

### **Absorption as Lawgiving, Lawgiving as Identity**

In the second chapter of *The Democratic Sublime* Frank suggests that the centrality of popular assembly for Rousseau political theory has not been fully understood. In a novel reading Frank suggests that the silent assembly is both source of democratic autonomy and its necessary condition of possibility. This reading centres around the problem of the lawgiver. Frank reimagines lawgiving as an ongoing aesthetic and sublime operation through which we come to act in democratic concert. Such an aesthetics conceives of the lawgiver as a sublime practice that stages the self-authorising of popular sovereignty as an ongoing operation. Despite my agreement with this reading, I suggest that democratic sovereignty formulated in this way sides with an identification with the general over the particular and as such fails to avoid the violence reproduced in any popular sovereignty which lays claim to total representation. I argue that for democratic communities to avoid such violence we need to push Frank's account further beyond a re-enacted 'peopling' towards a process of unravelling whereby the community always undoes its own self-imposed generality.

Frank argues that the central concern of Rousseau's political theory is the question of how disparate individuals become a people. Contrary to liberal constitutionalist readings of Rousseau, Frank contends that popular assembly is essential to the popular sovereignty as it is through acting in concert that particular individuals become the sovereign 'people'. The people are formed through association with one another, directed towards a common goal. As such, for Rousseau, popular sovereignty is not a natural organisation but an act of denaturalising in which isolated individuals are transformed through the process of becoming the people (Frank 2021: 50). Frank suggests that in Rousseau this process contains three important elements.

Firstly, the process of peopling is an ongoing practice of making in which the people is continually assembled and reconstructed through the practice of their

Luke Edmeads

sovereignty. As Frank writes “In concretely exercising their common will, the imagined corporate unity of peoplehood is given a distinctively tangible reality” (Frank 2021: 50).

Secondly, this assemblage must remain silent. For Rousseau this is because in silence no particular element of the collective can direct the people towards their own ends. Accordingly, Frank asserts the people is not constructed through a rational or deliberating assembly but is a collection of wills whose decisions are made in one another’s presence.

Finally, as Rousseau states “Sovereignty cannot be represented” (Rousseau 1968) cited in (Frank 2021: 48). This is again because the general the will cannot represent a particular position or opinion. That is, it cannot simply express only one part of the whole. For Frank, this unrepresentability “marks a suspension of the existing regime of representation” (Frank 2021: 48). Frank turns to the paradox of the lawgiver problem to examine how such a suspension takes place.

As formulated by Frank the paradox of the lawgiver shows that any democratic and self-governing people must themselves be educated and formed to enable their own self-rule. For Rousseau, the law giver must be a disinterested outsider, someone who has no legitimacy of their own, to form the people. The paradox here is that we have a conception of the people who are self-authorising yet whose production requires an external source. For Rousseau for the people to emerge they must be educated to their role by the lawgiver.

According to Frank, this lawgiver is not rational but sublime. Briefly put, sublime here offers a way to understand how we are moved beyond ourselves, transcending limitations and established rules to move the subject beyond its own individual experience. The lawgiver, as sublime, transforms the disparate individuals into the people, cultivating a certain sensibility. This is explained as a transformation that enables the acknowledgment of the peoples own collective self-rule. The education that the individual undergoes to become part of the people is an aesthetic one. As such “the lawgiver is” in Franks words “the

unrecognised condition of the people's emerging sense of their own autonomy" (Frank 2021: 55). The authority of the law giver is claimed to never be coercive nor dominating but rather compel individuals because, as sublime, it elicits as necessary the people's own authority.

Taking his distance from Rousseau, Frank's key insight is to show that lawgiving is not external but comes from aesthetic experience. In the aesthetic experience of absorption, we are claimed to completely identify with the object of our attention which allows us to experience ourselves as part of the collective. The prime example of this is absorption in public ritual. Whether through festival or in silent assembly, rituals work to reiterate our collective agency. The aesthetic experience which unifies the people is ritually produced through the spaces in which the collective takes place. The repetition of these ritualised assemblies is the constituent, and therefore lawgiving, act by which the people come to its own collective agency. It is the ritual enacted as part of the assembly, not the conference and speech between parties when assembled, which enables the transcendence of the particular and the formation of the general will. It is in this vein that Frank writes that the central operation of sovereign assembly is... to produce the very sovereign people whose is to be voiced" (Frank 2021: 64). Through the silence of those assembled their individual independence is maintained at the same time as their dependence on each other is produced. Thus, Frank argues that this silence is an aesthetic supplement that enables the people to be apprehended.

The question that arises here is whether Frank's supplement overcomes the paradox that the lawgiver reveals? Rousseau's account has classically been understood as addressing the problem of democratic foundation, providing an origin for popular sovereignty. However, as Bonnie Honig has pointed out this only exacerbates the problem that the lawgiver undermines the people's autonomy (Honig 2007: 3). The strength of Frank's account is to not offer a solution. Understanding lawgiving to be an active and ongoing process maintained through ritual and assembly, reveals the operation of what Menke has called the aesthetic force of the imagination that operates within democratic

sovereignty. This operation is necessarily a repetition through which the people's collective self-autonomy is activated and reactivated. Lawgiving then is not a solution to a problem of founding but an ongoing activity. There is no democratic unity which will resolve the paradox; instead, there is the ongoing aesthetic and sublime operation through which we come to act in concert. This refuses a solution to the paradox. This process, as activation and reiteration, takes the form of political aesthetics.

However, the question of whether this avoids violence and is non-dominating as claimed continues. We can think through this issue via the problem of identity. As noted, it is through our identification with the general will that the sovereign people are formed. This sovereignty is necessarily maintained through the exclusion of particular interest. To identify with the general then requires the domination of the particular. Might the collective ritual that Frank emphasises induce what Menke calls habit? For Menke habit is two sided. In the first instance habit enables our free action. In relation to Frank's account, we can understand the collective ritual as repetition of habit which brings us to our own collective sovereignty. However, Menke points out that habit also maintains our subjugation.<sup>1</sup> Habit ensures that we continued to be identified with and determined by what has come before (Menke 2022: p.98/99 authors own translation). In identifying with the collective, we are habitually determined by it (Chambers and Carver eds. 2008: 107/108). Despite suspending a regime of representability, the general will establishes its own new regime, one which we must identify with. In such a process our identity must become abstract and equivalent. As Menke points out in habit all particularity becomes an "instance of the general" (Menke 2022: 101).

In this sense the formation of the general will is both emancipating and subjugating. While it enables a popular sovereignty, it turns against its own articulation as contradiction, exposing itself as both delimiting and fictive. Moreover, as the enactment of habit such a fiction is already conditioned by what has come before. Balibar's account of the construction of universal claims accounts for this. For him any articulation of a universal claim immediately

entails its negation. The universal is always a particular claim raised to the level of the general resulting in the exclusion of any competing claims. As such Balibar contends that every claim to universality “functions as a norm” (Balibar 2020: 15). Universal claims enact their own standards by which all following claims are normatively policed.<sup>ii</sup> The general will as universal then already contains its necessary exclusions. Despite offering an account of the formation of popular sovereignty and autonomy that is open ended and ongoing, Frank’s aesthetic experience falls down on the side of the general because in silence it cannot accommodate the particular. As such it assumes the very unity it attempts to avoid.

Let me put this another way. The presence of assembled bodies already, and must, include some form of absence. Frank writes that through the lawgiver “The people must be indirectly taught to experience their sovereign will as their own, which involves the carefully guided elicitation of seemingly inborn desire” (Frank 2021: 54). The people desire precisely what is absent: their sovereignty. This chimes with Gail Lewis’s argument that new meaning is created in the place between the experience of the desiring subject and the absent object of their desire (Lewis 2017: 3). However, Lewis pursues this further to show that this ‘presencing’ makes absent particular experiences and epistemologies. Black women she writes, can be read as absent in both the categories of women and BAME (Black, Asian, and Minority Ethnic), because women are already constituted as whiten while BAME is a homogenising characterisation that degendered its subject (Lewis 2017: 12). The generalisation here works to make absent the particularities of black women. To be made present then always entails a domination of what is made absent. What is needed is neither a universalised generality that creates normative standard of sameness nor to maintain the Other as absolute alterity. (Lewis 2017: 15) Instead we need to open up Frank’s problem space, remaining in the space within absence and presence, in the discomforting place between particular and general.

Returning to Menke’s aesthetic force offers a conception of political aesthetics that “escapes the rule of generality.” (Menke 2010: 568) Aesthetic force, like

Frank's formation of popular sovereignty, is an ongoing replacement of what has come before. Unlike Frank's formation, aesthetic force expresses no general content. It refuses any unity. This takes seriously Frank's argument that sovereignty must be continually enacted and rearticulated. Yet rather than the rule of the general over the particular we find the articulated in the universalising claim, aesthetic force concedes the multiple contingencies through which such claims are articulated. Aesthetic force pushes beyond its own articulation dismantling what has come before. This is not an expansion of the terms of inclusion but rather undermining the ways in which who counts is calculated. As such aesthetic force renders political unity unstable. It is a necessary political task to dissolve the unity of the general which always becomes another form of exclusion. As Adorno states: "As soon as unity becomes stable, it is already lost." (Adorno 1997: 246)

Frank's reimagining of the lawgiver as a sublime operation rightly opens up the problem space within popular assembly and popular sovereignty. It renders sovereignty insecure by understanding the people as requiring constant re-enactment. Yet this re-enactment is at risk of becoming fixed and stable if it remains as a repetition of habit. Moreover, it risks identification with generality that makes absent anything that does not fit the normative standards that become sedimented in the process of 'peopling'. Taking Frank's political aesthetics seriously means to keep undermining such sedimentation, to destabilise the unity which incorporates sovereignty as a "distinctly tangible reality" (Frank 2021: 50) through its rejection of particularity. If this does not take place popular sovereignty enacts another domination and becomes another bounded regime. The question then is not simply how the people is formed but what is made absent in this formation. The refusal of a dominating unity requires both enactment and unravelling. Frank's work opens the space to pursue this task.

Luke Edmeads

## Bibliography

Adorno, T., (1997) *Aesthetic Theory* (1970), trans. R. Hullot-Kentor, Minneapolis: University of Minnesota Press, 1997

Balibar, E., (2020) trans. Jordan, J. D., *On Universals, Constructing and Deconstructing Community*, Fordham University Press

Chambers S., and Carver, T., *William Connolly, Democracy, Pluralism and Political Theory*, Routledge: Abingdon

Frank, J., (2021), *The Democratic Sublime: On Aesthetics and Popular Assembly*, Oxford University Press: Oxford

Honig, B., (2007) Decision and Deliberation: Political paradox in Democratic Theory, in *The American Political Science Review*, Feb., vol.101, iss. 1

Kay Lamb, M., (2019) *On Order and The Exception: A Philosophical History of Police*, PhD thesis, available at [https://cris.brighton.ac.uk/ws/portalfiles/portal/10327893/Melayna\\_Kay\\_Lamb\\_PHD\\_Thesis\\_OFFICIAL\\_VERSION.pdf](https://cris.brighton.ac.uk/ws/portalfiles/portal/10327893/Melayna_Kay_Lamb_PHD_Thesis_OFFICIAL_VERSION.pdf) accessed [31/01/23]

Lewis, G., (2017) questions of presence, in *Feminist Review*, No.117

Menke, C., (2022) *Theorie der Befreiung*, Suhrkamp: Berlin,

Menke, C., (2010) Force: Towards an Aesthetic Concept of Life in *MLN*, (German issue: *Literature and The Sense of Possibility/ Der Möglichkeitssinn Von Literatur*) Vol. 125, No. 3,

---

<sup>i</sup> This point reflects William Connolly's assertion that in Rousseau the micropolitics of everyday ritual and habit act as disciplinary and restraining mechanisms to create democratic sovereignty. See Chambers S., and Carver, T., *William Connolly, Democracy, Pluralism and Political Theory*, Routledge: Abingdon p.107/108

<sup>ii</sup> This is why Melayna Kay Lamb argues that Hegel suggests that for the imperative of the universal to be maintained a policing of the *excess* of the particular is necessary. Kay Lamb, M., (2019) *On Order and The Exception: A Philosophical History of Police*, PhD thesis, available at [https://cris.brighton.ac.uk/ws/portalfiles/portal/10327893/Melayna\\_Kay\\_Lamb\\_PHD\\_Thesis\\_OFFICIAL\\_VERSION.pdf](https://cris.brighton.ac.uk/ws/portalfiles/portal/10327893/Melayna_Kay_Lamb_PHD_Thesis_OFFICIAL_VERSION.pdf) accessed [31/01/23]