

Sovereignty, RIP

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Note for Penn readers:

These are excerpts, abruptly rammed together, from a book I have in press, *Sovereignty, RIP*, not announcing the death of the concept but proposing that we retire (murder?) it.

In unvarnished pragmatist mode, I want to treat concepts, theories – rationality itself – as problem-solving tools. Then I want to suggest we can appraise political theories as attempts to solve problems. We can ask how good they are – and whether they've outlived their usefulness, as old problems get solved or just plain fade away, or even whether they've become problems in turn.

I have no interest in figuring out whether we should focus on concepts or discourse or ideology or ... because I've got nothing invested in the distinction between the history of concepts and the history of everything else, or of social/political/economic history. For me, that distinction isn't a deep and ubiquitous issue in social theory. It's a particular distinction that might or might not be worth drawing on particular occasions for particular reasons. In that way it's just like the distinction between things north and south of the Mason/Dixon line, or things before and after 1789, or devices before and after the invention of the transistor.

For my purposes the distinction between (let's call it this time) intellectual and social/political history is *not* useful. I cast the classic theory of sovereignty as an attempt to rescue Europe from the unutterably cruel bloodbaths of the wars of religion. Bodin, Hobbes, and others argued that to secure social order you have to have a political actor (whether corporate or individual) whose authority is unlimited, undivided, and unaccountable. Two important ancillary commitments trail in the wake of the theory: that sovereign authority is immensely dignified, and that law is the command of the sovereign. Over the next centuries, those three criteria are gutted. Constitutionalism stands for the proposition that we can limit sovereign authority; federalism, that we can divide it; the rule of law, that we can hold it accountable. The ancillary commitments come crashing

down as a result. There's no reason to pretend to be value-free or agnostic about these changes. They're dramatic improvements. We could have supplied the concept with new criteria, but we never did. So I pose a dilemma. Either the concept has no criteria governing its use, in which case it is vacuous nonsense; or people are still clinging to one or more of its classic criteria, in which case it's decidedly pernicious. Time, either way, for it to shuffle off the historical stage.

The argument then lives in the historical struggles I examine. They aren't illustrative examples of some independent and timeless normative theory; they are the very substance of the normative argument. Here are just a few selected snapshots.

“Oh what a bloody age is this!” lamented one observer.¹ Country after country riven by combat, abashed by unabashed cruelty: and this on a continent serenely confident it was civilized. Millions were killed. Contemporaries shrank from telling the tale — “unspeakable,”² thought one; “no words can sufficiently describe it, nor tears bemoan it,”³ thought another; “no tongue can express the barbarous usage,” thought a third⁴ — but still they told plenty.

Here’s Spain’s Duke of Alba smashing rebellion in the Netherlands. Naarden, 1572: the locals dutifully respond to a summons to the hospital chapel. “All these poor and miserable inhabitants being thus assembled, the Spanish soldiers were commanded to murder them all.” So they did,

¹ *The Bloody Persecution of Protestants in Ireland* (London, 1641), sig. A2 recto. I’ve modernized spelling (not capitalization) and cleaned up punctuation in quotations throughout, but kept the original spellings of titles in footnotes to make it easier to track down the sources.

² “The Most Humble Supplication of Certaine of the States of Lower Austria Made vnto the Emperour,” in *Two Very Lamentable Relations* (n.p., 1620), n.p. I owe the reference to *The Thirty Years War: A Sourcebook*, ed. Peter H. Wilson (New York: Palgrave Macmillan, 2010), 29.

³ Otto von Guericke’s eyewitness account in *The Thirty Years War: A Documentary History*, ed. Tryntje Helfferich (Indianapolis: Hackett, 2009), 109.

⁴ A 20 September 1644 letter from E. H., in G. S., *A True Relation of the Sad Passages, between Two Armies in the West* (London, 1644), 9. Likewise the poet Schiller on the Siege of Magdeburg: Johann Christoph Friedrich von Schiller, *The History of the Thirty Years’ War*, trans. A. J. W. Morrison (n.p.: Floating Press, 2008), 251; [François de La Noue], *The Politicke and Militarie Discourses of the Lord de la Noue*, trans. E. A. (London, 1587), 36-47. And then of course shrinking authors rely on ominous abstractions: “all manner of whoredom, ravishments, violences and worse, were committed by those infernal hellhounds, villains, and savage robbers” (Antony Colynet, *The True History of the Ciuill Warres of France* (London, [1591]), 205); “strange cruelties,” “burning, spoiling, and making havoc after a strange and cruel manner,” “horrible cruelties,” “outrageous cruelty,” “killing, spoiling, and murdering the inhabitants in most cruel and horrible manner, and making havoc of all things without pity or mercy,” and so on (*The Mutable and Wauering Estate of France, from the Yeare of Our Lord 1460, vntill the Yeare 1595* (London, 1597), 24, 26, 32, 42, 57).

though they paused to rape the women first. Then they headed out to the rest of the town. “The children had their throats cut, and in some houses some were tied to posts with cords, then the houses were fired, and they burnt alive.” The troops killed everyone and razed the town. The chronicler thought future ages wouldn’t believe that a man, a Christian, could even think of such atrocities.⁵ But the duke proudly contemplated his sanguinary years in the Netherlands. “Ransacking, spoiling, ruining, expelling, destroying, imprisoning, chaining, banishing, and confiscating of men’s goods, burning, hanging, beheading, breaking upon wheels, hanging men alive by the feet,” and more: the duke “bragged” over dinner that he’d ordered eighteen thousand executions over and above those his soldiers had killed.⁶ No wonder he earned the nickname “the iron duke.” No wonder a contemporary engraving shows him eating a child.⁷ No wonder that when a furious Leiden soldier found a fallen Spanish soldier, he “plucked the heart out of his body, as he lay half dead, and when he had gnawn it with his teeth, he cast it away from him.”⁸

⁵ Likewise for the St. Bartholomew Day’s Massacre, [Ambrosius de Bruyn], *A Narration, Briefely Contayning the History of the French Massacre, Especially That Horrible One at Paris, Which Happened in the Yeare 1572* (London, 1618), 25: “Good God, can these things enter into the hearts of *Christians*?” and James Howell, *A German Diet: or, The Ballance of Europe* (London, 1653), 54: “Is it possible that a Christian people trusting in the same Redeemer, govern’d by the same Laws, eating the same bread, breathing the same air, should prove such tigers?”

⁶ Ed[ward] Grimeston, *A Generall Historie of the Netherlands* (London, 1608), 496-97, 533-34.

⁷ There’s a reproduction in James Tanis and Daniel Horst, *Images of Discord: A Graphic Interpretation of the Opening Decades of the Eighty Years’ War* (Grand Rapids, MI: Bryn Mawr College Library and William B. Erdmans, 1993), 67. Or see <http://historynet.com/wp-content/uploads/image/2013/MHQ/EXTRAS/Netherlands.jpg> (last visited 25 July 2018).

⁸ T[homas] S[tocker], *A Tragicall Historie of the Troubles and Ciuile Warres of the Lowe Countries* (London, [1583]), 124 verso.

Pomerania, 1630:⁹ the Count of Tilly and Albrecht von Wallenstein's soldiers tied burning matches to residents' "noses, tongues, jaws, cheeks, breasts, legs, and secret parts." They also lit satchels of gunpowder on people's genitals. They tied cords around victims' necks and twisted hard enough for their ears and noses to bleed and for their eyes to pop out of their heads. They skinned people, as if they were seeking leather. They burned some in ovens, some in fires – and kept others alive over smoldering fires, relieving them now and then with cold drink, "lest in their torment they should die too soon." They castrated men in front of their wives and children, raped daughters in front of their parents. They forced the dying to pray to the devil. They pried open victims' mouths, "then poured down their throats water, stinking puddle, filthy liquids, and piss itself." And "they made the people by force to eat their own excrements."¹⁰

Jean Bodin first published *Les six livres de la République* in 1576; an expanded Latin translation followed in 1586; an English translation in 1606 was based mostly on the Latin version. This complicated textual history aside, I'm interested in the popular uptake of Bodin's work. It matters that the French version comes out just four years after St. Bartholomew's Day massacre, in the midst of the French wars of religion. It matters because context bestows meaning: we can grasp and evaluate Bodin's views as a bid to put an end to grotesque social and political turmoil.

Bodin is explicit, emphatic, about the commitments that comprise what I'm calling the classic theory of sovereignty. "Majesty or

⁹ I think that's the right year for the narrative I'm relying on here, thanks to *Chronologische taafelen* (Amsterdam, 1709), 28. For a stunning wealth of information on (especially but not only) the German military, see Fritz Redlich, *The German Military Enterpriser and His Work Force: A Study in European Economic and Social History*, 2 vols. (Wiesbaden: Franz Steiner Verlag GmbH, 1964-65).

¹⁰ [Philip] Vincent, *The Lamentations of Germany* (London, 1638), 11-14.

Sovereignty," he declares, "is the most high, absolute, and perpetual power over the citizens and subjects in a Commonweale." "Sovereignty is not limited either in power, charge, or time certain."¹¹ Nor can sovereign power be divided: "such states as wherein the rights of sovereignty are divided, are not rightly to be called Commonweales, but rather the corruption of Commonweales." That sounds like a verbal quibble, but Bodin is pressing an empirical claim: "where the rights of sovereignty are divided betwixt the prince and his subjects: in that confusion of the state, there is still endless stirs and quarrels, for the superiority, until that some one, some few, or all together have got the sovereignty."¹² The sovereign is accountable only to God: "he only is to be called absolute sovereign, who next unto God acknowledgeth none greater than himself." The sovereign then doesn't answer to any earthly power: "if he be enforced to serve any man, or to obey any man's command (be it by his own good liking, or against his will) . . . he loseth the title of majesty, and is no more a sovereign." So Bodin shrugs aside feudal dependencies: "Whereby a man may easily judge, that there are few or none absolute sovereign princes." So too he denies the possibility of holding the sovereign legally accountable. Law is the command of the sovereign, and it doesn't make sense to imagine the sovereign commanding himself, since he can as readily unbind himself: "which is a necessary reason to prove evidently that a king or sovereign prince cannot be subject to his own laws."¹³

The classic theory of sovereignty resonated in popular culture, too, thanks to texts specifically designed to circulate it. Here's a sermon grimly

¹¹ Jean Bodin, *The Six Bookes of a Commonweale: A Facsimile Reprint of the English Translation of 1606 Corrected and Supplemented*, ed. Kenneth Douglas McRae (Cambridge, MA: Harvard University Press, 1962), 84, 85.

¹² Bodin, *Six Bookes*, 194. See too P. Dormer, *Monarchia Triumphans: or, The Super-Eminency of Monarchy over Poliarchy* (London, 1666), 9.

¹³ Bodin, *Six Bookes*, 86, 114, 128, 92.

underlining the indispensability of sovereignty: “take Sovereignty from the face of the earth, and you turn it into a Cockpit. Men would become cut-throats and Cannibals one unto another. Murder, adulteries, incests, rapes, robberies, perjuries, witchcrafts, blasphemies, all kinds of villainies, outrageous and savage cruelty, would overflow all Countries. We should have a very hell upon earth, and the face of it covered with blood, as it was once with water.”¹⁴ More histrionic, hysterical, yet, but also more and more historically apt as the wars of religion drenched Europe in blood, is a famous *Exhortation* dating back to 1547, to be read out ceremoniously in church: “Take away kings, princes, rulers, magistrates, judges, and such states of God’s order, no man shall ride or go by the highway unrobbed, no man shall sleep in his own house or bed unkilld, no man shall keep his wife, children, & possessions in quietness: all things shall be common, and there must needs follow all mischief and utter destruction, both of souls, bodies, goods and commonwealths.” The explicit invocation of sovereignty followed immediately: “But blessed be God, that we in this realm of England feel not the horrible calamities, miseries & wretchedness, which all they undoubtedly feel & suffer, that lack this godly order. . . . God hath sent us his high gift, our most dear sovereign lord king Edward the sixth.”¹⁵ The exhortation was still trundling along over three centuries

¹⁴ Robert Bolton, *Two Sermons Preached at Northampton at Two Several Assizes There* (London, 1635), 10. This sermon was delivered in 1621 (see the title page for dates of the sermons).

¹⁵ “An Exhortacion, Concernyng Good Ordre and Obedience, to Rulers and Magistrates,” in *Certayne Sermons, or Homelies, Appoynted by the Kynges Maiestie, to Be Declared and Redde, by All Persones, Vicars, or Curates, Every Sondag in Their Churches* (n.p., 1547), n.p. See too *Here Begynneth a Lytell Treatyse in Englysshe, Called the Extripacion of Ignorancy* (n.p., 1536), n.p.: “Where is no soueraine / there reigneth incóuenyêce / As fraude / gyle / & extorció / with many other offêce.”

later: just swap in Victoria for Edward VI.¹⁶ I'll offer more such glimpses later, some sustained gazes too: but I want immediately to disabuse you of the fear – or proud conviction – that sovereignty was the concern of rarefied theorists, that it had no uptake in daily life. (I'd like too to get you over the prejudice, or considered conviction, that it's important to draw a bright line between distinguished works of theory and the puttering and nattering on of lesser figures, but time will tell.)

So let's zip ahead to 1775, to the outbreak of war between the American colonies and Britain. Entering the lists against the Americans, Samuel Johnson thundered, "In sovereignty there are no gradations. There may be limited royalty, there may be limited consulship; but there can be no limited government. There must in every society be some power or other from which there is no appeal, which admits no restrictions. . . ." ¹⁷ Johnson was infuriated by various pronouncements of the Second Continental Congress, which he saw as lighting the fuse of explosive war. The only way to achieve peace was for the colonists to submit to parliamentary sovereignty.

But, or so it seemed to many Americans, sovereignty wasn't a beneficent salve to bloody conflict. It precipitated such conflict. Some of the Second Continental Congress's language was unhappily prolix, but they clearly grasped the case against unlimited sovereignty.

If it was possible for men who exercise their reason to believe, that the divine author of our existence intended a part of the human race to hold an absolute property in, and an unbounded power over others, marked out by his infinite goodness and

¹⁶ "An Exhortation Concerning Good Order, and Obedience to Rulers and Magistrates," in *Certain Sermons, or Homilies, Appointed to Be Read in Churches, in the Time of the Late Queen Elizabeth of Famous Memory* (London, 1852), 100-101.

¹⁷ [Samuel Johnson], *Taxation No Tyranny* (London, 1775), 24.

wisdom as the objects of a legal domination, never rightfully resistible, however severe and oppressive, the inhabitants of these colonies might at least require from the parliament of Great Britain some evidence, that this dreadful authority over them has been granted to that body. But a reverence for our great Creator, principles of humanity, and the dictates of common sense, must convince all those who reflect upon the subject, that government was instituted to promote the welfare of mankind, and ought to be administered for the attainment of that end.

Britain's parliament, they complained, was "blinded . . . by their intemperate rage for unlimited domination."¹⁸

Back in London, James Macpherson — once the progenitor of the Ossianic literary hoax, now serving the government as a hired gun¹⁹ — sneered at Congress's style and substance alike: "The declaration of the Congress begins with an involved period, which either contains no meaning, or a meaning not founded on the principles of reason. They seem to insinuate, that no body of men, in any Empire, can exercise an 'unbounded authority over others'; an opinion contrary to fact under every form of Government. No maxim in policy is more universally admitted, than that a supreme and uncontrollable power must exist somewhere in every state." The language might as well have been lifted from Blackstone. Maybe it was. Macpherson was happy to concede that such power would be "justly dreaded and reprobated" in a king: the Stuart monarchs would have been appalled, but the point is a useful reminder that the classic theory of sovereignty leaves open whether sovereignty lies in a monarch, a

¹⁸ *A Declaration by the Representatives of the United Colonies of North America, Now Met in General Congress in Philadelphia, Setting Forth the Cause and Necessity of Their Taking up Arms* ([Philadelphia?, 1775]), 2.

¹⁹ *DNB* s.v. Macpherson, James (1736-1796).

parliament, both jointly, or whatever other government actors one could invoke. Negotiations would be impossible, declared Macpherson, as long as the colonies pretended to sovereignty themselves. "Nations, as well as individuals, have a character, a certain dignity, which they must preserve at the risk of their existence."²⁰ Sovereign dignity isn't only a matter of courtiers fawning and scraping, of ambassadors huffing and puffing, of Queen Elizabeth's aggrandizing and feasting. It would be degrading for Parliament to stoop to negotiate with the unruly colonists. Better to kill them.

Not that everyone in Britain saw it that way. Hugh Baillie pounced on Macpherson's concession that it would be disastrous to vest sovereignty in one man and insisted that it would be as disastrous to vest it anywhere else, too. "Placing unbounded, or arbitrary power above the law, in any number of men, is equally bad and destructive of property, as placing that power in one man."²¹ Nor did everyone in America rally to the Continental Congress. But John Adams saw the same menacing implications of sovereignty as did Baillie. "The fundamental article of my political creed," he wrote to Jefferson, "is, that despotism, or unlimited sovereignty, or absolute power, is the same in a majority of a popular assembly, an aristocratical council, an oligarchical junto, and a single emperor. Equally arbitrary, cruel, bloody, and in every respect diabolical."²² If you were

²⁰ [James Macpherson], *The Rights of Great Britain Asserted against the Claims of America: Being an Answer to the Declaration of the General Congress* (London, 1776), 14, 87.

²¹ [Hugh Baillie], *Some Observations on a Pamphlet Lately Published, Entitled The Rights of Great-Britain Asserted against the Claims of America, Being an Answer to the Declaration of the General Congress* (London, 1776), 1. See too M[anasseh] Dawes, *The Nature and Extent of Supreme Power* (London, 1783), 23; *The Means of Effectually Preventing Theft and Robbery* (London, 1783), 104.

²² John Adams to Thomas Jefferson, 13 November 1815, *The Works of John Adams*, ed. Charles Francis Adams, 10 vols. (Boston, 1850-56), 10:174. See too John Adams, A

taken aback by the stunts of the Stuarts, you had to realize that the problem wasn't monarchy and the solution wasn't transferring sovereignty to parliament or whoever or wherever or whatever else. The problem was sovereignty.

Like the Continental Congress, Tom Paine clearly grasped the stakes; unlike them, he could turn a phrase. In *Common Sense*, that runaway bestseller of 1776, Paine exulted, "in America THE LAW IS KING. For as in absolute governments the King is law, so in free countries the law *ought* to be King, and there ought to be no other."²³ Or, as he put it on another occasion, "I am a Citizen of a country which knows no other Majesty than that of the People – no other Government than that of the Representative body – no other Sovereignty than that of the Laws."²⁴ This is more than a republican rejection of monarchy. It's an emphatic rejection of the command theory of law. Twenty years after *Common Sense*, a letter in a newspaper fastened on the essential contrast: "In Monarchical governments the King is law – In Representative governments the law is King."²⁵ In 1812, a Maryland legislative committee reporting on Baltimore riots appealed to "the sovereignty of the law."²⁶

Defence of the Constitutions of Government of the United States of America, 3 vols. (London, 1787-88), 3:304-305.

²³ An Englishman, *Common Sense* (Philadelphia, 1776), 32.

²⁴ Thomas Paine, *Thoughts on the Peace, and the Probable Advantages Thereof to the United States of America*, new ed. (London, 1791), 23. See too "Democracy," *Boston Quarterly Review* (January 1838), in *The Early Works of Orestes A. Brownson*, ed. Patrick W. Carey, 7 vols. (Milwaukee: Marquette University Press, 2000-2007), 3:277-78.

²⁵ Philo Virtutus, "Monarchical and Representative Government Contrasted," *Otsego Herald* (21 April 1796).

²⁶ *The War of 1812: Writings from America's Second War of Independence*, ed. Donald R. Hickey (New York: Library of America, 2013), 55, 68. For explicit rejections of "law is king" in the name of popular sovereignty, see "The People Are King," *Kansas Agitator* (26 January 1893), "Jo McDill's Musings," *Kansas Agitator* (13 February 1903).

The colonists didn't just draft and ratify the new federal constitution. They were already hurling themselves into the task of forging and renewing state constitutions, too.²⁷ Scant months after the Declaration of Independence, Pennsylvania adopted a new constitution. Denouncing the "most cruel and unjust war" George III was waging against them "for the avowed purpose of reducing them to a total and abject submission to the despotic domination of the British parliament" – or, as English loyalists would have had it, to sovereignty – the constitution opened with a generous dollop of individual rights against the state.²⁸ So did Maryland's and North Carolina's constitutions, later that same year.²⁹ One provision of New Jersey's constitution of 3 July 1776 is telling: "That all criminals shall be admitted to the same privileges of witnesses and counsel, as their prosecutors are or shall be entitled to."³⁰ Contrast Charles insisting he had to have the right to throw men in jail without even charging them. Whether you're inclined to celebrate such protections for criminal suspects is irrelevant for my purposes. What matters instead is seeing a limit to sovereign authority. Squint as hard as I can, I just can't get myself even to glimpse a political solecism, an incoherent and lethal defiance of the necessary logic of political authority. All I can see is a homespun but important reminder of how salutary limits on state authority can be. The usual story is that American state governments enjoy indefinite police powers. But state constitutions impose limits, too. As one 1832 observer put it, "It will be observed on consulting some of the state constitutions, that

²⁷ The texts of all state constitutions over time are available at <http://www.stateconstitutions.umd.edu/index.aspx> (last visited 27 August 2018).

²⁸ Constitution of Pennsylvania, 28 September 1776.

²⁹ Constitution of Maryland, 10 November 1776; Constitution of North Carolina, 18 December 1776.

³⁰ Constitution of New Jersey, 3 July 1776, Art. IX.

they contain words expressive of a grant of powers, which though limited, are sovereign within the limits.”³¹

By the 1830s, John Quincy Adams sounded serene in rubbishing the insistence that sovereignty had to be unlimited. Airily dismissing Hobbes’s *Leviathan* in his diary, Adams wrote, “there is nothing in the book worth retaining.” Filmer’s account, he added days later, was “utterly absurd.”³² Nor did Adams keep his sentiments secret. Addressing the citizens of Quincy at their 1831 celebration of the Fourth of July, he branded Blackstone’s bits on sovereignty “a false definition of the term *sovereignty*; an erroneous estimate of the extent of *sovereign* power!” Blackstone had it backwards. “Unlimited power belongs not to the nature of man; and rotten will be the foundation of every government leaning upon such a maxim for its support.” In the clutches of Blackstone’s invidious fantasy, Parliament had misunderstood the colonies from the start. “There was no such thing in [state] constitutions as an absolute, irresistible, despotic power, lurking *somewhere* under the cabalistic denomination of *sovereignty*.”³³ In 1833, Daniel Webster remarked, “The sovereignty of government is an idea belonging to the other side of the Atlantic. No such thing is known in

³¹ Benjamin L. Oliver, *The Rights of an American Citizen* (Boston, 1832), 136.

³² John Quincy Adams, *Diaries*, ed. David Waldstreicher, 2 vols. (New York: Library of America, 2017), 2:353 (26 March 1835), 355 (31 March 1835).

³³ John Quincy Adams, *An Oration Addressed to the Citizens of the Town of Quincy, on the Fourth of July, 1831* (Boston, 1831), 12-13, 21-22. For an approving review, see “Mr. Adams’s Oration,” *American Traveller* (26 July 1831). For partial agreement with Adams, see G. S., “Sovereignty,” *The Examiner, and Journal of Political Economy Devoted to the Advancement of the Cause of State Rights and Free Trade* (5 March and 16 April 1834). See too Adams, *An Oration Delivered before the Inhabitants of the Town of Newburyport, at Their Request, on the Sixty-First Anniversary of the Declaration of Independence* (Newburyport, 1837), 9, 25-26. Decades later, one of Adams’s grandsons would sketch a history with the same lesson: Henry Brooks Adams, “The Session,” *North American Review* (July 1870). And see the remarks of Sen. William B. Bate (D-TN), *Congressional Record* (20 December 1892).

North America. Our governments are all limited . . . all being restrained by written constitutions.”³⁴

I’ll close this chapter with an excerpt from a 1916 account of Americanism: “What constitutional government intended to do was to end forever the idea that there is any rightful depository of unlimited power; in brief, to destroy the error that anyone’s will is law, and to establish the principle that law is not a product of will, but a system of rules for the regulation of will, derived from the authority of reason.”³⁵ You might well think that last line an obscure bit of jurisprudence. But I want to insist on how utterly banal – for us, here, now, where it happens that “us” is hundreds of millions of people, and “here” is not just the United States, and “now” has been for quite some time – this bid to constrain unlimited power is, how odd it makes the command theory of law look, and then how weirdly counterintuitive the classic theory of sovereignty must now seem, with its insistence that sovereign authority must be unlimited. The shift here is not one of “discourse,” a mere *façon de parler*. It depends on actual changes in governing arrangements, on successful struggles in one country after another to constrain political authority. And again I see no reason to construe these changes in some detached or value-neutral or relativist way, as if we happen to have different commitments these days. I think it painfully obvious we should embrace limits on political authority as beneficial, even crucial.

In March 1764, Lord Grenville insisted that Britain could, should, must collect more than customs duties. “Something farther must be thought of. A stamp duty in America; ’twas easily collected, without a

³⁴ “The Constitution Not a Compact between Sovereign States,” in *The Works of Daniel Webster*, 6 vols. (Boston, 1851), 3:469; or in *Gales & Seaton’s Register* (16 February 1833).

³⁵ David Jayne Hill, *Americanism: What It Is* (New York: D. Appleton, 1916), 103.

large body of officers. Britain has an inherent right to lay inland duties there. The very sovereignty of this kingdom depends on it.”³⁶ “A power to lay on taxes,” fumed a bellicose Pacificus, “is inseparable from the rights of Sovereignty. Who ever heard of a Sovereign who could not tax his subjects? . . . An American only could have thought of so impotent a Sovereignty, a Sovereignty which would be such only in name; but, like the Log in the fable, might be insulted at pleasure by American frogs.”³⁷

These appeals to sovereignty could turn into pure symbolic politics. Take for instance the January 1766 joint meeting of the Houses, when some members denounced the government for being too complaisant. Defending the Stamp Act, Hans Stanley announced, “The tax was not a twentieth part of what they could afford to pay; but that was not the point: he had rather have a peppercorn to acknowledge our sovereignty, than millions paid into the Treasury without it.” I suspect sovereignty is in the margins, too, when Lord Clare held “that the honour and dignity of the kingdom obliged us to compel the execution of the stamp act, except where the right was acknowledged, and the repeal solicited as a favour.”³⁸ (A decade later, such bids to maintain dignity inspired an incredulous response: “I am well aware that it is said we must maintain the dignity of Parliament. Let me ask, what dignity is that which will not descend to make millions happy. . .? What dignity is that which, to enforce a disputed mode of obtaining revenue, will destroy commerce, spread poverty and desolation, and dry up every channel, every source from which revenue or any real substantial benefit can be expected?”)³⁹ The same symbolic politics

³⁶ *Proceedings and Debates of the British Parliament Respecting North America 1754-1783*, ed. R. C. Simmons and P. D. G. Thomas, 6 vols. (Millwood and White Plains, NY: Kraus International Publications, 1982-87), 1:492 (9 March 1764).

³⁷ Pacificus, “To the Printer,” *Gazetteer and New Daily Advertiser* (26 October 1765).

³⁸ *Proceedings and Debates 1754-1783*, 2:81, 84 (14 January 1766).

³⁹ *Proceedings and Debates 1754-1783*, 6:400 (Mr. Cruger, 20 February 1776).

motivated Lord North to dig in on a financially insignificant tax on tea: “the duty on tea must be maintained, as a mark of the supremacy of Parliament, and an efficient declaration of their right to govern the colonies.”⁴⁰ No surprise: North already had insisted that “whatever prudence or policy might hereafter induce,” he wouldn’t back down on the Paper and Glass Act “*till we saw America prostrate at our feet.*”⁴¹ The language of peppercorns and prostration elicited jeers, but a supercilious North didn’t back down.⁴² “They deny our legislative authority,” he snarled. “If they deny authority in one instance it goes to all. We must control them or submit to them.”⁴³ Earl Talbot glared at the colonies’ dismal record: “they have been obstinate, undutiful and ungovernable from the beginning.” So Parliament would have to teach the same old lesson, “that the supreme power retains the sovereignty over its several subordinate members, and of course” that includes “the right of taxation.”⁴⁴ Before we saw James I’s assuring Parliament in 1610 “that the king may take subsidies without the consent of his people, he condemns

⁴⁰ *Proceedings and Debates 1754-1783*, 3:239 (5 March 1770).

⁴¹ *Proceedings and Debates 1754-1783*, 3:13 (8 November 1768). See too Manlius Torquatus, “Written on the Repeal of the Excise on Cyder,” in *A New and Impartial Collection of Interesting Letters, from the Public Papers*, 2 vols. (London, 1767), 2:149, complaining that “The Americans seek a total exemption from taxes laid on by the supreme legislature” and that “ministers, actuated by factious views, patronize demands which their duty to the nation commands them to crush.”

⁴² *Proceedings and Debates 1754-1783*, 3:304-305 (Burke, 9 May 1770); 4:38 (William Dowdeswell, 7 March 1774); 4:373 (North, 2 May 1774). Protests continued: *Proceedings and Debates 1754-1783*, 4:434 (Marquess of Rockingham, 18 May 1774); 5:542 (Lord Camden, 16 March 1775); 6:117 (Burke, 26 October 1775), leading to North’s protest that his words had been misconstrued and misreported, 6:118 (26 October 1775). That reference to peppercorns was scornfully hurled back in the wonderfully intemperate “The London Cit,” *Gazette of the United States* (13 May 1789).

⁴³ *Proceedings and Debates 1754-1783*, 4:76 (14 March 1774).

⁴⁴ *Proceedings and Debates 1754-1783*, 6:441 (5 March 1776).

the doctrine[] as absurd”: that concession had been forgotten. So had Clarendon’s realization that governments could readily forswear the right to tax without consent: “As there is no Sovereign in *Europe* who pretends to this right of Sovereignty, so there was never any Kingdom, or considerable Country lost by want of it, or preserv’d by the actual exercise of it.”⁴⁵

I’m generally reluctant to draw tight links between texts in political theory and what political actors are up to – the “transmission” lines are tangled, the “messages” routinely garbled, the political actors transfixed by exigencies not incandescent in theory’s firmament – but in February 1766 Lord Chancellor Northington offered a striking rendition of the classic account of sovereignty, and it wouldn’t surprise me if Northington, himself a lawyer, had read Blackstone’s account, published the previous year. “Every government can arbitrarily impose laws on all its subjects,” said Northington; “there must be a supreme dominion in every state; whether monarchical, aristocratical, democratical, or mixed. And all the subjects of each state are bound by the laws made by government.”⁴⁶ The next month, the Declaratory Act unceremoniously – or, perhaps, quite ceremoniously – shoved aside any and all claims to autonomy the colonies offered: “all resolutions, votes, orders, and proceedings, in any of the said colonies or plantations, whereby the power and authority of the Parliament of *Great Britain* to make laws and statutes as aforesaid is denied, or drawn into question, are, and are hereby declared to be, utterly null and void to all intents and purposes whatsoever.”⁴⁷ Thomas Pownall urged the Commons to rivet their attention on “the sovereignty and supremacy of Parliaments.

⁴⁵ Edward [Hyde], Earl of Clarendon, *A Brief View and Survey of the Dangerous and Pernicious Errors to Church and State, in Mr. Hobbes’s Book, Entitled Leviathan* (Oxford, 1676), 176.

⁴⁶ *Proceedings and Debates 1754-1783*, 2:129 (3 February 1766); *DNB* s.v. Henley, Robert, first Earl of Northington (c. 1708-1772).

⁴⁷ 6 Geo. III, c. 11 (18 March 1766).

That is a line from which you ought never to deviate, which ought never to be out of sight. The Parliament hath and must have . . . has had, and ever will have, a sovereign supreme power and jurisdiction over every part of the dominions of the state, to make laws in all cases whatsoever; this is a proposition which exists of absolute necessity." Parliament's Declaratory Act was "a visible sign and symbol of its sovereignty . . . and if ever anyone . . . should attempt to erase, or to remove it, the whole edifice would fall to pieces."⁴⁸ A 1768 pamphleteer insisted too on "supreme and absolute sovereignty." "Without a right to tax," he asserted, "there can be no sovereignty."⁴⁹ In 1769, Allan Ramsay sneered at the "vulgar misapprehension" that taxation would be illegitimate without popular consent. In the colonies, in England, in Turkey, anywhere and everywhere, sovereignty was good enough. "Sovereignty admits of no degrees, it is always *supreme*, and to level it, is, in effect, to destroy it."⁵⁰ Thomas Hutchinson, royalist governor of Massachusetts, saluted Ramsay's text as "the best thing I have ever seen on the subject."⁵¹

Various actors repurposed *imperium in imperio* to drive home the alleged fallacies of the colonists' appeal for some kind of jurisdictional autonomy. "Two supreme independent authorities cannot exist in the same state," Massachusettensis instructed his readers. "It would be what is

⁴⁸ *Proceedings and Debates 1754-1783*, 3:154-55 (19 April 1769).

⁴⁹ *The Constitutional Right of the Legislature of Great Britain, to Tax the British Colonies in America, Impartially Stated* (London, 1768), 41, 5.

⁵⁰ [Allan Ramsay], *Thoughts on the Origin and Nature of Government* (London, 1769), 53. See too *The Late Occurrences in North America, and Policy of Great Britain, Considered* (London, 1766), 3; John Wesley, *A Calm Address to Our American Colonies* ([London?], [1775?]), n.p. (broadside), or Wesley, *A Calm Address to Our American Colonies*, new ed., corr. and enlarged (London, [1775]), 20. For scoffing at Wesley's view, see *Political Empiricism: A Letter to the Rev. John Wesley* (London, 1776), 27.

⁵¹ Bernard Bailyn, *The Ordeal of Thomas Hutchinson* (Cambridge: Belknap Press of Harvard University Press, 1974), 77.

called *imperium in imperio*, the height of political absurdity.”⁵² The king, insisted Joseph Galloway, “cannot constitute inferior communities with rights, powers, and privileges independent of the State; because this would be either to dismember them from it, or to establish an *imperium in imperio*, a State within a State, the greatest of all political MONSTERS!”⁵³ (That last came with an explicit nod to Pufendorf’s warning that a supreme governor who tried to establish an unaccountable body would be setting up “a State within a State,” “admitting two Heads in the Constitution” and making it “irregular and monstrous; which no one in his Wits will do, unless upon extreme Necessity.”)⁵⁴ Then again, Massachusetts’s House of Representatives flipped the script, urging that “to suppose a Parliamentary Authority over the Colonies under such Charters, would necessarily induce that Solecism in Politics, *Imperium in Imperio*.”⁵⁵

In the garish, blinding light of sovereignty, there were no hopes for a distinction between internal and external taxation. That distinction, like plenty of others, is rough or blurry, but still perfectly serviceable. Ben Franklin testified in Parliament that it was the key to understanding where the Americans would yield.⁵⁶ In November 1775, the colonial governor of New York thought that carving up tax jurisdiction that way might stop the

⁵² Massachusettensis, “To the Inhabitants of the Province of Massachusetts-Bay,” *The New-Hampshire Gazette, and Historical Chronicle* (24 March 1775).

⁵³ An American [Joseph Galloway], *Political Reflections on the Royal, Proprietary, and Charter Governments of the American Colonies* (London, 1782), 30-31. See too [Joseph Galloway], *A Candid Examination of the Mutual Claims of Great-Britain, and the Colonies* (New York, 1775), 5-6. “To the Author of a Pamphlet, Entitled, ‘A Candid Examination. . .,’” *Pennsylvania Journal, and The Weekly Advertiser* (8 March 1775), seized on the apparently contradictory concession Galloway offered at 43.

⁵⁴ Pufendorf, *Law*, 648-49.

⁵⁵ *The Speeches of His Excellency Governor Hutchinson, to the General Assembly . . . with The Answers of His Majesty’s Council and the House of Representatives* (Boston, 1773), 39. So too [Moses Mather], *America’s Appeal to the Impartial World* (Hartford, 1775), 44.

⁵⁶ *Proceedings and Debates 1754-1783*, 2:227-51 (13 February 1766).

combat – “could it be compatible with the dignity . . . of the British Sovereignty.”⁵⁷ The distinction was found wanting not because it was blurry, but because sovereignty is indivisible: so any proposed incursion on it was an insult. That’s why Joseph Galloway contemptuously branded it a distinction “which never existed, nor can exist, in reason or common sense”: “there must be in every state a supreme legislative authority, universal in its extent, over every member.”⁵⁸ That’s why William Knox furiously rejected the distinction, along with others like it. “All distinctions destroy this union; and if it can be shewn in any particular to be dissolved, it must be so in all instances whatever. There is no alternative: either the Colonies are a part of the community of Great Britain, or they are in a state of nature with respect to her, and in no case can be subject to the jurisdiction of that legislative power which represents her community, which is the British parliament.”⁵⁹ That’s why Hutchinson instructed his refractory assembly, “I know of no line which can be drawn between the supreme Authority of Parliament and the total Independence of the Colonies: It is impossible there should be two independent Legislatures in one and the same State.”⁶⁰ (Imagine holding that view staunchly enough to say, “there is no slavery you can entail upon your children equal to that

⁵⁷ Governor William Tyron to the Earl of Dartmouth, 11 November 1775, in *Documents Relative to the Colonial History of the State of New-York*, ed. E. B. O’Callaghan and B. Fernow, 15 vols. (Albany, 1856-57), 8:643.

⁵⁸ [Joseph Galloway], *A Candid Examination of the Mutual Claims of Great-Britain, and the Colonies: with a Plan of Accommodation, on Constitutional Principles* (New York, 1775), 2, 4.

⁵⁹ [William Knox], *The Controversy between Great Britain and Her Colonies Reviewed* (London, 1769), 50-51.

⁶⁰ *Speeches of His Excellency Governor Hutchinson*, 11. See too Thomas Hutchinson, “A Dialogue between an American and a European Englishman [1768],” ed. Bernard Bailyn, *Perspectives in American History* (1975), 391, 405-6.

which follows from a disputed supreme authority in Government.”⁶¹ Imagine saying that with a straight face in a society where chattel slavery flourishes. It’s slavery, avers Washington that same month, with unflinching recognition of blacks’ “abject” plight, to live under a sovereign; it’s slavery, asserts Hutchinson, not to. Want to take sides? Yes, you could cavil at this description of the alternatives. Still, if you had to choose?) That’s why a member of Parliament declared “taxation and supreme authority inseparable.”⁶² That’s why Jonas Hanway’s dialogue offered a speaker insisting, “Unless *Britain* has the *supreme legislative power*, she is not the sovereign. She cannot defend her *American Dominions*; and let who will be master of them, there must be a supreme legislative power, or the government cannot exist.”⁶³ If you subscribe to the theory of sovereignty, so much is just common sense – no wonder Hanway chose that for his title, just as Paine chose it for his.⁶⁴ If you slip free of sovereignty’s domineering clutches, this calm inference suddenly looks exactly like the bit of frantic hand-waving that it is.

We have another trial transcript, an emphatic counterpoint to that of Charles’s 1649 trial, its publication too a bid to consolidate a view of legitimate authority – by renewing an old one. This transcript is from 1660, when the new regime tried twenty-nine regicides for murder. Presiding, the Lord Chief Baron announced, “I must deliver to you for plain, and true Law; That no Authority, no single person, no community of persons, not

⁶¹ Hutchinson to —, 8 August 1774, *The Diary and Letters of His Excellency Thomas Hutchinson*, comp. Peter Orlando Hutchinson, 2 vols. (Boston, 1884), 1:214.

⁶² *Proceedings and Debates 1754-1783*, 4:182 (Mr. Rice, 19 March 1774).

⁶³ [Jonas Hanway], *Common Sense: In Nine Conferences, between a British Merchant and a Candid Merchant of America* (London, 1775), 52.

⁶⁴ Sophia Rosenfeld, *Common Sense: A Political History* (Cambridge, MA: Harvard University Press, 2011), is wonderful.

the people collectively or Representatively have any coercive power over the King of England.”⁶⁵ If Charles had been obdurate in refusing to play along at his trial, so were some of the regicides at this one. An unrepentant Thomas Harrison started arguing that kings were accountable, that Charles had started the war, that “God is no respecter of Persons” – and the court tried to cut him off. Still Harrison persevered, and this time a prosecutor interrupted: “Methinks he should be sent to Bedlam, till he comes to the Gallows, to render an Account of this. This must not be suffered. It is in a Manner a New Impeachment of this King, to justify their Treasons against his late Majesty.” A lawyer representing the royal family chimed in: “My Lords, This Man hath the Plague all over him, it is pity any should stand near him, for he will infect them.”⁶⁶ Symptoms of insanity or pathology, Harrison’s views were now officially not up for reasoned debate, but reprehensible poison, anathema to be censured. Surprise! he was found guilty. A regicide who’d fled to Switzerland condemned the “hasty Verdict” against Harrison. “That the Inhumanity of these Men may the better appear, I must not omit, that the Executioner in an ugly Dress, with a Halter in his Hand, was placed near the Major General, and continued there during the whole time of his Tryal, which Action I doubt whether it was ever equall’d by the most barbarous Nations.”⁶⁷

Harrison was hanged – but, by design, not long enough to kill him. When “half dead, he was cut down by the common Executioner, his privy members cut off before his eyes, his Bowels burned, his Head severed from his Body, and his Body divided into Quarters.”⁶⁸ (Go ahead, dig in and feast on bitter irony: the defenders of sovereignty solemnly recapitulated

⁶⁵ [Finch], *An Exact and Impartial Accompt*, 10; and see 280.

⁶⁶ *Accompt*, 48-49.

⁶⁷ *Memoirs of Edmund Ludlow, Esq*, 2nd ed., 3 vols. (London, 1720-21), 3:62-63. This last volume is titled *Memoirs of Lieutenant General Ludlow*.

⁶⁸ *Accompt*, 286.

the crazed excesses of the wars against religion, the very excesses that sovereignty was supposed to eliminate. Who needs berserk soldiers when they have legal proceedings?) A later tradition has it that after being sliced open, Harrison pulled himself up and punched his hangman in the ear.⁶⁹ I don't credit the tradition, and not only because of the heroic physiological feat: a detailed contemporaneous account doesn't mention it, though it does show how sunny and serene he was.⁷⁰ His head was "set on a Pole" on top of Westminster Hall, the parts of his body placed on various city gates.⁷¹ Other regicides got the same treatment and were left to linger for gruesome dramatic effect. The next year, a Dutch traveler noted "many limbs of traitors or accomplices of Oliver Cromwell . . . displayed on stakes," some twenty "heads on stakes" to boot.⁷²

The spectacular theatrics hadn't yet drawn to a close. Parliament decreed that the corpses of Puritan leaders Cromwell, Ireton, Bradshaw, and Pride be exhumed, hanged, and buried ignominiously under the

⁶⁹ [Bartholomew Shower], *Cases in Parliament Resolved and Adjudged* (London, 1698), 136.

⁷⁰ *The Speeches and Prayers of Major General Harison, Octob. 13 . . . Together with Several Occassionall Speeches and Passages* (n.p., 1660). Gallows speeches make for a notoriously unreliable genre, but if anything the impetus would be to make Harrison sound contrite. See too George Bates, *Elenchus Motuum Nuperorum in Anglia: or, A Short Historical Account and Rise of the Late Troubles in England* (London, 1685), pt. 3, 54: "with the same madness and obstinacy as he had behaved himself at his trial, the cruel Traitor affecting an undauntedness at his death, was hang'd and quarter'd, as he well deserved."

⁷¹ *Accompt*, 286.

⁷² *The Journal of William Schellinks' Travels in England 1661-1663*, trans. and ed. Maurice Exwood and H. L. Lehmann (London: Offices of the Royal Historical Society, 1993), 51 (15 August 1661), 48 (14 August 1661). I owe the reference to Crawford Gribben, *John Owen and English Puritanism: Experiences of Defeat* (Oxford: Oxford University Press, 2016), 210.

gallows.⁷³ Somehow Pride escaped the indignity, but the other three dutifully plummeted from Westminster honor to Tyburn infamy – and the hanging lasted a full nine hours.⁷⁴ Their decapitated heads were displayed on poles high up in (or on top of?) Westminster Hall, with Bradshaw’s – no accident – “over that part where that monstrous High Court of Justice sat.”⁷⁵ Some regicides facing life in prison were first carted to Tyburn “with Ropes about their Necks” before being returned to the Tower of London.⁷⁶ Some thought this forbidding performance was going to be renewed every year, but the legislation doesn’t mandate that.⁷⁷ The Speaker of the House of Commons assured Charles II that he hoped “to meet your Majesty as our Sovereign, with the Duty of Subjects.” Then he gushed, “If the Affections of all Englishmen can make you happy; if the Riches of this Nation can make

⁷³ *Journal of the House of Commons* (4 December 1660). For a later dubious tale, see Senex, “Oliver Cromwell,” *The Times* (31 December 1874).

⁷⁴ *DNB* s.v. Pride, Thomas; *Memoirs of Evelyn*, 271 (30 January 1661).

⁷⁵ *Mercurius Publicus* (31 January-7 February 1661). This paper says the heads were “set upon poles on the top of *Westminster Hall*,” which might sound like it’s over the roof; but Pepys has the heads “set up upon the further end of the hall,” which sounds like inside (*Diaries*, 2:31 (5 February 1661)); and *Diary of Townshend*, 297 (29 January 1661), ambiguously has them “set up over Westminster Hall.” The editors of *Diary of Pepys*, 5:297 n. 2, report that Cromwell’s “head remained for display at Westminster Hall for about 25 years, when it was blown down in a storm.” Their abbreviated citation led to the wonderfully grisly and detailed accounts in “Proceedings at Meetings of the Royal Archaeological Institute: 1st February, 1911,” *Archaeological Journal* (1911), 233-53, which left me less confident than the editors. I’m with Mr. W. H. St. John Hope at 253: “It was difficult to come to any satisfactory conclusion as to whether the head was fixed outside or inside the Hall.” And there’s plenty of room for doubting the claim that, wherever it was, it lasted twenty-five years.

⁷⁶ *Journal of the House of Commons* (1 July 1661). For a brief narrative of the punishment, see *The Traytors Pilgrimage from the Tower to Tyburne* (London, 1662).

⁷⁷ *Diary of Pepys*, 3:19 (27 January 1662); Francesco Giavarina, Venetian Resident in England, to the Doge and Senate, 10 February 1661, *Cal S. P., Venice*, 33:106; 13 Car. II c. 15 s. 4 (1660).

you Great; if the Strength of this warlike People can make you considerable at Home and Abroad, be assured you are the greatest Monarch in the World. Give me leave to double my Words and say it again, I wish my Voice could reach to Spain, and to the Indies too, You are the greatest Monarch in the World!”⁷⁸ (Picture yourself delivering these vehement lines. Better yet, strike a proudly self-abasing posture and read them aloud: but I won’t require that you do so in formal dress, standing before a distinguished and powerful audience in one of the world’s most imposing halls. No giggling, please.) While the courts of King’s Bench and Common Pleas were in session in Westminster Hall, the “common Hangman” ceremoniously burnt the 1649 Act setting up the court to try Charles I and a couple of other legislative abominations, interregnum measures to strip Charles II of his “pretended title” and safeguard Cromwell.⁷⁹ Not enough to notice that these laws were obsolete; not enough to repeal them. These people knew how to kill a bill. Ten years after the restoration, Charles II’s birthday still produced effulgent tributes: “God hath set him upon a Hill, made his Sovereignty to be recognized. Here is no co-ordinate, co-equal,

⁷⁸ *History and Proceedings of the House of Commons* (5 May 1661), or in *Journal of the House of Lords* (10 May 1661). See too the Earl of Manchester’s address to Charles, *Journal of the House of Lords* (29 May 1660). Publications are overupholstered with this sort of thing, with and without explicit appeals to sovereignty. See for instance Aurelian Cook, *Titus Britannicus: An Essay of History Royal* (London, 1685), 251: “the Person of the Prince they had Murder’d, was beyond any Parallel, being most Virtuous, most Innocent, most Religious; and that his Judges were for the most part mean and desperate Persons, whose Hands were lifted up by Ambition, Sacrilege, Covetousness, and success against the Life of that incomparable Prince, whose lamented and barbarous death God would not suffer to go unrevenged.”

⁷⁹ *Mercurius Publicus* (23-30 May 1661).

co-rival power of Parliaments . . . No Sovereign Authority of the People above him. . . . No Blaspheming of our Earthly God is allowed.”⁸⁰

Let me remind you of the dilemma facing champions of sovereignty. Prong one: they can yield on one or two of the concept’s criteria. They can agree that sovereign power can be limited or divided or held accountable: even some of the great theorists of sovereignty made such concessions. But they can’t yield on all three, lest they have a concept with no criteria. That way lies nonsense, quite literally: again, imagine someone who says, “this is a bachelor, but not an unmarried male.” Prong two: they can hang on to one or more of the criteria. But why would anyone want to embrace the idea of unlimited or undivided or unaccountable state authority? How many times must we learn that states don’t always secure social order, that they sometimes undercut and destroy it? How many political prisoners left to rot in jail with no recourse do we need, how many rape victims, how many living bodies bound and pushed out of helicopters into the ocean, how many grinning skulls, how many corpses stacked up, blown up, shoveled into mass graves, left to moulder in fields and be picked over by vultures and rats, how many delicate recitals of the filthy business we call ethnic cleansing, to recall that behind such suffocatingly bland phrases as “undercut social order” lies grotesque, unfathomable human suffering? How surprised can you even pretend to be that in cracking down on a Papua guerrilla movement seeking independence, Indonesia’s government has reincarnated the atrocities of the war of religion? “We were forced to eat shit, drink pee. I was electrocuted in my testicles, bum and legs.”⁸¹ How

⁸⁰ John Lake, *A Sermon Preached at Whitehal upon the 29th Day of May, 1670 Being the Day of His Majesties Birth and Happy Restoration* (London, 1670), 36-37.

⁸¹ Budi Hernawan, *Torture and Peacebuilding in Indonesia: The Case of Papua* (Abingdon: Routledge, 2018), 106.

surprised that torture in Pol Pot's prisons including having to eat shit?⁸² Don't begin to entertain the fantasy that only far-off or "backward" regimes perform such stunts. Don't airily dismiss the claim from a detainee at Abu Ghraib that one American soldier was "fucking a kid, his age would be about 15-18 years," "putting his dick in the little kid's ass," the kid was "screaming," "and the female soldier was taking pictures."⁸³ Don't anesthetize yourself with such disgusting Orwellian locutions as "enhanced interrogation techniques." Don't even congratulate yourself on being honest enough to talk about torture, or "acts that can only be described as blatantly sadistic, cruel, and inhuman," as that notorious softy, Secretary of Defense Donald Rumsfeld, put it in testifying before a Congressional committee.⁸⁴ Instead contemplate precisely what went on at the CIA's "black site" prisons.⁸⁵ Instead think as concretely, unflinchingly, pornographically as you can of just what that torture consists in. Isn't this sort of thing precisely what those demanding unlimited or unaccountable authority are in fact demanding? No, of course they don't intend that. But won't it inexorably come in the wake of what they do intend? Hoping to extricate subjects from bloody combat, Hobbes, recall, demanded a "power able to over-awe them all." Surely by now we know decidedly too much about what such a power can and will do.

⁸² David Chandler, *Voices from S-21: Terror and History in Pol Pot's Secret Prison* (Berkeley: University of California Press, 1999), 110.

⁸³ <https://media.washingtonpost.com/wp-srv/world/iraq/abughraib/151108.pdf> (last visited 22 July 2018).

⁸⁴ *Review of Department of Defense Detention and Interrogation Operations: Hearings before the Committee on Armed Services, United States Senate . . . 2004* (Washington, DC: U.S. Government Printing Office, 2005), 6. I owe the reference to Seymour M. Hersh, *Chain of Command: The Road from 9/11 to Abu Ghraib* (New York: HarperCollins, 2004), 43.

⁸⁵ See for instance <https://www.theguardian.com/us-news/ng-interactive/2017/oct/09/cia-torture-black-site-enhanced-interrogation>, with a cascade of nauseating links (last visited 22 July 2018).