful, whatever issue it is dealing with – demanding improvement of factory workers' human rights, protesting against unfair international trade, defending environmental autonomy, etc. Popular sovereignty is more able to deal with globalization's negative effects.

Illegal immigration is a more complicated issue in globalization, but it seems that popular sovereignty may also have a role in reducing the problem. Many cases of illegal immigration result from a bad economic environment in immigrants' mother states plus an incompetent or corrupt government. As I have said earlier, if a state's sovereignty can be held by the People and well realized, the People would have a better life, and there would be less political problems, which are almost always related to the government or public servants. When the economic environment is improved, the People's confidence toward their life and their state would also be improved. Thus, they may not be eager to immigrate to another state, and that can reduce the problem of illegal immigrants in another state. Therefore, for the issue of illegal immigrants, perhaps, a more fundamental solution is to institute or ensure a political system in illegal immigrants' mother states that is truly based on and realizing popular sovereignty.

Although the People have a right to hold sovereignty, and popular sovereignty is valuable in both domestic and global context, some may still have doubts about popular sovereignty, especially the fear of mob violence. In human's history, we did have a lot of cases of mob violence, so the fear of mob violence has never stopped. For example, as Canovan has mentioned, there was a common belief among Continental European liberals in the late nineteenth century that growing popular power would threaten freedom and enlightenment. Later, the experience of mass support of Nazism strongly reinforced Europeans' fear of popular power, and the fear affected many of the subsequent institutional structures, from German electoral arrangement to the European Court of Human Rights and the European Union.¹⁵ Does popular sovereignty have the potential for mob violence? Do we have to worry about mob violence if we support popular sovereignty? I think that mob violence can be prevented or reduced to some extent if popular sovereignty can be well realized in a society. We do need to worry about mob violence when a society is not mature in the realization of popular sovereignty.

According to empirical cases, the occurrence of mob violence usually has a cause and/or some background condition. The most commonly seen cause is demagoguery or manipulation. In a society that well realizes popular sovereignty, however, there is not much room for demagoguery or manipulation. The reasons have been given earlier when I argued that popular sovereignty can reduce extremists in a state. Mob violence could also happen when a popular movement loses its control. This can be seen at many occasions of mass demonstration. In a society that well realizes popular sovereignty, the right to demonstration would be protected, but there would also have a consensus in the

¹⁵ Ibid., pp. 85-86.

society that any demonstration should not become violent, for violence cannot persuade others. So, civic education would not only teach the People how to exercise their sovereignty through demonstrations, but also teach them how to do it peacefully. Thus, both leaders and participants of a demonstration would all know that they have the responsibility of keeping the demonstration non-violent, and leaders, particularly, would do anything to prevent the action from losing control. Mass demonstration without violence is possible. In fact, it already happened in many places. The well-known Polish ‘Solidarity’ movement in 1980 was an impressive example because it demonstrated an enormous grass roots movement with discipline and restraint.¹⁶ Also, in 2006, a large-scale genuine popular movement against a corrupt president occurred in Taiwan (formally, Republic of China). This movement was not led and mobilized by any political party or politician, and featured highly self-motivated and disciplined participants.¹⁷ Finally, mob violence could erupt when a society is greatly oppressed by its government or ruler and does not have a way out. That is, people in the society rise up to resist the oppression. In a political society that realizes popular sovereignty, oppression would be rare. Or, even if there is oppression, there are ways for people to voice or take action. So, mob violence would be less likely to happen in such a society.

Therefore, given what I have shown above, popular sovereignty does not necessarily lead to mob violence. As a matter of fact, it is less likely for mob violence to happen in a

¹⁶ Ibid., p. 136.

¹⁷ Organizers of the movement trained lots of volunteers to maintain order during sit-in and mass march. This included teaching them how to deal with provocation or potential violence. Participants were also asked to be peaceful, and they actually helped to maintain a non-violent movement.

society that well realizes popular sovereignty. We do not need to worry too much about mob violence when we advocate the idea of popular sovereignty.

In this section, I have argued that when sovereignty is held by the People, sovereignty can better function to fulfill what it can positively fulfill. Domestically, the realization of popular sovereignty can give the People a better life and a less predatory politics. It can also prevent the occurrence of tyrants and reduce extremists in a state. Globally, when sovereignty is held by the People and is well realized in a state or in each state, sovereignty can better function to cope with problems brought by globalization. Although the People have a right to hold sovereignty, and popular sovereignty is valuable both domestically and globally, there is still a fear that popular power may easily lead to mob violence. I argue that in a society that truly realizes popular sovereignty, mob violence can be prevented or reduced to some extent, and we do not need to worry too much about mob violence while we advocate the idea of popular sovereignty.

5.3 Majoritarianism

The theory of popular sovereignty would encounter a question about majoritarianism, which is the doctrine or philosophy that “majority rule should prevail in democratic decision-making.”¹⁸ When the People are the sovereign, they need to make decisions often. They make decisions in referendum, election, dismissal of public servants from

¹⁸ Arend Lijphart, “Majoritarianism,” in *Encyclopedia of Democratic Thought*, ed. Paul B. Clarke and Joe Foweraker (New York: Routledge, 2001), p. 427.

office, policy consultation, etc. Basically, many of the People's decisions would be made in terms of the principle of majority rule, which is widely accepted as an unavoidable, convenient, appropriate, and maybe the best workable method for making decisions. Indeed, it is hard to find another decision-method that can be as highly accepted as majority rule. However, despite its acceptability and popularity, majority rule is actually not obvious or self-evident. Why should the majority's choice or decision prevail? Why should the minority obey the majority's will? The accusation of the majority's oppression on the minority remains. Also, can the majority represent the entire body of the People? Would the concerns here pose a threat to the doctrine of popular sovereignty? Although popular sovereignty is inseparable from majority rule, we still need to be careful about this principle.

Our main question here is whether majority rule is justifiable, or if there is a moral basis for majority rule. It seems that if there is a moral reason for the minority to obey the majority, oppression would not exist. Then, is there such a reason? For social contract theorists such as John Locke and Rousseau, the minority's obligation to obey the majority's decision is based on an earlier agreement, i.e. the original social contract. The original contract is made by individuals' unanimous consent to form one Body Politick or a community,¹⁹ and once a person enters into the contract or community, it implies that the person also agrees to accept majority rule, which seems to be an inescapable device for decision-making thereafter. For example, Locke says, "it is necessary the Body should move that way whither the greater force carries it, which is the *consent of the*

majority: or else it is impossible it should act or continue one Body, *one Community*, which the consent of every individual that united into it, agreed that it should; and so every one is bound by that consent to be concluded by the *majority*.”²⁰ Also, for Rousseau, “if there were no earlier agreement, how, unless the election were unanimous, could there be any obligation on the minority to accept the decision of the majority?”²¹ “Apart from this original contract, the votes of the greatest number always bind the rest; and this is a consequence of the contract itself.”²² I have argued elsewhere how unrealistic the social contract theory is. In reality, we are bound by majority rule not because there is an original contract, but because majority rule is already widely accepted as an *appropriate* decision-method if decisions need to be made. A prior agreement (I do not mean the original contract) on majority rule certainly can make the majority’s decision morally forceful, but such an agreement seldom occurs in our societies. Majority rule is already presupposed by our societies.

People accept majority rule as an appropriate decision-method mainly because they think it is a fair method. When a collective decision needs to be made by a group of people, the decision would usually be made on the basis of individual members’ diverse views or preferences. In this situation, majority rule is a necessary and fair way of getting the decision, for unanimity is often impossible,²³ and the rule treats every member and

¹⁹ For both Locke and Rousseau, the original consent must be unanimous because every man is born free and should not subject to any political power without his own consent. See Locke, *Two Treatises of Government*, Book II, ch. 8, paras. 95-96. Rousseau, *The Social Contract*, Book IV, ch. 2, p. 152.

²⁰ Locke, *Two Treatises of Government*, Book II, ch. 8, para. 96.

²¹ Rousseau, *The Social Contract*, Book I, ch. 5, p. 59.

²² *Ibid.*, Book IV, ch. 2, p. 153.

²³ In Locke, unanimity is impossible not only because individuals have diverse views or opinions, but also because things such as infirmities of health and business avocations keep many people away from public assembly. Locke, *Two Treatises of Government*, Book II, ch. 8, para. 98.

their views equally. As Jeremy Waldron has said, “the method of majority-decision attempts to give each individual’s view the greatest weight possible in this process compatible with an equal weight for the views of each of the others.”²⁴ That is to say, every individual member’s view or choice is equally decisive. Thus, after we remove those positive and negative individual choices that offset or cancel out each other,²⁵ what remains would be the group’s final decision or choice.²⁶ Or, if there are more than two options for group members to choose from, the option that gains most consent or approval would be the group’s final choice. Since everyone’s consent or approval counts equally, consent or approval would aggregate,²⁷ and then the majority would have a greater legitimating force than the minority. The majority’s choice would prevail and bind all group members. In a word, it is the equal treatment of every person’s view or choice that makes majority rule legitimate and gives us some moral reason to obey the majority’s decision.

Although majority rule is a fair decision-method and gives us some moral reason to obey the majority’s decision, the method itself does not guarantee a fair decision-making

²⁴ Jeremy Waldron, *The Dignity of Legislation* (Cambridge: Cambridge University Press, 1999), p. 148.

²⁵ One positive choice and one negative choice can cancel out each other and make a situation unchanged or balanced because they have equal but opposite effect. Rousseau seems to have the same idea when he talks about how the general will is formed. See Rousseau, *The Social Contract*, Book II, ch. 3, pp. 72-73. Hobbes also has a similar expression in his account of how a representative body makes decisions. Hobbes, *Leviathan*, ch. 16, p. 221.

²⁶ Waldron, *The Dignity of Legislation*, pp. 148-150.

²⁷ Waldron does not think that consent aggregates, so far as legitimation is concerned. He uses an example similar to this to explain: suppose a person says “Yes” three times to a proposed operation on him, but says “No” in the last minute before the operation. Waldron says, three “Yes” do not outweigh one “No”; instead, it is the latest expression that prevails. So, in the issue of legitimation, consent is not an aggregative concept. *Ibid.*, p. 145. I agree that personal consent does not aggregate, but it seems that different group members’ consent can aggregate and form a legitimating force. These two are different matters and should not be confused. The point is that every member’s consent counts equally. Then, their consent must be able to aggregate or add up to a collective force. This is by no means a utilitarian interpretation, for we are not

process or outcome. Whether a decision-making or outcome is fair would also depend on how majority rule is used. If majority rule is not used properly, majority rule may not deliver a fair decision-making process or outcome and may give us little moral reason to obey the majority's decision. Below I want to talk about two situations in which the use of majority rule may not deliver a fair decision-making process or outcome. One situation is decision-making by relative majority rule. When relative majority rule is adopted in a decision-making, the winning choice may merely receive a plurality, rather than majority, of total votes cast. For example, suppose in a presidential election with three candidates, the result shows that candidates A, B, and C respectively received 39%, 37%, and 23% of the votes cast. In this case, although candidate A received the greatest legitimating force among the three candidates and is the winner, there is a majority – 60% – of votes that does not support him or her. Then, it seems unfair to say that supporters of the other two candidates which constitute the majority should obey the minority's decision. The majority here is actually oppressed by the minority. Therefore, relative majority rule may not be a proper decision-method for making important decisions such as in presidential election and constitution amendment. Simple majority rule or even absolute majority rule would be proper.²⁸ When making decisions, in order to ensure that fairness can be maintained, we should be more careful about how majority rule is used. As a formal fair decision-method, majority rule does not necessarily deliver a fair decision-making process or outcome. There are constraints on how to use majority rule.

saying that more consent makes a choice right, but that more consent would create a greater legitimating force.

²⁸ A simple majority is constituted by more than a half of total votes cast; an absolute majority is constituted by more than a half of all the members or eligible voters of a group or society. Rousseau has made a similar remark on the right size for the majority: "the more important and serious the matter to be decided, the closer should the opinion which is to prevail approach unanimity; ...the swifter the decision

The other situation in which the use of majority rule may not deliver a fair decision-making process or outcome is decision-making involving minority issues. If what is to be decided is a minority issue, majority rule should be used with conditions or constraints. Take the issue of secession for example. Suppose there are people of a minority group in a state who seek the group's secession, which means that the group would like to take away one portion of the state's territory and form its own independent state, and suppose that the group's secession would not essentially or significantly affect the existing state.²⁹ In such case, it seems inappropriate to hold a nationwide referendum to determine whether the minority group can secede or not, if it is foreseeable before the referendum that the separatists' choice or preference would never have a chance to prevail in a vote anyway. It is actually unfair to use majority rule to make decisions like this, though majority rule itself is a fair decision-method. The use of majority rule alone already constitutes oppression on the minority group. Harry Beran suggests that majority rule can create a moral reason for separatists to accept the voting outcome only if they have given their agreement as to who can vote in the referendum or in which part of the state's territory the referendum is going to take place.³⁰ Yes, settling a minority issue such as secession by majority rule requires some condition or constraint. Majority rule does assume that the society that is making collective decisions will continue to move as one body and will not break apart. That is, no one in the society would like to secede, even if

the question demands, the smaller the prescribed majority may be allowed to become;..." Rousseau, *The Social Contract*, Book IV, ch. 2, p. 154.

²⁹ Harry Beran suggests some conditions that may justify not allowing secession. For example, the group seeking secession "occupies an area which is culturally, economically or militarily essential to the existing state." See Harry Beran, *The Consent Theory of Political Obligation* (New York: Croom Helm, 1987), pp. 41-42.

³⁰ *Ibid.*, pp. 39-40.

they know that the society may move in a direction that is contrary to his or her own preference.³¹ Now that what is assumed does not exist, some condition or constraint of using majority rule should be added. In principle, majority rule is disadvantageous to minorities. I think that if any majority-decision is harming the minority's rights, basic or civil, the minority can even have a right, both moral and legal, to veto. Furthermore, if the majority's decisions, which often represent the People's decision, seriously violate any group's human rights, the decisions can be challenged or intervened.³²

So, majority rule as a fair decision-method can give us some moral reason to be bound by the outcome of a majority vote, if majority rule is applied properly. Nevertheless, moral reason given by the majority principle along with some formal constraints is merely minimal. If we need a stronger moral reason to obey the majority's decision, some substantial factors or conditions should be considered. For example, if the majority's choice is the result of bribery or manipulation, or if the majority is ignorant or irrational, or if the majority's choice is not good or right for the public,³³ then the minority will have very limited reason to obey the majority's choice. To make the majority's choice more morally forceful, choice should be made without the influence of bribery or manipulation, and individuals should be well-informed, rational, and act in the public interest as they are making decisions. Surely, deliberation, both personal and

³¹ Waldron, *The Dignity of Legislation*, pp. 131-132.

³² Recall what I said in Chapter 2 (2.2) about the moral constraint of sovereignty. Thus, the People's exercise of sovereignty by majority rule cannot violate any member or group's human rights. The "group" here often refers to an ethnic minority, but I think it could also be any other kind of group such as foreigners within a state who usually do not have a say. In fact, we may even extend the "group" to foreigners outside the state. That is, the People's exercise of sovereignty in a state also cannot violate human rights in other states, for human rights are not only prior to sovereignty but also universal.

³³ Sometimes, among those available options or alternatives for choosing, there *is* a good or right one for the public.

public, can help reach a better condition of decision-making. With deliberation, the influence of bribery or manipulation can be reduced, and individuals are more likely to make well-informed and rational choices that are good or right for the public. Thus, the majority's decisions would also be more likely to be well-informed, rational, and good or right, and they would carry more moral strength.³⁴ Deliberation may also enlarge the majority's size. Deliberation is not something unattainable. I have shown, in Chapter 4 (4.3), how institutions and civic education can improve the practice and quality of deliberation.

In conclusion, certainly, we cannot equate popular sovereignty or democracy with majority rule; the majority is not the People, either. Majority rule is merely an unavoidable device for many decision-making needs. Given that it treats every individual's view or choice equally, majority rule is a fair decision-method, though there are still some constraints for using this method. Majority rule's fairness makes the method itself legitimate or appropriate, and it creates some moral reason for the minority to obey the majority's decision. However, moral reason coming from majority rule is minimal. Stronger moral reason for obeying the majority's decision can be generated by the conditions for decision-making and what decision is made. That is, if a majority's decision is made independently and rationally, and if the decision is right or good for the

³⁴ Condorcet's jury theorem says that if each individual in a group is more likely to make the better choice between two alternatives, then the chance of the group majority making the right or correct choice increases as the number of individuals increases. Bernard Grofman and Scott L. Feld, "Rousseau's General Will: A Condorcetian Perspective," *The American Political Science Review* 82/2 (1988), pp. 569-570. Although options are confined to two in Condorcet's jury theorem, Christian List and Robert E. Goodin have proved that the theorem still applies when there are more than two options on the table. See Christian List and Robert E. Goodin, "Epistemic Democracy: Generalizing the Condorcet Jury Theorem," *The Journal of Political Philosophy* 9/3 (2001), pp. 277-306. No matter how many options there are, deliberation still

public, it creates more moral reason for people to be bound by the majority's decision. Deliberation can improve the conditions for decision-making and increase the probability of making the right or better decisions. The majority can represent the People only when it has generated sufficient moral force to bind all members of the People.

works for the theorem's premise. That is, deliberation can ensure that each individual is more likely to make the better choice.

Chapter 6: Conclusion

I have constructed and defended a theory of popular sovereignty. Let me first summarize what I have said in each chapter. Then, I will conclude this dissertation with a few remarks.

In Chapter 2, I have done a descriptive analysis of (state) sovereignty in our current world, and I have also determined sovereignty's status in the contemporary global environment. "Sovereignty" today is the highest political authority over a territory. It works in both governing and possessing a territory. This highest political authority is also independent, supreme, unique, and indivisible, but it is not absolute. Sovereignty's non-absoluteness has two senses. On the one hand, it is now widely accepted that the exercise of sovereignty should have a moral constraint – i.e. not violating human rights. On the other hand, regional integration often reduces the scope of matters over which state sovereignty can be exercised. State sovereignty should be distinguished from government or regime's authority or power. An intact and objective existence of state sovereignty is constituted by two necessary (and together sufficient) conditions: one is *de jure* sovereignty; the other is *de facto* sovereignty. Diplomatic recognition should not be a factor in determining the objective existence of sovereignty. Under the current wave of globalization, state sovereignty would continue to exist in our world, and it is actually important to have its continual existence, for sovereignty can help cope with problems

caused by globalization, and maintain territorial autonomy and cultural diversity.

However, to exert its function, sovereignty has to be held and exercised by the People.

Chapter 3 explored the nature of “the People”, and tried to draw both the external and internal boundaries of “the People”. “The People” is a political concept and generally refers to those who belong to a political society or community such as a state or city. So, “the People” has an external boundary coinciding with its political society’s external boundary. “The *sovereign* people” refers particularly to those who reside within a *state*’s boundary but are not necessarily a nation or a single cultural group. For convenience, I consistently use the term “the People” in my dissertation to indicate the sovereign people in a state. The People are not only a collection of individuals in a territory, but also a single body with certain collectivity. There are two things constituting the People’s collectivity: one is their common passive political status as the governed; the other is their common interests. “The People” is both an abstract notion and a concrete entity, in which each individual who constitutes “the People” has both a public and a private status. Practically, we may identify the People with a group of the governed who permanently reside in the territory of a state and have a strong right-duty relationship with that state. By this characterization, citizens are the primary component of the People. Permanent residents may also be included as members of the People.

After analyzing the concepts of sovereignty and the People, Chapter 4 showed how popular sovereignty can be both understood and exercised or realized in our ordinary life. Popular sovereignty means that the People have the highest political authority or an

exclusive right to possess and govern a territory. Specifically, the People have to rule indirectly by authorizing the government to take charge of most part of governance. The government works as the People's agent and aims to provide service for them. Nevertheless, the People can still rule ultimately by setting up goals and structure for governance, and by actively participating to monitor, control, and complement government's governance. The exercise and realization of popular sovereignty requires both a complete and well-designed institutional system that supports popular sovereignty and a well-equipped and civically motivated sovereign people. Such a sovereign people can be cultivated through civic education. Institutions provide opportunities or mechanisms for individuals to act as – and learn to be – a sovereign people, and civic education creates conditions for – and motivates – individuals to be able to act as a sovereign people. Although I advocate the participatory conception of popular rule, the degree of involvement should be reasonably acceptable to the People in a political society. It is hard to answer how much involvement is enough, for that would depend on different societies' situation.

Chapter 5 was about the justification of popular sovereignty. Given what sovereignty is in our world, I defend popular sovereignty as a normative ideal. That is, in every state, sovereignty ought to be held and exercised by the People. On the one hand, the People do have a right to be the sovereign, and they are the only acceptable holder of sovereignty. The People have a right to be the sovereign because the People have a tight connection with their territory, and are greatly affected by the governance in it. As the sole and direct receiver of whatever happened in the territory as a result of governance,

the People have a right to self-determine their own life and fate by holding the highest political authority to govern and possess the territory. If they cannot be self-determining, they would be like slaves. Autonomy is both intrinsically good as well as necessary to the People's happiness or well-being. It manifests values of liberty, equality, and humanity. On the other hand, it should be consequentially good to have the People be the sovereign.¹ When sovereignty is held by the People and realized ideally, sovereignty can better function to fulfill what it can positively fulfill. Domestically, the realization of popular sovereignty can give the People a better life and a less predatory politics. It can also prevent the occurrence of tyrants and reduce extremists in a state. Globally, when sovereignty is held by the People and realized well in a state or in each state, sovereignty can better function to cope with problems brought by globalization. There might be a fear that popular power may easily lead to mob violence. I argue that in a society that truly realizes popular sovereignty, mob violence can be prevented or reduced to some extent. There is also a concern about majority rule, which is often used in popular decision-making and seems not so obvious or self-evident. Basically, majority rule itself is a fair or legitimate decision-method, and it can create minimal moral reason for the minority to obey the majority's decision, for it treats every individual's view or choice equally. However, there are still some formal constraints when using this decision-method in things such as minority's issues. Stronger moral force can be generated by substantial factors such as a rational decision-making or a good or right decision. The majority can represent the People only when it has generated sufficient moral force to bind all members of the People.

¹ This is my conjecture. See footnote 13 in Chapter 5.

So, I have constructed a theory to provide an exact and thorough explication of popular sovereignty and argue against skepticism about popular sovereignty. Specifically, I have clarified and reconstructed the notion of popular sovereignty, discussed issues in realizing popular sovereignty, and justified the People's right to sovereignty and explored the need for popular sovereignty. I showed that the People in any state ought to be the sovereign, and that popular sovereignty is not only understandable, but also exercisable and realizable. As a result, my theory has provided a substantial basis for a conception of democracy that understands democracy as the rule by the People and for the People.

There are also a few things that I have not developed thoroughly in my theory, and which may have weaknesses. For example, I have been trying to show that popular sovereignty does not have to be understood and justified in the traditional contractarian context. A naturalistic approach, which starts with empirical facts or the reality, will do as well or even better. There are more ideas to develop in order to support my criticism of the contractarian approach. Besides, what I said in Chapter 5 (5.2) about good things popular sovereignty may bring were mainly my conjectures, which were based on the premise that popular sovereignty has been realized *ideally* in a society. I did not have empirical evidences to support my conjectures, and may need to find some, though I think it would be hard to get such evidences because my premise is an ideal situation, which has never existed in any society.

In conclusion, the notion of popular sovereignty is neither a fiction nor a myth. Although the notion is often used in political rhetoric, it could have substance.

Popular sovereignty should be well realized in every political society, and the realization is actually possible – through well-designed institutions and civic education.

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The Universal Declaration of Human Rights, URL = <http://www.un.org/Overview/rights.html>.