

# Solonian Reprints

## No. 2 – English translation

# On the Sovereignty of the People

*by Benjamin Constant (1815)*

*translated by Casey Bowman (1996)*

Our present constitution formally recognizes the principle of the sovereignty of the people, the supremacy, that is, of general will over any particular will. This principle indeed cannot be contested. Some have striven these days to obscure it; both the evils caused and the crimes committed, under the pretext of having the general will executed, lend an apparent force to the arguments of those who would wish to assign a different source for the authority of governments. Nevertheless all these arguments cannot hold together against the simple definition of the words used. The law must be the expression either of the will of all or of the will of some. But what would be the origin of the exclusive privilege that you would grant to this small number? If it is force, force belongs to those who seize it; it does not constitute a right, and if you recognize it as legitimate, it is equally so whichever the hands are that seize it, and everyone would like to conquer it in turn. If you suppose that the power of the small number is sanctioned by the assent of all, this power then becomes the general will.

This principle applies to all institutions. Theocracy, royalty, aristocracy,

when they prevail upon minds, are the general will. When they do not so prevail, they are nothing but force. In a word, there exists but two powers in the world, one illegitimate, that is force; the other legitimate, that is the general will. But at the same time one recognizes the rights of this will, that is to say, the sovereignty of the people, it is necessary, it is urgent to conceive well its nature and determine well its extent. Without an exact and precise definition, the triumph of theory could become a calamity in its application. The abstract recognition of the sovereignty of the people does not increase the amount of liberty for individuals in the least bit; and if this sovereignty is attributed a latitude that it ought not have, liberty may be lost despite this principle, or even through this principle.

The precaution that we recommend and that we shall take is all the more indispensable as men of party, however pure their intentions may be, are ever repugnant to limit sovereignty. They regard themselves as its heirs apparent and treat with care, even when it is in the hands of their enemies, their future property. They distrust such and such kind of government, such and such class of governors; but permit them to organize

authority their own way, let them entrust it to proxies of their choice, they will think they cannot extend it enough.

When you establish that the sovereignty of the people is unlimited, you create and leave to chance in human society a degree of power too large for itself and which is an evil no matter into which hands it is placed. Entrust it to one, to several, to all, you will equally find it an evil. You will lay blame on the depositaries of this power, and depending on the circumstances, by turns you will accuse monarchy, aristocracy, democracy, mixed government, and the representative system. You will be wrong; it is the degree of force and not the depositaries of this force which must be charged. It is the weapon and not the arm you must deal with severely. There are maces too heavy for the hands of man.

The error of those who, in good faith with their love of liberty, have accorded to the sovereignty of the people a power without limits comes from the way in which their ideas in politics were formed. They have seen in history a small number of men, or even just one, in possession of an immense power which was doing much evil; but their wrath was directed against the possessors of the power and not the power itself. Instead of destroying it, they have thought but to move it. It was a scourge; they considered it a prize. They bestowed it upon the whole society. It inevitably passed from there to the majority, from the majority into the hands of a few men, and often into one hand alone; it has done just as much evil as before; and the examples, the objections, the arguments, and the facts against all political institutions have been repeated.

In a society founded upon the sovereignty of the people, it is certain that it becomes no one individual, no one class, to subject the rest to one's particular will; but it is false that the whole society possesses over its

members a sovereignty without limits.

The universality of citizens is the sovereign, in this sense that no individual, no faction, no partial association can arrogate to themselves sovereignty if it has not been delegated to them. But it does not follow from this that the universality of citizens, or those vested by them with sovereignty, may dispose sovereignty of the existence of individuals. To the contrary, there is a part of human existence which, of necessity, stays individual and independent, and which is of right outside of all social purview. Sovereignty exists only in a limited and relative way. Where individual independence and existence begin, the jurisdiction of this sovereignty stops. If society steps over this line, it becomes as guilty as the despot who has no qualification other than his exterminating blade; society may not go beyond its purview without proving to be a usurper, the majority, without proving to be a faction. The consent of the majority by no means suffices in all cases to legitimate acts; there exist some things which cannot be sanctioned; when any sort of authority commits such acts, it matters little from which source it emanates and it matters little whether it is called an individual or nation; it could be the entire nation minus the citizen it oppresses, and it would not be more legitimate for it.

Rousseau has failed to recognize this truth, and his error has made his Social Contract, so often invoked in favor of liberty, the most dreadful accessory for all sorts of despotisms. He defines the contract entered into between society and its members as the complete alienation of each individual with all his rights and without reservation to the community. In order to reassure us on the consequences of this abandonment so absolute of all parts of our existence to the profit of an abstract being, he tells us that the sovereign, that is to say the social body, can harm neither the members altogether nor each of them in particular; that since each gives himself

completely, the condition is equal for all, and that it is in the interest of no one to make it burdensome for others; that since each gives himself to all, he gives himself to no one; that each acquires from all his associates the same rights he cedes to them, and gains the equivalent of all he lost with more force to keep what he has. But he forgets that all these safeguarding attributes which he confers to the abstract being which he names as the sovereign result from this creature being made up of every single individual without exception. But as soon as the sovereign must make use of the force it possesses, that is to say, as soon as it must proceed to a practical organization of authority, as the sovereign cannot exercise it by itself, it delegates it, and all these attributes disappear. Aciton done in the name of all being necessarily, by agreement or by force, at the disposition of one or some, it happens that by giving oneself to all, it is not true that one gives oneself to no one; to the contrary, one gives oneself to those who act in the name of all. From there it follows that, by giving oneself completely, one does not enter into an equal condition for all since some profit exclusively from the sacrifice of the rest; it is not true that none have interest in rendering the condition burdensome for others, since there exist some members who are outside the common condition. It is not true that all members acquire the same rights they cede; they do not all gain the equivalent of what they lose; and their sacrifice results, or may result, in the establishment of a force that carries away what they have.

Rousseau himself was frightened by these consequences, struck with terror at the sight of the immensity of the social power he had just created; he knew not into which hands to place this monstrous power, and he found no safeguard against the danger inseparable from such a sovereignty, apart from a device which made its exercise impossible. He declared that sovereignty could be neither alienated, nor delegated, nor represented. This was to declare in other terms that it could not be

exercised; this was to annihilate indeed the principle he had only just proclaimed.

But see how the partisans of despotism are more forthright in their march, when they depart from this same axiom, because it supports and favors them. The man who most ingeniously boiled despotism down to a system, Hobbes, hastened to recognize sovereignty as unlimited, in order to conclude from this the legitimacy of absolute government by one. Sovereignty, he says, is absolute; this truth has ever been recognized, even by those who have stirred up sedition or instigated civil wars; their motive was not to annihilate sovereignty, but rather to transport the exercise of it elsewhere. Democracy is absolute sovereignty in the hands of all; aristocracy absolute sovereignty in the hands of a few; monarchy absolute sovereignty in the hands of one. The people were able to give up this absolute sovereignty, in favor of a monarch, who then became the legitimate possessor of it.

You see clearly that the absolute character that Hobbes attributes to the sovereignty of the people is the basis for his whole system. This word *absolute* distorts the entire question and draws us into a new series of consequences; it is the point where the writer leaves the way of truth in order to progress by sophistry to the goal he had in view from the outset. He proves that, the conventions of man not being sufficient in order to be observed, a coercive force is needed to constrain men to respect them; that society needing to protect itself from external aggressions, a common force is needed to ready arms for the common defense; that men being at odds on their claims, laws are needed to regularize their rights. He concludes from the first point that the sovereign has the absolute right to punish; from the second that the sovereign has the absolute power to make war; from the third that the sovereign is an absolute legislator. Nothing could be more false than these conclusions. The sovereign

has the right to punish, but only guilty actions; he has the right to make war but only when society is attacked; he has the right to make laws but only when the laws are necessary and as long as they conform to justice. There is nothing consequently absolute, nothing arbitrary in these attributed powers. Democracy is authority deposited into the hands of all, but only the amount of authority necessary for the safety of the association; aristocracy is this authority entrusted to a few; monarchy, this authority handed over to one. The people can yield this authority to a single man or a small number, but their power is limited like that of the people who vested them with it. By this striking of one single word, inserted gratuitously in the construction of one sentence, the whole frightful system of Hobbes falls apart. To the contrary, with the word *absolute*, neither liberty, nor, as one will see eventually, peace, nor happiness are possible under any institution. Popular government turns out to be a tyranny that convulses, monarchical government but a despotism with focus.

When sovereignty is not limited, there is no way to shelter individuals from governments. It is vain that you claim to submit governments to the general will. It is always they who dictate this will, and all precautions become illusory.

The people, Rousseau says, are sovereign in one respect and subject in another; but in practice these two get mixed up. It is easy for authority to oppress the people as subjects, in order to force them to show the will it prescribes for them, as if they were sovereign.

No political organization can set aside this danger. You have divided the powers in vain; if the total amount of power is unlimited, the divided powers have only to form a coalition, and despotism is without remedy. What is important for us is not that our rights

may not be violated by such a power, without the approval of such another, but that this violation be forbidden to all the powers. It is not enough that the executive's agents need invoke the authorization of the legislator; the legislator must only be able to authorize their action in their legitimate sphere. It matters little that the executive power have not the power to act without the concurrence of a law, if one does not put limits on this concurrence, if one does not declare that there are subjects about which the legislator has not the right to pass a law, or, in other words, that sovereignty is limited and that there are volitions that neither the people, nor their delegates, may rightly have.

That is what must be declared; it is the important truth, the eternal principle that must be established.

No authority on earth is unlimited, neither that of the people, nor that of the men who call themselves their representatives, nor that of kings, by whatever title they reign, nor that of the law, which, being but the expression of the will of the people or of the prince, depending on the form of the government, must be circumscribed within the same limits as the authority from which it emanates.

The citizens possess individual rights independent of all social or political authority, and every authority which violates these rights becomes illegitimate. The rights of the citizens are individual liberty, religious liberty, liberty of opinion, in which is included its publicity, the enjoyment of property, guarantee against all that is arbitrary. No authority may infringe upon these rights without tearing up its own title.

The sovereignty of the people not being unlimited and their will *not* sufficing to legitimate all they wish, the authority of the law, which is nothing but the true or supposed expression of this will, is not without limits

either.

We owe many sacrifices for our public peace; we would render ourselves guilty in the eyes of morality, if, by an attachment to our rights that is too inflexible, we were to resist all laws which to us would seem to infringe upon them; but no duty binds us to those sham laws whose corrupting influence threatens the most noble parts of our existence, to those laws which not only restrain our legitimate liberties but command us to act contrary to those eternal principles of justice and pity that man cannot cease observing without degrading and contradicting his nature.

As long as a law, although bad, does not tend to deprave us, as long as the encroachments of authority exact only sacrifices that render us neither vile, nor ferocious, we can subscribe to them. We compromise but ourselves. But if the law were to prescribe that we trample under foot either our loves or our duties; if, under the pretext of a gigantic, factitious devotion for what it would call monarchy or republic by turns, it were to forbid us fidelity to our unfortunate friends; if it were to command us perfidy to our allies, or even the persecution of our vanquished enemies, anathema to the drawing up of injustices and crimes thus covered with the name of the law.

A positive duty, general without restriction, every time that a law appears unjust, is not to become the executor of it. This force of inertia entails neither violent disturbances, nor revolutions, nor disorders.

Nothing justifies the man who lends his assistance to law he believes iniquitous.

Terror is not an excuse any more valid than any of the other infamous passions. Woe to those zealous and docile tools, eternally kept under, by what they tell us, indefatigable

agents of all existing tyrannies, posthumous denounciators of all overturned tyrannies.

They used to allege to us, during a frightful epoch, that they were making themselves agents of unjust laws only to weaken their rigor, that the power which they were consenting to make themselves the depositaries would have done even more evil, if it had been delivered into hands less pure. Deceitful arrangement which opened to any crime a career without limits! Each was bargaining with his conscience and each degree of injustice was finding worthy executors. I do not see why in this system, one would not become the executioner of innocence under the pretext that the strangling would be done more gently.

Let us now sum up the consequences of our principles.

Sovereignty of the people is not unlimited; it is circumscribed within the limits which justice and rights of individuals trace for it. The will of an entire people cannot render just what is unjust. The representatives of a nation do not have the right to do what the nation does not have the right to do themselves. No monarch, whatever title he may claim, whether he relies upon divine right, or the right of conquest, or upon the consent of the people, possesses a power without limits. God, if he intervenes in human affairs, sanctions justice alone. The right of conquest is but force, which is not a right, since it goes to whoever seizes it. The consent of the people would not know how to legitimate what is illegitimate, since a people cannot delegate to anyone an authority they do not have.

One objection arises against the limitation of sovereignty. Is it possible to limit it? Does there exist a force which can impede it from jumping over the fences which we shall have prescribed for it? We can, we shall say, by some ingenious combinations, restrain

power by dividing it. We can set the different parts into opposition and into equilibrium. But by what means shall we make it so that the whole does not come to be unlimited? How do we confine the power other than with power?

Without a doubt, the abstract limitation of sovereignty is not enough. It is necessary to find bases for political institutions that combine in such a way the interests of diverse depositaries of power that their most obvious, most lasting, most assured interest is to each stay within the confines of their respective assigned powers. But the first question no less remains the competence and the limitation of sovereignty; for before organizing a matter, it is necessary to have determined its nature and extent.

Secondly, without wishing, as philosophers have done too often, to exaggerate the influence of the truth, one can affirm that when certain principles are completely and clearly demonstrated, they serve as a sort of guarantee for themselves. There takes shape, with regard to the evidence, a universal opinion which before long is victorious. If it is recognized that sovereignty is not without limits, that is to say, that there exists on earth no power that is unlimited, no one will dare claim at any time such a power. Experience itself already proves this. The entire society is no longer attributed, for example, the right of life and death without judgment. Also no modern government claims to exercise such a right. If the tyrants of ancient republics appear to us to be much more unbridled than the governments of modern history, it is in part necessary to attribute it to this cause. The most monstrous attempts by despotisms of one were frequently owing to

the doctrine of the unlimited power of all.

Limitation on sovereignty is veritable to be sure, and it is possible. It is to be guaranteed, first of all, by the force which guarantees all recognized truths: by opinion—next, in a more precise manner, by the distribution and by the balance of powers.

But begin by recognizing this salutary limitation. Without this preliminary precaution, all is futile.

By enclosing the sovereignty of the people within just limits, you have nothing more to dread; you lift from despotism, be it of individuals, be it of assemblies, the apparent sanction that it believes it draws from the consent it commands, since you show that this consent, were it real, has the power of sanctioning nothing.

The people do not have the right to strike one single innocent person or to treat as guilty one single accused person, without legal proof. It can therefore delegate such a right to no one. The people have not the right to make an attempt on liberty of opinion, on religious liberty, on judiciary safeguards, and on protective forms. No despot, no assembly, can therefore exercise such a right while saying that the people have vested him with it. All despotism is thus illegal; nothing can sanction it, not even the popular will that he alleges. For he arrogates to himself, in the name of the sovereignty of the people, a power which is not included in this sovereignty, and it is not solely an irregular displacement of existing power, but the creation of a power which ought not exist.

## French Source

**Constant de Rebecque, Henri Benjamin** (1815) *Principes de politiques applicables à tous les Gouvernements représentatifs et particulièrement à la constitution actuelle de la France*. Chapitre premier. In: Constant de Rebecque, Henri Benjamin. *Cours de Politique Constitutionnelle ou collection des ouvrages publiés sur le gouvernement représentatif*. Avec une Introduction et des Notes par Édouard Laboulaye. Deuxième édition. (Paris: Librairie de Guillaumin et C<sup>ie</sup>, 1872) pp. 7-17.

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