'(I've Never Met) a Nice South African': Virtuous Citizenship and Popular Sovereignty

Article *in* Theoria · June 2009

DOI: 10.3167/th.2009.5611905

CITATIONS
7

READS
202

1 author:

Lawrence Hamilton
Witwatersrand and Cambridge
59 PUBLICATIONS **449** CITATIONS

SEE PROFILE

‘(I’ve Never Met) a Nice South African’

Virtuous Citizenship and Popular Sovereignty*

Lawrence Hamilton

Abstract: What is virtuous citizenship? Is it possible to be a virtuous citizen whatever the form of one’s state? Is it possible to be a virtuous *citizen* in the new South Africa? In this article I defend some Republican ideas on civic virtue and popular sovereignty, especially as found in the writings of Jean-Jacques Rousseau, to suggest that popular sovereignty is a necessary condition for active and virtuous citizenship. For it is only under conditions of popular sovereignty that the right kind of political agency is possible. I discuss these ideas in the context of modern constitutional democracies, and argue that constitutional democracy in South Africa is not an instance of popular sovereignty and thus does not provide the possibility for virtuous citizenship. I end the article with a proposal for addressing these deficiencies: effective citizen control over the constitution by means of a decennial plebiscite—a carnival of citizenship.

Keywords: virtue, citizenship, popular sovereignty, Rousseau, constitutional democracy, South Africa.

Introduction

‘(I’ve Never Met) a Nice South African’ is a witty skit that was written and performed for UK television in 1986 about the arrogance, ignorance and racism of white South Africans.[1] Although this satirical view of white South Africans during Apartheid is in parts insulting and unfair, it hits the mark in a number of ways. In particular, the clear association between the illegitimacy of the political regime and the bad or evil conduct of its citizens is insightful and telling.[2] In the common imagination of progressive English people at the time, there

 doi:10.3167/th.2009.5611905

were few examples of 'nice' white South Africans. But in this context the term 'nice' means something more specific than the everyday sense we usually give it: 'nice' South African is equivalent to 'virtuous' South African. For the purposes of this article I will adopt this sense of 'nice'.

The struggle against Apartheid in South Africa required a number of different virtues such as courage and justice, but these did not amount to virtuous *citizenship*. This was the case because not only did the struggle require one to act way out of line with the avowed virtues of the day, but also it involved a direct negation of one's citizenship of an illegitimate state. And, of course, most of those involved in the struggle were non-whites and thus were by definition not full citizens. Today, fifteen years into the new South Africa, the non-racial, democratic nature of the regime has, amongst other things, made all South Africans full citizens. They are now 'nice'. But are they? If you accept the argument I defend in this article you may be persuaded to answer 'No': the current South African state precludes the possibility for virtuous citizenship. The reason it does this has to do with popular sovereignty.

What is virtuous citizenship? Is it possible to be a virtuous citizen whatever the form of one's state? Is it possible to be a virtuous *citizen* in the new South Africa? In this article I will defend some Republican ideas on civic virtue and popular sovereignty to suggest *pace* liberalism that popular sovereignty, or the effective control over a society's general laws, is a necessary condition for active and virtuous citizenship. According to this argument, if a state is far from popular sovereignty its citizens are not only unfree but also unable to act virtuously; conversely, the closer a state approximates popular sovereignty the more free and virtuous its citizens have the possibility of being. I begin by analysing the ways in which virtue and virtuous citizenship have been conceived. The article then defends the claim that popular sovereignty is a necessary condition for virtuous citizenship. In other words, the 'virtue' in 'virtuous citizenship' is not ultimately a question of the nature of one's character or dispositions or the universal moral standing of an act one performs, but the political conditions that enable political agency of a specified kind. So, this is not an argument about virtue *per se*, but rather about virtuous citizenship. It does not negate the possibility for the existence of other kinds of virtue; it maintains that the normal citizen has to be provided with the opportunity to have parity of effective control over the society's general laws—i.e., the constitution—in order to be able to become an

active, virtuous *citizen*. I then argue that constitutional democracy in South Africa is not an instance of popular sovereignty and thus does not provide South Africans with the possibility for virtuous citizenship. I end the article with a proposal for addressing these deficiencies: effective citizen control over the constitution by means of a decennial plebiscite—a carnival of citizenship.

Virtuous Citizenship

There are at least five different conceptions of human virtue: Traditionalist; Virtue-Ethics; Christian; Republican; and Liberal. Almost all of them make some reference to an individual's disposition, character or quality in the context of her or his state or human community.[3] However, only the Liberal and Republican conceptions do so in a manner that, in different ways, combines virtue and citizenship.

In the West, Liberal conceptions of virtue and citizenship predominate, both at the level of theory and public opinion (Canover, Crewe and Searing 1991; Miller 2000: 43-4; Geuss 2000). Liberalism conceives of virtue and citizenship within the framework of a set of predetermined personal rights that are conceived as the best means of guaranteeing legal impartiality, religious toleration, freedom of discussion, personal security, private property, constitutional government, and the freedom individuals require to pursue their own goals and happiness. Citizenship involves every member of the society in question having an equal entitlement to these rights—now called civil, political and social rights (Marshall, 1950). And the capacity of the citizen is focused on retrieving these rights: institutions that enable citizens to influence decision-makers are designed to allow citizens to retrieve and safeguard a set of pre-political rights (Taylor 1989: 178-9; Habermas 1996: pxxiv, 497). State power and the democratic process are constrained by, and are in the service of, these rights. All public activity is thus instrumental. No value is put on participation in rule for its own sake. This is a passive and formal view of citizenship that requires political participation 'only insofar as it is necessary to protect people's basic rights and liberties' (Miller 2000: 45-6).

Liberals also subsume virtue in the 'public sphere' under this instrumental logic. It is shorn of any conception of a substantive good. Rather it is linked directly to how well officials and citizens conform to pre-ordained and *role-dependent* codes of conduct that enable the retrieval of pre-political rights. Corruption amongst elected officials,

for example, is not deplored for the effects it has on the individuals concerned, or on the consequences it might have on political participation, but because it hinders citizens in their capacity to retrieve and claim their safeguarded rights. 'Private' virtue is then understood in quite distinct terms. Rawls' political liberalism, for example, rests on a sharp distinction between the person as private individual with a religious, moral, or philosophical conception of the good and its associated virtues and vices and the person as citizen who acts in accordance with principles of justice that all reasonable citizens can potentially accept.[4] In other words, whether an action is virtuous or not is determined either by private conceptions of the good that have no necessary relation to public, political action, or it is determined by role-dependent conceptions of 'public' virtue. Thus, to be a virtuous citizen, in Liberal terms, is to act in accordance with a set of pre-determined codes of conduct that are part and parcel of a set of institutions and practices whose main function is to safeguard a set of pre-political goods.[5]

Virtuous citizenship understood in Liberal terms therefore excludes what arguably lies at its core: effective political agency or power vis-à-vis real political problems in concrete contexts. This core is clearly articulated within another central, if less emphasised, part of the history of political thought that has given rise to the modern liberal, democratic republic: the republican tradition. In this tradition citizenship refers not only to a legal status, but also to a distinct normative ideal—that the governed should be full and equal participants in the political process (Kymlicka 1995; Turner 1993) and that participation in self-rule is the essence of freedom. For example, to say that I am a citizen of the *Republic* of South Africa is not simply to describe my legal status as the carrier of a South African passport, as subject to the laws of South Africa, and as the possessor of certain rights, duties and responsibilities; it also refers to the fact that as a citizen I am a member of a sovereign body within which I have, or ought to have, the *power* to participate in the political process on an equal footing with other citizens not simply as a means of securing my individual rights. This element of modern citizenship lies at the heart of the republican notion of virtuous citizenship.

The Republican conception of citizenship is one based on a notion of *civic* virtue. This is an idea with its roots in the writings of Cicero, Machiavelli and Rousseau, amongst others. It links individual liberty with active participation in the affairs of the community. To be virtuous in this sense requires a predisposition amongst citizens to concern themselves with public affairs, and to do so in a manner that displays

justice, moderation, courage and prudence (or practical wisdom). So, the citizen body must be just in its observation of the laws and its compliance with civic duties, moderate in its pursuit of wealth and honour, prudent in its choice of representatives and courageous in opposition to enemies. For example, citizens must participate in politics, pay their taxes, fight against invaders, be temperate and hard-working, etc. (Viroli 1990: 171-2). This kind of civic virtue is indispensable, argues Rousseau, because individual liberty cannot survive without it. What then is liberty for Rousseau and why is civic virtue so important in its maintenance?

For Republicans like Rousseau, human freedom is not only about the pursuit of private preferences, but also about self-rule through political participation. Rousseau argues that only the republic can guarantee true individual liberty since this does not consist *merely* in the absence of constraint (or 'negative liberty') but in active service to the sovereign body of which one is a member (or 'positive liberty').[6] In order to achieve this end the republic has to be ordered by a body of laws that truly reflects the General Will, in which *all* individual interests are reconciled (Pagden 1990: 10). The General Will is Rousseau's term for the exercise of popular sovereignty: in the *Social Contract* it is understood both as the public interest or common good which the sovereign of every state ought to promote, and the individual will of each citizen to achieve that good. A body of law that truly reflects the General Will is one that has been created by all those who will be affected by the law. This is a requirement because, according to Rousseau, we are free only when we obey a law we prescribe to ourselves (Rousseau 1997a [1762]: 54 [Bk I, ch 8]). Thus laws and liberty can proceed hand in hand provided that those who are subject to them also prescribe them;[7] in other words, provided that all citizens are members of the sovereign body. This is the basic condition of popular sovereignty and the fundamental difference between subjects and citizens. Individuals who are subjects alone are unfree because they are subject to laws that they have not prescribed themselves; they are subject to laws prescribed by a sovereign that stands above or apart from all the members of the community, for example a king or a group of unelected aristocrats or judges. As is elaborated on below, what distinguishes a citizen from a subject is *not* that a citizen is never a subject, but that citizens are both authors and subjects of laws; that is, they are subjects of their *own* laws.

The function of the idea of the General Will is not to remove different individual interests from the equation—Rousseau thought that

these were vital—but to provide a mechanism through which individual citizens might identify common interests above and beyond these. Thus the civic virtue of citizens is indispensable. In order for them to identify common interests they have to be virtuous enough to look beyond their immediate particular interests. In the process of voting, for example, individual members are not asked to express their individual preferences. They are asked to decide whether a certain law is, or is not, in agreement with the General Will; in other words, whether it is in the public interest, and thus ultimately their interest. If all vote correctly, the majority will constitute an expression of the General Will (Rousseau 1997a [1762]: 122-25 [Bk IV, ch 2]; Viroli 1990: 169). The only assurance, therefore, that the General Will remains right, that is, prescribes laws in the public interest or in the interests of the republic as a whole, lies in the rectitude of the individual members of the sovereign body (Rousseau 1997a [1762]: 89-90; 121-7 [Bk III, ch 3; Bk IV, chs 1, 2 and 3]).

Thus, for Rousseau as well as a whole host of other republican thinkers, to be a virtuous citizen requires a specified level and kind of political participation. However, the form the virtues and customs take depends very heavily on the form of the republic, or in other words it depends on the extent to which the form of the state allows popular sovereignty to obtain. For, as Machiavelli put it, 'good customs require good laws to sustain them' (Machiavelli 2003 [1532]: 160 [Bk I, ch. 18], cited in Viroli 1990: 172 [his translation]). What, then, is popular sovereignty and what are the conditions for its realisation?

Popular Sovereignty and Representation

Popular sovereignty as developed by Rousseau constitutes a thesis about the legitimacy of the state. The authority of every sovereign—which must be absolute—is legitimate only if each citizen takes a fully active role within it. In contrast to earlier thinkers such as Hobbes and Bodin, Rousseau argued that in order for a state to be legitimate the whole populace had to be sovereign (Rousseau 1997a [1762]: 49-51 [Bk I, ch 6]). In Hobbes' account of state formation by means of a social contract, individuals institute a sovereign power (the state) that is both separate from them and the officers or magistrates that constitute its government. In contrast, Rousseau uses the idea of the social contract to depict how individuals form a state that is equivalent to the body of citizens that constitute the sovereign body.

The ideal form of this kind of sovereignty is thus *popular self-rule*; that is, that the populace manages its own affairs. In other words, popular sovereignty, for Rousseau, is a state of affairs in which ultimate sovereign authority rests in the people in a way that enables them to have equal and effective *control* over it. This is not equivalent to the liberal version of popular sovereignty: a condition in which the authority of government and the legitimacy of laws rests on the tacit or explicit *consent* of the governed.

Given the centrality of liberty in this republican conception and the fact that citizens are only free when they are subjected to laws they prescribe to themselves, Rousseau could have it no other way. In order for every citizen to be free, they must all be involved in legislation. And, according to Rousseau, this is only possible if no citizen is dependent on another; that is, under conditions of full popular sovereignty every citizen is free because no citizen is dependent on another. It follows from this, Rousseau argues, that *civil equality* and *civil responsibility* are necessary conditions for popular sovereignty. Extremes of inequality in wealth and power create dependence on others, which breeds all kinds of vices. Rousseau did not support equality for its own sake or the abolition of private property, but he argued that if inequalities in wealth and power reached a point at which one citizen was rich enough to buy another and the other poor enough to sell himself, popular sovereignty would collapse and individuals would thus be unfree (Rousseau 1997a [1762]: 54-6; 78-80 [Bk I, ch 9; Bk II, ch 11]). This insight is capacious enough to include not just the condition of slavery, but also the exploitation that is characteristic of waged labour under capitalism.[8] The second requirement for popular sovereignty was that participation in the legislative assembly be compulsory, and that each citizen has a set of civil responsibilities as a full participant therein (Rousseau 1997a [1762]: 49-41; 59-60; 113-16 [Bk I, ch 6; Bk II, ch 3; Bk III, ch 15]). (In our own times this takes the form of compulsory voting, as, for example, is the case in Brazil, although voting is obviously a mere shadow of full participation.)

Thus, the common criticism that Rousseau's Republicanism legitimises tyranny is unfounded. Rousseau's claim that 'whoever refuses to obey the general will ... shall be forced to be free' (Rousseau 1997a [1762]: 51-3 [Bk I, ch 7]) is in fact the *safeguard* against tyranny: the law coerces a state's subjects to act in accordance with their conscience and volition as citizens, and hence their own freedom, and provides incentives for citizens to act virtuously, that is, to be active

citizens, both in terms of their involvement in public affairs and in the way they vote. Moreover, like Liberalism, Republicanism requires a set of rights that safeguards individual liberties and powers, the only difference being that they are not pre-political rights but rights founded in political debate and decision and secured within a constitution that can be changed over time (see Rousseau, 1997b [1772] and below).

Thus the structure of one's state only secures one's freedom where laws are a direct result of the conscience and volition of all its citizens. How is this possible in large, modern nation-states?[9] Rousseau's ideal republic was a small city-state, such as Geneva or Corsica, so how can his ideas be useful to most modern citizens today? Well, the obvious answer is that most modern citizens, whether they live in small city-states or large nation-states, cannot be involved in the day-to-day activity of government. And Rousseau was well aware of this fact. In the argument I have outlined thus far, Rousseau has been discussing the state—or citizens in their sovereign capacity—*not* government. Government is the intermediary body between citizens in their sovereign capacity and as subjects bound by law. Unlike sovereignty, which can never be represented, government is always comprised of the people's representatives. The body of assembled citizens constitutes the legislature, which for Rousseau is where the sovereign body enacts laws and thus is not able to be represented. When the populace comes to councils, representation falls away, for 'the moment the people is lawfully assembled as a sovereign all jurisdiction of the government ceases' (Rousseau 1997a [1762]: 112-13 [Bk III, ch 14]). In between legislative assemblies of citizens that meet periodically to enact laws, government must carry on and for this it requires representatives. The representatives in government are what Rousseau calls Magistrates and what we call Members of Parliament (MPs). They represent our consciences and volitions as citizens and, in Rousseau's conception of government in contrast to the task of MPs in our sense, they take decisions *only* on particular issues concerning the execution of laws. This is what Rousseau calls executive government. Thus even in small city-states a form of representation is required.

In contrast to what might be possible in small city-states, in modern representative democracies citizens now vote for representatives to make legislative and executive decisions. Thus the principle hasn't changed, but because representatives now carry out both functions, in practice our sovereign power is at one remove, so to speak. As Rousseau puts it in his *Considerations on the Government of Poland*,

'[o]ne of the greatest inconveniences of large States, the one which more than any other makes it most difficult to preserve freedom in them, is that in them the legislative power cannot show itself as such, and can only act by delegation' (Rousseau 1997b [1772]: 200-1 [ch 7]). Moreover, this process of legislation is determined to a significant degree by a set of laws and ideals entrenched in a constitution. Some thinkers highlight these developments alongside the nature of modern liberty as reasons why representative democracy could never reach the bar set by Rousseau as regards participation (e.g., Constant 1988; Dunn 1993: 1-28; Dunn 2005).[10] This argument is founded on a convincing assessment of two great political crises in the late eighteenth century and the works of their most clear-headed political leaders and commentators: two revolutions, one that arose in the mid-1760s in North America and the other two decades later in metropolitan France, and two sets of texts, the *Federalist* by James Madison, Alexander Hamilton and John Jay (2003 [1787]) and three pamphlets by Emmanuel Joseph Sieyès (2003 [1789]). These events and texts have marked indelibly the history of democracy ever since. The authors of the texts argue convincingly that popular government or 'pure democracy' is not possible in large, modern states and that any attempt to institute it would lead to anarchy, factionalism and 'elective despotism'. They opt for representative government, through which citizens' rights and freedoms are not only able to be safeguarded, but also those citizens are thus liberated from the kinds of legislative duties envisaged under 'pure democracy'; that is, the practice of representation allows them greater time and freedom to focus their energies elsewhere.

I want to suggest that although these and other thinkers identify a serious misfit between modern conditions and 'pure democracy', they underestimate the extent to which Rousseau's ideas on the nature of popular sovereignty and legislation can be made to fit modern conditions. They do this because they misrepresent Rousseau: his account of popular sovereignty is not ultimately about constant participation in the affairs of government, but rather periodic, equal involvement in the exercise of sovereign power, or the formulation of *general* laws. I maintain that this insight into the nature of popular sovereignty can be made to fit modern conditions if we remain true to Rousseau's emphasis on the exercise of sovereign power through control over the general laws. In modern representative constitutional democracies this entails control over the constitution. If citizens were provided with periodic direct access and control over constitutional amend-

ment, they would be provided with the kind of effective control over the state that lies at the core of Rousseau's conception of popular sovereignty. What might this look like and is it possible under conditions of modern representative constitutional democracies?

Representative Constitutional Democracies: the case of South Africa

In most modern representative constitutional democracies the constitution is one part of a sovereign triumvirate: the constitution and the institutional means of interpreting and enforcing it; the legislature and the executive; and 'the people'. Sovereign power, however, is not divided equally amongst these different parts. The constitution is set up as a 'higher law' that cannot be changed through normal lawmaking procedures in the popularly elected assembly. It involves exceptional legal entrenchment that exempts constitutional rules from the majoritarian controls that govern ordinary legislation (Holmes 1996: 134). This is known as constitutional precommitment and is a central tenet of Liberalism. Conceived in this way, the constitution occupies a special position within this sovereign triumvirate in two related senses. 1) It is understood as a prerequisite for the actions and decisions of the legislature, the executive and 'the people', a 'higher law' to guide normal, everyday law. 2) This 'higher law' is created antecedently and independently of these everyday actions and decisions. (In states like the USA and South Africa, this special position is exemplified by the institution of judicial review.) In Liberal terms, constitutional precommitment is legitimate for two reasons. 1) The constitution is the ultimate and legitimate seat of sovereignty because it is the repository of the volitions and rights of all the citizens and enjoys their tacit or explicit consent. 2) *Inherited* constitutions are enabling: they stabilise democracy because they are simultaneously a hedge against arbitrary government, a means of holding rulers accountable, and a safeguard of certain pre-requisites for democracy such as free speech. This argument has held sway ever since at least the Federalist defence of the American Constitution.[11] They argued that certain procedures and institutions fixed in the past enable us to achieve our present goals more effectively than if we constantly have to establish a basic framework for political life: an 'intergenerational division of labour' (Hamilton, Madison and Jay 2003, *Federalist:* 15, 18, 21, esp. 69, 93-5; Holmes 1996: 153).

Understood in these terms, constitutions limit government power in order to secure private autonomy and reinforce democratic processes. They thus empower individuals to choose whether and how to engage in politics. So, those that would like to participate can do so via parliament, or via the 'public spaces' provided in constitutional democracies for social movement activity, for labour unrest, for public campaigns, for protest politics, for internal party activism, etc. (Habermas 1996; *cf* Hamilton 2003a; 2003b). In contemporary South Africa, for example, there are three main ways in which citizens can influence and affect government. 1) They can affect legislation via their national representatives. 2) They can affect legislation from within local level citizens' councils (ward committees) and 'popular evaluation' in the Programme of Action (Piper 2005; Piper et. al. 2005). 3) They can undertake single issue direct action against pressing injustices or inequalities. As in a number of important recent cases around HIV/Aids and Land Reform, normally this kind of activism uses the constitution against government and its proposed or enacted legislation.

Some thinkers (eg., Suttner 2004) have taken these developments in South Africa to be part and parcel of the ANC's attempts to pursue the 'National Democratic Revolution' (NDR), that is, to continue 'a process of struggle that seeks the transfer of power to the people … where all organs of the state are controlled by the people … [which] requires participatory democracy, a democracy that is driven by the people' (Netshitenzhe 1996: 2). But this interpretation requires us to view representative democracy, local participation and single-issue activism through rose-tinted glasses: even taken together they do not constitute effective popular control over government, let alone the state. First, representatives very infrequently represent citizens' articulated interests[12] because there are no institutional means for citizens to articulate their interests to the representatives besides when they vote in national and provincial elections. Especially within systems of proportional representation that use party lists, where individual representatives are not linked to geographical areas, as is the case in South Africa, citizens have little or no access to ongoing legislative decision-making. South African citizens do not choose representatives; they choose parties with pre-determined party lists.[13] Second, within ward committees citizens are not given any voting rights or say in legislative decision-making. They may be able to access the discursive evaluation of local interests, but the decisions themselves are made behind closed doors by representatives (Piper 2005). Third,

direct political activism ultimately takes the form of 'private' legal action against government focused on particular parts of existing law that is in conflict with constitutional law. This can have the affect of prioritising certain issues at the expense of others purely as a consequence of the ability some activists have of garnering sufficient public and financial support. The combination of 'private' activism and unelected court officials can significantly skew the agenda under conditions of little or no representative accountability. In any case, to hold activists up as examples of virtuous citizens is to hold the bar much too high for normal citizens, most of whom are unlikely to feel the kind of calling or vocation that usually underpins the drive and virtue of activists. These developments and actions are well-intentioned and sometimes successful, but until citizens have parity of power over the promulgation of laws irrespective of their own prestige, media savvy or wealth, popular sovereignty will remain a pipedream.

In order to understand and rectify this lack of popular sovereignty and virtuous citizenship it is important to focus on the South African Constitution of 1996. It is not only the ultimate seat of sovereign power in South Africa, but also the framework that entrenched the current legal and political environment.[14] At a moment of rapid historical transformation it immunised against change a bill of rights, judicial review, representative government, a powerful constitutional court, and a number of extra-legislative institutions known as the 'chapter nine institutions', which were created to support constitutional democracy, for example the human rights commission. By effectively immunising constitutional constraints from revision, the South African Constitution depoliticised or juridified a number of very basic and large choices that are by their very nature political. It antecedently removed these matters from 'public' dispute, matters that are subject to shifts in the balance of disagreement.[15] Given that the agency of citizens depends upon choices that, like all other kinds of preference formation, are endogenous (Elster 1983; Sunstein 1988; Hamilton 2003a), the constitution pre-determines the available channels for political agency. In doing so it undermines effective political control and agency and thereby hinders rather than enables political freedom and popular sovereignty.[16]

Despite this, the intellectuals within and around the ruling party in South Africa, the African National Congress (ANC), believe that the constitution enables popular sovereignty.[17] They believe this because they are *inadvertently* wedded to a conception of popular sovereignty that rests on the liberal idea of tacit consent to a set of fundamental

laws.[18] There is a clear logic to this position. If popular sovereignty is conceived of in terms of consent, and the identification of that consent depends upon pre-existing legal rules for aggregating preferences, then it becomes incoherent to locate the sources of *all* legal regulation in the will of the people. The will of the people can only be expressed and identified under certain specified conditions—a set of antecedently determined fundamental, or 'higher' laws—that could not, therefore, be the direct result of that will. In order for this state of affairs to continue, these laws would have to be entrenched for generations to come: constitutional precommitment. In other words, voluntary consent is only possible when pre-determined, and is thus no longer voluntary. This is the paradox of liberal constitutional democracy. And it is also what allows the ANC to claim that the current constitution enables popular sovereignty: entrenched 'higher laws' are necessary, and as long as they have been consented to, and there exists no visible sign of dissent (i.e., there is evidence for tacit consent), they are also legitimate.

The real problem, though, isn't that a paradox exists, for politics is peppered with paradoxes. It is that this way of thinking about popular sovereignty—in terms of strict constitutional precommitment legitimised via consent—has little or nothing to do with popular sovereignty as effective popular control over laws. Once popular sovereignty is understood in terms of effective popular control over the general laws, things start to look a little different. The origins too of this way of seeing things are, unsurprisingly, distinct. At their base lies the idea that the Sovereign cannot be bound by his own laws because no man can be obliged to himself.[19] This is a central tenet of thinkers such as Aquinas, Hobbes, and Rousseau. The basic moral principle can be traced back at least to Seneca: '*A binding promise requires two parties and cannot be performed by one party alone'* (Seneca, 'On benefits', cited in Holmes 1996: 146). Thus the King or Sovereign Assembly is, at least in principle, *legibus solutus*. Pufendorf then extended this to democracies. The people, in Pufendorf's view, held the same position of untrammelled constituent power occupied by Hobbes's absolute monarch, and argued that 'nothing' could prevent a democratic people from abrogating all their fundamental laws at any time (Holmes 1996: 147). This argument was then given its most powerful reformulation by Rousseau. As I have shown, Rousseau argued that in order for popular sovereignty to obtain the citizens had to have direct and effective control over the formation of *general* laws, i.e., the constitution. Not just that they

must consent to it, but that they must control it, decide upon its content. So, for Rousseau, nothing can bind the will of the assembled citizens. As he puts it: 'it is self-contradictory for sovereign authority to shackle itself'; 'it runs against the nature of the body politic that the sovereign imposes on itself a law that it cannot transgress'; 'in the state there is no fundamental law that cannot be revoked, not even the social contract' (Rousseau 1997b, I, 7: 197-211; Rousseau 1997a, III, 18: 120).

Some thinkers argue that this constitutes a radical rejection of constitutional precommitment (Holmes 1996: 147). But this is to overstate the case, for Rousseau also stipulated that the popular will can be expressed only through absolutely general laws, i.e., in a constitution, and that the populace need representatives to enforce and interpret law. Moreover, he maintained that it was counterproductive and even dangerous to keep changing the general laws. He warned that it was all too easy to lose sight of the 'state of weakness and anarchy in which a nation finds itself while it establishes or reforms its constitution' (Rousseau 1997b [1772]: 255 [ch 15]; *Cf* Rousseau 1997a [1762]: 75-8 [Bk II, ch 10]).[20] What follows from this is that in order to entrench fundamental law in a manner that simultaneously secures popular sovereignty, security and everyday freedom, a constitution must be fixed *and* mutable, entrenched and emended by the citizen body. If the republican argument is correct, in order for virtuous citizenship and popular sovereignty to obtain in South Africa, the citizens of South Africa must have effective, periodic control over the content of the constitution. The important question is, however, how and how often should the citizens review the *general* laws?

A Decennial Plebiscite—Carnival of Citizenship

One possible response to the first part of this question is to bring the constitution under the direct control of the representatives of the people. However, not only would that not meet the Rousseauian standard for direct citizen control over the constitution, it would also open the door to the kind of tyranny, factionalism and corruption that both liberals and republicans fear. Thomas Jefferson provides a better answer. At the end of an argument for why periodic constitutional amendment was a necessary part of well-functioning democratic republic,[21] he proposes that a new constituent assembly should be held every twenty years: a 'ventennial plebiscite' (Jefferson 1999 [1816]: 216; Holmes

1996: 154). In this way, he claims, the general law would be able to be amended in line with developments in society and human nature and would enable each generation to, at least on one occasion, have effective control over the promulgation of the general laws that govern their society.

I want to suggest that Jefferson does not go far enough on two counts. A plebiscite of this kind would need to occur more frequently and would have to live up to its original Roman meaning—it would have to be more than simply a vote by a whole electorate but rather a process through which law is enacted by the 'plebeians' or ordinary citizens, culminating in a vote or series of votes. There would, of course, still be a requirement for professional justices to interpret the law (and act as a check on legislation enacted by representatives), but in order for the general laws to be assessed in the light of new developments, ideas and interests, citizens would need to be given the opportunity to review the constitution relatively frequently. Also each plebiscite would have to involve a protracted evaluation because citizens would need to be given the time and opportunity to understand and assess existing law in the light of substantial debate over existing needs, interests, ideas and possibilities. Moreover, any decisions or amendments that might follow will involve complicated empirical and normative matters with long-term consequences, for example, broad questions of the means, ends, institutions and practices that frame public policy, such as which needs and rights to safeguard, the forms of production and distribution, kinds of property ownership and inheritance, and so on. It would thus be optimal if this plebiscite occurred over a period of one month once every ten years: a decennial plebiscite.

A plebiscite of this kind would enable popular sovereignty because it would provide the citizenry with popular control over the constitution, the institution which in modern times has become the seat of sovereign power. And, given that it would take place over a protracted period, it is likely to provide the kind of environment in which citizens would not only be able to choose social ends, but they will also be part of a deliberative process that would enable the evaluation and transformation of preferences.[22] This is the case because these conditions would transform the nature of the fixed, legal framework of constitutionally guaranteed rights that, according to liberal dogma, allows free preference formation (Hamilton 2003a: 2-9). Rights would be subject to political revision (Sunstein 1988: 338); that is, their very nature would change—they would no longer be inviolable. And, as

they do, so would citizens' conceptions of their preferences change: the endogenous and socially-determined nature of preferences would become more apparent, and thus their possible transformation could be conceived of in terms of benign rather than malign paternalism (Hamilton 2003a: 162-170; Sunstein 2005: 175-203). And, of course, the constitution would then become something closer to what Rousseau and Jefferson intended it to be: a political institution whose content and form could be amended as humans and society change, as opposed to a *meta*-political institution looked upon with 'sanctimonious reverence' (Jefferson 1999 [1816]: 215), or the product of some sort of *pre*-political, inviolable social contract.

In order to enable popular sovereignty, a decennial plebiscite must provide all citizens with equal power and influence over the process of evaluation and amendment. This can be achieved via the entrenchment of procedural safeguards, which would constitute the sole inviolable part of the constitution. Justification for this comes from the fact that these are procedural rather than substantive safeguards. More positively, parity of individual power might be achieved by declaring a month-long holiday, in which citizens could attend state-funded educational workshops, evaluation centres and decision-making mechanisms—a carnival of citizenship! For reasons I have already discussed to do with the endogenous nature of preferences, the nature of the constitution will significantly affect the preferences, beliefs and modes of conduct of citizens. In other words, a constitutional framework of this kind will affect how people respond to citizenship and politics in general; more specifically, I maintain that it would have the effect of making them more active and virtuous citizens. Once citizens start to notice that the plebiscite provides them with greater control over the long-term, over the nature of existing institutions, needs and interests, they may begin to look beyond their short-term, particular interests and become aware of the social significance of their choices and actions. Also, it might encourage citizens to take risks, to put forward novel proposals safe in the knowledge that they could be tested and then, if necessary, discarded at the next plebiscite. These developments are likely to encourage consequentialist rather than deontological practical reasoning. A long-term view of matters coupled with less risk aversion might encourage increased interest in and understanding of the effects of institutional arrangements on the generation and satisfaction of citizens' needs. Citizens might then become simultaneously more responsible (more interested in the needs and interests of wider society) and more courageous (more

willing to experiment beyond the status quo). By providing citizens with direct control over the *general* laws that govern their lives, a decennial plebiscite thus also provides direct incentives for individual citizens to act virtuously.[23]

This proposal involves few risks and many potential benefits. It does not require changes to modern liberty or representative government. It does not require the modern citizen to somehow become a model republican citizen, to return to a condition of ancient liberty, constantly involved in politics and the life of the community. It takes on board the realities of modern existence and freedom. A short period to be reserved once every ten years in which individuals would be given the opportunity to exercise their citizenship, is not too much to ask, especially if it included a carnival. South Africans, at least, are likely to be tempted by that. The potential benefits of the proposal are manifold. It would create the conditions for: 1) popular sovereignty; 2) virtuous citizenship; 3) the reconfiguring of the constitution as a *political* institution; and 4) the continued transformation of South Africa.

In 1994 South Africans witnessed the dawn of democracy that heralded the beginning of a transformation in political power. Whether this transformation is to continue depends on whether the conditions for popular sovereignty are secured. This, I think, is the main challenge that faces South Africans today. Without further transformation South Africans will lose the opportunity provided by a unique moment: the will and desire for real political agency and citizenship driven by the hope and wonder of peaceful revolution. Many South Africans may be 'nice' in the everyday sense enunciated within common etiquette, in other words, they may be overflowing with what has been called 'bourgeois virtue', but in order for South Africans to become 'nice' in the more specific sense apparent in the skit with which I started this article, it is vital to ensure that the conditions for virtuous citizenship obtain. In this article I have suggested some changes to the form and nature of the constitution that I argue would enable the possibility for popular sovereignty in South Africa. Only then would South African citizens be free, and thus only then would they have the possibility for acting virtuously as citizens. The full force of the idea of citizenship will only be felt under conditions of popular sovereignty, conditions quite different from extant kinds of representative constitutional democracy.

Lawrence Hamilton is Professor of Politics at the University of Johannesburg, and Affiliated Lecturer in Political Theory at the Uni-

versity of Cambridge. His book, *The Political Philosophy of Needs*, first appeared in 2003, and he is currently working on two book manuscripts, *Are South Africans Free?* and *Human Needs and Political Judgement.*

Notes

* I would like to thank Laurence Piper, Raymond Geuss, Ze'ev Emmerich and Ayesha Omar and the participants at numerous conferences in South Africa, Sweden and the UK for valuable comments and assistance on this paper. None of them, however, are responsible for any of the errors and infelicities that may remain. I am also very grateful to the South African National Research Foundation, the Universities of Johannesburg and Cambridge and Clare Hall at Cambridge for their institutional and financial support.

1. It was written and performed by Spitting Image Productions Ltd and Central Independent Television PLC in 1986 and can be found on the CD, Spitting Image, 'Spit in Your Ear', track 21 (Virgin Records Ltd, 1995).
2. White South Africans may not have all been 'tyrannous murderers'… 'who hate black people', but some were murderers who worked within and for a tyranny.
3 . In modern moral philosophy there is a distinction between those approaches to ethics that focus on virtue—virtue ethics—and those that make room for virtue only alongside the main job of formulating the ultimate principles or rules of morality, for example Kantianism and Utilitarianism (Honderich 1995: 901). My purview here is wider; it includes approaches to virtue and citizenship in the long history of political thought. For more on the Traditionalist, Virtue-Ethics and Christian conceptions, see MacIntyre 1981 and Geuss 2000.
4. This is justified in terms of the emergence of radical cultural pluralism in modern liberal democracies, or what Rawls calls 'the fact of pluralism' in which people often do not share a 'common heritage' or 'way of life': 'the diversity of comprehensive religious, philosophical and moral doctrines found in modern democratic societies is not a mere historical condition that might pass away; it is a permanent feature of the public culture of democracy' (Rawls 1989: 234-5). This is one way of justifying the common liberal categorical divide between the 'private sphere' and the 'public sphere' (Geuss 2001).
5. There exists another conception of virtuous citizenship, what might be called the relativist conception, that was developed in opposition to this predominant liberal conception, but that is equally problematic for quite distinct reasons. It rests on a conception of virtue that is most clearly articulated by Alasdair MacIntyre: 'a virtue is an acquired human quality the possession and exercise of which tends to enable us to achieve those goods which are internal to practices' (MacIntyre 1981: 178). The problem with this approach is that it fails to provide us

with any means of evaluating virtues from a position external to the goods and practices that legitimize them (Hamilton 2003: 117-8).

6. Thus, in contrast to some of the more conventional liberal approaches to liberty, this more nuanced position also allows us to conceive of degrees of freedom: different conditions enable different degrees of freedom and virtue (Hamilton 2003: 113). For more on 'positive' and 'negative' freedom, see Berlin 1969; Taylor 1979; Skinner 1998.
7. According to James Harrington, *contra* Thomas Hobbes, liberty in the proper sense is liberty *by* the laws—this is liberty in the sense of citizenship—whereas liberty *from* the laws is of little significance (Harrington 1992 [1656]; Skinner 2002; Petit 1999: 39).
8. Rousseau's position contains the kernel of a novel, forceful argument for civil and material equality that rests not on a moral philosophical defence of human equality but on an account of individual freedom, a kernel that is further nourished in the works of Karl Marx, about which I can say no more here.
9. Or, for that matter, how might this be possible in a global-state? As I suggest below, the size of the state does not change the requirement for representation. It may affect a number of other related issues, but not the core issues of citizen power, popular sovereignty and the need for representation.
10. In his latest book, John Dunn provides a fascinating account of the history of democracy and the 'chasm between the meaning of democracy as a word and the substance of contemporary representative democracy in action'. He argues that the chasm 'could be spanned if we came to understand economies well enough to establish some real control over them, an idea which may not even make sense, and an achievement which certainly seems practically quite beyond our reach' (Dunn 2005: 186-7). Despite Dunn's evident scepticism and Marx's tenacious efforts, understanding economies in this way still constitutes the challenge of our time.
11. Although it has it source in Locke's argument that '*the end of Law* is not to abolish or restrain, but *to preserve and enlarge Freedom*' (Locke 1988: II §57, 306 – his emphasis).
12. Indeed, it is not even clear whether representative government represents citizens' interests or represents the state (Sonenscher 2003: vii).
13. Even in constituency-based systems, in both their proportional representation and first past the post varieties, which enable citizens to choose representatives from and for their local area, the interests of parties usually trump those of citizens. In parliament, if the demands and avowed interests of constituents conflict with the interests of parties, the former very infrequently outweigh the latter.
14. In their attempts to think about how to overcome the 'democratic deficit', deliberative democrats adopt a different strategy. They maintain that the provision of local and regional forums for deliberating citizens' interests will empower citizens, improve democratic accountability, and make government more able to respond to the demands and needs of citizens (Dryzek 2000; Gutmann and Thompson 1996; Habermas 1996). Or, in the words of one its standard-bearers, '[u]nder deliberative democracy, the essence of democratic legitimacy should be sought instead in the ability of individuals subject to a collective decisions to engage in authentic deliberation about that decision' (Dryzek 2000: v). However, these approaches to the problem are found wanting for a number of reasons. First, they are unrealistic about the demands on decision-making within highly

complex societies. Second, they ask too much of the modern citizen, both in terms of human rationality (Habermas) and in terms of the degree of political commitment expected from citizens (Dryzek; Gutmann and Thompson). (It isn't surprising that their model for active citizenship draws heavily on political activism.) Third, they assume that because the creation of institutions for the deliberation of citizens' interests would secure greater levels of participation, it would thus provide the conditions for popular sovereignty and virtuous citizenship. However, this would only be the case if citizens were provided with effective control not simply over government but the state too. So, their proposals are unlikely to have any significant affect on the possibility for virtuous citizenship; but see final section and fn 22 below.

15. Even under more normal conditions these matters involve choices that are characterised by disagreement, but under situations of rapid political change the balance of this disagreement is likely to shift quite fast. Strict precommitment at these times is often self-defeating (Waldron 1988: 295). Here, though, I defend the stronger claim, as does Waldron: that under normal conditions of politics strict precommitment is illegitimate and self-defeating.
16. Citizens can have a say in the content of the constitution through the very slow process of amendments to constitutions. But, amendments are very infrequently put out to referenda or decided by majority decision. And even when they are, the 'terms of the choices offered are always decided by a ruling group of career politicians' (Dunn 2005: 176).
17. 'The capacity to introduce fundamental change depends largely on whether the basic law of the land provides the framework for it. The negotiated constitution does provide that framework: we have enshrined democratic majority rule and a bill of rights with references to social rights' (Netshitenzhe 1996: 3).
18. Needless to note, most constitutions do not even pass the basic liberal test of consent. The constitutions of many countries were written way before all of the populace became full citizens (see Sejersted 1988). And even when a constitution was formulated in the era in which by right all of the population were citizens, it was normally the result of a negotiated settlement between elites under the careful guidance of those trained in the art of writing constitutions. This was the case even in South Africa, where the consultative process that led to the emergence of the South African constitution of 1996 has been lauded for its inclusiveness and the way in which it mobilized the people (Spitz and Chaskalson 2000). It is for this reason coupled with the stark differences that exist between the ANC's Freedom Charter and the final constitution that I stress the ANC are *inadvertently* wedded to a liberal conception of popular sovereignty. I may be wrong: they may have intentionally shifted their position on these matters, but if the intellectuals are anything to go by, they haven't. We will only know for sure once a great deal of political anthropology has been undertaken around this question. Also, of course, the ANC is not a single church; it is made up of a whole spectrum of positions and views.
19. The Liberal argument in support of constitutional precommitment makes use of a secularised *theological* position. The theological argument is that an omnipotent power such as God must be able to bind itself. Then, with the help of Bodin's analogy between God's self-binding and the self-binding of the political sovereign, Liberals argue that the political sovereign, like God, can and must bind himself; in other words, constitutional restrictions are in fact expressions of sov-

ereign freedom and power (Locke 1988: II §195, 395-6; Holmes 1996: 151). This cannot count as a very convincing argument in a world after God and the 'divine rights of kings'. The analogy, though, is telling: accordingly, the constitution tends to be deified, treated as a sacrosanct 'higher law' or order that citizens explicitly or implicitly consent to or revolt against but do not ultimately control.

20. Madison makes this point a little more forcefully in *Federalist* 49, when he said that the great problem with the frequent convoking of constitutional conventions was that it would create periodically a legal vacuum in which the '*passions* therefore not the *reason*, of the public, would sit in judgement' (Hamilton, Madison and Jay 2003: 248). However, it is not clear why this would be the case. An old constitution could remain in place up until the completion of any amendments to it, and the changeover could be instantaneous. Or, where this is not possible, a two-stage process could be used, as was the case with the interim constitution in South Africa, a process that was crucial to defusing the potentially very volatile process of transformation in that country (Spitz and Chaskalson 2000: 412-21).
21. Like Paine, Jefferson based this argument on the claim that one generation cannot bind the next. In opposition to Madison, Jefferson argued that 'the earth belongs to the living and not the dead'; 'each generation is as independent as the one preceding, as that was of all which had gone before. It has then, like them, a right to choose for itself the form of government it believes most promotive of its happiness … [T]he dead have no rights'; 'no society can make a perpetual constitution, or even a perpetual law' (Jefferson 1999: 216). Whether this constitutes a good or a bad argument in support of this position is heavily debated (see Burke 1992; Holmes 1996; Waldron 1998), but we do not need to resolve that question here, for Rousseau has provided a distinct justification.
22. This may also then satisfy the demands of many modern republicans and deliberative democrats, such as Sunstein (1988; 2001), Habermas (1996), Dryzek (2000), and Gutmann and Thompson (1996).
23. For more on these proposals and how they might affect citizenship and the satisfaction of needs in general, and with particular reference to the case of South Africa, see Hamilton 2003: 156-161, 171-184.

References

Berlin, I. 1969. *Four Essays on Liberty*. Oxford: Oxford University Press.

Burke, E. 1992. *Further Reflections on the Revolution in France*. Indianapolis: Liberty Fund.

Canover, P.J., Crewe, I. M., and Searing, D. D. 1991. 'The Nature of Citizenship in the United States and Great Britain: Empirical Comments on Theoretical Themes', *Journal of Politics*, 53, 800-32.

Constant, B. 1988. *Political Writings*. Cambridge: Cambridge University Press.

Dryzek, J. S. 2000. *Deliberative Democracy and Beyond: Liberals, Critics, Contestations*. Oxford: Oxford University Press.
Dunn, J. 1993. *Western Political Theory in the Face of the Future*. Cambridge: Cambridge University Press (Canto Edition).
_____. 2005. *Setting the People Free: The Story of Democracy*. London: Atlantic Books.
Elster, J. 1983. *Sour Grapes: Studies in the Subversion of Rationality*. Cambridge: Cambridge University Press.
_____. 1984. *Ulysses and the Sirens: Studies in Rationality and Irrationality*. Cambridge: Cambridge University Press.
Jefferson, T. 1999. *Political Writings*, ed. by J. Appleby and T. Ball. Cambridge: Cambridge University Press.
Geuss, R. 2000. 'Virtue and the Good Life', *Arion*, Spring/Summer 2000.
_____. 2001. *Public Goods, Private Goods*. Princeton, N.J.: Princeton University Press.
Gutmann, A. and Thompson, D. 1996. *Democracy & Disagreement*. Cambridge, Mass.: Harvard University Press.
Habermas, J. 1996. *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*. Cambridge: Polity Press
Hamilton, A., Madison, J. and Jay, J. 2003. [1787] *The Federalist*, ed. by T. Ball. Cambridge: Cambridge University Press.
Hamilton, L. 2003a. *The Political Philosophy of Needs*. Cambridge: Cambridge University Press.
_____. 2003b. "'Civil Society': Critique and Alternative", in S. Halperin and G. Laxer (eds). *Global Civil Society and Its Limits*. London: Palgrave.
Harrington, J. 1992 [1656]. *The Commonwealth of Oceana*, in J.G.A. Pocock (ed.). *The Commonwealth of Oceana and A System of Politics*. Cambridge: Cambridge University Press.
Holmes, S. 1995. *Passions and Constraint: On the Theory of Liberal Democracy*. Chicago and London: The University of Chicago Press.
Honderich, T. (ed.) 1995. *The Oxford Companion to Philosophy*. Oxford: Oxford University Press.
Kymlicka, W. 1995. *Multicultural Citizenship: a liberal theory of minority rights.* Oxford: Clarendon.
Locke, J. 1988. *Two Treatises of Government*, ed. by P. Laslett, Cambridge: Cambridge University Press.
Machiavelli, N. 2003. [1532] *The Discourses*. London: Penguin.
MacIntyre, A. 1981. *After Virtue: a study in moral theory*. London: Duckworth.
Marshall, T.H. 1950. *Citizenship and Social Class*. Cambridge: Cambridge University Press.
Miller, D. 2000. 'Citizenship and Pluralism', in *Citizenship and National Identity*. Cambridge: Polity Press.

Netshitenzhe, J. 1996. 'The National Democratic Revolution. Is it Still on Track?', *Umrabulo* 1, 4th Quarter 1996.

Pagden, A. 1990. 'Introduction', in A. Pagden (ed.) *The Languages of Political Theory in Early-Modern Europe*. Cambridge: Cambridge University Press.

Pettit, P. 1999. *Republicanism: A Theory of Freedom and Government*. 2nd ed. Oxford: Oxford University Press.

Piper, L. 2005. 'Theorising Democracy in Local Government in South Africa', unpublished paper presented at Politics Seminar, UKZN, Durban, November 2005.

Piper, L., Barichievy, K. and Parker, B. 2005. 'Assessing "participatory governance" in local government: A case-study of two South African cities', *Politeia*, 24: 3.

Rawls, J. 1989. 'The Domain of the Political and Overlapping Consensus', *New York University Law Review*, 64.

Rousseau, J-J. 1997a [1762]. *The Social Contract*, in V. Gourevitch (ed.) *The Social Contract and other later political writ*ings. Cambridge: Cambridge University Press.

_____. 1997b [1772]. *Considerations on the Government of Poland and on its Projected Reformation*, in V. Gourevitch (ed.) *The Social Contract and other later political writ*ings. Cambridge: Cambridge University Press.

Sejersted, F. 1988. 'Democracy and the rule of law: some historical experiences of contradictions in the striving for good government', in J. Elster and R. Slagstad, *Constitutionalism and Democracy*. Cambridge: Cambridge University Press.

Sieyès, E. J. 2003. [1789] *Political Writings*, ed. by M. Sonenscher. Indianapolis/Cambridge: Hackett.

Skinner, Q. 1998. *Liberty Before Liberalism*. Cambridge: Cambridge University Press.

_____. 2002. 'Machiavelli on *virtù* and the maintenance of liberty', in Q. Skinner, *Visions of Politics, Volume II, Renaissance Virtues*. Cambridge: Cambridge University Press, 160-85.

Sonenscher, M. 2003. 'Introduction', in E. J. Sieyès, *Political Writings*, ed. by M. Sonenscher. Indianapolis/Cambridge: Hackett.

Spitz, R. and Chaskalson, M. 2000. *The Politics of Transition: a hidden history of South Africa's negotiated settlement.* Johannesburg: Witwatersrand University Press.

Sunstein, C. 1988. 'Constitutions and Democracies: an epilogue', in J. Elster and R. Slagstad, *Constitutionalism and Democracy*. Cambridge: Cambridge University Press.

_____. 2001. *Designing Democracy: What Constitutions Do*. Oxford: Oxford University Press.

_____. 2005. *Laws of Fear: Beyond the Precautionary Principle*. Cambridge: Cambridge University Press.

Suttner, R. 2004. 'Democratic Transition and Consolidation in South Africa: The Advice of 'the Experts", *Current Sociology*, 52: 5, 755-73.
Taylor, C. 1979. 'What's Wrong with Negative Liberty?' in A. Ryan (ed.). *The Idea of Freedom*. Oxford: Oxford University Press.
Taylor, C. 1989. 'Cross Purposes: The Liberal-Communitarian Debate', in N. Rosenblum (ed.). *Liberalism and the Moral Life*. Cambridge, Mass: Harvard University Press.
Turner, B. 1993. *Citizenship and Social Theory*. London: Sage.
Viroli, M. 1990. 'The concept of *ordre* and the language of classical republicanism in Jean-Jacques Rousseau', in A. Pagden (ed.). *The Languages of Political Theory in Early-Modern Europe*. Cambridge: Cambridge University Press.
Waldron, J. 1998. 'Precommitment and Disagreement', in L. Alexander (ed.). *Constitutionalism: Philosophical Foundations.* Cambridge: Cambridge University Press.