Chapter 9

The Performativity of Foundations

Introduction

The last several chapters have examined how the metalinguistics of speaking and thinking provide resources for the construction of philosophical and literary models of subjectivity. Logic-based philosophical approaches to the self look for a point of certainty or fixity, whether it be in Descartes's cogito or Frege's realm of eternal thoughts, while narrated fiction explores the potentials of textuality. Despite their different models of subjectivity, the shared metalinguistic apparatus creates a common terrain of exploration that might be described as an intergeneric tension field out of which new forms of subjectivity develop. In this chapter, we will see how the interactions between these different visions of inwardness produce a new form of subjectivity, that of the "we, the people" of modern nationalism.

In his magisterial *Sources of the Self,* Charles Taylor traced the "inward turn" of Western subjectivity in philosophy, literature, and the arts; many of the figures he mentions, such as Locke, Rousseau, Kant, and Herder, are also the philosophical forefathers of modern notions of peoplehood. Habermas's study of the bourgeois public sphere argues that political notions of citizenship, sovereignty, and agency first develop in the literary public sphere and its "institutionalization of privateness oriented to an audience" (Habermas 1989, 43). The juncture between philosophy and literature will also provide the "transportable" forms necessary for Anderson's imagined communities of nationalism. A new structuring consciousness emerges through the development of a print capitalism mediated by an institutionally structured, self-reflexive appropriation of the metalinguistic potentials of narration. Narration is constituted by a semiotic reflexivity between the event of narration and the narrated event whose coordination reveals the locus of a new type of subjectivity, that of the narrator. The changes in novelistic form and narration during the rise of the

bourgeois public sphere parallel those in philosophy. The authority of omniscient narration interacts with a new form of narration that was especially popular around the time of the American Revolution, that of the epistolary novel; the epistolary novel created a tone of narratorial intimacy and reader solidarity among an extended, print-mediated audience that contrasted sharply with the "objectivity" of omniscient narration.

Earlier ideologies of printing constructed print as the extension of face-to-face communication. In the bourgeois public sphere, people began to see printing as foregrounding writing's potential for unlimited dissemination, thereby creating a print-mediated difference between public discourse and the world of letters that characterizes private correspondence. The critical transformation occurs when communication is seen not just as a face-to-face relation between people but rather as consisting of a potentially limitless print-mediated discourse. It is in this space that narrated texts insert themselves and become the semiotic base for new forms of subjectivity. A new vision of community is formed in which a reading public is held together by a potentially infinitely open-ended process of reading and criticism.

This space is at least doubly metalinguistic. First, philosophical and narrated texts are formally metalinguistic in their use of reported speech, double-voicing, indirect discourse, and free indirect style to construct the relation between narrator and narrated material or the philosophical self-reflexive examination of consciousness. Second, the discussion of such texts is also metalinguistic, and these emergent forms of consciousness contribute to the development of nationalism, civil society, and the modern nation-state. Concepts such as public opinion, the voice of the people, and popular sovereignty are metalinguistic objectifications of the intersection of narrated and philosophical discourses and the public spaces they create and mediate.

It is in this metalinguistic space that a new form of social subjectivity emerges that is at the heart of modernity. With the American Revolution, the idea of "we, the people" emerges, an idea that will spread quickly and become a founding presupposition of the order of nation-states. Of course, there were notions of collective "we's" that antedate the great revolutions of the eighteenth and nineteenth centuries. But the peculiarity of the modern notion of peoplehood lies not in its linkage to these more traditional forms but in its abstractness. With the American Revolution, we see the emergence of a notion of peoplehood concrete enough to apply to every citizen but abstract enough to legitimate a constitution. The idea of a constitutionalized peoplehood then rapidly becomes a key component of modern nationalisms.

The invention in the New World of national communities imagined to be independent, equal, and comparable to those of Europe was in its time "felt to be something absolutely unprecedented, yet at the same time, once in existence, absolutely reasonable" (Anderson 1983, 192). The inaugural event was the American Revolution, with the Declaration of Independence announcing the formation of a sovereign people and the Constitution declaring "we, the people" to be the subject/agent of an open-ended, self-constituting political process. The American Revolution not only drew together many of the issues being developed in the public spheres of England and France but established a notion of sovereign peoplehood relying on the creative melding of performativity and a new ideology of print mediation. The Declaration of Independence was meant to be read out loud and is structured as a performative that creates a sovereign and independent "we"; the Constitution presupposes this "we" but transforms it into an abstract peoplehood capable of legitimating a constitution and founding a new type of political community in which the idea of a literate citizenry plays a crucial role.

We, the Voice of the People

It is now difficult to see the founding documents of the United States as ushering in a new social form of modernity. Yet as both Anderson and Hannah Arendt (1963) point out, the Declaration of Independence and the Constitution announce the creation of a political subjectivity that breaks with traditional forms of legitimation. In neither document are there references to the antiquity of the American people or to a continuity of culture and custom that binds them; instead, there was "a profound feeling that a radical break with the past was occurring—a 'blasting open of the continuum of history'" (Anderson 1983, 193), the idea of which would spread and be emblazoned in the French Revolution calendar's marking of a new world era starting with Year I of the new French Republic.

> The modern concept of revolution, inextricably bound up with the notion that the course of history suddenly begins anew, that an entirely new story, a story never known or told before, is about to unfold, was unknown prior to the two great revolutions at the end of the eighteenth century. Before they were engaged in what then turned out to be a revolution, none of the actors had the slightest premonition of what the plot of the new drama was going to be. However, once the revolutions had begun to

> run their course, and long before those who were involved in them could know whether their enterprise would end in victory or disaster, the novelty of the story and innermost meaning of its plot became manifest to actors and spectators alike. As to the plot, it was unmistakably the emergence of freedom. (Arendt 1963, 28)

Revolution combined the ideas of a unique beginning and freedom while also creating a new historical subject and agent. The revolutionary project of "inventing the people" produces a new form of make-believe that "then takes command and reshapes reality" (Morgan 1988, 14) even as it attempts to establish a unique history for each new nation. Yet ultimately, revolutions simply replace one form of make-believe with another.

> At the time when England's American colonies were founded, the fictions that sustained government — and liberty — were almost the reverse of those we accept today. Englishmen of the sixteenth and seventeenth century affirmed that men were created unequal and that they owed obedience to government because the Creator had endowed their king with his own sacred authority. These propositions too were fictional, requiring suspension of disbelief, defying demonstration as much as those that took their place. How then did the one give way to the other? How did the divine right of kings give way to the sovereignty of the people? How did the new fictions both sustain government by the few and restrain the few for the benefit of the many? In other words, how did the exercise and authentication of power in the Anglo-American world as we know it come into being? (Morgan 1988, 15)

The battle to create a sovereign people contains within it the overthrow of an older order of legitimacy based on the divine right of kings. Yet to overthrow this source of legitimacy was to call into question that which had always been assumed: governments were legitimated by higher laws. If religion could not provide the source of legitimacy, what could? Even more specifically, what legitimates the constitution of a modern nation when traditional sources of authority have become effaced by a rising secularism? Arendt describes the situation as a vicious circle:

> those who get together to constitute a new government are themselves unconstitutional, that is, they have no authority to do what they have set out to achieve. The vicious circle in legislating is present not in ordinary

> lawmaking, but in laying down the fundamental law, the law of the land or the constitution which, from then on, is supposed to incarnate the "higher law" from which all laws ultimately derive their authority. And with this problem, which appeared as the urgent need for some absolute, the men of the American Revolution found themselves no less confronted than their colleagues in France. The trouble was — to quote Rousseau once more — that to put the law above man and thus to establish the validity of man-made laws, *il faudrait des dieux,* 'one actually would need gods'. (Arendt 1963, 84)

The American Solution

When the colonists first came to the United States, they came as Englishmen. There was no crisis of legitimacy or issue of sovereignty, no vicious circle to be undone. The Mayflower Compact was drawn up in Britain before the colonists left for the New World; they left under the jurisdiction of the Virginia Company and signed the Compact aboard the *Mayflower* before it ever landed. The Compact combines a performative moment of mutual agreement, sanctioned by God, with a constitutional one:

> [we] solemnly and mutually in the Presence of God and one another, covenant and combine ourselves together into a civil Body Politick . . . ; and by virtue hereof enact, constitute, and frame, such just and equal Laws, Ordinances, Acts, Constitutions, and Offices, from time to time, as shall be thought most meet and convenient for the general Good of the Colony; unto which we promise all due Submission and Obedience. (Quoted in Arendt 1963, 173)

Within one hundred fifty years, the different threads woven into the Compact would begin to unravel around the problem of representation.

> Nearly all of the great debates of the period, beginning with the imperial controversy in the 1760s and ending with the clash over the new Federal Constitution in the 1780s, were ultimately grounded in the problem of representation. Indeed, if representation is defined as the means by which the people participate in government, fulfillment of a proper representation became the goal and measure of the Revolution itself, "the whole subject of the present controversy" as Thomas Jefferson put it in 1775. (Wood 1969b, 1)

The American Revolution would replace the monarchy as the source of authority with the vox populi. The king issues commands in God's name; the people would replace him as the performative source of law.

Arendt sees the American struggle for independence as the first modern revolution that begins to articulate the implications of a politics of mutual consent. Starting with the Mayflower Compact and running through the Declaration of Independence and the Constitution, "promises and covenants" create and maintain power. In the Mayflower Compact and the Declaration of Independence, these agreements still appeal to God, laws of nature, and self-evident truths. But the Declaration, in the preamble's "we hold these truths to be self-evident," joins this appeal with the mutual subjectivity and agency of a "we" the Constitution will enshrine as the source of its legitimacy in the form of "we, the people." For as Arendt points out, the self-evident truths "that all men are created equal" and "are endowed by their Creator with certain inalienable Rights" were not of the same order as what were usually considered to be self-evident truths, such as those of mathematics.

> Jefferson's famous words, "we hold these truths to be self-evident," combine in a historically unique manner the basis of agreement between those who have embarked upon revolution, an agreement necessarily relative because related to those who enter it, with an absolute, namely with a truth that needs no agreement since, because of its self-evidence, it compels without argumentative demonstration or political persuasion. (Arendt 1963, 192)

In Arendt's opinion, the Constitution is the "true culmination of this revolutionary process." The Declaration of Independence announces and the American Revolution brings about a liberation; the Constitution creates a foundation for a new form of power that enhances freedom — "there is nothing more futile than rebellion and liberation unless they are followed by the constitution of the newly won freedom" (Arendt 1963, 142). The Declaration provides the source of authority from which the Constitution derives its legitimacy; it creates the "we" that the Constitution presupposes. The Declaration and the Constitution are the founding documents in a process in which men "mutually bound themselves into an enterprise for which no other bond existed, and thus made a new beginning in the very midst of the history of Western mankind" (Arendt 1963, 194).

The Americans, unlike their French counterparts, would separate the sources

of power and law by way of a printed textual mediation. The Constitution would be the source for law; the people would be the source of legitimate power. The distribution of a printed Constitution to be ratified by state legislatures would make possible a new form of social mediation that could then serve as the source for an abstract notion of the people that would transcend any particular locale yet be immanent in all the citizenry. As Michael Warner puts it,

> our society's representational policy rests on a recognition of the abstract and definitionally nonempirical character of the people. It is the invention of the written constitution, itself now the original and literal embodiment of the people, that ensures that the people will henceforward be nonempirical by definition. (Warner 1990, 103)

Deconstructing Foundations

In a conference celebrating the bicentenary of the Declaration of Independence, Derrida presented an analysis of the Declaration that locates in it the same vicious circle of foundation and legitimation that Arendt finds at the heart of modern politics.[1] The crucial question Derrida raises is "*who signs, and with what so-called proper name, the declarative act which founds an institution?*" (Derrida 1986, 8; emphasis in original). The problem is that

> [t]he "we" of the declaration speaks "in the name of the people."
>
> But this people does not exist. They do not exist as an entity, it does not exist, before this declaration, not as such. If it gives birth to itself, as free and independent subject, as possible signer, this can hold only in the act of the signature. The signature invents the signer. This signer can only authorize him — or herself to sign once he or she has come to the end [*parvenu au bout*], if one can say, of his or her own signature, in a sort of fabulous retroactivity. That first signature authorizes him or her to sign. (Derrida 1986, 10)

The signers are caught in the foundational paradox. They lack the authority to sign until they have already signed. The paradox's resolution lies in the utilization of the double functionality of all performatives.

> Is it that the good people have already freed themselves in fact and are only stating the fact of this emancipation in [*par*] the Declaration? Or is

1. This section draws on Honig's (1993) analysis of Arendt and Derrida.

> it rather that they free themselves at the instant of and by [*par*] the signature of this Declaration. It is not a question here of an obscurity or of a difficulty of interpretation, of a problematic on its way to its (re)solution. It is not a question of a difficult analysis which would fail in the face of the structure of the act involved and the overdetermined temporality of the events. This obscurity, this undecidability between, let's say, a performative structure and a constative structure, is *required* in order to produce the sought-after effect. (Derrida 1986, 9)

As we saw in the discussion of *Signature Event Context,* Derrida insisted that the effectiveness of speech acts depended on the interplay between locutionary and illocutionary, constative and performative. Performatives create the states of affairs that satisfy the truth conditions necessary for them to be effective. In the Declaration, the people authorize themselves and their representatives "in the name of the laws of nature which inscribe themselves in the name of God, judge and creator" (Derrida 1986, 12). The double functionality of constative and performative combines, through the structure of the signature and representation, two lines of authorization. One line stretches through the self-evident laws of nature to God, the ultimate, eternal, transcendental countersignatory; the other points to the just announced and contested "good people of these colonies." The radical performativity of the latter is legitimated by the transcendent authority of the former.

The politics of performativity are highlighted in Arendt's construal of how the Declaration of Independence and the Constitution have become authoritative. The founding fathers were faced with "the problem of how to make the Union 'perpetual,' of how to bestow legitimacy for a body politic which could not claim the sanction of antiquity" (Arendt 1963, 202); they found a model in the structure of Roman authority, in which "all innovations and changes remain tied back to the foundation which, at the same time, they augment and increase" (ibid.).

> Thus the amendments to the Constitution augment and increase the original foundations of the American Republic; needless to say, the very authority of the American Constitution resides in its inherent capacity to be amended and augmented. (Ibid.)

Honig (1993) draws a parallel between Arendt's notion of augmentation and Derrida's notion of survivance by which something is maintained through

translation. Translation for Derrida is not a passive act; it necessarily augments the original meaning by placing it within a new context. Translation partakes of the same structure of iterability as citation; in survivance, the translating text preserves the original moment of foundation by augmenting it with another event, speech act, or text.

Under these interpretations of how "foundation, augmentation, and conservation are intimately interrelated" (Arendt 1963, 201), the Constitution becomes the key text because it authorizes its own continuous revision. Every such revision augments the document's authority, and in so doing revalidates its author, "we, the people," thereby reinscribing the performative act of the Declaration of Independence as its creative presupposition. By a "fabulous retroactivity," the Constitution reaffirms and draws into it as a living part of a textualized narrative of national history the future subject whose creation the Declaration both announces and brings into being. The preamble of the Constitution anaphorically refers to the "people" created by the Declaration. Yet as a founding document, it also seems to be subject to the same foundational paradox that Derrida has outlined for the Declaration. Yet it makes no reference to God, laws of nature, or self-evident truths. What, then, is the source of authority for the Constitution?

Constitutional Subjectivity

Despite the apparent continuity between the "we" of the Declaration of Independence and the Constitution, it is immediately evident that this relationship is a historically constructed one that links two different subjects. The "People" of the colonies appealed to at the end of the Declaration is not the same "people" that opens the Constitution. The latter was created by James Madison, agreed upon by the Constitutional Convention, and brought into political existence by the state legislatures. It was, as Morgan has put it, an "invention."

> But even before the convention met, Madison recognized that it could achieve the objectives he had in mind for it only by appealing to a popular sovereignty not hitherto fully recognized, to the people of the United States as a whole. They alone could be thought to stand superior to the people of any single state. (Morgan 1988, 267)

Although this notion of "the people" would draw on the peoples of the individual states, it would be "a separate and superior entity" that would give

to the "national government an authority that would necessarily impinge on the authority of the state governments" (Morgan 1988, 267).

Madison's invention was a response to several crises. First, the Continental Congress lacked the legislative authority to get the various states to work effectively together after the threat of war was over. As the Declaration itself stated, its representatives were indirectly elected by the state legislatures. The Congress itself was made up of the elite sectors of colonial society, and since it lacked a directly elected house of representatives, it could not claim to directly represent the people. The state legislatures could claim to represent their constituencies, but the Congress had no corresponding claim that could "trump" those of the states; it therefore lacked the sovereign powers of a truly national government. By 1787, Congress's lack of legislative authority had produced a crisis. There were secessionist uprisings in Massachusetts, New Hampshire, and Connecticut. John Marshall, the future chief justice of the Supreme Court, thought that unless there was a national government with effective powers, there would be "anarchy first, and civil convulsions afterwards" (quoted in Morgan 1988, 267).

Yet creating a solution that would give some entity both power and legitimacy would require a new conceptualization of representation. Much of the revolutionary rhetoric was a critique of indirect and virtual political representation. During the Stamp Act debates, it was argued not only that the colonies were not properly represented in the Parliament but that, owing to the distances involved, they never could be, because any representatives would soon lose touch with local matters. With the Declaration of Independence, these issues of representation soon became involved in the vicious circle of a legitimation crisis. When the Continental Congress declared on May 15, 1975, that the authority of the crown should be replaced by that of new state governments empowered by the people, the question immediately arose of the legality of such a decree since there was no precedent for legally claiming the authority of the people. Previously, the law derived its legitimacy from the King and Parliament; with the overthrow of that order, it seemed that legal authority itself was lost. In Philadelphia, a pamphlet called *The Alarm* soon appeared that raised the question of who authorized such an authorization.

> Legislative bodies of men [have no power to destroy or create] the power they sit by. . . . Otherwise every legislative body would have the power of suppressing a constitution at will; it is an act which can be done *to them* but cannot be done *by them.* (Wood 1969, 337)

The problem was that if the Assembly could legally alter the constitution, then it "might afterward suppress the *new* authority received from the people, and thus by continually making and unmaking themselves at pleasure, leave the people at last *no* rights at all" (ibid.).

One of the solutions that Madison drew on was the practice of creating constitutional conventions, which quickly spread after the Declaration. These conventions broke with the vicious circle of finding some legal way to justify the founding law precisely because they were considered to be extralegal. In *Common Sense,* Tom Paine describes them as "some intermediary body between the governed and the governors, that is, between the Congress and the people" (quoted in Warner 1990, 101). Madison's goal was to create a national government whose authority would rest on a notion of the people of the United States and whose authority would not rest on state governments or the particular constituencies they represented; instead, the American people would constitute "a separate and superior entity" that was "capable of conveying to a national government an authority that would necessarily impinge of the authority of state governments" (Morgan 1988, 267). This notion of the American people would face two directions: it would be a transcendent source of legitimacy yet be embodied in every citizen. Madison's insight was to use the occasion of the Constitutional Convention to create a document that would lay out the legal procedures for claiming the authority of the people.

> By constituting the government, the people's text literally constitutes the people. In the concrete form of these texts, the people decides the conditions of its own embodiment. The text itself becomes not only the supreme law, but the only original embodiment of the people. (Warner 1990, 102)

The printed textuality of the Constitution allows the document to emanate from no individual, collectivity, or state in particular, and thus to arise from the people in general. Its circulation mitigated against the particularism of local interests and thereby solved one of the continuing problems of that period: how to balance local interest and the public good by creating a mediation between the two; by building on the translocal nature of the mediation, the Constitution created the ground for a notion of disinterested public virtue. It embodied a textualized mediation of what Arendt had called "the worldly in-between space by which men are mutually related" (1963, 175). The reading and ratification of the Constitution created the very "we" that is its opening subject and also its audience, anaphorically invoking the "we" of the Declaration.

The people serve as the subjectivity that validates the Constitution, but its performativity is different from the appeal to God we find in the Declaration; the people are not an external absolute used to secure the authority of text, but rather "distribute" performativity into two separate moments. With its reference to the twelfth year of the Independence of the United States, the Constitution links itself back to the continental congresses and the performative moment of the Declaration, suggesting that the "we" about to be created by the ratification process is continuous with the "we" of the Declaration. At the same time, it makes that "we" the subject/agent of the legal process it is about to constitute. The performative effect of "we, the People of the United States . . . do ordain and establish this Constitution for the United States of America" is to create a "we" that looks like a presupposition for the document's effectiveness and a "we" that the document's ratification will make the source of its power.

The creation of "the people" in the Constitution resolves the performativity paradox by substituting for the direct, face-to-face mediation of society by speech a model based on the indirect mediation of print. In his *Social Contract,* Rousseau presents a model in which a face-to-face assembly creates the social contract that brings about the general will, but it is only through the law that the general will can preserve itself and endure. Yet at the same time, the assembled general will is unable to create the law necessary to preserve itself except by an appeal by lawgivers to some external, transcendent agency. The American solution to this dilemma is to replace the transcendent authority with an extralegal source that is sufficiently abstract and general to legitimize the law and yet immanent within the legal process. This source will derive from the written qualities of the law and its ability to create an "imagined community" of readers and citizens based on the abstract properties of print mediation. If speaking, direct representation, and face-to-face assembly are the original sources of the general will, then writing, indirect representation, and print mediation are the sources for its preservation and reproduction. The constitutional convention and ratification process ensured that the source of this authority was extralegal; it represents a higher will that legitimates particular acts of legislation but itself can never be reduced to the normal legislative process. "The people" is a concept that embodies a general interest and transcends particular interests and is thus sufficiently abstract to legitimate the law of laws or a constitution. The performativity of "we, the people" is split into the Declaration's earlier performative moment (which still appealed to God and relied on an oral model of performativity) and the future self-interpretive pro-

cess the Constitution creates (in the Supreme Court and the amendment process) in which the people will constantly reinterpret itself. The temporal trajectory that the performativity of promising establishes at the heart of the law is embodied in the Constitution's amendment procedure and in the Supreme Court; at the same time, the whole legislative process presupposes and makes "the people of today" immanent in every legislative act that "the people" also legitimates.

Declaring Independence and Constituting a People

The contrast between oral and textual forms of performativity is inscribed in the differences between the Declaration of Independence and the Constitution. Although the Constitution relies on the Declaration as "the sole source of authority from which the Constitution, not as an act of constituting government, but as law of the land, derives its own legitimacy" (Arendt 1963, 195), it differs remarkably in its form and content. The Constitution makes no overt references to God, or to laws of Nature or reason. The preamble opens with the subject performatively created in the Declaration, attributes to it a goal-oriented intentionality ("in Order to form a more perfect Union . . . "), and then performatively asserts, "we . . . do ordain and establish this Constitution for the United States of America." Article I section I makes a reference to the textual nature of the Constitution, referring self-reflexively to "All legislative powers herein granted," and then there follows a series of articles mostly written in the future tense. The Constitution concludes with a statement about the document having been "done" by the "States present" in the twelfth year of the independence of the United States. Whereas in the Declaration the performativity creates both the subject and the declared independence, in the Constitution there is no subject to be created, there is only the performative task of creating the Constitution. The signatures have no performative effect, in sharp contrast to the Declaration. As Michael Warner puts it,

> whereas the climactic moment for the Declaration of Independence was the signing, for the Constitution the climactic moment was the maneuver [i.e., Franklin's motion for unanimous agreement] that deprived signing of personal meaning. For the same reason, whereas the signed copy of the Declaration continues to be a national fetish, from which printed copies can only be derived imitations, the Constitution found its ideal form in every printed copy, beginning, though not specially, with its ini-

> tial publication, in the place of the weekly news copy of the Pennsylvania Packet. (Warner 1990, 107–8)

The audience of the Constitution was the potential citizenry and the state legislatures that would have to ratify it. The "we" therefore has a peculiar inclusive quality. Each addressee/reader is, via the ratification process, potentially a member of this "we," which also includes all other collectivities made up of citizens, including those in the future. It thus forms the "we-ness" at the heart of Anderson's notion of an imagined community of potentially nonpresent consociates moving through time, giving it an agentive and coordinating force derived from the printed mediation of the document itself. The presupposing and creative dimensions of the performative moment of the Constitution are, in effect, distributed between its anaphoric reference to the Declaration's "we," which then appears as its founding presupposition, and the future ratification — and in some sense, perpetual reratification — by the people. The outside subjectivity invoked by the declarative speech act of the Declaration is transformed into that of the constitutional legal process itself.

In contrast, the Declaration of Independence was designed to be read aloud. It follows a speech act model of performativity that it secures within a constative order established by God; God also supplies the felicity conditions for its performative effectiveness. It is directed toward fellow colonists, especially those who are wavering, foreign governments whose political recognition the Congress sought, and England. To the colonists, the "we" has the effect of an invited inclusive: you are invited to join us. To others, it has an exclusive quality, indicating that a new subject (a speaking/signing "we" and others — "we" and "they") seeks the addressee's recognition as a sovereign "we" in its own right. At the same time, it seeks to secure such a recognition through a "we" that it does not refer to, that of all the people who share the recognition of God's truths and therefore the justness of the revolutionaries' cause.

The structure of the document moves from general to performative. The opening sentence is a long general statement in the nomic present tense about the "course of human events." It then locates a specific situation under the "Laws of Nature and Nature's God" in which it becomes necessary for one people to dissolve the political bands that have connected them with one another, makes reference to the opinions of mankind, and then states that those who seek independence should declare the reasons that "impel them to the separation."

In the second sentence, a "we" appears that holds "these truths to be self-evident." It thereby combines the creative self-referentiality of "we" with a mental-state verb, "hold."[2] The shift from the nomic level of the first sentence to a present reference ("we hold" seems to lie somewhere between a nomic and a true present reading) is signaled by the two indexicals "we" and "these," whose reference point is the moment of speaking. The "we" as subject/agent selects from among certain truths "these" self-evident truths, which turn out to be not the truths of mathematics — considered to be the paradigm cases of self-evidence — but rather truths about human society. The reference to "we" hints at a form of authority that will be secured not by appeal to some absolute but by mutual agreement. The next several sentences assert how governments are created to embody these truths, and then proceeds to list the King's violation of them. Because of these violations, "we, the representatives of the United States of America," who seek the acknowledgment of the justness of our intentions by God (otherwise the performative act would be null and void), "do . . . solemnly publish and declare, that these United Colonies are, and of Right ought to be Free and Independent states." The effect of this declaration is to make the representatives "mutually pledge to each other our Lives, our Fortunes and our sacred Honor," followed by their signatures.

As we saw earlier in his reading of the Declaration, Derrida argues that the appeal to truth or a constative moment interacts with the performative to create the legitimate referent of the "we," or performing subjectivity. Every performative moment, if it is to be a founding moment, must involve both performative and constative elements and it is their interaction that produces the desired effect. Although Derrida focuses on the intertwining of performative and constative locutions in the signing of the Declaration, their pairing extends throughout the document. The "mutual contract" required to create a society invokes the performativity of pledging and promising, but that performativity depends on a peculiar kind of constativeness. It requires an act of referring that brings into being what it describes, a suturing of the performative and constative. The very act of referring brings about the conditions that make it true that the predicated speech act has taken place, and the rest of the Declaration intertwines the two levels of performativity and truth functionality before com-

2. "We hold" is not a performative but a mental-state verb like "believe" or "know." Unlike a true performative, it refers not to a unique, present moment but to an indefinite time span that includes the moment of speaking.

ing to an end with the transparent performativity of the final sentence's "mutual pledging."

In the Declaration the referent of the initial "we hold" is not disambiguated until the document's performative conclusion. Jefferson drafted the document, which was then modified by the representatives of "the United States of America," who were "in the Name and by Authority of the good People of these Colonies." The performative is signaled by the choice of the metalinguistic verbs "publish," "declare," and "pledge," the unmarked present tense and aspect, and a "we" that subsumes the individual "I's" that sign. But this "we" is not just a collocation of assembled representatives; it stands also for the representatives of the United States of America. They sign, but their signatures and the felicity of their act is guaranteed by the "rectitude" of their intentions, which are vouchsafed by the "Supreme Judge of the World." The rectitude of intentions is one of the felicity conditions for the signatories' performative act, and it links the self-evident truths to their real historical understanding as an excuse (another performative) or justification for what will happen. God goes from being the transcendent ground of self-evidence to being the judge of intentionality. The link between the eternal truths, the requisite intentions, and the specific act of declaring independence is secured by God, who guarantees the continuity between one moment and another. The linkage is made explicit in the subordinate clause that "these United Colonies are, and of Right ought to be Free and Independent states" in which the *ought* actually prepares for the *is* because of England's violation of the self-evident oughts already announced. The double structure of this oughtness secures both a transcendental ground and a future for the founding performative event. It allows the founding event to be inserted into a chain of oughts, and God becomes the proper name or countersignatory of the people's performative. This performative is secured by the good intentions of the signers and brings into being that which they purport to represent: the people of the United States of America.

The linguistic structuring of the Declaration also points to the performative moment of speaking and signing. Unlike the Constitution, which is written mostly in the future tense, the Declaration opens in the nomic present tense, then moves to the indexical anchoring of "we hold." The list of complaints is written not in the simple past tense but in the present perfect, which, as we saw in an earlier discussion, signals the continuing relevance of the past state of affairs for some reference point. That reference point is established as the present by the performative conclusion of the Declaration; the ongoing rele-

vance of these justifications and the "rectitude" of the signers' present intentions are felicity conditions for the effectiveness of their performative declaration. The spoken performativity of the conclusion is even more dramatic in Jefferson's draft version, which reads, "we . . . reject and renounce all allegiance and subjection to the kings of Great Britain. . . . we utterly dissolve all political connections. . . . and finally we do assert and declare these colonies to be free and independent."

Parallel to the temporal shift from timeless situations to the moment of performative declaration, there is a change in the role of the agency of the "we." In the first sentence, there is only God as an agent. In the second, a "we" is asserted that grasps certain truths, each of which is listed within a complement clause introduced by "that" (e.g., "that all men are created equal"), each of which is in a nomic present tense. In the list of provocations, the King is the active agent, and the "we" an object of his unreasonable actions. The "we" that publishes and declares independence still appeals to God to judge the rectitude of its intentions, but the final "we" that mutually pledges creates its performativity unassisted; the signers' "firm reliance" on "divine Providence" is for their own protection, not to guarantee the effectiveness of their pledge to each other.

Despite being a written and then printed text, the Declaration's rhetorical structure indicates that it was meant to be read aloud. Jefferson's still-surviving rough draft of the Declaration is marked with diacritical accents, and the proof copy of John Dunlop's official broadside printing of the Declaration contains inexplicable quotation marks in the opening two paragraphs that are probably the printer's misinterpretations of Jefferson's reading marks (Fliegelmann 1993). All over the colonies, there were public readings of the Declaration designed to bring people together as a microcosm of the people it would bring into being.

At the time of the Declaration, rhetoric and oratory were also undergoing a revolution. People were searching for "a natural spoken language that would be a corollary to natural law, a language that would permit universal recognition and understanding" (Fliegelmann 1993, 2). The move to "plainspeak" cut rhetoric from its aristocratic origins as a sign of breeding and proper class behavior, and signaled the public exploration of a private subjectivity in which one's thoughts and feelings became self-evident in public. As Jefferson himself put it, oratory had three styles: "the elevated," appropriate for orators and poets, "the middling, appropriate for historians," and "the familiar." The

last of these would be suitable for "epistolary and comic writers" (quoted in Fliegelmann 1993, 27), whose works were the popular rage and in which the narrators would address their readers as if they were equals in a frank conversation. The inward turn that Habermas and Taylor describe receives its articulation in novels that create an imagined community of bourgeois readers exploring values of everyday life that would sustain their common social world.

> In a post-Lockean milieu that believed the self to be the sum total of its experiences and reflections upon those experiences, reading would become not a substitute for experience but a primary emotional experience itself, a way of understanding and making one's self. (Fliegelmann 1993, 58)

As Fliegelmann has pointed out, this revolution affected all forms of public expression in the Republican era, including art, theater, and music. These forces are all part of the milieu in which Jefferson drafts the Declaration. Jefferson combines the rhetorical models developing in literature with the philosophical models of subjectivity developed by British philosophers. He draws directly on Locke's *Two Treatises for Government,* in which Locke asserts that "a people" can rise up in revolution if there is "a long train of Abuses, Prevarications, and Artifices" to make his claim in the Declaration that "under absolute despotism" people have the right and duty "to throw off such a government" (see Gustafson 1992, 199, for a fuller discussion). From the assertion of the self-evident truth that governments that deny that men are created equal and have inalienable rights may be overthrown, and the minor premise that Great Britain was such a government, it naturally and inevitably followed that the colonies should be independent. The conviction of the conclusion lay not only in its syllogistic quality but also in its accordance with the rhetorical principles of the time, in which self-evident arguments were seen to lead to an intuitive consent by creating a feeling of immediate clarity that reached straight to the heart as well as the head (Fliegelmann 1993, 51). The written Declaration speaks with the force of an immediate performative.

Performing the People

The performativity of the Declaration builds on an inward, self-reflexive turn that begins in Western philosophy with Descartes and is reworked into the "punctual" self of Locke that Jefferson and the founding fathers drew on (Taylor 1989). The Declaration aspires to the self-grounded performativity of

the cogito, only it is not a solitary thinker that is created but a people. When we declare that we are independent, we are free and independent. Descartes's model of an indubitable proposition was the complement clause of "I think that I am," because the very act of thinking or saying it made true the subject whose existence the statement asserted. The Declaration aspires to the performativity of cogito, but it has to create both the acting subject and the state of affairs announced in the complement clause ("we . . . formally publish and declare that . . . "). The felicity conditions it has to fulfill are thus of two sorts: that of the subject, which is secured through the relays between "we," the signatures, and the representatives, and that of the "is and ought," which is secured by God.

The Declaration of Independence is structured to make its conclusion performatively effective. Unlike the complement clause of Descartes's "I think that I am," which is made true by it being thought, no first-person declaration by itself can bring about "that these United Colonies are, and of Right ought to be Free and Independent States." While it may be true that in the right circumstances, an assertion or reading aloud of the concluding sentences of the Declaration might indeed be the making of a declaration and a pledge, nothing would guarantee the truth of the complement clause. In a stroke of rhetorical genius, the Declaration sets up in the preceding paragraphs the conditions that must be true if the performative conclusion is to have effect and secure the proper uptake. God's subjectivity and agency are thus invoked as the guarantor of the constative truths that will make the conclusion performative.

The uniqueness of the expanded version of Descartes's cogito, especially in its dico variant, is that its assertion not only is performative but creates the presupposition needed to make the complement clause true. The assertion "I say that I am" is performatively true whenever I say it; its assertion creates the "I" that makes the proposition expressed in the complement clause, 'that I am', true. Since all the illocutionary verbs are hyponyms of the verb 'to say', embedded in every performative act of promising, declaring, or "formally publishing" is a tacit reference to the performative act of speaking. The difference between speaking and other metalinguistic acts is specified by the differences in their felicity conditions, with saying having minimal ones as compared with, say, promising or excusing. It is this gap between the felicity conditions for the performativity of speaking and the performativity of declaring independence that God's intentions secure in the Declaration of Independence. The performativity of the "we publish and declare" lies in the creation of the subject and

the performativity of the two metalinguistic verbs. But unlike Descartes's assertion of his cogito, where an act of the thinking subject creates the subject of the propositional complement and therefore guarantees its truth, the mere act of declaring independence cannot secure independence because that requires uptake, that is, the recognition of the validity of the claim by others. The grounds for this validity claim are provided in the paragraphs preceding the Declaration's conclusion, which are written under the eyes of God as witness and guarantor. The act of declaring is placed in a transcendent order that is meant to guarantee its effectiveness. If the appropriate "others" agree with the argument and then accept the performative creation of the "we" and its declaration of independence, then the complement clause of the performative becomes true and the colonies become a free and independent state.

There is a subtle creative ambiguity in the chain of "we's" that connects the Declaration and the Constitution. The referent of the first appearance of the "we" in the Declaration is not disambiguated until the end of the document. Does the initial "we" refer only to the signers or also to what they purport to represent, the peoples and people of the colonies? But if the document is to declare and create the fact of independence, then it does not do so until the end of the Declaration, so the referent of the initial "we" is not created until the end. Yet the performative "we do . . . formally publish and declare" also appeals to a Cartesian certainty, namely that any use of "we" creates itself as the topic/subject of its own assertion, so at least some subset of the referent of "we" is created whether the uptake is successful or not. The effect of the reference to God is to constitute that which is created by the act of formally publishing and declaring, namely, the declaration by the subject "we," as the object of God's divine will, which will make what ought to be into what is. God will transform this ambiguous "we" into the "we" of a free and independent nation. The initial performative "we," which is merely a discourse subject with ambiguous reference, is objectified by God into a "we" that can stand for a united people that can then be retroactively read back into the first "we" of "we hold these truths. . . . " "The people" is created by God's taking that which is created by a social speech act performative and transforming it into a subject/agent in its own right. The subject "we" of the Constitution's opening performative "captures" the "we" of the Declaration and embeds it in a text it creates and opens up to an interpretive process that it specifies and inaugurates.

The Constitution thus ushers in a new model of legal and textualized performativity. Whereas the Declaration was criticized as too effective in trying to

"captivate the people" (Fliegelmann 1993, 187) with its rhetorical polish, the Constitution was often criticized for its vagueness, abstractness, and ambiguity. A delegate to the Massachusetts convention complained:

> I think a frame of government on which all laws are founded, should be simple and explicit, that the most illiterate may understand it; whereas this appears to me so obscure and ambiguous, that the most capacious mind cannot fully comprehend it. (Quoted in Gustafson 1992, 278)

Although some of the worries about the meaning of the Constitution would be addressed in the Bill of Rights, much of the anti-Federalist sentiment was fueled by the fear that an aristocratic elite, hiding behind an ambiguous document that required constant reinterpretation, might use the word of law to violate the freedom and liberty of others. They were complaining about the shift from a model of politics in which textual interpretation would replace the populist models of the direct expressivity and sociability of face-to-face communication.

If the Declaration of Independence aspired to the performativity of Descartes's cogito as a founding moment when a new national history would begin, the Constitution embeds that performativity in a textualized iterability it creates. The Constitution replaces the punctual quality of the Declaration's face-to-face model of performativity with a text-mediated, "durative" performativity that "writes in" the conditions for its own uptake. In addition to "capturing" the "we" of the Declaration, it writes the future of its own interpretation into the document in the form of the Supreme Court, and it specifies the conditions of its augmentation through the amendment process. The Constitution creates the institutionalized space of authority into which it inserts itself and its future interpretations and, in so doing, signals a recognition of the intentionalist fallacy. The document is so constructed, from its opening words to the signatures indicating unanimous consent and including its creation of the Supreme Court, as to make the intentions of its drafters irrelevant to its interpretation. The founding fathers thus created the first antifoundationalist founding document.

Conclusion

The American creation of a textually mediated public subjectivity was a crucial step in the forming of what would be the crowning achievement of the bour-

geois public sphere: public opinion, which would become the organizing trope of the intergeneric tension field that new forms of publicity were creating. Edmund Burke, in a letter written for the electors of Bristol entitled "On the Affairs of America," formulated the idea that "general opinion is the vehicle and organ of legislative omnipotence" (quoted in Habermas, 1989, 94). By 1781, Burke's "general opinion" would become "public opinion." This line of thought would be articulated through the struggles of the French Revolution and would culminate in the work of Kant, in which the rationality of public opinion is secured by its public transparency. Kant's public opinion is totally textualized; his model is that of a scholar and his reading public.

> The public use of man's reason must always be free, and it alone can bring about enlightenment among men; the private use of reason may quite often be very narrowly restricted, however, without undue hindrance to the progress of enlightenment. By the public use of one's own reason I mean that use which anyone may make of it as a man of learning addressing the entire reading public. What I term the private use of reason is that which a person may make of it in a particular civil post or office with which he is entrusted. (Kant 1991, 54)

Of course, Kant's rationalization of public opinion builds on his development of a transcendental subjectivity based on the analytic-synthetic distinction derived from his interpretation of the syllogistic logic of his time. This subjectivity, in the form of a uniquely human rational will, becomes the source of morality; as Taylor puts it, "the fundamental principle underlying Kant's whole ethical theory" is to "live up to what you really are, viz., rational agents" (Taylor 1989, 365). A transcendental subjectivity secures the highest form of social objectivity, that of the freedom and autonomy of citizens and nations legitimated by the idea of a universal, rational will. In its ideal form, modern civil society should be governed by two principles. The first is that all deliberations that affect the people should be accessible to public scrutiny. The second is what Warner has called a principle of negativity. The potential validity of what one argues for stands in a negative relation to one's self-interest; the more disinterested a position is, the more likely it is to be universally valid and rational. The validity of such a position is never individually secured, however, but is the product of intersubjective agreement via uncoerced public discussion among people treating each other as equals.

If the Kantian trajectory represents the epitome of a textualized notion of

subjectivity, Romanticism articulates the rhetorical expressivism presupposed by the Declaration. Nature becomes the source that stimulates our inner resources and aspirations, and a return to nature will overcome the split between reason and sensibility, thereby creating the community feeling necessary for the development of a truly civil society. Among the verbal arts, poetry is elevated, as it reveals a "cosmic syntax" rooted in the poet's own creativity. The romantic painter Caspar David Friedrich expresses this new view of art in his desire to let "the forms of nature speak directly, their power released by their ordering within the work of art" (quoted in Taylor 1989, 381).

The Kantian turn and Romanticism both rely on a radical inwardness in which freedom is the most important value; attempts to overcome the tension between autonomy and expressivism will dominate the philosophical aesthetics of the period. Yet at the same time, literature is producing a new way of looking at human consciousness, a form that combines the objectivity of the constative order with the expressivity of speech. Free indirect style, as developed in Flaubert and Austen, provide a way of letting consciousness "speak naturally"; these new, textualized forms of subjectivity interact with the forms of historical narration being created at the same time and produce the possibility of "objectively" presenting subjectivity. The ideology of the modern Western nation-state fuses these two strands of inwardness. The nation derives its legitimacy from the popular will, whose rationality is embodied in its legislative and legal processes; but it derives its nationalism from the fusing of autonomy and expressivism tied to essentialized notions of a national language and culture. Narration and print mediation foreground a new semiotic space of potentially infinite dissemination based on reading and education, and a new disembodied mass subjectivity that is reaffirmed by every reader who conceives of himself as part of its audience. In the United States, the creation of an American people transformed the intergeneric field that gave birth to it, for it would now be possible to conceive of a distinctly American literature and culture.

Just as the American invention of the people signaled a transition from one model of textuality and publicness to another, the invention of the modern nation-state combines emerging forms of subjectivity with new ideas about publicity. The liberal ideals structuring this model of popular subjectivity, originally tied to a particular public sphere, have now become the bases for modern civil society and its view of the nation-state. Yet it is the very linkage of radical autonomy, expressivism, and publicity that a mass-mediated society challenges

as it ushers in new relations between print mediation and publicity. In contrast to the rational public subjectivity that is the normative ideal of the bourgeois public sphere, mass-mediated consumer capitalism creates an imaginary space of viewership and participation in which individual choice and freedom exist at the level of consumption. The specificity of interest and embodiment bracketed by the liberal public sphere returns in undisguised form as the basis for a mass subjectivity characterized by a potentially infinite differentiation of desire. Modern consumer capitalism links individual desires through mass-mediated forms of publicity. The fascination of visual imagery links the specificity of consumer choices to the body as signs of individual interest, desire, and subjectivity, but the publicity of mass-mediated choice creates the image of an imaginary public other (that which is other than me is what is public); one's individual choice stands in contrast to all other similarly mediated desires.

The multimediation of mass publicity creates a dynamic different from that of the early public sphere's print mediation, in which the narrator/commentator/critic could become a focus for the imaginary projection of that sphere's self-consciousness. In her book *Babel and Babylon* (1991), Miriam Hansen shows how the creation of the film viewer as spectator involved changing relations between the film industry, audience structures, technical resources, and narration. The invention of spectatorship accelerated the commodification of visual pleasure and fascination, creating what she calls "the commodity form of reception." This transformation depended on the development of classical modes of film narration and address in the early twentieth century. Earlier films had narrative structures that depended highly on extradiegetic contextualizations, including audience familiarity with the story or the presence of a lecturer to provide viewing information; in the classical mode, the narratives became increasingly self-explanatory through the integration of technical resources such as framing and editing with the narrative line of the film. Unlike the forms of subjectivity produced by the bourgeois public sphere, the development of spectatorship coincides with the commodification of visual fascination; instead of a disembodied, rational public subjectivity independent of individual economic interests, spectatorship provides a point of view whose abstractness depends on the generalizability of specific desires.

There is a tension between the idealized reader/citizen of the bourgeois public sphere and the spectator/viewer of mass media that reflects their different orientations. The individual reader stands in the same relation to the idealized reader as does individual opinion to rational public opinion. In each

contrast, the latter member is the abstract and universal form of the former. This abstraction is, at least in part, created by an idealization of the generalized publicity associated with print mediation; a rational opinion is that which everyone could agree on if they had the same sources of information. Rational public opinion can therefore appear as a detemporalized and despatialized voice that, because of its universality, can be open to and accommodate all differences. The category of spectator also stands in an abstract relation to the individual viewer. The major difference is that instead of bracketing interest as in the case of the ideal reader/citizen, the mass-mediated consumerist public subject is built on the notion of choice and interest; its internal dynamic is that of a temporal structuring of difference that is regulated by the demands of the market and mediated by forms of consumer publicity such as advertising. The goal of mass-mediated forms of publicity such as advertising is to produce generalized forms of desire that also appeal to individuals. Rational public opinion and the mass-mediated public subject are both generalized forms, but the latter generalizes what the former brackets. Their associated forms of publicity do not in principle overlap, but the subsumption of all forms of public production under forms of mass publicity has also led to their agonistic relationship in various public areas, as the current debates over multiculturalism and identity politics show. One pole of these debates is constructed around the liberal ideals of the bourgeois public sphere; the other is locked in the construction of particular identities in the face of an infinite differentiation of choice. The dynamic opposition between these two forms of public subjectivity creates the intergeneric tension field of contemporary society, now poised between an older model characterized by print mediation and its more recent, indirectly mediated counterparts.