

I

Introduction

“*One political being called a people . . .*”

Thus when in the Constitution of the Commonwealth of Massachusetts, it is said that the body politic is formed by a social compact in which the whole people covenants with each citizen and each citizen with the whole people, the words whole people in the first part of the sentence, have not the same meaning as they have in the second. In the first part they mean the portion of the people capable of contracting for the whole and with the whole—in the second, they mean the sum of total human beings bound by and included in the compact.

– *John Quincy Adams*

Like most American stories, the one of the American people is, by most standards, a success story. Even more impressive, it is the story of a self-made people – an eminently *political* people. After all, the ambition of a handful of Puritans spread in the wilderness to “be set as lights upon a Hill more obvious than the highest mountain in the World” was to be fulfilled to an extent never dreamt of by their contemporaries, albeit through means never imagined by the original protagonists.¹ Also like most American stories, it is one that generally tends to be depicted in broad strokes, with heroes and villains, winners and losers, divided in rather well-circumscribed and easily identifiable camps. Thus, in the winning camp one finds – besides the Puritans – Patriots, Federalists, and Northerners, while the losers’ camp is occupied by Loyalists, Antifederalists, and Southerners. One of the primary aims of this book is to use the intellectual history of compromise as a tool for revealing some of the shades and hues that have been erased from this overly simplified picture, thus clarifying key moments in the making of the American people.

¹ Edward Johnson, quoted in Francis J. Bremer (1976), *The Puritan Experiment – New England Society from Bradford to Edwards* (New York: St. Martin’s Press), 37.

Surprising considering its purported centrality to America's founding, the subject of compromise has thus far failed to seriously engage the interest of any one scholar, and the extant literature focuses almost exclusively on the role compromise played during the Constitutional debates and in the rhetorical and legal battles over the issue of slavery in the early republic.² It is a gap that is important to address, especially under the conditions of extreme polarization and unwillingness to compromise that characterizes today's American politics. For, as I have discussed in greater detail elsewhere, the history of compromise resembles the tip of an iceberg, in that it reveals its own concealment. It is a history that signals overlooked differences in some fundamental assumptions one makes about "the people" and their relationship to the political sphere.³ This is a history that still has plenty to teach us.

On the one hand, the refusal to compromise with perceived "others," which came to characterize Puritans, Patriots, Antifederalists, and Southerners alike, reveals largely ignored similarities between protagonists that otherwise are considered to have belonged to opposite camps in the story of America's founding. On the other hand, the willingness of Puritans to compromise, if only among themselves, and the calls for compromise made to their opponents not only by Loyalists but also by Federalists, and even by most Northerners until civil war became a reality, signals – other practical and historical considerations aside – that these actors might have had a shared understanding of what "the people" stood for, and why they thought a compromising attitude *ought* to be praised.

As such, the story of the American people, precisely because of the ambivalence of the term "people" for the protagonists, offers researchers a unique opportunity by combining in a peculiar way the British willingness to compromise with the French unwillingness to do so, as detailed in my previous work.⁴ According to one view, the people is as a collection of equal individuals, ruled by a majority of wills. According to the other, the people is a corporation, hierarchically structured, ruled by reason for the sake of the common good. Philosophically speaking, the former understanding of the people is sympathetic to the social compact theory, while the latter supports the political or governmental compact between a people and its leaders. I shall argue that it was precisely this foundational double helix that is largely responsible for the

² See Chapter 5 for the bibliography on the role played by compromise in the framing and ratification of the Constitution. Peter B. Knupfer (1991), *The Union as It Is: Constitutional Unionism and Sectional Compromises, 1787–1861* (Chapel Hill, London: The University of North Carolina Press) comes the closest to the overall purpose of this book. Yet Knupfer starts his investigation of compromise from the Philadelphia Convention, and his approach, despite some areas of agreement, is significantly different from the one proposed here. See especially Chapters 5 and 6 in this volume.

³ Alin Fumurescu (2013), *Compromise: An Intellectual and Philosophical History* (Cambridge: Cambridge University Press), 10–11.

⁴ Fumurescu, *Compromise*. See further.

versatility of American politics, and its eventual successes, but also for the persistent confusions both between the two understandings of the people and between the social and the political compact, respectively.

Considering all the contemporary implications, it is therefore from this foundational double helix that we ought to begin.

1.1 ONE PEOPLE, TWO BODIES⁵

In their recent book, *Democracy for Realists*, Christopher Achen and Larry Bartels argue that the credibility of “folk theory” of democracy, according to which people rule either directly or indirectly, through their representatives, “has been severely undercut by a growing body of scientific evidence.”⁶ Backed by a wealth of recent studies, the authors make a claim worrisome to many: None of the two main theories of democratic governance, namely the populist and the elitist, can sustain empirical inspection. Voters do not control public policy, neither directly, through referenda and popular consultations, nor indirectly, by prospectively choosing or retrospectively rewarding leaders that attend to their wishes. Bluntly put, “conventional thinking about democracy has collapsed in the face of *modern* social-scientific research,” yet “scholars . . . persist uneasily in their *schizophrenia*, recognizing the power of the critical arguments but hoping without hope that those arguments can somehow be discredited or evaded.”⁷

Even more recently, Daniele Caramani launched, from a different perspective, an equally concerning warning: According to her analysis, the representation model of party democracy is under attack from two sides – the populist and the elitist/technocratic. Politicians are accused (by the populists) of being either too detached from the people or (by the technocrats) too willing to please them regardless of the consequences. As the argument unfolds, populism and technocracy share the “*homogenous and organic vision of the people*,” “a non-pluralistic view of society and politics.” As a result, “both forms believe in an ‘external’ interest [of the people], detached from the specific group interests and their aggregation. [. . .] For populism, the general interest can be identified through *the will* of the people. For technocracy, the general interest can be identified through *rational speculation* and scientific procedures.”⁸ It is, in

⁵ This section is partially informed by Alin Fumurescu (2013), *Compromise*, and by Alin Fumurescu (2018), “The People’s Two Bodies: An Alternative Perspective on Populism and Elitism,” *Political Research Quarterly*, 7:4, 842–853.

⁶ Christopher H. Achen and Larry M. Bartels (2016), *Democracy for Realists: Why Elections do not Produce Responsive Government* (Princeton: Princeton University Press), 11.

⁷ *Ibid.*, 12 (emphases added).

⁸ Daniele Caramani (2017), “Will vs. Reason: The Populist and Technocratic Forms of Political Representation and Their Critique to Party Government.” *American Political Science Review*, 111:1, 62 (emphases added).

Caramani's own words, a political confrontation framed in terms of "will" versus "reason."

The undertones of Achen and Bartels's book and Caramani's article might be different, but both – and these are only two recent examples from a growing pool of scholarly literature concerned with this topic – point in the same direction: the crisis that democracies must face is related to conflicting understandings of "the people."⁹ Absent this clarification, the concept of popular sovereignty, central to any democratic system, remains an empty one, explaining everything and nothing. In Achen and Bartels's view, "the ideal of popular sovereignty plays much the same role in contemporary democratic ideology that the divine right of kings played in the monarchical era." "The doctrine of 'The King's Two Bodies' [...] provided useful leeway for understanding and accommodating the fact that mortal rulers were often less than divine in bearing and behavior." A similar rationale applies to the contemporary understanding of the people. "We . . . have our 'two bodies' doctrine: when majorities go seriously astray, it is not the people that 'advised themselves,' but rather the people misadvised by others and misled by misordered counsel."¹⁰

I shall argue that there is more validity in the paradigm of the people's two bodies than Achen and Bartels seem willing to grant. The paradigm might be nothing more than a fiction, but it is a useful one – like all other fictions on which any government rests. They are the bread and butter of politics. Edmund Morgan's observation is not to be ignored:

Governments require make-believe. [...] Make believe that the people *have* a voice or make believe that the representatives of the people *are* the people. Make believe that governors are the servants of the people. Make believe that all men are equal or make believe that they are not. [...] Because fictions are necessary, because we cannot live without them, we often take pains to prevent their collapse by moving the facts to fit the fiction.¹¹

Far from being "modern" or signaling some "schizoid" thinking, the idea of the people being conceived *at once* as a multitude prone to errors *and* as a sovereign corporate entity that cannot err enjoys a long pedigree. Even if the label of the people's two bodies is recent, the idea behind it is not.¹² It predates

⁹ See, for example, Christopher Bickerton and Carlo Invernizzi Accetti (2015), "Populism and Technocracy: Opposites or Complements?" *Critical Review of International Social and Political Philosophy*, 20:2, 186–206; Nadia Urbinati (2014), *Democracy Disfigured* (Cambridge, MA: Harvard University Press).

¹⁰ Achen and Bartels, *Democracy for Realists*, 19–20.

¹¹ Edmund S. Morgan (1988), *Inventing the People: The Rise of Popular Sovereignty in England and America* (New York, London: W.W. Norton & Co.), 13–14 (emphasis in the original).

¹² One could argue that the "people's two bodies" label is inaccurate, since, as a multitude, the people have no *one* distinct body, like they do in the corporate understanding. However, the expression "the body of the people" is currently used mostly in reference to a multitude of voices, which makes the distinction implied by the label even more useful. One should also remember

the transfer of sovereignty from kings to people, and hence the transfer of the idea of the King's Two Bodies to the people's two bodies that came to characterize the revolutionary eighteenth century.¹³

Despite what common misconceptions would have us believe, the doctrine of the King's Two Bodies was far from widespread, and equally far from characterizing the entire medieval period. Even if the doctrine was probably known across Europe, "it was nevertheless in England alone that there had been developed a consistent political, or legal theory of the 'King's Two Bodies.'" The theory, "in all its complexity and sometimes scurrilous consistency, was practically absent from the Continent."¹⁴ According to Queen Elizabeth's lawyers, "the King has in him two Bodies, viz., a Body natural and a Body politic. [...] [H]is Body politic is a Body that cannot be seen or handled, consisting of Policy and Government, and constituted for the Direction of the People, and the Management of the public weal, and this Body is utterly void of Infancy, and old Age."¹⁵ Far from being typically medieval, this "notion had . . . its important heuristic function in the period of transition from mediaeval to modern political thought."¹⁶

This is not to say that European medieval political thought was deprived of this dual way of thinking when it came to understanding the people. Throughout the Middle Ages, at least from the Roman lawyer Azo onward, "the people" were conceived simultaneously as a whole and as a multitude, as One and as Many. The same rationale informed both the Church and the political bodies.¹⁷ That the body politic was to be distinguished – as later on the political body of the King would be as well – from the physicality of its members was a certitude for the famous Commentator Baldus de Ubaldis, who

the frontispiece of the 1651 edition of Hobbes's *Leviathan*, by Abraham Bosse, "with creative inputs" from Thomas Hobbes, in which the body of the sovereign is made up of tiny little persons.

¹³ Although the formula of "the people's two bodies" has been previously used, the interpretation offered here differs drastically from the ones proposed by Sheldon S. Wolin (1981), "People's Two Bodies." *Democracy: A Journal of Political Renewal and Radical Change*, 1:1, 9–24, and by Eric L. Santner (2011), *The Royal Remains: The People's Two Bodies and the Endgames of Sovereignty* (Chicago: University of Chicago Press). On the one hand, Wolin identifies in the American tradition a politically active, democratic body and an essentially passive, economic, and antidemocratic one. On the other hand, Santner focuses on the modern transference of sovereignty from the King's Two Bodies to the people's two bodies, mainly from a psychoanalytical perspective centered on the idea of "corporeality." Edmund S. Morgan (1988), *Inventing the People*, whose chapter four is entitled "The People's Two Bodies," comes closer, distinguishing between people as subjects and people as rulers, and between the power to govern and the power to determine the form of government. See further.

¹⁴ Ernst H. Kantorowicz (1957), *The King's Two Bodies: A Study in Mediaeval Political Theology* (Princeton: Princeton University Press), 446, 441.

¹⁵ Quoted in *ibid.*, 7. ¹⁶ *Ibid.*, 447.

¹⁷ David Ciepley (2017), "Is the U.S. Government a Corporation? The Corporate Genesis of Modern Constitutionalism," *American Political Science Review*, 111:2, 418–435. See also Fumurescu, *Compromise*, especially chapter 3.

wrote in the fourteenth century: “Therefore separate individuals do not make up the people, and thus properly speaking the people is not men, but a collection of men into a body which is mystical and taken as abstract, and the significance of which has been discovered by the intellect.”¹⁸ Like the General Will that Rousseau would later describe, this “mystical body of the commonwealth” (*corpus mysticum reipublicae*) could not err.¹⁹

As modern as it might seem today, the idea that governments are the creation of the corporate people and that rulers are responsible and subordinate to the people was a common trope throughout the entire medieval period.²⁰ For example, Jacques Almain and John Mair, two lecturers at the University of Paris, “were . . . explicit . . . about the power of the secular community over the ruler. The community retained a constituent power. It could change both the ruler and the form of the constitution for reasonable cause.”²¹ The first monarchomachian theories of justified resistance were based, not on some proto-social contractarianism, but on the medieval political contract between the people and their rulers. Thus, in Beza’s words, “those have the power to depose a King who have the power to create him.”²²

There is no doubt, however, that in the medieval and even the early modern French understanding, the people entitled to remove an unworthy king were not the multitude but the *optimates*, i.e., the most reasonable part of it (*maior et sanior pars*.) However, who exactly could fulfill this role was open to debate. For François Hotman they were the supreme magistrates in the Estates, while for Beza, in the case of corruption of the Estates, the role could devolve to inferior magistrates. Yet, despite these differences, all authors from the period, Protestants and Catholics alike, carefully distinguished between the people as a conceptual whole and the majorities, i.e., between the people as One and the people as Many. They would all have agreed with Bodin who had previously argued that “in popular assemblies votes are counted, not weighed, and the number of fools, sinners, and dolts is a thousand times that of honest men.”²³

¹⁸ Quoted in Joseph Canning (1987), *The Political Thought of Baldus de Ubaldis* (Cambridge: Cambridge University Press), 187.

¹⁹ It would be undoubtedly interesting to analyze how Rousseau’s distinction between the General Will and the will of all (as simple majority of individual wills) relates to the paradigm of the people’s two bodies. It would constitute, however, an entire project in itself.

²⁰ This understanding was common in both Western Europe and the Byzantine Empire. See Anthony Kaldellis (2015), *The Byzantine Republic: People and Power in New Rome* (Cambridge, MA: Harvard University Press) for a similar argument and a wealth of examples.

²¹ John H. M. Salmon (2007), “France,” in Howell A. Lloyd, Glenn Burgess, and Simon Hodson, eds. *European Political Thought: 1450–1700* (New Haven and London: Yale University Press), 462.

²² Theodore de Bèze (1970), *Du Droit de Magistrates*, introduction, édition et notes par Robert M. Kingdon. Geneva: Librairie Doz, 45. For more details and examples, see Fumurescu, *Compromise*, chapter 3.

²³ Jean Bodin [1955], *Six Books of the Commonwealth*, abr. and tr. M.J. Tooley (Oxford: Basil Blackwell), VI.4, 193.

In this context, corporations (or offices) could have been represented and/or made compromises, but unique individuals could not. The general understanding was that no one could represent someone else in full, for no one could represent someone else's uniqueness. Since the internal self was impossible to represent, it was beyond the realm of political compromises, which are inherently public. Consequently, regardless of the circumstances, for the medieval individual, compromise could only involve the external, public self (*forum externum*), *qua* member of a corporation, but never the inner, private self (*forum internum*). Thus, compromise, both as a method of arbitration (*arbitratio*) and as a method of election (*electio*) was a neutral term, neither to be praised nor to be feared, since there was no fear of "*being* compromised."

Early modernity put an end to this understanding. Challenged by the various pressures of change, the dialectic of the individual between the two fora split across the Channel between a centrifugal individualism – focused almost exclusively on *forum externum* as the visible, trusted self – and a centripetal individualism, for which *forum internum* represented the only true self while *forum externum* was relegated to the status of a mere costume. As a result, by the beginning of the seventeenth century, Great Britain pioneered the understanding of the people as a collection of individuals, united via mutual compact or compromise, with every single Englishman virtually represented in Parliament. As Gilbert Burnet put it, "The true and Original Notion of Civil society and Government, is, that is a Compromise."²⁴ Naturally, compromise became a foundational virtue as the only way to avoid open conflict. Meanwhile, France continued, for more than a century after, to preserve the medieval understanding of the people as an organic corporation, hierarchically structured. Since the French emphasized centripetal individualism, unlike the medieval *compromissum*, the French *compromis* lost its neutral meaning, being perceived as a threat to one's identity, *qua* individual or *qua* community. The first English and French dictionaries of the seventeenth century reflect well these different understandings.²⁵

The American case is different from both the British and the French in that in the New World the modern understanding of "the people" took a peculiar twist – and so did the usage of compromise. As I shall show in detail in the next chapter, thanks to the Puritan bidimensional covenant, the idea of equal individuals consenting to form a new political body and to subject themselves to a new form of government was far from a mere philosophical idea. It was a living reality, hence the later attractiveness of the social contract theory for American political thinking. At the same time, once this new body of people was formed, the details of setting up a specific form of government and its daily function was entrusted in the hands of an elected aristocracy of merit, driving

²⁴ Gilbert Burnet (1688), "An Inquiry Into the Measures of Submission to the Supreme Authority . . .," in *A Collection of papers relating to the present juncture of affairs in England*, 2.

²⁵ For a full exposition of this history, see Fumurescu, *Compromise*.

many scholars to claim that the Puritans were in effect more medieval than modern.²⁶ In reality, they simply assumed that people enjoyed equal constituent power but different political skills.²⁷ This dual understanding of the people, both horizontal and vertical, proved to be, politically speaking, a long-lasting legacy.

What sets the American case apart is that they had the opportunity to actually implement both understandings of “the people” without really favoring one at the expense of the other. Some scholars have noticed that “democratic tides” come and go throughout American history.²⁸ The approach that I propose here overcomes this binary thinking, divided between “republicans” and “radical democrats,”²⁹ “traditional or radical Whigs” and “Federalists,”³⁰ “democrats” and “anti-democrats,”³¹ or simply “republicans” and “liberals.”³² In effect, I claim that, as in the story of the blind men and the elephant, all interpretations are partially right, and the main problem remains the inability to seize the paradigm of the people’s two bodies underlying these labels. By contrast, the interpretation suggested here represents more than the acknowledgment of “multiple traditions,”³³ a “synthesis,”³⁴ or an “amalgam.”³⁵ It invites the reader to see the whole elephant.

²⁶ Stephen Foster (1991), *The Long Argument – English Puritanism and the Shaping of New England Culture, 1570–1700* (Chapel Hill: The University of North Carolina Press); Donald S. Lutz (1988), *The Origins of American Constitutionalism* (Baton Rouge: Louisiana State University Press).

²⁷ Richard A. Ryerson (2016), *John Adams’s Republic: The One, the Few, and the Many* (Baltimore: John Hopkins University Press), 12.

²⁸ See, for example, Anthony S. King (2012), *The Founding Fathers v. The People* (Cambridge, MA: Harvard University Press), 100.

²⁹ *Ibid.*, 130–150.

³⁰ Donald S. Lutz (1980), *Popular Consent and Popular Control: Whig Political Theory in the Early State Constitutions* (Baton Rouge: Louisiana State University Press).

³¹ Merrill Jensen (1970), *The Articles of Confederation: An Interpretation of the Social-Constitutional History of the American Revolution, 1774–1781* (Madison: University Wisconsin Press).

³² When it comes to interpreting the founding through “republican” vs. “liberal” lenses, the literature is by now too voluminous to review. Suffice is to say, with the risk of simplifying, that among the promoters of the republican readers one finds scholars such as Barnard Baylin, Gordon Wood, and J. G. A. Pocock, while in the liberal camp one finds names such as Joyce Appleby, Isaack Kramnick, Thomas Pangle, Michael Zuckert, or Mark Hulliung. Most of them and some of their disciples will be mentioned and quoted throughout this book.

³³ Alan Gibson (2007), *Understanding the Founding: The Crucial Questions* (Lawrence: University Press of Kansas).

³⁴ Mark A. Noll (2002), *America’s God – From Jonathan Edwards to Abraham Lincoln* (Oxford: Oxford University Press).

³⁵ Michael P. Zuckert (2005), “Natural Rights and Imperial Constitutionalism: The American Revolution and the Development of the American Amalgam,” *Natural Rights Liberalism from Locke to Nozick*, Ellen Frankel Paul, Fred D. Miller Jr., and Jeffrey Paul, eds. (Cambridge: Cambridge University Press), 27–55.

The paradigm of the people's two bodies does not merely recognize the existence of these different understandings. Instead it reveals why they were accepted by most of this book's protagonists, *at the same time*, in a display of dialectic thinking that is hard to conceive today when talking about "the people." Much as Denis de Rougemont argued, in *Man's Western Quest*, that, all religious considerations aside, Christianity shaped a particular understanding of the world, I claim that Puritanism helped mold a certain *forma mentis* that contributed to a unique political *Weltanschauung*, by training the American mind to "assume incompatibles."³⁶ As hard as it is to accept today, the idea of an "aristocracy of merit" dominated the American psyche and rhetoric for more than a century before it was replaced by competing concepts, such as "republicanism" or "democracy," but at the same time, equally indisputable was the right of ordinary citizens to approve the general form of government and to elect or remove this "aristocracy" from office.

Thus, what for us today may appear as "schizophrenia" was, for a long period of time during the American founding, a suitable way for dealing with a political reality that could not (and still cannot) be confined in the peculiarly contemporaneous "either-or" model of the people: either ruled by wills or by reason, either artificial creation or organic whole, either One or Many. As a result, the question of popular sovereignty was addressed in a more creative way than democratic theory does today. In this respect at least, Achen and Bartels may rest assured: The founders were more realist than many contemporaries when it came to (not) trusting the people *qua* multitude to make complex political judgments, yet also less cynical than some technocrats that the same multitude was able to make mostly sound decisions about basic principles of government.

From the perspective proposed here, Caramani's worries also appear misplaced. Historically speaking, populism, understood as direct or indirect rule of the people by a majority of votes, and technocracy, understood as rule *for* the people's general interest, have neither been inherently incompatible nor have necessarily shared "a homogenous and organic vision of the people," but rather the opposite, if only because the organic vision is inherently inimical to homogeneity. The general interest is not incompatible with the aggregate interests of the groups composing it, if "the people" is understood – as it used to be – as a corporation of corporations. Hence, populism or elitism *per se* are less of a problem; all politicians are and will be, to various degrees, both populist and elitist, while popular leaders and technocrats are forced sooner or later to

³⁶ According to de Rougemont, accepting that Christ is simultaneously "true God" and "true man" paved the way for modern physicists to finally accept that a photon is, at the same time, a wave and a particle. Overcoming the binary logic, in which "*tertium non datur*," marked the beginning of modern physics; Denis de Rougemont (1956), *Man's Western Quest – The Principles of Civilization*, trans. from French by Montgomery Belgion (New York: Harper & Brothers Publishers), 115–118.

become politicians, as Caramani also acknowledges. The main problem, I suggest, might be a misconception of “the people” that creates unrealistic expectations both *for* and *from* the electorate, and *for* and *from* the elites that are supposed to act on its behalf. Thus, far from being a mere linguistic artifice, the people’s two bodies proves a useful paradigm for dealing simultaneously with the pitfalls of elitism and populism while taking advantage of both.

After all, words do matter precisely because their meanings are not settled.

1.2 COMPROMISE AND THE CHALLENGE OF REALISM

There is no denying that such a sweeping overview of the entire founding era raises an entire set of challenges, both theoretical and practical. To begin with, the jury is still out on when the American founding began and when it ended. For some, it started in 1611, with *Virginia Articles, Laws, and Orders*; for others, in 1730s, with Benjamin Colman’s sermon, *Government the Pillar of Earth*; or as late as in the 1760s, with Abraham Williams’s *An Election Sermon* (1762). It also may have ended (or even begun) in 1787, in 1805, or in 1860.³⁷ However, since this is a book not about the American founding per se but about the founding of the American *people* – a distinction that is easily yet undeservedly overlooked – it seems appropriate to start from the very beginning, with the arrival on the shores of the New World of the first group of American Pilgrims and Puritans. This is not to deny the existence of the Native Americans, or the fact that the colony of Virginia was by 1620 already well established. But, as I will elaborate further in the next chapter, it would be hard to deny that for the making of the American *people*, unlike the Puritans, these groups (and many others) have provided less important contributions, insofar as the *idea* of a people implies a certain set of contrived beliefs.

A similar rationale applies to establishing the ending of the research period. Here, the distinction between the founding of America and the founding of the American people becomes even more relevant. While the existence of a distinctive American *identity* was generally accepted decades before the Revolutionary War, and the reality of an independent *country* became a matter of fact after the Declaration of Independence, things were much muddier when it came to agreement on the existence of an American *people*. As shown in Chapter 6, John Taylor’s 1820 book, *Construction Construed*, stated: “Common consent is necessary to constitute a people, and no such consent, expressly or implied, can be shewn, by which all the inhabitants of the United States have ever

³⁷ See, for example, Bruce Frohnen, ed. (2002), *The American Republic – Primary Sources* (Indianapolis: Liberty Fund); Charles S. Hyneman and Donald S. Lutz (1983) *American Political Writing during the Founding Era, 1760–1805* (Indianapolis: Liberty Press); Ellis Sandoz, ed. (1998), *Political Sermons of the American Founding Era, 1730–1805* (Indianapolis: Liberty Press); Knupfer, *The Union as It Is*.