

Wilfred M. McClay

Communitarianism and the Federal Idea

The communitarian movement has arisen as an effort to address the evident and growing deficiencies of modern liberalism, which seems unable to think beyond the sovereign autonomy of rights-bearing individuals. But communitarianism has considerable deficiencies of its own. In particular, there is its propensity to use the language of “community” as a form of mood music, a pleasingly imprecise way to humanize any and all organizations, including those that are decidedly not families or communities, such as universities, business corporations, or nation-states. The problem with such discourse, as was brilliantly explained in the late Robert Nisbet’s 1953 classic *The Quest for Community*, is that it nearly always serves to violate or devalue genuine community where it exists, while imparting a manipulative unctuousness to the governance of those organizations to which it is inappropriately applied. Hillary Rodham Clinton’s recent effort to compare the workings of a national social-services bureaucracy with those of a cozy “village” is a case in point. Such rhetorical devices betray the cause of community by claiming the wrong territory for it. In the end, they merely repackage, rather than challenge, the deficiencies of liberalism as it is now practiced.

Somewhat more promising, however, is

the work of Harvard political scientist Michael J. Sandel, whose *Democracy’s Discontent: America in Search of a Public Philosophy* is one of the most accessible and thoughtful explorations of the communitarian alternative yet to appear. Sandel argues that today’s public philosophy is the liberalism of “the procedural republic”: a liberalism that makes government the referee of fair procedure and guarantor of individual rights, but insists that government be scrupulously, antiseptically neutral when it comes to passing judgment upon the substantive ends individuals elect to pursue. This is the liberalism of what Richard John Neuhaus has called “the naked public square,” a liberalism that eschews any attempt to identify and uphold public goods, since there can never be any agreement about such goods anyway, and besides, rights always trump goods. This liberal-neutralist philosophy, Sandel asserts, has proven inadequate to the needs of a democratic republic, since it fails to inculcate the civic virtues and qualities of character necessary to sustain liberty and self-governance. Its failure lies at the root of our current troubles.

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So far, so good. It is also encouraging that Sandel looks to a revitalized conception of citizenship as a starting place for a more adequate public philosophy, drawing on the republican political theory that so greatly influenced the generation of the American Founders. The liberalism of the procedural republic, he argues, does not represent an inevitable elaboration of American political ideals. Instead, its current predominance represents a dramatic and relatively recent departure from the spirit of the Founding, and of most of the nineteenth century, which balanced liberal conceptions against republican ones. Unlike liberals, republicans did not exalt the ideal of the freely choosing, unconditioned, unencumbered, autonomous individual, and the “negative liberty” he enjoyed. Rather, they exalted public life, involvement in the process of self-rule, participation in the civic life of the *res publica*, deliberation with one’s fellow citizens on matters of the common good.

The “republican conception of freedom,” Sandel asserts, implies “a formative politics,” a politics that takes as one of its principal tasks the shaping of the “qualities of character” that “self-government requires.” It takes a republic to make a citizen, and vice versa. Therefore, republican politics must place the greatest possible emphasis upon the dispersion and decentralization of power, in order to keep the agencies of government as close as possible to the working scale of the individual citizen. The “republican self” is not free to pick and choose among the obligations it will honor. Instead, it is a “situated” and “encumbered” self, which acknowledges its embeddedness in a particular social order—an order to which it is accountable, but which at the same time provides it with the necessary preconditions for self-rule.

The story of the evolving American public philosophy, then, as Sandel tells it, is a

tale of two traditions, liberal and republican, and of how the former has “gradually crowded out” the latter, in legal, social, economic, and political thought, and eventually in the very texture of our lives. Sandel has devoted most of *Democracy’s Discontent* to a detailed historical reconstruction of this process, which attempts to demonstrate how, in instance after instance, the centripetal requirements of the self-governing, soul-forming republic gradually came to be displaced by the primacy of the rights-bearing unencumbered individual, dwelling in the neutral liberal state. One could quibble with some elements of his account, but what emerges is a generally persuasive argument that, in nearly every important sector of American life, the normative standard of public life was once very different from what we find today. In conceptions of the economy, the family, church-state relations, free speech, Constitutional law, privacy, productive labor, consumerism—to name a few of the topics Sandel explores—there was once an assumption that the polity had a formative, prescriptive, “soulcraft” function to perform, an assumption that has been so completely undone by the procedural republic that we have forgotten it was ever there.

Given such an argument, it is curious indeed that Sandel has so little to say about federalism, and most of that unfavorable. One has to wonder if this does not represent precisely the sort of practical boundary that liberal communitarians will never be able, or willing, to consider crossing. It is one thing to protest against the building of Wal-Marts (a cause about which Sandel feels passionately), but quite another to protest against big government, and against the lost political independence of states, localities, and cities. Yet a revitalized federalism is the single most feasible and logical step in the direction Sandel advocates—and the politi-

cal tides of the day have swept federalism back into the forefront of public discussion and public consciousness. Indeed, the renewed interest in federalism currently in evidence may well be leading the nation into the most serious reconsideration of the federal idea we have had in the past century. And the increasingly thoughtful and impressive performance of so many of the nation's governors, both individually and in the context of organizations like the National Governors' Association, suggests that they, rather than the national politicians, have become the class act of American politics.

This is a remarkable development, and it reflects a growing disenchantment not only with big government, but also with the very pathologies of the unencumbered self that lead many communitarians to take an interest in revitalizing the theory and practice of *citizenship*. But hortatory talk of reviving citizenship is only a beginning. The current mood of reform needs an institutional component if it is to enjoy any success. It will not be enough to emphasize the need for "civic virtue," that is, for a restoration of the beliefs, habits, and behaviors that make citizenship and ordered liberty possible. It will also be necessary to give serious attention to what is being called "devolution," to the extent that devolution is dedicated to the recreation or preservation of the kind of proximate contexts within which the public virtues of citizens can be formed, and liberty can be ordered.

This is where the concept of federalism enters into the picture, and why it is an essential element in a proper answer to communitarians' concerns. At its heart, federalism is an attempt to reconcile opposites, to find a balance between the considerable advantages of national combination and the equally considerable virtues of autonomy and small-scale organization, without having to choose finally between one and the

other. But the specific terms in which that balance can be struck have varied widely in time and space, for federalism has not always meant what Americans take it to mean today. More specifically, I am *not* using federalism here in its strict sense, as designating a confederation of sovereign constituent states. Instead, I use it in its modern and American sense, designating a government that James Madison accurately presented in *Federalist* 39 as a "composition" of federal and national elements. Such an arrangement differs dramatically from the minimalist federalism of the premodern world, in which the federal entity was not regarded as a true unit of government, since it did not deal directly with the internal character of the polity, or the governing of its citizenry. It may be more accurate to call the American system a form of "decentralist-federalism," as Martin Diamond suggested, as a way of indicating the independent dignity, and ultimate primacy, of the national union.

Nevertheless, the ambiguities and historical resonances that complicate the word "federalism" have their uses. They preserve the awareness that this new American federal union did not entirely reject an older conviction that the small, autonomous community is the proper seedbed of republican virtue. The U.S. Constitution was born in the crossfire of fundamental political debate, and its final form showed the impress of the very contending factions it was designed to reconcile. Indeed, as Herbert Storing rightly emphasized, the views of the Constitution's opponents became an active part of the dialogue that defines American political principles, faithfully trailing the Constitution's path like the tail of a comet. The opposition was worried about the Constitution's inattention to the question of the sources of republican virtue, fearing that moral declension would befall any community that based itself solely upon the

pursuit of self-interest, however cleverly it was channeled and controlled. They believed, as Storing put it, that “the American polity had to be a moral community if it was to be anything”; and they feared that the Constitution took the perpetuation of a virtuous citizenry for granted.

The classical republicanism they so tenaciously represented gives the lie to the long-standing assumption that American political institutions were born exclusively liberal and modern. For a generation now, historians and political scientists have pointed out that American political thought of the eighteenth and nineteenth centuries was significantly influenced (the precise extent of the influence remaining a matter of intense debate) by classical ideas about the meaning of political life. For classical republicans, independence meant, not the contemplative pleasures of Walden Pond or of art for art’s sake, but the rigors and satisfactions of self-governance. They understood that such republican institutions cannot endure unless its citizens have the capacity for individual and collective self-governance: meaning civic or public virtue. In their mouths the word “virtue,” far from being a euphemism for feminine chastity, still retained many of its classical and pre-Victorian meanings, stressing the values of excellence, economic independence, a certain kind of manliness—and, above all, participation in civic life.

The last of these, the *vita activa* and its exalted conception of citizenship, was central to the classical understanding of republicanism, and entailed a view of human nature completely at odds with the “unencumbered” premises of modern American individualism. It presumed that human life has a proper and natural end, a *telos*, and that for an individual to be virtuous—that is, for him to realize his human nature in all its fullness—he had to involve himself intensively in the affairs of civic life, very much including the conduct of war. Indeed,

it seems anachronistic to speak of the “individual” or the “self” in this context, since the deepest sources of one’s identity were social. The republican ideal was, as J.G.A. Pocock has succinctly explained it, “a civic and patriot ideal in which the personality was founded in property, perfected in citizenship but perpetually threatened by corruption.” Notice especially the words “perfected in citizenship”: in this vision, civic life was not only the soul’s true end, but the means by which it is instructed in its higher nature.

Such are the worthy features of classical republicanism. But before we get too carried away with enthusiasm, it is well to remember some less pleasant things about it, aside from the problem of its chronic instability. Pocock himself has observed, “the ideal of virtue is highly compulsive,” for it “demands of the individual, under threat to his moral being, that he participate in the *res publica*.” Once we tune in, there is no dropping out. The soul of man under classical republicanism forswears individualistic vices; but it also forswears a great deal of liberty besides. The pleasures and satisfactions of commerce, of the arts and sciences, of luxury, of entrepreneurship, of religious devotion, of private life, of cultivating one’s own garden—all these must give way to a vision that, taken to its extreme, makes virtuous political activity the alpha and omega of existence. For most of us, there would seem to be something thoroughly dismal, even totalitarian, in such a vision, for it seems to deny us sanctuary for reflection, or space for enterprise.

The proper federal settlement, then, seeks to find a way to give scope to individual ambition, to economic energy and dynamism, to the “bourgeois” virtues of a liberal democracy, while respecting and upholding the role that acts of citizenship, and public life in general, play in the deepening and elevation of the soul. This was one of the

chief preoccupations of Tocqueville, who explored whether the power of self-interest, rightly understood, could be made to take the place of virtue. He was confident it could; at any rate, he thought we had no choice but to try to make it work. But he also never ceased worrying about what might happen if it didn't. It is sometimes not sufficiently appreciated that Tocqueville's famous critique of American individualism refers not to individualism as we today might understand the term, but to *privatism*, to the wholesale withdrawal of the individual from public life—the strong tendency in democratic societies for “each member of the community to sever himself from the mass of his fellows and to draw apart with his family and his friends.” Such individualism was in Tocqueville's view an even more ominous threat to a civilized and self-governing polity than was the tyranny of the majority.

Tocqueville too, then, greatly exalted the title of “citizen,” and saw political life as an indispensable school of the soul, wherein individuals would be gradually drawn out of themselves through immersion in public life, and would grow into more enriching and elevating connection with their fellows. Eventually, he believed, the habit of virtuous behavior, even if initiated for entirely self-interested reasons, could take hold and in due course give rise to something very similar to the original virtue itself. But he did not make the mistake of thinking that such behaviors and attitudes could be cultivated or compelled by exhortation alone. There had to be an *institutional* framework within which such exhortation would be rewarded, reinforced, and perpetuated. There had, in short, to be arenas for meaningful acts of citizenship. Fortunately, he believed, the American framers understood this too, and did not fall prey to the idea that a *national* community could provide such an arena. Instead, they took care to

“infuse political life into each portion of the territory in order to multiply to an infinite extent opportunities of acting in concert for all the members of the community.” They sought to provide infinite opportunities, that is, for Americans to develop as citizens.

In other words, Tocqueville saw in the federal idea a way that Americans could retain the spirit of republican citizenship, even when embracing the self-interested dynamism of liberal individualism. In so doing, Americans were in effect attempting to reconcile the central principles of both classical and modern political thought. Political communities, if they are to have any real moral vitality, and legitimacy in the hearts and minds of those who constitute them, must find ways to spur those inhabitants on to the free exercise of their highest natures, and provide them public spaces in which they can do so. It must permit them—and require them—to be citizens. By permitting citizens maximum freedom and scope in the administration of minor and local affairs, one draws them into public life, by giving them a genuine, palpable stake in it.

Hence the importance of devolution in our time. Writers on republicanism from Aristotle to Montesquieu insisted that a republic had to stay relatively small, because only a small polity could possess sufficient social and moral commonality to be self-governing. And although James Madison attempted to rebut such theorists when he argued that an “extended republic” could more effectively control the tendency toward faction in popular governments, he also insisted that the jurisdiction of the central government would be “limited to certain enumerated objects,” and the states and localities would “retain their due authority and activity.” Indeed, he speculated that were the Constitution to abolish the states, the general government would soon

be “compelled, by the principle of self-preservation, to reinstate them.” He did not assume that a large and diverse nation could offer the same sense of moral community as a small and relatively homogeneous republic. Rather, he assumed that “a judicious modification and mixture of the *federal principle*” could combine the advantages of both.

All of which suggests that for today’s politicians to fulfill the spirit of the federal idea, they may now have to move away from the relentless centralizing trends of the past century, and toward institutional arrangements that seek to multiply the opportunities for public association. We are here talking about real flesh-and-blood people, dwelling in propinquity to one another, not ciphers on the Internet. And their acts of public association take place within a sphere that is clearly delimited and contained, making of citizenship a sustained and reciprocal activity. The challenge is to find ways of restoring the sense of accountability and belonging offered by smaller, more human-scale institutions, institutions that can serve as schools of citizenship, while retaining the very considerable benefits of national government. This is precisely what the federal idea claims to do. It does not require us to renounce a national government, only to specify and enforce its limits. And it does so not only to limit the power of national government, but to preserve kinds of association, and therefore qualities of soul, that are beyond the power of nationalism to sustain.

This is an immensely complicated task. By attempting to accommodate within a single overarching structure what are in fact different principles of government, traceable ultimately to different views of human

nature, a federal system demands of its adherents extraordinary powers of *discrimination*. They will need a highly developed ability to distinguish what laws and actions are appropriate to each given sphere; an ability to distinguish between and among different spheres of possible activity—and in so doing, to grasp and distinguish the different axial principles appropriate to each. Federalism entails a very complex vision of the human soul, one that requires us to be forever balancing not only contending external interests, but competing understandings of what it means to be most fully human.

There is something in all this that does not come naturally, that goes against the grain, and places on us the demand for constant attention and frequent adjustments. American federalism is often caricatured as a kind of inert legalism, but in fact it reflects something very different: the restless ambivalence at the heart of American political life, whose dynamism ensures that many of the most important questions remain open and unsettled. Martin Diamond, one of the most thoughtful students of American federalism, put it well when he said that “any given federal structure is always the institutional expression of the contradiction or tension between the particular reasons the member units have for remaining small and autonomous but not wholly, and large and consolidated but not quite.” This is a tension that we should never wish to see finally resolved. To leave it unresolved, and leave space for the kinds of associations that today’s communitarians claim to cherish, is precisely the genius of federalism, properly understood.