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Law, Culture and the Humanities 2009; 5; 216
DOI: 10.1177/1743872109102489

Law, Culture and the Humanities 2009; 5: 216–227

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What should the relationship between citizens and the law in a liberal democracy look like? The idea that citizens should be associated with the laws that govern them is a cornerstone of democratic theory. Yet the specific nature of this relationship has varied widely in theory and practice. I examine one conceptualization of this relationship: the notion that democratic citizens should substantively identify with the law and see their preferences, will, or morality in it. This kind of civic identification with the law is suggested in Carl Schmitt's *The Crisis of Parliamentary Democracy*. Schmitt's text points both to the seductive appeal of civic identification with the law and to its pernicious potential.

Key words: democracy; law; citizenship; Carl Schmitt

As I write this commentary, a peculiar kind of dyspepsia has surfaced in American politics again. Citizens calling themselves the Minutemen are patrolling and policing the Southern border of the United States for undocumented migrants from Mexico and other points south. Frustrated with the government's action on immigration, the Minutemen have taken on the tasks associated with federal law enforcement. As spokesmen for the Minutemen put it, the movement is "ready to do the job that the federal government wouldn't do for the past four decades: defend the US from invasion, establish American sovereignty over US territory, protect our communities, and our families, and preserve the United States of America."[1] By its own account, the Minutemen is stepping into the government's terrain and is doing its job.

I say "again" because America has seen this kind of take-the-law-into-your-own-hands activism before. Vigilante groups that policed the Western frontier come to mind, as do lynch mobs in the post-Reconstruction South.

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1. Jim Gilchrist and Jerome R. Corsi, *Minutemen: The Battle to Secure America's Borders* (Los Angeles: World Ahead, 2006), 8.

 10.1177/1743872109102489

Vigilantes and lynching crowds claimed to be virtuous citizens who acted when the law would not or could not. They used violence – in some cases, much like terrorists – to accomplish their ends. The Minutemen would no doubt dispute this association because the group publicly forswears violence. Call its activism vigilantism lite then. But notice too that a fundamental similarity connects old-school vigilantism and this newer variety. Citizens come closer to legal interpretation, judgment, and enforcement. They come closer to the law, making law reflect their values more directly.

I have written about vigilantes and lynch mobs elsewhere in order to explore the relationship between democratic ideas and a homegrown version of terrorism.[2] In this commentary, I focus instead on what vigilantism lite suggests about the fraught issue of civic identification with law in liberal democracies. A question raised by the Minutemen is how closely should citizens identify with law? The idea that citizens should play a role in crafting the laws that govern them is, of course, a cornerstone of democratic theory. Liberal thinkers, however, tend to be wary of too much proximity between citizens and law. Recall, for instance, that in Locke's *Two Treatises of Government* political society is created when individuals hand over the power to punish offenders to the government. Citizens in a *liberal democracy* are, it seems, given a demanding task. They must feel some connection to the law, but not too much. I leave aside the significant question of just how such a trick might be accomplished. Instead, I focus here on the more limited issue of what is gained and lost when citizens adopt a particular approach to law – that is, when citizens aspire to identify with law and see it ideally as a reflection of their interests or values. What are the possibilities and risks of this kind of identification?

To better understand civic identification with law, I turn to Carl Schmitt. One of liberalism's most trenchant critics, Schmitt argued in *The Crisis of Parliamentary Democracy* that liberalism was at odds with democracy because it attenuates the distance between the will of the people and law. In a true democracy, Schmitt contended, just the opposite occurs. The people believe its will is reflected in law. Reconsidering this argument alongside the phenomenon of the Minutemen raises unforeseen problems with the ideal of civic identification. The Minutemen reveals that the expectation of seeing oneself in the law can produce anxiety about the quality and accuracy of that reflection. Identification with law can cultivate anxiety about *dis*identification, in other words. In closing I argue that some sort of attachment between the people and the law should be maintained in liberal democracies, if indeed they are properly called democracies. But, at the same time, this attachment between citizens and law must account for alienation, estrangement, and disaffection from law.

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2. See Jennet Kirkpatrick, *Uncivil Disobedience: Studies in Violence and Democracy* (Princeton: Princeton University Press, 2008).

Dipping one's toe into the work of any political thinker, as I do here, is a dicey enterprise. This is all the more so in the case of Schmitt, whose membership in the Nazi party and anti-Semitism has been well documented elsewhere.[3] My interest is not in Schmitt per se or in challenging existing interpretations of his work. Rather, I am focused narrowly on thinking about civic identification with law in liberal democracy, and, as such, my focus on Schmitt is also quite narrow. Schmitt has much more to say that could be relevant to a theoretical analysis of civic identification with law. Moreover, existing interpretations of his work – which, it is important to note, are numerous and rife with sharp disagreements – may point to different implications for the relationship between citizens and the law.

I. Citizens = law

The Crisis of Parliamentary Democracy begins with a startling assertion: democracy is everywhere and nowhere. Writing in 1923, Schmitt noted that democracy had engaged in a "triumphal march" in the nineteenth century and had successfully defeated its primary foe, monarchy. Democracy reigned supreme. It was an irresistible force. Yet, as Schmitt saw it, democracy's pre-eminence effectively gut it of meaning. To attain supremacy, democracy allied with radically disparate movements such as liberalism, socialism, and conservatism. Serving "many masters," democracy did "not … have a substantial, clear goal." "It had no political content and was only an organizational form."[4] As Schmitt presented it, democracy became a mode of politics that was remarkable both for its malleability and its vacuity.

"What remains then of democracy?" Schmitt asked. What is it that makes democracy democracy? Schmitt's answer was that "the essence of the democratic principle is … the assertion of an identity between law and the people's will." This identity, Schmitt argued, manifests itself in many different forms in a democracy. Seen as a "string of identities" or "series of identities," it includes:

> the identity of the governed and governing, sovereign and subject, the identity of the subject and object of state authority, the identity of the people with their representatives in parliament, the identity of the state and the current voting population, the identity of the state and the law, and finally an identity of the quantitative (the numerical majority or unanimity) with the qualitative (the justice of the laws).[5]

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3. Raphael Gross, *Carl Schmitt and the Jews: The "Jewish Question," The Holocaust, and German Legal Theory*, trans. Joel Golb (Madison: University of Wisconsin Press, 2007); Stephen Holmes, *The Anatomy of Antiliberalism* (Cambridge: Harvard University Press, 1993), 37–41; John P. McCormick, *Carl Schmitt's Critique of Liberalism: Against Politics as Technology* (New York: Cambridge University Press, 1997), 266–270.
4. Carl Schmitt, *The Crisis of Parliamentary Democracy*, trans. Ellen Kennedy (Cambridge: MIT Press, 1985), 22, 24.
5. Schmitt, *The Crisis of Parliamentary Democracy*, all quotations from 25–26.

In democracy, then, it should be possible to assert that the "governed" are in some way the same as "the governing" and that "the people" are in some way equivalent to "their representatives." At the root of these various forms of identification, Schmitt suggested, was one crucial identity – that is, the sameness of law and the people's will.

This is a cryptic passage that invites many plausible interpretations.[6] For my purposes, I will focus on one such plausible interpretation: Schmitt means that democratic citizens should feel a *substantive* identity with law. Citizens should believe that the law reflects the substance of their preferences, their will, or their morality.[7] In this respect they are unlike subjects in a monarchy who receive alien and unfamiliar law from a distant sovereign and who play no role in the construction of law. Looking at law, democratic citizens say with confidence, "I see myself in law. I feel we are in some way the same." Thus, in a classical form of democracy in which citizens make laws directly for themselves, this identification is likely to be robust. If the authors of the law are also its subjects, it is not difficult to see how the feeling of a substantive identity with law would be strong.

Taken in this way, civic identification with law suggests that the law is like a mirror. Citizens look at the law and they see themselves. Likewise, in a representative democracy, citizens look at their representatives in Congress or parliament and they see themselves (the "governed" identify with the "governing"). The connection is not superficial ("We both are wearing red hats!") but is essential and meaningful ("We share the same values."). As the metaphor of a mirror suggests, the closer the match is the better. What is desired then is not that citizens look at the law and feel some weak

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6. For instance, Schmitt does not specify the nature of the equivalence between law and the people's will. Are these properties equivalent in terms of *substance*? Should the will of the people be substantively recorded in the law? Or, are they equivalent in terms of *composition* – that is, the same people who make the law should be the same people who are subject to it? A third possible reading is that the identity between law and the will of the people depends on religious, racial, or cultural homogeneity. Only a homogeneous people that has a unified will can hope to see its will reflected in law. See Ellen Kennedy, *Constitutional Failure: Carl Schmitt in Weimar* (Durham: Duke University Press, 2004), 125–144. Also, the role of time is not clear. Is identification an on-going process or crystallized in founding acts of constituent sovereign power? See Andreas Kalyvas, "Popular Sovereignty, Democracy, and the Constituent Power," *Constellations* 12, no. 2 (2005): 223–244. Without knowing how law and the will of the people should be rendered equivalent, it's difficult to pin down exactly what Schmitt means in this passage. On Schmitt's stylistic tendency toward veiled allusions and arcana, see Peter C. Caldwell, "Controversies over Carl Schmitt: A Review of Recent Literature," *The Journal of Modern History* 77, no. 2 (2005): 358–359 and 386–387.
7. This assumes that citizens can choose to identify with the law or not and that this choice matters politically. Many of Schmitt's writings point in the other direction. As Stephen Holmes observes, "the soccer-stadium democracy that Schmitt already advocates in 1928 requires *das Volk* to exhibit a healthy docility toward its leaders. The serried ranks back their chief thumpingly, but never become dangerously rowdy or out of control. A truly democratic people is not self-organizing like a despicable bourgeois public, but instead adopts whatever behavior the charismatic regime prescribes." Holmes, *The Anatomy of Antiliberalism*, 49. Tracy Strong points out that, "Schmitt, no matter what else he might be, was not a democrat. He did not conceive of sovereignty as something each individual might have but rather as the exercise of power by the state." Tracy B. Strong, "Foreword," in *The Concept of the Political* (Chicago: University of Chicago Press, 1996), xix–xx.

association with it. Rather, the ideal is that citizens have an impression of *equivalence*, i.e., the will of the people is the law and, conversely, the law is the will of the people.

At first glance, this seems a remarkably high standard. How could citizens in a modern democracy identify with the thousands (or hundreds of thousands?) of laws necessary for a functioning government? Is it conceivable that the average American citizen will identify with, for example, S.RES.347, a resolution designating May 2008 as "National Be Bear Aware and Wildlife Stewardship Month"? Or to give a far more pressing and significant example, should all American citizens identify with H-J Res. 114, the 2002 congressional authorization for the use of military force in Iraq? In a democracy with a written constitution, this question can be asked in generational terms: how can a citizen today identify with the constitutional laws created by a generation long dead and gone? If this question gets re-phrased in terms of representation, it becomes more confusing still. Were the founders representatives of the current generation of citizens? Should citizens today identify with them? How is it possible for current citizens to see themselves in these dead founders? The latter clearly knew nothing of the former, so in what sense can a democratic identity between the two be maintained?

There is reason to think that this is not exactly what the Schmitt passage means. Notice the word "assertion" in Schmitt's statement: "the essence of the democratic principle is…the *assertion* of an identity between law and the people's will." Asserting that an identity exists is, of course, different from establishing that an identity actually exists. The perception of sameness is not actual sameness. Schmitt goes on to indicate that the perception was what mattered, noting that actual equivalence between citizens and law cannot be "a palpable reality." Indeed, it is not possible to "reach an absolute, direct identity that is actually present at every moment" and a "distance always remains between real equality and the results of identification."[8] The ideal of absolute civic identification with law in which law and popular will are truly interchangeable is just that, an ideal. Rather than expecting citizens to identify specifically with every law, Schmitt suggested that identification be understood as a general normative perception or feeling.

Actual identification as it is experienced will inevitably fall short of the ideal, in other words. The law will never function perfectly as a mirror. The average citizen may not see herself in H-J Res. 114 or even S.RES.347. Yet, this fact should not obviate the ideal of the law as a mirror. Despite the inevitable distortions and blurring of actual identification, it should be possible to claim that an identity exists. Thus, policies and procedures that foster this perception are useful to democracy. Schmitt noted, for instance, that the "[e]xtension of the suffrage, the reduction of electoral terms of office, the introduction and extension of referenda and initiatives – in short

8. Schmitt, *The Crisis of Parliamentary Democracy*, 26–27.

everything that one identifies as an institution of direct democracy … are governed by the notion of an identity."[9] As Schmitt presented it, these procedures are not, in and of themselves, democracy but they aid democratic identification with law. When they are present, it is easier to assert that an identity between citizens and law exists.

If the ideal of actual identification indicates a high standard, the perception of identification might be a very low standard indeed. It is possible, Schmitt observed, "to justify the rule of the minority over the majority, even while appealing to democracy" so long as "the essence of the democratic principle is preserved, namely, the assertion of an identity between law and the people's will."[10] An undemocratic process of minority rule can be justified as democratic, in other words, when citizens can see themselves in the resulting law. What the law says, its outcome, is far more important than how it was made. As Schmitt presented it, democratic citizens do not identify with law because its development adhered to a set of legitimate procedures, such as those with the most votes win, representatives can be recalled, or even the people will make law themselves. Nor do citizens identify with law because it was constituted through justifiable practices like voting, public deliberation, or collective action for the common good.

Citizens identify with the outcome of law – what it accomplishes, what it produces, what it encourages – rather than the procedures that constituted it. The metaphor of law-as-mirror is helpful at showing why this might be. Gazing into a mirror, I am primarily interested in the quality of the reflection and in sustaining the perception that the reflection is me (or at least a plausible version of me). I am not particularly concerned about how the mirror works or about how the image was produced.

As Schmitt himself noted, identification with outcome opens up a world of anti-democratic possibilities around procedures, process, and means. This, in turn, opens up a rather large question about whether any means are legitimate so long as the end of identification is achieved. It seems plausible that at some point an extremely undemocratic process – one that, say, involved violence or intimidation – would negate the possibility of identification. In a classical form of direct democracy, for instance, it is difficult to imagine that a direct experience of being strong-armed to support a proposed law would not interfere with identification with that law.

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9. Schmitt, *The Crisis of Parliamentary Democracy*, 27. It is important to note that in *Roman Catholicism and Political Form*, Schmitt critiqued the idea that representation consists of a reflection of a material substance or being. A materialist understanding of representation, he argued, misconstrued it "as 'reflex,' 'radiation,' or 'reflection,'" and assumed that representation should "have reference to matter." He continued, "All such metaphors as projection, reflex, reflection, radiation, and transference seek to express the 'immanent' material basis." Carl Schmitt, *Roman Catholicism and Political Form*, trans. G. L. Ulmen (Westport: Greenwood Press, 1996), 20–21. For an argument that connects Schmitt's non-materialistic concept of representation to an executive-centered, plebiscitary democracy, see McCormick, *Carl Schmitt's Critique of Liberalism: Against Politics as Technology*, 157–205.
10. Schmitt, *The Crisis of Parliamentary Democracy*, 26.

Schmitt does not mention this, however, leaving open the possibility that, as he saw it, the process of making law might not taint identification with its outcome.

II. Citizens ≠ law (What is to be done?)

Schmitt's idea of substantive identification between citizens and law lends insight into how the Minutemen can claim, presumably with a straight face, to be good citizens who strengthen democracy. Consider, for instance, how the authors of *Minutemen: The Battle to Secure America's Borders* see their actions in relation to democracy: "If simple enforcement of US law becomes too heavy a burden or too great a nuisance for elected and appointed members of government, then it is up to average citizens to fulfill the destiny envisioned by our Founding Fathers and to accept the challenge of exercising the right of self-governance."[11] As the Minutemen see it, the group is revitalizing democracy not thwarting it.

Schmitt's notion of identification suggests taking the Minutemen's claims of self-government seriously. Looked at through the framework of Schmitt's idea of civic identification with law, the Minutemen are attempting to shrink the distance between themselves and law. The group wants to feel that it is a part of law. This sense of proximity to the law is accomplished, first, by temporarily supplanting uncooperative intermediaries like federal border patrol agents, police officers, sheriffs, and other "elected and appointed members of government." It is strengthened, second, by actively intervening in the life of the law. As the group presents it, a direct intervention can make immigration statutes and policies more reflective of its preferences, moral beliefs, and collective will. Its activism can change law. The closing chapter of *Minutemen* is replete with statements like "Mr. President … a fence along our entire southern border needs to be built immediately. Furthermore, a significant increase in US Border Patrol agents, perhaps as many as thirty-five thousand more agents, is needed."[12] It is as if the distance between citizens and law has collapsed and so too has the distance between the Minutemen and the president. The movement speaks as if it were sitting in the Oval Office, advising the President directly on policy and law.

Schmitt's notion of identification also clarifies why vigilantism lite might be preferable to other more mainstream modes of political action, like writing to one's member of Congress, voting politicians out of office, or giving money to a political action committee. Vigilantism lite can provide a more immediate feeling of equivalence between citizens and law. It underscores that an identity should exist in a particularly powerful, direct, and public way. Indeed, following Schmitt, it is difficult to see how vigilantism lite

11. Gilchrist and Corsi, *Minutemen: The Battle to Secure America's Borders*, 5.
12. Gilchrist and Corsi, *Minutemen: The Battle to Secure America's Borders*, 321–322.

(or even traditional vigilantism) could be distinguished from mainstream democratic mechanisms like referenda, initiatives, and recalls. Each can foster the perception that a substantive identity exists between the people and law.

And, again following Schmitt, if the outcome of identification is more significant than the process that enables it, then perhaps vigilantism lite is equivalent to some forms of democratic action. It might even be superior. Compared to, say, sitting down at the computer to write an individual letter to one's representative, vigilantism lite might arguably be more effective at providing members of the Minutemen with a sense of equivalence between law and will. In the preface to the second edition of *The Crisis of Parliamentary Democracy*, Schmitt indicated that this kind of ranking is feasible when he compares an "acclamation" of popular will with voting.

> The will of the people can be expressed just as well and perhaps better through acclamation, through something taken for granted, an obvious and unchallenged presence, than through the statistical apparatus that has been constructed with such meticulousness in the last fifty years. The stronger the power of democratic feeling, the more certain is the awareness that democracy is something other than a registration system for secret ballots.[13]

If emphasis is placed on making "the power of democratic feeling" "stronger," then vigilantism lite may well accomplish this goal for those who participate in it.

In turn, vigilantism lite suggests that the ideal of identification is flawed because it does not sufficiently theorize *dis*identification. By its own account, the Minutemen intercedes in law because of a profound sense of alienation and separation from law. As it sees it, immigration law is not as it should be; the government is not acting as it should. To put its position in Schmitt's language, the Minutemen argues that the identity between law and the will of the people is unequal. So too, it argues, is the identity between the governed and the governing. When members of the Minutemen look at the law on immigration, they do not see themselves. Likewise, when they look at their representatives, they do not see themselves. As Jim Gilchrist, a founder of the Minutemen put it, "illegal immigration" is "something that the government should have taken care of long ago … It's almost as if President Bush and virtually the entire US Senate have said, 'Screw the average American; what the public doesn't know won't hurt

13. Schmitt, *The Crisis of Parliamentary Democracy*, 16. Schmitt goes on to criticize liberalism and praise "dictatorial and Caesaristic methods." He argued, "Compared to a democracy that is direct not only in the technical sense but also in a vital sense, parliament appears an artificial machinery, produced by liberal reasoning, while dictatorial and Caesaristic methods not only can produce the acclamation of the people but can also be a direct expression of democratic substance and power."

them. Let's just get through this term of office and move onto our next political ambition in life, or maybe retire.'"[14] Gilchrist's complaint underscores the notion that citizens in a vibrant, genuine democracy should be able to identify with their laws and their political representatives. Yet, it is important to note that this normative view is articulated alongside the bitter empirical experience of estrangement from law and disaffection from representatives. The normative ideal of identity is accompanied by the experience of dis-identity.

What is missing in Schmitt's account is that civic identification with law can be connected to acute feelings of disidentification from law.[15] Indeed, one may prompt the other. If so, it's not clear which comes first. Does the ideal of identification induce what it purports to cure? Or does the experience of estrangement from law instigate an acute appreciation for the ideal of identification? Perhaps the relationship is not causal and not one in which one element precedes the other. Perhaps, instead, ideal and experience are mutually constituting. That is, the ideal of making law and popular will equal might only become intelligible through the experience of their inequality.

The example of the Minutemen cannot adequately address how identification and disidentification function generally. But this case is helpful at showing that disidentification can be accompanied by the desire for a more pronounced form of identification. Unsatisfied with a general perception of identity, the Minutemen wants what Schmitt suggests it should not – that is, to make identification with law a "palpable reality." The Minutemen seeks something more than the perception of sameness. It wants actual sameness. This aspiration is most clearly demonstrated in what its members do. They roll up their sleeves; they interpret and enforce the law themselves. Short of self-legislation, it is hard to imagine a more direct and efficient way of making law and popular will (as they see it) equivalent. It is as if members of the Minutemen look into the mirror of law and, frustrated that they cannot see themselves, pull it closer, smashing their faces to the glass.[16]

The example of the Minutemen underscores how limited Schmitt's consideration of separation from law is. Schmitt does acknowledge that citizens will not experience complete or absolute identification with law. Recall his argument that the general feeling that a legal identity exists is

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14. Gilchrist and Corsi, *Minutemen: The Battle to Secure America's Borders*, xxi.
15. See, for instance, Franz L. Neumann's discussion of identification politics [*Identitätstheorie*] in William E. Scheuerman, *The Rule of Law under Siege: Selected Essays of Franz L. Neumann and Otto Kirchheimer* (Berkeley: University of California Press, 1996), 219–220 and 232.
16. The metaphor of representation as a mirror is long-standing in American history. John Adams argued, for instance, that the legislature "should be an exact portrait, in miniature, of the people at large, … it should think, feel, reason, and act like them." The "perfection of the portrait," he added "consists in its likeness." Also see James A. Morone, *The Democratic Wish: Popular Participation and the Limits of American Government* (New York: Basic Books, 1990), Chapter 1; Hanna Fenichel Pitkin, *The Concept of Representation* (Berkeley: University of California Press, 1972), Chapter 4.

more important than a tangible experience of identification with every law created in the polity. His focus on cultivating a general perception of identification does seem to suggest that citizens will have moments in which they feel that they cannot see themselves in a particular law. As I've read Schmitt, a citizen in this position should say "Oh, well, I shan't be disappointed because I can't see myself in this particular law. That's just too idealistic. I *do* still feel that citizens are a part of law more generally. I *do* still live in a democracy."

Acknowledging that moments of alienation and separation will occur is not the same thing as explaining how citizens in a liberal democracy should understand alienation, however. Absent a careful consideration of disidentification, it is difficult to construct a rich and detailed portrait of moments or kinds of alienation from law. There are numerous possibilities. Perhaps, to borrow from Bruce Ackerman's *We the People*, disaffiliation from law should be understood as a normal experience in the mundane, day-to-day system of politics in which citizens are passive recipients of law made elsewhere, while identification with law should be reserved for transformative moments of higher law-making in which "We the people" rule.[17] Or, to put this point in terms of Larry Kramer's argument in *The People Themselves*, perhaps civic identification with law manifests itself in acts of "popular constitutionalism" in which the people exercise final interpretive authority over the Constitution and subordinate courts and legislatures to its judgments.[18] Another alternative is to understand identification and alienation from law not as an abstract binary in which one element dominates the other. Rather, as Bonnie Honig has argued, maybe identification and estrangement should be understood as a continuum.[19]

Despite the differences among these various understandings of disaffiliation from law, each underscores that citizens in liberal democracies will, at times, fail to identify with law. In so doing, each account presents an understanding of law and citizenship that is rich and nuanced. They suggest – in a way that Schmitt does not – that law in a liberal democracy is (and should be) more than an expression of the will of the people. Law is more than the feeling of autonomy or control. Especially in a pluralistic and diverse nation, democratic law will bind citizens to a course of action

17. Bruce A. Ackerman, *We the People* (Cambridge: Harvard University Press, 1991).
18. Larry Kramer, *The People Themselves: Popular Constitutionalism and Judicial Review* (Oxford: Oxford University Press, 2004).
19. Bonnie Honig, "Between Decision and Deliberation: Political Paradox in Democratic Theory," *American Political Science Review* 101, no. 1 (2007); Bonnie Honig, "Dead Rights, Live Futures: A Reply to Habermas's 'Constitutional Democracy'," *Political Theory* 29, no. 6 (2001). Also see Sheldon Wolin's discussion of "fugitive democracy" in Sheldon S. Wolin, "Fugitive Democracy," in *Democracy and Difference: Contesting the Boundaries of the Political*, ed. Seyla Benhabib (Princeton: Princeton University Press, 1996); Sheldon S. Wolin, "Norm and Form: The Constitutionalizing of Democracy," in *Athenian Political Thought and the Reconstruction of American Democracy*, ed. J. Peter Euben, John R. Wallach, and Josiah Ober (Ithaca: Cornell University Press, 1994); Sheldon S. Wolin, *Politics and Vision: Continuity and Innovation in Western Political Thought* (Princeton: Princeton University Press, 2004), 601–608.

that they may not like. It obligates citizens; it coerces them; it dominates them. Laws, even democratic laws, can make us do things that we would prefer not to. It's true that not all laws impose a duty to act (H.L.A. Hart's power-conferring rules are an obvious and important exception), and no law can compel everyone to act in every circumstance. Citizens are free to disobey, either as criminals, civil disobedients, social bandits, uncivil disobedients, rebels, and so on. But, so long as obedience is the norm and the people are a pluralistic group who disagree about what the law should say as well as how it should be made, then law in a liberal democracy is likely to bind – and alienate – citizens in all sorts of substantive ways.[20] Given a citizenry that has diverse substantive interests and goals, the experience of disidentification with law is inevitable. It makes no sense then to theoretically wish it away.

III. Remaining Questions

If, as I have suggested, there are significant problems with civic identification with the substance of law, then we are left with a large and unwieldy question: what should the relationship between citizens and law in a liberal democracy look like? If not substantive identification, then what? It may be that procedural identification is more promising. Perhaps procedural identification – that is, the idea of citizens seeing themselves reflected in legal procedures – is not prone to the same sorts of dysfunctions as identification with the substance of law. This would mean that citizens should identify with the formal steps of making and enforcing the law and with the established mode of conducting judicial proceedings. Moreover, citizens would care more about feeling at one with these steps and modes than identifying with the law or rulings that resulted. Thus, strong-arm tactics like voter intimidation that interfered with the established forms or corrupted the regular sequence of legal action would matter a great deal. The process would matter more so than the results.

It may be, however, that a deeper problem exists with the idea of identification and with the metaphor of the law as mirror. If this is the case, both identification with the substance of the law and identification with the procedures of law would be problematic because they lean too heavily on the idea of sameness and equivalence. If this is right, it suggests thinking about an altogether new metaphorical understanding of the relationship between citizens and law.

What is needed perhaps is a metaphorical concept that counter-intuitively allows for alienation and disaffection from law as well as attachment and

20. Jeremy Waldron, *Law and Disagreement* (New York: Oxford University Press, 2001), 271–299; Jeremy Waldron, "Precommitment and Disagreement," in *Constitutionalism: Philosophical Foundations*, ed. Larry Alexander (Cambridge: Cambridge University Press, 1998).

connection to it. It might be that both estrangement and familiarity are necessary. It seems logical that there should be some relationship between citizens and law and, moreover, that this relationship should, in part, encompass a degree of recognition. Without some kind of recognition between citizens and law, it becomes hard to say what makes liberal democracy a form of *self*-government. If the law is always already alien, then in what sense are citizens governing themselves? How can we say that they are shaping their own political destiny? Still, when it comes to recognition between citizens and the law, it is possible to have too much of a good thing.

What are we left with, then? Estranged familiarity? Disaffected recognition? Alienated attachment? Considering these dizzying possibilities, two things jump out with particular clarity. First, we are left with more questions than answers. Second, there is much more work to be done on the relationship between citizens and the law in a liberal democracy.