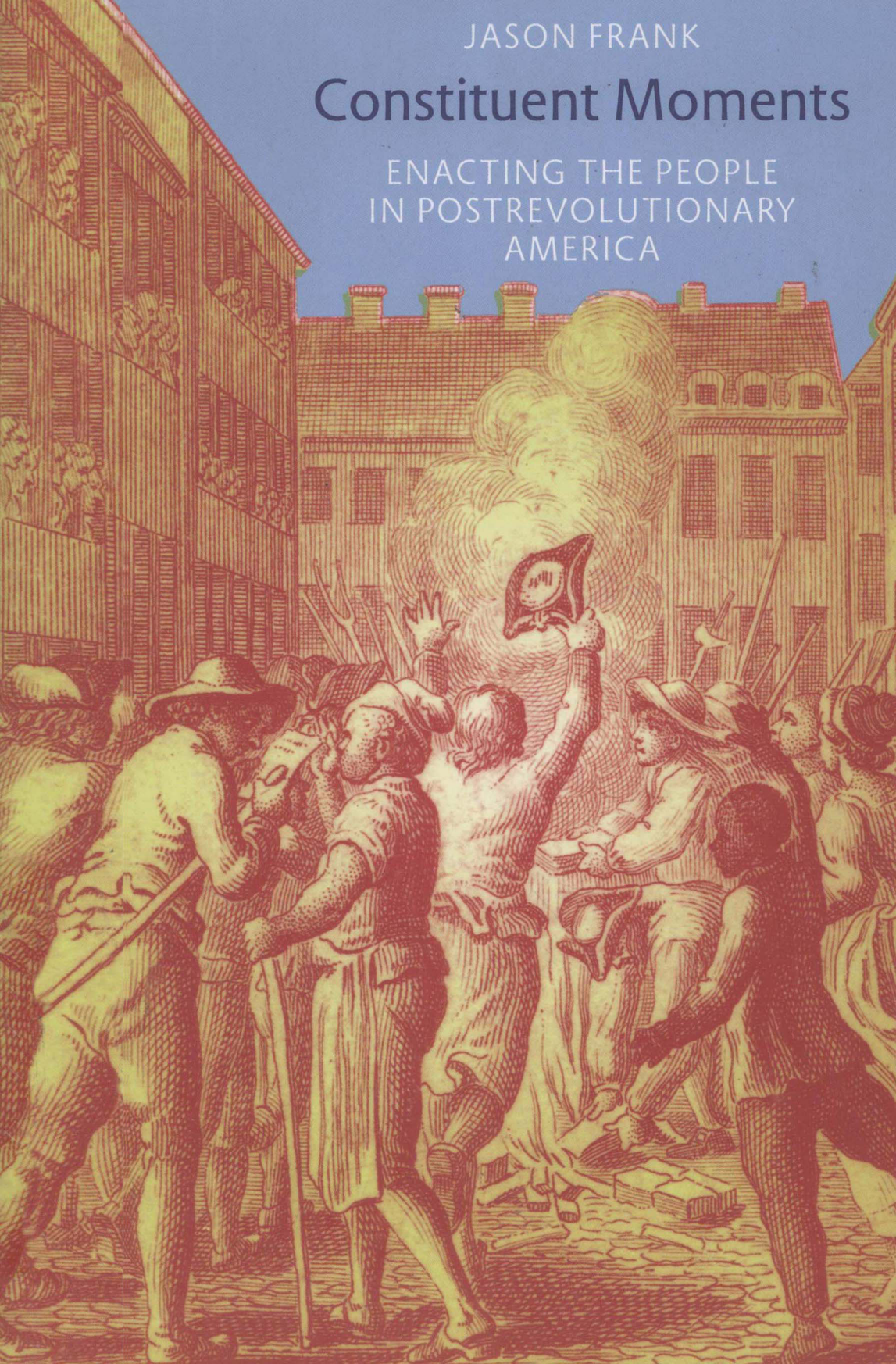


JASON FRANK

Constituent Moments

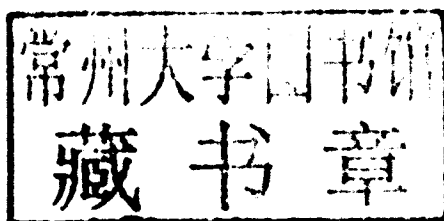
ENACTING THE PEOPLE
IN POSTREVOLUTIONARY
AMERICA



Jason Frank

Constituent Moments

ENACTING THE PEOPLE IN POSTREVOLUTIONARY AMERICA



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Constituent Moments

To my parents, for everything



There is no voice of the people.
There are scattered voices and polemics
which in each instance divide the identity that they stage.

— JACQUES RANCIÈRE,

Les scènes du peuple

"Origins" never stop repeating themselves.

— JACQUES RANCIÈRE,

Dis-agreement: Politics and Philosophy

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Democracy inaugurates the experience of an ungraspable, uncontrollable society in which the people will be said to be sovereign, of course, but whose identity will constantly be open to question, whose identity will remain forever latent.

CLAUDE LEFORT, *Democracy and Political Theory*¹



Introduction

Constituent Moments

Since the revolutionary period most Americans have agreed with John Adams that “in theory . . . the only moral foundation of government is the consent of the people.” Subsequent political history has returned time and again to the question that followed: “But to what extent shall we carry out this principle?”² Adams asked this unsettling question in a letter to James Sullivan on 26 May 1776, eleven days after the Continental Congress had decreed that new state governments should be established “on the authority of the people,” and just over a month before independence was officially declared “in the name and by the authority of the good people of these colonies.” The question resonates over the long span of postrevolutionary American politics to the present day.

Sullivan, a prominent lawyer in Boston and a member of the provincial congress of Massachusetts, had suggested in an earlier letter to Adams

that the Continental Congress should consider altering existing property qualifications for voters, to better align them with the proclaimed principles of just or “actual” representation affirmed by the colonists in their decade-long struggle with Parliament and Crown.³ Since all men live under law, Sullivan reasoned, all should be granted the right to vote. As the states prepared to replace their colonial charters and form new governments, Sullivan urged that they consider instituting universal male suffrage. At issue in Sullivan’s letter was not simply how to more fully carry out the principle of consent—as in the progressive democratization of governing institutions celebrated in Whig histories of American political development from Lincoln to Rawls—nor how better to represent the various constituencies or their interests, but rather the logically prior and more painfully ambiguous question of *who* constitutes the authorizing and consenting people in the first place. While seeking “a more equal representation” based in “true republican principles,” Sullivan also worried about the “levelling spirit” that accompanied these claims. Sullivan at once suggested and evaded this question in his letter, but in this he was far from alone. “How to decide who legitimately make up ‘the people,’” Robert Dahl notes, “is a problem almost totally neglected by all the great political philosophers who write about democracy.”⁴ Yet the problem haunts all theories of democracy and continually vivifies democratic practice. Determining who constitutes the people is an inescapable yet democratically unanswerable dilemma; it is not a question the people can procedurally decide because the very question subverts the premises of its resolution.

In his response to Sullivan’s suggestions, Adams prophesied the looming magnitude of this problem—the problem of the legitimacy of the people⁵—for postrevolutionary American politics: “Depend upon it, sir, it is dangerous to open so fruitful a Source of Controversy and Altercation . . . There would be no End of it. New Claims will arise. Women will demand a Vote. Lads from 12 to 21 will think their Rights not enough attended to, and every Man, who has not a farthing, will demand an Equal Voice with any other in all Acts of State. It tends to confound and destroy all Distinctions, and prostrate all Ranks, to one common Levell.”⁶ Adams’s letter suggests that the people who are usually envisioned—in everyday political speech as well as in most democratic theory—as a pre-political source of sovereign authority are actually the site of both extraor-

dinary and everyday acts of political contestation. Subsequent American political history has borne out his suggestion. While Adams focused on challenges to the vertical boundaries around the people—the “levelling” of “distinction” and “rank”—later challenges would be directed at the horizontal boundary as well—from the pressures and claims of “alien” constituencies. “To follow the career of the term the People,” Daniel T. Rodgers has noted, “is to watch men invest a word with extraordinary meaning and then, losing hold of it to other claimants, scuttle from the consequences.”⁷ Political theorists opposed to the more radical iterations of popular politics, from Plato to Filmer, from Madison to de Maistre, have tirelessly pointed out the inherent instability of the people, and they have been right to do so.⁸

Both democratic history and democratic theory demonstrate that the people are a political *claim*, an act of political subjectification, not a pre-given, unified, or naturally bounded empirical entity.⁹ In the United States the power of claims to speak in the people’s name derives in part from a constitutive surplus inherited from the revolutionary era, from the fact that since the Revolution the people have been at once enacted through representation—how could it be otherwise?¹⁰—and in excess of any particular representation. This dilemma illuminates the significance and theological resonance of popular voice: *vox populi, vox Dei*. The authority of *vox populi* derives from its continually reiterated but never fully realized reference to the sovereign people beyond representation, beyond the law, the spirit beyond the letter, the Word beyond the words—the mystical foundations of authority.¹¹ The postrevolutionary people are at once enacted through representational claims and forever escaping the political and legal boundaries inscribed by those claims. This book explores political and cultural dilemmas that attended these postrevolutionary dramas of popular self-authorization—dilemmas arising from the people’s revolutionary enthronement as the unlocatable ground of public authority—and the orienting power of these historical examples for contemporary democratic theory.

I

The people reign over the American political world as God rules over the universe. It is the cause and the end of all things; everything rises out of it and is absorbed back into it. ALEXIS DE TOCQUEVILLE, *Democracy in America*¹²

The people have been a remarkably potent symbol—and force—over the course of United States political history, and remain so still (albeit in a disconcertingly muted form). Many astute social and political thinkers nonetheless bridle at the vague indeterminacy of the term, at the way this “fiction” or “myth” is invoked in public discussion to obscure political realities or, even worse, as “a way of legitimating collective fantasy.”¹³ Many have agreed with the Marquis de Mirabeau’s declaration that “the word people necessarily means too much or too little,” that “it is a word open to any use.”¹⁴ Others believe it too ambiguous or dangerously populist to merit serious theoretical analysis.¹⁵ Pierre Bourdieu, to take one prominent example, argues that political recourse to “the people,” even in the “scientific” guise of public opinion polling, captivates subject populations through a “political metaphysics” that enthralls them to the rulers claiming to speak in their name.¹⁶ From a very different methodological perspective, the social choice theorist William Riker argues that there is simply no knowable “voice of the people” aside from the often “inaccurate or meaningless amalgamations” of voting. For Riker this unavoidable epistemological deficit mandates rejecting “populism,” and its “quasi mystical” claim to politically enact the people’s voice, in favor of a resigned “liberalism,” with democracy little more than an occasional, somewhat fumbling check on governmental power.¹⁷ Political realists of all sorts, left and right, class analysts and methodological individualists, typically deride the supposed mystification attending political appeals to the people.

If the notion of the people is a fiction or mystification, it is one with a profound political efficacy, playing a complex but foundational role in the interweaving traditions of American political thought and culture. In the jeremiads of Puritan New England, the covenanted people were figured as a new Israel given “speciall Commission” to establish “a City upon a Hill” as a beacon of moral righteousness to the world.¹⁸ The civic republican currents of American political thought and culture figure the

people as both a particular social class—the common, the poor—and the collective *populus* jealously guarding their liberties against the central government's always encroaching, corrupting power.¹⁹ American populists took this collective opposition to “interests” and “élites” and placed it in the hands of laboring people alone.²⁰ Traditions of popular constitutionalism similarly construed the people as the defenders of the constitution and, when the need arose, the direct enforcers of constitutional norms.²¹ Natural law liberalism, as transformed by postrevolutionary American constitutionalism, cast the people as the *makers* of the constitution, a constituent power enabling the contractual emergence from a state of nature into a new constitutional order. “The people,” as James Wilson stated in the Pennsylvania ratifying convention of 1787, “possess, over our constitutions, control in *act*, as well as right.”²² Finally, in what Rogers Smith has recently called the “ideologies of ascriptive Americanism,” the people—substantively figured as the race or the nation—have served to justify a history of racial and ethnic discrimination and violence, from draft riots against free blacks and the destruction of indigenous peoples to lynch mobs and anti-immigrant violence.²³ Despite historians’ efforts to isolate and analytically distinguish these traditions, they have been inextricably commingled in American political thought and culture. These traditions have a common authorizing appeal to the people that remains an ambiguous and contested inheritance.

Each of these interweaving traditions figures the people as the “legitimate fountain of power,” as a sovereign authority, but they differently construe how, when, where, and by whom this power is to be exercised. Remarkably diverse movements and policies, reforms and reactions, have invoked the sovereign authority of the people. The people have been used to justify popular revolution against colonial authorities and to found a constitutional order premised on “excluding the people in their collective capacity”; to embolden the states and to empower the union; to authorize vigilantism and to affirm the rule of law; to create a broad populist front against Gilded Age economic exploitation and to perpetuate some of the nation’s worst racial atrocities; to increase the power of the presidency and to return power to the grassroots.

This book claims that the potency of *vox populi* in American history derives in part from its persistent latency or virtuality, from the paradoxical political reality that the people are forever a people that is not . . . yet. Thus claims made in the name of the people always transcend the

horizon of any given articulation, drawing their power from their own unrealized futurity. The legitimating vitality of the people, their “*coup de force*,” derives from their constitutive surplus.²⁴ The inability of the people to speak in their own name does not simply mark a legitimization deficit for postrevolutionary democratic politics but also its ongoing condition of possibility.

The rhetorician Kenneth Burke recognized the virtual potency of “the people” in American political thought and culture in a speech, “Revolutionary Symbolism in America,” that he delivered before the American Writers’ Congress in 1935. Burke argued that the revolutionary left—the Congress was convened by the American Communist Party and Burke’s audience was a who’s who of *engagé* artists and intellectuals—should replace the divisive and limiting symbol of “the worker” or “the proletarian” with the universalizing ideal of “the people,” which, Burke claimed, “rates highest in our hierarchy of symbols.”²⁵ Importantly, and controversially for his audience, Burke saw neither “the people” nor “the worker” as a sociological entity but instead as a political or rhetorical construction. Burke based his strategic plea to lionize the people in socialist and communist propaganda in a general theory of symbolic action that emphasized how such symbols could capture the “subtle complex of emotions and attitudes” in a scheme of “polarizing social cooperation.”²⁶ Echoing George Sorel (whom he had read) and Carl Schmitt (whom he had not), Burke argued that all political movements, whether conservative or revolutionary, are made of such polarizing “myths.”

In a term that became central to his later thought on the relationship between political authority and tropes, Burke attributed to these myths the all-important power of “identification.”²⁷ Because the idea of “the people” is a myth “closer to our [American] folkways” and draws on “spontaneous popular usage,” Burke argued, it could tap the latent revolutionary potential of this “subtle complex of emotions and attitudes.” “The people” could then be employed as a powerful tool of immanent critique, revealing how widely proclaimed commitments to a government of, by, and for the people are systematically undermined in practice. Moreover, as Burke insightfully noted, “since the symbol of ‘the people’ contains connotations both of oppression and of unity, it seems better than the exclusively proletarian one as a psychological bridge for linking the two conflicting aspects of a transitional revolutionary era, which is Janus-