

*State Sovereignty, Democracy and Public Law:  
against Dialectics*

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**ABSTRACT:** This paper argues the relevance of ‘civil prudence’, an early modern philosophy and ethic of state, for understanding the ethics and politics of contemporary states, including the United States. It is distinguished by its ‘moral low ground’ emphasis on the *civil* uses and limits of a state’s paramount powers. Two features of civil prudence which make it hard to argue for today are the fact that, unlike its liberal and conservative equivalents, civil prudence does not vest ultimate authority in a notionally self-governing community, and its indifference to transcendent moral purposes. Accordingly, the paper draws attention to problems with recent juristic theory (Loughlin, Loader and Walker), which strives to dialectically reconcile civil sovereignty with ‘constituent’ popular power, and with a transcendent moral valorisation of ‘national security’. Following a reconstruction of civil prudential sovereignty clarifying its perspective on democracy, the paper cycles through a sequence of case studies, mainly concerning federal and executive powers. These suggest how a civil prudential sense of the state, whether followed, or evaded, has long formed one contour of the American polity, and the difficulties of invoking democratic sovereignty as a bulwark against overreaching states.

**BIO:** Jeffrey Minson does comparative-descriptive research in the ethics (including moral psychologies) of politics and government, with reference to their civil and rhetorical components. His publications include a study of Michel Foucault, a co-edited collection on cultural policy, and a book of essays on questions of conduct pertaining to citizenship, from sexual harassment law to the demands of democratic participation. His most recent research has been concerned with ethics and jurisprudence of state sovereignty, and with Francois Flahault’s project for a cross-disciplinary ‘general anthropology’.

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