

Liberalism's Discontent America in Search of a Past that Never Was

One has to be impressed by the fact that America's premier University continues to provide us with people who write "brilliant," "wise," "elegant," "impressive" and "refreshing" books which it needs so desperately. As democratic theorist Jane Mansbridge put it, Harvard's Michael Sandel's *Democracy's Discontent: American in Search of a Public Philosophy* "is bound to change the course of American historiography, political philosophy and legal scholarship." George Will, not generally thought of as a theorist of democracy, was equally enthusiastic. In his words, "Sandel's book is a thinking person's guide to the current rethinking of the role of government in America."

Like Robert Nozick's *Anarchy, State and Utopia* (1974) which made him a darling to the minimal government-free marketers who triumphed with Reagan and Company, Sandel's book is aimed at John Rawls's influential *A Theory of Justice* (1971). It seems well on its way to make him a darling of the new "republican-communitarians." I can only hope that some evangelical defender of "soulcraft" does not come to capture the imagination of our deeply troubled society.

But this gets well ahead of what I want to say. Sandel's argument is subtle and deceptive, even if, for me a least, it is a combination of bad philosophy, bad sociology, bad history and bad politics. I begin with the philosophy.

Liberal and Republican Freedom

There is a currently fashionable dichotomy between what George Kateb called "rights-based liberalism" and "American republican-communitarianism." It is clear enough that Rawls and Nozick (along with Flathman, Dworkin, Feinberg, Gewirth, Sen, and many others) are, despite differences, "rights-based liberals." The other side is a much less clear bunch and might include any number of diverse writers who have criticized liberal philosophy and promoted some version or other of "community," including John Dewey, Hannah Arendt, Robert Paul Wolff, Charles Taylor, Roberto Mangiabera Unger, Michael Walzer, Carol Gould, Hannah Pitkin, Amitai Etzioni, and some others besides. The relation to democracy of these writers is also very diverse.

Presumably, one of the notable achievements of Sandel is have clarified this argument, to show us both the limits of "rights-based liberalism" and that there is a viable alternative well within the American tradition. His main distinction, accordingly, is between what he calls "the procedural republic"--the version of liberalism "by which we live" (he offers that the label was suggested by Judith Sklar) and "republican" theory. As regards the procedural republic, then:

Its central idea is that government should be neutral toward the moral and religious views its citizens espouse. Since people disagree about the best way to live, governments should not affirm in law any particular vision of the good life. Instead, it should provide a framework of rights that respects persons as free and independent selves, capable of choosing their own values and ends. Since this liberalism asserts the priority of fair procedures over particular ends, the public life it informs may be called the procedural

republic (p. 4).

This is, of course, a fair statement of both Rawls and Nozick. It is less clear that it abstracts correctly the prevailing public philosophy, but I pass on that here. In sharp contrast to "republican theory," as understood by Sandel, we should emphasize that neither Rawls nor Nozick had much to say about democracy. Rawls assumed some form of "representative regime" and (with Mill) even defended plural voting. While democracy is not even indexed in Rawls's book, Nozick surely goes further. After acknowledging that democracy is the idea that "people have a right to a say in the decisions that importantly affect their lives," Nozick asserts, remarkably: "After we exclude from consideration the decisions which others have a right to make and the actions which would aggress against me, steal from me, and so on,...it is not clear that there are any decisions remaining about which even to raise the question" (1974: 270).

Both Rawls and Nozick do capture certain strands in the prevailing public philosophy, but the differences between them are critical--and much of what might be in this philosophy is not captured in the least. Thus, for example, both positions are certainly too extreme for most Americans. Rawls is too egalitarian; Nozick is too libertarian. Both Rawls and Nozick should be complemented for their refreshing reluctance to mostly ignore the critical idea of democracy. As regards most Americans, it is true to say, I think, that democracy is safely understood to be defined by "free" elections. Since neither Rawls nor Nozick reject this idea, their views are safely consistent with the prevailing public philosophy.

Sandel acknowledges that the prevailing conception of liberal political theory has its roots in Locke, Kant and Mill, but at the same time, he asserts that it "is a recent arrival, a development of the last fourth or fifty years." Indeed, it replaced a rival public philosophy, republican theory. This is characterized as follows:

Central to republican theory is the idea that liberty depends on sharing in self-government. This idea is not inconsistent with liberal freedom. Participating in politics can be one among the ways people choose to pursue their ends. According to republican political theory, however, sharing in self-rule involves something more. It means deliberating with fellow citizens about the common good and helping to shape the destiny of the political community. But to deliberate well about the common good requires more than the capacity to choose one's ends and to respect others' rights to do the same. It requires knowledge of public affairs and also a sense of belonging a concern for the whole, a moral bond with the community whose fate is at stake. To share in self-rule therefore requires that citizens possess, or come to acquire certain qualities of character, or civic virtue (p. 5-6).

Sandel's emphasis on "self-rule" makes his version of republican theory look like, of course, a version of democracy, but surprisingly absent in this characterization is any critical sense of what "self-rule" might mean or what would count as "deliberating" about the common good, or "helping to shape" the destiny of the political community.

Indeed, there is nothing in the book which attends to the currently profound structural limits

on "self-rule." Perhaps the best that he does on this score is to endorse Tocqueville's potentially beautiful trivialization of democracy: Local attachments enable citizens "to practice the art of government in the small sphere within [their] reach" (p. 314). Their reach may, of course, be pitifully small. "Ideally at least, the reach extends as the sphere extends" (p. 314). This extension is also efficiently discussed: Presumably, "civic capacities first wakened in neighborhoods and town halls, churches and synagogues, trade unions and social movements find broader expression" (*ibid.*). One need not take a radical stance as regards "self-rule" to wonder about this suggestion. That is, suppose that all decisions of major social importance are made by either private corporations or governments dominated by two parties who fundamentally share a public philosophy? There would be no institutional means to make even this "broader expression" felt. As long ago as 1925, Walter Lippmann pointed out that "in spite of all that has been said about tweedledum and tweedledee," modern democracy "was purely and simply a matter of choosing whether to "support the Ins when things are going well, or "to support the Outs when they seem to be going badly."¹

Moreover, as regards "knowledge of public affairs," Lippmann saw also--before television --that the public opinion was manufactured, that, to shift the metaphor, for the ordinary citizen, the problem was "to secure maps on which their own need, or someone else's need, has not sketched in the coast of Bohemia." For Lippmann, even if they were so disposed, ordinary people (including representative bodies which he called "a group of blind men") *cannot* get the information they need: "what is happening, why it is happening, what ought to happen."² We are, as C.W. Mills was later to argue, a mass dominated by mass media. In turn (as everybody knows, but cannot do anything about), these are dominated by money, both because they need to sell their products (and ads) and because they are owned by a handful of corporations. This is, of course, but part of this story.

But if Sandel is not interested in looking at how citizens might effectively participate in governance, he is deeply interested in looking at the qualities of character, the civic virtue, which is required *if* citizens are to be self-ruled. Indeed, his fundamental (almost exclusive) concern (as with Plato and, more recently George Will), is that, contrary to liberals, government ought not to be "neutral" (even if it could) and even more, that governments have legitimate concerns with "soulcraft," what he elsewhere calls "the formative project." His clearest statement of the content of "civic virtue" comes from Will:

Will sought to cultivate civic virtue, the 'dispositions, habits and mores' on which free government depends. By virtue he meant 'good citizenship, whose principle components are moderation, social sympathy and willingness to sacrifice private desires for public ends' (p. 310).

Sandel, like Will, Etzioni and many other "communitarians" would seem to have a theory of society in which problems can be solved by changing the "morals" of persons. Perhaps it is assumed that until such time that people acquire that "civic virtue" which is the prerequisite of "self-rule," we need not worry about either how people are to get the information they need, how to deconstruct maps with the coastline of Bohemia drawn on them, or how to begin to alter

structures so that people can have the power to make decisions that importantly affect their lives. I return to this in my last section.

For Sandel, the "formative project" is both inescapable and carries risk (p. 321). Indeed, "the task of forging a common citizenship among a vast and disparate people invites more strenuous forms of soulcraft" (p. 319). One has to be impressed with the ease by which he deflects this "risk."

We may agree with him that "the civic strand of freedom is *not necessarily* exclusive or coercive," that "it can *sometimes* find democratic, pluralist expression" (p. 321, my emphases). But first, as liberals have long insisted, the key virtue in this regard is toleration, reveling in difference, a willingness as equals to engage disagreement and conflict. Here as with the question of enlarging the sphere of self-rule, he seems guided by a faith similar to many of those who take for granted the structures of global capitalism and defend the currently fashionable idea of "civil society." Sandel writes: "Instead of collapsing the space between persons, it fills the space with public institutions that gather people together in various capacities, that both separate and relate them" (p. 320). He offers no suggestions on how this might be possible. Nor since he takes for granted both the modern state and global capitalism, it is hardly clear what good this would do.

His notion that the state should not be morally neutral as regards "morals" and "religion" and that it has a responsibility to cultivate "civic virtue" leads him, inevitably, to some strikingly conservative conclusions. It is in these concrete cases where we best get the flavor of the high abstraction, "civic virtue." He writes, e.g.:

What makes a religious belief worthy of respect is not its mode of acquisition--whether by choice, revelation, persuasion, or habituation--but its place in a good life or, from a political point of view, its tendency to promote the habits and dispositions that make good citizens (p. 66).

What are these "habits and dispositions"? Uncritical obedience? Undying commitment and loyalty? And what if believers have a prior obligation to God or to one of his emissaries? Suppose that such an obligation does not promote "moderation, social sympathy and a willingness to sacrifice private desires for public ends," then what? While the liberal can insist that such beliefs must be tolerated, as liberals see, a difficult enough task in itself (p. 321), and that the criminal law, aimed at preventing harm to others, is all that is needed, is it not on Sandel's principles within the legitimate province of the state to suppress that system of belief?

Similarly, Sandel notes that in *Paris Adult Theater I v. Slaton*, Chief Justice Burger "wrote as if embarrassed to acknowledge the moral objection to obscenity as such," a reluctance which presumably, undercut the coherence of his argument. Thus, "allowing the states to decide that commerce in obscenity may 'injure the community as a whole' begs the question whether communal injury can consist in an offense against shared moral standards" (p. 77). Burger opted for his form of argument perhaps because he had read H.L.A Hart's devastation of Lord Devlin. If the state can legislate for the sake of "morality" as such, then it can proscribe acts merely because they are

"sinful" or "wrong." In the light of human history, what could make anyone think that this is morally defensible?

Perhaps, however, if his principles are not liberal, his intuitions are. This seems so in a number of instances. For example, he seems to think that sexual relations between consenting adults, heterosexual or not, should not be proscribed. But he is uncomfortable with a straightforward liberal defense of this, substantially that "people should be free to choose their intimate relations themselves, regardless of the virtue or popularity of the practices they choose, so long as they do not harm others" (p. 104). He prefers, instead, the decision in *Griswold* where the court affirmed certain values and ends. It then articulated "the virtues that homosexual intimacy may share with heterosexual intimacy, as well any distinctive virtues of its own." What indeed is wrong with a court that affirms "family values?"

Indeed, in the same vein, Sandel is most unhappy also with no-fault divorce. "By making dependence a dangerous thing, it burdens the practice of marriage as a community in the constitutive sense" (p. 115) If so, why not compel life-long marriage under all conditions? In any case, blaming no fault divorce for the grim statistics he quotes is just plain bad sociology. The problem is not that the law affirmed the "encumbered self," but the consequence of profound structural problems in American society, coupled with a familiar inattention to the rights of divorced women. If we want to support marriage, we ought, at the very least, ensure that people have jobs which pay living wages and provide families and single-mothers with child support, daycare, etc. Nor even can we say that idea of no-fault was mistaken. There is nothing in that idea that says the former partner should not be held responsible. If alimony is not awarded and child support is not enforced, then we may suspect that patriarchy is at work in our so-called "liberal" courts and justice system.

One should not suppose that Sandel lacks arguments against liberals who are reluctant to embrace "the formative project." But they are frightfully lean and implausible. What matters to the liberals, he writes (many times!), is not the ends we choose, but our capacity to choose them. It is this which is most essential to our personhood. What is wrong with this? Sandel offers that:

the philosophical difficulty lies in the liberal conception of citizens as freely choosing, independent selves, unencumbered by moral or civic ties antecedent to choice. This vision cannot account for a wide range of moral and political obligations that we commonly recognize, such as obligations of loyalty or solidarity. By insisting that we are bound only by ends and roles we choose for ourselves, it denies that we can ever be claimed by ends we have not chosen--ends given by nature or God, for example, or by our identities as members of families, peoples, cultures, or traditions (p. 322).

This is conflation of a moral philosophy with what is familiarly identified as "individualism." They have gone together, of course. Still one wonders who is has in mind here and second, and more importantly, what does he have in mind as an alternative?

Sandel continually speaks of the liberal assumption that the self is "unencumbered." One

must look carefully to get an idea of what this might mean. A self is unencumbered, presumably, if first, we have no obligations which are not voluntarily incurred and second, and more interesting, we have identities quite apart from having roles and from being "members of this family or city or nation or people, as bearers of that history, as citizens of this republic" (p. 14).

But he knows that liberals do acknowledge "natural obligations," or obligations owed to persons just because they are persons. There is nothing particularly "individualist" about this even if it is a cosmopolitan point of view. He finds this inadequate, presumably because liberals would deny that we have a *natural* obligation to the political community in which we happen to live. Of course, he is correct that this is the characteristic liberal position: Indeed, the problem of legitimacy (of "political right") was "solved" in the modern period by liberals who insisted that only if citizens "consent" are they obligated. Most of us who have had problems with this have problems with the idea of consent, since as Hume as already noted, if merely living in state ("tacit consent") is consent, then everybody consents. Nor do all of us think that voting does the trick. These days, people everywhere get to vote!

This is not Sandel's problem. As noted, nowhere does he have anything to say about such critical institutional features of the modern state. Rather, here, as above, he is plainly reactionary: He seems at least to think that obligations generated by our roles and situations (voluntary or not) have some sort of presumptive moral quality and that we owe loyalty because our "identity" is tied up not only with our families and roles, but also with "our nation." On the side of obligation, after Eichmann and Lt. Calley,³ this view of obligation is quite remarkable.

Moreover as regards selves and nations, his view is stunningly "essentialist." One would have thought that he would know that both identities *and* nations are socially constructed from biographically and historically available materials and that, accordingly, we can both work to change them or more likely, to have them changed by events and decisions. The recent construction of Serbian identity had led, of course, to ethnic cleansing, an incredibly vicious form of "the formative project."

As regards "unencumbered selves," one suspects that Sandel is unduly under the influence of Rawls. One thus might hold that the persons in Rawls's constructed "original position" are "encumbered selves." But of course the point of that construction was precisely to deny that one's family, ethnic group, gender, or roles in society were relevant to defining the principles of justice. Rawls's social philosophy is cosmopolitan. Indeed, it was just here that Rawls's was at his most emancipating. Here was a liberal who showed that the most "liberal" society in the world could not defend the fact that it was the most unequal society in the world. Moreover, as Charles Beitz shows, Rawls's theory is easily and plausibly extended to address *global* injustice. As far as I can tell, inequality is not a concern of Sandel.

The idea, of course, of an "encumbered self" is implausible, but with the exception of Kant (and possibly of Robert Nozick), who has held to it? Kant badly confounded matters in bifurcating the phenomenal and the noumenal. Presumably our phenomenal, flesh and blood, concrete, historically located selves are "encumbered. Our "noumenal self," by contrast is "unencumbered."

Our "autonomy," accordingly, depended upon our capacities as "rational beings" to give law to ourselves. Sandel does not take on Kant. Nor shall I (even if think that his position is a disaster). What he does instead is to speak of Kantian liberals (generally unnamed) and then to allow us to believe that all liberals are committed to a Kantian ontology. One may wish here that he had been more careful. Indeed, one the huge difficulties in the book is a systematic ambiguity over whether Sandel is describing the *Weltanschauung* of the times and places in his book, or whether he is engaging normative theory. Worse, he lacks utterly a conception of ideology: the idea that certain philosophical theories may be articulating what are or are to become widely held but false beliefs, beliefs which, in fact, are in the interest of the powerful. This ambiguity in my view immensely contributes to the usefulness of this book *as* ideology. I return to this.

As noted, rights theorists all acknowledge non-voluntary obligations. Moreover, they can affirm that identities are tied up with relations and roles and still insist that our personhood requires that *we* choose our ends--not God, not nature, not the government. Personhood requires agency, but agency is not, as per Kant, autonomy--self-legislating--but the capacity to choose such that given any choice, one could have done otherwise.⁴

Insofar are we are always "encumbered," our choices, including our choice of "ends," are always both enabled and constrained. Liberals have not, it is true, generally noticed the stunning inequalities in what is enabled, nor that these inequalities are a straightforward consequence of socially constructed race, class and gender. Instead, they have tended to think that the only constraint is legal. Of course, this is major weakness of most liberalism (partly addressed by Rawls, more completely by Reiman (1990)). But this hardly calls for an abandonment of the idea that freedom is a fundamental value. Indeed, one must fear freedom--as in Plato, Durkheim, or Freud, to think otherwise.

Similarly, just as he confounds "autonomy" and "agency," he trades on the idea that the liberal is committed to what he calls the "voluntarist" conception of freedom. He writes, e.g.: "The voluntarist conception of freedom that inspires this liberalism holds out a liberating vision, a promise of agency that could be realized even under conditions of concentrated power" (p. 278).

Sandel is here on much stronger ground since "voluntarist" or "contractual" freedom *is* a central piece of liberal ideology. Nozick is the surely best case. For him a choice is free if and only if it is voluntary. A choice is involuntary if and only if it is coerced, and as above, coercion is the threat or use of violence, including legal coercion exercised by the state. Coercive social relations just don't count. So, neither does "bigness." For him, if people have equal rights, then they are equally free (period).

Insofar as he recognizes "positive" rights, or rights which oblige others (including especially the state) to do something to realize one's rights, Rawls would seem to see that freedom is very unequally distributed. Thus, rights demanded by Fair Equality of Opportunity, e.g., the right to a good education, or those demanded by the Difference Principle, e.g., the right to income greater than the worst off in any other system of distribution, imply non-legal constraints on freedom. But still trapped in liberal ideology, he also asserts:

The inability to take advantage of one's rights and opportunities as a result of poverty or ignorance, and a lack of means generally, is sometimes counted among the constraints definitive of liberty. I shall not, however, say this, but rather I shall think of these things as affecting the worth of liberty, the value of the rights that the first principle allows" (1971: 204).

But not all liberals are so foolish. Perhaps the best (intuitively sensible, philosophically sound) definition of freedom was offered by Joel Feinberg (1973). On this view, freedom is a capacity to do something, have something or be someone. But capacities are defined by enabling factors such as competencies and resources, and persons are constrained by hindrances and obstacles which prevent them from doing, having or being. The idea of absolute freedom is both incoherent and undesirable. But there are people with practically no freedom in exactly the sense that ignorance and poverty have *disenabled* them. The least of their problems is the coercive power of the state.

There are many problems with variant versions of liberal political philosophy; but the idea that it is not the ends we choose, but our capacities to choose them is not one of its problems. As I noted, one huge problem of liberal theory is its incoherence in acknowledging both the value of freedom and the equality of persons. It has thus persistently failed to address the problem of inequalities of freedom. Another, not unrelated to this, is the problem of democracy, to which I now turn.

Republican Freedom and Democracy

The foregoing has given the gist of the Sandel's moral and political philosophy. Most of book, however, is devoted to showing that the public philosophy which is the alternative to the procedural republic was present at the Founding and that it was replaced only recently. It what follows, I pursue two related themes. First, it is irresponsible to hold that one can understand the liberal strand in American thought apart the civic republican strand. These were not independent and merely consistent ideas: They were part and parcel of the same bundle of ideas as they emerged at a critical juncture in America's past.⁵ Sandel's distinction is artificial. Indeed, as the few examples adduced above suggest, at every critical instance, in order to try to make his case, he holds that the authors of his case examples are confused, or inconsistent, or that we must read between the lines to see *really* what is being put forward.⁶ It never seems to occur to him that these interpretative difficulties are a function of the artificiality of his distinction. Worse, his distinction promotes a profoundly ideological understanding of the American past. This is my second major theme. Sandel is both historically and philosophically uncritical regarding the idea of democracy.

History and Ideology

Sandel would have us believe that the Founding Fathers (or least some important and leading set of them) had as among their goals a constitution which promoted "self-government," that one of the key problems presented by the so-called "crisis period" was the absence of the civic virtue required by citizens (p. 128) and that throughout the nineteenth century "the civic ideal" of virtuous self-governing citizens was the dominant public philosophy in America. All of this is ideology in exactly the sense that these beliefs are false or distorted, and are both critical to

the reproduction of the status quo and serve those who have power in America. I begin with the Founding.

There are three or four fundamental facts for us to keep in mind. First, the War of Independence had converted farmers and mechanics, even the poorest of them and even some slaves, into armed citizens who, remarkably, had defeated one of the best professional armies in the world. The war for freedom was not likely to have had no impact on their political sensibilities. Edmund Morgan summarizes the main points very well:

Had the southern plantations not shifted from free to slave labor, had the planters continued to import masses of indentured servants and continued to pour them into their own and other colonies a few years later as indigent freedmen, then the picture of social mobility in the colonial period and of class conflict in the Revolution might have been quite different. The Minutemen of 1774 might have been truly a rabble in arms, ready to turn from fighting the British to fighting their well-to-do neighbors...But in the century between 1676 and 1776 the growth of slavery had curbed the growth of a free, depressed lower class and correspondingly magnified the social and economic opportunities for whites. It is perhaps the greatest irony of a Revolution fought in the cause of freedom, a Revolution that indeed advanced the cause of freedom throughout the world, that the men who carried it out were able to unite against British oppression because they had so completely and successfully oppressed the largest segment of their own laboring population (1976: 182).

The analogies to Athens, well enough understood by a tradition that had followed Aristotle, knew exactly what was at issue in this situation. Athens made citizens of poor people to man the triremes. Would these American citizens be the equivalent of what for Aristotle was "a maritime mob" (*nautikos ochlos*)? Would they, as citizens, do what everyone knew all democracies do? Would they attack the institutions of private property?

Indeed, it is quite impossible to underestimate the importance of Shay's (little!) rebellion in this regard, an event which took place four months after the defunct Annapolis convention and some three months before the historic meeting at Philadelphia. Promoted by Massachusetts' financial policies which had reaped enormous profits for holders of state notes--and had forced farmers into foreclosure, it was, as the leading expert on finance for this period says, "as surely class legislation as any paper money bill."⁷

The trouble had begun in 1782 and accelerated. In the Fall of 1786, farmers began petitioning and obstructing the proceedings of county courts. Governor Bowdoin clamped down, forbidding their assemblies as illegal--even though, as I note next, they were using exactly the same methods as they had used fifteen years earlier against British "tyranny." When Shays led his group of 1100 on the arsenal--their ultimate aims are unclear, Major General Shepherd fired a volley from his cannon. The crowd dispersed and was chased into the snowy woods. No one was hurt; Fourteen captured leaders were sentenced to death, but were later pardoned. Bowdoin lost the next election and the new legislature acquiesced to the demands of the farmers.

Shay's little rebellion did not constitute the people of Massachusetts, still less of New York and the rest of the Confederacy. But Jefferson, in Paris, saw the importance of Shay's little "rebellion" and concluded, rightly, that the new Constitution was the result of "overzealous reaction to...democracy."

Second, the war unleashed democratic ideas. As colonial authority was collapsed, it is sometimes said that the colonists had returned to "a state of nature." This was hardly the case. Yet, as Palmer emphasizes:

Governors, unable to control their assemblies, undertook to disband them, only to see most of the members continue to meet as unauthorized congresses and associations; or conventions of counties unknown to law, choose delegates to such congresses for provinces as a whole; or local people forcibly prevented the sitting of law courts...Violence spread, militias formed, and the Continental Congress called into the existence a Continental army.⁸

The first Congress had developed out of these "extra-legal" provincial conventions and committees of correspondence. The idea was not to form a new government but to institutionalize a common front for ongoing negotiations; then after the fissure, to field an army. What needs to be emphasized here is that despite huge wartime problems, the Confederation worked.⁹ The peace brought unique conditions and unique opportunities.

As Bailyn emphasized, even prior to the war the American experience had led the colonies to move in directions opposite from Britain. As he writes: the Americans,

starting with seventh century assumptions, out of necessity...drifted backward, as it were, toward the medieval forms of attorneyship in representation....The colonial town and counties...were largely autonomous, and they stood to lose more than they were likely to gain from a loose acquiescence in the action of central government.¹⁰

Localism, the aggrandizement of government in the legislative body--contrary to the teachings of Montesquieu and Harrington regarding "balanced government"--and a shift in the meaning of representation, were all signs of what had been traditionally recognized as shifts toward democracy. The shift in the idea of representation brings the foregoing together and takes us to the heart of Sandel's ideas regarding both "self-rule" and "civic virtue."

A debate in Maryland in 1785 makes clear that during this period, Americans articulated two distinct and incompatible meanings of the word "represent." In one sense, a representative could be defined, as in Hobbes and Locke, in terms of his authority. In this sense, as in Hobbes and Locke, we "consent" and thus create his authority. Even if the representative is elected (and he need not be), he acted *for* the people. By contrast a representative could be conceived merely as an agent, "a servant of the people," elected and controlled by those he represents in the sense that he is "instructed" by them. In this sense, the people retained their power. Sovereignty was, in this sense, as Rousseau had put it, inalienable.¹¹

The Maryland House of Delegates had acted in favor of "an emission of credit," legislation in favor of the debt-ridden farmers, but the Senate had refused to ratify it. Did the people then have a right to instruct their representatives in the upper house? The defenders of instruction held, rightly, that during the time Maryland had been a colony, it is was not denied, even by the Crown, that members of the lower house, the House of Delegates, were bound by their instructions from the people. During British rule, of course, the people had no claims on representatives on members of the upper house, since, of course, they were appointed by the Crown. For Samuel Chase the power to elect implied the power to instruct. If so, then the members of the upper house were also "servants of the people." But if so, as an opponent insisted:

Planters, Farmers, Parsons, Overseers, Lawyers, Constables, Petifoggers, Physicians, Mechanicks, Shopkeepers, Merchants, Apprentices, Watchman, Barbers, Beaux, Drayman, Porters, Labourers, Cobles and Cooks, all are to order the honourable, the legislature of Maryland what they must do upon the most *intricate* questions in government.¹²

But why, within Sandel's frame, should anyone have supposed that these men (sic) had the requisite "civic virtue?" Sandel might not deny this even if he is unable to disengage himself from manifest ideology and to see what was at issue. He writes:

What troubled the revolutionary leaders most of all [which 'revolutionary leaders'?] was the popular politics increasingly practiced in the state legislature. They [the propertied elite?] had assumed that under republican government, a `natural aristocracy' of merit and virtue would replace an artificial aristocracy of heredity and patronage. But in the postrevolutionary state legislatures, the best [sic] did not necessarily rule.... For republican leaders such as Madison, this form of politics amounted to an excess of democracy, a perversion of republican ideals. Rather than governing in a disinterested spirit in behalf of the public good, these representatives of the people *were all too representative--*parochial, small-minded, and eager to serve the private interests of their constituents (p. 128, my emphasis).

This is quite an old story, surely as old as Aristotle, who, at least, made no pretense of being a fan of democracy. As Madison more honestly argued, if you let a majority rule, then since as Aristotle had pointed out, the majority are always poor and they will rule in *their* interests. Better than to have the wealthy minority rule. They will be govern "in a disinterested spirit in behalf of the public good" (sic).

The US Constitution was a marvelous success, of course, even if it foreclosed the possibility that America might have had a far stronger democracy. But it was a huge success also in that, designed explicitly to undermine "self-rule," it came to be thought of as a democracy--indeed, a democratic model for the world.

Although there is no space here to tell this story in an adequate way, three facts seems central. First, as Gordon Wood has demonstrated, the biggest stumbling block for the Nationalists was the problem of sovereignty. How could there be one supreme legislature in each state *and* a

federal government which could make laws which superseded those of the individual states? The invention of the idea of "the sovereign people", which, remarkably, was offered as a solution to side-stepping the mandated ratification process, was a stunning achievement. The existing law had required that the new document be returned to state legislatures for approval. But it almost certain that these bodies would not have approved of it. In defense of the revolutionary act of bypassing state legislatures, Madison offered what seemed to be an obvious revolutionary justification: "The people were, in fact, the fountain of all power...They could alter constitutions as they see as they please..." As Wood argues, "relocating sovereignty in the people by making them 'the fountain of all power' seemed to make sense of the entire system."¹³ It is difficult, I think, to underestimate the ideological power of this idea. Henceforth, governments could be democracies if power "originated in" or "derived from" the sovereign people.

Second, although this has been obfuscated since, it is clear that there were plenty of people present at Philadelphia who had a clear grasp of the difference between the Confederacy under the Articles and the Virginia plan which subsequently was adopted. Mason contended, for example, that "under the existing Confederacy, Cong[ress] represent[s] the States, not the people of the States; [its] acts operate on States, not on individuals." The New Jersey plan, which was rejected, would have responded to the real flaws in the Articles without in any way compromising this principled difference. Madison and Hamilton will, of course, convince Americans--including many legal scholars (and likely also Sandel?) that "in principle" there was no difference.

Indeed, ironically, in his concluding chapter, Sandel sees, rightly, that "the hope for self-government lies not in relocating sovereignty but in dispersing it" (p. 345). But it was precisely the "problem" of "dispersed" sovereignty which so exercised the founding fathers-- exactly because it allowed for greater participation by citizens.

The third fact relevant to the idea that a large state can be a democracy as long as "representatives" are elected, evokes a further irony. Sandel is right to appeal to Jefferson as the most democratic of all America's early leaders. As regards the idea of representation, he always avoided the Federalist formula of power "originating" or "deriving from" the people. He always spoke of representatives as delegates, deputies, servants, functionaries or agents. Especially after he left office, he complained bitterly regarding the direction of American politics, that the problem had begun in Philadelphia where the Federalists had "endeavored to draw the cords of power as right as they could obtain them--indeed, as Madison had all but said in the 10th Federalist Paper-- "to lessen the dependence of the general functionaries on their constituents" and "to weaken the means of maintaining a steady equilibrium which the majority of the convention had deemed salutary for both branches, general and local." Moreover, he was persistently localist, insisting that the Montesquievan problem of size had been solved by the idea of layered "federated" jurisdictions from the local to the national.¹⁴

Merrill Peterson has rightly remarked that "men like Jefferson, deceived by the French Revolution,...taught the people to think of their government as a democracy rather than a balanced republic after Adams's vision." His "revolution of 1800" in the hotly ideological election of that year was critical in this. His victory was, as he insisted, "a revolution in the principles of our

government as that of 1776 was in its form." It was, of course, nothing of the kind. The victory of Jefferson, the first of a long series of "republican" victories, was a revolution in ideology.

Sandel's unhistorical reading of "the republican tradition" prevents him seeing any of these remarkable ironies in this. He writes:

Growing doubts about the prospect of civic virtue in the 1780s [growing paranoia that institutional arrangements had unleashed democracy?] prompted two kinds of response--one formative, the other procedural. The first sought, through education and other means, to inculcate virtue more strenuously. The second sought, through constitutional change, to render virtue less necessary (p. 129).

The constitutional change which effectively disempowered citizens is quaintly put:

The republican tradition taught that *a certain distance* between the people and their government was unavoidable, even desirable--provided that distance was filled with mediating institutions that gathered people together and equipped them to share in self-rule (my emphasis).

Indeed, as his historical account of America from Jackson to Kennedy itself decisively shows, once the new constitution was in place, "virtue" was not rendered "less necessary." It was rendered utterly unnecessary.

This is clearest in Sandel's chapter 6, "Free labor versus Wage Labor." Although he lacks the language to say it, Sandel sees in this chapter that the real problem for his "civic republicans" was class: "...they shared the long-standing republican conviction that economic dependence is essential to citizenship" (p. 169). But, of course, with industrial capitalism, if any sense was to be made of the new arrangements, holding firm to this prejudice would have been intolerable. So, "ultimately, the debate over the meaning of free labor would carry American political argument beyond the terms of republican thought..Wage labor is consistent with freedom, they would argue, not because it forms virtuous independent citizens but simply because it is voluntary, the product of agreement between employer and employee" (p. 171). On the one hand, this admission seems utterly inconsistent with this notion that "the formative project" remained alive and well until recently. On the other, that workers were "free" was not only a huge ideological victory but it was perfectly consistent with both a Lockean liberalism in which everybody had property: either in land and productive assets or in their labor and with the redefinition of democracy which had been wrought by the Americans. Henceforth, not only would capitalism be consistent with democracy, but it would come increasingly to be thought of as its ideal political form. With an impotent sovereign people, class struggle could be submerged and deflected.

Much of this was clearly seen by John Dewey. There is some paradox in this also since it is easy to think that Sandel is broadly, at least, in agreement with Dewey.

Dewey, Sandel and Democracy

It is worthwhile perhaps to quote in full Sandel's brief *précis* of Dewey's criticism of political democracy in America. Sandel writes:

The philosopher John Dewey observed that the theory of freely choosing individual self "was framed at just the time when the individual was counting for less in the direction of social affairs, at a time when mechanical forces and vast impersonal organizations were determining the frame of things.... According to Dewey, modern economic forces liberated the individual from traditional communal ties, and so encouraged voluntarist self-understanding, but at the same time disempowered individuals and local political units. The struggle for emancipation from traditional communities was mistakenly "identified with the liberty of the individual as such; in the intensity of the struggle, associations and institutions were condemned wholesale as foes of freedom save as they were products of personal agreement and voluntary choice.

Meanwhile, mass suffrage reenforced (sic) the voluntarist self-image by making it appear as if citizens held the power "to shape social relations on the basis of individual volition. Popular franchise and majority rule afforded the imagination of a picture of individuals in their untrammelled individual sovereign making the state." But this concealed a deeper, harder reality. The "spectacle of `free men' going to the polls to determine by their personal volitions the political forms under which they should live" was an illusion (p. 204).

It is clear enough what Sandel does share with Dewey. Both reject individualistic liberalism. What are the differences?

First, Dewey's critique of liberal ideology involves seeing that "mass suffrage" was an essential part of the alienation of politics, that people come falsely to think that they lived in a democracy in which they were "self-ruled." Dewey knew better. For him, the democratic state, ideologically sustained by individualist philosophy, emerged, contrary to Sandel, for reasons largely unrelated to the goal of realizing self-government. Dewey held, perhaps optimistically, that it tried, at least, "to counteract forces that ...largely determined the possession of rule by accidental and irrelevant factors," and tried, at least, "to counteract the tendency to employ political power to serve private instead of public ends." ¹⁵ But he insisted that it has failed even as regards these limited goals. Not only was the democratic state "grasped and used to suit the desires of the new class of businessmen" (p. 96), but the very forms of political democracy themselves throw up huge barriers in the way of realization of democratic publics. The constitution (despite Jefferson) had become "sacred," private power had been made invulnerable and public power had become firmly entrenched in the hands of a ruling elite.

Second, Dewey's operative theoretical term was publics, not "civic virtue." Dewey was not in the least interested in Sandel's "formative project," the state's obligation to "produce citizens," to cultivate attitudes of disinterested public spirit, to build up fellow-feeling and to articulate and promote common goals and interests. The problem was quite otherwise: It concerned the disintegration, wrought by "economic forces"--Dewey's euphemism for capitalism--of the very conditions for democracy as *a way of life*, an idea which he sharply distinguished from the modern idea of political democracy.

For Dewey, the problem of the public is the present incapacity of interdependent people even to perceive the consequences of "combined action," still less to act collectively regarding their collective interests regarding these consequences. Dewey was in full agreement with Lippmann's trenchant analysis, but refused to accept that nothing could be done. He was interested in "community," but for him communities were constituted "rationally," in terms of the actively articulated goals of conjoint action. Communities in his sense did not involve "identity issues," nor were they constituted emotively or ethnically. Nor surely were they the responsibility of a non-neutral government seeking to enforce or reinforce values taken to be essential to the "nation." These sorts of communities were and are shackles, destructive and not emancipating. The principles which presumably make them essential were rightly delegitimized by liberalism. Reminiscent of Rousseau's scathing attack on Hobbes and Locke and Marx's analysis of alienation, for Dewey:

Where there is conjoint activity whose consequences are appreciated as good by all singular persons who take part in it, and where the realization the good is such as to effect an energetic desire and effort to sustain it in being just because it is a good shared by all, there is in so far a community. The clear consciousness of communal life, in all its implications, constitutes the idea of democracy (p. 149).

Dewey did not, to be sure, offer much in the way of positive help on how we were to overcome those conditions which make impossible the emergence of publics, but as should be clear, the problem is not moral; it is structural and political. Here again we need to be careful in understanding Sandel's remarks, quoted earlier, regarding the idea that the hope for self-government is in dispersing sovereignty.

Sandel sees a "moral defect" in the cosmopolitan ethic (p. 342). Dewey did not. Dewey heaped nothing but scorn on the idea of the Nation and of National Sovereignty, but he did this precisely because its claims were fraudulent and because it served only to promote violence. He approved of a multiplicity of communities and political bodies, but for him, this required a cosmopolitan ethic, exactly because these communities were to be constructed on the basis of perceiving and collectively acting on the consequences of conjoint activities.

Although this is hardly the space to develop the idea, since global capitalism is the main problem, building social movements internationally is now the only strategy. As Dewey said, we already have a Great Society. What is now sorely lacking is a Great Community.

Peter T. Manicas
31 March 1997

Endnotes

1. Compare here Dahl's now classic, *Preface to Democratic Theory* (Chicago: University of Chicago Press, 1956). Dahl agreed with Lippmann that "public opinion" had nothing to do with policy formation, but offered that the institutions of modern democracy did allow citizens "to control leaders." But apart from supporting Ins or Outs, it is hard to see what this could mean. But as with Nozick and Rawls, Dahl's honesty as regards democracy is genuinely refreshing as compared to Sandel.
2. These are quoted from Lippmann's 1922 book, *Public Opinion* (New York: Macmillan, 1954), a brilliant critique of mass media and the implications of this for democracy. Lippmann knew also that when the Founding Fathers went to Philadelphia, they were "determined to outset as far as they could the ideal of self-governing communities in self-contained environments.... The problem, as they saw it, was to restore government against democracy" (p. 278). See below.
3. We are to have sympathy for Robert E. Lee who opposed secession, but concluded that his obligation to Virginia (and to the institution of slavery!!!) was not merely of sentimental import, but had moral force (p. 15).
4. The clause is important and is meant to undercut the old freedom/determinism chestnut. To have agency, we must be free in the sense that whatever we do, we could have done otherwise. That is even acts which are not voluntary in the sense that we were coerced display agency. One can choose even if the only other choice is death. But we must not confused agency with "freedom." See below.
5. The point was made by Ian Shapiro in his excellent *The Evolution of Rights in Liberal Theory* (1986). Sandel seems here to appropriate and extend a version of J.G. A. Pocock, *The Machiavellian Moment* (1975). But a careful reading of Pocock's last chapter (XV) will show, I think, that he does not deny the view shared by Bernard Bailyn, J.R. Pole and Gordon Wood that, as he summarizes matters: "in the period of the making of the Constitution and the Federalist-Republican debate, the civic tradition underwent a transforming crisis and was never the same again; Wood in particular speaks of an 'end of classical politics'" (1975). Put in other terms, the Americans invented modern democracy, surely the most successful version of liberalism to date.
6. For other examples, see p. 70, where he says of a Scalia supreme court argument: "such decisions might seem at odds with the liberalism that asserts the priority of the right over the good. But..." and p. 282, where he asserts that "Johnson's evocation of national community might seem to embrace the nationalizing tradition of progressive reform..." but...
7. See E. James Ferguson, *The Power of the Purse: A History of American Public Finance, 1776-1790* (Chapel-Hill: University of North Carolina Press, 1961), p. 245.

8. Robert R. Palmer, *The Age of Democratic Revolution*, 2 Vols. (Princeton: Princeton University Press, 1969), v. 2. p. 109.
9. Despite overwhelming historical evidence to the contrary, the real "crisis" had nothing to do with sovereignty, finance or commerce, all of which could easily have solved. The bad name given to confederacies by the Americans continues to haunt otherwise intelligent people. For some discussion of this evidence, see my *War and Democracy* (Oxford: Basil Blackwell, 1989). The present movement toward an European Union may overcome this prejudice.
10. Bernard Bailyn, *The Ideological Origins of the American Revolution* (Cambridge: Harvard University Press, 1967). p. 164.
11. We need to keep in mind the relevant numbers here. As Pole notes, the British Parliament had one member for every 14,300 people, while in the colonies, there was one for every 1200. The total number of eligible voters in Pennsylvania was only 90,000. As the democrats insisted (including here, later, Jefferson), far more "direct control" could have been expected.
12. From documents in Melvin Yazawa (ed.), *Representative Government and the Revolution: The Maryland Constitutional Crisis of 1787* (Baltimore: Johns Hopkins University Press, 1975), p. 20.
13. Gordon Wood, *The Creation of the American Republic, 1776-1789* (New York: Norton, 1969), p. 352.
14. But there is some doubt that even as the third President, he ever fully grasped what the Constitution had wrought. There are many texts which support this (including some of those mentioned here), but perhaps the most decisive is his Kentucky Resolution of 1798 which is easily shown to be inconsistent with the Constitution. This was, for this reason, a critical text for later secessionists. For a more thorough account of Jefferson's role in the redefinition of democracy, see Chapter 8 of my *War and Democracy* (1989).
15. *The Public and Its Problems* (Chicago: Swallow Press, 1954), p. 108.