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# Citizen-Sovereigns: The Source of Contestability, the Rule of Law, and the Conduct of Public Entrepreneurship

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Let it [*Democracy in America*] be read over again and there will be found on every page a solemn warning that [as] society changes its forms, humanity its condition, . . . new destinies are impending.

[T]he principles on which the American constitutions [N. B. plural] rest, those principles of order, of the balance of powers, of true liberty, of deep and sincere respect for right, are indispensable to all republics; they ought to be common to all; and it may be said beforehand that wherever they are not found, the republic will soon have ceased to exist (Tocqueville, author's preface [1835; 1840] 1945, 1: xix, xxi).

## Introduction

It was my good fortune to have known John Gaus and to have attended a lecture course and participated in a seminar that he offered in 1949. His Alabama lectures entitled *Reflections on Public Administration*, published in 1947, included such titles as "The Ecology of Government" and "Politics and Administration." His concluding chapter, written after the initial presentations, was entitled "A Theory of the Process of Government." Gaus was broadly engaged in reflections about the place of public administration in systems of governance and the constitution of order in human societies.

In that tradition, I propose to draw upon problems addressed by Alexander Hamilton and James Madison in *The Federalist* and by Alexis de Tocqueville in *Democracy in America* to consider a key intellectual challenge of how to

think about and act in relation to citizens as sovereigns in democratic societies.

## Hamilton's Query

In the opening paragraph of the first essay in *The Federalist*, Hamilton posed the question of "whether societies of men are really capable or not of establishing good government from reflection and choice, or whether they are forever destined to depend for their political constitutions on accident and force" ([1788] n.d., 3). This is a fundamental question about the constitution of order in human societies, the place of constitutional choice in creating good government, and the place of citizens in the conduct of democratic systems of governance.

Addressing the people of New York to secure the ratification of the Constitution of the United States of America, Hamilton, Madison, and Jay, using the name Publius, engaged in a diagnostic assessment of the failure of the Articles of Confederation and an extended analysis of the basic provisions of the newly drafted Constitution of the United States. Both constitutional documents had been drafted in response to the Declaration of Independence, which asserted that "it is the Right of the People . . . to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness." The aggregate constitutional order included the Constitution of the United States, along with the constitutions of the several states comprising the United States and the systems of governance within each state. Authorities pertaining to legislative, executive, and judicial functions were assigned limited powers. Limits on the general authority of the federal government were adopted in the first 10 amendments prior to their ratification by all of the states.

Limits on the authority of government and the diverse instrumentalities of governance created opportunities for con-

tation in diverse arenas evoking an open public realm for the enlightenment of citizens and the practice of citizenship in the proper exercise of governmental authority. What was meant by "good" in referring to good government had earlier been addressed by Adam Smith and David Hume during the British constitutional era of the seventeenth and eighteenth centuries. Smith in *The Theory of Moral Sentiments* ([1759] n.d.) identified sympathy as the sentiment that enabled human beings to establish the grounds for reflection and moral judgment. Hume (1948) indicated that such patterns of reflection and moral judgment enabled human beings to recognize and designate values that might apply to the creation of order in human societies. This intellectual tradition is consistent with the basic moral and ontological teachings of Moses, Jesus, Muhammad, and Confucius, among others. The principle of "*do unto others as you would have others do unto you*" is grounded in sympathy and is the key to normative thinking and moral judgment. These are essential teachings for the enlightenment of democratic citizens.

These cognitive capabilities that might accrue as human cultural achievements are required to confront a Faustian bargain that the enforcement of rule-ordered relationships requires recourse to force and the exercise of coercive capabilities—instruments of evil. Police and military components in human societies can be used by some to gain advantages and profits from opportunities for repression and corruption that pervade rule-ordered relationships.

Hamilton's query was concerned with how reflection and choice might override accident and force in the constitution of human societies. His diagnostic assessment of the failure of confederation identified individuals as being the responsible actors rather than collectivities as such. The problem of inquiry in democratic societies must extend to the enlightenment of the person of citizens

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as they engage in diverse processes of constitutional, collective, and operational choice. Voting in elections is not an adequate basis for the operation of democratic societies. The analysis offered in *The Federalist* presumes a much more enlightened and active citizenry in the constitution of civil society and in the conduct of governing arrangements than simply relying on officials to govern nation-states. Their analysis was one of artisans creating artifacts for the governing arrangement that became the United States of America. What might be called *public administration* is the organization and conduct of enterprises to render public services to communities of people.

### Tocqueville's Democratic Revolution

Alexis de Tocqueville, a citizen of France, who had endured the tragedies evoked by the French Revolution, turned with his colleague Gustave de Beaumont to the United States of America to inquire about their system of governance some four to five decades after the inquiries presented in *The Federalist*. His two-volume work was addressed to his fellow citizens of France. He later undertook a similar inquiry about France. The first volume in a projected two-volume work was published as *The Old Regime and the Revolution* ([1856] 1955). His analyses were assessments of human achievements and failures in light of efforts to transform societies.<sup>1</sup>

Tocqueville engaged in his inquiries in light of a more general set of conjectures about "a great democratic revolution" occurring among mankind. He viewed that revolution as having endured over some 700 years in Europe marked by strong aspirations for equality against the prior traditions of aristocracy and servitude built into the structure of property rights, law, social order, and defense capabilities.

Tocqueville admitted to "a kind of religious awe" in observing a movement that could not be stopped but required a reawakening of religious beliefs, enhanced standards of moral judgment, of statecraft, and of knowledge about time and place exigencies in which people live their lives. His concluding sentence amid these conjectures asserted that "A new science of politics is needed for a new world" ([1835; 1840] 1945, 1: 7).

In conceptualizing the aggregate system of order in democracy in America, Tocqueville advanced the concept of the principle of the sovereignty of the people. In commenting on the application of that concept to democracy in America, Tocqueville asserted:

[T]here society governs itself for itself. . . . All power centers in its bosom, and scarcely an individual is to be met with who would venture to conceive or, still less, to express the idea of seeking it elsewhere. The nation participates in the making of its laws by the choice of its legislators, and in the execution of them by the choice of the agents of the executive government; it may almost be said to govern itself, so feeble and so restricted is the share left to the administration, so little do the authorities forget their popular origin and the power from which they emanate. The people reign in the American political world as the Deity does in the universe ([1835; 1840] 1945, 1: 57–58).

It is easy to dismiss Tocqueville's use of language as political rhetoric. It might also be seen as a response to Hamilton's query applied to many different efforts to create good government from reflection and choice that might apply to each state, to governments within each state, and to diverse patterns of association that are constitutive of society. Among alternatives to a concept of the sovereignty of the people might be the sovereignty of states in a world of nation-states or other concepts that societies of people might use to create systems of governance.

### The Challenge of Machine Politics and Boss Rule

Nearly four decades after Tocqueville and Beaumont's visit to America, a judicial decision known as Dillon's Rule asserted the doctrine of legislative supremacy to the effect that municipal corporations were the creatures of state legislative authority.<sup>2</sup> Legislatures enacted individually specified municipal charters, including the creation of charter obligations to construct facilities for private endeavors with the municipality and its residents assuming the obligation for funding these efforts. Such opportunities led to bosses slating candidates, gaining control over legislative, executive, and judicial authorities, and electing United States Senators who formed a club of bosses and gained dominance over state, federal, and local governments. Ostrogorski's *Democracy and the Organization of Political Parties* ([1902] 1964) demonstrates how machine politics and boss rule came to prevail and usurp the authority of citizens in the United States.

In response, newspapers with reform agendas, city clubs, civic associations, and public fora began to explore reform agendas through constitutional methods to alter arrangements for the exercise of

state and local governments. Typical provisions adopted in revised state constitutions placed limits on state legislatures confining their authority to the enactment of general legislation, denying authority to create public debt without approval of the electorate in referenda, authorizing municipalities to create charter commissions to establish home-rule charters subject to popular referenda, and enabling citizens to amend constitutions and charters by popular initiatives or referenda following the example of Switzerland. Similar provisions allowed for the recall of public officials during their terms of office. Such efforts became the focus of a Progressive Reform Movement that achieved reform efforts among state and local governments throughout the United States. A new system of primary elections was created so that the candidates for public offices were nominated through public electoral arrangements rather than by party bosses.

Through these efforts of constitutional revision, Tocqueville's concept of the sovereignty of the people was re-established in American democracy through the Progressive Reform Movement by the second decade of the twentieth century. Machine politics and boss rule no longer prevailed through the revised structure of what might be called democracy in America.

### National Governments and World Affairs

In the closing decades of the nineteenth century, a war with Spain and an increasing preoccupation with world affairs were accompanied by an intellectual persuasion, perhaps best articulated by Woodrow Wilson. The essays written in *The Federalist* were addressed by Wilson as "literary theory" that failed to come to terms with political realities. Reality, Wilson believed, required "a [single] centre of power" ([1885] 1956, 30). Wilson's *Congressional Government* saw the Congress as that center of power, but in the preface to the 15th printing [dated 15 August 1900], Wilson indicated that "the new leadership of the Executive" may "put this whole volume hopelessly out of date" (23). That leadership took its place among the victorious powers in two world wars in the first half of the twentieth century. National governments in sovereign nation-states yielded monumental disasters in world affairs.

Leading European nation-states had created worldwide empires during the sixteenth, seventeenth, and eighteenth centuries. Revolutionary movements

following the example of the United States of America came to prevail in the nineteenth century leaving Latin America with numerous sovereign nation-states subject to *coups d'état*, military governments, and violent revolutionary struggles. Accident and force came to prevail among nation-states claiming sovereign authority to exercise rulership prerogatives within its territorial domain.

The end of European empires in Africa after World War II was succeeded by autonomous nation-states that also became the object of *coups d'état*, military dictatorships, and adventurous warlords and their combatants who pillaged and plundered the numerous African peoples in sub-Saharan Africa. Peoples in diverse language communities and ways of life in Africa were ignored in the quest for "democracy" among sovereign nation-states in their conduct of world affairs.

Two great proletarian revolutions in the Russian and Chinese empires, which called for the liberation of the workers of the world, led to these countries' recognition as sovereign nation-states in a world of nation-states. The promise of liberation from *capitalism* and the organization of collective enterprises in what was called *socialism* resulted in monumental disasters of starvation amid mass movements, imprisonment, and death in forced labor camps as dictatorships of the proletariat prevailed in the Soviet Union and the People's Republic of China.

The dominance of Faustian bargains through recourse to accident and force meant that societies of men created monumental disasters rather than reflection and choice. Erroneous diagnostic assessment can create serious illusions that turn into disasters of monumental proportions. The doctrine of sovereign nation-states with a single supreme authority does not facilitate reflection and choice in human affairs.

## The Intellectual Challenge of Today and Tomorrow

After nearly a thousand years in what Tocqueville referred to as "a great democratic revolution going on among us," we need to confront Hamilton's query of whether societies of men are really capable of establishing good government by reflection and choice or whether they are forever destined to depend for their political constitutions on accident and force. World wars and other monumental disasters need to be subject to diagnostic assessments and the exploration of alternative possibilities.

In the concluding section of the second volume of *Democracy in America*,

Tocqueville makes this following observation: "I am of the opinion that, in the democratic ages which are opening upon us, individual independence and local liberties will ever be the products of art (i.e., artisanship); that centralization will be the natural government" ([1835; 1840] 1945, 2: 296). Enlightened citizens are needed to craft systems of governance that take account of multiple communities of relationships.

The enactment of treaties by European nation-states to create first the European Community and later the European Union has brought an enduring peace since World War II as diverse authorities have pursued discussions and deliberations about problems faced in common by the peoples of Europe. The drafting of a constitution, including much of what represented a code of laws, has received a negative response in recent referenda. Processes of reflection and choice call for further reflections to capture the aspirations of Europeans in light of deepening inquiries about the meaning of European civilization. Harold J. Berman in *Law and Revolution* (1989) identifies the formation of the Western legal tradition with the papal dictate of Pope Gregory VII in 1075 establishing the autonomy of the Church from secular authority. The contestation over the meaning of law and the codification of law among Europeans contributed to the creation of free cities with their own self-governing charters, the establishment of guilds of skilled artisans working with one another across diverse language communities, the conduct of open markets throughout Europe, the emergence of merchant law, and the creation of enlightened codes of law. These developments were accompanied by the transformation of the Holy Roman Empire into a European confederation. How these endeavors contribute to what it means to engage in covenants of a constitutional character needs to become a part of the continuing reflections among Europeans and other democratic peoples in the next millennium.

The confederate-like structure of the Holy Roman Empire was subject to some of the weaknesses identified in Hamilton's and Madison's diagnoses of the failure of American confederation. The Napoleonic conquests, marking the end of the Holy Roman Empire, failed to undertake diagnostic assessments and to engage in deliberative efforts to establish good government from reflection and choice.

Rather than sovereign nation-states and associations of nation-states as created in the League of Nations and the United Nations, we need to give serious

attention to Tocqueville's concept of the principle of the sovereignty of the people reinforced by the assessments of Hamilton and Madison about the essential place of individual responsibility in the exercise of the prerogatives of persons and citizens. Fictions created by the association of individuals are helpful only in light of shared understandings and complementarities of actions amid continuing reflection and choice. These fictions, as such, do not engage in reflection and choice. Fictions are ways of creating concepts about social realities, not reality as such. The mutual understandings grounded in language yield misunderstandings unless they come back to the place of individual persons and citizens engaged in reflection, choice, and the presence of activities grounded in mutually understood patterns of artisanship.

If we rely upon the inquiries and teachings of Hamilton and Madison in *The Federalist* and of Tocqueville in *Democracy in America*, life in civil society is constituted by how individuals as persons and citizens relate to one another in multitudes of shared communities of understanding in the pursuit of innumerable opportunities. Among these innumerable opportunities are values that we characterize as learning, enlightenment, and scholarship.

Citizens in self-governing democracies are the ones who recognize problems and potentials among communities of people in contrast to persons in sovereign nation-states who run the risk of individuals in command of instruments of force exercising *coups d'état* to establish military dictatorships and presume to exercise supreme authority. This awareness turns to discussions about the nature of the situation and of the communities of people who share these problems and potentials. Some may have special advantage and ignore impending difficulties. Proceedings in equity jurisprudence may need to be undertaken to determine the scope of the problem and what might be a workable and equitable resolution in establishing a public entity capable of coping with the problem. Both preliminary inquiries and proceedings to create an appropriate public entity and negotiate working arrangements with existing public entities are aspects of public entrepreneurship to establish an appropriate public enterprise to operate in a public service economy in a self-governing society.

Monitoring performance occurs in the way that problems and potential are realized among those who share in the open public realm of a republican character, the scrutiny of public auditors, and the

inquiry of grand jurors concerned with the discharge of public trust. All such forms of entrepreneurship, performance of services, and open public scrutiny are features of public administration that might more appropriately be identified as democratic administration. Fragmentation of authority and overlapping jurisdictions are essential attributes of democratic administration, but their republican character—openness—enhances complementary performance.

If constitutions enunciate rules of fair games, they can evoke widespread support approaching unanimity. Reoccurring processes for selecting personnel to exercise public authority, levying taxes, allocating funds, and creating specific endeavors and obligation, can involve less demanding rules for taking collective decisions given effective rules of constitutional law.

Constitutions, statutory enactments, regulations, contractual undertakings, and shared communities of understanding all bear upon processes included in the principle of the sovereignty of the people. The field of law, the study of jurisprudence, and the exercise of proceedings in equity jurisprudence are essential features of what might be called *entrepreneurship* in the creation and conduct of working public enterprises.

Many of the essential goods of life in advanced societies are shared in common by communities of people living in diverse ecological settings. Sharing in common requires the exercise of some governmental prerogatives identified with public enterprises in contrast to private enterprises. Individual endeavors and private enterprises depend upon complementary public endeavors in the ecological exigencies in which people live their lives. Public entrepreneurship adhering to the principles of the sovereignty of peo-

ple requires attention to the complementarities of diverse exigencies rather than the command and control from a single center in sovereign nation-states. Intellectual competence and collegiality replace the prerogatives of command and control. By implication, Tocqueville's "new science of politics for a new age" requires a reawakening of sympathetic religious beliefs, enhanced standards of moral judgment, and diverse patterns of governance, historical traditions, and ecological exigencies. Given the great ecological diversity in which people live their lives, civic enlightenment requires citizens to achieve sufficient intellectual competence to draw upon the competence of others to take advantage of a variety of opportunities that are available as citizens acquire knowledgeable grounds to work with colleagues in self-governing societies.

When citizens are sovereign, political scientists confront the task of civic education reaching toward knowledgeable enlightenment and working collegiality in shared communities of sympathy and understanding. This is our intellectual challenge in political science as we extend patterns of association and political authority from the local to the global in the next millennium. What John Gaus called *public administration* has become *public entrepreneurship*. Recourse to covenants of mutual understanding in constituting enduring collective endeavors capable of achieving complementary working relationships is the way of constituting federal systems of governance that reach out to larger communities of relationships. A world of sovereign peoples will be vastly different than a world of sovereign, mutually exclusive, nation-states.

We who identify ourselves as political scientists are also required to recognize

that other disciplines in the social sciences and humanities are necessary complements of what is manifest in human societies. As Harold Lasswell and Abraham Kaplan have indicated, "all of the social sciences have an identical subject matter, but they adopt toward this subject matter varying observational standpoints (frames of reference) leading to different sets of problems" (1950, 215).

The exercise of reflection and choice, both in constituting societies and in gaining enlightenment about self-governing potentials, draws upon and contributes to the emergence of human civilization. Lasswell and Kaplan's identical subject matter of the social sciences becomes Tocqueville's concern about feelings, sentiments, mores, ideas, movements, and laws among self-governing peoples, and Hamilton's concern for good government by reflection and choice or on accident and force.

The concept of sovereign nation-states in a world of mutually exclusive nation-states is a fiction that justifies who is entitled to exercise command and control over others in which individuals as persons become subjects rather than citizens. It is always individuals in societies who think, act, and achieve whatever it is that humans are able to accomplish. Life is a drama conducted on a stage of rule-ordered relationships.

We have much to learn and to extend our understanding of what it means to become citizen-sovereigns in the "great democratic revolution . . . going on among us." But, citizen-sovereigns run the risk of failure when acting on erroneous concepts, grand illusions, and lack of comprehension. Critical scrutiny is necessary to reflection and choice (Diamond 2005; Jacobs 2004). A new political science has an essential place for the lives of citizen-sovereigns in a new age.

## Note

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1. See recent works of Barbara Allen (2005), Sheldon Gellar (2005), Alexander Obolonsky (2003), Amos Sawyer (2005), and Sujai Shivakumar (2005).

2. John C. Peppin (1941) gives an extensive account of "the principle of legislative supremacy" as an opportunity for delivering the government of cities and other local subdivisions into the hands of political spoilsmen in the state legislature.

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