

Introduction

Settler Illinois as a Developing Democracy

The story of the Mormon troubles in Illinois is a story of failed governance. Many democratic regimes confront the problem of legitimating governance, but emerging democracies face the problem without adequate tools of enforcement. It is my contention that settler Illinois was one such developing democracy and that we can better understand the dilemmas faced by modern democratic states, both developing and developed, by carefully observing the experience of antebellum Illinois.

To study the state is to study power. Political power can be viewed as existing along a continuum that runs from pure force on one end to pure persuasion on the other. As Alexander Hamilton argued in the first *Federalist*, state power is experienced as legitimate authority if it allows for “reflection and choice”; if not, it will be marked as an illegitimate kind of “accident and force.”¹ All governments seek to convert power into legitimate authority. Rule by naked force or violence is too costly. But persuasion is costly, too, as anyone who has tried to induce consensus in a large group can attest. Consequently, political systems economize on consent and aim for something short of pure persuasion. In the case of democracies, the calculus of consent centers on the majority; political power is rendered into authority first and foremost by claiming to represent the majority. Of course, being accountable to the majority of voters does not mean being accountable to all those affected by

state power. In liberal democratic theory, all those outside the circle of members remain unaffiliated and potentially face the state's force without protection. Those who are unrecognized and considered outsiders by the majority frequently experience the violent, forceful side of the liberal state.

States have historically developed into democracies in waves. Although focused on their own internal affairs, nations undergoing democratization have participated in a larger contagion effect from outside their borders. Laurence Whitehead counts five waves of democratization by "contagion through proximity" since the first democracy at Athens; these waves account for seventy-six governments, a large percentage of the democracies standing today.² Across time the definition of democratic government has remained fairly stable. A messy, if more or less accepted definition cultivated over the years by Robert Dahl and colleagues, is as follows: democracy is a form of government that results in elected officials obtaining office through "free and fair elections . . . [in which] all adults have the right to vote [and] run for public office." Of particular importance is "freedom of expression (especially for opposition parties)." At a minimum, democracies allow the formation of political parties, which provide citizens "sources of information that are not monopolized by the government of the state, or by any other single group."³ The focus on fairly run elections and effectively enforced rights attests to the fact that citizens experiencing democratization are preoccupied first and foremost with the internal drama of harnessing the power of the state by subjecting it to the control of what the majority considers the electorate. In settler states—states where the people have moved into a new territory—local majorities are especially preoccupied with controlling the electoral process and the granting of rights.

If they develop in a liberal direction, many democracies tie their legitimacy to respect for individual moral worth. Such respect comes in the form of protecting the rights of individuals, whether members or nonmembers. Because the definition of legitimate authority keeps evolving as the protection of rights evolves, the need to secure legitimacy is a never-ending quest in governance. But developed democracies often reach a stable order by having enough capacity for law enforcement to satisfy the majority and enough respect for rights to provide a modicum of due-process protection to minority individuals or to those considered outsiders. Much as the

majority often prefers to focus on the rights of its members only, the dynamic of governance in democracies inevitably spotlights the way the state treats minorities and outsiders.

Developing democracies are that subset of democracies which have not yet cemented their legitimacy to govern because they lack either the capacity to enforce the law or the law they seek to enforce persistently lacks popular support. Under such regimes, the protection of minority rights suffers and conflicts between majorities and minorities emerge. The institutional means that regimes develop over time to impose governance during conflicts often live on, shaping institutional state structures long after the critical junctures which first brought them to life have passed. Developed democracies have survived the governance conflicts of the past by patching together solutions enabling them to persist. They are shaped and marked by past deposits of new norms, rules, and organizations. States thus carry an archeology of conflicts within their lineaments.

In the settler states of antebellum America, incapacity to enforce the law left a legacy of beleaguered sheriffs, extralegal posses, and a recurring chorus of support for “rough justice.”⁴ The legacy chafed against the Jacksonian Democrats’ erstwhile calls for “equal rights.”⁵ One institutional residue was the nearly despotic prosecutorial power bestowed on local district attorneys, a power inherited nationally by the Federal Bureau of Investigation, which burgeoned during Prohibition and metastasized during the war on drugs in the 1980s. As Marie Gottschalk has suggested, the placement of the carceral powers of the American state in its prosecutorial subdivision—as opposed to the subdivision on health and welfare—has imparted a punitive approach to incarceration ever since.⁶

The Mormons (as members of the newly renamed Church of Jesus Christ of Latter-day Saints were commonly known) threatened the legitimacy of the majority societal culture in Illinois. The troubles were deep and long lasting enough to leave a detailed historical record. The Mormons challenged the majority’s normative aspirations as much as its legal order. The societal culture expected the state government to enforce law and order and also reflect the majority’s social norms. The settler state was legitimated not only by effectively enforcing the law but also by protecting the norms contained in extant “stories of peoplehood.”⁷ Normatively, Illinois residents experienced emigrating and acclimating to the settler

state as an epochal process with deep personal and collective meaning. They vied for and struggled over legitimating stories as much as they struggled to enforce the harm principle, the rule that all individuals are free to act as they will as long as their actions do no harm to other individuals or their property.

Effective governance requires trust. When trust fails, people turn to worth. It is a norm constructed in the give-and-take of civil society using the stories that the majority finds compelling. Trust was not easy to come by in frontier Illinois. To fill the gaps and bolster social cohesion, settlers told a story of a group of independent producers who came to the state to share in the adventure of land ownership and self-government. The independent-producer story was rarely articulated as such, but it could be found hovering in the collective imagination whenever the question of membership and the regulation of insider and outsider status arose. Under settler-state rules, the determination of who proved to be a worthy independent producer was delegated to local majorities. In theory, the state neutrally adjudicates worth by resolving conflicts between individuals involving harm; coercion is justified only against those who violate the harm principle. This is the deceptively simple and formal principle that, Joel Feinberg writes, “permits society to restrict the liberty of some persons in order to prevent harm to others.”⁸ If the Mormon troubles merely involved the misapplication of the harm principle rule to the Mormon minority, it would be unremarkable and of little import to our understanding of developing democracy. Indeed, many Illinoisans tried to frame the Mormon troubles as a matter of the sect’s threat to persons and property in Hancock County, where the Mormons settled. Governor Thomas Ford’s problem of governance would have been considerably simplified if this were the only issue the Mormons raised. As a judge in Ogle County, Ford had encountered and understood the activities of frontier outlaws and the communal response of “Regulators” and “Vigilant Societies” demanding “prompt and sure punishment.”⁹ Ford perceived that calls for action against outlaws were often motivated as much by the need to prevent harm as by the desire to project a community order patterned after a particular identity. His resistance to and denial of the identity needs of local order in the name of justice were widely unpopular.

The tension between justice and order is ancient and profound. Do the tools of contemporary scholarship bring us no closer

to understanding how justice and order are traded off in developing democracies? This study was undertaken in the belief that we can move beyond these broad distinctions to grasp why calls for “prompt and sure punishment” and rough justice repeatedly prevail over equal justice under law and due process in developing democracies. We can assess the way authority is constituted in developing states by focusing on how majorities frequently privilege one societal culture and one image of the ideal citizen and by realizing that they do so as a means of solving the collective-action problems they face. In American settler states like Illinois, the ideal citizen was the independent producer; it is an image that is with Americans still. When worth is called upon to supply the basis of trust, civil society engages in a politics of identity always subject to illiberal consequences.

Majorities are used as ordering devices as well as expressions of justice. When order and justice are conflated in democratic politics, rough justice frequently appears as the devious twin of popular justice. While we can better understand majorities by their use of the state, we can also assess minority group cultures more accurately by determining how encompassing they are for their members. Minority groups predictably respond to the demands majoritarian society places on group identity by deepening the ties of their own attachment. When the minority group is a religious sect, a familiar and ungovernable process is initiated in which “the need for spirituality” overlaps dangerously with “the need to belong.”¹⁰ Mormon minority group culture frequently expressed the camaraderie and solidarity of the oppressed, and though the rite of common property they developed in Ohio was abandoned in Illinois, the religious rites invented at Nauvoo created an inward focus and group loyalty that more than compensated for the unity ensured by shared property.

Leaders in all democracies shape states into ruling regimes that can be defined as durable sets of ideas, interests, and institutions. Regimes vary greatly in their foci and capacity to deliver services. Developing democracies are those in which the demand for popular justice is strong while the state’s capacity to supply it and other services is weak. The definition of developing democracy thus applies especially to emerging democracies because their state capacity is frequently weak.¹¹ The two-sided dynamic of strong demand for authority and weak supply gives the concept of developing democracy explanatory power. Indeed, it has been extended by Larry Diamond

to apply to modern developed democracies as well. Diamond urges scholars to take at all times a “developmental view of democracy, which emerges in fragments or parts, by no fixed sequence or timetable. From such a perspective, the presence of legal opposition parties, which may compete for power, and of greater space for civil society, constitute important foundations” for understanding how democracies vary.¹² In this view, legitimacy in any democracy depends on the capacity of state and civil society institutions to deliver a regime accountable to the people. The process of state formation, however, takes time and is subject to contingency; in newly developing democracies, the authority that civil society organizations offer to help build public order runs from feeble to overwhelming. Because levels of state capacity and demands for popular justice vary widely, the degree of development in democracies, young and old, can be usefully gauged. This is so despite the overly simple notions of development that scholars sometimes employ. It is a gross inaccuracy, Charles Tilly argues, to suggest development occurs in “standard stages, each more advanced than the previous stage,” or that development is synonymous with complexity and that “differentiation leads to advancement.”¹³

Undoubtedly, all democracies are developing at some level; all are merely “approaching democracy” as Czechoslovakian president Václav Havel suggested in a speech before the United States Congress in 1990.¹⁴ But as Havel pointed out, the US had by then the benefit of approaching democracy and learning from its mistakes for over two hundred years, while Czechoslovakia was just beginning its developmental journey. In emerging democratic states, leaders frequently focus on “people power” and rely on stories of worth to compensate for a lack of governing capacity. Regime services are provided on a self-help basis and thus follow majority norms with grave consequences for attitudes on toleration. For their part, minority groups can be tempted to develop oppositional cultures under which membership becomes an all-encompassing experience serving as the equivalent of self-government. Group cultures can be arrayed on a continuum, from those that fully encumber a member’s duties to those which impose mostly optional duties. Other factors, such as manipulation by the elite and civil society bonds, also affect the willingness to tolerate difference, but it is variation within the continua of majority norms and minority opposition that makes achieving popular justice through workable

democratic institutions and ideologies more or less likely.¹⁵ Together, these two factors—self-help service from majorities and the degree of minority group consciousness—allow us to assess how much governing capacity a democratic regime can achieve. Governance load can be conceptually measured by adding the degree of minority group consciousness to the amount of self-help service volunteered by majorities. The higher the load, the more the state will struggle to maintain order. The greater precision with which we can chart these factors allows a more fine-grained assessment of the governance work facing all states approaching democracy.

In newly developing democracies the capacity to apply the law is uneven. Gaps in enforcement create gaps in authority. The Mormon troubles in Illinois exposed many gaps in authority, which prompted civil society actors to serve as an ordering backstop when the state's ordinary police powers failed. The case study presented here exposes where the skin of the state broke to reveal the regime's sinews and tendons. In the exposure the anatomy of the antebellum settler state is discernible, offering an opportunity to observe and mark the critical junctures in the state-formation process.¹⁶ Scholars continue to debate the very nature and power of the antebellum American state. Points of emphasis include the common-law rules enforced by the courts, the policymaking power of the parties, the coercive instruments of state governments, and the punitive impulses of executive branches.¹⁷ The combination of strong but discretionary national measures at the federal level, along with popular but frequently ineffective institutions at the state level, made for the kind of uneven enforcement which plagues developing democracies.¹⁸ *The Saints and the State* seeks to contribute to the state-formation debate by explaining how the Illinois regime came to be, dissecting its powers, and detailing how its uneven authority shaped and drove the Mormon troubles.

In Illinois the Mormons had enough societal power to have their formal rights recognized, a power Joseph Smith demonstrated repeatedly in successful appeals to the writ of habeas corpus. But these victories for due process, which Governor Ford celebrated as vindications of the rule of law, only enraged the anti-Mormons and prompted them to organize extralegal civil society norms and institutions against the Mormons. In much of Hancock County and certainly in the surrounding counties, the Mormons lacked what Daniel Brinks and Sandra Botero have called the "lateral support"

needed for the effective enforcement of their legal rights.¹⁹ Two durable patterns resulted that are still evident today: a popular impatience with and devaluation of due process as a route to justice and legal fairness, and the temptation on the part of societal majorities to use the ordering strength of their numbers as lateral support to manipulate enforcement of the law and thus legal outcomes. In both patterns the reliance on extralegal force is justified in ways that sap the promise of fairness, which is often taken as a mark of legitimate democracy. The mere ordering power of the majority is taken, under a kind of category mistake, to be a sign of justice itself.

Despite their recourse to vigilante justice, the anti-Mormons, in marshaling their lateral societal support, did not justify their actions by pointing to the Mormons' unconventional religious ideas or activities. Instead they issued reports on cases of thievery, complained about violations of "normal" settlement patterns, and highlighted disreputable "antirepublican" practices. It was not religious bigotry that caused Ford's democracy to run uneven but a felt loss of local control and a stymied ability by the "old settlers" to enforce their unwritten civic status quo. The difficulty of recognizing and acknowledging this part of democratic state power is a key lesson of the story of peoplehood told here. Those from competitive or individualist political cultures are especially susceptible to denying the need for societal culture norms and background foundational beliefs in the first place. These norms and beliefs are effectively hidden from individualists' view because they are a part of the status quo, a social force individualists struggle to see as anything but a kind of neutral starting point even as they appeal to its norms to impose order.

Perhaps the most damaging consequence of the competitive view of status quo neutrality is the belief that the public interest emerges automatically from market processes or the parallel idea that the public interest is nothing more than the natural result of citizens acting in their self-interest.²⁰ Alexis de Tocqueville addressed the issue in *Democracy in America*, in which he famously titled one chapter "How the Americans Combat Individualism by the Doctrine of Self-Interest Rightly Understood."²¹ Published in an English translation in 1839, the chapter assumed that no society can do without a commitment to civic duty or virtue, which the idea of the public interest makes obligatory. Tocqueville disarmingly conceded that self-interest rightly understood is "not at all a sublime doctrine," yet he defended it because as a matter of practice

he believed it would produce the same result as a commitment to duty and the public interest.²² Whether it does or not is debatable, but Tocqueville was correct to observe that in effect the concept of civic duty had become optional in American civil society and easily confused with individual interest. The costs of this approach were ominously displayed during the Mormon troubles when the anti-Mormons took the initiative to perform citizenship in their own interest by organizing emergency meetings, political conventions, and impromptu militia actions.

In the preface to his *History of Illinois*, Ford acknowledged that he devoted many chapters to “our very unimportant mobs and wars, and particularly the Mormon wars.” He added that “small events and little men” were the only materials available to tell his story.²³ The argument here is that, small and wrapped in foundational beliefs as it is, the story of the Mormon troubles in Illinois is needed in our times. In developed democracies the state has the capacity, if not always the political will, to apply the law fairly to all. The Mormon troubles in Illinois expose the role civil society groups play in driving illiberal developments by infiltrating the state and biasing its actions, a process that affects the United States more broadly. While state capacity has been strengthened, and thus the breakdown in public order is less likely, the hidden backstop power of civil society remains potentially available today. Americans still rely on an independent-producer master narrative that continues to be enforced largely at the local level. Membership in the group of American citizens is still subject to the rules of recognition set in place and maintained by the majority’s societal culture.

The story of the settler state and its civil society shadow takes many twists and turns. It is a tragedy that unfolds in a succession of missed opportunities and fateful choices. In chapter 1 we find the Illinoisans blithely ignorant of the way state and society will structure their ability to receive the Latter-day Saints. As in many cases in which agency meets structure in democracies, early Illinoisans thought fairness to individuals was and should be a matter unconnected to culture. But as Feinberg notes, the purely “formalistic” version of the harm principle provides “no guide to the proper *content* of the law.”²⁴ Societal cultures enforced by elites in the name of the majority provide the content and thus are an undeniable part of democratic authority.²⁵ In chapter 2 the political dilemmas Joseph Smith’s beliefs created for state residents and officials are outlined.

Here the limitations of viewing the state as simply a neutral arbiter of the harm principle are exposed.

Chapter 3 outlines the Illinois regime created by the state's Jacksonian democracy and focuses on the driving force of the Democrats' egalitarian political culture. It introduces the notion of vertical equality, an idea of equality that emphasizes the ranking and comparison of groups in society. "Egalitarians," in this sense, are people who endorse equality for their particular group; they are less interested, if at all, in the liberal notion of equal moral worth, the idea that "each citizen is entitled to equal concern and respect."²⁶ Illinois politics did generate a few universalist egalitarian leaders, like Democrat Thomas Ford and Whig Abraham Lincoln, but they did not control the regime or characterize the larger culture. Chapter 4 makes plain the contemporary reality of the group status order in the state and in Hancock County; it sketches the contours of the Illinois way, the settler state's majoritarian societal culture, and the place of the Mormons within that culture's status order.

Chapter 5 narrates how the Illinois regime's institutional means, namely its common-law writ of habeas corpus and militia system, structured the interaction between political leaders and the Mormon minority. There readers will encounter the recurring pattern whereby a socially marginalized minority in a developing democracy finds ways to use the law to its short-term advantage at the cost of enraging the local majority. In chapter 6 the impact of the regime's political ideology and its commitment to local control are detailed. It argues that hegemonic conceptions of toleration and freedom of religion emphasized by scholars were less important in shaping outcomes than the anti-Mormons' perception of the Mormons as a collective threat to local control. The perception underscores how anti-Mormon leaders used an individualist political culture to justify a refusal to extend inclusion and toleration to a group they saw as dangerous. The Mormons could not be trusted with power, they argued, because while they asked for toleration, they unfairly denied it to others. Chapter 7 rehearses the difficulties Governor Ford faced in trying to end the troubles by treating both sides neutrally. By willfully dismissing the politics of civic worth, he prompted the dissolution of state authority in Hancock County. The high-minded denial of his own party's identity politics cost Ford the only public things he cared for: democracy's honor and the state's "goodly" reputation.