

Democratic Honor: Liberal and Populist

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Democratic politics is what constitutional argument (hence constitutional law) is about. Affirming it or wary of it—aiming to release, restrain or improve it—such argument cannot help but shape democracy, first of all, in the imagination.

Some time ago, I predicted that constitutional theory would eventually drop the pretense of working from one taken-for-granted conception of democracy. It would, I anticipated, bring into the open the contest among connotations of democratic politics that inevitably structures and animates the law. These would, I supposed, be more or less imprecise images, taken from and fit for use in constitutional argument. The contest among them, I hoped, would become the center of concern of the constitutional theory of the future.¹

This has come to pass. Writers about constitutional theory now tend, often at the outset, to reveal their imagination of a politics of popular sovereignty and to recognize it as contestable.² The aim, typically, is not to win the contest. Rather, the aim is to illuminate it. This may be done indirectly, by advancing constitutional argument drawing upon one or another image of democratic politics. Or (my own approach) it may be done directly.

My focus, for the moment, is on the question of political agency: What may be imagined to be the “spring of motion” most vital to a healthy democratic politics? What political actors are its primary source? Put differently, the question has to do with motivation—the sort of motivation imagined to drive the kind of political action supposed to be most fundamental to a democratic constitutional order.

In the world of constitutional theory nowadays, the answer to this question typically involves a special sort of civic virtue. What is envisioned is a democracy whose well-being and improvement depend most of all on the virtue of a few. These few are impartial and enlightened, motivated by idealism to rise above—and turn democratic “ideals” against—ordinary democratic politics. Such civic virtue is often imagined to supersede an inferior sort of motivation long supposed to be an engine of democratic political order. It is imagined, that is, to supplant (or, at least, crucially to

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¹ Richard D. Parker, *The Past of Constitutional Theory—And Its Future*, 42 OHIO ST. L.J. 223 (1981).

² See, e.g., CASS R. SUNSTEIN, *DESIGNING DEMOCRACY: WHAT CONSTITUTIONS DO* 3–11 (2001).

supplement and improve on) the competitive pursuit of partial interests through politics, a motivation to defend and extend advantages vis-à-vis others doing the same thing. Civic virtue and the competitive pursuit of interests, in turn, are imagined as obviating a far worse sort of political motivation, one so unrefined and unruly as to make democratic (or any) constitutional order nearly impossible: urges of personal and group identity, the supposed spawning ground of constant flux and conflict, that Albert Hirschman called “the passions.”³

I want to turn upside down this hierarchy of political motivations. I want to promote “the passions”—and demote civic virtue—as the source of democratic politics.⁴ This is part of a larger project, one exploring a populist—as opposed to what is generally called a liberal or progressive—imagination of democracy as the starting point of constitutional argument. A while ago, I wrote generally about the value of the “personal” in democratic politics.⁵ More recently, I addressed the connection between democracy and patriotism, a potent sentiment of group identity.⁶ Now, I want to look at a sentiment of personal identity—that of honor as a political actor—that might provide a source of agency in a populist democratic politics. The two are, of course, connected. Together, they constitute a kind of “identity politics” that, I believe, is just as vital to democracy as the kind more usually associated with that term—multiculturalism—is problematic.

My inspiration, as well as an object of criticism, is *Liberalism With Honor* by Sharon Krause.⁷ To set up my perspective on the connection she draws between personal honor and liberal democratic political agency—and to launch the different story I want to tell—I will begin with a critique of an influential essay in constitutional theory by Ronald Dworkin. Having positioned Krause in relation to this sort of constitutional theory, I will

³ ALBERT O. HIRSCHMAN, *THE PASSIONS AND THE INTERESTS: POLITICAL ARGUMENTS FOR CAPITALISM BEFORE ITS TRIUMPH* (1977).

⁴ When I first wrote about all this, I mentioned “civic virtue” as one component of an image of democratic politics to which I was attracted. Parker, *supra* note 1, at 258 n.146. Later, I made clear that the idea of civic virtue may be spun in two ways, “populist” and “anti-populist,” and that I meant (and had meant) to embrace only the former and reject the latter. RICHARD D. PARKER, *HERE, THE PEOPLE RULE: A CONSTITUTIONAL POPULIST MANIFESTO* 74–75 (1994). It is the “anti-populist” version of civic virtue that now dominates constitutional theory and that I seek to demote here.

⁵ Richard D. Parker, *Taking Politics Personally*, 12 *CARDOZO STUD. L. & LIT.* 103 (2000).

⁶ Richard D. Parker, *Homeland: An Essay on Patriotism*, 25 *HARV. J.L. & PUB. POL’Y* 407 (2002).

⁷ SHARON R. KRAUSE, *LIBERALISM WITH HONOR* (2002). I must add that the more general inspiration of my interest in honor is the wonderful work of Bill Miller. *See, e.g.*, WILLIAM IAN MILLER, *BLOODTAKING AND PEACEMAKING* (1990); WILLIAM IAN MILLER, *HUMILIATION* (1993); William Ian Miller, *Clint Eastwood and Equity: Popular Culture’s Theory of Revenge*, in *LAW AND THE DOMAINS OF CULTURE* 161 (Austin Sarat & Thomas Kearnes eds., 1998).

begin to explore, by contrast, a connection between honor and agency in populist democratic politics.

I. VIRTUOUS DEMOCRACY

In the last decade, nothing has better captured the dominant approach to constitutional theory than Ronald Dworkin's book *Freedom's Law* and, in particular, the first essay in it, "The Moral Reading and the Majoritarian Premise."⁸ What I have in mind is not what the book is best known for—its elaboration of a "moral reading" of the Constitution—but its initial debunking of "the majoritarian premise." There, Dworkin is speaking for the bulk of writers nowadays.

The idea is this: Popular sovereignty—for short, democracy—is the foundation of political legitimacy and so the key to interpretation of our Constitution. Democracy, however, is a complex idea. Politics may be more or less "genuinely" or "fully" democratic, varying in quality. The touchstone of constitutional meaning should be an image of an ideal democracy—call it virtuous democracy—whether adumbrated by historical commitments and by experiences of democratic excellence (the original adoption of constitutional provisions and other "constitutional moments") or by abstract phrases in the Constitution itself.⁹ The mission of constitutional argument and law, therefore, is to bring the gospel of virtuous democracy to bear on the day-to-day practice of politics.

Yet, Dworkin says, there is bound to be "deep controversy" about what an ideal democracy "really is." There arises, therefore, the oldest question: Who should have the "authority" to decide?¹⁰ He rejects the answer that proceeds from "the majoritarian premise." That is to say, he rejects the argument (overshadowed for thirty years but now re-emerging) that constitutional interpretation ought, at least in the long run, be in sync with—or tethered to, or not too much at odds with—widespread popular opinion and the politics of majority rule.¹¹ This argument, according to Dworkin, fails as a matter of theory, even logic. For, he says, it relies on the claim that adherence to majority rule and popular opinion is required by "democracy." It thus begs the question of what democracy "is." There is no substitute, Dworkin concludes, for engaging in that theoretical controversy and doing so on a "level playing field," with no necessary pref-

⁸ RONALD DWORKIN, *FREEDOM'S LAW: THE MORAL READING OF THE AMERICAN CONSTITUTION* 1–38 (1996).

⁹ In this sense, disparate approaches to constitutional theory—including some that emphasize originalism or structuralism or the constitutional practice or abstract moral philosophy—come down to more or less the same thing. Indeed, my own approach might be read in the same way. *See supra* note 4. One minor aim of this essay is to identify that as a misreading by carving out a position distinct from such idealist/conceptualist sorts of constitutional theory.

¹⁰ DWORKIN, *supra* note 8, at 2, 15.

¹¹ Dworkin identifies this argument, roughly, with Learned Hand. *Id.* at 12–14.

erence for the view of a majority or anyone else. The upshot: Whoever has the best view of democracy-at-its-best—and, hence, of who should have “final” authority to define it—is the one whose view should be authoritative.¹² (One might wonder: Who will have “authority” to decide who wins *that* contest?)

To develop his own view, Dworkin analyzes ideals typically invoked by advocates of majoritarian democracy, and he reduces them to one master ideal. He collapses political liberty into political community, and political community into political equality. The “essence” of virtuous democracy, he theorizes, is the “equal status” of, hence equal “respect” for, persons. That, in turn, is the essence of “genuine membership” in a political community—which, in turn, is vital to the enjoyment of political liberty. In democracy at its best, he continues, “we can all be equal citizens” and, as such, we can all “identify” with our political community as the medium through which we “govern [our]selves” and accept its decisions as our own, even if we oppose them at the outset. At one point, he goes so far as to associate equal citizenship with a person’s “opportunity to make a difference in . . . collective decisions” unlimited by “assumptions about his worth or talent or ability.”¹³ This could be an image of majoritarian democracy. Even a populist image. In fact, I embrace it as just that.

Of course, Dworkin doesn’t mean it—or, at least, doesn’t mean it that way. As he elaborates his idea of equal status, it becomes clear that the key difference between his ideal of (what he calls) a “constitutional” democratic politics and a populist one has to do with political agency. For Dworkin, equal status involves how one is “treated”—the “respect” with which one is treated—as a member of a democratic political community. The treatment-as-an-equal he has in mind has mainly to do with what is *done to* one, not with what one *does*. It is not, that is to say, about equal political agency at all. He does not imagine it to involve an exercise of power or influence in a community’s decision making; in fact, he insists that the power and influence of most people is bound to be so “tiny” or “minuscule” as to count for *nothing*.¹⁴ Nor does he imagine most people as engaging in important political action of any kind, even as a defense against treatment without “respect.” For him treatment as an equal—and so the “essence” of democracy—is, at bottom, a question of “results,” the results of political action taken mainly by office holders, subject to correction by other office holders, especially judges. As long as all are “in principle eligible” for office, it “does not matter,” he says, “whether or not [these] officials are directly elected.”¹⁵

¹² *Id.* at 18, 33, 35.

¹³ *Id.* at 8, 10, 17, 22–23, 24, 26, 38.

¹⁴ *Id.* at 21, 28.

¹⁵ *Id.* at 21, 28, 34. To be sure, Dworkin says his conception of democracy requires “majoritarian procedures”—“that day-to-day political decisions be made by officials who

To be sure, there is one sort of political action that, Dworkin imagines, may ideally be taken by more than a few. That is the “discussion” of political issues. Like many others in today’s academic mainstream, however, he is not thinking of just any sort of discussion. The “quality” of the discussion matters: It should be “deliberative” and about “principle.”¹⁶ And Dworkin makes explicit an implication that others leave implicit. He says: “[W]e want those with better views, or who can argue more cogently, to have more influence.” If everyone were to enjoy the same influence in political discussion it would, he foretells, “mean the end . . . of deliberation in our politics.” Thus the ordinary citizen, he suggests, might “exercise the responsibilities of citizenship better” if he did not initiate, or jump too soon, into public discussion. The “quality of the discussion might be better, and his own contribution more genuinely deliberative and public spirited,” if he waited until an issue of principle is “removed from ordinary politics” and has been “assigned to the courts.”¹⁷

If the political agency of virtuous officials is the vital spring of a healthy democratic politics, what does he imagine to be its motivation? One is left to speculate. The militantly idealistic and theoretical cast of the essay suggests the most likely possibility: that a glimpse of the ideal, amid the “degener[acy]” of the real, may by itself generate the motivation, first, for its pursuit and, then, for its imposition to “improve” the many whose need for improvement is known to the enlightened few. Why the rest might accept this tutelage is a question Dworkin does not even raise—perhaps because he imagines them as part of the degeneracy he deplors. Indeed, his off-hand characterizations suggest as much. Government by voters, with each getting one vote and each vote counting as one, is to him not government by persons, but merely government by “numbers.” Unofficial efforts to influence government beyond the ballot box are to him nothing more than “pressure.”¹⁸ Taken altogether, the high politics of virtue he envisions sounds like a liberal version of “vanguard politics” as imagined by the (far) left in the first half of the last century.

Can it be that contemporary constitutional theory, and its central conception of virtuous democracy, has become so alienated from actual

have been chosen in popular elections”—but only so long as such procedures produce results consistent with what he imagines to be “the essence of democracy.” Should they fail to do so, they should be displaced, he says, without any “cause of moral regret.” *Id.* at 17. One may wonder how significant he imagines such failures will be. He suggests, at one point, that “majoritarian procedures” will need correction only “on special occasions.” *Id.* But this phrase is misleading. He recognizes that his conception of “the essence of democracy,” by which he would evaluate and displace the results of majority rule, is “of breathtaking scope and power.” Indeed, calling it a “constitutional sail,” he recognizes that “many people”—but not he—“fear that it is too big for a democratic boat.” *Id.* at 10, 12.

¹⁶ See, e.g., SUNSTEIN, *supra* note 2; CHRISTOPHER EISGRUBER, CONSTITUTIONAL SELF-GOVERNMENT 96–99 (2001).

¹⁷ DWORKIN, *supra* note 8, at 27–30. He terms this a “tentative suggestion,” but suggests no reason to be tentative about it.

¹⁸ *Id.* at 18, 30, 34.

political life? Has it so completely lost touch with an understanding that constitutional values must be brought to bear *in*—not simply *on*—real-world politics? That, in practice, ordinary political reality shapes and constrains the generation and implementation of these ideals?

Dworkin would resist this criticism, of course. For he does not present his conception of what “genuine” democracy “really is” strictly as an abstract ideal. As is well known, he claims that the ideals he elaborates also “fit” historical commitments we have made in the real world.¹⁹ While he insists that the broad question of popular sovereignty has not been “settled”—that whether the majority should rule is a matter of theoretical “controversy” to be conducted on a “level playing field”—he insists, at the same time, that this very question is not open at all, that it *is* settled. It is settled, he says, that majoritarian democracy, along with majoritarian authority to define democracy, are simply “excluded” for us.²⁰ The playing field may be level—but at the start of the game, Dworkin rules the opposing team’s goal to be out of bounds.

What, more exactly, does he claim is settled? He mentions just one specific point: that the *Brown* decision is “paradig[matic].” And one general point: “that on some occasions the will of the majority should *not* govern.”²¹ That’s all. There is, of course, scholarship suggesting that *Brown* and its implementation were decisively shaped and legitimated by nothing other than the practice of, and belief in, majoritarian democracy.²² The same goes, generally, for the evolution of constitutional interpretation, the role of the judiciary, the extension of democratic participation and, so, the popular understanding of democracy and majority rule itself over more than two centuries.²³ Dworkin takes no note of any such view of the matter. Comfortable with a potted one-sided summation of a fluid and complex national experience, he appears to seek a “history” that fits his ideal, rather than the other way around.²⁴

And who, specifically, does he claim settled things this way? He refers to “America” and “American constitutional practice.”²⁵ More specifically? He invokes public opinion! He insists that *Brown* and other Court decisions are “widely” admired today. Indeed, he claims they are “now

¹⁹ *Id.* at 11.

²⁰ *Id.* at 12, 15.

²¹ *Id.* at 12–13, 16 (italics in original). Dworkin invokes *Brown* as the paradigm for “Supreme Court decisions that expanded racial equality, religious equality, religious independence, and personal freedoms such as the freedom to buy and use contraceptives.” *Id.* at 12.

²² See, e.g., LUCAS A. POWE, JR., *THE WARREN COURT AND AMERICAN POLITICS* 27–74, 157–78, 217–38, 272–302 (2000); GERALD ROSENBERG, *THE HOLLOW HOPE* 39–169 (1991).

²³ See, e.g., Larry D. Kramer, *Foreword: We the Court*, 115 HARV. L. REV. 4 (2001).

²⁴ See Michael McConnell, *The Importance of Humility in Judicial Review: A Comment on Ronald Dworkin’s “Moral Reading” of the Constitution*, 65 FORDHAM L. REV. 1269 (1997).

²⁵ DWORKIN, *supra* note 8, at 12, 31, 35.

almost universally thought” to be exemplary.²⁶ He does not measure how far this popular enthusiasm for judicial correction may extend. That is, he does not tell us what are the “some” occasions on which the public, supposedly, rejects majority rule. But he does tell how many people reject it. It is “most people.” Most people, he says, who “assume” the majority should rule “nevertheless accept” that, sometimes, it should not.²⁷ A majority! (If instead of “most,” he had said “almost all,” it would have called attention to the soft spot in his sentence: the word “some.”) A majority invoked as authority—authority to define what democracy is! In a stroke, his argument against the “majoritarian premise” seems to implode.

What can we take away from all this? Five things. First: His invocation of the authority of “most people” to define democracy as non-majoritarian—and, in all likelihood, his invocation of “fit” to truncate normative controversy about this most basic of constitutional questions—is not to be taken seriously. Dworkin is first and last an idealist, committed to enforcing his ideal through the agency of a virtuous few and to doing it in the name of “real” democracy. Second: There is no legitimate way to short-circuit the “deep controversy” about what democracy “is.” Imaginations of democracy, that is to say, ought to contend on a *truly* “level playing field.” And this means none of them is “correct”; the controversy is unending. Hence, the most one can do is offer plausible and appealing accounts of one or another image of democratic politics. Third: The account of a politics actuated by civic virtue that is implicit in Dworkin’s influential essay may be familiar, but its familiarity does not make it any more plausible or appealing. For fourth: Plausibility and appeal wane as an ideal becomes more and more aloof and alienated from real political experience, failing even to address it sympathetically. Correspondingly, they wax if it can discern within that experience a motivation that, developed further, promises to enhance it. So fifth: It remains to imagine democracy in a way that meets that standard. In particular, it remains to re-imagine the kind of democracy that Dworkin rejects but winds up (inconsistently but as if by gravity) drawn to invoke—democracy by the political agency of ordinary people, motivated by their identity as political equals, which is to say democracy by majority rule.

II. HONOR AND POLITICAL AGENCY

It seems implausible, no doubt, that a plausible account of democracy—much less an appealing one—could be built around the idea of honor. Honor is not typically associated with democratic politics. Nor is it very often associated with modern politics of any kind. We connect it, instead, with the *ancien régime* or, worse, with grossly oppressive racist

²⁶ *Id.* at 13.

²⁷ *Id.* at 16.

regimes like the antebellum South and Nazi Germany or, more generally, with class and gender hierarchies or, even more generally, with self-aggrandizing tendencies to aggression and violence. Yet in the last decade a number of scholars have addressed the subject in strikingly sympathetic terms—anthropologists, then historians and now Sharon Krause, a political theorist.²⁸ Taking off from their work, I want to sketch what they seem more or less to agree are generic elements of honor and the relation of honor to political agency before I turn, later on, to its possible place in an imagination of democratic politics.

To keep things simple (if necessarily abstract) consider six basic elements. Honor may be described as a moral practice, since it has to do with a sense of the “right thing” and the “wrong thing” to do. It has its reasons, as the saying goes. But it tends, for the most part, to short-circuit elaborate reasoning.²⁹ For it is, first of all, a moral *sentiment*. It taps directly into and constructs emotions. It is also a moral sensibility, a mode of experiencing oneself and the world around one, at once affective and evaluative. And it fuses sentiment and sensibility into something solid and evident—an attitude, a stance in the world.

Thus, second, honor is about *identity*. It is not universal or altruistic in its concern. It is not impersonal or impartial. It is self-centered. Yet it is about something more vital and intimate than self-interest: an image of oneself—as an individual (“who I am”) or as part of a collective (“who we are”) or both—including whoever or whatever is intimately tied to oneself (“what is mine” or “what is ours”). It presupposes and mandates responsibility for one’s identity, a sort of self-possession in the double meaning of the term.

Yet an honorable identity is not entirely self-created. Nor is it simply a matter of individual conscience or integrity. It is, third, a *status*, publicly recognized or at least publicly recognizable in a particular social and political context. It is local. It is not a universal “right.” Nor is it inalienable. It may be ascribed or acquired. But if ascribed, it must be

²⁸ One of the very best recent books on the subject is by an anthropologist. It provides an avenue into the preexisting anthropological literature. FRANK HENDERSON STEWART, *HONOR* (1994). The interest in honor on the part of historians does not seem to have such deep roots. *See, e.g.*, SARAH C. CHAMBERS, *FROM SUBJECTS TO CITIZENS: HONOR, GENDER, AND POLITICS IN AREQUIPA, PERU* (1999); JOANNE B. FREEMAN, *AFFAIRS OF HONOR* (2001); KENNETH S. GREENBERG, *HONOR AND SLAVERY* (1996); NANCY SHIELDS KOLLMANN, *BY HONOR BOUND: STATE AND SOCIETY IN EARLY MODERN RUSSIA* (1999); J. E. LONDON, *EMPIRE OF HONOR: THE ART OF GOVERNMENT IN THE ROMAN WORLD* (1997); CHRISTOPHER J. OLSEN, *POLITICAL CULTURE AND SECESSION IN MISSISSIPPI: MASCULINITY, HONOR, AND THE ANTIPARTY TRADITION* (2000); WILLIAM M. REDDY, *THE INVISIBLE CODE: HONOR AND SENTIMENT IN POSTREVOLUTIONARY FRANCE, 1814–1948* (1997); BERTRAM WYATT-BROWN, *SOUTHERN HONOR: ETHICS AND BEHAVIOR IN THE OLD SOUTH* (1982). And then there is the unpigeonhole-able work of Bill Miller, *supra* note 7. *See also* KRAUSE, *supra* note 7.

²⁹ *But see* James Q. Whitman, *On Nazi “Honour” and the New European “Dignity,”* in *DARKER LEGACIES OF LAW IN EUROPE* 243 (Christian Joerges & Navraj Singh Ghaleigh eds., 2003).

kept—and if acquired, it must be earned—through one's own actions. To win or keep honor, one must deserve it; and to deserve it, one has to behave honorably.

Fourth, honor involves a “code” of action. It tends to prescribe such qualities as courage, fidelity and honesty. But, at bottom, it is not really about virtue. It is not so open-ended. At bottom—despite innumerable variations from one system of honor to another—a code of honor comes down to *respect*. It involves the respect that one owes others who deserve it. Even more fundamentally, it involves the respect one deserves from and so owes oneself. (Courage, fidelity and honesty are ways of enacting respect.) One demonstrates self-respect, in the crunch, by insisting that others give one the respect one deserves. This insistence is shown by resistance—resistance to disrespect. Hence, honor is primarily a defensive rather than an aggressive attitude.

Fifth, within the circle of persons of honor, the norm is *equality*. Inside that circle, every person has the same status in a system of reciprocal respect. Thus, while one may admire a fellow's special talents or achievements, the respect each owes to each is no more and no less than respect as an equal. Similarly, there may be winners and losers, but the losers need not lose the respect of the winners because they need not lose their honor. Hence, winning is not a matter of political life and death. To be sure, one's stance toward those outside the circle may vary from honor code to honor code. By the same token, the scope and bounds of the circle of honor itself—its exclusiveness or inclusiveness—will vary from one system of honor to another. But within the circle, it embodies in a living institution or practice an experience that, for Dworkin, is an ideal to be impressed on a recalcitrant world.

The last generic element of honor follows from the first five. What honor embodies, above all, is a *motivation* to action. It springs immediately from a sentiment of personal identity. The stance in the world that it constructs, a “forward stance,” implies an urge to honorable behavior, especially in resistance to disrespect. One's self-image and self-respect cannot be separated from this behavior—which is experienced, simply, as necessary. The sentiment incorporates a readiness to be “tested,” to prove oneself to oneself and to others through action. “Who I am” includes an urgent conviction: what I've “got to” do.

Sharon Krause is interested in motivation to political action. She joins in the project of contemporary political theory to promote and identify “civic renewal for American democracy.” We have, she says, “lost faith in individual agency.” She deplores a widespread feeling of victimhood and powerlessness, a weak-kneed yearning for “protection from forces beyond one's control.”³⁰ What is needed now, she concludes, is to regain political motivation based in an awareness of and confidence in oneself

³⁰ KRAUSE, *supra* note 7, at ix–x.

as a political actor.³¹ However, she doubts that altruism—or civic virtue—offers a sufficiently “dependable” motivation in our real world. (In fact, she worries that it risks an unhinged extremism.) She also doubts that pursuit of self-interest can inspire the kind of “brave[ry]” that is required. Honor—the “gratification” and “pleasure” of standing up for oneself, resisting disrespect of “who I am” and “what is mine,” and so earning the respect of others—offers, by contrast, what she says is a “reliable” motivation for “spirited” involvement in public life.³²

This account of political motivation is a contribution to the imagination of democratic politics. It, therefore, contributes to constitutional theory as well. It throws new light on the value that, today, is the touchstone for mainstream constitutional theory—respect for the equal status of persons. Tying respect to political agency and vice versa, and locating both in a culture of honor, it potentially helps us make the old case that a growing number of us want to make again: That the value of respect should not be seen as an ideal to be imposed on political life—indeed that it is *disrespectful* of actual political actors to do so. This value, therefore, should be seen to develop through the agency of individuals in day-to-day politics, to which officials, including judges, should (if sometimes loosely) tether themselves. And that this tethering is, itself, a matter of honor, of showing respect that is due to others. It is, in other words, what officials owe to citizens who, as political agents, are—if not their masters, then something even better—their equals.

III. LIBERAL DEMOCRATIC HONOR

To support her argument, Krause draws, in particular, on Montesquieu and Tocqueville. She elaborates an account of aristocratic honor as a motivation to political action in resistance to tyranny and in defense of liberty. In the context of aristocracy—whose hierarchical culture of honor, whose deep-rooted pride and power and whose checking and balancing role in early modern politics is well known—the connection between honor and valuable political agency is entirely plausible. Yet, she notes, “honor’s aristocratic associations” limit its appeal today. The question, then, is whether honor can plausibly be imagined to motivate similarly vital, or even useful, political agency in a democracy. Does it, she asks, “run afoul of democratic equality”? That is the primary question to which Krause responds in *Liberalism With Honor*.³³

Her response resonates surprisingly with mainstream constitutional theory. Taking a first look at Krause’s book, one is likely to focus on differences between her imagination of democratic politics and the one, ex-

³¹ *Id.* at x–xi.

³² *Id.* at xi, 1, 3–4, 11.

³³ *Id.* at xi, 2.

emplified by Dworkin, presently dominant in legal academia. Her explicit concern is political action and motivation; his is the judicial development of legal principle. For her, the primary source of democratic flourishing is the self-centered individual; for him, it is an impartiality transcending any individual. He promotes a sort of civic virtue and idealism as essential to democracy; she seems to regard them as unreliable at best, striking a decidedly more down-to-earth note. Yet both say they adhere to “liberal” democracy. Upon a second look, as it turns out, their similarities are at least as impressive as their differences.

Krause imagines a liberal democracy actuated, as she says, by honor in a “modified form.”³⁴ Now, when we are talking abstractly about ideas or values to be put into practice in a political context, we cannot help but “modify” them in some way. Any general idea or value—including liberty, equality and community—can be (and has been) spun in many different ways and put to obviously better and worse (even horrible) uses. By modifying these conceptions of value, we put our own spin on them and indicate the sort of use we have in mind. The modification of honor that Krause elaborates is, therefore, revealing.

It has to do, first of all, with the “content” of the code of honor that she believes suited to motivate political action in a liberal democracy. The code must, she says, be filled with “high” principles. How high? Very: they ought to be “liberal” principles; that is to say, “universal principles” of abstract right. They should mandate respect for persons in keeping with “the principle of equal dignity” of all people—the vast bulk of whom (as we shall see) remain, for Krause, outside the circle of honor.³⁵ On one hand, she insists, honor must be self-centered and can never be “truly impartial.” Its code, on the other hand, ought to provide “the direction of impartial reason.”³⁶ This is surprising: her “liberal” code of honor sounds very like the ideal theory of the “essence” of democracy that Dworkin has in mind to guide the actors—primarily judges—whom he imagines are most vital to its success.

And that is not all. For, secondly, the persons of honor whom Krause imagines as vital to democratic flourishing are—like Dworkin’s judges—explicitly an elite. To be sure, their status is not dependent on a quasi-judicial separation from democratic politics. They are “in” political life. However, they are not really “of” it. Their status is based on superiority to it. They are “great” men and women. They are “heroes.” (She discusses, along with the American founders, Abraham Lincoln, Frederick

³⁴ *Id.* at xii.

³⁵ *Id.* at 7, 107, 185, 187. Repeatedly, Krause identifies the liberal code of honor she has in mind with the Declaration of Independence—the universal principles in its second sentence having to do with human equality and inalienable human rights. *Id.* at 27, 97–98, 106–07, 174–75. On occasion, she refers to the Constitution (and specifically the “principle of free speech”) as well. *Id.* at 188.

³⁶ *Id.* at 28, 187.

Douglass, Elizabeth Cady Stanton, Susan B. Anthony and Martin Luther King, Jr.) Like Dworkin's judges, they are (in her words) "the few"—the virtuous few—"who, when pressed, will rise to defend their principles."³⁷ They, too, thereby promote "progressive reforms" that, as Krause sees it, narrow "the gap" between the abstract ideals and the flawed practice of American democracy. They, too, will bring the "liberal" gospel to the rest of us.³⁸

Hierarchy is built into her imagination of democratic honor. To be sure, it is not "the fixed hierarchy" of the *ancien régime*. Yet it inheres, first of all, in what she supposes to be a principal motivation of honorable behavior—ambition for "public recognition," for "public distinction," for "public honors." "Public honors," she says, "can inspire us only if they are distributed unequally." Otherwise, they would have "as much appeal . . . as our social security numbers."³⁹ What she has in mind, here, is an aspiration to be seen as standing out from and above the mass of ordinary people. It is an aspiration to be recognized and admired by the very people whom the honorable "few" seek to transcend, the "public." What helps to motivate them, she implies, is recognition in the upcast eyes of political inferiors.

Honor and inequality, according to Krause, go together for an even deeper reason. To imagine honor without inequality—to imagine it as a quality potentially possessed by all—is simply impossible, she says. "[S]o long as honor . . . must be asserted [through honorable action]," she believes, "it never will be had by all, or never will be had equally by all." "[E]qualizing" it would require "coercion," "forc[ing] everyone to meet standards that are higher than most people could or would choose to meet."⁴⁰ The circle, then, is exclusive. True, one does not have to be white, male or rich. Only one white man, and no rich person, makes Krause's progressive pantheon. But one does have to possess profound "natural" qualities of character. Those qualities, she assumes, are not "likely to be held in equal measure by all." Indeed, they are rare, "irreducibly aristocratic." Deploying a phrase common in the eighteenth century but rather

³⁷ *Id.* at xii, 185, 190. Krause would resist my description of the "few" she has in mind as "the virtuous few," since she makes a general distinction between honor and virtue. For her, virtue "articulate[s] ways of being" and has to do with "excellence of character" and altruism. She defines honor, by contrast, as a way of acting in accordance with a code, motivated by self-concern. Still, she bases honor in "a quality of character." And her liberal code of honor mandates action in keeping with "principles of abstract right." Thus it is not a distortion to describe her honorable "few" as a "virtuous few." *Id.* at 4, 24, 30, 181.

³⁸ *Id.* at 174.

³⁹ *Id.* at 2. Of course, public recognition is not the only motivation to honor, as Krause quite properly makes clear. One may very well be motivated to act honorably without the real possibility of recognition. *Id.* at 3, 20. Still, she repeatedly emphasizes it as a principal motive.

⁴⁰ *Id.* at 2, 185.

less palatable nowadays, she insists that individuals who can be “heroic” and “great”—persons of honor—constitute a “natural aristocracy.”⁴¹

For both Dworkin and Krause, inequality in political agency is justified as well as necessary: it is justified as essential to liberal democracy. So long as there is no formal barrier to entry into the circle of democracy’s guardians, this inequality is, they suppose, essential in order to extend and defend “respect” for all—which they see as more vital to democracy than an equality of political agency. It is, however, one thing for a philosopher king to take this line. It is quite another thing for an exponent of personal honor to follow suit, especially one who imagines honor to be at work in the thick of politics. For her (one would think) respect is too inherently dependent on agency to be cut cleanly in two—so that for “the few” it is, and for the many it is not, dependent on agency. The tension internal to her argument is too sharp to ignore.

Strangely, Krause does not address this tension. Yet, perhaps unconsciously, she does display it. She displays it by deploying two defense mechanisms. On one hand, she seeks to assuage or evade it with her list of good-guy honorable “heroes” drawn from, and striving to advance, “marginalized” groups whose need for respect may well seem to eclipse the disrespect rooted in an inequality of political agency. On the other, she seems to deny it with an over-loud defiance. Thus, to establish that respect for ordinary people as political agents is of minor concern to her, she begins by painting them as the enemy. “This book,” she says, “is animated by a fear of majority tyranny.” Later, she adds: “Part of the aim of this study is to . . . peel away the concealing layers of democratic euphemisms and so to illuminate the aristocratic foundations . . . implicit in individual agency.”⁴²

Neither evasion nor bluster can put the problem to rest, however. Krause set out to defend honor against “neglect” due to its “aristocratic associations.” Her defense of it as a kind of “natural aristocracy” hardly puts those associations to rest. Similarly, she set out to counter the objection that political agency rooted in honor “run[s] afoul of democratic equality.” Yet she excites that very objection. And there is a still more telling indication of the intractability of the problem. The actions of great and honorable persons in democratic politics, she says, “attest to [their] superiority.” But, she continues, it is a superiority “they will not claim.”⁴³ One may ask: Why not? Might it be, in keeping with Krause’s own as-

⁴¹ *Id.* at xii, 12–13. This “natural” inequality does not trouble Krause. “[H]owever much it needs great citizens,” she says, “liberal democracy does not need every citizen to be great; indeed, an abundance of heroic types could only be a mixed blessing in any polity.” It is enough, for her, that “[w]e ordinary citizens” can “rely on the honor of the few” and may be “inspired” by them to “reach for the exercise of agency that too often seems to elude us” and perhaps, in modest ways, “become more fully the agents of our destinies.” *Id.* at 12, 190.

⁴² *Id.* at ix, 23.

⁴³ *Id.* at 22.

sumptions, that “the few” grasp what she does not: that, in our democracy, basic respect for millions of people requires that there be no superiors and inferiors when it comes to political agency—that every citizen, presumably, can and should be motivated to political action by an appeal to honor?

IV. POPULIST DEMOCRATIC HONOR

Near the end of *The Remains of the Day* by Kazuo Ishiguro, a novel well known to lawyers, an ultra-dignified English butler named Mr. Stevens looks back at his life: “I can’t even say I made my own mistakes. Really—one has to ask oneself—what dignity is there in that?”⁴⁴ He is beginning to grasp the relationship between dignity and honor. What he is glimpsing—after decades of impeccable, assiduous subordination to an aristocratic employer whom he trusted as a great and honorable man—is not so much that he had worked for the wrong boss. Rather, it is the truth central to the sentiment of honor: the dependence of respect and, even more important, of self-respect on personal agency.

Earlier, in a country inn, Mr. Stevens briefly crosses paths with the ultimate ordinary man, a “small” man named Harry Smith, who presses the point. He sounds off:

Dignity’s something every man and woman in the country can strive for and get That’s what we fought for and that’s what we won. We won the right to be free citizens Now it’s up to us to exercise our rights, every one of us It gets easy for us here to forget our responsibility as citizens. That’s why I work so hard at the campaigning. Whether people agree or disagree—and I know there’s not one soul in this room now who’d agree with everything I say—at least I’ll get them thinking. At least I’ll remind them of their duty. This is a democratic country we’re living in. We fought for it. We’ve all got to play our part.⁴⁵

Mr. Stevens, embarrassed by this presumptuous hot air, tactfully tries to change the subject. But we get the point. Nowadays, we are accustomed to hearing that “dignity” is a human right. When we hear it, we tend to think of protection against what may be *done to* a person or, perhaps, what a person has a *right* to do. This “dignity” has been described as a generalized, equalized, democratized form of honor.⁴⁶ If, however, it is a form of honor, it is honor diluted to the point of perverse transformation.

⁴⁴ KAZUO ISHIGURO, *THE REMAINS OF THE DAY* 243 (1989).

⁴⁵ *Id.* at 186–90.

⁴⁶ See AVISHAI MARGALIT, *THE DECENT SOCIETY* 43–44 (Naomi Goldblum trans., 1996); JAMES Q. WHITMAN, *HARSH JUSTICE: CRIMINAL PUNISHMENT AND THE WIDENING DIVIDE BETWEEN AMERICA AND EUROPE* (2003); Whitman, *supra* note 29, at 245–46.

For what honor is about, as Harry Smith suggests and as I have suggested, is what one actually *does* and what one *ought to be doing*. Honor as a motivation to and product of agency—specifically, honor mobilizing political agency—is what needs to be generalized, equalized, democratized. That is the old-fashioned idea of Harry Smith. And it is the primary insight of a populist imagination of democracy.

Here's the idea: Populist democracy and honor, when fused, nourish one another. The populist democratic impulse vastly extends access to the experience of honor. It expands the circle of honor so as, potentially, to include every single citizen. Thus it frees the sentiment of honor, at last, from the aristocratic associations that tend, today, to limit its potency. The culture of honor, in turn, nurtures populist democratic politics in two ways. Identity as a citizen—as a political agent—is a source of honor. Thus, on one hand, honor's norm of reciprocal respect among equals within a circle of honor reinforces democratic political equality. At the same time, honor nurtures a motivation to democratic political action—action living up to a “code” of citizenship, especially in defiance of disrespect for oneself and one's fellows as citizens.

Talk of “citizenship” as a form of honor tends to raise academic hackles. (Shades of the proverbial, if never actually experienced, “civics class”! We sophisticates have our own sense of honor after all.) But who can deny that this sort of democratic populist imagination is still alive—on the left, the right, and the center—in our popular political culture? The question is whether we should allow it back into the legal culture. What I want to do is spotlight three arguments for its exclusion, each made by Sharon Krause. They claim that an expansion of the circle of honor is impossible and/or undesirable. I will identify assumptions that tie them together. There is the assumption, on one hand, that the motivation built into honor must involve a drive to separation from and superiority over others. On the other hand, there is the assumption that most people simply fall far short when it comes to political agency. The two are deeply connected. In my view, the latter generates the former. If starkly stated, they may tend to erode. For, like any prejudice against other people, the prejudice against most people—the majority—is not so easy to embrace in the light.

The first argument is that extension of the circle of honor so as, potentially, to include most people would trivialize it and, so, drain it of capacity to motivate action or elicit respect. This claim is encapsulated in Krause's comment about the insignificance of social security numbers—which she seems to compare with citizenship.⁴⁷ Not only are both given for free, but both are given “automatically” to most of us as a matter of law, and both might be described as compulsory. How could “being a citizen,” any more than having a social security number, be seen as a badge

⁴⁷ See *supra* note 39 and accompanying text.

of honor motivating anything, much less political agency? One difference, however, is that citizenship, unlike a social security number, is widely taken to embody a standard of behavior. “Being” a citizen is taken to mean “acting like” a (good) citizen. This is not just a matter of an outward show. It is understood to be a matter of choice, even character. So, we come back to the heart of the argument: How could one be motivated to earn access to a circle that is open to (and occupied by) so many? Here, it is the assumption that does the work of argument: the assumption that political motivation depends on the prospect of being special, the prospect of a competitive advantage over the next person and over most people. (Dworkin, in the same vein, assumes that political action yielding a “tiny” or “minuscule” measure of power or influence over government counts for nothing and, so, is worth nothing.) Is the assumption plausible?

Take an example: You have been admitted to the bar; you are expected to meet certain standards of ethics and performance; it is supposed that you will try to meet them, not primarily so as to avoid disbarment, but out of professional and personal honor. Or another example: a military draft. You are “automatically” given, indeed required to have, a draft card. If drafted, you are expected to behave as a (good) soldier. Again, it is generally supposed that your motivation to act that way is not just a matter of being told what to do—that it is, perhaps primarily, a matter of honor. In these cases, honorable behavior does not make you very special. You simply join most people in your situation, a great number of people. In that context, your behavior is ordinary.⁴⁸ Why should motivation to the political agency expected of (good) citizens be so different? True, citizenship is a role more common than service at the bar or in the military. But the difference is one of degree. Why is it assumed (by Krause for instance) to be a difference in kind? Might it be because of a deeper assumption: that when it comes to political life, ordinary people are simply not capable of wanting to meet—much less meeting—the sort of standard of honor that motivates lawyers and soldiers?

That introduces the second argument. The claim, as Krause puts it, is that standards of honor “are higher than most people could or would choose to meet.”⁴⁹ The ranks of the qualified are extremely small, in other words, because the qualifications are extremely high. Why so high? She subscribes to what used to be called “the great man theory of history.” She believes that “greatness”—“great” aims, “great” impact—is what makes the difference in liberal democracy and, especially, in the onward march of progressive reform. Hence, in her mind, that is the quality that *deserves* to be honored. Anything and anybody less extraordinary fade into a bland

⁴⁸ Krause herself invokes the honor of a student who adheres to her school’s honor code in taking an exam. See KRAUSE, *supra* note 7, at 3.

⁴⁹ See *supra* note 40 and accompanying text.

background in her imagination—like social security numbers. How plausible is this?

These days, not many historians believe in “the great man theory.” Most history, in one way or another, is written from the bottom-up. Even biography tends to locate the “hero” in his “times.” Not only his opportunities, but also his success, indeed his very formation, are understood to depend on a vast collection of others. It is less what motivates him than what motivates them, less what he does than what they do, that really matters. Thus the political actions of myriad persons come into focus. This kind of political agency has little to do with “greatness” or a desire to be “great.” Yet, when multiplied, simple acts of standing up and speaking up (or sometimes, sitting down and refusing to speak) can and do often “make a difference.” En masse, even voting changes the course of history. Why, then, doesn’t this kind of thing *deserve* to be honored? In the populist democratic imagination, it does. A citizen need not be rich or own a newspaper. She need not be an “activist” or read a paper every day. She simply must be ready to act politically, in the most capacious sense of the word. Not necessarily in dissent—and not always in a “great” cause or at “great” cost—but in service of self-respect and, so, of respect. Such behavior is within reach of everyone. Looking down on it as something less than full “political agency,” and so unworthy of honor, reflects an attitude whose own worthiness needs to be put in question.

The third argument has to do with the supposed underside of populist democratic honor. It brings the two persistent assumptions to a full boil. Krause imagines that her honorable few are wonderfully “moderate,” self-restrained.⁵⁰ Most other political actors, she seems to imagine, are not. Many writers take the argument farther. They claim that when the sort of motivation they assume to be inherent in a culture of honor—motivation to separation and superiority—drives the political behavior of ordinary (inferior) people, the resulting behavior will tend to be narrow, prideful and dangerous.⁵¹ It will tend (so the argument goes) to inflate their self-esteem, blind them to concerns of others, encourage hypersensitivity to collective insult, and finally incline them to self-definition and self-assertion through hostility and aggression against the others.

This familiar story line may be plausible when addressed to an identity politics based in the purported homogeneity of a group defined by race, ethnicity, religion or other supposedly natural or supernatural trait. (It could be a small group of “aristocrats” as easily as a group of self-styled “folks.”) The imagination of populist democracy, however, has nothing to do with homogeneity. It opens the circle of honor to a vast variety of individuals, for it attaches honor strictly to political agency. Of course, citizenship does have to do with nationality, and it may often be

⁵⁰ KRAUSE, *supra* note 7, at 7.

⁵¹ See, e.g., RICHARD SENNETT, RESPECT IN A WORLD OF INEQUALITY 55 (2003).

invoked in appeals to national solidarity. But so long as it is the former that defines the latter, and not the other way around, political dispute is not likely to be silenced for very long. This ought to be recognized, in addition to the diversity among citizens, as a vital “moderating” dynamic built into a populist democratic politics. That many critics—themselves often enthusiastic sponsors of multiculturalist homogeneity-groups—do not so recognize it may tell more about them and their attitude toward most people than it does about populist democracy.

V. IN PRACTICE

But is it plausible or appealing in practice? Even if it is not impossible or undesirable, is it likely that so diverse and diffuse a group as the citizenry would generate a culture of honor? Is it likely, more specifically, that honor would mobilize individual citizens to collective political action that accomplishes important and valuable things?⁵² Are there any “authorities” to be cited to show that it *is* likely—indeed, that it has been done? For my present purpose, there are. They are none other than the “great” individuals whose stories are told by Sharon Krause in the course of her argument that the political motivation of ordinary people by the sentiment of honor is *not* likely.

The stories she tells are, in fact, not about solitary actions of “great” individuals. Rather, each involves an historical situation in which one of her “heroes” had to, and sought to, mobilize ordinary citizens to collective political action. In each case, success depended on the “hero’s” imagination of popular politics—specifically, of what might motivate ordinary people to political agency. In each case, what her “hero” did was speak to the honor of citizens as citizens, pointing to political disrespect they had to correct in the name of self-respect. In each case, he or she

⁵² There is, of course, a rich literature addressing these general questions, if not in exactly these terms. See, e.g., BENJAMIN BARBER, *STRONG DEMOCRACY: PARTICIPATORY POLITICS FOR A NEW AGE* 117–311 (1984); ALBERT O. HIRSCHMAN, *SHIFTING INVOLVEMENTS: PRIVATE INTEREST AND PUBLIC AUCTION* 62–134 (1982); THEDA SKOCPOL, *DIMINISHED DEMOCRACY: FROM MEMBERSHIP TO MANAGEMENT IN AMERICAN CIVIL LIFE* 254–93 (2003). Two writers who have looked for answers in terms of (or terms like) honor are Judith Shklar and Michael Walzer. JUDITH N. SHKLAR, *AMERICAN CITIZENSHIP* (1991); MICHAEL WALZER, *SPHERES OF JUSTICE* 259–80, 303–11 (1983). Walzer explicitly asks what “makes it possible” that honor (or something like it) may motivate active democratic citizenship. He answers with what may be necessary vagueness: “A surge of hope generated perhaps by a social or an economic crisis, a shared understanding of political rights, an impulse toward democracy latent in the culture (not in every culture).” WALZER, *supra*, at 311. Krause responds to a more limited aspect of Walzer’s speculations involving the location of honor in voluntary associations. KRAUSE, *supra* note 7, at 182–86. She concludes, accordingly, that “[h]onor is too limited and too plural to provide a comprehensive, unitary standard for moral and political life.” *Id.* at 186. For a contrasting view that honor is simply lost to us now, see, for example, Peter Berger, *On the Obsolescence of the Concept of Honour*, in *LIBERALISM AND ITS CRITICS* 149 (Michael J. Sandel ed., 1984); James Bowman, *The Lost Sense of Honor*, 2002 *PUB. INTEREST* 32.

succeeded. In each case, what he or she elicited cannot be dismissed as “herd behavior”; to the contrary, it involved a multitude of individual choices and actions that were honorable. In each case, the “hero” showed—by tapping into it—that popular political honor is a democratic passion of stunning power for good and, so, that populist democracy is not only possible, but indispensable.

Consider three cases in point. Take first the Declaration of Independence. Krause exalts its authors, calling their text the “American national code of honor.”⁵³ What she has in mind are the first five—out of forty-six—sentences in the document. She is far from the only one to focus on the universalistic Lockean philosophy in those sentences: the “Laws of Nature and Nature’s God,” the “truths” that are “self-evident,” the “inalienable rights,” the “ends” of government “to secure these rights” and “the right” to “alter or abolish” government if it is “destructive of these ends.” Indeed, the Declaration is often imagined as nothing less than an inspiring statement of philosophy left to the ages by extraordinary men, like the works of other great thinkers. Of course, as Krause understands, these men were political actors at a particular time and place, facing a particular political challenge. The central challenge was not to speak abstract truth to royal power. It was to rally active involvement in revolution by colonists, in the face of very substantial loyalist opposition. They were not seeking followers who would merely do what they were told. What they were trying to motivate was political agency by untold numbers of ordinary people, which would require them to take initiatives in untold struggles and which would be extremely risky. Could philosophical ideals possibly be enough to accomplish that aim? They didn’t think so. Shouldn’t we look, then, at the other forty-one sentences in this classic document of political motivation?

Those sentences break down into three sections. The theme of the first (by far the longest) section has to do with the behavior of the British government. It is not about a failure to secure rights to “life, liberty and the pursuit of happiness.”⁵⁴ Rather, it details the political disrespect with which the crown had treated the colonists. The Declaration explicitly recognizes its motivational challenge, observing that “mankind are more disposed to suffer . . . than to right themselves” by means of revolt.⁵⁵ To turn “patient sufferance” into active resistance, it emphasizes three essential elements of disrespect. First, it personalizes the behavior: repeatedly naming the King, rather than the Parliament, as the perpetrator—beginning twenty-seven sentences with the word “He.”⁵⁶ Second, it focuses on the mental element: “a design to reduce [the colonists] under absolute

⁵³ KRAUSE, *supra* note 7, at 174.

⁵⁴ THE DECLARATION OF INDEPENDENCE para. 1 (U.S. 1776).

⁵⁵ *Id.* para. 2, 3.

⁵⁶ *Id.* para. 3.

despotism,” a “direct object [to establish] an absolute Tyranny” over them.⁵⁷ And, third, it describes persistent contemptuous acts: “a long train of abuses,” a “history of repeated injuries and usurpations.”⁵⁸ Surprisingly (from our perspective) only a minority of the listed “abuses”—at most, twelve out of twenty-seven—involve encroachments on material interests, personal security or other “individual” rights. Since the aim of the document is to spark political agency, most of them have to do, instead, with invasions of an apparently more vital prerogative: the capacity of people, collectively, to rule themselves. Having pressed in the face of colonists this proof of persistent and intentional political disrespect (how else to see the rhetoric of the long list?) the Declaration claims it is their “right” to “throw off” the royal government—but that is not the real destination of the argument. After a comma’s brief pause, it insists it is their “duty” and (in the next sentence) that it is “necessary.”⁵⁹ In other words, they have “got to” do it—if they have political self-respect. This, unmistakably, is the language of political honor.

The following section (eight sentences) uses the same language to enhance the same motivational appeal. The Declaration depicts the additional abject humiliation of the colonists as political agents. It recites that “we have petitioned for redress” and have done so “repeated[ly].” What is more, we have done so “in the most humble terms.” Yet we have been “answered only by repeated injury.” In a tone of outraged innocence, it cries that the “character” of the monarch revealed by this ultimate insult makes him “unfit” to rule—or at least (another turn in the appeal to honor) “to be the ruler of a free people.”⁶⁰ Still, according to the Declaration, the colonists hoped against hope—and met yet more disrespect. Going around the King, they sought sympathy from the people of Britain. Surely, they—“our British brethren”—would be moved by “our common kindred to disavow these usurpations.” But “[t]hey too have been deaf to the voice of justice and consanguinity.”⁶¹ This section of the Declaration ends by reprising the end of the prior section: We “must” separate from them. It is a “necessity.”⁶² Why? The Declaration does not use the word—yet—but, quite plainly, it is speaking of and to honor.

The last section (one long sentence, one short one) is a crescendo. It abruptly shifts from a narrative to a performative voice. For the first time, it uses “we” to refer not to the colonists—the primary audience—but to the signatories of the Declaration. It asserts “the rectitude of our intentions” and, speaking “in the Name, and by Authority of the good People” of the colonies, it “declare[s]” that these colonies are now “Free and Independ-

⁵⁷ *Id.* para. 2.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.* para. 4.

⁶¹ *Id.* para. 5.

⁶² *Id.*

ent States.”⁶³ It ends with a “pledge to each other.” What is going on here is modeling: The final appeal is sharply personal. It taps into the personal self-respect—and the desire for respect—of individuals in its audience. It does so by personalizing its own voice, then using that voice as a model for what it seeks to motivate in response. And, in the end, what is it that “we mutually pledge to each other”? “Our Lives, our Fortunes” and “our sacred Honor.”⁶⁴ These are the last words.

The nature and consequences of that “mutual pledge” were the concern of another one of Sharon Krause’s “heroes”—Lincoln. His lodestar was the Declaration. Yet the challenge he faced was very different. Rather than having to motivate separation from a political community, his challenge was to motivate resistance to separation. Nonetheless, the appeal he made, at what may have been the most critical moment, was also an appeal to political honor. I want to look at his Inaugural Address in March 1861, as secession was beginning, and his Message to Congress in July, after the attack on Fort Sumpter.⁶⁵ In these speeches, his audience was not just Congress but, more importantly, the citizens of Southern and border states considering secession and the citizens of Northern states who, he hoped, would supply the massive army needed to preserve the Union. Boiled down and reorganized, the argument contains three connected elements.

First, Lincoln describes “who we are” and “what is ours” and the threat to both. The Union, he says, was conceived and bonded by “a plighting of faith”—initially, in the Declaration and then in the Constitution.⁶⁶ The nature of the bond created was recorded in what he repeatedly refers to as “express” or “plain” or “clear” constitutional provisions.⁶⁷ The bond was reinforced over decades of common experience, of political agency: “mystic chords of memory, stretching from every battlefield, and patriot grave, to every living heart and hearthstone.”⁶⁸ Now, he asserts, the generative pledge defines our identity: “We the People” of a “perpetual” Union.⁶⁹ Everything brought into being by the act of union—the national government, its property, the state governments—“belongs” to “the People.”⁷⁰ Secession is not only an attempt to take what is ours. It is an attempt to vivisect who we are.

Lincoln portrays the Union as a circle of honor including all citizens of the United States. He emphasizes, in particular, the norm of equality—of reciprocal respect—central to a code of honor. He, therefore, compares secession to unilateral rescission of a contract and renegeing on a common

⁶³ *Id.* para. 6.

⁶⁴ *Id.*

⁶⁵ ABRAHAM LINCOLN: SPEECHES AND WRITINGS 1859–1865, at 215, 256 (Don E. Fehrenbacher ed., 1989).

⁶⁶ *Id.* at 256.

⁶⁷ *Id.* at 216–19, 253.

⁶⁸ *Id.* at 224.

⁶⁹ *Id.* at 217–18, 256.

⁷⁰ *Id.* at 222.

debt, focusing on the disdain of the secessionists for equality of obligation and the fate of one's fellows.⁷¹ What is more, he says that their self-justifications exude intentional and underhanded disrespect for political agency of the citizenry at large—"ingenious sophism" working an "insidious debauching" and "drugging" of "the public mind." That disrespect for the equal status of citizens is, he says, at the heart of secessionist claims of minority rights. They amount, he says, to a denial of the political equality, for they assert the superiority of a Southern minority over a national majority. Even in the South, he charges, secession was imposed without majority support.⁷² And, in an acid passage, he describes the disrespect that saturates the claim that "a minority, may rightfully do, what the others, because they are a majority, may not rightfully do."⁷³ "These politicians," he observes, "are subtle and profound, on the rights of minorities." Turning his rhetorical knife, he continues: "They are not partial to . . . 'We, the People.'"⁷⁴ To illuminate the haughty and humiliating attitude of the secessionists, he contrasts the political culture of the Union. Out of nearly every Union regiment, he says, there could be "selected a President, a Cabinet, a Congress, and perhaps a Court, abundantly competent to administer the government."⁷⁵

To intensify the contrast, Lincoln adds a second argument. He details—much as the Declaration did—the elaborate efforts he has made to engage his adversaries in brotherly accommodation, going the extra mile to demonstrate "forbearance" and thus respect for them. But he says that they—like the British crown and public described in the Declaration—have rebuffed every gesture and refused every accommodation, disdaining to recognize even the President of the United States as a political equal. Their response to his many overtures was aggression.⁷⁶

Finally, Lincoln aims to move his audience to action. Now, he says, there is "no choice." Repeatedly, he speaks of an "oath" and a "duty" that must be fulfilled.⁷⁷ It is, he proclaims, "a people's contest."⁷⁸ The issue is "[i]n *your* hands."⁷⁹ With confidence that "the plain people understand" and "will save their government," he concludes with rhetorical modeling, referring initially to himself. As President, he says, he has done his duty: "You will now . . . perform yours."⁸⁰ He goes on to recall what others did in the revolution and says: "Surely each man has as strong a motive *now*,

⁷¹ *Id.* at 217.

⁷² *Id.* at 255, 258.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.* at 259.

⁷⁶ *Id.* at 253.

⁷⁷ *Id.* at 250, 252–53.

⁷⁸ *Id.* at 259.

⁷⁹ *Id.* at 223.

⁸⁰ *Id.* at 254, 259, 261.

to *preserve* our liberties, as each had *then*, to *establish* them.”⁸¹ And, in a brilliant passage, he invokes yet another model. Following secession, he says, many military officers “proved false to the hand which had pampered them, [but] not one common soldier, or common sailor is known to have deserted his flag.” Theirs, he proclaims, is “the greatest honor.” On that note, he concludes, urging Americans to “go forward without fear, and with manly hearts.”⁸²

On the steps of the Lincoln Memorial on August 28, 1963, another of Krause’s “heroes” gave his most famous speech.⁸³ Like Lincoln, Dr. Martin Luther King, Jr., had at least two audiences. On one hand, he hoped to sustain and expand the mobilization of the Civil Rights Movement.⁸⁴ On the other, he hoped to mobilize white support for the movement’s goals. What many of us remember is the last part of his speech—especially the refrains “I have a dream” and “Let freedom ring.”⁸⁵ Taken alone, that part seems to exemplify a rhetoric of uplift and idealism. However, it is less than half of the whole. Upon a re-reading from beginning to end, it becomes clear that King’s speech (with a little reorganization) makes much the same kind of appeal to popular political honor with roughly the same three-part structure, as the Declaration of Independence and the two early addresses by President Lincoln.

The speech begins with the Emancipation Proclamation. It promised to “the Negro,” says King, an identity—as an equal “in his own land”—that was subjected, over the ensuing century, to utter disrespect. The disrespect he chooses to spotlight is not the general business of “exil[ing]” black people “on a lonely island of poverty,” still “crippled by the manacles of segregation and the chains of discrimination.”⁸⁶ What King repeatedly emphasizes is the special kind of disrespect that is involved when a deal, supposedly between equals, is contemptuously scrapped by one party. That is to say, dishonored. He portrays the Proclamation not only as a brilliant “beacon light of hope,” but (along with the Declaration and the Constitution) as a “promissory note” or a “check.”⁸⁷ Like Lincoln, he uses the analogy of a contract or financial obligation, first, to stress the equality of status—political status—central to the identity created by the founding documents and, second, to insist that what is being taken or denied is something that belongs to “the Negro,” something to

⁸¹ *Id.* at 259–60.

⁸² *Id.* at 261.

⁸³ See KRAUSE, *supra* note 7, at 168–69.

⁸⁴ See *id.* at 169.

⁸⁵ Martin Luther King, Jr., I Have a Dream, Address at the March on Washington for Jobs and Freedom (Aug. 28, 1963), reprinted in THE AUTOBIOGRAPHY OF MARTIN LUTHER KING, JR. 223, 226–27 (Clayborne Carson ed., 1998) [hereinafter King, I Have a Dream].

⁸⁶ *Id.* at 223–34.

⁸⁷ *Id.*

which he, like “every American,” is already an “heir.”⁸⁸ Pushing the analogy one step further, King is then able to portray the treatment of black people in the hundred years since emancipation as disrespect rooted in a particularly sleazy and despicable attitude: “America,” he says, “has defaulted on [the] promissory note.” It has given blacks “a bad check”—a check that, at long last, “we’ve come to cash.”⁸⁹

King next portrays the political agency of the civil rights movement and the response to it. He juxtaposes the energy and potential force of the movement—“whirlwinds of revolt,” “a rude awakening”—with its prevalent “soul force,” its peaceful approach to those in power.⁹⁰ He highlights its forbearance—its “dignity and discipline”—and warns against “wrongful deeds” and “distrust of all white people.”⁹¹ (His depiction of the movement is, of course, similar to the depiction by Lincoln and by the authors of the Declaration of their own efforts on behalf of accommodation.) Yet, despite this restraint, the movement’s “soul force,” King observes, has elicited little more than compounded official disrespect.⁹² It has been met with “physical force,” with “storms of persecution” and “police brutality,” and by a Governor whose lips are “dripping with words of interposition and nullification.”⁹³ After persistent insult added to long-standing injury, it is at last time, he tells his audiences, to face the “fierce urgency of now”⁹⁴—to do, in other words, what we have “got to” do to protect “who we are” and “what is ours.”

The third component of the speech is the longest. It is the exhortation. King dismisses “the luxury of cooling” and “the tranquillizing drug of gradualism” along with advice to be “satisfied” and slow down.⁹⁵ He also dismisses any temptation to “wallow in the valley of despair.”⁹⁶ “This is no time” for any of that, he says. “Now is the time to rise from the dark and desolate valley.”⁹⁷ Then, about half way through the speech, he shifts—as the signatories of the Declaration and Lincoln did—into a more personal mode of address. He begins to speak as “I.”⁹⁸ What follows

⁸⁸ On December 5, 1955, Dr. King gave his first important speech, at the outset of the Montgomery bus boycott. The first sentence of the speech was: “We are here in a general sense because first and foremost—we are American citizens—and we are determined to apply our citizenship to the fullness of its meaning.” Martin Luther King, Jr., MIA Mass Meeting at Holt Street Baptist Church, Address at the Outset of the Montgomery Bus Boycott (Dec. 5, 1955), reprinted in 3 PAPERS OF MARTIN LUTHER KING, JR. 71, 71 (Clayborne Carson et al. eds., 1992).

⁸⁹ King, I Have a Dream, *supra* note 85, at 224.

⁹⁰ *Id.* at 224–25.

⁹¹ *Id.* at 225.

⁹² *Id.*

⁹³ *Id.* at 225–26.

⁹⁴ *Id.* at 224.

⁹⁵ *Id.* at 224–25; cf. THE DECLARATION OF INDEPENDENCE para. 2 (rejecting “patient sufferance”).

⁹⁶ King, I Have a Dream, *supra* note 85, at 224.

⁹⁷ *Id.*

⁹⁸ *Id.* at 225.

is perhaps the most celebrated passage of rhetorical modeling in American history. He begins: “I still have a dream.”⁹⁹

VI. SO WHAT?

Does it matter, in the end, how we imagine democracy? To be sure, in the abstract, the way we see the political world and feel about it is bound to affect what we do in it and about it. But can't we be more specific? Do images of democracy determine or, at least, influence the resolution of controversial issues? Does one or another inherently, or at the moment, favor the left or the right? Judicial activism versus judicial restraint? Is there a special affinity between certain images of democratic politics and certain locations in our social structure? Or certain types of personality? My answer to all these questions is: Probably. But none of them gets to what is really at stake. What is at stake, I think, is a matter of attitude—about others and ourselves as political actors, in or out of judicial robes—and attitude is important in and of itself. Whether or not it affects what we do and what happens, it is the essence of our political identity.

This identity is something we choose and can change. We can adopt a new one if we associate it—however imprecise the association—with someone or something we are drawn to. Thus we decide who we are and what is ours. The question that follows is whether to stand up for who we are and what we own. That is the question put, and then answered, by the attitude of democratic honor: in particular, populist democratic honor. When we do stand up for ourselves—whether or not the occasion be of great significance—we may be encouraged to recall that this was the attitude that helped to make and then to save the nation and, so, establish the basis for the law itself.

⁹⁹ *Id.* at 226.