

## **Breach of Faith: Towards a Political Genealogy of Trust**

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*Popular distrust of government has steadily increased. The undermining of the most fundamental of all democratic principles, the intimate connection between citizenry and its government, has encouraged alienation and disaffiliation from a state that modern revolutions had promised would become democratized, beholden to the people, and the instrument of their hopes and aspirations. Thus the paradox: the demos is becoming disenchanted with the form that claims it.*

■ Sheldon S. Wolin.

In 1721, Thomas Gordon defined our relation to government quite succinctly, “What is Government, but a Trust committed by All, or the Most, to One, or a Few, who are to attend upon the Affairs of All, that every one may, with the more Security, attend upon his own? A great and honourable Trust; but too seldom honourably executed.”<sup>1</sup> Today, Britain and the United States find themselves in a crisis of political trust rivaling that of 17<sup>th</sup> century England, which suffered through the turmoil of civil war, revolution, and even the beheading of Charles 1. From the old scandal of “rotten boroughs” in Britain to the recent gerrymandering by Tom DeLay in the U.S., not to mention the selling of political influence in both countries, government continues, it appears, to be a trust “too seldom honorably executed.”

In his influential work, *Leviathan* (1651), Thomas Hobbes famously describes Civil Society as being founded upon a “covenant,” or social contract. When government meets its obligations under the terms of this contract, says Hobbes, “[its] performance is called *keeping of promise*, or faith; and the failing of performance (if it be voluntary) *violation of faith*.” The idea that governmental obligation is established by a promise or oath can be traced back to Solon in Ancient Greece.<sup>2</sup> However, the political sentiments of Hobbes and others would not be formalized until the passage of the English *Bill of Rights* in 1689. This document, inspired

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<sup>1</sup> Cato's Letters, no. 38, 22 July 1721.

<sup>2</sup> “Next Solon drew up a constitution and enacted new laws; and the ordinances of Draco ceased to be used, with the exception of those relating to murder. The laws were inscribed on the wooden stands, and set up in the King's Porch, and all swore to obey them; and the nine Archons made oath upon the stone, declaring that they would dedicate a golden statue if they should transgress any of them. This is the origin of the oath to that effect which they take to the present day.” Aristotle, *The Athenian Constitution*.

nominally by the Magna Carta of 1215 (itself based in part on the Charter of Liberties of 1100)<sup>3</sup>, would influence the American Constitution and indeed virtually all constitutional democracies in the modern world. What such documents insist upon above all from government is adequate *representation*, the failure of which constitutes a breach of faith or trust.

In this paper, I will conduct a political genealogy of trust. Of course, both British and American politics have a common philosophical ancestry, and indeed the constitutional politics of both stem from the same ideological tree, a tree rooted—almost literally, as we shall see-- in a common soil. From this soil a view of representational government will emerge, after centuries of tenuous growth, reaching maturity in the 17<sup>th</sup> century. Can recovering 17<sup>th</sup> century notions of representation lead to a contemporary renewal of trust in government? Or, have the very conditions that necessitated representational government undergone such a profound historical change that political representation itself has become a principal mechanism of exploitation, *misrepresentation* and breach of faith?

### **The Ground of Trust: A Political History**

Clearly, the waning of trust in government implies the violation of a trust, a trust predicated on living up to the terms of social contract. Indeed, it is only against this expectation that the notion of trust, or the “waning” of trust in government even makes sense. The difficult question, however, is determining the nature and limits of representation. Assuming that constituencies are diverse, with competing interests, to whom is government most obligated? Are there degrees of obligation? What happens when the good of the constituency is in conflict, when there are different interests or factions within the constituency? Or when the good of the constituency can be served by violating other laws or moral rules against, for example, bribery, or selling titles? In other words, are there times when government is justified in *not* keeping faith with the terms of the contract? Of course, Machiavelli argued just that:

Everyone admits how praiseworthy it is in a prince to keep faith, and to live with integrity and not with craft. Nevertheless our experience has been that those princes who have done great things have held good faith of little account . . . Therefore a wise lord

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<sup>3</sup> Both Charter of Liberties and Magna Carta are similar swearing of oaths. “To no one will we sell, to no one will we refuse or delay, right or justice,” Magna Carta.

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cannot, nor ought he to, keep faith when such observance may be turned against him, and when the reasons that caused him to pledge it exist no longer.<sup>4</sup>

Gerrymandering, for example, might serve a majority of your constituency, but at the expense of others not holding similar views. Would it thereby be justified? Tom Delay seemed to think so. His actions beg the more general questions of what exactly are the terms of the promise, and can they ever be justifiably violated?

The conventional approach to such questions is a normative one, by demonstrating through Kant's ethics or utilitarianism, for instance, that such breaches of faith are wrong because they, respectively, violate the rights of the electorate or are detrimental to the promotion of the common good (or both). While I think that we have many robust ethical frameworks to show that the Machiavellian justification for violations of trust are, at best, morally problematic, I want to approach these questions genealogically, rather than appealing to abstract moral principle.<sup>5</sup> To do so, I will first invoke John Locke, whose definition and delineation of political rights would have profound consequences for both political theory and the political institutions that were founded upon them.

For Locke, the primary rights of human beings were the rights of life, liberty, and property.<sup>6</sup> We do not give up these rights when we enter political society. On the contrary, government is established through social contract, says Locke, precisely to "preserve and enlarge" the rights of life, liberty, and property. "For all Power given with trust for the attaining an end, being limited by that end, whenever that end is manifestly neglected, or opposed, the

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<sup>4</sup> from *The Prince* CHAPTER XVIII, "Concerning The Way In Which Princes Should Keep Faith."

<sup>5</sup> The notion of genealogy employed here is adapted from Nietzsche and Foucault. As Foucault has observed, Nietzsche deploys a *wirkliche*, or "effective history" designed to be "therapeutic," in that it at once reveals the historical contingency of moral values and truth(s), for instance, and points toward the possibility of a kind of freedom from their hegemony, which Nietzsche viewed as decadent and debilitating. Foucault likewise speaks of a "counter-memory" that is effected by genealogical critique, wherein the power of certain discursive practices and disciplinary institutions, which both define and subjugate us, is suspended. See "Nietzsche, Genealogy, History," (Foucault, 1977). For a discussion of how critical genealogy is intrinsically political, see Saar, 2002.

<sup>6</sup> See 2<sup>nd</sup> Treatise, passage 87, "Man being born, as has been proved, with a title to perfect freedom and an uncontrolled enjoyment of all the rights and privileges of the law of Nature, equally with any other man, or number of men in the world, hath by nature a power not only to preserve his property—that is, his life, liberty, and estate, against the injuries and attempts of other men... But...no political society can be, or subsist, without having in itself the power to preserve the property." Locke sometimes speaks as if life, liberty, and property are three separate rights, but here he seems to subsume life, liberty, and estate (i.e., property in the more mundane sense) under the supra-right of Property. This is consistent with his description how one "mixes one's labor" with, e.g. land, and thereby turns the land into something one *owns*. Ownership of a means of subsistence is a necessary condition of both life and liberty. Thus, life, liberty, and property are a kind of triumverate that cannot be easily separated, as the rights are in the Bill of Rights.

trust must necessarily be forfeited.” Government violates this trust, first and foremost, according to Locke, “when they endeavour to invade the Property of the Subject.” (2<sup>nd</sup> Treatise, passage 149)

Too often, I think, Locke’s appeal to the right of property is read anachronistically, through Jefferson’s appropriation and transformation of the term in the Declaration of Independence-- “life, liberty and the pursuit of happiness,”--and the equation of happiness with Adam Smith’s ideal of laissez-faire capitalism, wherein property, and property rights, are essential to a thriving and just society. But to appreciate the full force of this emphasis on the importance of property, as a right, as the safeguard of individual liberty, and as a wellspring of prosperity, we have to look backward, to the history of England. Michael Wood’s excellent study on *The Domesday Book* shows that the history of political organization in England is a history of war, conquest, threat, and dislocation—and that the history of freedom has the most meager beginnings, symbolized by the act of “fee simple,” the acquisition of property through the literal handing over of a clod of dirt. (Wood, 2005)

In the last half of the first millennium, Anglo-Saxon tribes conquer a Britain already organized by Roman “forms of lordship and servitude” –and tribute assessment. In southern Britain, the land is divided into “hides,” which originally referred to the amount of land that could support one peasant family.”<sup>7</sup> Formal records, for example, the *Tribal Hidage* being one of the earliest, were kept and used as the basis for the imposition of taxes. This system was expanded and intensified under Alfred the Great in response to the Viking invasions of the 9<sup>th</sup> century. Alfred literally transformed the landscape of England, moving the scattered peasant population (creating the largest concentration of people in cities until the 17<sup>th</sup> century) to newly fortified and, in some cases, newly constructed, towns, along main roads and river routes, replacing independent farms with so-called “common land.” Observes Wood, “Society, in short, became geared for war” (83). The ‘backbone’ of the new army was the class of thegns, who were given lands in return for their military service. Below them a virtually enslaved peasantry worked the land to support this nascent feudal society, the model for which would spread across the whole of medieval Europe.

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<sup>7</sup> Wood points out that although such hides have been estimated to be approximately 120 acres, they actually varied in size depending on such factors as location, the arability of the land, the crops produced on it, etc. These hides were collected into larger sections of land called “hundreds.”

The Vikings had devastated medieval Britain and succeeded in destroying or taking over much of the countryside, especially in the east and northeast. If not for the leadership of Alfred the Great and his sons, England might have become a western state of Scandinavia. But, although Alfred was successful in defeating the Vikings, the Anglo-Saxons fell in short order to William the Conqueror in 1066. Ironically, Alfred's re-organization of rural society, which was key to fending off the Vikings, made it possible for the Normans to infiltrate the political structure very quickly. In 1086, William commissioned the Domesday Book, to ascertain exactly what the assets of his new kingdom were, and thus what he could expect from it in the way of tribute. William was so avaricious in his assessment of taxes, and so ruthless to those who came up short, that a peasant migration to seek free lands occurred, especially in East Anglia and the Midlands. There, under the influence of the independent attitudes of the Danelaw, a quasi-legal system inherited from the Vikings, the first real class of "freemen" was able to thrive, giving rising to so-called "English individualism," which C. B. Macpherson has described as "possessive" individualism. (Macpherson, 1962)

This individualism has two main traits: first, it is founded on the free ownership of property.<sup>8</sup> Second, it appeals to a negative right of non-interference.<sup>9</sup> This means that at a basic level, government has no right to interfere in how the individual uses his/her property, that it will not be taken away unfairly or unduly taxed. This is a philosophy based on a long history of fear of governmental abuses, especially as it relates to property generally, and to land specifically.<sup>10</sup> Minimally, the "contract" entered into by the sovereign and those governed must recognize these limits.<sup>11</sup>

We can now appreciate why Locke's articulation and defense of the right to property is so important. Without it, no other rights amount to much. To violate this right, to breach the

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<sup>8</sup> The modern notion of free ownership is fairly black and white—you either own your property or you do not (mortgages aside). But in the medieval world, there were degrees of freedom, predicated on degrees of land ownership, and your social identity reflected that, ranging from serfs to villeins to sokemen to freemen to thegns.

<sup>9</sup> Robert Nozick would take these traits and turn them into formal principles at the heart of a rights-based entitlement theory of distributive justice. (Nozick, 1974)

<sup>10</sup> Elsewhere I have argued that the Social Contract tradition is animated by a "discourse of threat." Ostensibly, social contract alleviates the threat of the state of nature by offering us the safety and security of living in a "civil" society. The presumption is that threat precedes the contract and makes it necessary; but in fact, the notion of contract is necessary to give meaning to the notion of (political) threat. To this extent, social contract does not end the state of nature; it perpetuates it as an ever-looming danger. In this way, it compels acquiescence and engenders political quietism. (Clifford, 2001)

<sup>11</sup> The welfare state ideal of T. H. Green, wherein government has certain positive obligations to its constituency, such as eliminating poverty and providing education, will not appear until the 19<sup>th</sup> century.

trust predicated on the recognition of this right, would be to transgress what Locke calls the “fundamental Rule of Society:”

Whensoever therefore the Legislative shall transgress this fundamental Rule of Society; and either by Ambition, Fear, Folly or Corruption, endeavour to grasp themselves, or put into the hands of any other an Absolute Power over the Lives, Liberties, and Estates of the People; By this breach of Trust they forfeit the Power, the People had put into their hands, for quite contrary ends, and it devolves to the People, who have a Right to resume their original Liberty, and, by the Establishment of a new Legislative (such as they shall think fit) provide for their own Safety and Security, which is the end for which they are in Society.

(2<sup>nd</sup> Treatise, passage 222)

Like Hobbes, Locke appeals to an element of rational self-interest to account for the formation of civil society. Entering social contract requires relinquishing certain rights and freedoms for the safety and security afforded by a sovereign power that makes and enforces the laws. But unlike Hobbes, Locke believes that the obligations of sovereignty go beyond merely maintaining the peace. Sovereign government has what John Stuart Mill would call a “distinct and assignable obligation” to respect the rights of life, liberty, and estate, which all fall under the umbrella right to property. This obligation stems precisely from the terms of the contract, and need not (necessarily) be based on extraneous moral principles.<sup>12</sup> To permit government to violate this right would be irrational on the part of political subjects in that it would contradict the very reasons we enter into civil society in the first place.

I would argue that Locke’s emphasis on property rights reflects a discursive memory, embedded in the texts of the Liberal Tradition, of a time, for Locke not so long ago and in many respects still persistent, when land—soil—and its ownership determined one’s political status and life’s prospects, when kings and lords wielded power by controlling who owned the land and

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<sup>12</sup> Here I am appealing, provisionally at least, to a notion of legal realism, which founds contractual obligations merely on the act of contract itself; that is, the contract or agreement is sufficient justification for the expectation of mutual recognition. Critics of legal realism object that it begs the question of the ultimate moral grounds of contract. Hobbes appealed to mutual self-interest. Kant appeals to a notion of human dignity and autonomy, which a breach of trust would violate. My purpose is not to settle the matter, but to delineate the historical conditions under which the notion of social contract emerged. I consider legal realism sufficient to the extent that it provides a framework for understanding what constitutes a breach of political faith, even if it is weak in providing a normative bulwark against such a breach, and may in fact permit the sort of Machiavellian suspensions that many politicians, both past and present, feel are sometimes warranted.

how it was used, when liberty came to be defined by the degree to which you were free from such arbitrary dictates, when land was the canvas for the expression of life and liberty.

### **Citizenry in Peril: Rethinking the Modern State**

At this point, I would like to return to the series of questions with which I began. These questions can be organized into two basic categories, one normative and the other systemic. The questions about the moral obligations of government belong obviously to the first category: Assuming that civil society is based on a (hypothetical or real) social contract, what are the terms of this contract? What specific (or general) obligations does the contract impose on sovereign power? What actions (or inaction) constitute a breach of faith or trust on the part of government? The answers to these questions could be provided by the constitution of the government in question. Because we live in a republic, the basic issue is one of representation: to what extent do our elected officials live up, or fail to live up, to the terms of the contract as defined by the Constitution? This also settles to some degree the Machiavellian questions about whether it is ever justified for government officials to violate the terms of the contract. Since acting in accordance with the Constitution is the very essence of the contract, per se, any deviation from that will be, *ipso facto*, unjustifiable.

Of course, we have only to consider the often heated debates between strict constructionists and living doctrine proponents over the proper way to interpret and apply the U. S. Constitution, not to mention the numerous areas where the law is silent, to appreciate the wide latitude that is granted to governmental representatives to act within constitutional parameters. This leads us to consider the second category of questions mentioned above, the systemic. Because we live in a large, diverse society, with many, sometimes competing, constituencies, by what principle of governance are representatives to decide between these constituencies? The notion of a “common” good, while laudable, is far too vague and general to provide direction except in the broadest of instances (e.g., all persons benefit from an education), but even when such a good can be defined, the practical execution of this good is often hindered by the diverse circumstances and resources of the constituents, not to mention the possibility that some choices involve “robbing Peter to pay Paul,” or at least adopting priorities which compel some projects being privileged over others. These are the realities of everyday politics, of course. But it

places governmental officials in a precarious position, having to make decisions that will be viewed as breaches of trust by one or some components of the electorate.

The systemic problems go deeper than just having to make tough choices, however. Because constitutional obligations are rather vague and open-ended, and because the good of the electorate is multiple and conflicting, governmental representatives are often influenced to make decisions by those who have the most access to them, by those who have their ear due to simple proximity. Of course, this problem is systemic to all forms of government, not just large-scale constitutional democracies. The question of who has the king's ear is an ancient one. From the thegnly class of the medieval world to the lobbyists of today—there are over 30,000 registered lobbyists in Washington D.C. alone—the “deciders” in government have always been influenced by so-called special interests. These claim to be speaking for the majority, for the common good, but their agendas often conflict with those of the general populace, influencing a person in power to “act contrary to his trust,” as Locke says, by violating what Locke calls the “fundamental Rule of Society;”

One solution routinely offered to this problem is to promote more active political participation on the part of the electorate, beginning with the voting process itself. Americans voters are apathetic, it is often noted, given that even the most popular elections rarely include even half of the registered voters. One particularly embarrassing measure of voter apathy is the fact that more people voted for the winners of “American Idol” than in the general presidential election!

But perhaps this is not real apathy. After all, under the right conditions (for example, WWII, Viet Nam, 9/11), Americans can be motivated to become very active politically. Perhaps what appears to be apathy is in fact an expression of a kind of pragmatic quietism, which is arguably an historical correlate of possessive individualism. As we have already noted, this individualism manifests itself as a desire to be left alone to live one's life as one sees fit. Speaking out against the rulers is risky. Doing so, as history shows, may cause you to lose property, liberty and even life. You only speak out when you must, when the risks of not doing so outweigh the risks of speaking. For the most part, you leave the affairs of government to the governors, inserting yourself in the fray only when there is a perceived breach of faith, a violation of the social compact. Of course, by not speaking out, this only leaves government more susceptible to the influence of special interests.

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Aside from the systemic problem of access, to speak out politically is dangerous. Those governed know this both instinctively and through rough experience. And yet it is vital to the success of a constitutional democracy that those ruled be granted the liberty to speak, for a number of obvious reasons. This no doubt is why the writers of the Constitution made freedom of speech the first in the Bill of Rights. Actually, a genealogy of free speech would show that it traces its origins from the Greek notion of *parrhesia*, literally meaning “free speech.” Parrhesiastic speech, however, was a kind of speaking truth to power, when doing so put one at risk. Parrhesia also refers to a kind of moral bravery as well as duty. Socrates was the epitome of the parrhesiastic figure. (Foucault, 1985)

One is tempted to want to try to recover the ideal of parrhesia, as a moral duty and as an expression of character, in order to inject it into the modern juridical notion of free speech, which one may or may not invoke as a right. Unfortunately, the problem is deeper than simply a reluctance on the part of the electorate to speak out, to become more involved politically. Moreover, it may be that this political quietism on the part of the electorate is more than simply the *entstehung*, or historical accident, of a bloody political history. It may be, as Sheldon Wolin has argued, that this quietism and apparent political apathy is actually cultivated by the “postrepresentative politics” of the modern power regime:

The fact that democracy continues to be invoked in American political rhetoric and popular media may be a tribute, not to its vibrancy, but to its utility in supporting a myth that legitimates the very formations of power which have enfeebled it ... Popular distrust of government [and] disaffiliation is one of the marks that identify the state not only as postdemocratic but as postrepresentative. . . Representative government was supposed to solve those problems, but, as we have seen, in place of an active demos it substituted professionalized representation of interests. By splintering the demos into disparate interests, it scotched the possibility of collective action. (Wolin, 601-602)

Wolin describes the modern power regime as a kind of hybrid that combines the old institutions of government with the interests, mechanisms, and strategies of the transnational corporation. This “Superpower,” as he calls it, does not simply ignore democratic values, it coopts and redefines them in terms of its own interests, which include globalization and the corporatization of institutions previously considered public, such as education, health care and the penal

system.<sup>13</sup> Moreover, this new political regime make decisions that transcend or sidestep conventional organs of oversight, including the electoral process. Thus, the demos has little to say about those decisions—they are not the sort of issues that come up before popular vote. In fact, in this new order, asserts Wolin, “majority rule, democracy’s power-principle, is fictitious: majorities are artifacts manufactured by money, organization, and the media” (601).

In a system like this government cannot help but be corrupt, not because it tends to attract corrupt officials, but due to the nature of the system itself, because power is exercised “without being accountable to the system that is being influenced.” In fact, “corruption is normalized,” asserts Wolin, as part of the very fabric of the operation, whereby it takes control of the same mechanisms (infiltrating the legislative process, for example) that would otherwise hold it accountable. (600) Not only is it difficult to know who is responsible, it is sometimes hard to know exactly when, and how, a breach of faith has even occurred, since the system often operates outside the parameters of any given social contract/formal constitution and manipulates to its own advantage the interpretation of constitutional statutes where they do exist.

What Wolin calls Superpower, and others have called the Corporatocracy,<sup>14</sup> compels us to rethink the notion of what it is to be a citizen. Traditional ideas about democratic participation are outdated and inadequate. It is not enough to have the right to free speech, nor the courage to exercise it. Nor can we nostalgically appeal to the individual property rights so venerated by the Founding Fathers. Jefferson’s gentleman farmer is an impotent relic when set against the multinational corporate leviathan that exercises power by gobbling up the planet’s resources.

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<sup>13</sup> “Capitalism has transformed itself, from a system of activities analyzable through economic categories to one that has adopted political characteristics and the qualities of a new constitutional blend devoid of democratic substance. The new economies created by technologically advanced societies provide equivalents for democracy’s values of participation (mass consumption), inclusion (work force), and mass empowerment (‘consumer sovereignty,’ ‘shareholder democracy’). Those sublimations accord with a ‘virtual’ way of being in a world transformed by the technological revolution in communications. Electronic technologies (computers, video, Internet) epitomize the combination of the illusion of individual freedom/power with the encapsulation of the individual in a cocoon from which escape seems an incoherent idea.” (Wolin, 2006)

<sup>14</sup> In his controversial book, *Confessions of an Economic Hit Man* (2006), John Perkins describes how this Corporatocracy operates by sending private business envoys to meet with the leaders of third world countries. These envoys promise the leaders millions of dollars in loans from the World Bank, to construct dams and hydroelectric plants, or to extract fossil fuels, for example. But the contracts for these projects typically go to corporations like Halliburton and Bechtel, which receive huge profits, while the return to the native country is negligible, at best. In fact, the government goes into huge debt, is unable to repay the loans, which gives the corporations even greater leverage. At the same time the infrastructure of the native country suffers. Often the benefiting corporations leave poverty, increased governmental corruption, devastation of the environment and even civil war in their wake. For an account of how Shell Oil exploited Nigeria in much this same way, see Watts, 2003.

There is a sad irony in the fact that private property, for Locke the very foundation of governmental accountability, would become the instrument of collective disenfranchisement.

What then is the solution to the normative and systemic problems of representation in our present governmental regime? One alternative, Marxism, has long been discredited; it proved practically inept and suffered from its own brand of endemic corruption. Besides, contemporary China demonstrates how the ideology of Marxism is likewise coopted by this corporate superpower. Conventional western democratic mechanisms seem equally inadequate. Even when we identify the occasional corrupt officials, and force their removal, or we remove by election those we think have broken the terms of the contract, we do nothing to affect the overall system. In fact, the system works precisely because the players are interchangeable. Others emerge to take the place of the ones ousted, only to be compromised by the system itself.

Of course, there are no easy answers to these questions. I doubt that wholesale political and economic changes are realistic or even necessarily desirable. In fact, some of the very mechanisms that put modern citizenry in peril—new technologies, policies of globalization and transnationalism—could be used to empower citizens. For example, the Internet, while a desensitizing instrument of consumerism, can be used to expose racism and totalitarianism, and to mobilize citizens against them, as was the case recently in Louisiana where bloggers rallied tens of thousands of protesters against the treatment of the Jena 6. Similarly, multinational corporations have been persuaded to adopt green policies, to donate billions to help alleviate world poverty, and to support the recognition of human rights in countries which lack a human rights tradition either politically or culturally.

To make government more responsible, to restore our trust in it as an institution, we need to rethink the ideas of citizenship, of popular political participation, and of representation, as a start. Towards that end, I have offered a preliminary genealogy of these terms, in the hope that a better understanding of their history will help us to appreciate their limitations and liabilities in the present, and thereby to reformulate and reinvigorate them for the future.

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