

Ferguson: Returning to Popular Sovereignty through Rhetorical Protest

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Riots broke out in Ferguson, Missouri (USA) after a white police officer shot and killed a black citizen of Ferguson. We explain how a breakdown of popular sovereignty in Ferguson contributed to the preexisting hostility in Ferguson. The rhetorical appeal of "Black Lives Matter" will hopefully lead to the restoration of a democratic municipal government in Ferguson and trust among its citizens.

Keywords: Popular sovereignty, Ferguson, surveillance, Black Lives Matter

In August of 2014 Citizen Michael Brown and Police Officer Darren Wilson squared off on a street of Ferguson, Missouri. In this paper, we are going to argue that the confrontation that left Brown dead in the street was an ideological conflict between tyranny and anarchy because a government of popular sovereignty had been subverted in Ferguson. The will of the people had collapsed under racial and economic pressure, replaced by a system of government run by a numerical minority at the expense of a racial and economic minority. Surveillance and circumventing due process of law validated and justified the breakdown of democratic institutions. Ultimately, the bullets from the police issued weapon of Officer Wilson killed Citizen Brown. The violence of that act motivated the rhetoric of the protesters that moved Ferguson toward popular sovereignty. We will use Ferguson as a case study to consider the democratic processes inherent in popular sovereign and the role rhetoric can play in restoring balance in popular sovereignty.

Popular sovereignty was theorized by Enlightenment thinkers like John Locke¹ and Jean-Jacques Rousseau² as a system of government whereby people create institutions of government to serve the interests of the citizens. Popular sovereignty stood in sharp contrasts with the 16th Century concepts of rule by monarchs or aristocrats. Three revolutionaries in British North America had no illusions about the difficulties of creating a government of the people that would actually work. Jim Otis, John Hancock, and Samuel Adams in *The Boston Pamphlet* (1863) discussed the advantages of a system of government that would allow a free people to follow their own conscious and pursue their "natural rights" given to them by God the Creator. However, they also warned the audience of their writings that the tendency of those in government would be to create a tyranny because the people in government would be tempted to use their power in government to serve themselves. "The Legislative has no Right to absolute arbitrary Power over the Lives and Fortunes of the People," they warned in the 1863 pamphlet. Despite the threats inherent in creating a system of government, citizens without government would degenerate into anarchy. They predicted that a lack of government would lead to "the worst Anarchy and Confusion, civil

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Discord, War and Bloodshed.”³ By August, 2014 Ferguson had become a conflict between anarchy and tyranny.

Scholars (Bailyn, 1967; Conkin, 1974; Morgan, 1988; Maier, 2010; LaCroix, 2011) agree that the American Revolution was revolutionary because the North American colonists created a government of the people. As Conkin wrote, The Declaration of Independence made the argument that “A people are by right sovereign” (47). The words of *The Declaration of Independence* issued in 1776 justified ending the 150 years of British colonial rule because Parliament and King George III were denying the citizens of the Thirteen Colonies their rights under natural law “to life, liberty, and the pursuit of happiness.” The Preamble to the U.S. constitution established popular sovereignty as the basis for the system of government spelled out in the remainder of the document, points out Conkin (1974), and the ideals of popular sovereignty are the theoretical framework of the Bill of Rights, particularly the First Amendment. In addition, the constitutions of all fifty states open with a statement of popular sovereignty.⁴ Popular sovereignty is the heart and soul of all branches of government in the United States. The best description of the meaning of popular sovereignty came from Abraham Lincoln in the Gettysburg Address: “government of the people, by the people, for the people....”

Popular sovereignty is a simple process in theory. Citizens elect people to serve in government. Elected officials pass laws at the behest of the citizens to serve the needs of the citizens. One problem arises if the public officials use their authority to serve themselves or to deny citizens their natural rights. Then the courts can declare laws or actions of the government to be unconstitutional, restoring popular sovereignty. A second problem occurs when anarchy exists. One of the responsibilities of the government is to protect the safety and security of the people from anarchy. Anarchy requires using the police state to protect the citizens.

U.S. Supreme Court Justice John Marshall Harlan wrote several decisions explaining where the lines of balance exist within popular sovereignty. As Harlan noted in several cases, under popular sovereignty citizens do not have the right to practice their natural rights without a concern for the welfare of other citizens. The state of Kansas had the right to prohibit the manufacturing of liquor in the state (*Mugler v. Kansas*, 123 U.S. 623, 1887) and could limit the hours in a work week (*Atkin v. Kansas*, 191 U.S. 207, 1903). Minnesota could regulate slaughter houses (*Minnesota v. Barber*, 136 U.S. 313, 1890). San Francisco put restrictions on selling alcoholic drinks (*Crowley v. Christensen*, 137 U.S. 86, 1890). In 1905, Harlan wrote that the Preamble of the Constitution did not prohibit Massachusetts from requiring Jacobson to have a smallpox vaccination (*Jacobson v. Massachusetts*, 197 U.S. 11, 1905). Harlan's decision in *Jacobson* has been used as evidence that the Preamble and popular sovereignty carry little constitutional weight. Harlan argued that the Preamble only indicates “the general purpose” of the Constitution. The Preamble did not diminish the state's “police power” to carry out the legitimate state interests of the government. Citizens retained the constitutional rights specifically spelled out in other sections of the constitution, explained Harlan (197 U.S. 25), but no constitutional rights could be inferred from the Preamble. In effect, Harlan argued that citizens could not use the Preamble to claim that their actions were the result of a natural right. In effect, the police power of the government can be used to prevent individual actions that lead to anarchy. However, Harlan continued his line of reasoning. Government could only pass laws and use its police power when those laws and actions served “the safety and security” of the citizens. “According to settled principles, the police power of a State must be held to embrace, at least, such reasonable regulations established directly by legislative enactment as will protect the public health and the public safety,” explained Harlan. The laws that “safe

guard the public health and public safety" are constitutional (197 U.S. 25), but laws that do not protect safety and security deny citizens individual liberty (197 U.S. 26). Here Harlan explains the power of popular sovereignty and of the Preamble. The police power of the state overreaches when the government passes laws that serve the interests of government, but do not protect safety and security of the citizens.

The Binary Oppositions

Harlan's Supreme Court decisions explain popular sovereignty as a state of balance between individual rights and the police power of the state. In a state of balance there is no conflict within a system of government built on popular sovereignty. When the government ceases to serve the interests of the people, then a binary opposition exists between government tyranny and individual liberties. When individual liberties create harm to the safety and security of citizens, then there is a binary opposition between individual liberties and the police power of the state.

Ferguson, Missouri is a case study of what happens when popular sovereignty is replaced by a binary opposition of the police power of the government versus individual liberties. The municipal government of Ferguson became a tyrant, the court system was co-opted into the tyranny, and the poor, black majority of Ferguson was forced to pay for the tyranny of government. Regardless of the personal reasons that motivated Michael Brown to walk in the city street in Ferguson that August or the intentions of Darren Wilson when he stopped Brown, by the end of the day on August 14, they were both players in the binary oppositions of individual liberties vs. police power, white officer vs. black citizen, freedom fighter vs. tyranny, and hero of the state vs. anarchists. These conflicts were played out physically sometimes, but more importantly, they became rhetorical conflicts.

Ferguson

As media articles explained after the shooting, in Ferguson, Missouri, the white, middle class power structure had become the tyrants and the poor, generally black citizens, had become the anarchists. In August, 2014, the shooting of Michael Brown by Police Officer Darren Wilson was the broken straw in a history that seems to revolve around racial confrontation, but which the authors of this paper read as a confrontation between tyrants and anarchists. *The Washington Post*, *The New York Times*, and other media sources found patterns of governmental abuse in Ferguson, which occurred when the popular sovereignty of people was sacrificed for the benefit of the privileged class. The news articles⁵ lay out an incestual legal system created in a power vacuum that exists in St. Louis County. The municipal boundaries of St. Louis are permanently established, which means the city cannot annex additional property in the county. As a result, there are 90 city governments and 10 unincorporated areas in the parts of the county outside the limits of the City of St. Louis. Plus, there is the government of St. Louis County. Many of these governmental units lack a property or sales tax base to finance the costs of government. As a result, these political units have been living off the fines collected for traffic violations and violations of other city ordinances. One street exemplifies the patchwork of governmental jurisdictions. Chambers Road begins near the Mississippi River (the boundary between Missouri and Illinois) and ends at the St. Louis Airport, a distance of less than 15 miles. Chambers Road begins in Riverview and runs west to Moline Acres, through St. Louis County, to Dellwood, to Ferguson, and to Kinloch before ending at the airport. All six jurisdictions set their own traffic regulations over those 15 miles. Each municipality has

the opportunity to set up speed traps and add stop signs. In some cases, according to the media coverage, police manipulated traffic lights within their city limits so they could issue tickets.⁶

According to the research collected by National Public Radio Reporter Joseph Shapiro (2015), nearly 33,000 bench warrants were issued in Ferguson in 2014, which had a population of 21,000 residents; Ferguson collected \$2.6 million in fines and fees, which comes to about \$124 per resident.⁷ Ferguson was 29 per cent white and 67 per cent black⁸ at the time of the Brown shooting; five of the six councilmen were white; 50 of the 53 members of the police department were white.⁹ Median income for whites in St. Louis County was around \$42,000 annually, compared to \$21,000 for African-Americans.¹⁰

Ferguson was just one of the municipalities in St. Louis County that financed city government through fees and fines. *Washington Post's* Radley Balko (2014) described municipal justice systems in St. Louis County that self-perpetuated money and power. For example, Lawyer One would act as the municipal judge on Monday, Lawyer Two served as the prosecutor, and Lawyer Three would represent clients. On Tuesday, Lawyer One would be a prosecutor for a second municipality, Lawyer Two would be a defendant's lawyer, and Lawyer Three would be the traffic court judge. The legal community in St. Louis County would keep the traffic court rotations going throughout the month. Violations, convictions, and fines kept the system oiled and kept the revenue flowing into city coffers, paying for the city councils, the lawyers, and the police departments. The councilmen passed the ordinances and the police enforced them, which kept the violators coming before the courts.

Defense attorneys were allowed to appear before the judge first on the evening the traffic courts were in session. These attorneys represented people, usually of the middle class, who had money to pay their fines, pointed out Balko. With the help of their attorneys, clients would contest the charges or plead them out. The poor appeared without representation and often could not afford to pay their fines. Balko presented evidence that poor blacks often would not appear if they could not pay the fines, fearing arrest. Failure to appear led to bench warrants and then felony convictions, denying them the right to vote. Research indicates that a quarter of black males in Missouri are felons.¹¹ Any future arrests or traffic stops represented jail time for people—often felons—with outstanding fines or bench warrants for failure to appear.

From the perspective of popular sovereignty, nothing in this system in St. Louis County represents government designed by the people to serve the safety and security needs of the citizens. Rather, the system in Ferguson was government created by the power elites to pay the power elites for running the government. The police were hired to be the muscle for the tyrants. The role of the underclass was to pay to keep those in power wealthy and in power.

Based on the case law from the Supreme Court, the way government and the law were practiced in Ferguson and St. Louis County violated the popular sovereign of the people under both the U.S. and the Missouri Constitution because the laws were not passed to provide for the safety and security of the people as required under popular sovereignty. Rather governments used the law to reinforce and pay for government at the expense of the people and their rights.

Surveillance and Hegemony

Michel Foucault (1995) in *Discipline and Punish: The Birth of Prisons* argues that one purpose of the police system is to provide surveillance. Surveillance requires people to remain within the ideological acceptable positions or face discipline, punishment, and perhaps

prison. Surveillance enforces a code of proper behavior (195). The Ferguson system of government and courts created a judicial system that created an expectation that people were always being watched by the police for traffic violations. If the person had outstanding fines or warrants, then being “seen” could result in prison. Since poor and black people in Ferguson were being targeted by the police, any public violations of the law that attracted police attention could lead to another fine, another court date, and possibly prison if they had fallen behind in their payments to the courts or had an outstanding warrant. The system of government kept people under surveillance and in fear of being seen, limiting their participation in government and their willingness to voice opposition to the government.

The result of the surveillance was to create a hegemonic power structure in Ferguson. Gramsci (2007) describes hegemony as a system whereby people agree to the power assigned to the minority in government and accept a lesser position for themselves within the power structure. Hegemony creates a system of “collective will” that appears as social and cultural unity, points out Ives (2004). The praxis of hegemony allows the rulers to force discipline on the underclass, argues Crehan (2002, 102), when the underclass becomes reticent to majority rule. Once the power structure is incorporated into daily praxis, then the ways of the power structure become the “common sense” (Fiske, 1987, 14) of the power structure. Once the “common sense” of the ideology is established, explains Burawoy (2001), then the working class can be kept subservient to the upper class that defined what constituted common sense by invoking the common sense as justification for rules or laws.¹² Abuses of power in government are justified because those in power have rationalized the power structure. In Ferguson, the white power structure ruled the black and poor minority because whites upheld law and order. The black and poor were the anarchists, who broke the law, did not pay their fines, avoided arrest, or went to prison. The white power structure in Ferguson was necessary to keep the black and poor from bringing anarchy to the municipality of Ferguson.

St. Louis, obviously the dominant municipality in St. Louis County, was proof of what happened when anarchy ruled the streets. On a scale where 100 is the safest city in the nation, St. Louis received a 1 in 2013, which was a year in which St. Louis experienced 26,164 violent crimes in a population of 318,416.¹³

Through surveillance, punishment, and prison, the white leaders of Ferguson established their city as a safe place to live. Law and order justified the hegemonic power structure; white tyranny was necessary to prevent anarchy by people who are black and poor. So, on that day in August, Officer Wilson was on surveillance. He heard about a nearby robbery, considered Brown and another black male possible suspects, and he stopped them, fulfilling his role as a hero protecting the white tyranny.¹⁴ Brown had grabbed a handful of cigars at a convenience and was walking in the street towards the apartments where he was staying. Brown was playing the role of anarchists.

The crowds that gathered even before Brown’s body was removed from the street did not see Brown as the anarchists. They saw him as a victim of tyranny, particularly as word spread that Brown had his hands up to surrender when Wilson—the villain—shot him down.¹⁵ Brown became the dead hero as the people living on the underside of Ferguson’s political structure demanded justice, shouting “Hands Up, Don’t Shoot.”¹⁶

The Rhetorical Positions

Peaceful demonstrations degenerated into some looting, protests, and arson. The rhetorical response of the white power structure was to demonstrate their lethal power. Anarchy had

arrived and the Ferguson police were ready with military weapons, body armor, snipers, and military vehicles.¹⁷ The heroes were ready to protect their city.

The voices against the tyrannical order were not intimidated. Rather the shouts of “Hands Up, Don’t Shoot” by peaceful protesters were viewed live on 24-hour news stations for days. The story played out initially in the media that the peaceful protesters and media were being victimized by a militant police force. An editorial in *The Dallas Morning News* (14 August, 2015) illustrates the public response:

Differing accounts continue to emerge from the incident in which Michael Brown, 18, was shot six times by a Ferguson officer, but certain rabble-rousers on the streets seem uninterested in the legal details. They appear more intent on looting and inflicting as much physical damage as possible, as if thuggish behavior will somehow hasten the administration of justice.

Their violence is no more justified than the militaristic overreaction by Ferguson police, who helped amp up an already electrified protest atmosphere.¹⁸

Missouri Governor Jay Nixon responded August 14 by putting the Missouri Highway Patrol in charge of police in Ferguson.¹⁹ The person in charge on the ground was Cpt. Ron Johnson, a black veteran of the Highway Patrol, who grew up in the area. He marched with the peaceful protesters and stopped the anarchists. Johnson was quoted as saying, “I’m not afraid to be in this crowd today, that’s why I walk up front (in the march). Hopefully, (there will) be some healing.”²⁰

Ferguson stayed in the headlines for months as nationwide protests followed and demonstrations heated up when a grand jury refused to indict Officer Wilson. The one-year anniversary of the shooting brought more protests. One black male, armed this time, was shot by police.²¹

Rhetorically, three arguments had been made. From the perspective of the tyrants, the Ferguson police protected the City of Ferguson, ready to fight a war with military style weapons and armor. The power structure of Ferguson was under attack after the shooting of Brown; the police sought to control the anarchy of the demonstrators. Some of the people who showed up for demonstrations were anarchists, hoping that events would provide an opportunity to ransack stores. The third voice presented the perspective of popular sovereignty, e.g. returning a government of the people to Ferguson. In the aftermath of the shooting peaceful protesters demonstrated nightly. This was the voice that Captain Ron Johnson joined.

In Spring, 2015 a voter registration drive and the outcomes changed the power structure in Ferguson. The Missouri Legislature acted. Over the summer church groups and others met to discuss race relations and community organization.²² A U.S. Justice Department report concluded that Ferguson frequently violated the premises of popular sovereignty.

Patrol assignments and schedules are geared toward aggressive enforcement of Ferguson’s municipal code, with insufficient thought given to whether enforcement strategies promote public safety or unnecessarily undermine community trust and cooperation. Officer evaluations and promotions depend to an inordinate degree on “productivity,” meaning the number of citations issued. Partly as a consequence of City and FPD priorities, many officers appear to see some residents, especially those

who live in Ferguson's predominantly African-American neighborhoods, less as constituents to be protected than as potential offenders and sources of revenue.²³

Discussion

Applying the concept of popular sovereignty to the situation in Ferguson identifies where the political system failed and popular sovereignty offers a solution. Popular sovereignty, e.g. democratic systems of government, cannot be reestablished in Ferguson until people vote, both middle class and poor, black and white. The voices of all citizens in Ferguson must be heard. By not voting, the poor left the middle class in charge of government. In the municipal elections of 2013, only 6 per cent of African-Americans voted compared to 15 per cent of whites, which meant that 52 per cent of the voters were white, even though whites are a minority in terms of total population.²⁴ In the future, the poor and the middle class have to select people for government who will serve the citizens of Ferguson. In April, 2015 the people of Ferguson elected two African-Americans to the city council for a total of three African-Americans, which is half of the seats.²⁵

Whether or not a change in city council will change patterns of government in Ferguson can be determined by whether the city government passes laws and regulations to serve all citizens. The incestual system of courts, police, and lawyers has to become a system where the courts are independent bodies of government that prevent the police and the government from becoming tyrants. Municipal government can no longer be financed on the backs of drivers who have to sort out an arcane web of traffic codes designed to ensure non-compliance instead of seeking public safety and security. The Missouri Legislature passed a law limiting the amount of fines that would go to municipal government.²⁶ One solution under popular sovereignty would be to create a citizens board in St. Louis County that would write traffic laws for all county, state, and federal roads, removing authority from municipal government. Continuity in laws would allow drivers to follow the laws created for safety and security because the laws would not be constantly changing because of a municipal boundary line.

Conclusion

One conclusion that can be drawn from Ferguson based on popular sovereignty is that Officer Wilson represented a tyrannical system of government and Citizen Brown was an anarchist in opposition to that system. Whether either Brown or Wilson thought of themselves that way is irrelevant because when popular sovereignty broke down in Ferguson that is what their roles became. Were Eric Gardner in New York City, Tamir Rice in Cleveland, Walter Scott in North Charlotte, and Freddie Gray in Baltimore also anarchists shot down by policemen in the service of tyrants? The circumstances of those shootings are outside of the scope of this paper. However, since the numbers of victims in so many municipalities grows on what seems like a weekly basis in the United States, perhaps it is time for all citizens of the United States and the world to reconsider popular sovereignty.

Ferguson also demonstrates the importance of free speech. The leaders of Ferguson used surveillance, discipline, and punishment to create a system of hegemonic power. These leaders manipulated their power to perpetuate their positions. Poor people and the majority black population of Ferguson were placed in the subservient roles in the Ferguson hegemony, which required them to pay for the government that abused them. The shooting of Michael Brown created the impetus for the underclass to speak out against the power

structure. Their voices were joined by others across the nation. Attracted by the free speech activities of the underclass, the news media looked deeper into the Ferguson hegemony, revealing its tyrannical side. Only then did the Missouri Legislature and U.S. Department of Justice take actions to end the unconstitutional actions of the city government. Only then did the people of Ferguson organize themselves into community action groups and vote in new leadership.

On the one-year anniversary of the shooting, the future of popular sovereignty in Ferguson remains uncertain. Anarchy remained in Ferguson; shots fired into a Ferguson home killed a nine-year-old.²⁷ Police shot two more black males.²⁸ Meanwhile, citizens kept marching and speaking out for a return to civil government. "There needs to be a reevaluation of human life: (whether) black, white, young, seasoned, whether in Ferguson, or areas considered affluent," Pastor Willis Johnson told KMOV, a St. Louis television station. "This has to stop. This epidemic of lost life under false pretense and of no real significant reason has to change."²⁹

Notes

¹ <http://www.iep.utm.edu/locke/>

² <http://www.philosophyislam.org/rousseau.html>

³ <http://americaninclass.org/sources/makingrevolution/crisis/text6/bostonpamphlet.pdf>

⁴ We have posted the preambles at <http://130.18.140.19/preambles.pdf>

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⁸ <http://www.cnn.com/2014/08/12/us/5-things-ferguson-missouri/>

⁹ <http://www.usatoday.com/story/news/nation/2014/09/09/ferguson-council-meets/15370001/>

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¹⁴ <http://www.vox.com/2014/8/11/5988925/mike-brown-killing-shooting-case-ferguson-police-riots-st-louis>

¹⁵ A grand jury concluded that Brown did not try to surrender. <http://www.washingtonpost.com/blogs/post-partisan/wp/2015/03/16/lesson-learned-from-the-shooting-of-michael-brown/>

¹⁶ <http://www.westernjournalism.com/the-guy-who-started-the-michael-brown-hands-up-dont-shoot-lie-is-in-trouble-again/>

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- ²⁶ <http://www.nytimes.com/2015/05/09/us/missouri-lawmakers-agree-to-limit-revenue-from-traffic-fines.html>
- ²⁷ <http://www.nydailynews.com/news/crime/ferguson-9-year-old-girl-shot-dead-homework-bed-article-1.2331544>
- ²⁸ http://www.stltoday.com/news/local/crime-and-courts/quiet-start-day-after-fires-tear-gas-in-wake-of/article_9eae9155-9f8e-5296-b836-45326918fda3.html
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