

Being a Citizen in the Rubble of Institutions

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Abstract

What is the best foundation for democracy: citizenly habits sustained informally by the spontaneous effort of citizens themselves, or formal institutions and the law? C. L. Skach's *How to Be a Citizen* tells us how someone who dedicated her career to the importance of law and institutions lost her faith in them and came to see the habits and informal relations of citizens as the real site of democracy. Like many observers of politics in recent years, Skach has concluded that the regnant social order based on law and institutional mediation has fatally discredited itself. But giving up on institutions and law is no small thing. There are powerful reasons for, and immense social forces tied up with, coordinating modern societies by means of them. This review article explores the tensions between Skach's approach and some of these reasons and forces. Yet it does so not in the spirit of critique but rather as a challenge for those who view institutions and law as almost unquestionably fundamental to modern life. It seeks to explore what value there is in Skach's informal, anti-institutional approach for those who have not yet entirely lost the faith she once affirmed in modernity's legal and institutional workhorses.

Keywords: democratic theory; constitutionalism; modernity; judicial supremacy; institutionalism; coordination

I am predisposed to be skeptical of C. L. Skach's book *How to Be A Citizen: Learning to be Civil Without the State*.¹ You might even say, based on my published views, that I'm committed to rejecting most of its core claims with both hands.² Skach builds a case against the importance of formal institutions, especially law and constitutions, for the project of building more authentically democratic communities that promote human flourishing. By contrast, I have largely concerned myself with deploying such institutions in better ways to those same ends.

Yet Skach's book is not the latest salvo from a longtime skeptic of institutionalism. She is no holdover from, or echo of, the countercultural movements seeking to build a new world outside the forms of the old, for instance. Rather, the book is the record of an apostate explaining what drove her from her faith. If you believe as I do that institutions and how we design them—and constitutions and how we write *them*—matters, then you share the faith that she has lost. And she has written this book for you.

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¹ C. L. Skach, *How to Be a Citizen: Learning to Be Civil Without the State*, 1st ed. (New York: Basic Books, 2024).

² See, for example, Kevin J. Elliott, *Democracy for Busy People* (University of Chicago Press, 2023).

Skach wants to convince us to join her in her skepticism and adopt new practices of citizenship that will help build a more robust and authentic form of democratic community. The bulk of the book consists in her elaboration of the six “pillars” of these new habits of citizenship, and why they’re needed in place of existing patterns of behavior. I’ll discuss these in detail later, but to give a flavor: one of the pillars is to “hang out in a piazza, repeatedly,” by which she means that we should spend more time in shared informal spaces with other people, interacting with them in the ways appropriate to those spaces. In this way, she thinks we build and strengthen the “cooperative spaces of citizenship”³ in which we can self-organize responses to shared problems and supply common needs. Self- and spontaneous organization are a major theme throughout.

I could use this review to anatomize the shortcomings of Skach’s approach or exploit the popular way it’s written to level accusations of scholarly insufficiency. Though there are important omissions from even a book meant for a popular audience, this is not the tack I intend to take. What I want to do instead is use the opportunity this book affords to explore the doubts that any reasonable person with views like mine ought to periodically consider, particularly in an era when institutions, law, and constitutions don’t seem to be successfully safeguarding democracy.

It seems to me that if you believe institutions are important, you should also worry that they often aren’t important *enough* to forestall some of the worst political outcomes. You should worry that even well-designed institutions may often fail to insulate communities from calamity and can obstruct rather than facilitate human flourishing and the solving of social problems. I thus propose to use this review to write the minority report for commitments like mine. I want to explore the possibility that I’m wrong in fundamental ways about what matters in the proper ordering of democratic societies to the promotion of human flourishing.

I organize this exploration around three themes found in Skach’s book. The first is what I’ll call its *antinomianism*, meaning a general skepticism toward law, constitutions, and formal institutions more broadly as a means of ordering social life. The second theme concerns the motivations of democratic citizenship: why do we do what democracy requires of us? Skach suggests true citizen motivation requires deep social roots and reflective self-control, which reliance on formal institutions undermines. I capture this second theme under the heading of *restoring the festival* for reasons that will become apparent later. The third theme concerns the beliefs of ordinary people about the constitution, and about their own agency over it. Skach wants us to abandon thinking in terms of constitutionalism altogether—recall her antinomianism—but here the issue is what replaces it. Skach seems to suggest replacing constitutions with personal ties and a less mediated ownership of our rights. Because this theme concerns the beliefs ordinary citizens have about the basic rules of the social order, I’ll discuss it under the heading of *folk constitutionalism*.

Before exploring these themes, however, I’ll first lay out the basic structure and content of Skach’s argument, with the aim of bringing out just how radical a departure it is, both for her as well as for those of us who believe, as she used to, in law and institutions.

³ Skach, *How to Be a Citizen*, 141.

Structure and Argument

Skach opens the book with a confession—or rather, with the abandonment of one: “I can remember the exact day I finally *lost my faith* in formal rules—in the law.”⁴ *How To Be a Citizen* is an act of apostasy. In it, Skach explains why someone who’s dedicated her entire career to studying law and constitutions, and at times advised efforts to write actual constitutions, could reasonably abandon them. The rest of the book explains what should take their place. It is structured around six pillars of being a citizen, corresponding to the six main chapters, which supply the practical substance of her alternative account.

Like all stories of a loss of faith, the reasons matter a great deal. In the Preface, Skach outlines how her brief experience advising the project of writing a constitution for American-occupied, post-Saddam Iraq was ended by a nighttime rocket attack. This experience left Skach feeling understandably “traumatized” but also “guilty,” the latter because she realized “nothing or no one could help these people [the Iraqis] but themselves. No law, no rule.”⁵

She later enumerates a long series of developments, dating from the beginning of her academic career at the end of the Cold War, that created and deepened a shadow of doubt in her mind about the “power of laws.” Her particular list includes stalled democratic transitions in Central and South America, the rise of right-wing populist regimes in Hungary and Poland, the stymying of the Arab Spring, the rejection by voters of core EU treaties (including Brexit), Russia’s invasion of Ukraine, and police violence against Black people in the United States.⁶ (One might add—though Skach does not mention—the global financial crisis and subsequent grinding eurozone crisis). All this convinces Skach that democracy is failing “everywhere,” leaving societies and the political classes governing them “shattered.”⁷

Though one wonders whether “shattered” is a fair characterization of some of the most prosperous and peaceful societies in the history of the world, no one could deny that the world faces immense challenges, some of the most important of which are not being handled at all well. Tackling these failures at their root requires much more than the usual schemes for reform. Skach acknowledges but largely dismisses the efforts of “public intellectuals” to remedy these defects by reform since “their solutions come out of the same toolbox we have drawn from for centuries.”⁸ I’ll return to this formulation later.

Having taken institutional or legal reform off the table, Skach’s proposal for replacing the regnant sociolegal order consists of six “pillars.” The first pillar is “don’t play follow the leader.” It means we should move away from relying on leadership for solving our problems and governing our collective life, since “we don’t really seem to need it” for the most pressing things we require today.⁹ She suggests instead that we build “laterally”¹⁰ toward “spontaneous, horizontal, non-hierarchical self-sufficiency.”¹¹

⁴ Skach, 1, emphasis added.

⁵ Skach, 7.

⁶ Skach, 15–17.

⁷ Skach, 17–18.

⁸ Skach, 18.

⁹ Skach, 65.

¹⁰ Skach, 65.

¹¹ Skach, 52.

Skach's second pillar is to "own your rights, but responsibly." This principle means, first, not to let courts tell you what your rights are. It also denotes that one's rights are properly something that's negotiated, not asserted as a zero-sum proposition.¹² It also means you mustn't press them maximally against others but rather forbear from such exclusive claims in order to accommodate and make space for others.

The third pillar directs citizens to "hang out in a piazza, repeatedly." This means spending time in shared, public or quasi-public spaces, like actual parks or piazzas, or indeed beauty salons, barbershops or spas (her example). These are places where people meet, talk, and—crucially—build common knowledge about what's happening, what problems our neighbors are facing, and what can be done about them.

The fourth pillar is to "grow your own tomatoes, and share them." This is about literally interacting with the earth, as in a garden, and is best done with others, to make food that you share with a wider community. Skach sees an essential connection between "food security, self-sufficiency, and civil and political rights."¹³

Fifth is the pillar recommending that we "eat 'ethnic food,' regularly." The aim here is to build solidarity across difference: "I strongly believe that identities are best understood by tasting, viscerally experiencing, the other."¹⁴ Such direct experience allows us to "appreciate our differences, because we see that they [fellow citizens who are socially 'other,' do], like 'ethnic food,' actually make our community interesting."¹⁵

The final pillar is to "start this all very early, about age three." The basic idea here is that we need to educate citizens from the start to be the sort of civic-minded individuals who naturally engage in the previous five pillars and are free of "the constraints of laws and rules."¹⁶ This kind of citizen will spontaneously do what's needful for the community rather than by a leader's command. This education is guided by three further principles: educate the young to be "kind and thoughtful . . . not test takers;" "include and engage all;" and "build backward and forward linkages between kids and the community, including the earth."¹⁷

This final pillar closes the circle by providing an account of how the previous five are reproduced socially. It also makes explicit Skach's story about proper citizenly motivation—citizens act in the patterns she prescribes automatically, by in-built habit, which targets the preferred action directly rather than indirectly, as through mechanical obedience to a law that's presumed to be aligned with it. In this motivational story of doing the right thing spontaneously without law, we also see a deep continuity with the past.

Being a Citizen in the System of the World

The central contention of *How to Be a Citizen* is that law, constitutions, and institutions are not equal to today's challenges but rather cultivate in people weak citizen virtues, rendering them highly vulnerable to the failure of those systems. Its

¹² Skach, 78–80.

¹³ Skach, 159.

¹⁴ Skach, 178.

¹⁵ Skach, 185.

¹⁶ Skach, 194.

¹⁷ Skach, 202.

argument implies that true citizen empowerment requires transcending reliance on law and taking one's fate and the fate of one's community and polity into one's own hands, guided by one's awakened citizenly qualities.

Though Skach nowhere uses the term, nor shows awareness of the deep tradition it portends, what she describes here is a kind of *antinomianism*. Literally, antinomianism means "against law" (anti- "against;" nomos "law"), but in Christian theology, it has long stood for the rejection of obedience to rigid divine law, like that of Moses or the Ten Commandments, in favor of inner guidance from one's own spiritual uprightness, as worked by the holy spirit. One should do the right thing because God has worked his will into one's own, not out of a slavish obedience to a law that is backed by the earthly power of violence. Conforming outwardly with rightness out of fear of violence makes one little better than the proverbial obedient-because-beaten dog and enervates our ability to act from any other motive.

Antinomianism thus stands for the idea that right conduct only properly arises from one's inner virtues and character rather than any external source, incentive, or constraint. Legalistic obedience—toward rigid and hierarchical institutions, whether of church or state—can only enfeeble our moral powers by displacing their exercise and development.

Skach's skepticism of law is in this antinomian vein but is not born out of a nihilistic or theological pessimism about the human potential to act well. That kind of comprehensive pessimism about humanity seems to be spreading widely in the current era of climate emergency and democratic retrenchment. But for Skach, law does not fail because humans are fallen, inevitably evil beings. It is rather because law can't move us toward a positive vision of human flourishing and community. Antinomianism in this sense expresses a disbelief that law can help us to solve the problems that prevent our communities from flourishing, or us from living well.

To bring out just how radical this antinomianism is, I want to return to Skach's comment that reformers only suggest solutions from a centuries-old "toolbox," the contents of which she takes to be discredited. There is a profundity to the rejection of that toolbox that must be unpacked and emphasized.

Though she nowhere explains what she means exactly, it seems clear that Skach is indicting the mainstream of modernity, or the modern social order, itself. To many readers, the meaning of "modernity" is likely to be vague. For our purposes, it can be identified as the developments in politics and society beginning around 1500 that built out globe-spanning capitalist markets originating in colonial and imperial networks; created large, bureaucratized states capable of projecting unprecedented warfighting ability abroad and the minute regulation of daily life at home; introduced new "scientific" ways of knowing which reflected accelerating patterns of secularization; and established social orders characterized by formal equality rather than hierarchy or caste and a concomitant tolerance for, and sometimes celebration of, broad social difference.

Skach calls into question some of the key systems undergirding this modern world—above all the interconnected ones of law and large institutions. Consider that one of the core characteristics of these modern societies is an extraordinarily advanced division of labor. This specialization makes people today entirely dependent on each other for their most basic needs. You no more know today how to make your own clothing than how to locate clean water, nor make your own food (from seed), nor build adequate housing. Self-sufficient autarky has never been less possible.

This fact of fundamental interdependence generates the need for *absolutely reliable* mechanisms for coordinating our existentially necessary social cooperation. If my very life, and the lives of those I love and am responsible for, depends on relying on others, I better have ways of securing their cooperation that are robust to the point of indestructibility. This is where law and institutions enter the picture.

Formal legal systems and institutions are the distinctively modern way to provide that security, replacing ties of kinship or tribal affiliation and allowing for scaled-up forms of social cooperation and insurance. They do so by rendering one's dependence largely immune to the petty biases and hatreds of those around us; being a social pariah need not consign one to death or even a life of poverty in a large modern society. Modern legal systems are founded on the assumption of legal equality, meaning all persons are subject to a uniform set of laws that bind everyone equally. This is what in the modern period we call the rule of law. The rule of law enables people who have no particular shared personal ties to rely on each other, via enforceable legal obligations, in social and economic cooperation.

The lack of personal ties here is key. It might be trivially easy to arrange a trade for some necessary good or service with a friend or neighbor since one has a pre-existing relationship of trust with them. But when I trade with a stranger—as I might in a widening network of market-based commerce—I require some other assurance. That's what the law (of contract) supplies. I don't need to trust or even like you to trade with you because I can rely on the law and institutions backing it to ensure our exchange—and thus, our mutual survival.

A legal and institutional approach to social order also provides security because it is highly resistant to adverse conditions. Institutions allow us to scale up our cooperation by joining and coordinating specialized functions together, often under one organizational roof—hence, the modern bureaucracy, whether public or private, governmental or corporate. This cooperative form of human community enables unparalleled provisions against misfortune to be made via large scale and long-term planning and specialization. Moreover, these provisions can be made at the scale of need requisite to large modern societies, as in social insurance schemes like Social Security. In calling law and institutions into question as the main tools of the reformer's toolbox, Skach is proposing to *abandon* rather than tinker with these bedrock systems for coordinating social order. Her claim is thus no small thing.

Of course, the entire reason she makes this proposal is because she thinks these systems have been doing a lousy job of creating a social order worth having. That is why the specific reasons for her apostasy are so important. Her argument is going to be most persuasive for those who share her intuition that the world today supplies innumerable cases signaling comprehensive failure of this entire paradigm of social order. As may be apparent, I do not on the whole share this diagnosis. But there is surely *something* to Skach's antinomianism.

At the most basic level, it cannot be denied that a system whose elements can operate independently of central coordination mechanisms is going to be more robust than one whose components rely on them totally. If citizens can reproduce democratic processes spontaneously, without relying on leaders or institutions to direct them, that is going to be a more resilient democracy.

This resilience is moreover going to exist on a spectrum such that a democracy with more citizens who are more self-directed may be more robust than one with fewer. This suggests that one does not necessarily need to replace conventional

systems of law and institutional coordination—indeed, Skach is not advocating revolution. Rather, she wants us to use the affordances of our present degenerate institutions to build new, better *citizens* within them: the sort who can do without them. Even if that task is only partly done, she might insist that it improves matters markedly by building greater resilience within democracy.

Could this view possibly be right? It seems undeniable that self-sufficiency in the capacities for (democratic) self-organization are of immense value when alternatives of mediated interdependence become destabilized or discredited. Insofar as Skach is right that those alternatives are indeed receding, her project takes on an obvious urgency. But if you think mediated interdependence still has a substantial future, perhaps after some disruptive reorganization, then the core project here may seem anachronistic.

This is not meant to be a dismissal of Skach's view at all but rather a pinpointing of the decisive locus of disagreement for some of her readers. If you think, on the best understanding of the evidence we have, that large-scale mediated forms of interdependence are failing or have become fatally unreliable, then her view will have more to attract you. And that attraction is likely to vary with the strength of your agreement with that assessment. I admit that my own degree of agreement with it varies somewhat with the ebb and flow of contemporary events, periodically bringing Skach's view closer to my personal envelope of plausibility.

There is another concern I am required to register about this possibility of building more resilience via increasing the autonomous capacities of citizens. The concern is that insofar as only *some* citizens embrace this enhancement of their citizenly capabilities, they will as a matter of fact gain greater influence in ostensibly democratic processes and institutions than their fellow citizens who, for whatever reason, do not. Some will gain the ability to effectually make themselves heard and be influential in the community compared to others. Those others would be disadvantaged in this scenario even if it is the necessities of life, like work or care responsibilities, that bar the others from embracing more active participatory citizenship. That could mean—and given the way that existing advantages compound, very likely *would* mean—that building up resilience among some could actually *hurt* democracy as a system of equal self-rule insofar as it harms equality.

In other words, projects of democratic renewal like Skach's that, in exchange for empowerment, place heavy demands on citizens often predictably result in deepening unequal power because already advantaged groups are in the best position to meet them. I elsewhere have termed this perverse tendency "the paradox of empowerment."¹⁸ But setting this concern aside, there are, I think, two additional merits to Skach's project, which I explore sequentially in the next two sections.

Restore the Civic Festival

At the heart of Skach's worry about law and institutions is that their formality necessarily and inevitably estranges them from the people they are supposed to govern. These ways of organizing social life are ill-fitting to our humanity, she suggests. Estrangement is thus a core motivation of Skach's project, and one of the chief problems to be solved.

¹⁸ Elliott, *Democracy for Busy People*, 72–80.

As I read them, three of Skach's six pillars of how to be a citizen attempt to address the problem of estrangement and do so in a distinctive way. The pillar advising citizens to "hang out in a piazza, repeatedly" is meant to cultivate solidarity with one's fellow community members by doing everyday things with and around them, like going to a café or spa. "Growing your own tomatoes, and share them" is likewise aimed at forging horizontal ties, but it is joined also to a universal human practice (eating) from which most people derive considerable enjoyment. Reiterating her gustatory preoccupation is the pillar "eat ethnic food, regularly" with the aim of building understanding across social difference while at the same time enriching our own experience of the world.

What is distinctive about these responses to estrangement is that citizens are not enjoined to complete these tasks out of bare moral duty. Skach doesn't claim citizens *owe* this conduct to each other or to some abstraction like democracy or social justice, whatever the cost. Though she does see these pillars as serving those ends, in each case, citizens are supposed to get something valuable and meaningful for their own lives out of it. Being better citizens should be a sort of *fun*.

There is a deep philosophical issue here regarding how good behavior should be motivated. Much political theory and philosophy is obsessed with the idea of "duty." In my own field of democratic theory, we speak of what "duties" citizens have—to vote or not;¹⁹ to become informed about politics²⁰ or politically socialized;²¹ to vote to promote justice²² or avert democratic collapse.²³ These duties are typically framed as necessary for something of superlative importance, such as the persistence of democracy or achievement of justice. Yet seldom do we speak seriously of motivation; we focus on what people must do, not why they might be motivated to do it. Just because something is our duty does not make it something we want to do.

This is because the idea of duty has a distinctly Kantian air to it. In Kantian ethics, we fulfill our duties because they are the right thing to do *and not for any other reason*. Doing our duty may not please us, may not be in our interests, and may in fact come at the cost of considerable pain, inconvenience, and disagreeableness. (For Kant, the only time we can have any confidence that we are acting from duty is when we act against all our interests and inclinations but in accordance with duty, like the miser Ebenezer Scrooge overcoming the fixtures of his character to donate money to charity.) Doing the right thing because it's the right thing has nothing to do with what fulfills us personally, or even with what enables us to flourish, according to a hardline Kantian. Discharging our duty may even make us enduringly unhappy, as countless Victorian novels insist.

¹⁹ See, for example, Loren E. Lomasky and Geoffrey Brennan, "Is There a Duty to Vote?," *Social Philosophy and Policy* 17, no. 1 (2000): 62–86, <https://doi.org/10.1017/S0265052500002533>; Julia Maskivker, *The Duty to Vote* (New York: Oxford University Press, 2019); Alexandru Volacu, "Democracy and Compulsory Voting," *Political Research Quarterly* 73, no. 2 (1 June 2020): 454–63, <https://doi.org/10.1177/1065912919839155>; Kevin J. Elliott, "An Institutional Duty to Vote: Applying Role Morality in Representative Democracy," *Political Theory* (26 June 2023): 00905917231178519, <https://doi.org/10.1177/00905917231178519>.

²⁰ Michele Giavazzi and Zsolt Kapelner, "The State's Duty to Foster Voter Competence," *Episteme* (26 September 2022): 1–14, <https://doi.org/10.1017/epi.2022.31>.

²¹ Kevin J. Elliott, "Making Attentive Citizens: The Ethics of Democratic Engagement, Political Equality, and Social Justice," *Res Publica* 24, no. 1 (2018): 73–91.

²² Julia Maskivker, "Being a Good Samaritan Requires You to Vote," *Political Studies* 66, no. 2 (2018): 409–24.

²³ Alexandra Oprea and Daniel J. Stephens, "A Minimal Standard of Democratic Competence," *Politics, Philosophy & Economics* (5 September 2024): 1470594X241276142, <https://doi.org/10.1177/1470594X241276142>.

The advantage of the concept of duty in modern circumstances is that, like the law, it is compatible with a wide variety of substantive priorities in life. In the lingo of moral philosophy, it is congruent with many “conceptions of the good life,” or substantive accounts of what makes a human life well lived. Because they constitute what we care about most, these conceptions should have considerable motivational power to shape our choices and behavior. Insofar as we are convinced of them, they powerfully and reliably move us to act in congruent ways. They tell us what is worth doing and describe what we care most about, moving us through the world and supplying us our very idea of what happiness is and why it’s worth getting out of bed in the morning.

To be motivated by duty is meant to bridge *all* such conceptions of happiness. It’s supposed to supply a conceptual paradigm within which *literally everyone* can have a reason to behave in the same ways despite serious disagreements about what’s best in life. Duty can do this without taking over a life by only attaching to matters of fundamental or universal morality. Only the things that no moral being could do or omit from doing are the content of duty; everything else is up to us. It thus allows for social coordination and cooperation despite the presence of the sort of fundamental disagreements over which, historically, people have often chosen to kill each other instead. Duty, like law, thus plays no small part in ordering a modernity in which societies contain an unprecedented degree of difference and disagreement.

Skach’s method of integrating democratic citizenship with fun, or intrinsically rewarding activities, can be understood as an attempt to sideline duty as the means of structuring citizenship. Duty tells us why and how we should be good citizens, even if doing so doesn’t make us happy and doesn’t fit in well with our idea of a life well lived. We should do it even if it isn’t fun, in other words. Yet the question ultimately posed by Skach’s approach is, why should being a good citizen *not* be fun? This seems like a good question, both to me and to other democratic theorists.

Emilee Chapman argues for administering elections in ways that encourage citizens to see themselves as part of the “competitive fray” of electoral campaigns, expressed in a festival atmosphere surrounding the election and, indeed, literally surrounding polling places.²⁴ She describes a nineteenth-century U.S. election that encourages this participatory spirit by the physical design of the polling place, which barred voters from entering. Instead, they voted at a window outside of it, in the public space where all the electoral festival activity was occurring.

Out there, citizens were embedded in the “cheering and jeering” that attended the electoral competition, as well as the carnival of food and especially of drink that attended that competitive party spirit. Alcoholic inducements—offering drinks for votes—were a common practice in nineteenth-century American elections, Chapman tells us. What we’ve discussed already gives us a way to understand the significance of this arrangement.

Some people like to drink. To them, it’s fun, or can be fun. That implies, using our discussed schema, that it often fits into people’s conception of the good life—after all, what is life without a nice glass of wine, cocktail, or beer now and then? (Some would say, with vehemence: impoverished!). Trading drinks for votes can thus be viewed as a highly salient way of making voting—as an active exercise

²⁴ Emilee Booth Chapman, *Election Day: How We Vote and What It Means for Democracy* (Princeton: Princeton University Press, 2022), 158–59.

of one's democratic citizenship—something that directly comports with people's idea of what makes their life go well.

Zooming out a bit: the carnivalesque character of a nineteenth-century election day makes it, essentially, a *party*. And parties are famously things that most people like. They're occasions for many of the activities that make life worth living on a broad array of accounts thereof: epicurean enjoyment of food and drink; romantic or sexual connection; freewheeling and informal conversation that has the latitude to get deep, hilarious, practical, or insightful by turns; the making of new friends and catching up with old ones; the laying of future plans or forging of business partnerships; performing various qualities one takes pride in, such as the grace of a dancer or showing off taste in one's dress, hair, makeup, etc. If trading drinks for votes generates an election day party, it may make democracy something that people care more about via the reflected glory of all these activities people love.

Chapman thus suggests we ask ourselves, "Should we bring back the whisky barrels?" Her answer is measured:

Democracy is probably not well served by political operatives selling a glass of whiskey for a party vote. But whiskey barrels on Election Day do not just serve as a quid pro quo. They also symbolize a communal, celebratory Election Day atmosphere that encourages voters to see elections as a crucial part of the life of their community and to see themselves as participants in political competition.²⁵

She suggests that a strict quid pro quo is obviously corrupt and nothing to be nostalgic for and yet the festival atmosphere *is*—because it makes democracy come alive for us. And although she's focused on elections where Skach has little to say about them, both share that aim of reviving a meaningful citizenship in contemporary circumstances. We must ask then, could there be a way to restore the festival without a corrupt quid pro quo? The experience of Australia suggests so.

Australian elections are, like in most healthy democracies, held on the weekend (Saturday). Turnout is also compulsory, and achieves high compliance, with rates typically exceeding 90 percent. This combination of nearly universal participation and weekend timing creates a "holiday" feel (meaning in Australian English, vacation) for Election Day.²⁶ Many Australians vote on their way to the beach, with their families in tow, grabbing cakes, jams, or the famous "democracy sausage" sold by civil society groups who surround polling places with stalls, grills, decorations, and activities. Election Day is, in other words, *fun*. It fits easily into citizens' lives and their conceptions of the good life, providing them a motive to take an active part in their democracy that's more powerful than an austere dedication to duty.

Another way to restore the festival without corrupt quid pro quos, and one perhaps better taking advantage of advances in information technology, is Josh Lerner's call for democratic "gamification." Lerner suggests adapting democratic processes to make them more "game-like" by infusing them with elements from the toolbox of game design to promote engagement and improve the quality of participation from the participant's perspective. These include "*game mechanics* that engage the senses, . . . generate collaborative competition, link participation to

²⁵ Chapman, 187.

²⁶ Judith Brett, *From Secret Ballot to Democracy Sausage: How Australia Got Compulsory Voting* (Melbourne, Victoria, Australia: Text Publishing, 2019), chap. 16.

measurable outcomes, and create experiences designed for participants,” among others.²⁷

Although the notion of gamification perhaps invites the thought of leveraging the dastardly tools of addictive smartphone games and infinite scroll apps, which harm our agency in myriad ways,²⁸ Lerner has in mind the tools used in designing board games played in person. He hopes to make an experience for citizens that’s meaningful and, indeed, fun, as they contribute to the flourishing of democracy.

What we see in these different approaches are distinct ways of fitting politics into people’s conceptions of the good life. By *throwing* political parties (instead of joining or voting for them), or gamifying our participation, or integrating culinary and interpersonal practices as Skach suggests, we try to make politics into something that people fly to, not from, of their own volition.

In the modern context of broad disagreement about what’s worthwhile in life, finding a way to make politics attractive to all might seem like an impossible task. We may think that there are always those too anxious to enjoy parties, or who dislike the competitive tension of games, or have health or dietary restrictions that make it difficult to share food with them. Politics oriented towards fun might thereby end up being exclusionary because it could not possibly reflect *everyone’s* idea of fun.

We thus do not need to be anhedonic puritans for restoration of the civic festival to give us pause. Making politics thicker and more intrinsically attractive inevitably seems to involve a tradeoff with making it inclusive and accessible to all, since nothing can attract everyone. This remains my considered opinion, even after exploring these options for enriching the experience of citizenship.

There is, however, another point to be made against this skeptical conclusion. My (very) brief survey of approaches to making politics fun is hardly exhaustive of ways to integrate politics with conceptions of the good life. The same variety that makes a more fun politics challenging can also be harnessed to address itself. The effervescent energy of a free people who have the tools to express and organize themselves may inevitably generate new variations on “fun” politics.

The rise of news-oriented political humor in the twenty-first century, epitomized initially by *The Daily Show* and now nearly ubiquitous, is one such case. Today’s favored media format of short-form video as on TikTok and longer-form “video essays” for disseminating political content are also instances. In the same way society has fractionalized into many different disagreeing groups, that very diversity can innovate endlessly to generate new ways to make politics fit into our lives more naturally and easily—and in service of our own vision of an enjoyable life. We can perhaps hope for, if not count on, an inclusive and enjoyable politics being just a few more such innovations away.

Our Rights in Our Hands

A key element of Skach’s vision of a more self-directed citizenry liberated from the strictures of law is the adoption of greater agency over our rights and the solving of social problems. The idea here is that institutions in general and constitutionalism

²⁷ Josh Lerner, *Making Democracy Fun: How Game Design Can Empower Citizens and Transform Politics* (Cambridge, Massachusetts: MIT Press, 2014), 5, original emphasis.

²⁸ James Williams, *Stand Out of Our Light: Freedom and Resistance in the Attention Economy* (New York: Cambridge University Press, 2018).

in particular introduce a vast array of intermediaries between citizens and their rights and the problems besetting their lives. Habitual reliance on those intermediaries, Skach suggests, enfeebles our agency as citizens.²⁹ Rehabilitation requires nothing less than abolishing that reliance.

We see this view most clearly on display in her second pillar, “own your rights, but responsibly.” As I previously outlined, the idea here is to take back ownership and agency over the interpretation, protection, and enforcement of our fundamental rights. This is not meant to license a pigheaded assertiveness of one’s prerogatives, like the proverbial overprivileged “asshole,”³⁰ but rather to reclaim authority over rights from courts and judges.

Skach rejects the view that we should let such mediating institutions as courts and officials like judges tell us what our rights are just because doing so ourselves is difficult. She writes that “constitutional interpretation—trying to understand what our rights are and whether or not we are actually enjoying them—is *our* task, the task we all have as bearers of rights.”³¹ She thinks the practical work of figuring out the state of our rights here and now is not something we can delegate. That interpretive task is essentially our own, inseparable from the status of being rights bearers. Skach is asserting that just as some core rights are inalienable, so too is the obligation to actively judge for oneself whether they are being respected.

Doing this work ourselves, Skach suggests, supplies “a more durable solution” to society’s rights conflicts. “Without these rules and laws, but with the knowledge of our rights . . . [we have] . . . more incentive to compromise and negotiate, to go back to social pacts and agreements based on community, trust, and shared identity.”³² When we lose the crutch of a professionalized legal bureaucracy for adjudicating rights conflicts, we will resort to other mechanisms that involve us more directly as active participants. Skach hopes this will result in a polity-wide practice of “bottom-up rights negotiation,” wherein some restrict their rights a little to enable others to exercise their own expansively. The resulting habit of “owning our rights in a way that enables us to make agreements”³³ with others over rights conflicts is the fulfillment of this part of her vision for democratic citizenship.

Skach is not alone in her skepticism of judicial supremacy and the approach to rights associated with juristocracy in the United States. Jamal Greene has also articulated a thoroughgoing critique of U.S. rights culture in law and politics.³⁴ Like Skach, Greene is concerned that an impoverished, absolute, and zero-sum conception of rights—what he calls “rightsism”—has been wielded like a weapon in partisan warfare by judges in the United States in ways that undermine core values of democracy.

In rightsism, a vanishingly small set of rights command absolute superiority over all other social needs. These absolute rights must be few in number and their scope minimized to be afforded this unconditional priority. Greene notes that, in recent U.S. history, the rights claims that have received this special status have tended to

²⁹ Skach, *How to Be a Citizen*, 20–21.

³⁰ Aaron James, *Assholes: A Theory* (New York: Knopf Doubleday Publishing Group, 2012).

³¹ Skach, *How to Be a Citizen*, 80, emphasis added.

³² Skach, 78–79.

³³ Skach, 79.

³⁴ Jamal Greene, *How Rights Went Wrong: Why Our Obsession with Rights Is Tearing America Apart* (Boston, New York: Houghton Mifflin Harcourt, 2021).

reflect “the worries of First World men” such as rights to access politicians via monetary contributions, pornography, and to block unionization in workplaces.³⁵

Greene proposes to replace this destructive rightsism with a “rights mediation” approach in which a wider scope of more weakly held rights is reconciled with each other through political processes, rather than one person’s right trumping all other claims via a court decision. One consequence of absolute rights overriding others’ claims, Greene argues, is that it ends up treating the “losers” of rights conflicts as if they, and their rights and interests, are *nothing* in the eyes of the Constitution.³⁶ This zeroing out of their constitutional standing is inherently obnoxious and dehumanizing and reflects the social reality of histories of oppression in which racial and ethnic minorities, women, Indigenous groups, migrants, etc. have indeed been deprived of equal status.

In a rights mediation approach, by contrast, courts should give “the people of this country the tools to resolve our own disputes in a way that respects one another’s legitimate ends.” Judges shouldn’t displace or supplant politics with legalistic diktats from on high but rather create space for it by pushing more of the business of justice into the “political arena,” characterized by “legislatures and juries, churches and families,” where mediation is more natural.³⁷ So, although he is focused on the proper role of courts and so is speaking less directly to citizens than Skach, Greene wants to move more rights conflicts out of the courthouse and into democratic spaces.

As a diagnosis of what’s wrong with rights these days, Greene’s critique closely mirrors that of Skach. Both are concerned that, as Greene puts it, “[w]e have come to see deciding what rights we have and what rights we don’t have as simply the thing that courts do. The rest of us are meant to obey.”³⁸ Yet whereas Skach wants citizens to take back direct control over rights adjudication, Greene turns to political mediation through nonjudicial, political means. He suggests that “the institutions best suited to reconcile the competing demands of rights bearers [are] not courts but rather state and local political bodies: juries, churches, families, and legislatures.”³⁹ It is on this point that they seem to decisively diverge.

Skach seeks “ways to empower all individuals in a decentralized space,” and specifically discusses physical public spaces like piazzas as sites of what she calls “guerilla constitutionalism.”⁴⁰ Guerilla constitutionalism means that “rights are really negotiated democratically when we bump up against one another in these spaces, where our interactions with one another then shape who we are, and how we use and take ownership of our rights so that others can, too.”⁴¹ Here, “the real power in all of this lies with citizens themselves,” not with *any* intermediary representative or institution.⁴² The core feature of Skach’s vision, then, is a radical disintermediation of rights adjudication, putting the task squarely and directly in our own hands, whereas Greene retains a substantial role for mediation in more local and democratically accessible institutional sites.

³⁵ Greene, xix.

³⁶ Greene, 249.

³⁷ Greene, 116, xxxv.

³⁸ Greene, 167.

³⁹ Greene, 7.

⁴⁰ Skach, *How to Be a Citizen*, 98–99.

⁴¹ Skach, 95.

⁴² Skach, 98.

It's possible that I overdraw the distinction here. Perhaps Skach would, if pressed, agree that the kind of productive friction she envisions could happen in some of these intermediary institutions/spaces, particularly churches and (presumably extended) families. The real question seems to ultimately be what's needed to successfully rebuild the civic capacity or "muscle" for ordinary citizens "to identify rights and to accommodate rights."⁴³

I imagine both Skach and Greene would likely yield to a compelling case about the how or where this re-muscling best occurs. On this question, one might add to Skach's piazzas and elaborate on Greene's institutions with thinking about the spaces of associational life.⁴⁴ This would of course include the aforementioned churches⁴⁵ but also universities and many other intermediate group spaces.⁴⁶

Skach's chapters on growing and sharing food and enjoying "ethnic" cuisine suggests another distinctive series of sites: gardens, kitchens, and dining rooms. She suggests that these noninstitutional, unorganized spaces for the growing, preparation, and sharing of food constitute spaces for building citizenship. What I like about this approach is its leveraging of the universal human need to eat and the nearly universal rich cultural traditions associated with it to civic purposes. Yet I worry it does not scale and may leave out those who lack the skills, space, and tools—like a usable kitchen—to participate fully. It is nonetheless a worthwhile addition.

So, there are many places we might meet each other and do the work of mediating our rights. There is one other thought I want to explore here, and it regards what's needed for this task of putting rights into the hands of citizens to succeed. Skach suggests friction in social situations will do the trick. Greene is mainly concerned with the proper role of courts in a regime of mediating rights; he really isn't talking to or about ordinary citizens. I wonder if we aren't leaving out here the *ideas* ordinary citizens would need to do their part in this scheme.

What ideas would citizens need to have about their rights for them to see them as something that's in their own hands? Even if judges follow Greene's advice and back off from rightsism, and even if people fill the spaces Skach recommends and collide with each other, that does not mean they'll automatically know what to do. They may fail to articulate daily tensions in terms of rights claims, for example, and continue to see courts as the exclusive and authoritative interpreters of what our rights are.

They need what I call a *folk constitutionalism*, or an ordinary person's understanding of the constitution, that's emphatically democratic and anti-judicial supremacy.⁴⁷ It should include ideas that take the Constitution off the pedestal it's often placed upon and seen as within the people's practical power to change where needed. Having an appreciation for the Constitution's unwritten portions is, I think, a useful part of this since so much of the basic rules aren't actually included within the four corners of the written document.⁴⁸

⁴³ Greene, *How Rights Went Wrong*, 167–68.

⁴⁴ Robert P. Putnam, *Bowling Alone* (New York: Simon & Schuster, 2000); cf. Simone Chambers and Jeffrey Kopstein, "Bad Civil Society," *Political Theory* 29, no. 6 (2001): 837–65.

⁴⁵ Jeffrey Stout, *Blessed Are the Organized: Grassroots Democracy in America* (Princeton: Princeton University Press, 2010).

⁴⁶ Jacob T. Levy, *Rationalism, Pluralism, and Freedom* (New York: Oxford University Press, 2015).

⁴⁷ Kevin J. Elliott, "Folk Constitutionalism, or Why It Matters How Ordinary People Think about the Constitution," *Critical Review* 36, no. 3 (2 July 2024): 222–51, <https://doi.org/10.1080/08913811.2024.2412419>.

⁴⁸ Akhil Reed Amar, *America's Unwritten Constitution: The Precedents and Principles We Live By* (New York: Basic Books, 2012); George Thomas, *The (Un)Written Constitution* (New York, NY: Oxford University Press, 2021).

These unwritten portions often change, and quite dramatically, over time without any formal amendments, sometimes with profound effects on the practical operation of American government. Both the evolution of the filibuster from something impossible under Senate rules, to a rarely used delay tactic, to a de facto supermajority threshold⁴⁹ and the growth of the power of the presidency⁵⁰ are instances of changes like these. Another instance is women's right to vote, which required not just adding a bit of constitutional text, but enormous cultural labor to destabilize and replace dominant ideas about the subordinate status of women in society.⁵¹

We must keep in mind that much of the Constitution is unwritten and lies thus within our grasp to redefine; this mindset would thus enhance our agency over it and over the rights it governs and mediates. We might also consider how the Constitution is composed of many different texts—its “multitextuality.”⁵² Each Amendment is, after all, technically a separate text and does not actually erase previous constitutional language in the American tradition; it merely overrides it. Multitextuality brings to the fore the historicity of the Constitution as an imperfect instrument of government that has been the work of previous generations of Americans to remake for their own day—and suggests we might join that project.

The views discussed here posit that our rights are properly in our own hands. There can be little doubt that this is an essential lesson in the present moment, when legal and political systems struggle to merit trust. Skach suggests that in the face of crisis, no one is coming to save us. We must do the work ourselves. She wants us to be the agents and guardians of the fundamental rights defining our own citizenship.

This sounds great, but it flies in the face of the scale of modern societies. Today, we are only ever able to occupy shared spaces with a comparatively small and homogeneous subset of society. Mediating the rights of people we have access to only via stereotyped representations in the media does not seem promising.

Moreover, society's scale in modernity is not necessarily to be lamented since it generates many great virtues associated with impersonality and anonymity, including society's ability to tolerate a wide range of personalities, ways of life, and religious or ethical doctrines. Impersonal social arrangements, such as those mediated by institutions, allow us to sidestep issues that might otherwise wreck gainful intercourse of all kinds with others, allowing business to stay business, religion to remain religious, and creating spaces insulated from forms of harmful social hierarchy.

So, by all means, let us take our rights away from judges. But in so doing, let us not forget the ways in which one person's freedom may involve another's subjection.⁵³ For although Skach wants to breed self-assertion of our rights, she wants also to avoid obnoxious entitlement to unjust social privilege. And that is a fine line to walk.

⁴⁹ Adam Jentleson, *Kill Switch: The Rise of the Modern Senate and the Crippling of American Democracy*, 1st ed. (New York: Liveright Publishing Corporation, A Division of W. W. Norton & Company, 2021).

⁵⁰ John A. Dearborn, *Power Shifts: Congress and Presidential Representation*, Chicago Studies in American Politics (Chicago, London: The University of Chicago Press, 2021).

⁵¹ Elizabeth Beaumont, *The Civic Constitution: Civic Visions and Struggles in the Path toward Constitutional Democracy*, First issued as an Oxford University Press paperback (New York, United States of America: Oxford University Press, 2018), 164ff.

⁵² Richard Albert, “Multi-Textual Constitutions,” *Virginia Law Review* 109, no. 8 (2023): 1629–98.

⁵³ Elisabeth R. Anker, *Ugly Freedoms* (Durham: Duke University Press, 2022).

Conclusion

On the one hand, I am not sure I can recommend that everyone read *How to Be a Citizen*. It has spurred me to reflection and to write this essay, and for that I am grateful. But I am in a unique position insofar as the book challenges my views, which I know to be idiosyncratic. Many readers would likely find it full of comforting and familiar nostrums regarding the importance of community, cultivating close ties among neighbors, the impossibility of true democracy at scale, the vital role of associations and a healthy public sphere, and the importance of engaged and informed citizenship.

Yet I have my doubts about each of these propositions and am on the record opposing or attacking many of them. I am instead impressed by the pluralistic and tolerant affordances of anonymity, the feasibility and attraction of large-scale divisions of the labor of democratic politics,⁵⁴ and the virtues of a minimal citizenship.⁵⁵ I worry about the ways social advantages redouble through civil society⁵⁶ and the exaggerations of the importance of “informed” citizenship.⁵⁷

So, many ideas Skach advocates are ones that seem to me to have little or no place in the kind of world we occupy. That, at least, has been my considered view. I have tried to set those convictions aside and seriously consider Skach’s alternative. Despite my many reservations, however, I cannot entirely dismiss it, nor should any reader who is, like me, still sympathetic to the intermediacy of law and institutions. For we are in desperate need of alternatives and the courage to imagine them.

⁵⁴ Kevin J. Elliott, “Democracy’s Pin Factory: Issue Specialization, the Division of Cognitive Labor, and Epistemic Performance,” *American Journal of Political Science* 64, no. 2 (2020): 385–97, <https://doi.org/10.1111/ajps.12486>.

⁵⁵ Elliott, *Democracy for Busy People*, chap. 4.

⁵⁶ Elliott, chap. 3.

⁵⁷ Kevin J. Elliott, “A Defense of Specialized Citizenship,” *European Journal of Political Theory* (19 December 2024), <https://doi.org/10.1177/14748851241305030>.