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A 'Peaceable and Orderly Manner': Town Meetings and other Popular Assemblies in the American Founding

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Abstract

The New England town meeting has often been seen as the archetypical deliberative citizen forum (see, e.g., Mansbridge 1980). More recently, political theorists have begun to appreciate the way in which any particular public forum might be better understood as part of the larger deliberative system (Parkinson, Mansbridge, 2012). Much of this work draws on modern-day examples (Parkinson 2006). But a return to the American founding era reveals that while town meetings are often praised and have many democratic virtues, they also embody a limitation on popular action generally and especially on democratic dissent.

Keywords

deliberative democracy, town meetings, citizen assemblies, dissent, James Madison, American Founding

Introduction

Much like the ancient Athenian assembly, the New England town meeting has often been seen as an archetypical deliberative citizen forum (see, e.g., Mansbridge 1980). More recently, political theorists have begun to appreciate the way in which any particular public forum might be better understood as part of the larger deliberative system (Parkinson, Mansbridge, 2012). Much of this work draws on modern-day examples (Parkinson 2006). But a return to the American founding era reveals how different “arenas” of public discourse (Mansbridge et al., 2012, p.9) evolved to take on different and always debatable roles. Town meetings, for example, emerged out of a wider world of popular engagement where both the centrality of the town as the appropriate unit and the formal meeting for orderly deliberation as the proper procedure had to be debated and theorized. There was always the crucial question of what kind of political speech might be allowed: should it be decorous elite deliberation or a broader array of plebian voices and dissenting opinions that challenged rather than upheld the status quo?

Recovering and analyzing how town meetings emerged out of a broader universe of popular participatory practices, as I will below, demonstrates that while town meetings are often praised and have many democratic virtues, they also embody a limitation on popular action generally and especially on democratic dissent. The emergence of what was widely seen as the first modern democratic republic in 1780s and '90s America raised a host of then-unprecedented questions about the role and nature of citizen assemblies. Who sets the agenda? What are the appropriate norms of engagement? Who speaks, and who is genuinely heard? Most crucially, which practices and institutions are legitimate and which are democratically suspect? As we shall see, establishing the town meeting as a legitimate public forum often came at the cost of closing down other avenues of popular participation; this, in turn, was part of a larger shift away from free-forming, grassroots gatherings toward formalized, elite-driven public institutions.

This shift can perhaps be most explicitly seen in the responses to a popular uprising that occurred in western Massachusetts in 1786, only a few years after the Treaty of Paris finalized Great Britain's recognition of American independence. Citizens assembling for redress of grievances was a broadly accepted mode of reforming or “regulating” unjust governmental policy. Participants thus saw themselves as “regulators” and their movement as a “regulation,” following on smaller regulations in North and South Carolina that had been somewhat successful in securing political reform; these regulations in turn had drawn on a long Anglo-American history of community regulation via informal popular action.

Yet we do not now commonly call this episode the “Massachusetts Regulation of 1786” but rather “Shays’s Rebellion.” History is often told from the victors’ perspective, of course, and so it is unsurprising that when the movement was pacified, its opponents were able to characterize it as they wished. But there is more at play here. Central to the dispute was the question of whether or not the new representative democracy instituted in the Massachusetts Constitution (1780) exhausted the avenues of popular participation. The result was to undermine the legitimacy of various traditional practices of the “people out of doors,” even while it established the place of the town meeting.

Analyzing two subsequent regulations in Pennsylvania in the 1790s—now likewise generally known as “rebellions”—will extend this story of a narrowing of participatory pathways. We will then turn to an effort not to replace representative institutions, but to augment and enrich them, the “democratic societies” that blossomed and faded in the mid-1790s. Here too particular representative institutions were valorized while quasi-public citizen assemblies were made to seem suspect, even dangerous to a democracy. Finally, we will turn to the preeminent political theorist of early America, James Madison, as he goes from a spirited defense of broad popular participation in 1785 to a more narrowly-defined and institutionally formalized approach to political engagement in 1798. The outcome of these two decades, then, was largely to confine public debate and democratic action to officially sanctioned and formally ordered (and thus elite-controlled) venues like the town meeting (or the state legislature).

“Regulating” government through and beyond the town meeting

By the eighteenth century, town meetings had a prominent place in the political world of many British North American colonies, in New England especially. They often served as the main local policy-making body and might, as in Massachusetts, elect delegates to go to the lower house of the colonial (and then state) legislature. But the connections between the formal, official town meeting and the wider world of political engagement and discussion was always blurry. In fact, town meetings began as informal, extralegal adjuncts to the royally chartered governments of the Plymouth and Massachusetts Bay Companies. And from these beginnings in the 1630s, it seems that all adult men were allowed to speak and that the results were sometimes disorderly (Zimmerman, 1999, p. 18-23).

The town meeting would become more structured during the seventeenth century, often meeting more or less monthly and in many cases adopting a plural executive body of “select men.” Nevertheless, by the 1770s, it sometimes still empowered common people to challenge established elites and it continued to be connected to various informal mechanisms of popular action. As opposition to the British

government grew in the run up to the Revolution, the appointed governor of Massachusetts banned town meetings, though they continued in violation of royal authority (Zimmerman, 1999, p. 2). The famous (and unofficial) “Boston Tea Party” followed a town meeting, and Boston leaders would occasionally call meetings of “the whole body of the people” when they sought to broaden engagement beyond the limits of the voter roll (Young, 2006, p. 7). Other assemblies—including county conventions, state conventions, and even militia companies—along with town meetings, might publish separate political statements, as they did in urging the colonies toward independence in early 1776 (Young, 2006, p. 10). Less formalized were public rallies that had long enforced widely shared norms via “rough music,” such as the ritual punishment of dragging an adulterous husband back to his wife and family. Such political regulation by the “people out of doors” was generally seen as legitimate, not least because it often drew on the same men who made up the militia, served in an official posse, or voted in a town meeting.

In the run-up to independence, then, it is not surprising that the people of Massachusetts would use county conventions, rather than more locally focused and highly structured town meetings, as the main vehicles for coordinating state-wide opposition to the hated “Coercive Acts” instituted by Parliament in 1774. Similarly, with the War underway and the monarchical colonial government only partially reformed by elites in Boston, the people of western Massachusetts used county conventions to demand a new, republican constitution for the state. The so-called Berkshire Constitutionalists led a movement that closed courts and established a form of self-rule until a new Massachusetts Constitution was ratified by popular referenda in 1780.

The new constitution continued the tradition of town meetings serving as deliberative venues for local policy and for the formal instructions they would use to control the state representatives they elected. But other features of the new government were less conducive to the political engagement of common farmers in western Massachusetts. Increasingly, important policy was made at the state-level, where the commercial east had a disproportionate amount of power. A powerful Senate was restricted to the elite via property restrictions. And while each state Senator was elected by a county, there was no county-wide process for drafting and approving instructions to state senators.

By 1786, it was clear to many people in western Massachusetts that this elitist and eastern-dominated government was not the revolutionary republicanism for which they had fought. Worse yet, the post-War depression and sharply increased taxes had left the common people in dire economic straits. Accordingly, following the recent models from before and during the War, they used town meetings to elect

delegates to county conventions, which in turn petitioned the faraway capital in Boston for a redress of grievances, including debt relief as well as political reforms. When these petitions went unanswered, citizens turned from town meetings and county conventions to militia companies, which closed the local courts, thus making collection of taxes and debts impossible.

This episode is generally referred to as “Shays’s Rebellion,” but for the insurgents and their legions of supporters in western Massachusetts, this was no “rebellion,” but rather a “regulation.” This movement has also been denigrated as an effort by debtors to avoid paying their taxes and other debts. But the connection between debt and resistance does not hold up to careful scrutiny (Richards, 2002). Rather, as one historian explains, “The question of how and where the voice of the people might be heard was the central problem at the heart of Shays’s Rebellion” (Sturr, 2005, p. 193).

One pseudonymous supporter of the movement, “Tom Taciturn,” defended the people’s right to meet via county conventions (Sturr, 2005, p. 192). The Shaysite county conventions consisted of delegates elected by proper town meetings and these delegates did work to articulate the depth and breadth of backcountry problems. But for many critics, town meetings were the only legitimate avenue for public dissent. Individual towns could convene in town meetings, elect assemblymen, and issue instructions, all in keeping with procedures sanctified by time-honored practice as well as specific constitutional declaration. State senators were elected by county, but neither the holding of county conventions nor the adopting of county petitions was explicitly justified by the Massachusetts constitution. County conventions had been legitimate during the war against the British, some detractors conceded, but they were no longer proper under the new state constitution.

Many Eastern conservatives went further and saw all dissent as anathema to good government. “Another Citizen” for example, argued that opposition tends to destroy government. Annual elections were sufficient popular input into government. Regular town meetings were certainly legitimate, he admitted, but any popular organization beyond that was tantamount to treason (*Worcester Magazine* 7 September 1786). A town meeting in Newton, near Boston, declared that annual elections and the power of instructing a town’s representatives was sufficient to address all real grievances. Factions, the Newton townsmen noted, were generally the cause of the end of republics (*Boston Independent Chronicle*, 31 August 1786). “Publicus” agreed that town meetings and instructions to representatives were the only legitimate means of participating in governance. The county conventions being used in the west were not specified in the state

constitution, he insisted, and lacked any reliable source of genuine knowledge, leaving them misinformed (Boston *Independent Chronicle*, 31 August 1786).

These critics were correct that the county conventions were not mentioned in the state's constitution. But not all the conventions were radical, and the state legislature had recognized one of them (Pole, 1968, p. 425). Moreover, the conventions were made up of delegates chosen by town meetings and served a different purpose than town meetings. County conventions could demonstrate the breadth and commonality of the problems faced by western farmers, whereas town instructions and petitions seemed more idiosyncratic. County conventions also met out west, thereby avoiding the high costs of travel all the way to Boston.

Indeed, by the mid-1780s, many western towns had given up sending their representatives to the state capital. Given the eastern lock on power, it seemed pointless (as well as a waste of scarce resources). One of the most prominent supporters of the Regulation, local judge William Whiting, condemned the failure to employ this avenue of opposition. But he also stressed that the state constitution explicitly declared that the people are the source of all power, that government officers are merely the people's agents, and are thus always accountable to the people. Since the constitution did not explicitly say how officials are accountable to the people, Whiting reasoned that county conventions should be seen as legitimate (Whiting, 1957 [1786], p. 153). Ultimately, to many backcountry citizens, the conventions that led the opposition were much more representative of the people than the state legislature (*Worcester Magazine*, 12 October 1786; see also, Pole, 1968, p. 429 and Slaughter, 1986, p. 110). What's more, insisted Whiting, "the people are making their laudable exertions in the most peaceable and orderly manner that will consist with effecting their important purpose" (Whiting, 1957 [1786], p. 132).

Given state-wide popular support for political reform as well as tax and debt relief, state officials were unable to muster eastern militia companies against the "regulators" and, as we have seen, western militias were at the forefront of the movement. So Boston elites had to raise a private army and march them west. After some skirmishes (and five deaths), the area was pacified, and many leaders were imprisoned (or fled into exile); thirteen insurgents were sentenced to death, but then pardoned. Public opinion shifted broadly enough to elect a new governor. But policies did not really change. And certainly the various arguments about the representativeness of the official town meetings versus the informal county conventions were debated but not resolved. Dissent outside of clearly sanctioned channels was, however, stained as illegitimate in the eyes of many citizens.

A similar “regulation” took place in 1794 in western Pennsylvania, a backcountry region where town meetings were not institutionalized, but militia meetings, county conventions, and other public assemblies were more common. When the new federal government placed an excise tax on whiskey, many communities on the western edge of the nation simply refused to comply. Excise taxes had long been hated (and even called the “devil’s remedy”), but for policy makers in the commercial east, whiskey seemed an expendable luxury. For farmers in the western backcountry, however, distilling whiskey was the only way to turn their grain into profit: the Mississippi river was closed to them since the Spanish controlled New Orleans, and overland transportation of the unprocessed grain to coastal markets was prohibitively expensive. Indeed, whiskey was so central to the backcountry economy, it was a sort of currency in an area where specie was scarce.

Feeling unrepresented in the federal government, most westerners saw this as the kind of taxation without representation that they had just fought England to avoid. And they again turned to county conventions to issue protests. At the Pittsburgh convention of 21 August 1792, for example, the meeting resolved that if any local men accepted the office of tax collector, all assembled would “withdraw from them every assistance, and withhold all the comforts of life, which depend upon those duties that as men and citizens we owe to each other, and upon all occasions treat them with that contempt they deserve; and that it be, and it is hereby earnestly recommended to the people at large, to follow the same line of conduct towards them” (quoted in Brackenridge, 1985 [1794], p. 75 n. 25).

When these efforts at popular, non-violent resistance failed, many men turned to militia musters, intimidation of officials, and ultimately to tarring and feathering. Furthermore, the people in many western communities organized to protect their neighbors who could not—or would not—pay their taxes, agreeing, for example, to not bid at any foreclosure auction (and blocking roads so no others could participate). Private debts were handled informally, but the people successfully resisted official efforts to enforce the new tax law. Or, rather, communal disobedience was successful in Kentucky and elsewhere, but not in western Pennsylvania starting in 1794 when a federal official arrived who was unwilling to yield to local opinion and intimidation.

The most intense standoff involved a militia that surrounded the tax official’s home. When an exchange of gunfire led to the deaths of three regulators, the militiamen burned down the official’s house but did not exact bloody vengeance on him or the federal troops involved. Nor was this limitation of popular disorder and violence a result of authoritarian leadership; rather, these militias refused to be led by officers, even officers of their own choosing. Instead, they organized democratically, in keeping with their broader principles.

When President Washington marched west to put down the insurgency, he led thousands of troops gathered from various western states' militias. In reaction, the communities of western Pennsylvania again held local meetings to choose delegates to a multi-county convention, which then voted to submit rather than fight. This move was in keeping with the previous three years of popular protests focused not on taxes so much as what they saw as unrepresentative practices at the federal and even state level. Towns would meet and decide to raise a liberty pole and a flag—and then proceed to deliberate about what the flag should say. “In their minds, they were not rebels,” the historian Terry Bouton concludes. “Instead, these people saw themselves as the defenders of democracy and good government” (Bouton, 2007, p. 238).

In this western Pennsylvania insurgency, then, the occasional informal town meeting was a less significant forum for citizen political activity than the more traditional county convention and, especially, the militia. Things were no different in southeastern Pennsylvania, where militia companies had deliberated and decided to refuse to back land speculators against settlers in the Wyoming Valley in the late 1780s. It is not surprising, then, that militia companies even more than town meetings would be prime sites of organization and resistance to the newly imposed federal Direct Tax in 1799. This insurgency, more commonly known as “Fries’s Rebellion,” is instead notable for its stress on democratic inclusion, political statements, and effort to avoid serious violence, an evolution explored elsewhere as a shift from popular disorder to “democratic disorder” (Martin, 2013, p. 26). The aim here was emphatically toward greater democracy. The purported leader, John Fries, had marched along with many of his neighbors against the Shaysites and their use of violence back in 1794. Importantly, the insurgent militia companies of 1799, like those of 1794, eschewed the idea of elitism and hierarchy: we are all commanders, they claimed. And as with the so-called “Whiskey Rebellion,” this movement was labeled a “rebellion” by elite supporters of the government in an unmistakable effort to characterize citizen assemblies and militia musters—really, any popular action—as illegitimate.

These regulators grounded their resistance in the Constitution. They rejected the Sedition Act’s (1798) recent criminalization of criticism of government. They further claimed the Direct Tax was unconstitutional due to its basis in real property (homeownership) rather than population. More importantly, they insisted popular assemblies of all kinds were not only legitimate, but constitutionally protected. Town meetings were not mentioned in the new federal Constitution, but the right of citizens to assemble for redress of grievances was explicitly protected in the First Amendment.

Drawing on long-standing tradition, the Regulators of 1799 saw the properly structured militia not as a disorderly mob, but as a legitimate body of the people defending the public good. However, since not everyone was in the militia, raising liberty poles and signing pledges of association allowed others to take a place in the movement as well. Informal town meetings therefore took place at which the assembled populace discussed the issues, and arrived at a general consensus. What this often meant in practice was a pledge to work together to resist the tax and to rescue anyone arrested for resisting. This latter point was essential, since the townspeople understood that anyone arrested for resistance would not be afforded the usual trial in the vicinity (where local men could be relied on to acquit them), but rather be dragged to Philadelphia, where a very unsympathetic, or even packed, jury awaited.

It is worth noting that those these meetings usually arrived a broadly held consensus. Any townspeople who opposed the resistance, either inside or outside the meeting, would not be tolerated; rather, threats were made against opponents of the movement as well as tax assessors. Some housewives took to pouring pans of hot water on assessors snooping around houses to calculate the tax by counting and measuring windows. (Hence, another derisive name for the insurgency, the “Hot Water War.”) Nevertheless, a recent historian concludes that “no serious acts of violence took place during the course of the insurrection” (Churchill, 2000, p. 124).

Whereas the previous two regulations had engaged in actual gunfire and brought real casualties, the Regulators of 1799 carefully avoided this violence and eschewed even the traditional symbolic violence of burning government officials in effigy. Instead, they focused on efforts to engage in democratic debate and advanced a positive message, raising liberty poles that focused less on the Direct Tax and more on opposing the Sedition Act (a kind of “gag” law); one liberty pole sign, for example, declared “The Constitution Sacred, No Gag Laws, Liberty or Death.” The intrusive new tax was the triggering issue, but the Regulators of 1799 had bigger concerns that in fact centered on democratic politics.

The people of southeastern Pennsylvania were hardly alone in their opposition to the Direct Tax and the prohibition of criticism of government included in the Sedition Act. The ruling party behind these laws, the Federalists, lost the elections of 1800 and the laws expired or were repealed. The Democratic-Republican party of Thomas Jefferson and James Madison was ascendant. But as we shall see, the coming domination of the Democratic-Republicans after 1800 would actually foreclose less structured if more immediate expressions of popular political engagement. We should note now, however, that for the third time in only a decade and a half the characterization of an insurgency as a “rebellion” would win over the popular imagination. In this latter case, even a largely non-violent protest would

be widely considered illegitimate. The right of the people to unstructured direct popular action—to assemble for redress of grievances—was normatively denigrated and conceptually narrowed.

The Democratic Societies: Exploring and expanding the democratic public sphere

The late 1780s and 1790s, then, was a period when the American people worked through, in fits and starts, the possible avenues for legitimate popular engagement in the first modern democracy. Various kinds of forum—traditional if unstructured popular demonstrations, militia musters, informal and formal town meetings, various county conventions—were utilized and often critiqued as insufficiently orderly or representative. How then should we understand citizen assemblies that made no claim to represent or speak for the whole people, but rather sought to inform the citizenry of a set of views and arguments that were largely excluded from the government? Prior to the Pennsylvania Regulation of 1794, a much broader movement emerged that opposed the general direction of the Washington administration and the Federalist political party.

As the new federal government started to take shape in the early 1790s, many common men felt the emerging political system was taking on precisely the elitist and centralizing characteristics that the Anti-Federalists had predicted in the course of their failed effort to forestall the ratification of the Constitution. With the French Revolution upending monarchy, there was a broad, trans-Atlantic movement underway pushing for more democratization, and groups formed to contribute to this movement: the Jacobin clubs in France and the various constitutional societies in England. The “democratic societies” that formed in America in 1793-4 were something different from the French or English models, nor were they quite like the various revolutionary Committees of Safety and of Correspondence that spurred the Patriot movement of two decades earlier in America. Rather, these associations were really a new form of political institution, aimed not at direct action, but at contributing to public debate and thereby hopefully influencing the public opinion that ought to guide government officials.

Typically, these groups met at a tavern on a publicly-announced evening and debated some resolutions on recent political issues or perhaps drafted a public letter to another democratic society pledging mutual support grounded in shared political principles; these proceedings would then be published in a local newspaper and hopefully reprinted in other cities' papers. The clubs did not propose or endorse slates of electoral candidates, though they would be succeeded in time by

Jefferson's Democratic-Republican political party. They did not petition for a redress of grievances nor did they generally sponsor protest marches; about the only marching they did was in July 4th parades.

None of this may seem particularly radical, especially when compared to the direct action of the regulations we have examined. But with the meaning and practices of popular government very much up for grabs at this moment in world history, these plebeian political activities took on a profound significance. The club's debates and publications broadened and enlivened the democratic public sphere by creating a public space outside of the formal and traditional avenues of power precisely so that average citizens—neither elected nor elite—could have a political voice. This voice they might then more confidently and articulately bring to bear in more formal fora like town meetings.

And the clubs did attract average citizens. The most thorough modern study of the clubs suggests that membership may have been as much as two-thirds craftsmen of various sorts (Link, 1942, p. 72). In a world still colored by deference to gentlemen, organizations formed for ongoing political discourse by common men were a powerfully democratizing force. Moreover, choosing to use the label, "democratic"—as many but not all of the clubs did—was itself a symbolic gesture toward a more inclusive politics at a time when the derogatory connotations of the term (as mob-rule) still lingered.

Nevertheless, as inclusive as the democratic clubs were with regard to rank and social position, we should not lose sight of the silent but effective exclusion of women and African-Americans, free or enslaved. Though some members were manumitting their slaves, and some club leaders were among the more prominent critics of slavery, "the clubs themselves," the historian Eugene Link observes, "avoided definite action on the emotion-charged question" (Link 1942, p. 154). So the democratic societies had their own subtle limitations to the public agenda.

By and large, though, the clubs effectively expanded the public sphere. Even more importantly, they did so as part of *normal* democratic politics. The popular committees of the 1770s (and, more recently, in France) had been revolutionary, and emerged from non-representative regimes. The American democratic societies of the early 1790s were a response to a different situation and answered a different and unavoidable question: What is the role of the average citizen in the ordinary politics of a popular, representative system? More specifically, an elected official can call or schedule a town meeting, but how does a citizen know which issues to raise? Or which arguments to make? Or how to make those arguments? Or even summon the courage to dare to stand up and speak? These were (and are) very real questions, and the democratic societies were one answer.

To many Federalists, the emergence of voluntary, unofficial political organizations made no sense. “After all,” the prominent Federalist George Cabot demanded, “where is the boasted advantage of a representative system...if the resort to popular meetings is necessary?” (Cabot, 1877 [1795], p. 85). For the club members, an elected, representative legislature was only part of popular government. Even “in elective governments, the security of the people...is not confined to the check which a constitution affords, or the periodical return of elections; but rests also on a jealous examination of all the proceedings of administration, and an open expression of their sentiments thereon.” Contrary to the Federalists, then, the democrats maintained that “rulers have no more virtue than the ruled,” and “the equilibrium between them can only be preserved by proper attention and association; for the power of government can only be kept within its constitutional limits by the display of a power equal to itself, the collected sentiments of the people” (Philadelphia *General Advertiser*, 16 May 1794). This, ultimately, was the significance of a venue for dissent. “Solitary opinions have little weight with men whose views are unfair, but the voice of many strikes them with awe” (German Republican Society, 1976 [1794], p. 62).

To be sure, Federalists did not deny that individuals could say or print their political views. But club members were exploring voluntary citizen assemblies that would exist in the space between an individual’s newspaper essay and the proceedings of a legislature, or even a town meeting. Because it was “impractical for the citizens to assert their rights and interests in a proper and efficacious manner, unenlightened by mutual communications, and unaided by joint operation,” reasoned “Democritus,” it was necessary and proper for small groups—“where no constitutional mode is pointed out for calling forth the declaration of the popular sentiment”—to discuss, and then publish “the result of their deliberations for approbation or correction” (*New-York Journal*, 29 March 1796).

Beyond serving as a nexus for citizen vigilance, the democratic societies saw themselves as contributing to the public debate that would inform public opinion and, thus, influence the government and its policies. This influence, however, raised the concern that club members—a minority of the wider community—might overrule the majority. This concern was a common refrain of Federalists, and recent research suggests that they were right to criticize the societies’ resolutions as coming from a relatively small number of authors. Though widely circulated, the resolutions may well have been unrepresentative.

As insightful as the Federalist critique was, it presumed three claims the democrats categorically denied. First, the clubs were hardly dictating public policy, or even public debate. Rather, because the Federalists lacked any theory of legitimate opposition (much less democratic dissent), they saw all (non-elite) criticism of

government as “dictatorial,” rather than an appropriate contribution to a healthy public dialogue. A second, related presumption was that elections were enough, that popular government really only required a few weeks of discussion before electing another elite gentleman to rule. Finally, for Federalists, the pre-existing political (and social) “balance” between the “rabble” and the educated, propertied elite was about right—or at risk of tipping dangerously to the middling and lowers orders. Democrats saw things very differently.

For a start, these democrats insisted their clubs were merely trying to augment public opinion, as any individual or group might seek to do. “It has been objected to the political societies that they derive no authority from the people,” observed one club member. “Be it so, and they pretend no representative authority; but each individual of them is one of the people, and they, in their aggregate, claim no other authority than is the right of the meanest citizen, of free speech, and writing” (*New York Journal*, 10 January 1795).

More importantly, we can see now that the democratic societies were important in a conceptualizing and instantiating the Habermasian public sphere, especially the central role of the “forceless force of the better argument” (Habermas, 1975, p. 108). The influential Democratic Society of Pennsylvania, for example, did “claim” and sought to “exercise all the influence which they can command, by the weapons of argument, over the minds of their fellow-citizens” (*Philadelphia Aurora*, 22 December 1794). The clubs “can pretend to no other authority,” claimed one supporter in the *New-York Journal*, than that which comes “from the conviction that irresistible truth and reason must impress in every wise and virtuous breast” (31 January 1795).

The clubs’ discussions and publications should not be opposed by public officials, but welcomed by them. The clubs’ “communications, unsupported by any colour of force to give them currency, save the conviction of truth and justice must enforce on the public mind, can never be hostile to the faithful servant of the state” (*New York Journal*, 29 March 1796). “If our opinions are founded in political error, if they are calculated to mislead,” declared the New York club, “counteract their evil tendency by the force of argument” (New-York Democratic Society, 1976 [1795], p. 194). Then, once the public debate has been aired, the people should rule. “Let our fellow-citizens judge?” was the rhetorical question the Baltimore club presented to itself. Its response: “On the opinions of men accustomed to think for themselves, cheerfully, we rely” (Maryland Democratic Society, 1976 [1795], p. 241).

John Taylor went so far as to argue that mere elections, without some further mechanism for public influence, were meaningless. Real “political existence” is

exercised by only “the 5000,” the gentlemanly elite (including men like Taylor, and his two older associates, Thomas Jefferson and James Madison). The rest of the political nation, “the 5,000,000 are only allowed once in two years, a kind of political spasm, and after one day’s mockery of importance, sink again into its lethargy.” The patrician class’s “irresistible influence” over the legislature is the genuine substance of power, Taylor asserted. The rabble’s “nominal election” was merely power’s “shadow.” Democracy required more, much more. Since political institutions are “improveable” and government officers answerable (and imperfect), “free investigation” “is necessary and proper” (Taylor, 1794, p. 14).

For Federalists, the historian Seth Cotlar has observed, infrequent town meetings and spontaneous petition drives “were the only legitimate expressions of public opinion” (Cotlar, 2011, 193). Popular engagement beyond that threatened the role of elected officials. Town meetings were acceptable, South Carolina Representative William Loughton Smith conceded, since their “deliberations were cool and unruffled” (*Annals of Congress*, 1794, p. 902). “If the citizens think proper to meet and consult,” one contributor to the Boston *Columbian Centinel* inquired, “what better club can be desired than a town meeting, where all is day light, and the law has regulated the proceedings in such a manner as to secure to every man his fair and equal privilege?” (27 September 1794).

Yet again, the members of the democratic societies saw things differently. Town meetings did not secure fair or equal rights: their norms tended to marginalize common citizens and their daytime schedule effectively excluded much of the demos. But if there was nothing underhanded about the clubs’ “nocturnal” meetings, their tendency toward restricting membership to the like-minded was more complicated. If the point was to contribute to the public discourse, why not simply open the societies’ meetings to anyone and everyone?

In fact, while the clubs’ various published resolutions and declarations on political issues were contributing to the democratic public sphere, the semi-private meetings were serving a different purpose: they strengthened the members’ ability to counter the exclusions of a deferential political culture. Subtle norms at the time insisted that cobblers and their kind should listen silently to and follow the lead of learned gentlemen. This was largely unspoken, but Federalists would occasionally make explicit the expectation that those well-qualified for “mending shoes” are not qualified for “mending laws” (J.S.J. Gardiner, 1795, quoted in Cotlar, 2011, p. 197).

Whereas an elite gentleman might think nothing of turning out a polished, learned political essay, drawing on a solid education, wide reading, and countless private conversations with similarly-privileged gentlemen, a typical democratic society member faced a much more uphill battle. Lacking time, education and perhaps

even complete literacy, the common laborer would have to enter the public glare in a highly deferential culture. The semi-private space provided by the clubs allowed members to air their tentative views to a sympathetic audience and then hone their arguments before exposing them to public critique. This provided those derided as the “subterranean gentry” with a commodity they sorely lacked: confidence.

The fact that personal confidence would be in such short supply (and require so much solidaristic effort) perhaps strikes us today as odd. But we should recall the Federalists’ repeated claims that the societies, simply by publishing critical resolutions in the newspaper, were being “tyrannical” and “dictatorial.” These accusations were, as we have seen, in part corollaries of a Federalist theory of representative government (the criticized officials were, after all, elected by a majority). But these outbursts from appalled gentlemen were also, in fact, sincere reactions reflecting an overwhelming culture of deference. And that is what the “lower orders” found themselves up against: a social world in which average citizens, in spite of themselves, were in awe of their “betters,” embarrassed by their own lowly, or even middling, status.

This social embarrassment could lead to a lack of personal confidence and, ultimately, apathy. It often did. When Federalists suggested that the clubs’ private “nocturnal” assemblies were suspicious because (open, daytime) town meetings were always available, they overlooked (or chose to ignore) the fact that average farmers, mechanics, and tradesmen generally shrank from speaking publicly, even if they were a majority, even when they knew they were right, solely because they were overawed by the learned gentlemen eying them suspiciously and ready to pounce at the slightest error of fact or awkwardness of diction. While the general public sphere tends to be dominated by the forces of the status quo, a separate space like the one formed by the democratic societies provides an opportunity to formulate one’s own views in a more supportive surrounding, hone one’s argument and rhetoric, and, perhaps most importantly, realize that one is not alone—maybe not yet a majority, but at least a sizable minority that should not, will not, be ignored any longer.

What the societies were up to, then, was conceptualizing—if only dimly—the place and potential of what political theorists now call “counterpublics.” Counterpublics are enclaves of the broader public sphere in which opposition groups develop solidarity and articulate theories and narratives that challenge the status quo. Drawing on Nancy Fraser’s rendering of “subaltern” (or marginalized) counterpublics, we can think of such counterpublics as allowing like-minded people to meet and think out loud amongst themselves, without concern that their comments will become fodder for the discursive contests of the main public sphere (Fraser, 1992, p. 123).

The democratic societies were thus actually serving two purposes in the wider deliberative system, purposes that were sometimes in tension. On the one hand, an extremely important aspect of their activities was theorizing and instituting, as we have seen, an active, ongoing, democratic public sphere. Publicizing their constitutions, resolutions, declarations, letters, and addresses—and then calling on their opponents for a public response—all created that public sphere. But the club members also felt the need to have a separate space, their meetings, where they could engage with their sympathetic colleagues before stepping back into the communal glare of the broader public.

The democratic societies' most important practical legacy was their insistence that average citizens—neither elected nor elite—had a significant role in popular politics via the unsanctioned democratic public sphere. Their lasting significance to democratic theory and practice remains in their moral argument (and practical demonstration) that town meetings, elections, and representation do not exhaust the civic potential of democracy.

But if that legacy endures, the clubs themselves did not last long. Federalists, as we have seen, had always considered the clubs to be illegitimate, unrepresentative, and even seditious. So when one of the clubs was accused of connection to the “Whiskey rebels” we looked at earlier, government officials—including the revered President Washington—took to condemning the clubs vociferously. Public opinion soon turned against the clubs and they quickly faded. Their continuing influence, however, might be seen in the confident behavior of average citizens in the initial response to the news of the proposed Jay Treaty with England in 1795.

Even with the democratic societies gone, opposition to the Treaty was easily organized, leading to many marches and meetings. Meetings in Philadelphia and New York condemned the treaty, following the example of the Boston Town Meeting, which formally renounced the treaty at a well-attended session. Merchants as a class had a great deal to lose if relations with Britain soured, and by mid-August, a Boston group led by merchants had published a “Dissent,” a counter-petition in favor of the treaty and declaring their “disapprobation of and dissent from the votes of” the official town meeting (Boston *Columbian Centinel*, 19 August 1795). This “Dissent” in turn brought more anti-treaty protests (and effigy burning) in Boston and Portsmouth, New Hampshire.

Beyond its support for the Treaty, the Boston “Dissent” was an implicit critique of the methods of the Town Meeting, suggesting that its unanimous vote against the Treaty was manufactured more by intimidation than reflection. And in this, the Federalists had a point. Even if the crowds at this town meeting and other protest events were reflective of the wider populace, they sometimes opposed not only the

Treaty, but Jay and his supporters as well (often in personal terms). A Federalist newspaper in Boston similarly condemned the anti-treaty protests for exciting “the populace to mobs and riots.” “This stale trick of disorganizers was the last resort of our Jacobins, to revive the spirit of their faction and to intimidate the good citizens from expressing their opinion upon the subject” (*Columbian Centinel*, 31 October 1795).

We should pause to note the insights revealed by this particular episode. Town meetings, then as now, often came to a widely shared if not perfect consensus. When that consensus fit with elite views—as usual—there was little complaint in the newspapers; yet here, when the elite merchants were for once cowed by an engaged populace (rather than the other way around), complaints were publicly and loudly made. In this, we see that the formal rules for inclusion (at least for white men) were simply that: formalities. The practical norms supported the status quo and elite control, at least until common people gained the confidence to challenge them.

The democratic societies as institutions were all but gone by now, but this emboldened public movement is one indication of their influence. In important respects, then, the democratic societies opened up the public sphere, empowering average citizens to join in the (informal) public policy debate via official town meetings and unofficial protest marches. But the clubs were also quickly and effectively delegitimized. Most significantly, as institutions, these bottom-up organizations would be replaced by the top-down Democratic-Republican political party that emerged by 1800.

James Madison and the decline of action by “citizens in a body”

Public fervor against the Jay Treaty eventually waned, and the power of Washington’s support turned public opinion toward the treaty enough to allow a close Senate vote in favor of ratification in mid-August 1795. That episode is but one development in the overarching pattern we have seen, wherein unstructured citizen assemblies were being marginalized in favor of formalized procedures (such as a town meeting). This pattern is also exemplified in the political practice of no less a figure than James Madison, the preeminent theorist of American democracy. In 1785, Madison was central to a citizen petition drive intended to instruct elected officials to reject one policy (a tax assessment to support religious ministers) and enact another (Thomas Jefferson’s “Statute for Religious Freedom”). (Nor would he fundamentally alter his views in his 1787-1788 *Federalist Papers*, which are much less dismissive of popular control than as often interpreted [Martin 2013, p. 125-130]). Yet by 1800, in a second episode, Madison helped sideline an informal popular movement against the Alien and Sedition Acts in favor of formal state

government actions as the proper avenues of protest via his own Virginia Resolutions (and Jefferson's Kentucky Resolutions).

After the social disarray of the Revolutionary War years, many Virginia elites sought a return to moral stability through, among other efforts, a new tax assessment to support religious ministers. Madison and many others in the House of Delegates saw this as an affront to newly won religious liberty; as a result of this legislative debate, the bill was postponed to allow for citizens to make their views known. Other leaders of the opposition movement appealed to Madison to write something and he chose to write an anonymous petition that would speak for—and be signed by—many common citizens. His “Memorial and Remonstrance Against Religious Assessments” (1785) is justly famed for its arguments in favor of religious freedom, but what is often overlooked, but crucial for our purposes, is Madison's defenses of—and even assumptions concerning—informal citizen engagement.

Madison's main point in the Memorial is that no part of society—including the legislature—has the moral authority to force religious practice. But he also goes out of his way to stress that the duly elected legislators are created by the people, whose “vicegerents” they are. And if the elite gentlemen of the Assembly were mere vicegerents, then the real rulers were the people. We might be inclined to dismiss this claim as the common trope of elite rulers as mere “public servants.” But Madison goes further to assert that the signatories of the petition (some of whom would be women) were duty “bound as faithful members of a free State...to declare the reasons by which we are determined.” What's more, it's the “first duty of Citizens” to “take alarm at the first [attack] on our liberties” (Madison, 1973 [1785], p. 298).

By 1785, citizen petitions were a time-honored practice in Virginia, and the Assembly went even further in this case, specifically requesting public petitions. But we should not make the mistake of minimizing Madison's fervently populist language or his embrace of the unstructured petition process. To be sure, he knew these petitions were requested by, and going to, the proper lawmaking body. But Madison could have written an anonymous newspaper essay, as he did on other occasions, which would have been understood as the opinion of a learned gentleman. Alternatively, he could have written nothing, and left the issue to the electoral process: with the tax bill postponed to the next legislative session, citizens could and did vote in an intervening and regularly scheduled election. (They voted out of office many supporters of religious assessments.) Instead, Madison chose to not only condone but to contribute to the petition drive, with its unstructured assemblies and common-folk signatories.

There were many other petitions emerging in June of 1785, one of which was considerably more popular than Madison's. But as has been demonstrated elsewhere, the other petitions that summer "humbly" pleaded with the Assembly to reconsider the bill, often in clearly deferential language (Martin, 2010, p. 21-24). In stark contrast, Madison wanted the people to speak boldly of their duty to remonstrate and even point the legislature toward new, better laws. The "Memorial's" signatories close by "earnestly praying" that God will, "guide [the legislators] into every measure which may ... establish more firmly the liberties, the prosperity and the happiness of the Commonwealth" (Madison, 1973 [1785], p. 304). While this call for a new policy direction may seem vague or subtle from our historical distance, it was clear enough at the time; soon other petitions would copy some arguments from the "Memorial" and would mention Jefferson's religious freedom statute by name. A year later, that bill—not religious assessments—became law.

Finally, and most importantly, Madison in 1785 not only valorized unstructured public action—citizen assemblies and the resulting petitions and signatures—but even hinted at justifiable civil disobedience. In one of the last paragraphs of the petition, Madison has his farmer and mechanic signatories ask, "If it be difficult to execute any law which is not generally deemed necessary or salutary, what must be the case, where it is deemed invalid and dangerous? And what may be the effect of so striking an example of impotency in the Government, on its general authority?" (Madison, 1973 [1785], p. 304).

Why might the Virginia government have trouble executing the proposed religious assessment bill, and thus look impotent? Because the people would refuse to obey it. What is more, this warning of direct public action—should the petition process fail to control the legislature—was no idle threat. At around the same time as he wrote the "Memorial," Madison wrote privately to his friend, James Monroe, and stated his expectation that "a very warm opposition will be made to [the bill] by the people.... Tho' the General Assembly should give it the form...they [the people] will not give it the validity of a law." Madison even agreed that this popular language was warranted (Madison, 1973 [1785], p. 306).

In 1785, then, Madison, even while a member of the duly elected legislature, praised and contributed to an unstructured public petition process and even condoned the possibility of direct public action in the face of a (potential) procedurally valid law. In 1798, when a law *did* pass, similarly damaging to individual rights, he would have a very different reaction to direct public action. Once again, the people of Virginia were meeting in public assemblies, signing petitions, and preparing for civil resistance, but rather than contributing to these

efforts, or even condoning them, Madison worked to marginalize them by pursuing a much more formal, and much less popularly accessible, oppositional mechanism.

When a series of naval skirmishes with Revolutionary France became the “Quasi” War (1798), the Federalist-controlled Congress passed, and President John Adams signed, the Alien and Sedition Acts. Most significantly, these laws criminalized criticism of the government and authorized the President to deport summarily any foreign national he deemed a threat. Many Americans, including Madison, Jefferson, and the rest of the emerging Democratic-Republican party, saw these laws as patently unconstitutional. Opposition to the “gag law” contributed to the regulation now known as “Fries’s Rebellion,” as we saw above, and varied widely from public protests to endless newspaper articles to learned treatises.

The citizens of Richmond, Virginia decided to meet to resist the Acts, and published their “Address of the Citizens of Richmond” in a prominent Philadelphia newspaper, concluding:

Acts that violate our chartered rights have no binding force, and are not entitled to the respect or obedience of the people; and where they must choose between an obedience to measures adopted by their own servants, and an adherence to the constitution, it must not be doubted, but that they will cling to the constitution as the rock of their political salvation:--Nor is the legislature to be the judge when that constitution is infringed. The people are the dread tribunal. (*Aurora*, 20 August 1798)

The general logic here was further explained in an Albany, New York newspaper, where a correspondent insisted that, unlike the Federalist Congress, Democratic-Republicans believed:

that a constitution of government is a solemn pact between the governors and the people, and that whenever it is clearly and openly outraged by the former, it is no longer binding on the latter; that this ever was the basis of our revolution, and that the doctrine that the people have no right to redress their own wrongs, is under every shape and colouring which may be given to it, the old and damnable heresy of passive obedience and non-resistance. (*Albany Register*, 18 April, 1799)

As we have seen, one mechanism for popular engagement had often been local militia companies, and so it was when Madison County, Kentucky’s 7th Regiment organized with the local population to draft and then publish nationally some

resolves, including a declaration that that “the bills, called the Alien and Sedition Bills, are infringements of the Constitution and of natural right, and that we cannot approve or submit to them.” These Kentuckians not only refused to follow these procedurally-valid statutes; by twice calling them “bills”—six months after congressional passage and presidential signature—they were refusing to characterize them as laws (*Aurora*, 4 January 1799).

The “Memorial of the People of Essex County, Virginia” spoke in the same general vein. There, the memorialists conceded that citizens must obey constitutional laws, “however oppressive” until the

general voice of the nation shall concur in requiring its repeal. But when laws are made contrary, both to the spirit and letter of the constitution, your memorialists are of opinion, that such laws encroach on the sovereignty of the people and are in their nature void, that the *authority* which enacts such laws is self-created, and unconstituted, and that every attempt to execute them is tyranny. (*Aurora*, 7 December 1798).

Throughout the country, then, people were assembling informally to draft and publish declarations of resistance and non-submission: this was “popular nullification” of invalid laws through a broad agreement to refuse to obey them. Other assemblies would not go so far, and instead joined together as an engaged populace to petition the federal Congress to repeal the acts. For example, one writer in New Jersey called on his neighbors to “pursue the constitutional mode of protecting [the Constitution], which is by convening together in either township or county meetings, as convenience may dictate, and there request of your public agents, by way of remonstrance, to repeal the Alien and Sedition Laws, which have been enacted in open violation of the Constitution” (*Newark Centinel of Freedom*, 18 December 1798).

Madison agreed broadly with these attacks on the Alien and Sedition Acts. Freedom of political speech was necessary, he insisted, to make elections a meaningful check on legislators and other government officials. But Madison at this moment was actually going further, pioneering a theory of the deliberative democratic public sphere. This meant that it was the “duty as well as the right of intelligent and faithful citizens to discuss and promulge [government proceedings] freely,” both to “control them by the censorship of the public opinion” and to “promote a [constitutional] remedy” (Madison, 1850 [1800], 191). The myriad expressions of opinions would then lead public opinion, and thus governmental policy, as a result of persuasion. Madison was defending “expressions of opinion, unaccompanied with any other effect than what they may produce on opinion, by exciting reflection.” Madison is thus presuming the moral power of reflection,

especially public reflection spurred by vigorous dissent, which would then lead to new and better democratic outcomes.

Indeed, Madison's writings during the period are some of the most searching defenses of democratic press liberty ever written and they support the general views of the opposition (Martin 2001). But if he agrees in substance, his ideas of democratic practice changed markedly from 1785 to 1798, paralleling the shifts we have seen elsewhere. Rather than participate in public petitioning, as in 1785, Madison in 1798 instead chose to draft resolutions to be passed by the Virginia state legislature. Working with Jefferson, who drafted resolutions for Kentucky's legislature, these two men led the opposition against the federal government's overreaching laws. The "Resolutions" would become famous statements of states' rights, especially since Jefferson's draft originally included the claim that each state could unilaterally "nullify" invalid federal laws.

Recent historical research, however, has shown that the "true context" of these Resolutions is not states' rights and state nullification, but the general resistance movement of 1798-9 and its universe of popular petitions, addresses, and memorials (Bradburn, 2008, p. 566). What is notable from this vantage point is that Madison is now also expecting the "censorship of public opinion" to be led by formally structured representative bodies, *not* by informal citizen assemblies. Though Madison's own Resolutions presume this expectation, Jefferson's first draft of the Kentucky Resolutions—which Madison read—made the new approach explicit within the first resolution: "The constitutional form of action for this commonwealth as a party with respect to any other party is by its organised powers & not by its citizens in a body" (Jefferson, 1950 [1798], p. 541).

The arguments on the floor of the Virginia House of Delegates suggest that Madison's Virginia Resolutions were also meant to avoid informal meetings and popular nullification. John Taylor, an associate of Jefferson and Madison, formally presented the Resolutions and framed them as "only an appeal to public opinion," a "middle way" that rejected both timidity and armed resistance—and thereby ignored the alternative of informal democratic popular action. Later in the legislative debate, Taylor "concluded with observing that the will of the people was better expressed through organized bodies dependent on that will, than by tumultuous meetings" (Taylor, 1850 [1798], p. 114, 121).

By opposing the Congress through formal resolutions of a state legislature, then, Madison is not only eschewing popular nullification but even marginalizing popular assemblies meeting to petition for reform. His move away from seeing informal popular assemblies and direct public action as primary avenues of democratic engagement mirrors the evolution we have seen elsewhere. This laid

the groundwork for the modern valorizing of town meetings, but is also actually the result of a narrowing of democratic avenues and attitudes of citizen engagement, and came at the expense of a broader array of democratic pathways and discursive practices.

Conclusion

During debates over Revolutionary independence, state constitutions, the Federal constitutional ratification, and the precedents for the new national government, Americans at the end of the eighteenth century theorized a new popular politics. As they sought to realize that theory in practical terms, they had an array of participatory mechanisms and traditions on which to draw. Over a series of distinct episodes and arguments, a general trend emerged, lending legitimacy to a few of the more formal and more regimented modes of citizen participation and decision-making—most notably the town meeting and state legislature—and delegitimizing several more informal and more open avenues for popular engagement that had previously been unexceptionable, such as the county convention, popular petition, and militia muster.

In many respects, this shift was part of a reasonable and necessary assessment of the implications of the new and (relatively) representative institutions established in the state and federal constitutions of the era. In the traditional world of the British limited monarchy—with a hereditary nobility and House of Commons that excluded common folk—there was a clear need for quasi-legitimate popular avenues for the “people out of doors.” But in the new American world of both remarkably broad and expanding white male suffrage and widely (if not universally) accepted elective, representative bodies, the role of institutions beyond those explicitly constitutionalized required more theorizing. Democratic radicals made the case—in words and action—for the uncodified popular avenues, but they were largely unsuccessful.

The prescribed structures of the town meeting and state legislature had—and continue to have—many formal advantages: rules of procedure, methods of assessing representativeness, standards for inclusion, and often official protections for dissenting views. Yet then as now, these forms could also be silently and not-so-silently exclusive and limiting for “menders of shoes” who sought to mend public policy and defy the status quo. Perhaps more importantly, legitimating the formal institutions came at the cost of marginalizing a richer and more fluid world of grassroots mechanisms that were often more effectively open to plebeian voices and dissenting views. Our current deliberative systems frequently include an array of discursive “arenas,” but the plebeian radicals of the 1780s and ’90 envisioned,

advanced, and then lost a more diverse, engaged, and creative world of democratic participation.

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