INTRODUCTION

We live with a complex conceptual inheritance that draws equally on the thought of classical Greece, Christianity, and the Enlightenment. Oversimplifying greatly, we can say that the Greeks formulated the ambition to subject the soul and the state to the order of reason; the Christians turned from reason to a will informed by grace; and the Enlightenment turned both reason and will toward a new appreciation of the ordinary as the object of interest and the limit of experience. All of these elements continue to inform our experience of the political. Each frames political time differently. The perspective of reason is that of timeless principle: politics is measured against principles of justice derived from argument, not experience. The perspective of will is that of history: politics is measured against a past that is understood as a kind of sacred self-revelation of the community. The perspective of interest is that of the present: politics is measured by markets. The confusion over the temporal character of our political life results from theorists and practitioners taking one perspective as the “truth,” and viewing the others as mere fictions or confusions. In fact, we live within multiple incommensurable symbolic frameworks. In different contexts, we are likely to appeal to different frameworks—principle, history, or interest. Theorists may be uncomfortable with the inability to give a single account of our political lives, but citizens of the modern state usually live comfortably within these multiple worlds. They can speak of a universal order of justice, of the patriotic virtues, and of the satisfaction of interests. Each of these normative frameworks supports a different conception of the international: a global order of human rights, a competition between sovereign nation-states, and global markets.

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Because market approaches dominate so much of contemporary analysis, I will have little to say about this perspective in this essay. Instead, I will focus on the other two perspectives: reason and will. Many of the differences between political theorists and constitutional theorists can best be understood as grounded in the different priorities they assign to these distinct perspectives. At the present moment, for example, their dispute often seems to center on the concept of sovereignty. The political theorists increasingly are abandoning the concept of sovereignty, which only acts as a break on the emergence of a liberal order of rights and markets of global scope. Constitutional theorists cannot do without the concept of sovereignty, for theirs is a world in which “we the people” create and maintain the nation. My ambition in this essay is not just to elaborate the different perspectives of justice and law, but to weigh in on the side of law. Modern political theorists have been so busy with the content of justice, they have failed to do justice to our own culture of sovereignty through the rule of law.

I. Modern Political Theory and the Social Contract

Modern political theory begins with the formulation of a particular narrative: the social contract. Theorizing politics from an imaginary point of origin is by no means a new enterprise. Plato, too, thought that the way to investigate justice was to construct “a city in speech,” by which he meant to imagine the origins of the political order as men come together to meet their needs. The modern account differs from Plato’s, however, in at least four respects: (1) it rejects the idea that political formations are organic; (2) it adopts an internal point of view; (3) it assumes a methodological individualization; and (4) it aims to derive a normative standard against which to measure actual polities.

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2 For a more complete account, see Paul W. Kahn, Putting Liberalism in Its Place 145-82 (2005).
Plato describes the rise and fall, the life cycle, of the well-ordered city. However he does not believe that one can simply freeze that movement at one point in order to maintain a just city. To stop the life cycle is no more possible for cities than for men, who also live through a complete life cycle from birth to death. Plato’s imagined city is fundamentally organic because it develops according to an internal logic. The character of the metaphor of the organic state shifts from classical to pre-modern Europe, but the idea of an internal, natural order to the political remains. Political order will develop or decline on its own rhythms.

The first point to be made about the social contract is that it rejects this whole complex of ideas about the state as an organic body. Political authority is not natural, but rather is a consequence of the finite actions of rulers and ruled. The state is a product of human artifice. As such, it can be made well or poorly. The state’s problems are neither inevitable nor a mark of sin, rather they are always subject to repair.

Second, Plato’s effort at political construction is always written from the point of view of an observer. Understanding something for him meant to identify its intelligible form within the changing material of becoming. The modern social contract tradition locates the theorist within the descriptive enterprise. He asks, what are the terms of association to which a rational agent would agree, i.e., what are the terms to which he, as author, would agree? The author writes as the universal, rational agent. Plato can write of the need for the state to deploy a “noble lie” if it is to bring order to the mix of individuals within it. The pre-modern European state too is founded on a mystery of sacred authority impenetrable to the ordinary person. The social contract can countenance no such lies or mysteries; it is fully transparent to all members of the polity.

Third, Plato assumes that individuals are formed by the city and that the problem of politics is to assure that individuals remain means to the polity’s ends. This remains true of the pre-modern state: the order of the political is not simply the aggregation of the ordinary interests of the individual. The ends of the polity work in the dimension of history—power—not individual welfare. Plato refers to a city with the latter horizon as “a city of pigs.” The social contract turns this around, asking not how the state creates useful individuals but under what conditions individuals will agree to create political authority. Its horizon is first life itself—Hobbes—and second individual welfare—Rawls.

Fourth, the end of Plato’s inquiry into political order is not the

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8 The problem for philosophy is to ask whether the good citizen can be a good man.
normative evaluation of the city, but the nature of justice in the individual soul. What is to be remade is not the state, but the individual.

pre-modern, European politics remained embedded in the sacred. The social contract, on the other hand, is about reshaping politics, not the soul. If political authority is the product of individual acts of authorization (delegation), then the terms under which it is created remain relevant as the normative measure of its actual performance. Authority can be removed as well as created. It is justly removed when it violates the terms of its creation.

Plato’s inquiry, no less than the modern social-contract tradition, represents an effort to subject political order to the scrutiny of reason. Both agree that reason’s method is to observe the coming together of the elementary parts of a complex entity. But despite his narration of construction, Plato does not have the idea that actual political organisms can be freely constructed on the basis of reason. This, however, is the ambition of the modern social contract tradition. This is the source of the modernist urge to build the political community from an imagined state of nature in which all that we can rely upon is our ability to reason and all that we can be sure of is that we confront a world of need and threat. The modern political task is to construct order from first principles that would be self-evidently valid to all rational persons who must establish a polity under the predictable conditions of material need and moderate scarcity of resources.9

From the beginning of the modern period, the ideal of the social contract has done double duty; it is theory directed at practice. Social contract theorists are philosophers of revolution regardless of their own political temperaments. Their theories ground the possibility of revolution, which is understood as the reenactment of the social contract. Thus, a politics that operates under the idea of the social contract is one that operates under the threat of revolution. If authority strays so far from the conditions of its creation that it is beyond the possibility of reform, it can and should be radically remade.

Certain characteristics of political time emerge from this linkage of theory and practice in the modern age. It is the time frame of the civil engineer or more broadly of what the Greeks called a “techne.” It is the

9 This does not necessarily mean a single empire. We cannot know in advance how far the application of reason will take us in the construction of political order. It may leave room for substantial variation within general parameters; it may set out alternative structures that are sensitive to contexts. If a plurality of reasonable states is possible, then the problem of creating an order of reason replicates itself in considering the proper relations among states. Thus, Rawls follows his works on the justice within a state with a work on justice among states, once again deploying his version of the social contract—the veil of ignorance. See JOHN RAWLS, THE LAW OF PEOPLES (1999). Ackerman and Habermas are similarly inclined to advance from the liberal state to a liberal international order. See, e.g., Bruce Ackerman, The Rise of World Constitutionalism, 83 VA. L. REV. 771 (1997); Jürgen Habermas, The European Nation-State: On the Past and Future of Sovereignty and Citizenship, 10 PUB. CULTURE 397 (1998).
time frame of “projects.” The engineer forms his projects by an appeal to timeless principles. In the one case, it is the science of mechanics, in the other the science of politics. Actual projects translate more or less well the timeless principles into particular arrangements. The principles remain the measure of the actual, which in turn is always subject to reform, and, if need be, to discard and reconstruction. We see this frame of reference in Jefferson’s appeal to “self-evident” principles or in the Federalist papers effort to provide the logic of the Constitution’s political arrangements. The history of the state has no value in itself, but only insofar as it too can serve as an epistemic resource: we may be able to learn something about principles by studying our own past. Politics may be an inductive, as well as a deductive, science. Madison came to Philadelphia having studied the history of past republics, not just the history of the American colonies.

As any number of constitutional theorists have pointed out, this picture, drawn from modern political theory and the revolutionary character of modernity, does not easily match our practice of the rule of law. Constitutional theory must explain a practice, which is partially informed by the modernist character of thought, but which remains embedded in a pre-modern structure of meaning. While political theory has developed ever more refined versions of the social contract, constitutional theorists have struggled to find a way to connect a practice of legal reasoning from a determinate text to the abstract products of the political theorists. Early efforts to theorize across these perspectives gave us the Bickelian vision of the judge, who opportunistically deploys the insights of theory to reform legal doctrine. More recent efforts have looked for a synthesis of liberalism and republicanism, producing Ackermanian dualism or Dworkin’s linkage of principle and fit.

For the most part, I believe these are efforts to square the circle, to resolve an unresolvable paradox. The problems run extremely deep, for American constitutionalism as a practice challenges not just a set of norms, but the entire style of liberal thought represented by the social contract tradition. We need to theorize the constitutional state from a perspective that does not assume the priority of reason, of the individual, and of reform. That is a large task. Here, I want to set the basic terms of this alternative model, contrast it with the liberalism of the social contract tradition, and indicate how the alternative makes better sense of the temporal structures that we find within our practice.

11 See ACKERMAN, supra note 4; RONALD DWORKIN, LAW’S EMPIRE (1986).
12 See KAHN, supra note 2.
II. POLITICAL PSYCHOLOGY: REDISCOVERING THE WILL

The classical Greeks first conceived of a hierarchy of faculties within the soul and projected that logos of the psyche onto the order of the state. To the classical philosopher, the problem for both the state and the individual was to subordinate the intemperate desires of the moment to the conclusions of principled deliberation. Plato’s philosopher-king is just one version of this common assumption that political rule and self-rule are both a function of reason, and ideally, the identical function. Early Christians recoiled from these claims for reason, believing that the most important truths were beyond the capacity of man’s limited understanding. Man stood in need of revelation. The paradox of establishing the political conditions for the rule of reason is displaced by the paradox of the human condition: how can finite man achieve the infinite? This paradox could no longer be overcome by the accident that a king may come to have an interest in philosophy—Plato’s answer—or by the cultivation of virtuous habits—Aristotle’s answer—but only by divine intervention. This belief in revelation required a reconceptualization of the faculties of the soul, and thus a different ordering of psyche and polity.

No element of the classical conception of the soul had as its object anything like revelation. Revelation as a new source of substantive truth led to the introduction of the faculty of will. The Christian conception of the will is best understood as the faculty of the soul that corresponds to the substantive idea of grace. Will is the potential to realize God’s grace. It is the faculty by which one puts the soul into a condition to receive that grace. The failure of the will is no longer weakness before temptation or the lack of habits that support political virtues like courage and moderation. The failure of the will now is that fall from grace which the Christian experiences as sin.

No amount of pursuit of the classical virtue of justice through the rule of reason will bring the soul into the presence of the sacred. The wise man may still be fallen. Grace is the response of an omnipotent God to the act of willed confession by the individual. By confession, I refer not just to the ritual of the Catholic Church, but more broadly to a purification and opening to the sacred. Through will one puts oneself in a position to receive grace. Confession marks the turning of the will toward God, by abandoning the finite self. This is will beyond reason and without desire. As Simon Weil writes, “[g]race fills empty spaces,

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but it can only enter where there is a void to receive it, and it is grace itself which makes this void.”14 Confession is the paradigmatic act of speech in a Christian metaphysics of the will. It is a speech that brings one to the edge of the sacred, while recognizing that speech cannot cross the boundary. Thus, the deliberative community of the Greek polis is displaced by the confessional community of the Church.

The will is that capacity man must have in a world in which meaning is wholly within the possession of God’s act of grace. In an echo of the Platonic homology of city/man, the reconceived soul of man now operates in a new homology of God/man. Thus, just as will represents the openness of man to revelation, will is the source of revelation in God. God wills the world into existence; every manifestation of the divine is a renewed expression of God’s will. No longer reason, but will binds the world into a single whole.

For the Greeks, the problem of the will was conceived as that of controlling a weak will—a will that would not comply with the demands of reason even when one knew what should be done. Accordingly, the virtues of the will were temperance and courage, the capacity to do what was right under extreme conditions of either pleasure or pain.15 But what was right remained a matter of reason. Training of the will was a matter of forming correct habits within a context of reasonable community expectations. These habits could then be relied upon when circumstances became strained. This normative sensibility led the Greeks to produce the first works of history in the West. These works presented narratives of heroic actions, i.e., of overcoming weakness of the will by deploying the virtues of reason under extreme conditions. This, for example, was the special virtue of Odysseus.

In his autobiography, Augustine describes his confrontation with, and ultimate rejection of, this classical conception of the will. The experience he describes begins from the problem of weakness of the will: *akrasia*. Despite his education, and despite his powers of deliberation, he is without the power to form his character under the guidance of reason. Indeed, reason just makes matters worse. It becomes a source of radical doubt. Augustine is the first to record the experience of existential angst.16 Existence itself has become a problem, and the only answer to this problem is through a faith that reaches beyond reason.

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15 See Aristotle, Nicomachean Ethics bk. III, chs. 6-12 (David Ross et al. eds., 1998).
16 Saint Augustine, The Confessions of Saint Augustine bk. VII, ch. xxi, at 27 (Edward B. Pusey trans., 1999); see also Taylor, supra note 1, at 131 (“It is hardly an exaggeration to say that it was Augustine who introduced the inwardness of radical reflexivity and bequeathed it to the Western tradition of thought.”).
A polity organized on the principles of reason can never do more than replicate the limits of the individual soul and the incompleteness of finite efforts at justice. Organized political life comes to be seen, therefore, as the condition of fallen man. This corrupt political life is to be transcended in a new community of faith. Modern politics continues to bear remnants of this Christian idea of the corruption of the body. Politics, we often feel, is all too much of this world. When we take up politics, we inevitably dirty our hands.

The state too must have a will, if it is to become a possible representation of the divine. Politics is no longer a matter of justice under the guidance of reason, but of faith within a community of those sharing a common will. This idea of a community of the faithful begins in the Church, but becomes central to the Western concept of nationhood and its tenets of patriotism, loyalty, and, indeed, treason. A political community is not merely an organized structure for the development and deployment of reason. Its foundation lies in will, not reason. Modern political thought expressed this idea in the notion of “sovereignty.” The sovereign is the point of reification of the common will of the nation. The sovereign has will, not reason and not desire. Indeed, we come to the idea of the sovereign through that of the will: because there must be a national will, there must be a subject in possession of that will. This is the sovereign.

For centuries, the sovereign will was quite literally embodied in a subject: the monarch was the mystical corpus of the state. That incorporation borrowed explicitly from Christology. The sovereign did not just claim a “divine right” to rule—a claim about the derivation of legitimacy. Rather, the sovereign was an appearance of the divine. He or she was Christ-like, in claiming, for example, a miraculous power to heal the sick.17 This substantive claim of the monarch cannot survive the desacralization of the modern world. Yet the understanding of the form of the sovereign will remains.

The deeper point that survives the death of the king concerns the operation of the metaphysics of the will in the construction of the community’s self-understanding. Just as the will of the individual appears in and through a metaphysics of faith, so too does the will of the nation. The nation is a community of faith. To this, the idea of sovereignty is critical, while the representation of the sovereign in the monarch is not. The monarch claimed to be the “mystical corpus of the state,” but was vulnerable to competing symbolic representations of the national will. The sovereign as mystical corpus survives long after monarchs disappear. Revolution kills the king, but also announces the presence of a new sovereign: We the People.

The social contract of the political theorists fails to understand the foundation of sovereignty in the metaphysics of the will. These theorists are likely to see popular sovereignty as a voting mechanism, rather than as an expression of a faith in a transtemporal, plural subject. They see a two-termed world of reason and interest. But that is exactly their problem: theories of politics are produced that fail to grasp the distinctive character of modern politics—a character founded on the will. Prior to the will, there was no sovereign. Without sovereignty, we do not have modern politics.18

These sources point in very different directions when we theorize about values and sources of meaning. Reason points toward the universal; will points toward the history of a confessional community. Reason appears with a kind of timelessness; will appears in and through the narrative of a uniquely valued community. Individual subjects, as well as the collective polity, orient themselves in both of these dimensions, that of timeless truth—the perspective of justice—and that of historical continuity—the perspective of nationalism and sacrifice. Each generates a different attitude toward the future into which the polity is moving: the reformist ambition of reaching closer and closer to an ideal of justice, or the maintenance of an historical legacy. Similarly, each generates a different perspective on the relationship between self and others. That relationship moves from contract to sacrifice.19

III. POLITICS AND THE METAPHYSICS OF WILL

The social contract tradition is caught in a kind of dialectic of reason and interest: is the end of politics justice or economic well being? Yet, modern political experience has been centrally a phenomenon of the will. The more we take the perspective of the will, the more we emphasize a normative perspective that places a revelatory act at the foundation of the community’s self-understanding. This is a politics that borrows from the religious linkage of will and revelation. Faculty and object provide two perspectives on a single experience of meaning. Grace is a function of will, and will a function of grace. The tendency of early Christian thought to collapse across this line, such that man becomes a part of the divine, was a danger resisted as a form of

19 A complete account must add the perspective of interest, modeled on bodily desire. This is presentist, particular, and contractual. It models politics on a market.
heresy.20 The rise of modern political theology, however, embraces this heresy. The revelatory act—the moment of grace—is now that of self-revelation by the popular sovereign. In the politics of the nation-state, man—understood as the popular sovereign—has become divine. The source of the state’s creation is the will of the popular sovereign. That will reveals only itself: faculty and object have become identical.

The modern, democratic polity is founded on a transcendent act of self-revelation: revolution. The political value of revolution cannot be explained either by appeal to abstract norms—justice—or by analysis of the empirical causes—material need—leading to revolution at a particular moment in time. Revolution is not the effect of any cause, although the circumstances that are the occasion for revolution can be described. They are not its cause, because replication of those circumstances will not necessarily lead to revolution. At best, those circumstances “invite” revolution. Revolution breaks into ordinary time as a new moment of creation. It can never be reduced to its antecedent causes; nor can it be exhausted in the subsequent history it makes possible. It is politics in the form of a democratic metaphysics of the will.

Whether a modern nation-state can exist without a revolutionary consciousness is an open question. Even nations as ethnically and culturally stable as France or England maintain a narrative of popular revolution. More importantly, every modern nation-state believes that it is subject to a potential revolution—a new mobilization of the sovereign people outside of law. Constitutions may not have sunset clauses, but neither can they declare illegitimate an investment of the popular sovereign in a new constitution. This is part of the nation-state’s sense of its own democratic legitimacy. Indeed, it is a necessary structure of the contemporary idea of a political will. The will of the popular sovereign is always deeper and richer than its particular terms of expression in a constitution.21 That will is an inexhaustible source of meaning for the state.

Successful revolution is followed by constitutional construction. Constitutional construction will necessarily appeal to reason for guidance, but the authority of a constitution derives not from reason but from will. The constitution preserves that sacred appearance of the popular sovereign and organizes political life around it. The constitution provides access to the sovereign revelation, but is never

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20 The idea that matter is nothing but a deterioration of the spirit is central to Gnostic thought, as well as the idea that man’s end is a return and reunion with the Godhead.

21 This intuition of the limits of law leads Carl Schmitt to locate sovereignty at the point of the power to declare an “exception” to legal rule. See Carl Schmitt, Political Theology: Four Chapters on the Concept of Sovereignty (George Schwab trans., MIT Press 1985) (1922).
fully adequate to it. It translates into the idiom of the ordinary the extraordinary experience of revolution. This juxtaposition of the extraordinary and the ordinary produces the problems of constitutional hermeneutics. On the one hand, constitutions appear as law, to which the ordinary canons of legal construction should apply. On the other hand, constitutions appear as an endless resource of self-understanding for the state. They preserve that original act of self-revelation by the popular sovereign.

From the standpoint of reason, there is not a substantial difference between reform and revolution. A gradualist agenda of reform can produce, over time, a political order that is as just as the outcome of dramatic revolutionary change. The common law evolution of a political order—for example, in England—may compete on the scale of reason and justice with the revolutionary constitutional construction of the United States.22 Only from the perspective of the will does revolution show itself to be different in kind from reform.23

Theorists who ignore the place of the will in American constitutionalism are likely to assimilate the constitutional tradition of Supreme Court adjudication to the common law working out of the order of reason.24 Analogical reasoning is at work in constitutional adjudication not as a part of an inductive science, but rather because every interpretation of the Constitution aims to make present, to illuminate, the expression of the popular sovereign. Every judicial opinion has the same source of authority, the same hermeneutic ambition. Accordingly, interpretation can begin at any place in the corpus because all point back to the same authoritative source. This has less to do with the evolution of reason through the mechanism of judicial practice, than with the transparency of interpretation to its object.

Comparing the originalism of revolution to the original position of Rawlsian liberalism, we see two quite different normative structures. One we value because it is ours; the other because it is no one’s in particular. One has value because it happened; the other has value only as a regulative ideal. This produces a paradox in the constitutional

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22 William Gladstone expressed this idea: “[A]s the British Constitution is the most subtle organism which has proceeded from the womb and the long gestation of progressive history, so the American Constitution is . . . the most wonderful work ever struck off at a given time by the brain and purpose of man.” William Gladstone, *Kin Beyond Sea*, 127 N. AM. REV. 179, 185 (1878).

23 Failure to recognize this difference in conceptual models produces the normative confusion of Ackerman’s dualism. He needs a theory of the will, but does not want to abandon his liberal commitment to reason. See Paul W. Kahn, *Community in Contemporary Constitutional Theory*, 99 YALE L.J. 1 (1989).

jurisprudence of democratic self-governance: the more the nation believes itself to be a product of the will of the popular sovereign, the less democratic it becomes—if we mean by democratic, subject to control through broadly participatory electoral mechanisms. Constitutional law maintains the revelatory act of the popular sovereign, which may not make direct contact with the contemporary wishes of a majority of the electorate. American constitutional theory has been focused on this problem since Alexander Bickel first labeled it the “counter-majoritarian difficulty.”\(^25\) This is the modern form of Rousseau’s distinction of the general will from the will of all.\(^26\) The distinction will never survive the scrutiny of reason; it rests on a metaphysics of the will.

Originalism as a mode of constitutional thought is inseparable from this experience of self-revelation by the popular sovereign.\(^27\) American debates over the appropriate form of constitutional interpretation always occur within a broadly originalist framework. All participants in the debate take seriously the claim that constitutionalism is a matter of giving effect to a text with its own history. All ask what it means to be “true” to the text.\(^28\) Originalism is sometimes presented as a doctrine designed to constrain judicial activism.\(^29\) Not only does this seem false as a practical matter,\(^30\) but it fails to explain the passion with which originalism is pursued. The powerful attraction of originalism is in the effort to preserve and make operational a sacred, revelatory past. The nonoriginalist does not challenge this end, so much as the manner in which that sacred past can continue to live in the present. This whole endeavor is a form of practical reasoning that appears simply irrational from the perspective of reason. Appeals to originalism seem a methodological category mistake to the liberal theoretician. But this is only because it is the mode of interpretation deployed by will, and against reason. We cannot measure faith by logic. The sacred is always beyond reason.

\(^{25}\) Bickel, supra note 10, at 16-23.


\(^{27}\) This is not to suggest that originalism is the only legitimate mode of constitutional interpretation. On the dialectical relationship between originalist and non-originalist interpretations of a “sacred” text, see Paul W. Kahn, The Reign of Law: Marbury v. Madison and the Construction of America 220 (1997).

\(^{28}\) See, e.g., Lawrence Lessig, Fidelity in Translation, 71 Tex. L. Rev. 1165 (1993) (critiquing a hermeneutics of strict originalism in the name of an originalist value).


\(^{30}\) Consider, for example, the contemporary revolution in federalism doctrine. See United States v. Lopez, 514 U.S. 549 (1995) (striking down federal legislation as exceeding congressional Commerce Clause powers); United States v. Morrison, 529 U.S. 598 (2000) (same).
Will privileges the narrative of self-creation of a particular community. There is no universal will; no will in the abstract. On this view, the origins of the political community represent a perfect state of grace, in which there is a complete transparency of the individual will to the sovereign will. This revolutionary community has a kind of transtemporal existence: all individuals—present and future—participate as members of the popular sovereign. For this reason, the actions of the Founders can continue to bind future generations: all are part of a single We. The atemporality of Christ has moved from church, to sovereign monarch, to the popular sovereign. Such a nation cannot be conceived on the model of reason or interest. It is the product of a revolutionary act of will that has become a self-validating source of revelation. It is the nation-state that becomes a church in which all citizens are part of the body, the mystical corpus, of the state.

Reason’s role in a system of the will is neither that of identifying universal truths nor that of discovering the implicit logic of a market order; its method is neither deductive nor inductive. Rather, reason’s task is hermeneutical: it must interpret manifestations of the sacred. Hermeneutics had its origins in the recognition that there is a unique demand on reason in the interpretation of a biblical text. A constitutionalism of popular sovereignty requires a similar approach to the sacred text of the civic religion. The task of political hermeneutics is to explain who we are as a community that has engaged in an act of self-creation. Its object is “we the people,” never we, the present voters. In its judicial form, hermeneutics interprets the constitutional text as the material representation of the sovereign people. Thus, the Supreme Court aims to speak in the voice of the sovereign people. If it fails, if it speaks only in the contemporary voice of politics, it is without legitimacy. Constitutional hermeneutics treats the text not as a source of just political principles, but as the revelatory source of our deepest common meaning. In its nonjudicial form, this same subordination of reason to the metaphysics of the will produces the political rhetoric of sacrifice: the call to the individual citizen to realize his or her deepest meaning in the giving over of the self wholly to the maintenance of the sacred meaning of the state.

Political rhetoric does not call the individual to sacrifice for the rule of a universal ideal of justice, nor for satisfaction of the interests of

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32 For examples of two classic forms of constitutional misreading, consider Beard’s interest analysis, and Perry’s turn to human rights. Neither makes contact with our constitutional practice as a hermeneutics of popular sovereignty. See Charles A. Beard, An Economic Interpretation of the Constitution of the United States (1913); Michael J. Perry, The Constitution, the Courts, and Human Rights (1982).
any particular citizen or group of citizens. It is a call to be as a part of the transtemporal unity of the state that is the popular sovereign. Just as liberal political thought cannot understand reason as hermeneutics, it has no understanding of the rhetoric of political sacrifice—except as a dangerous appeal to irrational passion. Nevertheless, a state that operated without constitutional hermeneutics or political rhetoric would be a post-modern political form that made little contact with the politics of the nation-state as we have experienced it over the last two centuries. It imagines the global reach of both laws based on reason and a market based on interests. Will disappears from political ontology. For many, of course, this sounds like the appropriate aspiration in an era of globalization. Faith is eliminated from politics in the same way that it has been eliminated from science. The sovereign will as the source of political creation, hermeneutics as the method of reasoning, and sacrifice as attitude toward the body’s interests are all remnants of the Judeo-Christian faith that have become part of our secular political tradition.

The politics of modern nation-states remains a world of symbols and miraculous appearances. The body of the citizen is to become a symbol—a point at which the popular sovereign shows itself by displacing interest. This is a politics of citizen sacrifice, which ranges from the battlefield, to the voting booth, to the courtroom. A virtuous political citizen willingly sacrifices his or her own interests. Sacrifice may appear first as the language of warfare, but it is more generally the language of “public spiritedness.” Thus, the general form of the pathology of modern politics is the pursuit of “special interests.” Church and nation-state are always calling on us to overcome the individualism of interest. Both appeal to a revelatory past and look forward to a redemptive future.

From the perspective of the will, the most basic structure of political reality is the transtemporal community. For the individual, contact with the sacred origins of the community requires an overcoming—a sacrifice—of private interests. The need to act as a public citizen is often expressed in contemporary constitutional thought. The liberal tenor of that thought, however, tends to understand this demand on the individual as a precondition for public deliberation based on reason. But reason is no less a problem from the perspective of will than is interest. The political community, founded on the will of the popular sovereign, requires a deliberate suspension of belief in the powers of a universal reason, no less than it requires a sacrifice of individual interests. Political deliberation is not an abstract

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33 See, e.g., ACKERMAN, supra note 4, at 230-94 (arguing a dualist conception of the “private citizen” that includes a public function of higher law making); Cass R. Sunstein, Naked Preferences and the Constitution, 84 COLUM. L. REV. 1689 (1984).
consideration of justice. It is, instead, the hermeneutic enterprise of constitutional interpretation. The sacred political community exists in the traditional paradox of Christianity: by sacrificing the subject, the self will be reborn; by abandoning reason and interest, one will find the truth.

Of course, the revolutionary consciousness of the popular sovereign makes a claim to justice. We inevitably bring our abstract understandings of justice to the task of performing a revolution, as well as to that of subsequently interpreting the meaning of the revolution. The popular sovereign must say something; it must produce a text. Where else can it look for the content of its discourse than to its moral and political ideals? Thus, the Declaration of Independence speaks of “self-evident truths,” which only in retrospect become the revelatory speech of the popular sovereign. That the American founders located their self-evident truths in substantial part in the classic liberal tradition is obviously important for the content of the politics of will in our tradition. Yet it is a mistake to see only the form of justice and not the politics of the will within which this tradition operates. The political community is not reducible to a collective effort to realize these liberal norms. Politics is not just something that gets in the way of liberalism.

Similarly, even revolutionary communities must be concerned about individual interests. The demands of the body must be met. Politics—even a politics of will—is not a kind of practical eschatology. A political community demands sacrifice, but it is not a suicide pact. While a politics of will must still respond to the claims of interest and reason, these intersections are not only incomplete, they represent a kind of boundary crossing as we find ourselves responding to very different claims. Thus, the American politics of the will occurs within a general understanding of markets as the means of meeting interests. This does not mean that economics displaces the politics of the will, but rather that the construction of a narrative of the national will makes room for an account of markets. It means that we are likely to confuse a particular form of the organization of production—property and markets—with the political narrative of self-revelation. We will invest our markets with more meaning than they can bear in themselves because they have been touched by the miraculous speech of the popular sovereign.

The political perspective of will is that of a community whose identity is constituted by the narrative of its own self-creation. History, prior to that founding act, lacks meaning. Pre-revolutionary history

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gains whatever meaning it has retrospectively, i.e., its meaning is only as a kind of preparation for the revolution. The American colonial experience, for example, is not understood as an aspect of British life, but as a kind of training for independence. The same is true in the modern, post-colonial world as each new state makes a claim to its colonial past. That past is reinscribed in the narrative of revolution; it is dispossessed of its place in a competing narrative of empire.

The birth of the post-colonial state, of which the United States was the first and the most successful, was made possible by the metaphysics of will. Revolution breaks the link with a colonial, and even a pre-colonial, past; it begins history over. This is the means by which the arbitrariness of the boundaries of the post-colonial state—a legacy of European, not indigenous, history—is simply eliminated from the narrative of political meaning. Within those boundaries, the popular sovereign reveals itself as a self-validating source of political meaning. Since the post-colonial state is a legacy of a Western idea of politics that traces directly to a Christian conception of the will, it should not be surprising that the actual politics of these states has, for the most part, failed to match the conceptual foundations of the polity.

Only from the perspective of a metaphysics of the will can we make sense of much of modern political practice—especially that of the United States. American constitutionalism looks strangely irrational and anachronistic to the elites of much of the rest of the modern West precisely because we remain enthralled by the perspective of the will. Our actual politics remains distinctly less liberal than our political theory, because we remain a sacred, political community.

Of course, American elites, no less than their equivalents in other developed countries, are deeply attracted to an emerging regime of globalization of markets and of law. They too see the virtues of reason. They too cultivate a sense of transnational—not transtemporal—identity. They too speak of the breakdown of traditional political boundaries. Yet, most Americans, and certainly the political leadership, remain conflicted over the virtues of globalization. Particularly so for two reasons: first, a deep tradition of constitutional law as a hermeneutics of the will; and second, the enduring persistence of a belief in American exceptionalism. These two points are reverse images of each other: American exceptionalism is grounded in a political psychology that privileges the perspective of the will.

Even abroad, however, we should not too quickly judge the tenor of a nation’s political form by looking only to expressions of political

and legal theory. The European Union, the model of a post-national sovereignty community, has hardly begun to displace the sense of identity through nationhood in the citizen’s political imagination. Europeans may not yet be done with the politics of will, and Americans remain firmly in its grasp.

CONCLUSION: THE DIVERSITY OF POLITICAL MEANINGS

There is no single story to be told about contemporary American politics. Three different normative perspectives or world views are set in competition: reason and will, which I have elaborated here, as well as interest, which I have for the most part ignored. The competition among them shapes many of our deepest political dilemmas at the level not just of national policy, but equally at that of the individual and the global. Consider the multiple norms to which the individual citizen feels drawn. He or she simultaneously affirms the virtues of participation in public deliberation over the character of justice, of satisfaction of interests through participation in a well-functioning market, and of responding to a call for sacrifice for the maintenance of the state. At the international level, we affirm the justice of universal human rights, the appeal of transnational markets, and the importance of state sovereignty.

We are replicating at the international level just those conflicts of faculties, values, and perspectives that we have been managing in our conceptions of domestic order since the modern nation-state emerged as a product of a revolutionary act expressing the will of the popular sovereign in an age of reason, and at a point in time when the promise of markets to satisfy the social question first became imaginable. The problems here are not just those of incommensurable values. Each value stands upon an entire metaphysics that grounds a political psychology. We live simultaneously in distinct universes, i.e., among diverse symbolic forms. There is no neutral perspective, no reality, separate from the forms themselves.

Although we can understand the institutions and values produced by each, the relationships among reason, will and interest cannot be stabilized in any one order. Consider, for example, the different attitude toward the future each adopts. From the perspective of will, the future always poses a threat of corruption, of a falling away from the meaning that created and sustains the community. From the perspective of reason, this fear of change is nothing less than submission to the dead-hand of the past. Reason looks to a future of endless reform, moving ever closer to an ideal order of justice. Interest rejects both the
reverence for the past and the hope for the future, looking to present satisfactions; it measures the future in terms of present value.

What is important to see is that none of this is true in and of itself. Nor is it true that the multiple perspectives and structures that we deploy constitute a complete account of possibilities, even for ourselves, let alone others. We could, for example, see interest as the product of character, and character as the product of a life built within a community. We could locate even the body’s desires in the historical narrative of a particular community. This is no more right or wrong than seeing desire as the domain of sin to be fought against by reason and will. All of our structures of thought have their own histories, their own genealogies. We are in no position to make universal claims when our own conceptual resources are so diverse and incommensurable.

Political theory built on the social contract stabilizes a number of conceptual resources available within the Western tradition. It represents a rough melding of normative perspectives of reason and interest. This marriage produces the odd spectacle of competing liberalisms that move across a spectrum that extends from libertarianism to the social welfare state, from Bentham’s utilitarianism to Rawl’s theory of justice. Different liberalisms can be understood as “local equilibria” of these conflicting resources. This approach explains the historical ambiguity in the meaning of liberalism, which points simultaneously to a conception of politics founded on notions of individual rights and to a market order. The former emphasizes the role of reason in liberal theory, while the latter emphasizes the role of interest.

All of these theories leave out of the account those norms that have their origin in the faculty of the will as it enters the Western tradition through the experience of Christianity. Will and grace are the terms of our inheritance from a post-classical world of monotheistic values and concepts. In the age of democratic states, there is a collapse of these terms: the people, as popular sovereign, endow their own revolutionary act of will with its sacred meaning. Every manifestation of the will of the popular sovereign has the aura of grace. We are a chosen people because we will ourselves into being and thus choose ourselves as a people. This is neither a matter of reason nor of interest, but of will and of the norms generated by a particular conception of the will. These concepts remain a part of the construction of meaning for the individual and the polity within the democratic, constitutional state.

37 See ARISTOTLE, supra note 15, at bk. II, ch. 1 (character is a function of community’s law).