

After Bartolus

The monarchomachs and resistance in France, the Netherlands, Scotland...

The godly people, represented by elders, existing pre-politically unlike in Bartolus and contracting with its ruler/king.

The breach of the presumptive contract, and the right of resistance....Locke.

Hobbes's Argument

1. The multitudo becomes a populus only so far as it has a voice.
2. It gains a voice only so far as it is personated by a spokesperson.
3. This personator must be unique, else there will be no single body.

Hobbes's Conclusion

The sovereign is the personator.

And so 'bears the person' of the people.

The populus exists only via the sovereign and so there can be no contract here.

Unless the sovereign is the people, the people are an interpretive conceit.

Compare Sieyes and Dworkin.

Hobbes's Oversight

The populus exists via its spokesperson

The populus can have only one voice

There every rival voice must be silenced.

But there is a suppressed false premise: rival voices challenge the sovereign.

They may not; they may only constrain.

A New Start

The spokesperson or sovereign may only speak for the people conditionally.

The condition on its doing this will be that it satisfies certain constraints.

A salient possibility: that it is responsive to the public opinions of members; i.e.. opinions about common interests

The public

A population will constitute a public iff

1. members accept personation
2. members opine about government
3. the opinions constrain gov't.

The salient possibility identified is that the public rules how gov't acts, at least within certain boundaries.

A Midway Group Agent

The sort of group agent envisaged here stands midway between extremes.

First, the participatory extreme where members form judgments in-house.

Second, the personated extreme where judgment-formation is outsourced.

There is participation and personation.

A Problem

The 'circumstances of politics' involve ineradicable divisions of opinion.

So how could public opinion-formation serve to constrain government?

Wouldn't that require consensus?

And dissensus is all we are likely to get.

Towards a solution 1

Dissensus is organized around: assumptions licensing participation.

The participatory assumptions of a public are that each can speak as an equal: both qua object of concern and qua source of contribution.

Towards a solution 2

Dissensus is also organized around: assumptions licensing inference.

There is no argument, private or public, without unspoken principles. L.Carroll.

This applies in informal inference too, and in non-conclusive reasoning.

These assumptions may vary culturally.

Towards a solution 3

Government might be forced to address these locally shared pre-judgments.

They are not products of public discourse but presuppositions and precipitates.

This picture connects with many thinkers such as Habermas and Rawls.

As we shall see...but first note:

Towards a solution 4

The public pre-judgments will serve in two distinct roles, presumptively.

They will rule out more or less surely some procedures and policies.

And as between candidates on the table, they will support tie-breaking rules: majority vote, expert decision

Habermas

'Discourse theory works instead with...communication processes that flow through both the parliamentary bodies and the informal networks of the public sphere. Within and outside the parliamentary complex, these subjectless forms of communication constitute arenas in which a more or less rational opinion- and will-formation can take place' 1994, p.8

Rawls 1

'the political culture of a democratic society that has worked reasonably well over a considerable period of time normally contains, at least implicitly, certain fundamental ideas from which it is possible to work up a political conception of justice suitable for a constitutional regime (Rawls 2001, 34-35).

Rawls 2

The idea of the well-ordered people, among whom public reasons rule.
The gov't is to be constrained by these.
This people will be present in that gov't, both in acting internally and externally.
The contrast cases.

Is this Democracy?

Under this third model, the people are a group agent, present in gov't.
This people will rule itself just so far as that gov't is the people in action.
And to say that the gov't is the people is not just an interpretive conceit here.
There is a real form of rule in play.

Is this Desirable?

People do not enter the polity voluntarily, so that it can't be justified by consent.
Suppose people were ruled individually by a public in which they were equal.
Suppose that it ruled by 'prejudgments' that were endorsed by each.
That, surely, would be appealing.

Is it Realistic?

But is the rule of the public realistic?
Is it adumbrated in actual institutions?
Is it capable of improvement and of stabilization?
We turn to this crucial issue next.