

# *Political Philosophy and the Unwritten Constitution*

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DISCRIMINATING OBSERVERS RECOGNIZE that political practice in the United States today bears only a faint resemblance to the Constitution written at Philadelphia. The old Constitution enjoys a formal, ceremonial existence still and possesses a limited practical efficacy, but American government and politics have been transformed in the direction of a centralized mass democracy greatly at odds with what the Framers envisioned.

To understand the distance between the intent of the Framers and current practice it is insufficient to compare the present state of affairs to the words of documents like the Constitution and the Federalist Papers. Their real meaning emerges only when the texts are put in their religious, moral, cultural, social, and political context. The Constitution and related documents all imply an entire view of human nature and society. The particular text assumes and forms an inextricable part of a more comprehensive and unwritten constitution, which includes the moral ethos of the Framers. The institutions and procedures prescribed by the written document imply a particular kind of civilization and a particular kind of human being. Without a certain personality type setting the tone in society, the government could not function as intended. The Constitution presupposes character traits in tune

with its prescriptions, and those prescriptions are expected to foster that personality.

A consideration of what the Framers assumed and implied will demonstrate the inadequacy of interpretations that look for the meaning of "the Founding" in texts abstracted from historical settings and concrete substance. Neglect of the unwritten constitution may serve as an example of the debilitating effects of abstractionist, ahistorical modes of thought in contemporary political philosophy.

Of special importance in ascertaining the intent of the Framers is the moral ethos that permeates the unwritten constitution and informs their written work. Attending to this dimension of the Constitution helps reveal the extent of the decline of American constitutionalism. Studying the work of the Framers in this manner shows the futility of trying to restore crumbling constitutional structures by invoking the "principles" of the Constitution in the abstract. Returning to the intent of the Framers, if it were possible or even desirable today, would require nothing less than a revival of the constitutional personality and of the civilization from which it is indistinguishable. The disintegration of constitutionalism in America manifests the emergence of a different type of civilization and human being. To stress the need, in

the face of that development, to recover the "principles" of the Framers neglects the presuppositions and concrete entailments of their ideas. Most of the assumptions behind their constitutional preferences are left unstated, because they are taken for granted. Abstractionist interpretations misunderstand both the intent of the Framers and the prospects for constitutionalism today.

Grasping the moral ethos of the Framers goes a long way toward explaining their preference for a decentralized, regionally differentiated, and group-oriented society. The Framers assume the preponderance of a particular type of moral responsibility with deep roots in classical and Christian civilization. The virtue they admire and hope will assist the realization of their plans is not some abstract precept or ethereal sentiment. It is a virtue of character and concrete obligations that generates social relationships and institutions of a certain type and quality. This moral ethos can be contrasted with a very different notion of virtue, one that has become increasingly influential in the Western world. While the older kind of virtue manifests itself in individual, personal responsibility and tends to foster private and local community and a decentralized society, the more recent kind of virtue manifests itself in abstract ideas and sentiments and tends to foster a collectivistic and centralized society. The two types of morality may resemble each other in terminology, but they represent incompatible views of human nature and society and have radically different social and political ramifications.

To bring out a crucially important aspect of the Framers' outlook it may be useful to present first a view that is very different from theirs. A distinctive feature of the political philosophy of Jean-Jacques Rousseau is the rejection of social subdivisions in the state. According to Rousseau, the citizens must not be distracted from the good of the whole by

group loyalties and interests. The proper dedication to the common good requires that the people be dissolved into an undifferentiated mass of individuals. Traditional Western civilization is incompatible with Rousseau's vision and must be overturned. To accomplish that goal it is necessary to destroy the elaborate groupings and social patterns through which that civilization manifests itself. The Greeks argued that man is a social being who can realize his true humanity only through associations, starting with the household. Christianity continued that tradition, making its own additions and revisions. But Rousseau wants society swept clean of decentralized, group-oriented structures. He wants the state to have no "sectional associations" (*société partielle*).<sup>1</sup>

Rousseau's philosophy is thus in the sharpest possible conflict with American tradition. In America, groups and subdivisions have not only proliferated, but they have been encouraged and protected. Alexis de Tocqueville was struck by the habit of Americans to join together, privately and locally, to conduct their own affairs. He took special note of the influential role of the Churches.

It is important to note that under the old Constitution the American people are recognized *only* as members of subdivisions, of States and electoral districts. The Framers set up not a single institution through which the American people as an undifferentiated mass of individuals could express their will. The will of the people is plainly viewed as something very different from a numerical majority. The people, the Framers say or imply, are members of groups or subdivisions. The interests of persons are seen as more or less bound up with the interests of their most cherished associations. Beyond the Constitution itself, American tradition in general gives power, protection, and independence to countless social and political subdivisions. Without

always making it explicit, the Framers view life in autonomous groups as fulfilling a basic human need.<sup>2</sup>

Federalism is just one of the more striking examples of the old American preference for local and regional autonomy and decentralization. The way in which the United States Senate is constituted illustrates the Framers' respect for sectional interests. According to the democratist standard of one-man-one-vote, all persons should carry the same political weight at the polls. The Constitution embodies a much different conception of popular rule. It gives all States, regardless of size and population, the same representation in the Senate. New York has the same number of Senators as Delaware, California as Wyoming. The votes cast by citizens of Delaware and Wyoming are, as it were, counted many times. This is done in deference to the States as semi-autonomous entities worthy of support and protection. The enormous expansion of American central government in the last century makes it difficult to remember that the Framers actually expected the States and the people to retain all powers not specifically delegated to the central government.

Even in the case of the allegedly most popular, or "democratic," institution of the United States Government, the House of Representatives, the Framers balanced regional against numerical considerations. A tiny State that purely quantitative standards would leave without representation in the House is guaranteed at least one representative. The Framers also assigned the task of selecting Presidents not to the mass of the people, but to the Electoral College, containing as many members from each State as that State had representation in the House and Senate. Again small States were deliberately given vast overrepresentation.

Traditional American society as a whole nurtured decentralized social and political structures and a multiplicity of

subdivisions and associations. In asserting the one-man-one-vote formula as integral to the Constitution, the Warren Court introduced an atomistic and democratist notion alien to the Framers. The pervasiveness and proliferation of communal ties in the older American society are among the reasons why it is misguided to treat the political philosophy of John Locke as paradigmatic for the United States. Locke's social and political atomism, focused on the rights of discrete individuals, does not account for an American historical reality that is in some respects surprisingly reminiscent of medieval Western society.

It is crucial to understanding the written and unwritten constitutions to recognize the ethical import of the old American affinity for groups and associations. The Framers, their class, and the American people in general were steeped in a Western tradition whose conception of virtue gave precedence to the responsibility of the individual in personal relationships and associations. Aristotle had explained the centrality of the household in fostering sound habits. The Romans had also viewed family as preparing the individual for wider duties. Christianity gave succinct expression to what would become the heart of the moral ethos of the Western world when it stressed "love of neighbor." It is primarily in one's daily contacts with people that one should show goodness and charity. The person's chief obligation is to limit his own selfishness and generally to improve character so that he can do right by others.

By "neighbor" is meant not people in the abstract and in the distance, but people of flesh and blood with names and faces. In his more intimate associations the individual gets practice in "loving neighbors." There virtue is concrete and personal. The individual is continually encouraged to consider the needs and wishes of others. In the family espe-

cially, the person learns both what it means to be loved and cared for and what it means to love and care for others. Taking others into account becomes a habit. It is not possible to get away with mere moral posturing. People who present themselves as better than they are are mercilessly exposed when their actions fall short of their words. Over time, life in groups and associations tempers the selfish ego. It fosters character traits conducive to a larger good. Having gotten its start in the family and other relationships at fairly close range, moral responsibility can be applied to wider social and political concerns.

Note carefully that traditional Western moral virtue is not a sweet sentiment or a generalized concern for mankind in the abstract. Virtue is a matter of character. It means making the best of self and acting responsibly toward real people, which means that morality is hard. To make love of neighbor particularly difficult, real people are frequently less than pleasant, and they may be our competitors. Behaving charitably may require strength of will. Virtue shows itself, thus, not in high-sounding phrases or teary-eyed "compassion" but in responsible conduct.

Compare this older Western and American ethos to the common modern notion of virtue. The latter can be described as morality in the abstract. Unlike the older virtue, it does not presuppose improvement of self. It can be espoused by the worst of human beings, by people who are very difficult to live and work with. These same individuals can ooze benevolence for people in the abstract and talk incessantly about "justice," "human rights," and "the common good." They can advocate schemes for sweeping social and political change. In fact, the wider the scope of their virtuous project, the more compelling is supposed to be the evidence of a superior morality.

But this abstract and self-congratula-

tory virtue cares about nobody in particular. It is morality made easy. Anybody can do it. You can remain the same odious person as before while professing noble principles and feelings. From the point of view of the older Western ethic, the new virtue actually looks like a moral hoax. It is a more or less subtle escape from man's primary moral responsibility: to make the best of self and do right by neighbors. Abstract moralism is less interested in improving self than in improving others. And the need to take concrete action is somehow always transferred elsewhere, typically to government, which acquires ever new responsibilities and becomes ever more centralized.

The importance of this contrast between different notions of virtue cannot be exaggerated. The two kinds of virtue foster different human beings and build entirely different societies. From the old virtue of character springs a decentralized, group-oriented society. Those have the chief responsibility for acting on problems and opportunities who are most directly affected by them. Help is sought beyond the people most involved only to the extent that they cannot satisfactorily manage their own affairs. De Tocqueville found among Americans in the early decades of the 1800's a pronounced disinclination to hand over responsibilities to authorities further away.<sup>3</sup>

The traditional moral ethos of the West shows its own substantive meaning only in the kind of concrete social and political patterns that have been described. Man is thought to express his essential nature and find his greatest satisfaction in associations, starting with the family. Rousseau knew what he was doing when he turned against "sectional associations." Only by destroying the socio-political structures in which the older ethos manifested itself could you effectively destroy it.

Federalism and decentralization in the

American tradition can be adequately understood only in the context of the old Western moral heritage. If regional, local, and private initiative and independence are eroding today, it is because a new ethos is replacing the older one. The new moralism is undermining the virtue of character and undermining the corresponding exercise of up-close responsibility. The new virtue generates a centralized and expansionist government which ceaselessly meddles in the life of the citizens.

No amount of abstract principle can restore decentralized constitutional government and a vital federalism. The political system envisioned by the Framers assumed the preponderance of a particular type of human being, what has here been called the constitutional personality. Without that personality of character a decentralized society is not possible. To revive American constitutionalism, if it can still be done, would require, not more people who talk all the time about "justice," "the common good," and "the best regime," but people who are able to shoulder concrete responsibilities, so that the reconstruction of society could begin where it matters most, in the personal lives of the citizens.

Trying to restore the intent and the work of the Framers by advocating abstract principle avoids the heart of the matter. It bypasses the central need of all civilized life, the shaping of moral character. Character, let it be underlined, is not the same as keeping nice-sounding "principles" in your head. In fact, talking about virtue in the abstract easily becomes an escape from what is much more difficult and needed, the actual improvement of self and the actual exercise of responsibility. To that extent, endless theorizing about "the good" aggravates the erosion of a free and decentralized society. One of the dangers of philosophical abstractionism is that it discourages attention to the concrete

texture of responsibility and distracts the individual from obligations that are near and personal. It turns virtue into a matter of correct thinking.

Rather than attuning the individual to the actual moral opportunities of historical existence, abstractionism invites him to contemplate "ideal" propositions. "The good" of abstract theorizing does not belong to the world of particulars in which the person has to act and hence is not directly relevant to the needs of specific situations. Even if abstractionism encourages the individual to keep the idea of "the good" in his head, he becomes used to more or less ignoring it in practical conduct. The effect of centering morality in ahistorical contemplation is to undermine the virtue of character, including the self-restraint that can hold the individual's lower self in check.

This criticism of abstractionism is not directed against philosophy in general. There can be no question of rejecting or discounting reasoning that is truly philosophical. It should be said also that there is a special sense in which genuine philosophy can be said to be "abstract": it is contemplative and conceptual, not a form of practical action. The object of criticism here is *poor* philosophy, the kind that attempts to separate itself from the world of particulars in which human beings actually dwell. Good humanistic philosophy *embraces* historical particularity and *articulates* it: universality and particularity are at the same time inseparable and in tension.<sup>4</sup>

A most unfortunate weakness of postwar American intellectual conservatism has been its limited interest in philosophy beyond loosely held generalities and formulas. A lack of philosophical breadth, depth, and discipline made possible the paradoxical spread of ahistorical or anti-historical habits of mind. It is now widely believed that sound theorizing assesses ideas apart from considerations of historical substance and circumstance. The

meaning of ideas and principles are looked for within textual formulations themselves, as if the concrete referents and larger experiential context of words and terms were not part of their meaning. According to this view, the principles of the good society can be discerned and pronounced by enlightened individuals who reflect in isolation from historical experience and circumstance. It is believed that doctrinal formulations can carry precise and definitive meaning. This philosophical and interpretive stance is the epistemological counterpart of religious fundamentalism.<sup>5</sup>

That anti-historical sentiment should be common among academics labeled "conservative" could not be more paradoxical, for if intellectually serious modern conservatism has any distinctive feature, it is surely the historical consciousness and the sense of the intimate connection between universality and historical particularity. Most persons of traditional views have a conviction, based in religion, ethical intuition, or philosophy, or all three, that there is a universal moral order and that right and wrong are not questions of subjective preference. But the term "conservatism" indicates that the position to which it refers is conservative *of* something, specifically, of the ethical awareness that emerges from the great classical and Judaeo-Christian heritage. As in the case of Edmund Burke, the sense of universality is indistinguishable from the historical sense. What is ethically universal transcends history and particular civilizations, but it becomes known to man only in concrete historical manifestations. Moral good cannot simply be a creature of convention, for history produces evil as well as good. But only a deep and wide-ranging historical sense can distinguish true universality from momentary and idiosyncratic preferences.

There has been much loose talk over the last few decades about the dangers of "historicism." A belief in moral univer-

sality and lasting truth is said to be incompatible with stressing the historical nature of human existence. That moral and epistemological relativism, as ordinarily understood, poses a danger to civilization hardly needs repeating, but it betrays ignorance to assert that the only real alternative to relativism is ahistorical ratiocination.

Although espoused by some individuals reputed to be "conservative," moral and epistemological abstractionism is profoundly anti-conservative. The notion that real universality must be sharply distinguished from historical particularity clashes, for example, with the belief that man is dependent for moral, intellectual, and cultural guidance on the human heritage of life and letters. Among those who have uncritically accepted a doctrine of abstract "principles" are many philosophically innocent Christians, perhaps especially Roman Catholics, who vaguely assume a connection between those "principles" and natural law. The latter is interpreted in a rationalistic and legalistic manner. Properly concerned to affirm universal morality, many Christians have, for lack of real exposure to philosophical alternatives, attached themselves to ahistorical assumptions that are not easily reconciled with what they presumably also believe: that the transcendent Word became flesh, that the Logos was *incarnated* in history. Drawing no philosophical lesson from this religious belief, they blithely accept the notion that universality could have no integral association with historical particularity. Many others with conservative instincts follow a similar suicidal course. The belief in "universal values" is transformed into an assertion of abstract principles that is sometimes hard to distinguish from the Jacobin advocacy of "rights" inspired by Jean-Jacques Rousseau.<sup>6</sup>

Abstractionism affords a limited and limiting perspective on the Framers and

the state of the Constitution today. It lacks a sense of the concrete substance and implications of ideas. Abstractionism misses the central importance of the unwritten constitution. It diverts attention from the world of historical particularity. Appealing as ahistorical theorizing is to some academics today, such thinking was not the manner of the Framers. The Constitution is the result of deep and plentiful reflection, but it is not a blueprint based on ahistorical ratiocination.

Federalist No. 37 is here both explicit and emphatic: it is a strength of the Constitution, Madison writes, that it does not have “that artificial structure and regular symmetry which an abstract view of the subject might lead an ingenious theorist to bestow on a Constitution planned in his closet or in his imagination.”<sup>7</sup> The work of the Framers was creative and distinctive, to be sure, but it was historically rooted and informed, and adjusted to concrete circumstances. If we are to understand their Constitution with all of its unstated assumptions, preconditions, and entailments, and if we are to understand the forces that are now destroying it, a philosophical outlook is needed that is attuned to historical realities, both past and present.

Many would like us to believe that the great intellectual struggle of today is between “historicists” of various kinds and defenders of universal truths and values. But this formulation of alternatives leaves out the one truly fruitful course of philosophical renewal. The intellectually significant choice is not between historical and anti-historical positions, but between historicism that does and historicism that does not acknowledge the universal. Abstractionism manages to misconstrue both universality and particular-

ity. Rejecting the historical consciousness, it engenders rigidities and reifications that can only give universal-ity a bad name. In its fondness for disembodied ideas and texts rather than historical realities abstractionism becomes an escape from the concrete and acute problems of our time.

1. Jean-Jacques Rousseau, *The Social Contract* (Harmondsworth, 1970), Bk. II, Ch. 3, 73. Rousseau’s political philosophy is analyzed in depth with special attention to its ethical import and contrasted with American constitutionalism in Claes G. Ryn, *Democracy and the Ethical Life*, 2nd expanded ed. (Washington, D.C., 1990). 2. The term “autonomous group” is used by Robert Nisbet. See, in particular, *The Quest for Community* (San Francisco, 1990), which explains the humane significance of life in small and independent associations. 3. See, for example, Alexis de Tocqueville, *Democracy in America* (New Rochelle, N.Y., undated), Vol. I, 177. 4. The historical nature of philosophy is perhaps nowhere better demonstrated than in the work of the Italian philosopher Benedetto Croce (1866-1952). His most famous and central books, *Aesthetic* (1902), *Logic* (1908), and *The Philosophy of the Practical* (1908), present a mature and lucid, though not flawless, version of German idealism. Crocean ideas are revised and developed and incorporated into a reconstituted epistemology of the humanities and social sciences in Claes G. Ryn, *Will, Imagination and Reason* (Chicago and Washington, D.C., 1986). 5. For an extensive discussion of the relationship of universality and particularity, see Ryn, *Will*. The sense in which philosophical abstractionism is “fundamentalistic” is explained in Ch. 7. 6. The relationship between moral abstractionism, as found, for example, among disciples of the late Leo Strauss, and currents of moralistic utopian ideology is explained in Claes G. Ryn, *The New Jacobinism: Can Democracy Survive?* (Washington, D.C., 1991). Abstract universalism of the “Straussian” kind is no less questionable when its advocates think they are presenting it for “popular” consumption but hiding their real, putatively Nietzschean beliefs. Suggestions of “secret writing” simply claim credit for philosophical ambivalence and incoherence. 7. Hamilton, Madison, Jay, *The Federalist Papers*, ed. Clinton Rossiter (New York, 1961), No. 37 (Madison), 230.