

# Democracy and the Citizen: Community, Dignity, and the Crisis of Contemporary Politics in America

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Most Americans would agree that the Constitution has become more democratic with time.<sup>1</sup> We know the evidence for this view. The vote has been extended to racial minorities, women, and eighteen-year-olds. We elect senators directly, property qualifications have virtually disappeared, the poll tax is unconstitutional, and all of us are entitled to equal protection of the laws. As these examples suggest, one person one vote is the measure by which most Americans assess degrees of democracy. Most of us, in other words, see voting by majority rule as the defining characteristic of a democratic regime.

This view is correct as far as it goes, but it rests on a fragmentary idea of democracy. I rely on an older, more comprehensive understanding that makes citizenship, rather than voting, the defining quality of democracy.<sup>2</sup> Common sense tells us that speaking and listening precede voting and give it form. Democracy is inseparable from democratic ways of framing and arguing for political choices. Almost all agree, for example, that elections in so-called people's democracies are shams. At a deeper level, moreover, democracy depends on those things that affect our ability to speak, hear, or be silent. In this sense, I will argue that democracy requires community, civic dignity, and religion. Similarly, I will argue that in certain important respects the Constitution, contrary to the prevailing view, was more democratic in the past than it is today, especially in providing greater dignity for the citizen and greater protection against "tyranny of the majority."

My argument, obviously, extends beyond what established opinion understands by democracy, especially since my notion of democracy includes things not considered "political" by most Americans. In order to combat such deeply entrenched ways of thinking, I will have to turn to the foundations of our political thought.

## The Ancient Idea of Democracy

To ancient political science, citizenship came first in the ordering of democracies. Aristotle established the first principle of democracy as political liberty, "ruling and being ruled" in turn, sharing the responsibilities of rule as well as the duty to obey.<sup>3</sup> In a democratic regime, each citizen must be able to share in defining the public's alternatives and have "an equal say in what is chosen and for what end."<sup>4</sup> Since the equality of all citizens is a democratic tenet, democracies make decisions according to number, but

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<sup>1</sup> Most political scientists probably share this view. The Constitution, Robert Dahl writes, "given the right circumstances... could become the government of a democratic republic. And it did." Dahl, *Pluralist Democracy in the United States* (Chicago: Rand McNally, 1967), p. 55.

<sup>2</sup> For similar views, see Walter Nicgorski, "The New Federalism and Direct Popular Election," *Review of Politics*, vol. 34 (1972), pp. 3-15, and Lane Davis, "The Cost of Realism: Contemporary Restatements of Democracy," *Western Political Quarterly*, vol. 17 (1964), pp. 37-46.

<sup>3</sup> Ernest Barker, ed., *The Politics of Aristotle* (Oxford: Clarendon, 1952), p. 258.

<sup>4</sup> Delba Winthrop, "Aristotle on Participatory Democracy," *Polity*, vol. 2 (1978), p. 155.

Aristotle took care to show that majority rule is derived from the principle of equal citizenship and shared rule.

Majority rule is, after all, a difficult precept. Why should a minority accept the rule of a majority it considers wrongheaded? According to John Locke, the authority of the majority rests on a combination of force and consent.

It is necessary that the body should move that way whither the greater force carries it, which is the consent of the majority, or else it is impossible it should act or continue one body, one community, which the consent of every individual that united into it agreed that it should....<sup>5</sup>

At first blush, Locke's case for majority rule rests on the minority's agreement to form a political community, but that consent as readily obliges the minority to accept *any* system of rule in preference to political dissolution or civil war. The majority's specific title derives from its "greater force"- implicitly, the impossibility, under natural conditions, of coercing the many and the ease of coercing the few. Locke, however, limited his argument to the state of nature and conditions akin to it. In civil society as Locke knew well, majorities cannot be equated with greater force; a minority may easily comprise citizens who are wealthier and more skilled in military matters.<sup>6</sup> If the wealthy and strong accept the rule of the poor and unskilled, it cannot be because they are forced. It is often observed that the minority must believe that the majority will respect its "rights," ensuring its essential minimum without which it would fight. Certainly, a minority must have such confidence, but is that trust *enough*? Why would a strong minority settle for so little when force might give it so much more? The strong minority bends to majority rule only when it accepts the principle- the political equality of all citizens- from which that rule derives. I can believe that all citizens have an equal share of justice without believing that the majority is always right. You and I can be equal and ignorant when it comes to astrophysics, yet I can insist that my opinion is correct no matter how many equally ignorant people share yours.

Similarly, a strong majority refrains from oppressing the minority because it too accepts the principle of equal citizenship and political participation. The minority, as equals, must be allowed their say. (In fact, to give the minority equal time, as we do, gives it more than an equal share, since fewer citizens are allowed the same time.) As Delba Winthrop comments, a democrat who takes equal political liberty seriously "does not intend a tyranny of the majority."<sup>7</sup>

Both the majority and the minority must regard the principle of civic equality and equal participation more strongly than their partisan creeds and their private interests. In a democracy, citizenship rules partisanship, and public principles govern private interests.

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<sup>5</sup> Locke, *Second Treatise on Government*, sec. 96.

<sup>6</sup> Even Locke's argument is debatable, since majorities would be particularly unlikely to have superior force in the individualistic conditions of Locke's state of nature. There is a sense in which democracy, and the virtue of majorities, does derive from force, since democracy is akin to an army. As Aristotle knew, majorities acquire force only through discipline, the ability to trust and rely on one's fellows *as a whole*, and the willingness to obey orders (provisionally at least), the reason for which we cannot see from our part of the battlefield. *The Politics of Aristotle*, pp. 182, 272, 308; Plato, *Apology*, 28d-e.

<sup>7</sup> Winthrop, "Aristotle on Democracy," p. 156.

Citizens of all factions must, to that extent, prefer the good of the whole to that of the part.

Civic virtue is reemphasized by the consequences of political liberty. Aristotle observed that the democratic stress on political liberty-- freedom to participate in public life as part of the whole- suggests a second form, individual liberty—"living as one likes" as though one *were* a whole. Democrats "say," Aristotle commented, that liberty must involve "living as you like," because slaves do not live as they like.<sup>8</sup> This argument by democrats is evidently fallacious: "That which is not slave" is not an adequate definition of "a free person." A child who is not a slave, for example, has not come into "man's estate." This is, however, the sort of error that citizens unfamiliar with philosophy might be expected to make.

There is a second error in the democratic argument. In ordinary terms, no one lives as he "likes." The slave is not defined by living under a rule but by having no say about that rule. Voicelessness, not restraint, is the mark of a slave. This second mistake is possible only because the good citizen, in being ruled, feels he is *doing* as he likes. So he may be. The public-spirited citizen, ruling, acts for the common good; and being ruled is liberating in part since it allows a greater attention to one's own good. This is especially true if my rulers are no worse than I am, and I expect them to be guided by common principles.<sup>9</sup> Aristotle's argument suggests that patriotic and law-abiding but unphilosophic citizens come to believe that freedom is "living as one likes," an error that does little damage so far as they are concerned. Aristotle pointed out, however, that this idea leads to the claim of freedom from any government, or indeed, from any restraint at all. The children of public-spirited citizens, taught the mistaken "second principle" of democracy, become private-regarding individualists.<sup>10</sup> They may accept democracy as a second-best substitute (especially since democracy does not ask us to be ruled by anyone in particular) but it will be only that. "In this way," Aristotle observed guardedly, the second principle "contributes" to a "system of liberty based on equality."<sup>11</sup> Preferring to be free from all rule, the individualist supports democracy from weakness and lack of spirit, but he is not a democrat. His attitudes will be partisan or even more narrowly concerned with his own interests. If he obtains office, he will not subordinate his private will or interest to the good of the community, since to do so, in his eyes, would be slavish. Democracy can survive a few such citizens but not many. If they become predominant, majority rule will become tyrannical, with civil conflict the least danger facing the regime. The second principle, individual liberty, must be kept subordinate to the democratic first principle, political liberty and equal citizenship, if democracy is to stave off decay.

Whatever democrats "say," democracy does not promise "living as one likes." Its aim is self-rule. Autonomy is possible for human beings only as parts of wholes, in which our "partiality" and the things to which we are "partial" are recognized as secondary, though important. In essential ways, politics frees us. In the world of the tribe, most citizens do similar work; in the city, we work at what we do best. In the clan, custom and

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<sup>8</sup> Aristotle, *Politics*, p. 258.

<sup>9</sup> Plato, *Republic*, book 1, 346a-347d.

<sup>10</sup> Compare Franklin's advice to Tom Paine; Benjamin Franklin, *Select Works*, P. Sargent, ed. (Boston: Phillips Sampson, 1857), p. 488.

<sup>11</sup> Aristotle, *Politics*, p. 258.

blood-law regulate life. As a child, I am hopelessly dependent, and I value the rules of custom and kinship, which tell my parents that they must care for me. As I approach adulthood, however, this choiceless automation comes to seem impersonal, if not oppressive. The polis allows me to find friends who choose me (as I choose them) because they like me, not my genealogy.<sup>12</sup> In this sense, the polis is naturally “prior” to the individual, because the human being as an end presumes the polis as a means.<sup>13</sup>

The excellent or complete human being is the end for which the city exists; for him, if for anyone, it might be said that freedom is “doing as one likes.” Such a human being, however, would recognize his debt to the city and know that his freedom involves obligations. Moreover, the fully self-ruled men realize that the thing they rule, the self, is not something they make. My nature sets the limits to my rule. If I command myself to be young forever, my orders are hostile to self-rule, because they seek to subject the self that I am to another, imagined self. To be self-ruled, I must be ruled by my nature as a human being and by the nature of which humanity is a part. In that higher sense, self-rule does imply “doing as one likes,” for it requires that I do what I truly like, according to nature, or, to put it another way, I must do what is “liked” by nature, “the one” of which I am only a part.<sup>14</sup>

Self-rule requires, then, that I be free to do what is according to nature. No barrier in my environment or in me must stand in the way. To help me toward self-rule, democracy must provide me with an environment that has resources enough to permit me to live in a fully human way. It must also educate me so that my soul will be free to follow nature. For its own health, democracy must try to teach me that human freedom is possible only when I act as a part of a whole and that my good, the good of a part, depends on that of the whole.

This lesson can never be learned perfectly. My body reminds me constantly that I am separate; my sense are my own and no one else’s. The body and the senses take us beyond mere survival and pleasure; as we know, powerful feelings and passions may move us to sacrifice our lives and liberties. My body and my senses move me to such sacrifice only on behalf of things they take to be my own. The perimeter of the senses is narrow and makes me the center of the world.

When governments and law urge me to support the common good, they may find an ally in my reason or my soul, but they must expect resistance from my body and my senses conducted in the name of my dignity. If, for example, reason assures me that government has consulted people like me in making policy, my emotions will answer that is has not consulted *me*.<sup>15</sup> Civic virtue requires that we govern some of our strongest

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<sup>12</sup> Because democracy emphasizes “free birth” it is more familial than its claim to freedom would suggest. Ibid., pp. 163-164. On the general point, the emphasis must be on finding friends within the city, for the friendship of all citizens is decidedly second-rate. Even though I begin by admiring what my friend appears to be, I aim at the friend I can value for what he truly is. Aristotle, *Nicomachean Ethics*, 1164a1-30, 1168a27-1169b2, and *Ethica Eudemia*, 1236a-b, 1237a-b, 1238b, 1234b.

<sup>13</sup> Aristotle, *Metaphysics*, 1018b9-29, discusses the varieties of “priority.”

<sup>14</sup> Winthrop, “Aristotle on Democracy,” pp. 166-167.

<sup>15</sup> Peter Berger, “On the Obsolescence of the Concept of Honor,” *European Journal of Sociology*, vol. 2 (1970), pp. 339-347; Anthony Lauria, “*Respeto, Relajo*, and Interpersonal Relations in Puerto Rico,” *Anthropological Quarterly*, vol. 37 (1964), pp. 53-67.

feelings and desires. In that sense, as Aristotle argued, to rule free men—and hence, to be a citizen of a democracy—one must first learn how to be ruled.<sup>16</sup>

If government is radically at odds with my senses, my dignity, and my private interests, however, I will feel it as a kind of tyranny. I will resist it, retreating into private refuges if it is strong and defying it if it is weak. I may be compelled to obey, but I will not learn to be ruled.

Classical political philosophy argued in favor of the small state, in part because the *polis* was within the periphery of the senses, reducing the distance and the conflict between public good and private interest. In a small community, if my taxes help to build a reservoir, I will be drinking the water it provides, and my sense will testify to the benefits of civic duty. In a large state, by contrast, any benefit I derive from a dam in Idaho is indirect, as distant from my senses as Idaho itself.<sup>17</sup>

Similarly, the small state lets me know my fellow citizens and my rulers.<sup>18</sup> More important, they know *me*. This is especially true in stable communities, for people I have known only a short time are people I know only superficially. Moreover, if people move frequently, I will not feel confident that we share common destiny or a common good. Rather, I am likely to suspect that they may desert me in a time of trouble; I may feel compelled to protect myself by deserting them first. The common good reigns weakly in a hobo jungle or a trailer park. Small and relatively stable communities, by contrast, encouraged confidence and fidelity.

Finally, the small state is suited to democracy. In a small state, it is possible for me to have my say. In a large state, only a few can be heard beyond private circles. Small communities give a larger proportion of citizens the chance not only to speak but to speak adequately. Too, relations of trust encourage speech; we need not be silenced for fear of “giving offense” or by the suspicion that our community is too fragile to bear disagreement. Of course, a much larger percentage of the citizens of a small community can hold office. To put it another way, in the small state I matter and my choices are visibly important. A small state comports with my dignity.<sup>19</sup> In this respect, it is less important that I speak or hold office than that I be able to do so. If I listen or obey, it then must be presumed that I chose to do so. Silence and law-abidingness are dignified forms of conduct. The large state, however, tends to rob obedience and silence of their dignity, making them matters of necessity. In modern America, for example, we do not really respect the respectable.

The small state is the natural home of democracy. It makes possible “ruling and being ruled in turn” and it helps to strengthen public spirit. The small state, however, demands that we restrain our ambitions for power and for wealth. Similarly, democracy presumes some restraint on the extremes of wealth and poverty. Democracy does not require economic equality, but it does require a sense of commonality and equal dignity. The sense of the common good is weakened where the impoverishment of some does not affect, or even contribute to, the wealth of others. The wealthy are tempted to believe that they do not need the many and to behave with arrogance; the poor become desperate if

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<sup>16</sup> Aristotle, *Politics*, p. 105.

<sup>17</sup> Mancur Olson, *The Logic of Collective Action* (Cambridge: Harvard University Press, 1965.)

<sup>18</sup> Plato, *Laws*, book 5, 738e.

<sup>19</sup> R.E. Gehringer, “On the Moral Import of Status and Position,” *Ethics*, vol. 67 (1957), pp. 200-202.

they see their poverty as a badge of indignity and shame.<sup>20</sup> The desire for wealth must be restrained in all classes. Economic gain must be subordinated to stability and civility in democratic life.

In summary, democracy claims to be a regime characterized by liberty, but it depends on restraint. It requires citizens who are willing to sacrifice for the common good and, correspondingly, a restraint of the passions. Even those concepts that educate the passions gently, like the small state and relative economic equality, required restraint on private desires. Democracy depends on some knowledge of the limits of personal liberty and human nature. It hopes that citizens will see the law and nature not as confining prisons in which the self is trapped, but as boundaries which delineate the self. Put another way, democracy aims at the governance of body by soul. That aim is audacious. In the best of us, the body's obedience is imperfect; democracy is not a government by the best. Citizens cannot be assumed to have the faith of saints or the reason of philosophers. Democracies rely on true opinion, rather than knowledge, and on piety, rather than revelation. These lesser excellences, nevertheless, depend on the greater. Ordinary citizens need the example of the best human beings in order to imitate, as part of the exacting regimen of civic education, the reverence for law and nature which, in the best, emanates from the freedom of spirit.

### **The Framers' Rejection of the Ancients**

Ideas like these, especially as glossed by Christian theologians, were a major part of the cultural inheritance of Americans at the birth of the Republic. Custom and controversy made many such teachings familiar to Americans who had little notion of their origins. Those who rejected classical political philosophy as a whole clung to one part or another. The framers, however, were self-conscious modern men who rejected the tradition. They felt themselves the vanguard of an intellectual revolution as well as political founders. The struggle over the form and spirit of the Constitution was, in many ways, a battle between the old science of politics and the new.

Although the framers appealed to "republican" ideals, they meant "republic" in a special, modern sense. Their real concern was liberty, not republican government, and they set as the "first object of government" the protection of the "diversity in the faculties of men." Their aim was private rather than public freedom; they elevated Aristotle's second principle to the first place in political life.<sup>21</sup>

Human beings, in the framers' creed, are by nature free, morally independent without obligations to nature or to their fellows. For the framers, the separateness of the body – if not the body itself – was the defining fact of human nature (hence the tendency, in ordinary speech, to separate "nature" and "nurture," equating natural conduct with what springs spontaneously from the body). By nature, our desires are free, and we seek to do as we like. Above all, we desire self-preservation, a "great principle" worthy to be

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<sup>20</sup> Aristotle, *Politics*, pp. 63-68, 209, 232, 268.

<sup>21</sup> Madison, Hamilton, and Jay, *The Federalist* Nos. 10, 39; Martin Diamond, "The Declaration and the Constitution: Liberty, Democracy, and the Founders," in Nathan Glazer and Irving Kristol, eds., *The American Commonwealth 1976* (New York: Basic Books, 1975), pp. 48-49.

ranked with “absolute necessity” and “the transcendent law of nature and of nature’s God.”<sup>22</sup>

Nature will not let us preserve ourselves. In the end, nature will kill us. The naturally free individuals of the framers’ theory find themselves obstructed, at almost every point, by nature and their fellows. By nature, we strive to acquire the power to do as we will an, ultimately, to master nature itself.

By the familiar locutions of social contract theory, people discover that their unaided efforts leave them too exposed to attacks by others and too weak to trouble nature seriously. Reason suggests to the individual that he would do better in combination with others; governments are created “by the consent of the governed,” since morally independent beings can be bound only by their consent. If our consent *creates* obligation, then nothing can evaluate our consent: Whatever we consent to will be “right.”<sup>23</sup> The theory presumes, of course, that we will never truly consent to give up our rights to “life, liberty and the pursuit of happiness”; this only emphasizes that our consent (and hence government) can only be self-limited. As Berns demonstrates, the governed can consent according to the Declaration of Independence, to regimes other than democracy. Civic education in an established polity does all that it need or should do when it persuades us to consent. Political participation is quite needless if we are persuaded that government protects our private rights and interests; public spirit, in any strict sense of that term, is *undesirable*. Government is always to some degree oppressive, since we give up to it some of the liberty that is ours by natural right. We ought to surrender such liberty grudgingly and watchfully; whatever civic duties our consent entails, we should perform with an eye to our private liberties. The “consent of the governed” does not require democracy, and it discourages citizenship.

For human beings as the framers understood them, the really desirable regime is not democracy but a tyranny in which I am the tyrant, able to command the bodies and resources of others to “live as I like.” Failing that, I prefer not to be ruled at all. Tyranny is unlikely and insecure, and anarchy is impractical because of the “inconveniences” of the state of nature but these prudential objections do not affect the basic argument. Human nature strains against the law, our passions resisting the necessity to which reason gives its consent. “Why has government been instituted at all? Because the passions of men will not conform to the dictates of reason and justice without constraint.” In Madison’s famous rhetoric, “What is government itself but the greatest of all reflections on human nature? If men were angels, no government would be necessary,” and consequently, “in framing a government... [y]ou must first enable the government to control the governed...”<sup>24</sup>

In controlling the governed, majority rule – “the republican principle” – is invaluable. In the first place, all other things being equal, the majority will possess “greater force” than the minority, as in Locke’s argument; its support will provide the

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<sup>22</sup> *Federalist* No. 43.

<sup>23</sup> Hanna Pitkin, “Obligation and Consent, II,” *American Political Science Review*, vol. 60 (1966), pp. 39-52.

<sup>24</sup> *Federalist* Nos. 15, 51. Madison’s implicit theology is revealing. Angels are governed, after all, by an absolute monarch, but Madison seemed to assume that the government of heaven is not relevant to earthly politics. If men were angels, Madison asserted, they would be beyond the power of nature, though not masters over it. Even with that qualification, given a modern view of the purposes of politics, no *human* government would be necessary.

power to constrain. Since other things are not equal, as Madison knew, and the majority is likely to be relatively poor and discontented, its consent removes one probable source of disorder.

The consent of the majority, of course, is impermanent. Having given our consent, we regret the constraint it entails, especially since under the government's protection, we forget the dangers that moved us to consent. The revolutionary war, Madison wrote, encouraged an excessive reliance on the "virtue and intelligence" of the people, since it "repressed the passions most unfriendly to order and concord," producing a patriotism not to be expected in more tranquil times. Periodic elections are needed to renew consent or, at least, to provide the government with the support of a current majority; such elections should not be so frequent as to undermine the public's "veneration" for a regime.<sup>25</sup> The fundamental unpolitical nature of human beings makes majority rules and periodic elections prudent, though not strictly necessary. Democracy in the modern sense derives from our supposed indisposition to all forms of rule, including democracy. The case for modern democracy rests in part on the undemocratic nature of humankind.

However, majority rules and periodic elections do not oblige the government to "control itself," the second concern in framing free government. In the normal course of events, the majority will be partisan, moved by private motives, and disposed to oppression. "Neither moral nor religious motives can be relied on" to restrain it and, in any case, it is not the business of government to educate the soul. If man has a soul, it is free by nature; legitimate government is obliged to leave it so.<sup>26</sup>

It is no surprise then that the framers rejected the classical case for the small state. Madison was hostile to the "spirit of locality" in general, not only in the states. Small communities afford the individual less power, less mastery, and hence, less liberty, than do large states. Moreover, the small community lays hold of the affections of the individual and leads him to accept the very restraints on his interest and liberty that are inherent in smallness.<sup>27</sup> The classics urged the small state, in part because it might encourage the individual to limit and rule his private passions. Madison rejected such states, because he rejected that sort of restraint. Small communities limit opportunities and meddle with the soul. At best, they are outdated associations that once advanced individual interests but now fetter the new science of politics.

All "face-to-face" communities are suspect. In very small districts, Madison warned, representatives are likely to be "unduly attached" to their constituents. The affections are too intense, the bonds of community too strong. "Great and national objects" on one hand, and individual liberty on the other, are necessarily endangered. In a large assembly, especially if it is "changeable," the individual is not attached *enough*. In the crowd, the individual is too anonymous for a "sensible degree of praise or blame for public measures" to attach to him. His private passions are loosed because he is freed from the consequences of his acts. At the same time, by the face-to-face quality of the assembly, the individual is enabled to discover those who share his ambitions,

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<sup>25</sup> *Federalist* No. 49. Hegel regarded war as useful because it reminded citizens of their partiality and their need for the state (*Philosophy of Right*, part 3, pp. 320-328). Elections are a kind of "war without the knife" and hence both invaluable and dangerous.

<sup>26</sup> *Federalist* Nos. 51, 10.

<sup>27</sup> Julian Boyd, ed., *The Papers of Thomas Jefferson* (Princeton: Princeton University Press, 1950-), vol. 6. pp. 308-309.

resentments, and desires. “A common passion or interest will, in almost every case, be felt by a majority of the whole; a communication and concert results from the form of government itself...”<sup>28</sup>

In one context, Madison seemed to suggest that the problem results from our unequal capacities for reason.

In a nation of philosophers... [a] reverence for the laws would be sufficiently inculcated by the voice of an enlightened reason. But a nation of philosophers is as little to be expected as the philosophical race of kings wished for by Plato.<sup>29</sup>

In fact, however, a nation of philosophers would make no difference if it were a polis: “Had every Athenian citizen been a Socrates, every Athenian assembly would still have been a mob.”<sup>30</sup> This is a striking, even shocking assertion although it follows from the framers’ theory. Madison argued that the passions can never be educated, even in the best and wisest human beings; they can only be repressed and controlled. In the assembly, each citizen-Socrates would sense his anonymity. He would no longer fear the shame of visibly pursuing private interests or oppressive designs, and he would join others in carrying these designs into effect. Socrates is not king, “the epitome of a free man who participates in politics for the common good” and a model for democratic citizens, but a craven tyrant who fears being found out.<sup>31</sup>

If this is true of Socrates, it is even more true of the rest of us. There are no citizens in the classical sense of the term, just as there are no kings. There are only tyrants, more or less strong. Liberty requires that we be kept weak. The small state, however, makes us feel strong, or at least that we matter. That very virtue, in the framers’ eyes, becomes a damning vice.

Madison and Hamilton argued that the control of the majority lies in the “enlargement of the orbit” of republican rule, creating a large state in which a majority must be composed of diverse factions, unlikely to agree about much for long. The number of such factions, however, is no more important than the distance between the bodies of the individuals composing the factions. That distance guarantees that a common sentiment cannot be felt, except in so diffuse a form as to be unimportant. The ideal regime is “dispassionate” even more than “disinterested.” Interest, at least, is calculable and easily channeled by institutions and laws. The passions must be “controlled and regulated” by government.<sup>32</sup>

Free government aims to minimize coercion, but the passions can be disciplined without much direct force. Human beings will be fearful enough when they are weak and alone.

The reason of man, like man himself, is timid and cautious when left alone; and acquires firmness and confidence in proportion to the number with which it is associated.<sup>33</sup>

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<sup>28</sup> *Federalist* Nos. 10, 63.

<sup>29</sup> *Federalist* No. 49.

<sup>30</sup> *Federalist* No. 55.

<sup>31</sup> Winthrop, “Aristotle on Democracy,” p. 166

<sup>32</sup> Robert Rutland et al., eds., *The Papers of James Madison* (Chicago: University of Chicago Press, 1962-), vol. 9, p. 384; *Federalist* No. 49.

<sup>33</sup> *Federalist* No. 49.

Individuals in the large state, unable to “communicate and concert” easily, are likely to feel “timid and cautious.” The states and local communities, however, are barriers to this salutary isolation. In them, individuals are too intimately associated with others who are close to their affections; citizens are encouraged to be rash and turbulent in relation to the general government, while local regimes deprive them of private liberty. Consequently, the federal government must gain access to the individual, breaking the locality’s monopoly on his affections and attracting to the central regime “those passions which have the strongest influence upon the human heart.”<sup>34</sup> At least somewhat freed from local regimes, the individual will also be more timid, cautious, and alone.

This has a benefit beyond fearful obedience. Since human reason “acquires firmness and confidence in proportion to the number with which it is associated,” those opinions shared by the majority of Americans will be held with overwhelming force. There will not be many such opinions – no more, perhaps, than the general principles of the Declaration of Independence – but they will be all but unquestioned. In the large state, weak individuals hesitate to advance eccentric views and adopt with confidence ideas shared by the many. It is a strange result for a theory that began with a concern for the freedom of the soul.

### **The Antifederalists and the Old Science of Politics**

However, as Young reminds us, the framers did not have it all their own way. We tend, in fact, to underestimate the strength of Antifederalist views, since many who shared Antifederalist beliefs and apprehensions joined Jefferson in accepting the Constitution as a working document, hoping to shape it by interpretation, practice, and amendment.<sup>35</sup> The federalism of the Constitution resulted from politics, not from the framers’ wishes. Both Madison and Hamilton desired a far more centralized regime than that framed in the Constitution.<sup>36</sup>

While the Antifederalists, as Berns comments, spoke in the language of rights and contracts then current among educated men, their position derived from the older science of politics. The language of individual rights did not really suit the Antifederalists. They were far more likely than their antagonists to refer to government and society as “natural.” Civic virtue was a central concern of their political argument, and they were zealous to defend true opinion and small states as the foundations of civic education. Centinel scorned governments that were “republican” in form only, insisting that the “reality” required a virtuous people. As Berns observes, Antifederalists sometimes supported religious tests and, even more often, legislation to promote public morals. A free people, Melancton Smith argued, is necessarily exposed by its very freedom to a “fickle and inconstant” spirit. Government must be vulnerable to this inconstancy. Free government requires the foundation provided by a stable private order, the “old communities” settled in “time and habit” to which Samuel Bryan appealed. Such

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<sup>34</sup> *Federalist* No. 16

<sup>35</sup> Adrienne Koch and William Peden, eds., *The Life and Selected Writings of Thomas Jefferson* (New York: Modern Library, 1944), p. 441.

<sup>36</sup> Gaillard Hunt, ed., *The Writings of James Madison* (New York: Putnam, 1900-1910), vol. 2, pp. 336-340; Max Farrand, ed., *The Records of the Federal Convention* (New Haven: Yale University Press, 1937), vol. 1, pp. 162, 164, 168, 297, 463-464, 476, 489-490, 530; vol. 2, pp. 390-391; vol. 3, p. 77.

communities should be rooted in the people's affections. They require an ordered life and a rough equality, protecting community against the conflicts engendered by luxury, competition, and anxiety. A democracy, George Clinton said in a nice turn of phrase, should be "well-digested."<sup>37</sup>

Only in small states, Richard Henry Lee contended, can the laws possess the "confidence" of the people. Confidence, we should remember, is a much more active and embracing term than "consent." It suggests speaking one's mind, as in "confiding" to another. It also implies that citizens "confide" – give or entrust – themselves to the laws, yielding private interest and opinion to public rule. Such a spirit required, Lee observed, a government within the emotional, sensory range of the individual, one limited like man himself, Agrippa wrote, to a "narrow space."<sup>38</sup>

A federal regime could acquire confidence only if representatives, who make the laws, are able to convey it. In the first place, the citizen must know his representative and be known by him, establishing a tie between the "natural aristocracy" and the "democracy." No "government of strangers" is acceptable.<sup>39</sup> For Madison, it was enough that the representative know the "local circumstances and lesser interests" of the electors. George Mason argued, by contrast, that the representative should "mix with the people, think as they think, feel as they feel, ought to be perfectly amenable to them and thoroughly acquainted with their interest and condition."<sup>40</sup> Mason included Madison's demand for an intellectual knowledge of the "interest and condition" of the people, but he put it last, giving precedence to the requirement of emotional comprehension and personal relationship, considerations Madison put aside.

Moreover, if the representative is to convey confidence, he must represent the minority as well as the majority. For this to be possible, majorities and minorities, like the citizens Aristotle described, must prefer the public good to their partisan interests. The district must be a community, convinced that its likenesses outweigh its differences.

To Madison's objection – that very small districts tie representatives to parochial interests— the Antifederalists responded that only such districts can give the representative the authority (confidence) to *sacrifice* private interests. Of course, representatives from small districts may be mean or private-spirited. Unless the electors are ensured their say, however, they will not consider themselves represented and, resenting the indignity, they will stand on the defensive. In a large district, we may trust our representatives to defend the district's interests; we are unlikely to trust his decision to sacrifice them.<sup>41</sup>

Madison's argument illustrates his differences with the Antifederalists. The district must be large enough to avoid "undue attachment" but small enough for the representative to know the district's interest. This latter limit, however, is not a strict one. A shrewd representative can master the interests of a large district. Congressmen today, who represent close to a half million people, prove the point. In fact, if a district is large, according to Madison's principles, it should be very large, since in all face-to-face

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<sup>37</sup> Cecilia Kenyon, ed., *The Antifederalists* (Indianapolis: Bobbs-Merrill, 1966), pp. xcii, 148, 197, 205, 263, 309-310, 374, 388.

<sup>38</sup> *Ibid.*, pp. 154, 210.

<sup>39</sup> *Ibid.*, pp. lxi, 216-217, 377-378, 383-385.

<sup>40</sup> *Federalist* No. 10; Kenyon, p. lii.

<sup>41</sup> Paul L. Ford, *Essays on the Constitution of the United States, 1787-1788* (Brooklyn: Historical Printing Club, 1892), p. 73; Kenyon, pp. 310-312.

meetings, passion prevails. On the other hand, a “numerous and changeable” body cannot be moved by a sense of the common good.<sup>42</sup> This comment, in relation to the Senate, illuminates Madison’s intent. Congressional districts, intended to be large if not especially changeable, are not *meant* to be moved by the common good. The refusal of a minority within such districts to be “represented” merely adds another faction to the multiplicity that protects liberty, and it may help to fragment locality. Madison rejected a system of representation intended to convey confidence, public-spirited support for the common good, in favor of representatives who can provide the consent of a “numerous and changeable” multifactional majority.

Madison also maintained that large districts would be more likely to contain “fit characters” than small ones. Since candidates would be less able, in large districts, to practice the “vicious arts” of electioneering, “fit characters” would be more likely to win office. Madison, of course, knew well that demagoguery is easier when addressing a large audience than a small one; that is not the sort of “vicious art” he had in mind. He referred to “cabals” that organized (and often bribed) local electorates. Organizing or bribing a large electorate is undeniably more difficult; hence the “suffrages of the people” would be more “free.” As a result, well-known and celebrated persons would be more likely to win election.<sup>43</sup>

This argument, however, illustrates what John Lansing meant when he observed that elections can be only the “form” of freedom.<sup>44</sup> All elections require some organization; the selection of contending candidates and the identification of “serious” contenders in a large field are obvious examples. Large electorates favor those with established advantages – the wealthy, the famous, and urbanites, who “live compact” with “constant connection and intercourse.”<sup>45</sup> The Antifederalists, on the whole, were partisans of direct election, but, unlike later and less wise enthusiasts, they recognized that mass electorates are to the advantage of *elites*. Martin Van Buren observed thirty-five years later that nonpartisan elections benefit the upper classes and the celebrated and consequently undermine respect for institutions by inspiring belief that elections are a fraud, concealing “real” decisions made elsewhere.<sup>46</sup> To the Antifederalists, democratic elections were tied to the local polls, closer to a caucus than to the secret ballot and relatively open to the candidacy of ordinary citizens. The Antifederalists retained the idea of a citizen as someone who shares in rule, hence their support for annual elections and rotation in office. All citizens, George Clinton declared, should have the chance to win public office and honor, for the “desire of rendering themselves worthy” of office nurtures patriotism and civic virtue.<sup>47</sup> In this too, the Antifederalists defended the older science of politics against the new.

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<sup>42</sup> *Federalist*, no. 63.

<sup>43</sup> *Federalist* No. 10.

<sup>44</sup> Jonathan Elliot, *Debates in the Several State Conventions on the Adoption of the Federal Constitution* (Philadelphia: Lippincott, 1896), vol. 2, p. 295; Kenyon, p. 72.

<sup>45</sup> Kenyon, *Antifederalists*, p. liv; James Madison, in A. Koch, ed., *Notes of Debates in the Federal Convention of 1787* (Athens: Ohio University Press, 1966), pp. 235, 194.

<sup>46</sup> James Ceasar, “Political Parties and Presidential Ambition,” *Journal of Politics*, vol. 40 (1978), pp. 725, 728.

<sup>47</sup> Kenyon, *Antifederalists*, pp. 310-311; Elliot, *Debates on Adoption of the Constitution*, vol. 2, p. 295.

Trained in a rhetoric that exaggerated dangers in order to anticipate them, the Antifederalists overstated the immediacy of the threat posed by the Constitution.<sup>48</sup> They were sometimes wrong altogether about specific provisions. In the main, however, they understood the Constitution correctly. “Consolidation,” the Pennsylvania Antifederalists observed, “pervades the whole document.”<sup>49</sup> The states, close to the people, possessed their confidence and affection and were safe against direct assault. The shrewd reader, however, would discern a certain “studied ambiguity” in the language of the Constitution, made more ominous with all “essential” powers given to the central government.<sup>50</sup> Antifederalists were not mollified by reassurances: “It is a mere fallacy, invented by the deceptive powers of Mr. Wilson, that what rights are not given are reserved.”<sup>51</sup> In the combination of power and ambiguity, the Antifederalists detected a desire to reduce the states, “slowly and imperceptibly,” to a “shadow of power,” forms without functions.<sup>52</sup> It would be hard, in the event, to argue that the Antifederalists did not read the Constitution properly.

Established opinion, especially attachment to states and localities, imposed on the framers. By its influence on politics and political men, the older idea of democracy voiced by the Antifederalists profoundly affected the use and interpretation of the Constitution and its powers. In many ways, American political history can be read as a conflict between the institutional design of the Constitution, reflecting the framers’ “new science,” and public mores, habit, and beliefs. Alexis de Tocqueville gave his opinion that the “manners of the Americans” were the “real cause” of our ability to maintain democratic government.<sup>53</sup> However, George Clinton was correct: “Opinion and manners are mutable,” especially given the “progress of commercial society”; in the long run the government “assimilates the manners and opinions of the community to it.”<sup>54</sup> Clinton’s observation suggests an amendment to Tocqueville: The manners of the Americans are more important than the laws, but in the end, the laws transform manners in their own image.

Certainly, that is what the framers hoped. Thwarted of his centralizing ambitions, Madison became, with years, more tolerant of the states. He had not changed his aims. He simply became more convinced that indirect means, especially from the power of commerce would achieve his goal. The railroads, he told George Bancroft, would “dovetail” the states. (Justice Johnson, concurring in *Gibbons v. Ogden*, similarly observed that with the “advancement of society,” commerce necessarily comes to include more and more spheres of life.)<sup>55</sup> The new science of politics was too subtle to attempt frontal attacks; the older traditions, lacking the clarity and coherence of the classical science of politics from which they derived, were too easily confused to do more than

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<sup>48</sup> On the rhetoric of the Antifederalists and its origins, see Kenyon, p. xlv, and Harvey Mansfield, Jr., *The Spirit of Liberalism* (Cambridge: Harvard University Press, 1978), pp. 79-80.

<sup>49</sup> Kenyon, *Antifederalists*, p. 45.

<sup>50</sup> *Ibid.*, pp. lxxv, 212-213.

<sup>51</sup> *Ibid.*, p. 141.

<sup>52</sup> *Ibid.*, pp. 265, 212-213, 43, 127.

<sup>53</sup> Alexis de Tocqueville, *Democracy in America* (New York: Schocken, 1961), vol. 1, p. 383.

<sup>54</sup> Kenyon, *Antifederalists*, pp. 308-309.

<sup>55</sup> Madison’s comment is related in Bancroft’s biography, *Martin Van Buren* (New York: Harper and Bros., 1889). Justice Johnson’s comments are only a little more explicit than Marshall’s opinion for the Court (*Gibbons v. Ogden*, 9 Wheat. 1, 1824).

fight a stubborn delaying action. The older idea of democracy now faces final defeat, and its defenders seem reduced to garbled romanticism. The triumph of the new democracy over the old, however, is a bleak enough prospect to alarm any surviving citizens into wakefulness.

### **The Framers' Triumph and Tyranny of the Majority**

Fifty years after the ratification of the Constitution, Tocqueville refined and restated the Antifederalist case. In large states, Tocqueville argued, democracy was especially exposed to "tyranny of the majority." Equality denies the authority of one individual over another, but suggests the authority of the many over the authority of the few. When society is small enough so that the majority may be perceived as *individuals*, equality permits and encourages me to discount it. Consequently, "small nations have therefore ever been the cradle of political liberty." Tocqueville, in fact, seemed to reverse the framers' argument. The instability and turbulence of small states is the mark of their freedom, the proof that local tyrannies, however intrusive, can be overthrown. Tocqueville referred to political, not individual liberty. The small state's limited resources check individual ambition and direct the citizen to the cultivation of the "internal benefit of the community," including a nurturing of civic virtue. Large states are better suited to great projects and the pursuit of power, particularly because, unlike localities, they are rarely governed by custom.<sup>56</sup> Large states, then, may suit private liberty, but large *democracies* are a particular case.

Given the weight of numbers, the idea of equality makes it hard for me, even in spirit, to oppose the majority. The majority becomes overwhelming, impersonal, and imponderable. I cannot perceive it as so many faces, since it has become faceless. In the small state, I may hope to change enough votes by my eloquence or my skill at electioneering to transform a minority into a majority. In large states, such a result is improbable at best. The "tyranny of the majority" was not like the coherent majority factions which Madison feared, nor was it like the tyrannies of the past. It was an "affair of the mind," crushing the spirit as it left the body free. Later in the century, James Bryce referred to the "fatalism of the multitude," contending that most Americans, taking their impotence for granted, regarded prevailing opinions as "facts of nature" to which they could only adapt. In such circumstances, public criticism of dominant ideas would be rare, hesitant, probably ignored, and in the end, likely to be forgotten.<sup>57</sup>

Along with this tendency to public conformity, Tocqueville observed, went an inclination to private self-seeking and "individualism." Making the citizen feel insignificant, mass democracy affronts his dignity, losing most of its chance to nurture civic virtue. Public life injures the citizen's self-esteem, and he retreats into private life, especially when established opinion speaks of the right to, and the rightness of, private liberty. As the public sphere grows larger and more powerful, the private sphere shrinks, the individual breaking his ties to his fellows one after another, a "freedom" which "threatens in the end to confine him entirely within the solitude of his own heart."<sup>58</sup>

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<sup>56</sup> Tocqueville, *Democracy in America*, vol. 1, pp. 176-177, 179.

<sup>57</sup> *Ibid.*, vol. 1, pp. 298-318. James Bryce, *The American Commonwealth* (New York: Commonwealth, 1908), vol. 2, pp. 358-368.

<sup>58</sup> Tocqueville, *Democracy in America*, vol. 2, pp. 118-120.

This combination of public freedom and private weakness, with its attendant consequence, nearly uniform adherence to those ideas supported by large majorities, is precisely what Madison had urged and sought to establish. Seeking to avoid the despotism of a visible majority, the framers had encouraged the tyranny of an invisible one. Freeing the body, they had made it too easy to enslave the soul.

Tocqueville saw several barriers to tyranny of the majority. Religion taught Americans a law beyond the will of the majority and a code of morals at odds with calculations of utility. It commanded love and sacrifice, the moral signs of nobility. Divine monarchy restrained and elevated secular democracy, especially since the loneliest American could seek asylum from the tyranny of the majority at the feet of the king.<sup>59</sup>

Second, local regimes appealed to the citizen's dignity and "engendered and nurtured" his civic spirit. "The public spirit of the Union is... nothing more than an abstract of the patriotic zeal of the provinces."<sup>60</sup> Finally, local regimes enabled the citizen to learn the "arts of association" through participation, making him stronger and more confident in relation to national majorities. Public life became a source of dignity rather than humiliation. Without politics, an American "would be robbed of one half of his existence. He would feel an immense void in the life which he accustomed to lead, and his wretchedness would be unbearable."<sup>61</sup>

Tocqueville did not highly value American political parties, but clearly they belong in his case. Many a Republican is able to defy majority opinions because he can identify them as Democratic heresies. Rooted in local ward and precinct allegiances, traditional parties – by a hierarchy of personal relationships and partisan fraternities – connected the "right opinion" of localities to the national regime. Similarly, parties appealed to private motives (the desire for jobs and honors, loyalty to one's friends, and hatred for one's enemies), hoping to woo them to the support of public principles and honor. Traditional parties were, in crucial ways, the schools for civic education, inculcating the middling sort of civic virtues possible in a vast state.<sup>62</sup>

Today, however, all these institutions are in disarray. Religion is in retreat; the evangelical exceptions to the rule, far from denying the general tendency, proclaim it fervently. Increasingly, states and localities lack the resources needed to address public problems. Ignore the effects of war; commerce alone has devoured the local community and reduced local regimes to near impotence. The Supreme Court conceded long ago that commerce, "the plainest facts of our national life," must take precedence over federalism in defining the constitutional order.<sup>63</sup> The Court's decision was probably prudent, but the ascendancy of economic life over locality implies the supremacy of private motives, pursued in accord with presumed "necessities," over deliberation and choice. That, obviously, is not good news for democracy.

The states and localities have lost more than material power; their influence on our characters and their hold on our affections are rapidly declining. Localities are

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<sup>59</sup> Ibid., vol. 1, pp. 353-373; vol. 2, pp. 22-32, 170-177.

<sup>60</sup> Ibid., vol. 1, p. 181.

<sup>61</sup> Ibid., vol. 1, p. 293; see also vol. 1, pp. 216-226, 331-339.

<sup>62</sup> I make a similar argument in "Political Parties as Civic Associations," in Gerald Pomper, ed., *Party Renewal in America* (New York: Praeger, 1980), pp. 51-68.

<sup>63</sup> National Labor Relations Board v. Jones and Laughlin, 301 U.S. 1 (1937).

decreasingly stable (approximately a quarter of the population moves every year); trust is necessarily limited and superficial.<sup>64</sup> More and more, we live in neighborhoods and social circles that are not political bodies combining all or most of the things necessary for the good life, but associations formed on the basis of highly specialized similarities of private pursuit and fortune.<sup>65</sup> Too much of what we need and are is left out of such “communities” for us to confide much of ourselves to them. We live increasingly private lives, as Tocqueville warned; instability and weakness erode our capacities for intimacy, life beyond the moment, and mutual dependence. Even the family is embattled, rivaled by the impermanent relationships it is coming to resemble. The “culture of narcissism” bespeaks the fall of the great barriers to tyranny of the majority.<sup>66</sup>

In public and economic life, the citizen is dwarfed by titanic organization and confused by change. Inequalities of wealth and position are only a part of the problem, though such inequalities undoubtedly restrict access to office or to the rostrum. Those social critics who suggest that capitalism and private wealth are the root of all the ills of American democracy are guilty of making our problems appear less severe than they are. Wealth *can* be limited or equalized, although assembling a majority to support such policies would be difficult. Inequalities of organizational power are less tractable. Large-scale organizations are an artifact of the size and complexity of our regime. Any organization large enough to affect the market or the government’s policy is almost certain to be so large as to offend the dignity of its members. We can regulate these private regimes but only by increasing *public* bureaucracy and large-scale organization.<sup>67</sup>

The mass media are prototypic of such “private governments.” In one sense, the media control who is allowed to address the public and on what terms. Private, often self-selected, leaders in the media chair our public forum, able to set the terms of deliberation.<sup>68</sup> Sponsors, at least in television, have little control over content; a program with a strong following finds a seller’s market. *Both* sponsors and media leaders are dominated by their eagerness for programs that score well in the “ratings.” Our choice of programs, however, is no democratic decision. When we turn the dial, we do not make a decision which consciously involves *public* standards. (This matters. Not long ago, a majority endorsed the idea of “family time” as public policy while expressing distaste for the programs that filled such slots.) We certainly do not deliberate. The “ratings” aggregate our private choices, and those choices, in turn, tyrannize the media’s “men of power.” At the same time, a host of specialized journals and radio stations appeals to narrowing private circles. The public sphere **expands, the** private sphere contracts. Neither speaks the language of citizenship or democracy.

The citizen finds little in public life to elevate his spirit or support his dignity; he finds much that damages both. Political parties, which sought to connect private feelings

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<sup>64</sup> See my essay, “American Pluralism: the Old Order Passeth,” in Irving Kristol and Paul Weaver, eds., *The Americans, 1976* (Lexington: Heath, 1976), pp.

<sup>65</sup> John H. Schaar, “Equality of Opportunity and Beyond,” in Roland Pennock and John W. Chapman, eds., *Equality* (New York: Atherton, 1967), pp. 228-249.

<sup>66</sup> Christopher Lasch, *The Culture of Narcissism* (New York: Norton, 1979) and *Haven in a Heartless World* (New York: Basic Books, 1977).

<sup>67</sup> Grant McConnell, *Private Power and American Democracy* (New York: Knopf, 1966).

<sup>68</sup> Bertrand de Jouvenel, “The Chairman’s Problem,” *American Political Science Review*, vol. 55 (1961), pp. 368-372.

with public life, are waning along with the communities that were their foundation.<sup>69</sup> Increasingly, the citizen retreats into the “solitude of his own heart,” denying the country the allegiance it needs to address looming crises and himself those possibilities that still exist for friendship and freedom.

Democracy has few footholds in modern America. Strengthening democratic life is a difficult, even daunting, task requiring sacrifice and patience more than dazzling exploits. Foreign policy alone forbids dismantling the mass state. We could equalize wealth but not power. Wealth – to the extent that it differs from organizational power— at least complicates the lives of our organizational oligarchs. Even if, by some miracle we *could* equalize power and make all Americans equal in all things, we would still face the stubborn problem of dignity. In the mass state, indignity is inherent. In such a state, equality would imply that *no one* matters. I have no desire to minimize the grievances of the poor, but it seems to me that indignity, not inequality, is our real complaint. A great many Americans would forgo material gains if they felt they were listened to or even that their *listening* mattered. A great many more would make greater sacrifices if they felt they would be known and remembered.

Democratic citizenship requires dignity. Neither dignity no citizenship is at home in an unstable society or a large state. Whatever possibilities we have for democratic life require us to turn government’s resources to the task of protecting and reconstructing community and private order. We can, at least, repeal laws that place families at a disadvantage in taxation, that weaken local communities, and that are designed to shatter political parties. We can seek laws and policies that enhance and support stability in our relationships, our expectations, and our laws themselves. A “transformation” is required only in a very special sense; we need a movement away from the transformations that have regularly weakened the democratic aspects of our life.

Democracy requires, I think, and end to the moral dominion of the great modern project that set humankind in pursuit of the mastery of nature. Democracy is for friends and citizens, no masters and slaves. The ultimate ground for democratic ideas of equality and the highest limitation on democracy’s excesses both derive from a universe in which humanity is at home, my dignity is guaranteed by the majesty of the law I obey, and perhaps even “those who have no memorial” do not pass from memory.

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<sup>69</sup> Gerald M. Pomper, “The Decline of the Party in American Elections,” *Political Science Quarterly*, vol. 92 (1977), pp. 21-41.

