



Michael J.  
**SANDEL**

**D**EMOCRACY'S  
DISCONTENT

**AMERICA  
IN SEARCH  
OF A  
PUBLIC  
PHILOSOPHY**



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# Democracy's Discontent

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America in Search of a Public Philosophy

Michael J. Sandel

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## Preface

Political philosophy seems often to reside at a distance from the world. Principles are one thing, politics another, and even our best efforts to live up to our ideals seldom fully succeed. Philosophy may indulge our moral aspirations, but politics deals in recalcitrant facts. Indeed some would say the trouble with American democracy is that we take our ideals too seriously, that our zeal for reform outruns our respect for the gap between theory and practice.

But if political philosophy is unrealizable in one sense, it is unavoidable in another. This is the sense in which philosophy inhabits the world from the start; our practices and institutions are embodiments of theory. We could hardly describe our political life, much less engage in it, without recourse to a language laden with theory—of rights and obligations, citizenship and freedom, democracy and law. Political institutions are not simply instruments that implement ideas independently conceived; they are themselves embodiments of ideas. For all we may resist such ultimate questions as the meaning of justice and the nature of the good life, what we cannot escape is that we live some answer to these questions—we live some *theory*—all the time.

In this book I explore the theory we live now, in contemporary America. My aim is to identify the public philosophy implicit in our practices and institutions and to show how tensions in the philosophy show up in the practice. If theory never keeps its distance but inhabits the world from

the start, we may find a clue to our condition in the theory that we live. Attending to the theory implicit in our public life may help us to diagnose our political condition. It may also reveal that the predicament of American democracy resides not only in the gap between our ideals and institutions, but also within the ideals themselves, and within the self-image our public life reflects.

Part I of this book took form as the Julius Rosenthal Foundation Lectures at Northwestern University School of Law in 1989. I am grateful to Dean Robert W. Bennett and the faculty for their warm hospitality and searching questions, and also for their permission to incorporate the lectures into this larger project. I also benefited from opportunities to try out portions of this book on faculty and students at Brown University, the University of California at Berkeley, Indiana University, New York University, Oxford University, Princeton University, the University of Utah, the University of Virginia, the Institute for Human Sciences in Vienna, and at sessions of the American Political Science Association, the Association of American Law Schools, the Society for Ethical and Legal Philosophy, and the Harvard University Law School Faculty Workshop. Portions of Chapters 3 and 4 appeared, in earlier versions, in *Utah Law Review*, 1989, pp. 597–615; and in *California Law Review*, 77 (1989), 521–538, respectively.

For generous support of the research and writing of this book, I am grateful to the Ford Foundation, the American Council of Learned Societies, the National Endowment for the Humanities, and Harvard Law School's Summer Research Program. Colleagues in the Department of Government and the Law School at Harvard provided a constant source of stimulating conversation on the themes of this book. I am especially indebted to the Harvard graduate and law students in my course, "Law and Political Theory: The Liberal and Republican Traditions," who subjected my arguments to vigorous critical scrutiny. I owe special thanks to friends who, at various stages of this project, gave me the benefit of extensive written comments on parts or all of the manuscript: Alan Brinkley, Richard Fallon, Bonnie Honig, George Kateb, Stephen Macedo, Jane Mansbridge, Quentin Skinner, and Judith Jarvis Thomson. John Bauer and Russ Muirhead provided research assistance that went far

beyond the gathering of information and did much to inform my thinking. At Harvard University Press, I was fortunate to work with Aida Donald, an exemplary editor and a patient one, and with Ann Hawthorne, who saw the book through its final stages with skill and care. My greatest regret about this book is that my friend and colleague Judith N. Shklar did not live to see it finished. Dita disagreed with much of what I had to say, and yet from my first days at Harvard was a wellspring of encouragement and advice, of buoyant and bracing intellectual camaraderie.

During the time I worked on this book, my sons Adam and Aaron grew from babies to boys. They made these years of writing a season of joy. Finally, this work reflects much that I have learned from my wife, Kiku Adatto, a gifted writer on American culture. She did more than anyone else to improve this book, which I dedicate to her with love.

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# I

## The Constitution of the Procedural Republic





# 1

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## The Public Philosophy of Contemporary Liberalism

Times of trouble prompt us to recall the ideals by which we live. But in America today, this is not an easy thing to do. At a time when democratic ideals seem ascendant abroad, there is reason to wonder whether we have lost possession of them at home. Our public life is rife with discontent. Americans do not believe they have much say in how they are governed and do not trust government to do the right thing.<sup>1</sup> Despite the achievements of American life in the last half-century—victory in World War II, unprecedented affluence, greater social justice for women and minorities, the end of the Cold War—our politics is beset with anxiety and frustration.

The political parties, meanwhile, are unable to make sense of our condition. The main topics of national debate—the proper scope of the welfare state, the extent of rights and entitlements, the proper degree of government regulation—take their shape from the arguments of an earlier day. These are not unimportant topics; but they do not reach the two concerns that lie at the heart of democracy's discontent. One is the fear that, individually and collectively, we are losing control of the forces that govern our lives. The other is the sense that, from family to neighborhood to nation, the moral fabric of community is unraveling around us. These two fears—for the loss of self-government and the erosion of community—together define the anxiety of the age. It is an anxiety that the prevailing political agenda has failed to answer or even address.



Why is American politics ill equipped to allay the discontent that now engulfs it? The answer lies beyond the political arguments of our day, in the public philosophy that animates them. By public philosophy, I mean the political theory implicit in our practice, the assumptions about citizenship and freedom that inform our public life. The inability of contemporary American politics to speak convincingly about self-government and community has something to do with the public philosophy by which we live.

A public philosophy is an elusive thing, for it is constantly before our eyes. It forms the often unreflective background to our political discourse and pursuits. In ordinary times, the public philosophy can easily escape the notice of those who live by it. But anxious times compel a certain clarity. They force first principles to the surface and offer an occasion for critical reflection.

### Liberal and Republican Freedom

The political philosophy by which we live is a certain version of liberal political theory. 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, government 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.<sup>2</sup> Since this liberalism asserts the priority of fair procedures over particular ends, the public life it informs might be called the procedural republic.<sup>3</sup>

In describing the prevailing political philosophy as a version of liberal political theory, it is important to distinguish two different meanings of liberalism. In the common parlance of American politics, liberalism is the opposite of conservatism; it is the outlook of those who favor a more generous welfare state and a greater measure of social and economic equality.<sup>4</sup> In the history of political theory, however, liberalism has a different, broader meaning. In this historical sense, liberalism describes a tradition of thought that emphasizes toleration and respect for individual rights and that runs from John Locke, Immanuel Kant, and John Stuart

Mill to John Rawls. The public philosophy of contemporary American politics is a version of this liberal tradition of thought, and most of our debates proceed within its terms.

The idea that freedom consists in our capacity to choose our ends finds prominent expression in our politics and law. Its province is not limited to those known as liberals rather than conservatives in American politics; it can be found across the political spectrum. Republicans sometimes argue, for example, that taxing the rich to pay for welfare programs is a form of coerced charity that violates people's freedom to choose what to do with their own money. Democrats sometimes argue that government should assure all citizens a decent level of income, housing, and health, on the grounds that those who are crushed by economic necessity are not truly free to exercise choice in other domains. Although the two sides disagree about how government should act to respect individual choice, both assume that freedom consists in the capacity of persons to choose their values and ends.

So familiar is this vision of freedom that it seems a permanent feature of the American political and constitutional tradition. But Americans have not always understood freedom in this way. As a reigning public philosophy, the version of liberalism that informs our present debates is a recent arrival, a development of the last forty or fifty years. Its distinctive character can best be seen by contrast with a rival public philosophy that it gradually displaced. This rival public philosophy is a version of republican political theory.

Central to republican theory is the idea that liberty depends on sharing in self-government. This idea is not by itself inconsistent with liberal freedom. Participating in politics can be one among the ways in which 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 a 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 virtues. But this means that republican politics cannot be neutral toward the values and ends its citizens espouse. The republican conception of freedom, unlike the liberal conception, requires a formative politics, a politics that cultivates in citizens the qualities of character self-government requires.

Both the liberal and republican conceptions of freedom have been present throughout our political experience, but in shifting measure and relative importance. Broadly speaking, republicanism predominated earlier in American history, liberalism later. In recent decades, the civic or formative aspect of our politics has largely given way to the liberalism that conceives persons as free and independent selves, unencumbered by moral or civic ties they have not chosen.

This shift sheds light on our present political predicament. For despite its appeal, the liberal vision of freedom lacks the civic resources to sustain self-government. This defect ill-equips it to address the sense of disempowerment that afflicts our public life. The public philosophy by which we live cannot secure the liberty it promises, because it cannot inspire the sense of community and civic engagement that liberty requires.

How the liberal conception of citizenship and freedom gradually crowded out the republican conception involves two intersecting tales. One traces the advent of the procedural republic from the first stirrings of American constitutionalism to recent debates about religious liberty, free speech, and privacy rights. Another traces the decline of the civic strand of American political discourse from Thomas Jefferson's day to the present.<sup>5</sup>

These stories, taken together, bring to clarity the self-image that animates—and sometimes debilitates—our public life. They do not reveal a golden age when all was right with American democracy. The republican tradition coexisted with slavery, with the exclusion of women from the public realm, with property qualifications for voting, with nativist hostility to immigrants; indeed it sometimes provided the terms within which these practices were defended.

And yet, for all its episodes of darkness, the republican tradition, with its emphasis on community and self-government, may offer a corrective to our impoverished civic life. Recalling the republican conception of freedom as self-rule may prompt us to pose questions we have forgotten how to ask: What economic arrangements are hospitable to self-govern-

ment? How might our political discourse engage rather than avoid the moral and religious convictions people bring to the public realm? And how might the public life of a pluralist society cultivate in citizens the expansive self-understandings that civic engagement requires? If the public philosophy of our day leaves little room for civic considerations, it may help to recall how earlier generations of Americans debated such questions, before the procedural republic took hold. But in order to identify the relevant strands of the story, we need to specify more fully the version of liberalism that informs our present politics.

### The Aspiration to Neutrality

The idea that government should be neutral on the question of the good life is distinctive to modern political thought. Ancient political theory held that the purpose of politics was to cultivate the virtue, or moral excellence, of citizens. All associations aim at some good, Aristotle wrote, and the polis, or political association, aims at the highest, most comprehensive good: “any polis which is truly so called, and is not merely one in name, must devote itself to the end of encouraging goodness. Otherwise, a political association sinks into a mere alliance, which only differs in space from other forms of alliance where the members live at a distance from one another. Otherwise, too, law becomes a mere covenant—or (in the phrase of the Sophist Lycophron) ‘a guarantor of men’s rights against one another’—instead of being, as it should be, a rule of life such as will make the members of a polis good and just.”<sup>6</sup>

According to Aristotle, political community is more than “an association for residence on a common site, or for the sake of preventing mutual injustice and easing exchange.” Although these are necessary conditions for political community, they are not its purpose or ultimate justification. “The end and purpose of a polis is the good life, and the institutions of social life are means to that end.” It is only as participants in political association that we can realize our nature and fulfill our highest ends.<sup>7</sup>

Unlike the ancient conception, liberal political theory does not see political life as concerned with the highest human ends or with the moral excellence of its citizens. Rather than promote a particular conception of



the good life, liberal political theory insists on toleration, fair procedures, and respect for individual rights—values that respect people’s freedom to choose their own values. But this raises a difficult question. If liberal ideals cannot be defended in the name of the highest human good, then in what does their moral basis consist?

It is sometimes thought that liberal principles can be justified by a simple version of moral relativism. Government should not “legislate morality,” because all morality is merely subjective, a matter of personal preference not open to argument or rational debate. “Who is to say what is literature and what is filth? That is a value judgment, and whose values should decide?” Relativism usually appears less as a claim than as a question: “Who is to judge?” But the same question can be asked of the values that liberals defend. Toleration and freedom and fairness are values too, and they can hardly be defended by the claim that no values can be defended. So it is a mistake to affirm liberal values by arguing that all values are merely subjective. The relativist defense of liberalism is no defense at all.

### Utilitarianism versus Kantian Liberalism

What, then, is the case for the neutrality the liberal invokes? Recent political philosophy has offered two main alternatives—one utilitarian, the other Kantian.<sup>8</sup> The utilitarian view, following John Stuart Mill, defends liberal principles in the name of maximizing the general welfare. The state should not impose on its citizens a preferred way of life, even for their own good, because doing so will reduce the sum of human happiness, at least in the long run. It is better that people choose for themselves, even if, on occasion, they get it wrong.

“The only freedom which deserves the name,” writes Mill in *On Liberty*, “is that of pursuing our own good in our own way, so long as we do not attempt to deprive others of theirs, or impede their efforts to obtain it.” He adds that his argument does not depend on any notion of abstract right, only on the principle of the greatest good for the greatest number. “I regard utility as the ultimate appeal on all ethical questions; but it must be utility in the largest sense, grounded on the permanent interests of man as a progressive being.”<sup>9</sup>

Many objections have been raised against utilitarianism as a general doctrine of moral philosophy. Some have questioned the concept of utility and the assumption that all human goods are in principle commensurable. Others have objected that by reducing all values to preferences and desires, utilitarians are unable to admit qualitative distinctions of worth, unable to distinguish noble desires from base ones. But most recent debate has focused on whether utilitarianism offers a convincing basis for liberal principles, including respect for individual rights.<sup>10</sup>

At first glance, utilitarianism seems well suited to liberal purposes. Seeking to maximize overall happiness does not require judging people's values, only aggregating them. And the willingness to aggregate preferences without judging them suggests a tolerant spirit, even a democratic one. When people go to the polls we count their votes, whatever they are.

But the utilitarian calculus is not always as liberal as it first appears. If enough cheering Romans pack the Coliseum to watch the lion devour the Christian, the collective pleasure of the Romans will surely outweigh the pain of the Christian, intense though it be. Or if a big majority abhors a small religion and wants it banned, the balance of preferences will favor suppression, not toleration. Utilitarians sometimes defend individual rights on the grounds that respecting them now will serve utility in the long run. But this calculation is precarious and contingent. It hardly secures the liberal promise not to impose on some the values of others.

The case against utilitarianism was made most powerfully by Immanuel Kant. He argued that empirical principles such as utility were unfit to serve as a basis for morality. A wholly instrumental defense of freedom and rights not only leaves rights vulnerable but fails to respect the inherent dignity of persons. The utilitarian calculus treats people as means to the happiness of others, not as ends in themselves, worthy of respect.<sup>11</sup>

Contemporary liberals extend Kant's argument with the claim that utilitarianism fails to take seriously the distinction between persons. In seeking above all to maximize the general welfare, the utilitarian treats society as a whole as if it were a single person; it conflates our many, diverse desires into a single system of desires. It is indifferent to the distribution of satisfactions among persons, except insofar as this may affect the overall sum. But this fails to respect our plurality and distinct-



ness. It uses some as means to the happiness of all, and so fails to respect each as an end in himself or herself.

In the view of modern-day Kantians, certain rights are so fundamental that even the general welfare cannot override them. As John Rawls writes in *A Theory of Justice*, “Each person possesses an inviolability founded on justice that even the welfare of society as a whole cannot override. . . . The rights secured by justice are not subject to political bargaining or to the calculus of social interests.”<sup>12</sup>

So Kantian liberals need an account of rights that does not depend on utilitarian considerations. More than this, they need an account that does not depend on any particular conception of the good, that does not presuppose the superiority of one way of life over others. Only a justification neutral among ends could preserve the liberal resolve not to favor any particular ends or to impose on its citizens a preferred way of life. But what sort of justification could this be? How is it possible to affirm certain liberties and rights as fundamental without embracing some vision of the good life, without endorsing some ends over others?

The solution proposed by Kantian liberals is to draw a distinction between the “right” and the “good”—between a framework of basic rights and liberties, and the conceptions of the good that people may choose to pursue within the framework. It is one thing for the state to support a fair framework, they argue, something else to affirm some particular ends. For example, it is one thing to defend the right to free speech so that people may be free to form their own opinions and choose their own ends, but something else to support it on grounds that a life of political discussion is inherently worthier than a life unconcerned with public affairs, or on the grounds that free speech will increase the general welfare. Only the first defense is available on the Kantian view, resting as it does on the ideal of a neutral framework.

Now the commitment to a framework neutral with respect to ends can be seen as a kind of value—in this sense the Kantian liberal is no relativist—but its value consists precisely in its refusal to affirm a preferred way of life or conception of the good. For Kantian liberals, then, the right is prior to the good, and in two senses. First, individual rights cannot be sacrificed for the sake of the general good; and second, the principles of justice that specify these rights cannot be premised on any particular vision of