

ATOMIZATION AND “ONE MAN, ONE VOTE”

by

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I. ATOMIZATION

The Supreme Court decisions known collectively as the “one man, one vote” decisions are atomizing American society. The claim is not that the “one man, one vote” decisions are the sole cause of atomization; there are a plethora of atomizing factors. Indeed the “one man, one vote” decisions depend upon and further, many atomizing phenomena. To demonstrate the problem of “one man, one vote” this thesis will first discuss the atomizing phenomena that are used in the cases or furthered by the court cases. After discussing atomizing phenomena, this argument will describe the representation system that existed before the “one man, one vote” decisions. This description will be historical, theoretical, and in specific relation to American politics. The transformation of American representation should be understood as atomizing in and of itself. Finally, this paper will summarize the ‘one man, one vote’ decisions, demonstrate historical inaccuracies in the decisions (that lead to atomization), expose the atomizing assumptions in the decisions, and discuss the atomizing impacts of their mandates.

Atomization: Definition and American Context

Undoubtedly, the causes of atomization are legion. This work does not pretend to make a complete summary of atomization in America. Instead, this thesis will speak to forms of atomization that are related to the “one man, one vote” decisions. Atomization is not a phenomenon unique to America. Some trace the beginning of social disaggregation back to the nation-state itself. Some think atomization is inherent in liberalism. Others think it is the natural ‘progression’ of humanity. It has attracted the attention of theorists spanning the spectrum from John Rawls to Francis Canavan. Allen Ehrenhalt explains the scope of atomization in Western history.

One can argue quite plausibly that the modern history of Western civilization is itself a history of eroding community and authority, reaching back to the reformation, if not further; that the West has spent the last five hundred years moving inexorably away from the values of tribe and hierarchy and village life and toward individualism and the market. Perhaps all we have done since the 1950s is play out the process one generation further.¹

One may be tempted to accept societal atomization; it seems inevitable with five-hundred-years of momentum. Further, this five-hundred year history has brought some positive movements. We no longer have families domineering individuals, or going to war with one another to preserve the societal honor of a member of the family.² However, social atomization has also brought the destruction of identity, confidence, community, and human happiness. Robert Nisbet explains “The modern release of the individual from traditional ties of class, religion, and kinship has made him free.”³ However, Nisbet continues “this freedom is accompanied not by the sense of creative release but by the sense of disenchantment and alienation.”⁴ Man is made to feel alone when stripped of his community. Nisbet argues “the alienation of man from historic moral certitudes has been followed by the sense of man’s alienation from fellow man.”⁵ Atomization strips man of identity and friendship. The lack of association creates a deep longing in the breast of humanity.

This deep psychological longing for membership has generated a crisis of personhood, but also a crisis of nationhood. Alexis De Tocqueville observed the

¹ Alan Ehrenhalt, *The Lost City: The Forgotten Virtues of Community in America* (New York, NY: Basic Books, 1996), 266.

² Carle C. Zimmerman, *Family and Civilization* (Wilmington, DE: ISI Books, 2008), 213.

³ Robert Nisbet, *The Quest for Community: A Study in the Ethics of Order and Freedom* (Wilmington, DE: ISI Books, 2014), 7.

⁴ Ibid.

⁵ Ibid.

fundamental character of Americans labeling them as joiners.⁶ Tocqueville points out that Americans join together to solve most of their problems. Americans join because they do not have an aristocracy, a centralized state, nor even unclassed wealthy people willing to produce societal improvements. Tocqueville proves associations are beneficial to Americans; “in the United States, they associate for the goals of public security, of commerce and industry, of morality and religion.”⁷ Everything was handled in America by cohesive communal organizations. An intact community was essential to Tocqueville’s America.

Associations are so central to the American character the first descriptor of a new despotism that could come to America is its opposite, social isolation. Tocqueville writes “each of them, withdrawn and apart, is like a stranger to the destiny of all the others. . . . he exists only in himself and for himself alone, and if a family still remains for him, one can at least say that he no longer has a native country.”⁸ Interestingly, Tocqueville points out the loss of the concept of citizenship, directly tied to the loss of association. Traditional conceptions of justice, liberty, and equality are existent through and maintained in communities. Americans are dependent upon the institution of community.

Community is in the very DNA of Americans. The American founding should be understood as a bolstering of communal ties, contra to the trend described above. Whereas the king and his state were atomizing American society to govern, American colonists were placing the values of their society around a communal understanding of liberty, virtue, and family. Barry Allen Shain explains the pre-revolution social conditions of America.

⁶ Alexis De Tocqueville, *Democracy in America*, trans. Harvey C. Mansfield and Delba Winthrop (Chicago, IL: University of Chicago Press, 2000), 493.

⁷ Ibid., 181.

⁸ Ibid., 662.

Americans were local communalists who ‘did not espouse the ethic of individualism’ but instead backed a localism that in which freedom ‘was possible only within a community of likeminded men.’ . . . communal political theory in America described two interconnected features of social thought and life. First most Americans were dedicated, in theory and practice, to local rather than central and national political, religious, and economic organization. Second, they insisted that it was the responsibility of these local institutions to shape and make possible their members’ ethical existences.⁹

Freedom was communal. Human thriving and fulfillment depended upon strong communal ties.

Atomization would be very different with this conception of freedom. To have institutions that develop and protect virtue is to have the determination of virtue and vice by an institution above the individual. To insist upon local supremacy is to insist upon local power and authority over individuals. Foundational American communal governance was the antithesis of atomization; where the individual was made subservient to the community in all matters. Familial roles were rigidly enforced. Property ownership was not understood as an end in and of itself, nor was property understood to be for personal development.¹⁰ The head of the household was not given “absolute [property] rights.”¹¹ Shain explicitly elaborates: “It [the right to own property] was a right of stewardship that the public entrusted to an individual, for both private and public benefit. It was a right the public could withdraw if necessary.”¹² A far cry from the modern sense of absolute self-ownership and modern individual political thought.

⁹ Barry Alan Shain, *The Myth of American Individualism: The Protestant Origins of American Political Thought* (Princeton, NJ: Princeton Univ. Press, 1996), 49.

¹⁰ *Ibid.*, 183.

¹¹ *Ibid.*

¹² *Ibid.*

Communal governing rights motivated the American revolution. Shain informs us: “what concerned Americans in their imperial relations was the possibility of British-sponsored enslavement with slavery understood as the absence of political liberty for a corporate body.”¹³ The taxation issues were based on a lack of representation of the community. The issue was not ideological opposition to taxation, but taxation without representation, political representation of the community.

As eluded to above throughout the tumultuous relationship with the British, Americans would regularly speak of slavery. However, they did not mean chattel slavery. With Hamilton quipping “the only ‘distinction between freedom and slavery,’ was that in ‘the former state, a man is governed by the laws to which he has given consent. . . . In the latter, he is governed by the will of another.’”¹⁴ The difference between freedom and slavery is the difference between an opportunity to participate in political decisions and an inability to participate. To be free was to have a community one was able to influence.

There was another function of community that American founders were concerned with losing. Shain writes “those who were ‘inwardly the Servants of Sin, must be outwardly the Servants of Influence,’ and were incapable of enjoying political liberty and unworthy of it.”¹⁵ The level of virtue required to maintain spiritual freedom necessitated the use of intrusive community authority.¹⁶ Not only was the original American way of life and thought antithetical to individualism, but it would also consider today’s individualism to be catering to spiritual slavery. That is slavery to sin and self-fulfillment.

¹³ Ibid., 290.

¹⁴ Ibid., 297.

¹⁵ Ibid., 298.

¹⁶ Ibid., 308.

The original state of America was communal. The ethos of communal unity continued for a significant time. On the eve of the American Civil War, Alexis De Tocqueville wrote “The New England township unites two advantages that, everywhere they are found, keenly excite men’s interest; that is to say: independence and power. It acts, it is true, in a circle that it cannot leave, but its movements within that are free.”¹⁷ American community thus generated a self-interested, community-minded, public spiritedness. Self-interestedness flowered into a sense of ownership of the government and community. Initially, the participation was driven by self-interest –found in a lack of aristocracy, king, or central government-- but upon continued investment and labor, the participant then began to engage out of an attachment to the community. Thus public spiritedness attaches the American to his town and his townsmen beyond his own interests. This communal understanding of life was founded on top of the original system of covenantalism, which will be explained in chapter two.

America was not at risk of atomizing during the colonial era through the civil war. Community connectedness and the importance of community was central to the American identity. Despite this history of communal connectedness, America has not been insulated from the Western atomization as described by Allan Ehrenhalt. Instead, we will now show that American society is being atomized.

Atomization of American Society Quantified

We can observe some of the atomizing through data analysis performed by Robert Putnam. Putnam uses several indicators to track atomization. We will start with his work on voting. Voting is a particularly important community effort, and a decline in

¹⁷ Tocqueville, *Democracy in America*, 63.

community voting signifies apathy for the wellness of the town. It would be hard to imagine a people actively connected with their communities not participating in the molding and shaping of the community leadership. Putnam says, “Voters are more likely to be interested in politics, to give to charity, to volunteer, to serve on juries, to attend community school board meetings, to participate in public demonstrations [etc].”¹⁸

Voting is an important aspect to track regarding atomization.

Voting should be on the rise because some things have changed in America that would lead to increased participation. Despite several movements that should have increased political participation, we have not seen positive increases in voting. In 1960, choosing between Nixon and Kennedy 60.2% of Americans participated in voting.¹⁹ In 1996 less than 49% of voters participated, with participation following the same trend.²⁰ Political knowledge and other political participation has dropped too.²¹ Volunteering and participation in political parties is in sharp decline.²² More than direct political participation, many other forms of communal engagement have declined dramatically.²³ In addition to organizational memberships declining, social surveys have demonstrated informal social activities, fraternal organizations, and other have followed the trajectory of declining engagement within communities.²⁴ Families are demonstrably eating together less.²⁵ Religious participation has been falling since the 60’s. “In short, Americans have been dropping out in droves, not merely from political life, but from

¹⁸ Robert D. Putnam, *Bowling Alone: The Collapse and Revival of American Community* (New York, NY: Simon and Schuster, 2000), 35.

¹⁹ *Ibid.*, 31.

²⁰ *Ibid.*, 32.

²¹ *Ibid.*, 35.

²² *Ibid.*, 38.

²³ *Ibid.*, 41.

²⁴ *Ibid.*, 58

²⁵ *Ibid.*, 100.

organized community life more generally.”²⁶ Religious participation has dropped by roughly 10% from the 60’s to the 90’s.²⁷ Atomization has continued into the late 2010’s and is now reaching levels where public health is becoming a significant concern.²⁸

Julianne Holt-Lunstad, a psychologist at Brigham Young University, she has documented the prevalence of social isolation in 2017. After noting the difficulty of establishing mass statistics in societal connection, Lunstad writes: “Over a quarter of the U.S. population, and 28% of older adults, live alone.”²⁹ According to Lunstad, our most intimate societal organization is failing “more than half the U.S. adult population is unmarried, of which 20% have never married.”³⁰ When people do form societal institutions, they break them says Lunstad “approximately 40% of first marriages and 70% of remarriages end in divorce.”³¹ Lunstad says Americans feel this disassociation, “more than one third of adults over age 45 report being lonely.”³² Social groups have continued to decline, Lunstad summarizes “the majority of American adults do not participate in any kind of social group.”³³ Religious participation is connected with increased sociability; it too is declining in contemporary America. Lunstad shows “less than half of adults participate in a local religious group, and less than a quarter of adults participate in a social club, community group, sports league, or other local group.”³⁴ The families that do exist are smaller; Lunstad informs “the average household size has

²⁶ Ibid., 64.

²⁷ Ibid., 70.

²⁸ Julianne Holt-Lunstad, "The Potential Public Health Relevance of Social Isolation and Loneliness: Prevalence, Epidemiology, and Risk Factors," *Public Policy & Aging Report* 27, no. 4 (2017), 127-130, 127.

²⁹ Ibid., 128.

³⁰ Ibid.

³¹ Ibid.

³² Ibid.

³³ Ibid.

³⁴ Ibid.

decreased.”³⁵ People are not associating with each other personally according to Lunstad, “over the past 2–3 decades, the average size of social networks has declined by one-third and social networks have become less diverse.”³⁶ The cycles of increase and decrease described by Putnam have not returned to increase again. The paper forwards on potential explanation, the creation of “one man, one vote.”

The crucial elements of society, so foundation to the American understanding of life, are weakening. Robert Putnam’s seminal book *Bowling Alone* provides us with an initial account of atomization and modern statistics demonstrate atomization is a continued trend. Before moving into an explanation of atomization, it is vital to paint a picture of intact social life in a modern, post war America.

The Modern Cohesive Community

Before describing a community, we must outline what a community is not. American society is so atomized that it even atomizes its understanding of community. A community should be understood as a group of people with varying ideas, identities, and lifestyles living together and playing different roles in life. In America, we tend to abandon this concept and form lifestyle enclaves, that is to build a ‘community’ out of those who look, think, act, and live as we do. The lifestyle enclave is a consumeristic and individualistic community.³⁷ The lifestyle enclave does not add societal value and in many ways exasperates existing vices of America.

³⁵ Ibid.

³⁶ Ibid.

³⁷ Robert N. Bellah, Richard Madsen, William M. Sullivan, Ann Swidler, and Steven M. Tipton, *Habits of The Heart: Individualism and Commitment in American Life* (New York, NY: Harper and Row Publishers, 1985), 154.

A genuine community is integrated and based upon geographical proximity.

Robert Bellah explains:

Communities, in the sense in which we are using the term, have a history- in an important sense they are constituted by their past-and for this reason we can speak of a real community as a "community of memory," one that does not forget its past. In order not to forget that past, a community is involved in retelling its story, its constitutive narrative, and in so doing, it offers examples of the men and women who have embodied and exemplified the meaning of the community. These stories of collective history and exemplary individuals are an important part of the tradition that is so central to a community of memory. The stories that make up a tradition contain conceptions of character, of what a good person is like, and of the virtues that define such character. But the stories are not all exemplary, not all about successes and achievements. A genuine community of memory will also tell painful stories of shared suffering that sometimes creates deeper identities than success. . . . it will remember stories not only of suffering received but of suffering inflicted.³⁸

A community is an institution that serves as a memory. Communities provide a model for a good person and a bad person. Communities celebrate their excellence and, importantly, remember their vice. A community then allows for the retention and promotion of the good while providing a mechanism for the remembrance and the prevention of the bad.³⁹ Community performs a central function in the maintenance of identity, in shaping humans to the lessons of the past. It allows for moral development.

In chapter three, this paper will focus on the role of communal hierarchy and culture in creating substantive American representation. These communities of memory are essential to the process of creating and maintaining communal values and culture. To illustrate atomization in a way that will allow people to connect with the issue of communal values and hierarchy this paper will be discussing a particular neighborhood in

³⁸ Ibid., 153.

³⁹ Ibid., 153.

Chicago. We will be discussing one section of Chicago to demonstrate the human damage done by atomization. The social transformation of society is breathtaking. We will start our discussion of Chicago with the stories of a ballplayer and a politician. The ball player and politician demonstrate the loyalty and hierarchy capable with communal representation.

In 1975 Chicago a man won election to the House of Representatives promising to uphold community values and standards representing the mayor.⁴⁰ Triumphant Fary proclaimed “I will go to Washington to help represent Mayor Daley . . . for twenty-one years, I represented the mayor in the legislature, and he was always right.”⁴¹ Fary was a community man, a man who owned a tavern in his community, and who maintained loyalty to their values. Fary did what his local community hierarchies told him to do, and for a long time that worked for him. Ehrenhalt informs us “he seemed content voting with leadership, gratified to be part of an ordered political system, content working behind the bar at his tavern when he was not practicing politics.”⁴² Fary followed the rules of his community, and it worked for him, moving from legislator to congressman. However, when communal hierarchy went out of fashion, so too did communal politicians.

Community loyalty existed outside of politics too. A player named Ernie Banks was starting on the Cubs. Ernie won multiple MVP titles with the Cubs but never reached a championship because the rest of his teammates were terrible. Banks’ pay was not great

⁴⁰ Alan Ehrenhalt, *The Lost City: The Forgotten Virtues of Community in America* (New York, NY: Basic Books, 1996), 8.

⁴¹ Ibid.

⁴² Ibid., 9.

because few people bought tickets.⁴³ Banks never publicly requested to go elsewhere and was known for his enthusiasm to play the game with the team that had “lifted him out of the weedy fields of the Negro leagues.”⁴⁴ Banks, like Fary, was loyal to the group of people that made up his team and to the city that supported him.

It is impossible not to compare Banks with the contemporary ballplayer. The modern player would be just as happy to go from New York to Boston for money, then come back to New York if the money was right. Modern ballplayers tremendously out earn Banks but demonstrate a minute fraction of his enthusiasm. Ehrenhalt acknowledges that much of this may be personality but, “Ernie Banks and John Fary lived in a world where choice was much more limited- where those in authority made decisions that the free market now throws open to endless individual reexamination.”⁴⁵ The Banks and Fary patterns have been lost in contemporary America, and indeed, in Chicago.

Like our politician and ball player, America was fundamentally different. “If it is true to say of 1950’s America that it was a world of limited choices, it is also fair to call it a world of lasting relationships.”⁴⁶ Fary, our example politician, operated a bar his father had operated and lived atop the saloon. Far from being unique, there was a local bar like Fary’s on every block.⁴⁷ However, with all these choices we had a pattern of resolve present in the consumers of the bar. As one can imagine, with bars on every block most residents would have a plethora of choices of bars, even bars within short walks must have been plentiful. However, choice is not what drove the customer base. Ehrenhalt

⁴³ Ibid,

⁴⁴ Ibid., 10.

⁴⁵ Ibid., 11.

⁴⁶ Ibid., 12.

⁴⁷ Ibid., 13.

explains this did not create a mad dash of consumers “Once a customer chose his bar. . . it was his. . . . He didn’t switch to another tavern because he heard that Hamm’s was available on tap for five cents less. . . . They had a different view of what was important in life.”⁴⁸ Similarly, the rest of economic life was based upon habit, not competitive prices. One got to know their grocers, bankers, and gas station attendants. More than mere economic relations, the residents of Chicago had geography based communities, community-based clubs, associations, churches, and schools. These neighborhoods were not lifestyle enclaves, nor were they accommodating to privacy. One such neighborhood was St. Nicks. Communities like these formed and maintained characters like Banks and Fary. Ehrenhalt shows how these communities formed citizens.

To live in a bungalows in St. Nick’s parish was to live in a place where the walls of one’s house did not constitute boundaries, where social life was conducted on the front stoop and in the alley, and where, even inside the house, four or five children in a three bedroom home made privacy a rare commodity. Television was coming to such neighborhoods in the 1950’s, but air-conditioning had not yet arrived, and summer evenings were one long community festival, involving just about everybody on the block and brought to an end only by darkness and the need to go to sleep.⁴⁹

St. Nicks religious life was dominant as well. The chapel, with over 1,000 seats, was filled regularly on the hour with parishioners which were not participants in the singing, or ceremony (which was in Latin) and simply observed the mass and received the Host. The church met in a temporary basement from the 1920’s until their priest got funds to build the church. The labor itself was largely done by unemployed members.⁵⁰ This represents a literal fulfilment of Tocqueville’s description of associational life; as described by Tocqueville.

⁴⁸ Ibid., 13.

⁴⁹ Ibid., 29.

⁵⁰ Ibid., 113.

Americans of all ages, all conditions, and all minds constantly unite. Not only do they have commercial and industrial associations in which all take part, but they also have a thousand other kinds: religious, moral, grave, futile, very general and very particular, immense and very small; Americans use associations to give fêtes, to found seminaries, to build inns, to raise churches, to distribute books, to send missionaries to the antipodes; in this manner they create hospitals, prisons, schools. Finally, if it is a question of bringing to light a truth or developing a sentiment with the support of a great example, they associate. Everywhere that, at the head of a new undertaking, you see the government in France and a great lord in England, count on it that you will perceive an association in the United States.⁵¹

These associations fundamentally powered America, and they depend upon cohesive communities. Keeping in tune with its Tocquevillian life, St. Nick's generated its own social clubs, had an unofficial bar where parishioners met, and engaged some of the more serious members in ritualistic duties within the church.⁵² Rosary Clubs engaged women who were eager to participate. The civic associations were aided by an education system that prepared future generations for civic association.

St. Nick's ran a tuition free, or "virtually free," school that had most of the local parishioners attend it. This school focused in the development of discipline, on rule following, and used plenty of authority. The nuns drilled the students on biblical content and took attendance at Mass. Students were liable for punishment for acts committed outside of the schools and the parents were accepting of the punishment. If a parent complained, the priest was known to throw the parent out of the building.⁵³ Transmitting the cultural importance of Notre Dame, St. Nick's even sponsored elementary football

⁵¹ Tocqueville, *Democracy in America*, 489.

⁵² Ehrenhalt, *The Lost City*, 16.

⁵³ *Ibid.*, 129.

games, and the Father of the parish was at every game and pressuring every parishioner to attend.

St. Nicks neighborhoods were an incredibly safe place to live. There was very little crime, and it was monitored by the throng of stay at home parents.⁵⁴ Still, the threat of violence was concerning to the population, and St. Nick's school sponsored a youth essay contest on youth delinquency.⁵⁵ These were working-class people, firemen and factory workers. These were communities intact.

Chicago does not look like this any longer. Before the community centered around mass. Today, fewer than 6% of attending adults even participate in confession, with multiple confession booths now being used as storage facilities for the church.⁵⁶ Attendance is decent among the elderly, but not what it was when the community was a center.⁵⁷ The school has lost its focus, and now its nun instructors (the last left in the 70's) and has as such lost its focus on the development of discipline in the students. There are no neighborhood gatherings in the summer, or community gatherings. The things folks did in the 50's would appear uncomfortable and foreign to residents today.⁵⁸

The octagon bungalows still stand as they did in the 1950's. . . . But much else is gone: the sociability of the front stoop on summer evenings, the comradery of the back alley as an athletic field, the network of at-home moms who provided an instant neighborhood bulletin board seven days a week. On weekdays now, for long stretches of time, no one walks down the quiet residential streets. That is in part because the older people worry about crime and fear the streets almost as much as they took sustenance from them in the old days.⁵⁹

⁵⁴ Ibid., 97.

⁵⁵ Ibid., 96.

⁵⁶ Ibid., 256.

⁵⁷ Ibid., 257.

⁵⁸ Ibid., 258.

⁵⁹ Ibid., 254.

It is a story repeated all over America. Communities are atomized. Solidarity and meaning are lost. The human cost is huge.

Atomizing the Family

It is not just the communities that are changing, but the foundations of the communities too are morphing. In the following chapter, this thesis will discuss the idea that the family was the smallest political unit in American political representation. The family as the political unit is key to understanding the original representation of America. Original American representation relied upon and reinforced a cohesive understanding of the family. It is necessary to describe the transformation in the family to understand the atomization of and from the “one man, one vote” decisions.

The central unit of politics is the family.⁶⁰ Marriage and love are the core of the family.⁶¹ There are two views of marriage. According to Bellah one view “is a realm of diffuse, enduring solidarity.”⁶² This realm is a realm for peace and tranquility, and it serves to protect the American from their social state. Bellah goes on to comment that the family is the opposite of “the anxiety, competitiveness, and achievement orientation of the occupational realm.”⁶³ The family is “a place where one is unconditionally accepted,”⁶⁴ a place of peace and solidarity and love. Tocqueville describes this view of the American family:

When, on leaving the agitations of the political world, the American returns to the bosom of his family, he immediately meets the image of order and peace. There, all his pleasures are simple and natural, his joys

⁶⁰ Johannes Althusius, *Politica: Politics Methodically Set Forth and Illustrated with Sacred and Profane Examples*, trans. Frederick S. Carney (Indianapolis, In: Liberty Fund: 2013), Kindle Location 1376.

⁶¹ Ibid., Kindle Location 1323.

⁶² Bellah, *Habits of the Heart*, 87.

⁶³ Ibid.

⁶⁴ Ibid.

innocent and tranquil; and as he arrives at happiness through regularity of life, he becomes habituated to regulating his opinions as well as his tastes without difficulty. While the European seeks to escape his domestic sorrows by troubling society, the American draws from his home the love of order, which he afterwards brings into affairs of state.⁶⁵

This older view of the family is a view of protective separation from the outside world. However, it is more than that; it is an understanding of humanity that survives the trends of the culture. The family is also where Americans learn their love for peace and order. The family is the foundation for all people and the politics as a whole.

Parts of America are clearly more secular than in Tocqueville's time. All of America is more consumerist and individualist today than it was when Tocqueville walked the continent. The need for familial protection is significantly greater now than before. But the family is no longer characterized by familial roles, solidarity, peace, order, and tranquility; it is now another center of individual choice. Most of the mechanisms that transmitted mores into men and children are weakened or gone, and the family is no longer meaningfully permanent, with divorce rates ranging from 40 to 50%.⁶⁶ Some of this is due to a transformation in the understanding of the role of the family.

Modernity understands the family different than Tocqueville. Marriage has lost its primary purpose according to Bellah "in the twentieth century, marriage has to some extent become separated from the encompassing context of family in that it does not necessarily imply having children in significant sectors of the middle class."⁶⁷ If marriage is separated from the creation of family, its role is altered fundamentally. Bellah goes on

⁶⁵ Tocqueville, *Democracy in America*, 279.

⁶⁶ American Psychological Association, *Marriage and Divorce*, <http://www.apa.org/topics/divorce>. (accessed 5/10/2018]

⁶⁷ Bellah, *Habits of the Heart*, 89.

“Thus marriage becomes a context for expressive individualism.”⁶⁸ This is a break from the very understanding of marriage.

Indeed, the acts of dedication that allowed for marital success and longevity are now lost to the model of self-autonomy. Bellah explains the transformation of marriage

How is it that one can ‘lose’ oneself in love, and what are the consequences of that loss? . . . Not losing yourself has something to do with having a sense of your own interests. What can be lost are a set of independent preferences and the will to pursue them.. . . giving up one’s self . . . may, in the contemporary middle class, as in Nan’s case, lead to losing precisely the self that was loved-and perhaps losing one’s husband.⁶⁹

From dedication to a preservation of self-interest. From “for this cause shall a man leave father and mother, and shall cleave to his wife: and they twain shall be one flesh,”⁷⁰ to “giving up one’s self.”⁷¹ The change in the role for marriage changes many things.

Society has transitioned. In *Family and Civilization*, Zimmerman creates three ideal models for the family. They are, the trustee family, the domestic family, and the atomistic family. The trustee family can be fairly accurately understood as a clan like organization where the family is the central unit of governance and identity.⁷² The domestic family is still central to a life, but it is in competition with the state, religion, and other groups for purpose and priority. It grants individual freedom, to a degree, and does not condone the family carrying out death penalties.⁷³ The atomistic family is a

⁶⁸ Ibid.

⁶⁹ Ibid., 92.

⁷⁰ Matthew 19:5 (King James Version).

⁷¹ Bellah, *Habits of The Heart*, 92.

⁷² Zimmerman, *Family and Civilization*, 33.

⁷³ Ibid., 33.

family where the individual must be freed from family restrictions and bonds.

Zimmerman explains the atomistic family:

If the trustee family represents the great family, measuring greatness in terms of legal and social power and responsibilities given to the family, the atomistic family represents the great individual, measuring individualism in terms of legal and social power and responsibility given to the individual. In trustee times, the family was held responsible for the individual and the individual was held accountable to the family. In atomistic times, the individual is held responsible for himself and he alone is accountable to the state, or through the state to other persons.⁷⁴

How else could one categorize a family type that is permanent less than half the time, and is plagued by a feeling that it forces people to ‘lose themselves?’ Can the individualized institution protect a society from individualism and consumerism? The atomistic family cannot perform the important task of checking individualism. No American may return to a household of an atomic family, and find peace and order that he seeks to transmit into society. The individual is deprived of non-individualistic solidarity at home.

Atomization also occurs in another way. The loss of a cohesive family makes politics based on family as the smallest unit impossible. A family brought together as a whole may be represented corporately, may protect its members, and it may protect community values. A family entirely concerned with each individual “not losing” themselves is not representable, but rather an aggregation of individual tastes and desires, temporarily joined together for pleasure, and destructible when pleasure leaves. It is a loss of an entity that previously defined society.

⁷⁴ Ibid., 31.

The State

With the family losing authority, the state gains power. The Supreme Court is the state, and the Supreme Court is actively engaged in atomizing society. The state's role in the loss of community authority is rapid, swift, and coercive. The state and its structure is coercive by nature. As Nisbet points out:

The single most decisive influence upon Western social organization has been the rise and development of the centralized territorial state. There is every reason to regard the state in history as, to use a phrase von Gierke applied to Rousseau's doctrine of The General Will, 'a process of permanent revolution.' The conflict between the central power of the political State and the whole set of functions and authorities contained in church, family, guild, and local community has been, I believe, the main source of those dislocations of social structure and uprooting of status which lie behind the problem of community in our age.⁷⁵

Nisbet goes on to inform us that, where society has become weak and where the intermediary associations have failed, the state has grown ever stronger and more influential than ever before.⁷⁶ The state then takes on the roles held by the society, which can be understood by a deep look into the state.

Nisbet carefully lays out several "general characteristics of the state."⁷⁷ Initially, Nisbet says that "the state and society must be sharply distinguished."⁷⁸ The next point is that "the state is not the direct outgrowth of the family, tribe, or local community."⁷⁹ The state grew in "powerful opposition to kinship and other traditional authorities."⁸⁰ Finally, the state should not be understood as mere power, which discredits the power the state

⁷⁵ Nisbet, *The Quest for Community*, 91.

⁷⁶ *Ibid.*, 92.

⁷⁷ *Ibid.*

⁷⁸ *Ibid.*

⁷⁹ *Ibid.*, 93.

⁸⁰ *Ibid.*, 93.

has. Instead, it must be known as “an increasingly popular and ever more cohesive mass relationship.”⁸¹ This powerful, massive organization of individuals is in direct competition with the powers of community. The “one man, one vote” decisions places the individual in sole relation with the state, ceasing the competition with the community. Thus, the individual is ‘liberated’ from community, and in direct relation with the state.

Not only is the state in competition with community, but the competition is motivated by our understanding of man. Nisbet explains “it is this maximization of political power this penetration of the state into intuitional areas formerly autonomous, that lies behind so much of the modern political interest in problems of individual freedom, individual rights, and social equality.”⁸² Ultimately, this conflict for control between family, community, and the state is “the real conflict in modern political history.”⁸³ When the individual is liberated, the community is weakened because the community loses roles delegated to it.

One can see much of this conflict inherent in Social Security. Before Social Security, children provided for elder parents, giving them food and the necessities of life.⁸⁴ There is a certain justice in the inherent debt of a child to a parent for rearing and value installation, but with Social Security, that justice has been denied. At least the obligation for it has been removed.⁸⁵ Instead of a child providing for their parents (as has been seen for millennia) as they age, the omniscient nanny state allocates goods to

⁸¹ Ibid., 94.

⁸² Ibid., 98.

⁸³ Ibid., 100

⁸⁴ William A. Donohue, *The New Freedom: Individualism and Collectivism in the Social Lives of Americans* (New Brunswick, NJ: Transaction Publishers, 1995), 16.

⁸⁵ Ibid, 18.

the elder family members, whilst their children are free to put them in nursing homes. Justice is avoided, the youth are deprived of the memories of the society, and the parent dies alone. Thus, the elderly are ‘liberated’ from dependence upon what they sowed, familial relations are replaced by the state, and the state grows in authority.

Economic Atomization

The state is not the only atomizing institution in American society. Just so, economics atomize American society in several ways. Blame can be placed on the market mechanism itself. The market is not a neutral mechanism, it partly is controlled by the population but it is partly controlling. The market appeals to atomized individuals, and “it hampers us in fulfilling the needs we have as an interconnected people.”⁸⁶ Indeed, the market subsidizes our isolation.⁸⁷ The market produces an abundance of goods that we consume individually and it gives superficial notice to community; it alters the menu of life, and humans are psychologically conditioned to choose what is made most available to them.⁸⁸ This economic individualism prevents a maintenance of community standards; the system plays to the weakness of the community. Schmookler writes “The world of social atoms is not natural, and what it produces is not necessarily right.”⁸⁹ Atomization, is partially brought forward by the continual individualization of the market.

One example of a destroyed set of choices is given by Schmookler, “For all the products and services so lavishly available to us, there is no place you and I can go to buy

⁸⁶ Andrew Bard Schmookler, *The Illusion of Choice: How the Market Economy Shapes Our Destiny* (Albany, Ny: State University of New York Press, 1993), 62.

⁸⁷ *Ibid.*, 62.

⁸⁸ *Ibid.*, 63.

⁸⁹ *Ibid.*, 64.

. . . an intact social community.”⁹⁰ The loss of coherent community may be seen by returning to St. Nicks in Chicago. Intact communal economies are a good contrast to rapidly individualistic economies. In an un-atomized community:

The very act of shopping [i]s embedded in the web of long term relationships between customer and merchant, relationships that [a]re more important than the price of a particular item at a particular time. The sense of permanence that b[i]nd politicians to organizations, or corporations to communities, reache[s] down to the most mundane transactions of neighborhood commercial life.⁹¹

The plethora of choice brought about by the exposure to the market has resulted, in many ways, in the reduction of social environments described above. Today, the bottom line is the bottom line, when it comes to economic exchanges. Today the economic reality for most Americans is not an economic operating on rich social webs, instead individuals seek out the best product for the best price and are perfectly willing to change stores at the drop of a hat to save a few dollars.

Obviously the loss of these solidaristic associations is atomizing, but the comfort of individual shopping is itself atomizing. As Cross informs us, “Consumer goods allowed Americans to free themselves from their old, relatively secure but closed communities and enter the expressive individualism of a dynamic ‘mass’ society.”⁹² This freedom yielded greater expression, greater choice, less authority, and more atomization. Partially through the market, the community is alleviated of its authority. But it’s not a rapid or forceful loss, it is instead, a slow and gradual change.⁹³ Mass consumption

⁹⁰ Ibid., 62.

⁹¹ Ehrenhalt, *The Lost City*, 99.

⁹² Gary S. Cross, *An All-consuming Century: Why Commercialism Won in Modern America* (New York: Columbia University Press, 2002), 02.

⁹³ Ibid.

forwards what Patrick Deneen calls an anti-culture.⁹⁴ Together they combine to degrade community. While “One Man, One Vote” does not directly rely upon economics, situations like St. Nick’s and Pole Town allow for the removal of obstacles to communal destruction. While never rearing its head, the distraction and gradual removal of communal authority lurks underneath the “One Man, One Vote” decisions through every atomizing assumption.

Liberalism

The free-market is an ideological tool of and derived from liberal philosophic thought. The atomization of American society cannot be meaningfully separated from the philosophy of the atomized individuals. Liberalism was originally designed to be significantly more than “bland, permissive tolerance,”⁹⁵ but today that is what remains of liberalism. “The reason . . . will . . . have . . . much to do with the subjectivism that is the essence of liberalism.”⁹⁶ The liberalism of Thomas Jefferson, originating from Locke, included individualism in its thought; indeed, it was a major component. The classical liberalism also included a belief that “there are certain eternal truths transcending individuals independent of either individual will or desire.”⁹⁷ Both are apparent in the Declaration of Independence, and other foundering era documents. The “self-evident” rights emanating from “their creator,” indicates a philosophy rooted in more than nominalism.

⁹⁴ Patrick J. Deneen, *Why Liberalism Failed* (New Haven, Ct: Yale University Press, 2018), 64.

⁹⁵ Francis Canavan, *The Pluralist Game: Pluralism, Liberalism and the Moral Conscience* (Lanham, Md: Rowman and Littlefield, 1995), 115.

⁹⁶ *Ibid.*, 115.

⁹⁷ *Ibid.*, 115

However, a contradiction was destined to produce problems for liberalism. Liberalism then held two contradictory beliefs at the same time: “On the one hand, there is the notion that law is the product of individual wills and the embodiment of individual interests,”⁹⁸ thus an individual direction is given to law. Canavan continues “On the other hand, there is the notion that law is the embodiment of eternal and absolute truths independent of either individual will or interests.”⁹⁹ The glue that held these contradictory views together was a belief that each man possessed a share of divine reason and could use his reason to discern the principles of moral law.¹⁰⁰ A belief in natural law prevented sustained unadulterated liberalism.

Liberalism was driven apart by the loss of its cement. The agent that unbound the ideology is a loss of reason, which leaves nothing else but, hedonism and skepticism. Skepticism is the unwinding of man's ability to know truth. Canavan explains “As people lost confidence in their ability, through reason, to know truths that transcend sense experience, reason became increasingly individualized and moral judgment turned into the mere expression of individual preference.”¹⁰¹ Hedonism is the confusion of morality with pleasure, as made particularly popular by Bentham and Mill. Mill himself wrote that “to desire anything except in the proportion as the idea of it is pleasant is a physical and metaphysical impossibility.”¹⁰² A philosophy that equates the good with pleasure severely limits the scope of reason. The whole realm of judgment on what is good or bad

⁹⁸ Ibid., 116.

⁹⁹ Ibid., 116.

¹⁰⁰ Ibid., 116.

¹⁰¹ Ibid., 116.

¹⁰² Ibid., 117.

for human beings, therefore of normative ethical and political judgment, is closed to reason. Canavan elaborates:

Since the relative worth of different goals cannot be discerned by reason, the political system must populate and equal the worth of all adult citizens' desires. Thus political equality comes to be founded, by default, so to speak, on the subjectivity of all values. . . . The substantive limitations upon subjective interest and will . . . broke down under the pressure of liberal hedonism. Underlying the hedonism and subjectivism of the liberal mind is its individualism; and this in turn springs from its nominalism.¹⁰³

Liberal individualism thus derives rights from skepticism. Only atomized individualism remains from the old liberalism. A world built by a state based upon Lockean liberalism is thus destined to be a world of atomic individualism.¹⁰⁴ A system that cannot identify the good cannot produce the good; a system anchored in confusion must produce more confusion.

There can be no obligation to others when all actions are an expression of will; there can only be mutually agreed upon relations. "The individual must decide upon his own good, because it is so thoroughly his."¹⁰⁵ A community cannot exist without a conception of good and evil. There must be an ordering principle above both equality and liberty to resolve the conflicts in society. Liberty and equality cannot be the high beliefs because they relativize all other thoughts, and undermine each other. America needs a public philosophy that transcends liberty and equality and justifies occasional violations of both.

¹⁰³ Ibid., 118.

¹⁰⁴ Ibid., 118.

¹⁰⁵ Ibid., 119.

Instead, what we have is what Donohue calls “rights mania,”¹⁰⁶ or an endless usurpation of familial and organizational rights by a bureaucracy operating under one million incoherent and inflexible rules, all must be treated equally. Phillip Howard comments “rights are absolute so that choices among conflicting groups never need to be addressed, much less balanced.”¹⁰⁷ Despite its apparent fervor, it is fundamentally incoherent. Kenneth Grasso writes.

This new found emphasis on individual rights and the assertion of their priority over other claims has been paralleled by the rise of ‘a new cultural climate’ in which violations of ‘the right to life’ of unborn children through abortions are justified ‘in the name . . . of individual freedom.’¹⁰⁸ Apparently, the base for inalienable rights does not come from one’s humanity, but rather their ability to verbally lay claim to said right. As argued above, there can be no rights natural to human when rights are based only in hedonism. One shocking realization is that the theory responsible for the incoherent divorcing trend is fundamentally the only ideology that we have in America “Indeed, enlightenment liberalism today supplies both the conceptual framework within we think about politics and the idiom within which our civil conversation is conducted.”¹⁰⁹ There is no escaping the ideology of the liberal individual.

To speak of atomization is to necessitate dealing with the liberal understanding of man. Kenneth Grasso explains “the most striking aspect of enlightenment liberalism’s model of man and society is its individualism.”¹¹⁰ Kenneth Grasso continues modern

¹⁰⁶ Donhue, *Rights Mania*, 29.

¹⁰⁷ Philip K. Howard, *The Death of Common Sense: How Law Is Suffocating America* (New York, NY: Random House Trade Paperbacks, 2011), 185.

¹⁰⁸ Kenneth L. Grasso, “The Triumph of Will: Rights Mania, the Culture of Death, and the the Crisis of Enlightenment Liberalism,” in *A Moral Enterprise: Politics, Reason, and The Human Good: Essays in Honor of Francis Canavan* ed. Kenneth L. Grasso, Robert P. Hunt, and Francis Canavan (Wilmington, De: ISI Books, 2002), 221.

¹⁰⁹ Ibid., 223.

¹¹⁰ Ibid., 224.

liberalisms conception of man can be summarized as “human life has no natural or God-given purposes, but only those which the self chooses for itself.”¹¹¹ Each individual is thus “freed from the sanctions of custom and tradition and inherited status, unbound by moral ties antecedent to choice.”¹¹² This understanding of man inherently violates human nature. As Glendon puts it:

The lack of public discourse regarding responsibility, sociability, and civil society, leaves us to work out our own vision of the kind of people we are and the kind of society we want to become, mainly in terms of the individual, the state, and the market.¹¹³

Glendon’s comment is much the same as Sandel’s musing about the trend. “Unless we think of ourselves as encumbered selves, already claimed by certain projects and commitments, we cannot make sense of these indispensable aspects of our moral and political experience.”¹¹⁴ Individualism is growing more individualistic; it is becoming statist and Americans, by and large, fail to recognize the absolute monopoly liberalism holds over us.

Rights and the Individual

Rights talk is a significant consequence of the dominance of liberalism. As the family has had many transformations that lead to atomization, so have many other entities. Significant among those is the growth of the importance of rights. While many Americans will proclaim a desire to want what St. Nicks had, they may be mistaken. Much of what happens in the St. Nicks of the 50’s violates what Americans understand to

¹¹¹ Ibid., 226.

¹¹² Michael Sandel, *Democracy's Discontent: America In Search of A Public Philosophy* (Cambridge, MA: Harvard University Press, 1998), 12.

¹¹³ Mary Ann Glendon, *Rights Talk: The Impoverishment of Political Discourse* (New York, NY: The Free Press, 1993), 48.

¹¹⁴ Sandel, *Democracy's Discontent*, 14.

be their liberty. Americans understanding of themselves and their property generates a specific conception of the proper role of interference with their private lives. This role of rights is properly understood only when the understanding of the individual is outlined.

Mary-Ann Glendon explains:

The lone rights-bearer of American political discourse is an admirable figure in many ways. Yet he possesses little resemblance to any living man, and even less to most women. When did he ride into town? Where did he come from? And how did he become the protagonist of the American rights story? . . . The origin of all rights, in the Lockean fable, was the “property” a man possessed in his own person in the state of nature. When man enters civil society, the story goes, he gives up only so much of his natural liberty as is necessary for the sake of comfortable self-preservation. . . . the primary end of government is to protect individuals in the enjoyment of their “absolute” rights—which are none other than the “residuum” of natural liberty. A subsidiary task of law (the one that keeps most lawyers busy) is to regulate the rights and duties of individual members of society in their relations to one another.¹¹⁵

The lone rights bearer is a fixture in American political thought. The atomized individual as the holder of rights, is itself a premise for most American political thought.

A philosophic development follows from this basic premise; a right to be left alone.¹¹⁶ But to understand the right to be left alone, we first understand the rights bearer. America displays “extraordinary homage to independence and self-sufficiency, based on an image of the rights-bearer as a self-determining, unencumbered, individual, a being connected to others only by choice.”¹¹⁷ The lone rights bearer was developed and refined through Locke and Blackstone. This conception of the individual would chafe at the restrictions applied by the community upon the individual.

¹¹⁵ Glendon, *Rights Talk*, 49.

¹¹⁶ *Ibid.*, 52.

¹¹⁷ *Ibid.*, 48.

The American image of the rights bearer is not the only source of individualism. Democracy itself creates individualism. Tocqueville writes “I have brought out how, in centuries of equality, each man seeks his beliefs in himself. . . in the same centuries, he turns all his sentiments toward himself alone.”¹¹⁸ In times of aristocracy, men are naturally dependent upon one another and forced to rely upon each other for existence. In democratic times, many men thrive without social networks or societal dependence, and they are naturally tended to isolate. Tocqueville shows democratic times are different “thus not only does democracy make each man forget his ancestors, but it hides his descendants from him.”¹¹⁹ More than the future, democracy hides the present “[democracy] separates him from his contemporaries; it constantly leads him back toward himself alone and threatens finally to confine him wholly in the solitude of his own heart.”¹²⁰ One atom, bouncing freely of any constraint.

Americans thus have a psychology of separation. The isolation of the individual from familial and lifelong community ties significantly results from the individualist viewpoint. This individualism atomizes society by simply not acknowledging the social nature of human beings. William Donohue explains the transition from the atomization discussed above to a demand for a removal of all constraints.

Our longing for freedom without restraint is a natural outgrowth of a society geared toward the unburdening of the individual. Declining family obligations, increasing affluence, and a redistribution of responsibility from the individual to institutions have lessened the need for restraint and ignited a demand for freedom from every conceivable limitation in our lives. The New Freedom tolerates no abridgement of liberty and regards

¹¹⁸ Tocqueville, *Democracy in America*, 419.

¹¹⁹ *Ibid.*, 484.

¹²⁰ *Ibid.*

appeals to the common good as unconscionable infringements upon the rights of the individual. Duty is a chore not worth exercising.¹²¹

Having the liberal view of the world leads us down the atomization path. We adopt public policies that adopt atomization and destroy ethnic communities. We internalize these values and make atomization a virtue. This dynamic can be seen in the world of representation. This individualistic theory results in the world of political representation that destroys and ignores communities. In chapter three we will see the court make many assumptions outlined in this chapter and forward many phenomena also mentioned here. In chapter two we will see how America was established on differing assumptions and obligations.

¹²¹ Donohue, *The New Freedom*, 26.

II. REPRESENTATION, COVENANT, AND COMMUNAL REPRESENTATION

Before turning our attention to how America's movement to a "one man, one vote" model of representation has contributed to atomization, we need to explore the idea of representation in the context of American political tradition. American representation was traditionally localist, federalist, and community-based. The community was able to be represented, not merely in arithmetic relation to its population, but significantly through a connection with its representatives' ties to specific and meaningful communal values. Community organizations brought citizens together in body politic and allowed for an overcoming of social and political tensions. To understand the radical transformation in representation, we must know the concept of representation. After representation is explained, we will theoretically explain a covenantal organization of society. Following a theoretical explanation, we will show the history of covenantalism in America, we will discuss the role of community in governance, and finally, show American communal representation inherent in any organization of America during the time of the founding.

Representation

We live in an era of liberal individualism where many assume the only proper representation is that of an aggregate of individuals. One may call this individual representation. However, representation has the potential to be significantly more than individual representation, and community has an important role in the realization of that potential. Because of the common assumption that individuals are the only entity worthy of representation, we will use Hannah Pitkin and Michael Oakerson to demonstrate that

legislative representation is a community activity and that community activity drives governmental direction.

Hannah Pitkin's theory of representation is vast and inclusive; for the purpose of this work, we will only focus on her legislative political representation theory. The legislative representative has a unique role. The legislator must advocate on behalf of his district, plead with his legislative colleagues to consider their plight, and rule with the interest of the nation in mind.¹²² Voting habits and electoral processes are a familial and communal activity. Pitkin states, "decisions seem to be motivated mainly through contact with primary groups."¹²³ Pitkin goes so far as to say that it is "farfetched"¹²⁴ to imagine a voter challenging a representative over a policy position or vote contradicting familial or communal values, and then being convinced by the politician's answer. The politician in conflict with familial or communal values is likely to be unconvincing; the voter is dependent in his policy preference upon his community and family.¹²⁵ The voter holds his position because of communal standards and, if the politician is out of line with those views he will not convince his voters to see it his way. Community and family are at the heart of legislative representation, but even if they were not, a model of purely rational voter response is impossible to apply to the complex world of the modern legislator.¹²⁶ Representation cannot be broken down to a 1 to 1 action and response. Instead Pitkin argues:

¹²² Hannah Fenichel Pitkin, *The Concept of Representation* (Berkeley, CA: University of California Press, 1967), 218.

¹²³ *Ibid.*, 219.

¹²⁴ *Ibid.*

¹²⁵ *Ibid.*

¹²⁶ *Ibid.*

political representation is . . .the overall structure and functioning of the system, the patterns emerging from multiple activities of many people. It is representation if the people (or constituency) are present in government action, even though they do not literally act for themselves.¹²⁷

As a communal activity, this is representation of corporate entities. I do not mean economic corporation. Rather, I mean groups identified by common identities and cultures being represented as naturally occurring wholes.

According to Oakerson, early Americans established substantive representation in three ways. The first was very limited tenure for elected office.¹²⁸ Short terms kept representatives regularly accountable to their constituents. The second was small communities.¹²⁹ Small, intact, and wholly represented communities allowed for significant representation of culture and values. Third, communities assigned written instructions to their representatives.¹³⁰ By assigning written tasks, communities could direct and instruct their representatives even while they were in Washington. Thus we can see Pitkin's ideal of culture driven representation applied in three ways.

Whereas Pitkin is primarily concerned about outlining the characteristics of representation, Oakerson emphasizes the role of the community. Before elaborating the role of community he argues "electoral representation has limits - that it is necessary but not sufficient- for republican governance."¹³¹ Due to the severe limitations in choice, Oakerson writes "the vote cast both represents and misrepresents the voter."¹³² The only

¹²⁷ Ibid., 222.

¹²⁸ Ronald J. Oakerson "Representation, A Slender Thread?" in *Institutional Diversity in Self-Governing Societies: The Bloomington School and Beyond* ed. Filippo Sabetti, and Dario Castiglione (Lanham, MD: Lexington Books, 2016), 77.

¹²⁹ Ibid.

¹³⁰ Ibid.

¹³¹ Ibid., 73.

¹³² Ibid.

exception is if a voter votes for a candidate that he wholly agrees with but, even that, is not sufficient because the vote is not conditional. The vote cannot be revoked if the politicians go astray from his campaign promises.¹³³ A voter also has a "weak interest"¹³⁴ in developing significant enough political knowledge to understand political events.¹³⁵ Further, the interest is weakened more by the free-rider problem, the tendency for large groups to minimize participation by widely distributing benefits of association and failing to hold members accountable for production of the group.¹³⁶ Besides, electoral representation fails to give the community an active method of directing politicians.¹³⁷ The accountability to public opinion is achieved through "retrospective accountability"¹³⁸ and by opposition research. In other words, there is punishment for the wrong action, but no prior direction toward the right action.¹³⁹ Thus, even with Pitkin's communal representation, if there is only the vote, there is not real representation. No vote is capable of actual representation; elections alone fail to produce self-governance.

As a result of these failings, representation (through voting) is said to affect only one-quarter of the political process.¹⁴⁰ Oakerson states "The process of governance has four distinct dimensions: prescribing, invoking, applying, and enforcing law."¹⁴¹ For a government to be representative, all aspects of these actions must be representative.¹⁴² With one-quarter of the influence a community cannot be said to be self-governing, as

¹³³ Ibid.

¹³⁴ Ibid.

¹³⁵ Ibid.

¹³⁶ Ibid.

¹³⁷ Ibid., 74.

¹³⁸ Ibid.

¹³⁹ Ibid.

¹⁴⁰ Ibid.

¹⁴¹ Ibid.

¹⁴² Ibid.

three-quarters of the process is either not representative or representative of another entity other than the community it serves. An aristocracy, a bureaucracy, or whoever is making three-quarters the decisions should be said to be represented.

In the United States, Oakerson argues, the representation challenge is overcome by a lively public realm.¹⁴³ One of the ways that the public overcomes difficulties in representation is by forming a society of solidarity.¹⁴⁴ By the normal routine of problem-solving, the community learns to empathize with itself. Diverse groups work with each other to establish their values and work through complex situations.¹⁴⁵ This multiplication of institutional representation is mirrored in the structure of American politics itself, where multiple governments (cities, counties, states, and the federal government) all interrelate with each other in designated areas of authority and shared power to represent multiple priorities.¹⁴⁶ Oakerson writes “A republic depends upon representation to bring diverse values onto the legislative agenda for consideration: multiple agency facilitates this process by multiplying the paths of representation.”¹⁴⁷ This includes governmental organizations and organizations outside of governmental responsibility.

This public realm involves itself in elections but is also engaged with other things.¹⁴⁸ Oakerson notes Tocqueville's account of the role representation plays in the jury, thus enabling the majority to enforce the law. Tocqueville is an excellent addition to Oakerson when he states, "the genuine sanction of political laws is therefore found in the

¹⁴³ Ibid., 80.

¹⁴⁴ Ibid., 81.

¹⁴⁵ Ibid., 82.

¹⁴⁶ Ibid., 82.

¹⁴⁷ Ibid.

¹⁴⁸ Ibid., 79.

penal laws, and if the sanction is lacking, the law sooner or later loses its force.”¹⁴⁹ The selection of the jury at random establishes a societal control over the prosecution of criminals and, in far too few cases, the decisions of civil disputes.¹⁵⁰ As noted by Tocqueville, the whole society is included only when democracy is the acting regime. The jury ensures communal representation in the enforcement of laws.

We can see additional representation in the founders’ thoughts on deadly force too.¹⁵¹ Oakerson references this famous passage in the Bill of Rights “A well-regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed.”¹⁵² The Second Amendment, Oakerson argues, is proof of concern over the restriction of military force and a use thereof of the people. He does not cite but could have cited Madison in *Federalist Paper 46* “Extravagant as the supposition is, let it however be made. Let a regular army, fully equal to the resources of the country, be formed”¹⁵³ to invade the states. Madison continues “let it be entirely at the devotion of the federal government; still it would not be going too far to say, that the State governments, with the people on their side, would be able to repel the danger.”¹⁵⁴ Madison cites both the second amendment and the attachment to the community.¹⁵⁵ Thus, The Second Amendment allows for the enforcement of laws and the prevention of an invading force, the latter, of course, would end any political representation.

¹⁴⁹ Tocqueville, *Democracy in America*, 260.

¹⁵⁰ Oakerson, “Representation, A Slender Thread?” 79.

¹⁵¹ Ibid.

¹⁵² James Madison, *The Constitution of The United States*, The Avalon Project, http://avalon.law.yale.edu/18th_century/usconst.asp The Second Amendment. (Accessed 5/10/2018).

¹⁵³ James Madison, *Federalist 46*, The Avalon Project, http://avalon.law.yale.edu/18th_century/fed46.asp paragraph 9. (accessed 5/10/2018).

¹⁵⁴ Ibid.

¹⁵⁵ Ibid.

Finally, the ability to invoke law too was dependent upon the community. Oakerson points to the institution of the grand jury as proof positive that citizens could invoke the law. The Fifth Amendment reads “No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury.”¹⁵⁶ He also cites the First Amendment’s protection of the ability to petition the government.¹⁵⁷ In both cases, the community was represented in the initiation of legal action.

We can thus see that community is involved in legislative representation. Community and familial involvement is key for meaningful self-governance. In addition, we can see that genuine self-governance is dependent upon societal activity. Self-governance depends upon a litany of behaviors that come out of a community. To explain this activity we have to explain community and covenantalism.

Covenant Defined

Covenants are the initial unit of representation in America, they are foundational to the organization of American society. The atomization embedded in “one man, one vote” is directly contrary to the covenants that undergird traditional American representation. Before the “one man, one vote” decisions, the systemic organization of society was rooted in covenantalism. To understand American representation, one must discuss the importance of covenants. According to Elazar a covenant:

involves a coming together of basically equal humans who consent with one another through a morally binding pact supported by a transcendent power, establishing with the partners a new framework or setting them on

¹⁵⁶ Madison, *The Constitution of The United States*, Fifth Amendment.

¹⁵⁷ Oakerson “Representation, A Slender Thread?” 80.

the road to a new task, and which can be dissolved only by mutual agreement of all the parties to it.¹⁵⁸

A covenant involves God and potentially the state, whereas compact uses the state or the community without invoking divine authority.¹⁵⁹ A covenant and a compact are performed in the open, for the public to see. The covenant or compact directs a community and is bound by all participants having sworn to it under a divine authority. The Biblical God was the authority sworn to in America.¹⁶⁰ Compacts and covenants are broadly reciprocal,¹⁶¹ and generate obligations that are "beyond the letter of the law."¹⁶² Compacts and covenants are, therefore "inherently designed to be flexible,"¹⁶³ while a contract is a legalistic agreement designed to create strict adherence to a very finite but tightly enforced set of conditions. Contracts are also done in private and cannot be a public manner. Contracts cannot generate broad reciprocal norms. Covenants and compacts are irreplaceable to local self-governance. A covenant is defined by its moral obligation. Eleazar writes: "in its heart of hearts," the covenant is dependent upon a religious foundation that includes a conception of God. In fact, God is usually "a direct party to, or guarantor,"¹⁶⁴ of the covenant. Covenants were the initial form of agreement that inspired later forms of agreement.

Compacts are derived from covenants. A compact, while performing the same function, is not as dependent upon God as much as it is a legal or social obligation.¹⁶⁵

¹⁵⁸ Daniel Elazar, *Covenant and Commonwealth* (New Brunswick, NJ: Transaction Publishers, 1996), 1.

¹⁵⁹ Ibid.

¹⁶⁰ Ibid.

¹⁶¹ Ibid., 2.

¹⁶² Ibid.

¹⁶³ Ibid.

¹⁶⁴ Ibid.

¹⁶⁵ Ibid.

However, a compact does generate moral norms, as the general spirit of the agreement and not legalistic technicalities as a contract would.¹⁶⁶ Like covenants, compacts are thought of as broadly applicable and matters of principled rules, not technical rules. The compact and contract flow directly from the covenant, as the covenant was the oldest conception of the orders derived from mutual consent.¹⁶⁷

A Political Theory of Community and Covenant

The institution of Covenant must be theoretically explained to grasp the representation that was replaced by “one man, one vote.” Covenantal theory will produce an important contrast to the methodological individualism and metaphysical nominalism at the root of enlightenment liberalism and “one man, one vote.” To theoretically explain covenant, we need to explain community systemically. The use of authority at the lowest practical level is not a pragmatic expression.¹⁶⁸ Instead, granting the smallest possible organization maximum authority over itself is a value-laden statement and practice. The school of thought that understands the smallest social entity as the appropriate authority over its own internal affairs is “commit[ed] both to the centrality of freedom in human social life and to what might be termed institutional pluralism.”¹⁶⁹ This is because man is “the political animal.”¹⁷⁰ Human thriving is dependent upon association and communication of what is “good and evil.”¹⁷¹ The community is initially formed for safety and the production of material goods but maintains existence so humans can live

¹⁶⁶ Ibid.

¹⁶⁷ Ibid.

¹⁶⁸ Kenneth L. Grasso, “The Subsidiary State: Society, the State and the Principle of Subsidiarity in Catholic Social Thought,” in *Christianity and Civil Society: Catholic and Neo-Calvinist Perspective*, ed. Jeanne Heffernan Schindler (Lanham, MD: Lexington Books, 2008), 34.

¹⁶⁹ Ibid., 32.

¹⁷⁰ Aristotle, *Politics*, trans. Ernest Barker (New York: Oxford World’s Classics), 10.

¹⁷¹ Ibid.

under a shared conception of the good.¹⁷² This social nature arises partly from human inability to self-sustain,¹⁷³ but more from the human need for mutual love and obligation to one another.¹⁷⁴ More than a collection of individuals, the smallest necessary entity is the family.¹⁷⁵ Society includes, not only individuals and families, but also groups of fraternal orders, veterans organizations, religious association, and more. Kenneth Grasso elaborates “indeed, in as much as it possesses a pluralist structure—in as much as it is a community of communities—the ‘wholes’ in question include not only individual human persons, but the various groups, the various unities of order, which issue from the social nature of the human person.”¹⁷⁶ From this understanding of human nature, the community is the origin and end of political order, where community can be expected to maintain healthy control of a government. Society thus understood is “a unity of order”¹⁷⁷ a collection of organizations, a vast array of associations compiled of “natural wholes”¹⁷⁸ called human beings, necessary to make these entities complete. Humans cannot be humans without these associations.

Althusius defines politics covenantally in *Politica*.

POLITICS IS THE ART OF ASSOCIATING (consociandi) men for the purpose of establishing, cultivating, and conserving social life among them. Whence it is called ‘sympiotics.’ The subject matter of politics is therefore association (consociatio), in which the symbiotes pledge themselves each to the other, by explicit or tacit agreement, to mutual

¹⁷² Ibid.

¹⁷³ Grasso, “The Subsidiary State,” 33.

¹⁷⁴ Ibid.

¹⁷⁵ Aristotle, *Politics*, 9.

¹⁷⁶ Grasso, “The Subsidiary State,” 34.

¹⁷⁷ Ibid.

¹⁷⁸ Ibid.

communication of whatever is useful and necessary for the harmonious exercise of social life.¹⁷⁹

Althusius is an essential philosopher of representation for both covenantal and communal foundations in America. Althusius explains covenantalism as the core of a Federal system. Althusius is thought by many to be the first Federalist.¹⁸⁰

Finally, the Althusian political order begins with a covenant.¹⁸¹ The Althusian model of government is built upon what he calls symbiotics. Following in the footsteps of Aristotle, and proceeding Tocqueville, Lutz, Elazar and many more, Althusius says that humans are social because they are impotent (to live comfortably) and incapable of independent survival.¹⁸² Deriving from his impotent state man is lead to symbiotic life.¹⁸³ Althusius writes “He is led, and almost impelled, to embrace it if he wants to live comfortably and well, even if he merely wants to live.”¹⁸⁴ Accordingly, he willingly accepts the obligation to aid the community that aids him.¹⁸⁵ Althusius thinks out of this organization comes the conception of citizenship, the conception of governing the community, and “it notes the form and Constitution of the commonwealth by which all associations of the citizen are guided.”¹⁸⁶ The community then produces the organization

¹⁷⁹ Althusius, *Politica*, , Kindle Location 1116.

¹⁸⁰ Alain De Benoist, “The First Federalist: Johannes Althusius,” *Telos: Critical Theory of the Contemporary* 118 (2000): 25-58.

¹⁸¹ Kyle Scott, *Federalism: A Normative Theory and Its Practical Relevance* (New York: Bloomsbury Academic, 2011), Kindle Location 124.

¹⁸² Althusius, *Politica*, Kindle Location 1125.

¹⁸³ Ibid.

¹⁸⁴ Ibid., Kindle Location 1134.

¹⁸⁵ Ibid.

¹⁸⁶ Ibid.

of the person. Althusius maintains this forms an entity seeking the good life.¹⁸⁷ Human inability to survive independently own makes them the political animal.

Francis Scott explains "For symbiotes, there are obligations beyond oneself; there is the community. But the community would not ask a symbiote to do something against himself for the sake of the community. [These relationships are like like] Aristotle[‘s view] of friendship."¹⁸⁸ It is not in accordance with the role of the symbiote and it’s community to hold anything but goodwill for each other. This bond is the origin of political life.¹⁸⁹ Althusius informs us:

From what has been said, we further conclude that the efficient cause of political association is consent and agreement among the communicating citizens. The formal cause is indeed the association brought about by contributing and communicating one with the other, in which political men institute, cultivate, maintain, and conserve the fellowship of human life through decisions about those things useful and necessary to this social life.¹⁹⁰

Unlike Aristotle, however, Althusius had the advantage of living when the idea of the state, independent of church, community, and society existed. In the time of Aristotle religion, society, and governance were all a single and inseparable entity, the polis. This means that Althusius can, and does distinguish between community and state. Althusius also recognized that the state was not the leading association for human flourishing.¹⁹¹ Instead, it was one association among many associations. If we recall that Althusius

¹⁸⁷ Scott, *Federalism*, Kindle Location 142.

¹⁸⁸ Ibid.

¹⁸⁹ Ibid., 148.

¹⁹⁰ Althusius, *Politica*, Kindle Location 1233.

¹⁹¹ Scott, *Federalism*, 156.

places the origin of politics in the community, we may understand that the state is not the primary unit of representation. Another entity is understood to be primary.

Althusius says the family is the ultimate political entity, though it is not entirely political. The family is what allow humans to be political animals and fulfill their nature. "These [families] associations are the seedbed of all private and public associational life."¹⁹² The prioritization of the family is to be taken literally, as Althusius says without these families our understanding of how to associate is "incomplete and defective . . . and cannot be rightly understood without it."¹⁹³ Althusius recognizes parts of family utility are not political.¹⁹⁴ Initially, then, the family is the primary association. However, the associations before the state go beyond the family. The family is the smallest building block, but not the most political.

Althusius does not hold the family as the primary political organization of society. Rather, he is summarized by Scott to say "The civil life is arranged by a collegium."¹⁹⁵ A collegium is an association of non-familial citizens. Althusius defines it "In it three or more men of the same trade, training, or profession are united for the purpose of holding in common such things they jointly profess as duty, way of life, or craft."¹⁹⁶ Althusius understands the family to be a natural organization and the collegium as the foundation of the civil community.¹⁹⁷ The elevation of orders continues, without the first institutions giving up on their authority over their sphere. As Elazar explains:

Althusius' grand design is developed out of a series of building blocks or self-governing cells from the smallest, most intimate connections to the universal commonwealth, each of which is internally organized and linked to the others by some form of consensual relationship. Each is oriented

¹⁹² Althusius, *Politica*, Kindle Location 1365.

¹⁹³ *Ibid.*

¹⁹⁴ *Ibid.*

¹⁹⁵ Scott, *Federalism*, Kindle Location 198.

¹⁹⁶ Althusius, *Politica*, Kinle Location 1399.

¹⁹⁷ *Ibid.*, 1385.

toward some higher degree of human harmony to be attained in the fullness of time.¹⁹⁸

With these structures, we can see that the summary Althusius makes “society develops from private to public association by the definite steps and progressions of small societies.”¹⁹⁹ Public groups “exist when many private associations are linked together for the purpose of establishing an inclusive political order (politeuma).” Althusius gives these associations several names “a community (universitas), an associated body, or the pre-eminent political association.”²⁰⁰ This is a strong institution and it remains in existence so long as there is a member living.²⁰¹ Not only is the institution of the city durable “it [is not] altered by the change of individual persons, for it is perpetuated by the substitution of others.”²⁰² The city and the community transmit their values from generation to generation and thus achieve self-preservation.

This organization preserves the conception of the good by the structuring of society. Althusius explains that “the members of a community are private and diverse associations of families and collegia, not the individual members of private associations.”²⁰³ The associations change the nature of the individual, the people of the community “by their coming together, now become not spouses, kinsmen, and colleagues, but citizens of the same community.”²⁰⁴ We can see a movement here “passing from the private symbiotic relationship, they unite in the one body of a community.”²⁰⁵ The movement from individuals to community creates a particular

¹⁹⁸ Daniel Judah Elazar, *Althusius and The Federal Commonwealth*, Online Library of Liberty: A Collection of Scholarly Works About Individual Liberty and Free Markets, <https://oll.libertyfund.org/pages/althusius-and-the-federal-commonwealth> paragraph 8. (Accessed 4/1/2019)

¹⁹⁹ Althusius, *Politica*, Kindle Location 1480.

²⁰⁰ Ibid.

²⁰¹ Ibid.

²⁰² Ibid.

²⁰³ Ibid., Kindle Location 1500.

²⁰⁴ Ibid., 1499.

²⁰⁵ Ibid.

ownership of the community by the members of the community; at the exclusion of those outside of the community.²⁰⁶ The community, in this communication never forfeits its authority. According to Althusius the head of the community is supreme over single members, but inferior to the association as a whole.²⁰⁷ A community is a corporate entity that represents associations and families, but it is more. A community is a group of groups, bound by a shared consensus of the good and mutual solidarity.

There must be a substantive agreement to form a community, Francis Canavan summarizes that communities are formed “by virtue of what they hold in common”²⁰⁸ including “certain moral values and principals.”²⁰⁹ Every law is a normative value statement, and every legal action and non-action have moral normative consequences in society.²¹⁰ This is relevant because Althusius informs us that “the community is an association formed by fixed laws and composed of many families and collegia living in the same place.”²¹¹ Althusius says this may be also called a city.²¹²

History of Covenantalism in America

With the theory of covenantalism explained, we can move to the history of covenant in America. Understanding the history of such consent forming agreements allows us to see how the institutions were designed to operate. Before the American revolution was conceived of covenants were forming the foundation for American

²⁰⁶ Ibid.

²⁰⁷ Ibid., Kindle Location 1509.

²⁰⁸ Canavan, *The Pluralist Game*., 10.

²⁰⁹ Ibid.

²¹⁰ Canavan, *The Pluralist Game*, 68.

²¹¹ Althuius, *Politica*, 1489.

²¹² Ibid.

society.²¹³ The covenantal tradition morphed into our self-governing documents (the Declaration of Independence, the original state constitutions, the Articles of Confederation and the United States Constitution).²¹⁴ The assertions in the Constitution are fundamental to understanding the document itself. A Constitution is essential to understand because as Lutz demonstrates:

A constitution provides definition for a way of life. It contains the essential political commitments of a people and is a collective public expression of particular importance. One can read a letter to an insight into the mind of an individual, or read a set of treaties and pamphlets to obtain a sense of the range of positions on a particular issue. A constitution, a document of political founding or refounding, however, amounts to a comprehensive picture of a people.²¹⁵

The Constitution enshrines mythic and symbolic language and ideas that give people answers to essential questions and forms a consensus.²¹⁶ Lutz argues “By studying the political documents of a people we can watch the gradual unfurling elaboration and alteration of myths and symbols that define them.”²¹⁷ Lutz turns to pre-Declaration documents, the Declaration, and following Constitutions to trace American meaning. Lutz finds these sources “lead us back to the Covenant Tradition of The Old Testament.”²¹⁸ A brief explanation of the coventalism in core documents will show the place of these institutions in The Constitution itself.²¹⁹ “The early state constitutions did not suddenly spring into being. Neither did the United States Constitution. The continuity was rooted not only in documents and institutions but also in a way of viewing and approaching

²¹³ Donald S. Lutz, *The Origins of American Constitutionalism* (Baton Rouge, LA: Louisiana State University Press, 1988), 6.

²¹⁴ *Ibid.*

²¹⁵ *Ibid.*, 3.

²¹⁶ *Ibid.* 6.

²¹⁷ *Ibid.*

²¹⁸ *Ibid.*, 7.

²¹⁹ Donald S. Lutz, "From Covenant to Constitution in American Political Thought," *Publius: The Journal of Federalism*, 102, (1980): 101-133.

politics.”²²⁰ The documents were formed in several ways. They are all rooted in the covenantal tradition.

One such way is what Lutz call an "organic act."²²¹ These agreements “codifie[d]”²²² a series of compacts and covenants.²²³ In so doing they reaffirmed “oaths upon which the obligation to the community rests.”²²⁴ This is not a replacement of previous agreements, but rather a building of agreements on top of previous agreements. Included in these refoundings are early state constitutions,²²⁵ the Puritan Laws and Liberties (1658), the Connecticut code of laws (1650), and the laws and liberties of Massachusetts (1646).²²⁶ Another method of agreement was a combination.²²⁷ Combinations were understood as “a bringing together of two or more entities into a whole. The banding together or union.”²²⁸ The Mayflower Compact was understood to be a combination by its authors.²²⁹ These agreements were understood as refoundings instead of a new founding of political order.²³⁰ Accordingly, there were "fundamentals" that were thought to be pre-political foundations for later agreements.²³¹ Noteworthy colonial specimens were The Fundamentals of West New Jersey, the New Haven Fundamentals, and the Fundamental Orders of Connecticut.²³² These organizations placed covenant at the heart of the political and social order of America. The early state constitutions were used to inspire The Articles of Confederation

²²⁰ Lutz, *The Origins of American Constitutionalism*, 49.

²²¹ *Ibid.*, 18.

²²² *Ibid.*

²²³ *Ibid.*

²²⁴ *Ibid.*

²²⁵ *Ibid.*

²²⁶ *Ibid.*

²²⁷ *Ibid.*, 19.

²²⁸ *Ibid.*

²²⁹ *Ibid.*

²³⁰ *Ibid.*

²³¹ *Ibid.*

²³² *Ibid.*

and The United States Constitution serve to maintain some of the foundations of covenantalism.²³³

Americans were colonists, but they were given significant latitude over their governance as colonies. They operated from charters written by The King.²³⁴ Lutz writes "the typical charter . . . required that the colonists pledge loyalty to the Crown, but left the design for local government up to the settlers, as long as the law was not contrary to the laws of England."²³⁵ Communities formed to make decisions together.²³⁶ Preoccupation with war, limits to technology, and the distance of England allowed these communities to operate unmolested by the crown.²³⁷ However, there was a problem. These people were not political theorists, they were religious settlers. They thus adopted their religious traditions to politics.²³⁸ Lutz demonstrates the use of these covenantal documents to found these societies.²³⁹ More than join together towns, "Compacts were used . . . to knit settlements together," as an example Lutz uses The Fundamental Orders of Connecticut.²⁴⁰ Thus we see in America a building of order, from small covenants, to regional and state ultimately to national ones, namely, The Declaration of Independence.²⁴¹ Further theoretical explanation is forwarded under the communal representations section of this chapter. According to Lutz:

²³³ Donald S. Lutz, "The United States Constitution as an Incomplete Text," , " *Publius: The Journal of Federalism*, 19, (1989).

²³⁴ Lutz, "From Covenant to Constitution," 128.

²³⁵ Lutz, *The Origins of American Constitutionalism*, 24.

²³⁶ *Ibid.*

²³⁷ *Ibid.*

²³⁸ *Ibid.*

²³⁹ *Ibid.*, 25.

²⁴⁰ *Ibid.*, 31.

²⁴¹ *Ibid.*, 69.

Independence required that the implicit constitutional developments of the colonial era be expressed in working constitutions first at the state level, and then at the national level. The early state Constitutions were the link between colonial and national constitutional development. The Declaration of Independence and The Articles of Confederation were important aspects of the national expression of American constitutionalism. If we are to understand these developments, we must articulate the patterns in American political thinking that flowed through and around the constitutions written between 1776 and 1787.²⁴²

Lutz demonstrates that America was created with a compact, The Declaration, which he thinks was established atop a sea of covenants.²⁴³ Lutz shows that America must be understood as being defined by the Declaration of Independence. Taking it a step further, Elazar demonstrates that the Declaration of Independence is itself a covenant, placing God at the center of the commitment.²⁴⁴ The Declaration ratified by members of the states creates a community of communities, in solidarity and action.²⁴⁵ Lutz has compiled work regarding original American covenants and the national government immediately following the Declaration of Independence.²⁴⁶ The Articles of Confederation were constructed atop the covenantal tradition of the towns they incorporated.²⁴⁷ Following the revolution, more covenants were built off the same covenants that supported the Declaration. The original covenants act as a foundation for political establishment. In addition to the Declaration and the Articles, the Federal Constitution is a partial or incomplete covenant with the state constitutions being necessary for the completion of the covenant. Americans had “a collective experience of writing

²⁴² Ibid.

²⁴³ Donald S. Lutz, "The Declaration of Independence as Part of an American National Compact," *Publius: The Journal of Federalism*, 19 (1989): 41-58, 41.

²⁴⁴ Daniel J. Elazar, *Covenant and Constitutionalism: The Great Frontier and the Matrix of Federal Democracy* (New Brunswick, NJ: Transaction Publishers, 1998), 49.

²⁴⁵ Ibid.

²⁴⁶ Donald S. Lutz, "The Articles of Confederation as the Background to the Federal Republic," *Publius: The Journal of Federalism*, 20, (1990):55-70, 57.

²⁴⁷ Ibid.

documents of political foundation.”²⁴⁸ The American Constitutional tradition was covenantal. In so doing, these historical actions serve a very important function in the American founding.

Like Lutz, Elazar draws the concept of covenant to be central to the idea of America and The West. Elazar argues "The covenants of the Bible are the founding covenants of Western civilization."²⁴⁹ Elazar points out that while there is an obvious relationship with God in the agreements, these covenants were created to "establish lines of authority, distributions of power, bodies politic, and systems of law."²⁵⁰ Elazar compellingly demonstrates that constitutionalism is sprung from covenantalism. The concept of covenant allows the "two faces of politics,"²⁵¹ that is "power and justice,"²⁵² to be tied to a people bound by their shared morality.²⁵³ The rules on justice and power form the people, and patterns of life center around these conceptions in the society. It is this making the covenant the foundation of moral thought that produces it as a foundation, to the political culture and tradition of a people.²⁵⁴

The covenantal tradition manifests itself within the vocabulary and context of the culture. The covenant, through the vocabulary, creates patterns of thought and word that form the method of political thinking in a particular people. This tradition encompasses all activity, especially the tensions between groups and ideas that frames the conversation

²⁴⁸ Lutz, "The Declaration of Independence," 41.

²⁴⁹ Daniel Judah. Elazar, *Covenant and Commonwealth: From Christian Separation through the Protestant Reformation* (New Brunswick, N.J.: Transaction Publishers, 1996), 3.

²⁵⁰ Ibid.

²⁵¹ Ibid., 4.

²⁵² Ibid.

²⁵³ Ibid., 5.

²⁵⁴ Ibid., 6.

of the people. The tradition is used to "keep those principles, relationships, and tensions alive and operational as the body politic confronts changing situations and circumstances."²⁵⁵ The traditions are maintained by bringing the language and values used by a people into the contemporary discussions of modern politics. These discussions will eventually generate texts that present and preserve the tradition for further usage.²⁵⁶

The early American covenants also allowed for communal accountability by upholding foundational values. "A proper covenant not only offers humans the right path or way but provides means for the self-same humans to judge and be judged as to how well they stay on the path or maintain that way."²⁵⁷ While these means produce a path to unification, it also, by necessity recognizes minority and different coalitions within the population, thus making a whole out of two separate parts. The bind of the obligation is explained by the nature of the community "Covenant identity is 'Federal Identity'; that is to say, one's identity is. . . . no longer defined organically at birth . . . but by agreement and the assumption of certain obligations in return for certain liberties."²⁵⁸ These shared values do allow for accountability and interference, but they also produce representation at a community level. These communities can self-direct, compel, and enforce the law. Thus, these covenants generate the concept described by Oakerson and accepted as a requisite for self-governance.

²⁵⁵ Ibid.

²⁵⁶ Ibid., 7.

²⁵⁷ Ibid., 8.

²⁵⁸ Daniel J. Elazar, *Covenant and Constitutionalism: The Great Frontier and the Matrix of Federal Democracy* (New Brunswick, Nj: Transaction Publishers, 1998), 22.

Indeed, covenantalism allowed America to facilitate a wide diversity of thought and creed by creating a federal individualism, or individualism bound by a substantive consensus of the good via community.²⁵⁹ Social solidarity allowed American society to

become a web of individual and communal partnerships in which people link with one another to accomplish a common purpose or to create a common environment without falling into collectivism or allowing individualism to degenerate into anarchy. These links usually manifest themselves in the web of association that we associate with modern society but that is particularly characteristic of covenanted societies such as that of The United States.²⁶⁰

The rich web of associations in The United States is in part thanks to the covenantal origins. Covenantalism created a system of liberty that required free people to accept and live by the moral conditions of the Covenant, and thus allowed for maintenance of the greater good.²⁶¹ Covenantalism produces ordered liberty with consent while maintaining moral standards at the center of a community. Publius comments on the result of a cohesive social doctrine “providence has been pleased to give this one connected country to one united people--a people descended from the same ancestors, speaking the same language, professing the same religion, attached to the same principles of government, very similar in their manners.”²⁶² We can see much of the social cohesion in post-revolutionary America results from the continued transcendent values. George Carey argues:

While not spelled out explicitly in *The Federalists*, an underlying morality, not unlike that alluded to above, is clearly indispensable for the proper operations of the political system designed by the Framers. Moreover, it is a morality that must be perpetuated for the regime to endure. It embraces not only the virtues

²⁵⁹ Ibid., 30.

²⁶⁰ Ibid., 31.

²⁶¹ Ibid., 43.

²⁶² John Jay, *Federalist # 2*, "The Avalon Project, paragraph, http://avalon.law.yale.edu/18th_century/fed02.asp 5. (accessed 4/1/2019]

necessary to avoid divisive factionalism but also specific ‘constitutional’ prescriptions that outline the proper roles, functions, and relationships of the institutions for the system to operate as designed.²⁶³

The transcendent values of the founding covenants are necessary for the continued operation of the resulting government. These Transcendent values are captured and further into founding documents by covenantal agreements.

Elazar points out that federalism, arising through Althusius, was fundamentally different in a critical component from the well-known contract theorists. Althusius treated the family, not the individual, as the basic unit of society.²⁶⁴ Atomization under such a system is impossible, as the smallest political conception is the family. This is critical to understand. Covenantalism was not capable of producing the disorder and murder of the French Revolution, it does not feed Tocqueville's tyranny of the majority, and it does not generate Hobbes' right of nature. It is bound by custom, mores, values, and communities who have consented to these institutions. This binding of meaning in the original and regional language creates a deep tradition that is worth representing.

We have now established the history and the theory that produced communal representation in America. This tradition includes the bonding of families and communities by covenant to each other to form larger communities of communities. By discussing the history and influence of covenantalism and constitutionalism, I have connected communal representation with American origins, pre-founding, and

²⁶³ George W. Carey, “The Constitution and Community,” in *Community and Tradition: Conservative Perspectives on the American Experience*, ed. George W. Carey and Bruce Frohnen (Lanham, Md: Rowman & Littlefield Publishers, 1998), 77.

²⁶⁴ Daniel Elazar, *Covenant and Civil Society Constitutional Matrix of Modern Democracy* (New Brunswick, NJ: Transaction Publishers, 1998), 21.

Constitutional organization. I have found the element to be central to the potential of localism and communal government. The removal of covenantalism would remove the core of social connection. However, in order to talk about the diminished communal connection, we must first discuss the representation brought to a community.

Communal Representation

The American Constitutional system is rooted in communal representation via coventalism. The American system is dependent upon the operation of the community to govern itself, as shown by Oakerson. Indeed, Oakerson says even reform must come from the community organization of The American system.²⁶⁵ Thus, preservation of community is necessary. However, we have yet to substantively deal with the representation of community. Althusius' covenanted communities produce communal representation, as summarized by Alain Benoist.

At the core of such associations, communication is both pliant and extensive. Thus, in law, communication turns the collegial organization into a moral individual capable of expressing the unitary will and of possessing a true corporate autonomy, i.e., the power of jurisdiction over its members by virtue of obligations assumed voluntarily.²⁶⁶

Althusius himself says a community “is called a representational person and represents men collectively, not individually.”²⁶⁷ According to Althusius these bonds form a distinct entity. This then, is the definition of communal representation. The community must be respected as a whole, to be a community properly so called. With this understood as the organization of a community, politics takes a particular meaning. Althusius informs us:

²⁶⁵ Oakerson, “Representation, A Slender Thread?” 96.

²⁶⁶ Benoist, “The First Federalist,” 35.

²⁶⁷ Althusius, *Politica*, Kindle Location 1501.

Political order, in general, is the right and power of communicating and participating in useful and necessary matters that are brought to the life of the organized body by its associated members. It can be called the public symbiotic right. This public symbiotic association is either particular or universal. The particular association is encompassed by fixed and definite localities within which its rights are communicated. In turn, it is either a community (*universitas*)²⁶⁸ or a province.²⁶⁸

This communicating and political order is dependent upon the scale of the city.

Althusius writes “every city is able to establish statutes concerning those things that pertain to the administration of its own matters.”²⁶⁹ However, representation is more than the mere ordering of a city.

Also pertaining to this communication are the right of the vote (*jus suffragii*) in the common business and actions of managing and administering the community, and the form and manner by which the city is ruled and governed according to laws it approves and a magistrate that it constitutes with the consent of the citizens. When, on the contrary, these common rights of the community are alienated, the community ceases to exist.²⁷⁰

The need for communication and the abundance of community values creates several phenomena that aid the community in their preservation and propagation. These phenomena, in turn, move forward the process of community representation and reward citizens and leaders. Though communal representation is established through the actions of the community, these entities are the tools of the community to preserve and project communal values. We can see specific American institutions taking on these roles.

Tocqueville famously noted the American city performed this role.

It is nonetheless in the township that the force of free peoples resides. The institutions of a township are to freedom what primary schools are to science; they put it within reach of the people; they make them taste its peaceful employ and habituate them to making use of it. Without the institutions of a township a nation can give itself a free government, but it

²⁶⁸ Ibid., 1489.

²⁶⁹ Ibid., 1665.

²⁷⁰ Ibid., 1667.

does not have the spirit of freedom. Fleeting passions, the interests of a moment, the chance of circumstances can give it the external forms of independence; but despotism suppressed in the interior of the social body reappears sooner or later on the surface.²⁷¹

We first may see that pre-revolutionary Americans shared the communal understanding of politics. Lutz inform us that “towns were the basic political unit.”²⁷² Because of this these towns scale up as Althusian political theory does “all New England colonies, and thus states, were built from federations of towns.”²⁷³ The towns in this system controlled the first governments by early state Constitutions.²⁷⁴ Essential to remember of original American institution is the fact that “representation in the legislature would be essentially by towns, rather than by the numbers of individuals.”²⁷⁵ The Christianity inherent in this school of thought ensured equal treatment of individuals, but the equal treatment was established through the town.²⁷⁶ Tocqueville too noticed the joining of towns to form larger associations. “Political or administrative life is found concentrated around three sources of action that could be compared to the various nervous centers that make the human body move. At the first stage is the township, higher the county, finally the state.”²⁷⁷ More than a hive of activity, these towns possessed significant characteristics from their covenantal origins.

We should note Tocqueville is in agreement with Aristotle and Althusius on the nature of the city. Tocqueville writes “It is man who makes kingdoms and creates republics; the township appears to issue directly from the hands of God.”²⁷⁸ None the

²⁷¹ Tocqueville, *Democracy in America*, 57.

²⁷² Lutz, *The Origins of American Constitutionalism*, 54.

²⁷³ Ibid.

²⁷⁴ Ibid.

²⁷⁵ Ibid.

²⁷⁶ Ibid.

²⁷⁷ Tocqueville, *Democracy in America*, 56.

²⁷⁸ Ibid., 57.

less, he says in America, the town has a significant distinction. “The institutions of the township in New England form a complete and regular ensemble; they are old; they are strong by law, stronger still by mores; they exert an enormous influence on the entire society.”²⁷⁹ Because of Covenantalism, the town is particularly formidable in America.

Tocqueville continues:

The freedom of a township in the United States therefore flows from the very dogma of the sovereignty of the people; all American republics have more or less recognized this independence; but among the peoples of New England, circumstances have particularly favored its development. In this part of the Union, political life was born in the very bosom of the townships; one could almost say that each of them at its origin was an independent nation. When afterwards the kings of England reclaimed their part of sovereignty, they were limited to taking the central power. They left the township in the state they found it in; now the townships of New England are subjects. . . They therefore did not receive their powers; on the contrary, it was they that seemed to relinquish a portion of their independence in favor of the state—an important distinction that ought to be present in the mind of the reader.²⁸⁰

This independence and authority is what Tocqueville credits with the towns complete domination of its own realm of authority. In other words, the covenantal tradition that formed these New England towns, allowed their residents to establish the local tradition so necessary for the form of government. We see Tocqueville model this power imbalance “In France, the tax collector of the state levies the taxes of the commune; in America, the tax collector of the township levies the tax of the state.”²⁸¹ The town is not subject to state authority, no, the state must depend upon the town for its funds. Tocqueville summarizes again “The New England township unites two advantages that, everywhere they are found, keenly excite men’s interest; that is to say: independence

²⁷⁹ *Ibid.*, 58.

²⁸⁰ *Ibid.*, 62.

²⁸¹ *Ibid.*, 62.

and power.”²⁸² This authority maintains the relationship between the town and the man.²⁸³

Recall, these communities were understood to be essential to human nature. Like Althusius, the conception of the community depended upon a conception of the good. Lutz explains "The American tendency to see their communities as primarily constructed at the local level was based upon a . . . principle that a community has a commonly held set of values, interests and rights distributed through a limited population."²⁸⁴ The dependence upon consent, like Althusius, was upon this conception of the good.²⁸⁵ Consent is impossible without an adequate set of values. Lutz explains small communities were necessary because without an “agreement on basic values, interests, and rights, there could be no community.”²⁸⁶ Lutz says this holds at the national level too.²⁸⁷ Only through this arrangement could Publius label the society “a band of brethren, united to each other by the strongest ties.”²⁸⁸ George Carey explains this was explicitly the role of the community.

Simply put, those of the founding era simply believed that the task of the character formation through education in virtue was the responsibility of the ‘lower,’ or more basic institutions on the hierarchy, that is, church, family, community, and local governments. The responsibility of these institutions extended as well to sustaining and even enhancing the morality necessary for the regime.²⁸⁹

Thus to form this consent, the community must maintain its conception of the good. This consent, which depends on upon local communities, is necessary for American liberty.

²⁸² Ibid., 63.

²⁸³ Ibid., 63.

²⁸⁴ Lutz, *The Origins of American Constitutionalism*, 73.

²⁸⁵ Ibid.

²⁸⁶ Ibid.

²⁸⁷ Ibid.

²⁸⁸ Jay, *Federalist* 2, Paragraph 6.

²⁸⁹ Carey, “The Constitution and Community,” 78.

Lutz clarifies in America there was natural liberty, but more critically, civil liberty which required restrictions made "for the good of the community."²⁹⁰ In these conditions one is restrained by laws, but in civil society, one consents to the laws of restraint and is bettered by the laws, thus one is more free.²⁹¹ Lutz aptly points out that in *Federalist 11* Hamilton asks if "societies of men' not individuals"²⁹² were capable of producing 'good governance."²⁹³ The question was never about individuals. The community was essential to liberty but also virtue. Lutz explains "the community is the primary instrument for eliciting, teaching, nurturing, and protecting the virtue of the people."²⁹⁴ Americans had two similar sounding maxims around the community. Lutz elaborates:

First because human's highest moral and material existence is in communities, and because a community is defined by a commonly held set of values, interests, and rights . . . the people in a community have a common interest in protecting and preserving these values. . . Second when there is a conflict between the values . . . of the community and those of specific individuals . . . those of the community are superior.²⁹⁵

The priority was the community.²⁹⁶ Lutz shows that like Althusius "[Americans] believed that humans develop and maintain their highest moral and material existence on Earth while living in communities."²⁹⁷ Lutz quotes Samuel Williams in 1775 "We cannot therefor either improve or enjoy ourselves as God designed but in a state of society." Likewise citing The Essex results, Lutz points out the founders thought happiness was a result of community.²⁹⁸

²⁹⁰ Lutz, *The Origin of American Constitutionalism*, 73.

²⁹¹ Ibid., 74.

²⁹² Ibid., 78.

²⁹³ Ibid.

²⁹⁴ Ibid., 83.

²⁹⁵ Ibid., 76.

²⁹⁶ Ibid., 71.

²⁹⁷ Ibid., 71.

²⁹⁸ Ibid., 72.

Because communities were central to human existence, in America they were given legal protection. “The early state constitutions, however, protected the rights of local communities rather than the rights of the individuals within them.”²⁹⁹ Lutz says most states included at least one branch of their legislature that was apportioned by city or county.³⁰⁰ Indeed, we will see later The Supreme Court dismantling representation by county and region in State governments in the late 1960s. In his dissent of *Wesberry v. Sanders* (1964) Justice Harlan points out the new standard being created makes most sitting congressmen illegitimate, thus demonstrating communal representation being destroyed by the court.³⁰¹ A far cry from Original intent “it was generally accepted during the founding era that since the legislature was elected by the majority, it embodied popular consent and thus represented the community.”³⁰² We see this expressed by Publius himself “The republican principle demands that the deliberate sense of the community should govern the conduct of those to whom they intrust the management of their affairs.”³⁰³ The legislative tie is dependent upon communal cohesion.

Recall, communities were understood to be central to the preservation of backgrounds and values. According to Lutz “legislators are to be representative of the community by virtue of being made of the same stuff collectively as their constituents. Shared experiences, backgrounds, and values would lead naturally to legislators thinking and feeling like their constituents did.”³⁰⁴ Thus communal representation was inherent in

²⁹⁹ Ibid.

³⁰⁰ Ibid., 65.

³⁰¹ *Wesberry v. Sanders*, 376 U.S. 21.

³⁰² Lutz, *The Origins of American Constitutionalism*, 89.

³⁰³ Alexander Hamilton, *Federalist* # 71, The Avalon Project, http://avalon.law.yale.edu/18th_century/fed71.asp paragraph 2. (accessed March 26, 2019)

³⁰⁴ Lutz, *The Origins of American Constitutionalism*, 90.

any legislative body because the people were understood communally. Publius insists it is of the utmost importance “the cool and deliberate sense of the community ought, in all governments, and actually will, in all free governments, ultimately prevail over the views of its rulers.”³⁰⁵ Thus, ideally the sense of community would be within the legislator.

Communal legislative representation is both theory laden and historic. We've seen communal representation theoretically justified. Historically, "as Gordon S. Wood and others have noted, the colonists regarded the Crown, and the governors it appointed, as the government. The legislature represented the community to the Crown and protected the people from the government. It was not part of the government itself."³⁰⁶ If we take this historical view, and the communal value view, we can certainly understand why most states preserved a country representation system until Leviathan wrapped its tentacles around it. From the theoretical perspective we see how central communal representation was to self-governance.

³⁰⁵ James Madison, *Federalist* # 63, The Avalon Project, http://avalon.law.yale.edu/18th_century/fed63.asp paragraph 7 (accessed March 26, 2019]

³⁰⁶ Lutz, *The Origins of American Constitutionalism*, 152.

III. THE ONE MAN, ONE VOTE DECISIONS AND ATOMIZATION

In the United States today communal representation is effectively prohibited by a series of Supreme Court decisions. The decisions prohibiting communal representation have come to be called the “one man, one vote” decisions. We will begin with a brief outline of the several cases that have produced the “one man, one vote” legacy. The constitutional arguments surrounding “one man, one vote” are outside of the scope of this paper. This paper will focus on the political theory of people and representation embedded in the decisions and the societal consequences of this philosophy. First, I will summarize the pre “one man, one vote” jurisprudence and decisions. Second, I will summarize the “one man, one vote” decisions. Third, I demonstrate the “one man, one vote” decisions are made based on atomizing assumptions. Fourth, I will show the decisions themselves are an atomizing force today.

A Summary of Jurisprudence Before “The One Man, One Vote” Decisions

The “one man, one vote” decisions were a pivotal moment in American jurisprudence. The shift was produced neither by new legal circumstances nor new amendments to the Constitution of the United States. The new jurisprudence was a product of an atomizing tendency in American thought. All the cases creating the “one man, one vote” standard were decided before the Voting Rights Act.³⁰⁷ Thus, the Voting Rights Act is outside the scope of this paper. However, the decisions predating the “one man, one vote” decisions must be understood.

³⁰⁷ The Voting Rights Act was passed in 1965

To demonstrate the novelty of the “one man, one vote” decisions, we will very briefly look to previous judicial decisions dealing with redistricting authority and ‘vote debasement.’ In *Wood v. Broom* (1932) the court declined to override precedent with an unmodified constitution and a complaint resembling the issues that initiated the “one man, one vote” cases. The complaint was centered on the Fourteenth Amendment and an alleged unfair election process that prevented a citizen from running for office.³⁰⁸ In view of the court, as expressed by Chief Justice Hughes, “it is unnecessary to consider the questions raised,”³⁰⁹ because the supervisory power was given to Congress, and Congress had not passed relevant regulations.

In *Colgrove v. Green* (1946), the court heard a case involving the issue of proportional electoral districts. In *Colegrove* the court refused to pass judgment on the issue. Justice Frankfurter states “these are three qualified voters in Illinois districts which have much larger populations than other Illinois Congressional districts. They brought this suit against the governor, the Secretary of State, and the auditor of the State of Illinois . . . to restrain them, in effect, from taking proceedings for an election.”³¹⁰ The circumstances are nearly identical to those heard a few decades later resulted in the “one man, one vote” decisions. Despite the similarities, the “one man, one vote” decisions break with the reasoning in *Colegrove*.

In the court decision *Colegrove* considered itself bound by *Wood*.³¹¹ “The District Court was clearly right in deeming itself bound by *Wood v. Broom*,”³¹² and says it could

³⁰⁸ *Wood v. Broom*, 287 U.S. 1 (October 18, 1932).

³⁰⁹ *Ibid.*, 8.

³¹⁰ *Colegrove v. Green*, 328 U.S. 550 (June 10, 1946).

³¹¹ *Ibid.*

³¹² *Ibid.*, 551.

rest the result on the same case. In *Colegrove* the court held the role of the court is not to engage in legislative apportionment. Justice Frankfurter went farther in the majority opinion:

The appellants urge with great zeal that the conditions of which they complain are grave evils, and offend public morality. The Constitution of the United States gives ample power to provide against these evils. But due regard for the Constitution as a viable system precludes judicial correction. Authority for dealing with such problems resides elsewhere. . . . Courts ought not to enter this political thicket. The remedy for unfairness in districting is to secure State legislatures that will apportion properly, or to invoke the ample powers of Congress. The Constitution has many commands that are not enforceable by courts, because they clearly fall outside the conditions and purposes that circumscribe judicial action.³¹³

Had this precedent held, “one man, one vote” may never have been. The precedent of *Colegrove* was not respected as the court overruled *Colegrove* with “one man, one vote.” It must be noted, that the Constitution was not altered in a relevant matter after *Colegrove* or before *Baker v. Carr* (1962). The changes that lead to the “one man, one vote” precedent were independent of any change to the foundational document. “one man, one vote” did not derive from unanswered questions surrounding legislative apportionment.

A Summary of the “One Man, One Vote,” Decisions

In *Baker* the Supreme Court reversed *Colegrove* without amendment to the American Constitution. The lack of amendment is relevant, as there was no change to the foundational law that formed the decision in *Colegrove*, *Wood*, and many other cases we do not have space to detail. Thus the court used the process of a constitutional change without any change to justify the new standard. “one man, one vote” is a new judicial interpretation independent of textual change. *Baker* did not establish “one man, one vote”

³¹³ Ibid., 556.

but it made legislative apportionment justiciable.³¹⁴ By making the claim of vote debasement a matter for judicial review, the court prepared its own way for “one man, one vote.”

Baker held that appellants did have standing based on ‘an injury’ from numerically unequal districts.³¹⁵ Thus, the district court did have the authority to rule on the case.³¹⁶ Ultimately *Baker* was remanded to the lower courts. *Baker* does not produce new standards or new readings of the apportionment clause, but perhaps *Baker* has the most effect of any decision regarding representation. *Baker* assigns authority given by the Constitution to the Congress to the Supreme Court. Allowing numerically unequal districts to be considered injurious is the beginning of the road to “one man, one vote.”

In *Grey v. Sanders* (1962), the state of Georgia was challenged over the apportionment of its primary elections.³¹⁷ Georgia ran its primary system in a manner that allotted units based both by county and by population.³¹⁸ The county populations were not equally incremental in the requirements for escalation of representation. The requirement for increases in representation per county varied from 5,000 people to 30,000, with the latter necessary for initial increases and the former for additional increases in population.³¹⁹ The complaint was that the increase in population requirements for representation was discriminatory against urban counties.³²⁰ The

³¹⁴ *Baker v. Carr*, 369 U.S. 186 (March 26, 1962).

³¹⁵ *Ibid*

³¹⁶ *Ibid*.

³¹⁷ *Grey v. Sanders*, 372 U.S. 368 (March 18, 1963).

³¹⁸ *Ibid*.

³¹⁹ *Ibid*.

³²⁰ *Ibid*.

Supreme Court makes mostly arithmetic points to establish discrimination. Justice

Douglas writes:

The population of Fulton County, . . . was 556,326; that the residents of Fulton County comprised 14.11% of Georgia's total population . . . the six unit votes of Fulton County constituted 1.46% of the . . . votes . . . Echols County, the least populous county in Georgia, had a population in 1960 of 1,876, or .05% of the State's population, but the unit vote of Echols County was .48% of the total unit vote of all counties in Georgia . . . Thus, one resident in Echols County had an influence in the nomination of candidates equivalent to 99 residents of Fulton County.³²¹

The district court chose to allow the potential for counties as units of representation, stating the ratio must be made to be equal or less than the ration found in the Congress or the Electoral College.³²² The court rejects any such comparison.³²³

Instead, the Court says “Georgia gives every qualified voter one vote . . . in counting those votes, she . . . in end result, weights the rural vote more heavily than the urban vote”³²⁴ The court compares the county unit system to bigotry. “If a state, in a statewide election, weighted the male vote more heavily than the female vote or the white vote more heavily than the Negro vote, none could successfully contend that that discrimination was allowable.”³²⁵ The court uses several analogies that will be discussed later in this paper, then concludes “The conception of political equality . . . can mean only one thing-one person, one vote.”³²⁶ Thus *Grey* attempts to impose its new theory of representation onto American historical documents.

³²¹ Ibid., 371.

³²² Ibid., 372.

³²³ Ibid.

³²⁴ Ibid., 379.

³²⁵ Ibid.

³²⁶ Ibid., 381.

Grey depends upon *Baker* to establish standing.³²⁷ *Grey* also uses *Baker* to maintain that a debasement of the vote is comparable to a denial of the vote.³²⁸ The lower courts made a new and bold claim that the use of the existing apportionment system was a violation of the Equal Protections Clause of the Fourteenth Amendment.³²⁹ Surprisingly, the Supreme Court agreed with the action of the lower court, thereby agreeing that it is a violation of the Equal Protection Clause. The Supreme Court however found the lower court too lenient in setting precedent. The lower court committed the sin of assuming a government based upon state representation³³⁰ would permit the representation given to states to be legitimate. The Supreme Court went further and created a stronger doctrine that became a backbone for “one man, one vote” in the holdings of *Grey*. Justice Douglas writes:

The District Court correctly held that the country unit system, as applied in a statewide election, violates the Equal Protection Clause of the Fourteenth Amendment, but it erred in framing its injunction so that a county unit system might be used in weighing the votes in a statewide election, if the system showed no greater disparity against a county than exists against any State in the conduct of national elections.³³¹

The court struck down –what it held—was a properly decided case, explicitly to produce a broader and heavier handed adherence to its apportionment doctrine. It was not enough to strike down county representation that did not meet the ratios of federal representation; the Court decided it must ban county representation.

In addition to this new standard, *Grey* creates a secondary standard. Justice Douglas writes “once a geographic unit for which a representative is to be chosen and is

³²⁷ Ibid., 373.

³²⁸ Ibid., 386.

³²⁹ Ibid., 379.

³³⁰ Lutz, *The Origins of American Constitutionalism*, 02.

³³¹ *Grey*, 369.

designated, all who participate in the election must have an equal vote.”³³² Finally, we have the concept of “one man, one vote” established in the holdings of *Grey*. Justice Douglas thinks “one man, one vote” is central to the American identity; “the conception of political equality from the *Declaration of Independence*, to Lincoln’s *Gettysburg Address*, to the Fifteenth, Seventeenth, and Nineteenth Amendments can mean one thing—one person, one vote.”³³³ Justice Douglas finds the denial of absolute arithmetic equality to be morally equivalent to discrimination based on gender or race. Thus, we have the name given to these requirements established.

Another case in the “one man, one vote” canon is *Wesberry v Sanders* (1964). *Wesberry* is a case about county apportionment, and like the previous cases, the Supreme Court bases its rulings upon arithmetic equality. As explained by Justice Black “A single Congressman represents from two to three times as many . . . voters as are represented by each of the Congressmen from . . . other . . . districts.”³³⁴ In *Wesberry*, the court is ruling on general elections instead of primary elections.³³⁵ *Wesberry* holds that “the constitutional requirement that representative be chosen ‘by the people of the several states’ means that, as nearly as practicable, one person’s vote in a congressional election is to worth as much as another’s.”³³⁶ This holding was used as precedent of subsequent cases. The court here is not claiming that the votes of two people are equal because both of their communities are represented. Instead, the weight of each vote is demanded to be equal.

³³² *Ibid.*

³³³ *Ibid.*, 381.

³³⁴ *Wesberry v. Sanders*, 376 U.S. 7 (February 17, 1964).

³³⁵ *Ibid.*

³³⁶ *Ibid.*, 2.

As was previously stated, justiciability was established in *Baker*. In *Wesberry* and *Gray* “one man, one vote” and the requisite jurisprudence is initially, but briefly, outlined. *Reynolds v. Sims* (1964) finishes producing the rules of “one man, one vote.” *Reynolds* was another challenge to a county representation system. *Reynolds* is based on *The Fourteenth Amendment*. *Reynolds* further establishes several fundamental changes in the view of voting and suffrage in America. “one man, one vote” is a fundamental redefinition of voting. The holding of *Reynolds* for this paper requires detailed exploration.

The first holding of *Reynolds* as written by Chief Justice Warren, is “The right of suffrage is denied by a debasement or dilution of a citizens vote.”³³⁷ This holding uses the individual as the sole unit for political representation. Chief Justice Warren quotes *Wesberry* emphasizing this point “our Constitution's plain objective’ was that ‘of making equal representation for equal numbers of people the fundamental goal.”³³⁸ Warren applies a litmus test for vote debasement, entirely framed around an individualistic understanding of man and society. In order to consider vote debasement “the rights” must be “individual and personal in nature.”³³⁹ Chief Justice Warren categorically rejects the representation of community or town.³⁴⁰ The single minded focus on percentage and arithmetic as a moral determinant of representation is seen yet again in *Reynolds* “if a state should provide that the votes of citizens in one part of the state should be given two times . . . the weight of votes of . . . another part of the state, it could hardly be contended

³³⁷ *Reynolds v. Sims*, 377 U.S. 555 (June 15, 1964).

³³⁸ *Ibid.*, 560.

³³⁹ *Ibid.*, 561.

³⁴⁰ *Ibid.*

that the right to vote . . . had not been effectively diluted.”³⁴¹ *Reynolds* applies restrictions of dirty tricks, ballot stuffing, unfair poll tests, poll taxes, and the like with traditional districting and constitutional representation.³⁴² The philosophic implications of this holding are significant. Community is made irrelevant in representation. The fundamental organization of American society, as seen in chapter two, cannot exist with this conception of representation.

The initial part of the second holding of *Reynolds* was a rehashing of *Baker*. New ideas are discussed in the second point of the decision. The holding reads “the Equal Protection Clause provides manageable standards for lower courts to determine the constitutionality of a state legislative apportionment scheme.”³⁴³ That is to say, the “No state shall . . . deny to any person within its jurisdiction the equal protection of the laws,”³⁴⁴ which is equated with exactly equal weighing of votes. This may be understood as the transformation from a community representation to the representation of atomized monads; the Constitution must be made to fit the epistemology. The third holding of *Reynolds* is multifaceted. Their first point is a slight elaboration on the second point. The decision reads “the Equal Protection Clause requires substantially equal legislative representation for all citizens in a State regardless of where they reside.”³⁴⁵ This holding is followed by sub points. One such clause is “legislators represent people, not areas.”³⁴⁶ In this clause, we can see some dramatic philosophic shifts. We see a rejection of the

³⁴¹ Ibid., 562.

³⁴² Ibid. 555.

³⁴³ Ibid. 534.

³⁴⁴ Ibid. 593.

³⁴⁵ Ibid. 534.

³⁴⁶ Ibid.

oldest political theory of representation in America, covenantalism. If we view this in direct contradiction with Althusius, Elazar, and Lutz, as explored in chapter two, we should understand this holding to be philosophically transformative. While representation was possible to think about in communal terms before these decisions, this line from *Reynolds* makes methodological individualism the sole possible idea for representation.

The next clause in *Reynolds* is a complete assault upon communal representation. Chief Justice Warren writes, “Weighting votes differently according to where citizens happen to reside is discriminatory.”³⁴⁷ Aristotle informs us that communities are based upon a shared conception of the good.³⁴⁸ As has been made clear by the summary of this decision to this point, Chief Justice Warren understands the good to be only of the atomized individual, and its right to participate in the state. As Robert Nisbet puts it for Warren, each individual must be “free to participate in Leviathan.”³⁴⁹ This conception of the good is not consistent with American history.

According to Barry Allen Shain, in Colonial America, a disagreement regarding religious doctrine often lead to a new settlement of new land.³⁵⁰ Thus, the acceptance or rejection of the conception of the good was determinant of whom was represented. Previously, equal representation was established. This representation was equal regarding an ability to join or be a member of a community and each community was understood as one entity. As we saw in Lutz, the first constitutions used counties as the unity of

³⁴⁷ Ibid.,

³⁴⁸ Aristotle, *Politics*, 10.

³⁴⁹ Nisbet, *The Quest For Community*, 144.

³⁵⁰ Shain, *The Myth of American Individualism*, 67.

legislative apportionment. A county is certainly capable of containing an Althusian organization of organizations.³⁵¹ Neither counties nor towns could be assumed to hold arithmetically equal representation. The reader would be forgiven for doubting if any two counties in any of the fifty states have an arithmetically equal population of residents. This ruling breaks from tradition and the authority of American history. More importantly, this part of the decision attacks historic modes of representation and makes them impossible to maintain. The courts' requirements for districting cannot be made to operate within the historic understanding of representation; a conception of the good cannot be remade and redefined every ten years to match arithmetic equality.

The fourth holding of *Reynolds* also depends upon the Equal Protection Clause. Chief Justice Warren writes "the seats in both houses of a bicameral legislature must . . . be appointed substantially on a popular basis."³⁵² Made clear throughout *The Federalist Papers* is the intentional differentiation of the Senate and the House; this is accomplished through differing apportionment. This is a direct contradiction with the form of representation established by the United States Constitution.³⁵³ However, when defending his position, Chief Justice Warren hinges his defense of bicameralism upon modernity. Warren writes "A prime reason for bicameralism, modernly considered,"³⁵⁴ Warren draws the authority for a Constitutional decision from modernity, not the constitution. The modern concern of bicameralism is, according to Warren, "to ensure mature and deliberate consideration of, and to prevent precipitate action on, proposed legislative

³⁵¹ Althusius, *Politica*, Kindle Location 4422.

³⁵² *Reynolds v. Sims*, 534.

³⁵³ Madison, *The United States Constitution*, Article Two.

³⁵⁴ *Reynolds v Sims*, 576.

measures.”³⁵⁵ Warren goes on to list several categories that could be made to produce what he considers the crucial element of bicameralism, or rather, what the modern concern ought to be. Warren’s view contradicts the founders.

As established by the American Constitution the two congressional legislative chambers were intended to represent entirely different populations; this was partially established by state appointed senators. According to Madison in Federalist 62:

If indeed it be right, that among a people thoroughly incorporated into one nation, every district ought to have a proportional share in the government, and that among independent and sovereign States, bound together by a simple league, the parties, however unequal in size, ought to have an equal share in the common councils, it does not appear to be without some reason that in a compound republic, partaking both of the national and federal character, the government ought to be founded on a mixture of the principles of proportional and equal representation.³⁵⁶

Reynolds breaks sharply from the federal pattern of government and holds states to be more accountable to arithmetic equality than the federal government is. Consequently, it fundamentally destroys the “republican form of government,”³⁵⁷ as conceived by the Founders. If “one man, one vote” were the guiding representative philosophy, we would not have Publius arguing “the parties, however unequal in size, ought to have an equal share in the common councils.”³⁵⁸ This is a rewriting of the concept of representation.

The court argues that states, not counties, hold the sovereignty of the citizens. Chief Justice Warren writes “Political subdivisions of states . . . never have been considered as sovereign entities. . . . they have been traditionally regarded as subordinate

³⁵⁵ Ibid.

³⁵⁶ James Madison, *Federalist* # 62, The Avalon Project, http://avalon.law.yale.edu/18th_century/fed62.asp paragraph 3., (accessed March 31, 2019]

³⁵⁷ Madison, *The United States Constitution*, article 4.

³⁵⁸ Madison, *Federalist* # 62, paragraph 3.

governmental instrumentalities . . . to assist in the carrying out of state governmental functions.”³⁵⁹ As we have seen with Althusius and Lutz, however, the federalist system of the United States originates in what Tocqueville called townships³⁶⁰ and joined themselves together to form county and state entities. This is the original form of representation in America. These are the sources of the identity of the states, the communities forwarding the central consensus of the good. If the states are to maintain any sovereignty they must be allowed to define themselves and to define themselves, they must be allowed to draw on their first identities located in the city and county organizations.

Reynolds states “a state legislature must be apportioned . . . as nearly as practicable, [to have] districts . . . of equal population.”³⁶¹ The decision goes on to claim that there are ways for the states to have “some deviations from a strict equal population principle. . . so long as the basic standard of equality of population among districts is not significantly departed from.”³⁶² The court, seemingly granting leeway to states, quickly backtracks the claim that exceptions may be made.

Citizens, not history or economic interests, cast votes. Considerations of area alone provide an insufficient justification for deviations from the equal population principle. Again, people, not land or trees or pastures, vote. Modern developments and improvements in transportation and communications make rather hollow, in the mid-1960's, most claims that deviations from population-based representation can validly be based solely on geographical considerations.³⁶³

³⁵⁹ *Reynolds v. Sims*, 375.

³⁶⁰ Tocqueville, *Democracy in America*, 57.

³⁶¹ *Reynolds v. Sims*, 534.

³⁶² *Ibid.*, 535.

³⁶³ *Ibid.*, 580

The court is incoherent in the handling of exceptions to what seems to its precedent in *Reynolds*. How one can maintain “as nearly as practicable”³⁶⁴ equality and depart from that standard is not clear. The court initially claims there may be some interest in city representation, but insists not all cities may be represented, because that would lead to inequality amongst individuals. The court’s exception “does not mean that each local governmental unit or political subdivision can be given separate representation . . . a scheme of giving at least one seat in one house to each political subdivision . . . could . . . result, in . . . a total subversion of the equal population principle.”³⁶⁵ However, the court says “ensuring some voice to political subdivisions in at least one body may . . . warrant some deviation from population-based representation in state legislators.”³⁶⁶ If the subdivisions cannot be tied to economic or geographic areas, it is difficult to imagine an effective protection of minority voices; certainly not the traditional protection of covenantalism.

There are two cases that were decided at the same time as *Reynolds*. These two cases clearly show the atomizing effects of the “one man, one vote” decisions. Both deal with state legislative districts. The first is called *WMCA, Inc. v Lomenzo* (1964) and is in New York, and the second is *Lucas v. 44th General Assembly of Colorado* (1963). Both directly involve the apportionment schemes of state legislatures constitutionally established in the state’s Constitution. Recall Lutz’ observation that “after independence, most states adopted bicameral legislatures, and the upper house frequently was apportioned by counties.”³⁶⁷ This thesis also said these counties and towns were

³⁶⁴ Ibid.

³⁶⁵ Ibid., 581.

³⁶⁶ Ibid., 535.

³⁶⁷ Lutz, *The Origins of American Constitutionalism*, 65.

representative because of their common culture and conception of the good.³⁶⁸ In both of the following cases, county and cultural groupings are struck down for arithmetic equality. The point made here is not the appropriate role of decision making, but rather the active destruction of pre-existing communal representation, and thus atomization.

In *WMCA, Inc. v. Lomenzo* (1964), the court addresses a New York redistricting case. The New York system reviewed was another county-based apportionment system. Given the unique difficulties of New York State, one could understand the appropriateness of a county system; with the largest city in the country as part of its population, the state of New York must balance New York City with the rest of the state if culture and way of life were to be represented in the latter.³⁶⁹ Pure arithmetic representation would make non-functional representation of any political culture outside New York City. The court predictably used the above cases to deny the state of New York its chosen apportionment system.³⁷⁰

Lucas v Forty-Fourth General Assembly of Colorado (1964) is another case about state legislative apportionment.³⁷¹ In *Lucas* “one man, one vote” is formed as a judicial rule all must obey, but *Lucas* has a component previously unseen. The representation system struck down in *Lucas* was a constitutional amendment chosen by the people of Colorado. Chief Justice Warren writes “The Colorado electorate adopted proposed Amendment No.7 [the option to have a senate modified by other than popular weight] by a vote of 305,700 to 172,725,”³⁷² that is to say, the people of Colorado wanted to retain

³⁶⁸ *Ibid* 90.

³⁶⁹ *WMCA, Inc. v. Lomenzo*, 377 U.S. 633 (1964)

³⁷⁰ *Ibid*.

³⁷¹ *Lucas v. Forty-Fourth General Assembly of Colorado*, 377 U.S. 717.

³⁷² *Ibid*.

their county representation system by a 2 to 1 margin. The proportion system the court forced upon the state was defeated 311,749 to 149,822 an even larger margin.³⁷³ Twice the citizens of Colorado voted to have county representation, and yet, on the grounds that votes are being debased. The Supreme Court overrode the citizens, to force them to take a system they did not want. In the holding it states “A political remedy such as an initiative . . . has no constitutional significance if the plan does not meet equal protection requirements.”³⁷⁴ The court has thus eliminated state constitutional amendments from the realm of representation.

The Atomizing Assumptions Enabling the “One Man, One Vote” Decisions

The “one man, one vote” decisions were written with a particular understanding of representation including assumptions previously described as atomizing. These assumptions are foundational to these decisions. Throughout the majority opinions in each of these cases we see explicit and implicit use of the assumptions. The court holds an atomized view of society. These decisions are a product of the era in which they were decided: an era of individualism. Before discussing the atomizing assumptions in the decisions, we must first look at how the court projects its atomizing assumptions onto American history.

The court appropriates historic American conceptions that are not uncontestably individualistic to argue for individualism. In *Grey v. Sanders* Justice Douglas writes, “The conception of political equality from *the Declaration of Independence*, to Lincoln's *Gettysburg Address*, to the Fifteenth, Seventeenth, and Nineteenth Amendments can

³⁷³ Ibid.

³⁷⁴ Ibid., 714.

mean only one thing -- one person, one vote."³⁷⁵ Some experts contest the individualism of each of these primary documents. Barry Allen Shain contests the individualism of the Declaration of Independence.³⁷⁶ Lincoln's Gettysburg address is used as a beacon for covenantal thought by Elazar.³⁷⁷ The Fifteenth does not speak to districting.³⁷⁸ The Seventeenth creates popular elections with permanent disparities among voters voting for the Senators.³⁷⁹ Just as the Seventeenth did not speak to districting or equal voting populations, neither did the Nineteenth.³⁸⁰ None of these things mean "one man, one vote." Only a partisan of individualism could associate these distinct and unique American ideas with apportionment. The court is imposing its philosophic individualism on these documents.

Just as we can see the theory in the interpretations of text, so too could some dissenters see the theory being forever superimposed atop the Constitution. Justice Clark argues:

I could not join in the fabrication of a constitutional mandate which imports and forever freezes one theory of political thought into our Constitution, and forever denies to every State any opportunity for enlightened and progressive innovation in the design of its democratic institutions, so as to accommodate within a system . . . of representative government the interests and aspirations of diverse groups of people, without subjecting any group or class to absolute domination by a geographically concentrated or highly organized majority.³⁸¹

Because of the new philosophic outlook, the courts struggled to justify their new position. Justice Clark is correct in asserting a unilateral domination. One is reminded most of the

³⁷⁵ *Grey v. Sanders*, 384.

³⁷⁶ Barry Allen Shain, *The Myth of American Individualism*, 250.

³⁷⁷ Elazar, *Covenant and Civil Society*, 131.

³⁷⁸ Madison, *The United States Constitution*, Fifteenth Amendment.

³⁷⁹ *Ibid.*, Seventeenth Amendment.

³⁸⁰ *Ibid.*, Nineteenth Amendment.

³⁸¹ *Lucas v. Forty-Fourth General Assemble of Colorado*, 748.

state of New York being drowned by the “geographically concentrated” and dense New York City. The dissent from *Lucas v. The 44th General Assembly of Colorado*, written by Justice Clark as follows:

It is important to make clear at the outset what these cases are not about. They have nothing to do with the denial or impairment of any person's right to vote. Nobody's right to vote has been denied. Nobody's right to vote has been restricted. Nobody has been deprived of the right to have his vote counted. The voting right cases which the court cites are, therefore, completely wide of the mark.³⁸²

No one is being tyrannized. Comparing denials of enfranchisement with tradition apportionment is not convincing. The reason for this difficulty is because of the new orientation of the public philosophy and of the court. We know this is a vision not previously accepted as Constitutional because of its previous failures. Described by Justice Harlan in a dissent to *Grey v. Sanders* “the dissenting opinion of Justices Black and Douglas in *South v. Peters*, *supra*, 339 U.S. at 339 U. S. 277, in which they unsuccessfully espoused the very views which now become the law. Presumably my two brothers also reflected these same views in noting their dissents in the *Cox* and *Hartsfield* cases.”³⁸³ Only in an environment growing friendlier to these ideas can precedent be reversed in the ways described above. The “one man, one vote” decisions were made possible because of a rapidly liberalizing culture. The logic of the “one man, one vote” decisions is entirely dependent upon the liberal tradition in America.

In what comes across as comically misleading, Justice Black writes in the majority opinion for *Wesberry v. Sanders* (1964). “We hold that, construed in its historical context, the command of Art. I, § 2 that Representatives be chosen ‘by the

³⁸² *Ibid.*, 744.

³⁸³ *Grey v. Sanders.*, 383.

people of the several states' means that, as nearly as is practicable, one man's vote in a congressional election is to be worth as much as another's."³⁸⁴ By writing into the document an assumption that democratic norms were embedded in what Justice Harlan mocks as a "Shakespearian anagram,"³⁸⁵ The court reveals its exclusive belief in the liberal tradition in America, completely misrepresenting the text and ignoring the authority granted to the states in the same clause. Contrast this opinion with a majority opinion, less than 20 years before the youngest "one man, one vote" decision in *Macdougall v. Green* (1948):

Thus, the Constitution protects the interests of the smaller against the greater by giving in the Senate entirely unequal representation to populations. It would be strange indeed, and doctrinaire, for this Court, applying such broad constitutional concepts as due process and equal protection of the laws, to deny a State the power to assure a proper diffusion of political initiative as between its thinly populated counties and those having concentrated masses, in view of the fact that the latter have practical opportunities for exerting their political weight at the polls not available to the former. The Constitution -- a practical instrument of government -- makes no such demands on the States.³⁸⁶

Clearly, before "one man, one vote" the court held a different opinion of the governing assumptions of the U.S. Constitution. However, as Justice Harlan notes, these were questions that had been answered in previous decisions. The significant and seeming blind rush to push through the previous theoretical and Constitutional barriers left essential answers unmentioned in the critical opinions of the court.

It is symptomatic of the swift pace of current constitutional adjudication that the majority opinion should have failed to mention any of the four occasions on which Georgia's County Unit System has previously been unsuccessfully challenged in this Court. *Cook v. Fortson*, decided with *Turman v. Duckworth*, [329 U. S. 675](#) (1946); *South v. Peters*, [339 U. S.](#)

³⁸⁴ *Wesberry v. Sanders*, 7.

³⁸⁵ *Ibid.*, 27.

³⁸⁶ *MacDougal v. Green*, 335 U.S. 283 (October 21, 1948).

276 (1950); *Cox v. Peters*, 342 U.S. 936 (1952); and *Hartsfield v. Sloan*, 357 U.S. 916 (1958).³⁸⁷

The court upheld county primaries four times. The contradiction with the text of the document and the precedent of the court allows for the philosophic changes to be visible in differing court opinions. With the textual analysis errors addressed, we move on to overt theoretical assumptions of the court.

The first overt assumption is something distinct between a congressional majority and a presidential majority. Willmore Kendall has observed a difference between two majorities in the United States, they are the congressional majorities and the presidential majority. The “one man, one vote” decisions explicitly transform the Congressional majority into something like the presidential majority. In so doing, the “one man, one vote” decisions fundamentally transform the representation possible in the Congressional majority. Without the entities lost in the transformation, community becomes significantly less useful.

Kendall helps us explore the value of the community to self-governance. Explicitly, the presidential majority is different from the congressional majority. Kendall associates presidential elections with broad rhetoric and big ideas. The presidential ideals are impossible to achieve because of their vague nature. Kendall considers the presidential majority to be entirely foreign to the American system.³⁸⁸ This system has been “engrafted”³⁸⁹ upon the American Federal system. The presidential majority is national, but fleeting.³⁹⁰ It is of all the people, but all the people as atomized individuals,

³⁸⁷ *Grey v. Sanders*, 383.

³⁸⁸ Willmoore Kendall, “The Two Majorities,” *Midwest Journal of Political Science*, no. 4 (November 1, 1960), 336.

³⁸⁹ *Ibid.*

³⁹⁰ *Ibid.*, 337.

at least, atomized within their state.³⁹¹ The presidential majority, because it is so large has no sense of community to it. The lack of community makes the presidential majority fundamentally different from the congressional majority.

Kendall explaining the congressional majority, the older and designed majority:

Although the constituencies and states differ greatly in this regard, they all nevertheless approximate, in a way in which the national constituency cannot do, to structured communities, involving more or less endless series of face-to-face hierarchical relations among individuals-of super-ordination and subordination, of capacity to influence or subject to pressure and susceptibility to being influenced or subjected to pressure, of authority and obedience, of economic power and economic dependence, of prestige enjoyed and respect tendered, etc., that are patently relevant to the choice of a congressman or senator in a way that they are not relevant to the choice of a president. In the election of the member of Congress, a community faithful to the constitutional morality of the federalist makes a decision about whom to send forward as its most virtuous man, a decision which is the more important, and which it accordingly takes the more seriously, because the community knows that it can have little effect on a presidential election (i. e., its most direct means of defending its own interests and " values " is by sending the right senator or representative to Washington, and sending the right one becomes therefore a matter of sending a man who will represent the hierarchical relations in which those interests and values are articulated). In the congressional election, therefore, the " heat " can and will go on, if there is a powerful community " value " or interest at stake in the choice among available candidates; so that although the voters vote as nominal " equals " . . . they do so under pressures that are quite unlikely to be brought to bear on their "equal" voting for President (especially as the powerful and influential in the community are normally unable to estimate accurately, for reasons we shall notice below, the probable impact of the presidential candidates upon their interests and "values," whereas they can do so with the candidates for the legislature).³⁹²

The hierarchies within a community define it. The community shares values and these values are forwarded in and preserved in a sense of honor that binds individuals to the

³⁹¹ Ibid.

³⁹² Ibid., 340.

community. The community is able to direct their representative because of these values and hierarchies.

Kendall is writing before the 1960's and thus describing politics before "one man, one vote." In addition to establishing that the Congress represents a community, he shows it is the only branch capable of representing a community.³⁹³ Congress was uniquely capable of representing communities because of the smaller size of the districts, as well as the culture described above. In describing the difference between the local and the national Kendall writes.

The difference in the discussion process as we see it go forward in the constituencies and the discussion process as we see it go forward in the national forum. This is partly a matter of the point just made (that the constituency is to a far greater extent a structured community), and partly a matter (not quite the same thing) of the sheer difference in size between the local constituency and the nation-or, as I should prefer to put it, of the kind of considerations that led that remarkable "empirical" political theorist, J.-J. Rousseau, to declare, at a crucial point in *Du contract social*, that there is more wisdom in small bands of Swiss peasants gathered around oak trees to conduct their affairs than, so to speak, in all the governments of Europe.³⁹⁴

From the above discussion we can tease out a pattern of civic activity enabled by a common conception of the good for a community. We see above how an intact, face to face community may be represented in the Congress or in a state legislature. It is important to contrast this with how Kendall describes the discussion divorced from "structured communities."³⁹⁵

The first difference between communication of structured communities and arbitrary coalitions, according to Kendall, is the lack of importance of the community to

³⁹³ Ibid., 340.

³⁹⁴ Ibid., 341.

³⁹⁵ Ibid., 340.

the arbitrary presidential majority.³⁹⁶ The Second is “the sheer difference in size”³⁹⁷ Size is important for two reasons “First, there is a presumption that each small band is talking about something, not nothing.”³⁹⁸ Kendall intends to communicate something of substance, something particular to the community’s problems or values. Kendall goes on “Second, there is a presumption, because of each band's relatedness to the community whose affairs it is dispatching, that its members are reasonably well-informed about the something they are talking about.”³⁹⁹ The something and nothing, of course, refers to the substantive details of which the deliberation is centered upon.⁴⁰⁰ Accordingly, the more people there are and the more diverse their cultures are, the fewer meaningful details will be available for all in the discussion. This creates a barrier to deliberation.

It must be made clear that “evidently a congressional or senatorial constituency is not a small band gathered around an oak tree.”⁴⁰¹ However, it must also be said that “the national constituency in America long ago became so large and complex that, even were there candidates who themselves understood it . . . the audiences to which they must address themselves do not.”⁴⁰² But the non-regional and anti-local understanding of politics produces “an additional electoral process that forces discussion of”⁴⁰³ national “problems in the national constituency; that obliges candidates to ‘go to the people.”⁴⁰⁴ However, the size of the group and diversity of culture forces candidates not connected to

³⁹⁶ Ibid.

³⁹⁷ Ibid.

³⁹⁸ Ibid., 342.

³⁹⁹ Ibid.

⁴⁰⁰ Ibid.

⁴⁰¹ Ibid.

⁴⁰² Ibid.

⁴⁰³ Ibid.

⁴⁰⁴ Ibid.

a cohesive community to “avoid talking about something and leaves them no alternative but to talk about nothing—that is . . . to talk about high-or at least high-sounding -principle, without application to any concrete situation or problem.”⁴⁰⁵ The non-community based districts force political candidates to abandon substantive, issue centric campaigns.

With the above changes, it is unavoidable that the election creates “a unanimous mandate for the principles both candidates have been enunciating.”⁴⁰⁶ Non-community based campaigns “virtually oblige”⁴⁰⁷ the electorate to over value “pleasant-sounding maxims”⁴⁰⁸ at the expense of their local values and local issues. The loss of localism pushes individuals out of the family, church, club, community, and society. Kendall is writing about a national majority voting for the President, but the above summarized mandate for arithmetic equality necessitates such disjointed communities. It is functionally impossible to not “talk about nothing”⁴⁰⁹ with districts so large and so arbitrary where no coherent identity can be extracted from the arithmetically equal districts of people.

In some cases communities are forced to be arbitrarily divided, forcing members of the community into different legislative districts. In other cases, smaller communities are drowned out by other small communities and sometimes cities, requiring candidates to behave as Presidential candidates instead of community representatives. As an example of the latter problem consider Washington’s 7th legislative district. This district spans five counties. The District Stretches from the Canadian border to almost halfway

⁴⁰⁵ Ibid., 343.

⁴⁰⁶ Ibid.

⁴⁰⁷ Ibid.

⁴⁰⁸ Ibid.

⁴⁰⁹ Ibid.

down the state, and approaches half the states total width. It includes small northern towns such as Republic (with a population of 1,062 people and elevation of 2,569'), Kettle Falls (population 1,611 elev 1,631), Colville (population of 4,765 elevation of 1,614), and Chewelah (population of 2,637 elevation 1667). It also includes Washington's second largest city of Spokane (population 217,108 and elevation of 1,843). The district includes Native American tribes, lumber mills, private and public universities. Districts are in mountains, deserts, and cities. Parts of the district are agricultural, other parts are metropolitan. We can understand that even a local cannot meaningfully speak to any single community, culture, or value system for the whole district. Instead, one must adopt the national majority model "and speak about nothing."⁴¹⁰

While size is clearly a factor here, it is not the primary concern. While some parity does exist between the anti-Federalists and this argument (especially regarding the size of the country and congress) those criticisms took for granted a reality ignored by "one man, one vote." Without bean counting obsessions over exact equality of members in each district, the lines were allowed to be drawn around cultural commonalities and identities. Washington's 7th, for example, could well represent a coherent community of small and mountainous towns and peoples explicitly while being large. However, the "one man, one vote" standard forces the mountainous towns to be joined with Spokane. Further, a coherent mountain region is forced to the west and south, breaking up a common heritage. The required arithmetic equality prevents the representation of such identities. By requiring arithmetically equal districts, the court has effectively prevented

⁴¹⁰ Ibid.

community, culture, and local concerns from being accounted for in elections. In so doing, in Kendall's words, the court requires house candidates and state legislators "to talk about nothing,"⁴¹¹ because their constituency consists of an amalgamation of unencumbered selves, instead of communities. As such, communities are split apart or drowned by other communities. The neglect of community is an atomizing assumption that had to be in place before the courts could declare such an anti-localist scheme.

There is a philosophy in American history that does not atomize communities. Michael Sandel argues there are two traditions in America one is republicanism and the other is liberalism.⁴¹² This distinction, in turn, involves varying understandings of freedom. The republican tradition of liberty requires citizenship, community, and a people operating under a common conception of the good.⁴¹³ This understanding of liberty is dependent upon communities small enough for citizens to interact, and develop solidarity, in the public square. Sandel writes "given our nature as political beings, we are free only insofar as we exercise our capacity to deliberate about the common good, and participate in the public life of a free city or republic."⁴¹⁴ To participate in a society requires a society small enough to participate in. We can see the conflict between this understanding of liberty and society and "one man, one vote." Though there is a universal good that is good for all humans, one cannot have a complete common conception of the good over five counties. A regional good is dependent upon additions to the universal good particular to the culture and needs of that particular society, though they may not contradict the universal good. In chapter two we saw Althusius explain communities

⁴¹¹ Ibid.

⁴¹² Sandel, *Democracy's Discontent*, 6.

⁴¹³ Ibid., 26

⁴¹⁴ Ibid., 26.

developing up from the family unit, and interacting, not with other individuals, but with other families. Five counties is simply too large to allow for realistic, non-political communication; even if it did allow for occasional cooperation, it cannot allow for a shared culture necessary for friendship.

In chapter one I explained the liberal tradition. Sandel informs us that both the liberal and republican tradition were present in early American thought.⁴¹⁵ As has been previously established liberalism is an atomizing assumption with vast consequences. The court chooses only to emphasize the liberal tradition of American thought, neglecting the republican tradition.⁴¹⁶ Recall the several misreadings of the court in the beginning of this section, the court is forced to impose its liberal ideology on non-liberal documents and institutions. This imposition was argued against by some justices on the court. Justice Harlan, for example, in his dissent in *Gray*, writes, “any such distinction finds persuasive refutation in the Federal Electoral College whereby the President of the United States is chosen on principles wholly opposed to those now held constitutionally required in the electoral process for statewide office.”⁴¹⁷ Thus when Justice Clark demonstrated the court is “forever freez[ing] one theory of political thought [liberalism] into our Constitution,” the court is atomizing American society. By taking on the liberal view of humanity and society, the court exposes its predisposition to atomization. This predisposition is noted by Justice Stewart.

What the court has done is to convert a particular political philosophy into a constitutional rule, binding upon each of the 50 states, from Maine to Hawaii, from Alaska to Texas, without regard and without respect for the many individualized and differentiated characteristics of each State,

⁴¹⁵ Sandel, *Democracy's Discontent*, 5.

⁴¹⁶ *Ibid.*, 55.

⁴¹⁷ *Grey v. Sanders*, 384.

characteristics stemming from each State's distinct history, distinct geography, distinct distribution of population, and distinct political heritage.⁴¹⁸

The court is forcing the country to accept a particular view of man and society. This forced acceptance prohibits meaningful attention to half of the American tradition. Because the ideology being forced upon the states is atomizing, the states are forced to accept atomizing ideas. The court then forces atomizing assumptions upon the states.

Liberalism is an atomizing assumption in another way. Liberalism is part of the ideology of the political community.⁴¹⁹ This ideology captures all modern ideologies.⁴²⁰ Nisbet describes it as “an idea system”⁴²¹ that “run[s] throughout” ideologies at varying strength.⁴²² It is an all-encompassing philosophy.⁴²³ This ideology is identified by a radical and methodological individualism and a massive central state.⁴²⁴ In chapter one I explained how this ideology atomizes the society by taking over the roles of the family and the community. The individualism of liberalism as part of the ideology of the state is clearly forwarded by “one man, one vote.” Therefore liberalism as part of the ideology of the political community is an atomizing assumption.

Apart from liberalism communal direction of society is essential. Robert Nisbet informs us that the more the central government absorbs, the less there is for a community to do to maintain community. Aristotle informs us that the defining

⁴¹⁸ Lucas v. Fourty-Fourth General Assembly of Colorado, 748.

⁴¹⁹ Nisbet, *The Quest For Community*, 143.

⁴²⁰ Ibid.

⁴²¹ Ibid.

⁴²² Ibid.

⁴²³ Ibid.

⁴²⁴ Ibid.

characteristic of a governing community is a common conception of the good.⁴²⁵ Aquinas tells us that “it is evident that all who are included in a community, stand in relation to that community as parts to a whole.”⁴²⁶ Since the community is so central to human beings, the community must define itself philosophically. We learned in chapter two the history of a culture fundamentally anchors the community to the values of its past. We saw in Bellah that betterment of a community is only possible through memory of good and evil actions of the community. Before the Supreme Court began “invading the valid functioning of . . . the procedures of the States,”⁴²⁷ Colorado’s legislative apportionment plan was defensible. Even during the case the courts defended the plan as significantly rational.⁴²⁸ Some members of the court realized that representation should reflect the community “appropriate legislative apportionment, therefore, should ideally be designed to ensure effective representation in the state’s legislature, in cooperation with other organs of political power, of the various groups and interests making up the electorate.”⁴²⁹ The representation is to serve the community and ought to be empowered by the community. The assumption that community should not be involved in its own definition is atomizing.

In addition to denying communities their ability to define themselves, the court takes advantage of a loss of a sense of duty and obligation in American culture. We learned from Donahue that the loss of authority figures and discipline lead to atomization.⁴³⁰ We saw in chapter two how social agreements and common conceptions

⁴²⁵ Aristotle, *Politics*, 11.

⁴²⁶ Thomas Aquinas, “Question 58. Justice Summa Theologiae II-II,” New Advent, <http://www.newadvent.org/summa/3005.htm> (accessed March 31, 2019)

⁴²⁷ *Lucas*, 743.

⁴²⁸ *Ibid.*

⁴²⁹ *Ibid.*, 749.

⁴³⁰ Donahue, *The New Freedom*, 5.

of the good created constitutions upon which communities and societies found their behavior. These compacts are built upon varying ideas and behaviors and traditions. These traditions create a diverse set of interests. The interests and traditions create a hierarchy of social order. Justice Stewart agrees in his dissenting opinion in *Lucas*.

Population factors must often to some degree be subordinated in devising a legislative apportionment plan which is to achieve the important goal of ensuring a fair, effective, and balanced representation of the regional, social, and economic interests within a State. And the further fact is that, throughout our history, the apportionments of State Legislatures have reflected the strongly felt American tradition that the public interest is composed of many diverse interests, and that, in the long run, it can better be expressed by a medley of component voices than by the majority's monolithic command.⁴³¹

The loss of this cultural and social medley is destructive to communal cohesion. Minority interests need to be represented in the legislature. More than a refusal to acknowledge authority and community, the court seems to reject both. Chief Justice Warren denouncing institutional pluralism:

With respect to the allocation of legislative representation, all voters, as citizens of a State, stand in the same relation regardless of where they live. Any suggested criteria for the differentiation of citizens are insufficient to justify any discrimination, as to the weight of their votes, unless relevant to the permissible purposes of legislative apportionment.⁴³²

Chief Justice Warren call traditional Constitutional apportionment discriminatory. By this logic, citizenship itself is discriminatory. After all, it weighs different human experiences more than others. Under this guide, the country may not weigh citizens of a community more than non-citizens. The lack of social considerations is a significant assumption. This places the individual atop the hierarchy of state concerns. The refusal to acknowledge membership in community is yet another atomizing assumption.

⁴³¹ *Lucas*, 751.

⁴³² *Reynolds*, 565.

More than not directing their communities, Americans have a tradition of abandoning their communities. There is an American tradition of leaving community and church as a rite of passage.⁴³³ Children leave the home, the church, and their towns as cultural rites of passage.⁴³⁴ These cultural ceremonies are meant to force the child to “find themselves,”⁴³⁵ and forces a separation from their culture. These court cases fundamentally forced a transformation in several states, just as the rights of passage force teenagers out of their culture. “As of November 1, 1962, the apportionment of seats in at least 30 state legislatures had been challenged in . . . besides this one, 10 electoral cases of one kind or another are already on this court's docket.”⁴³⁶ It is difficult to imagine a society not motivated by individuals “finding themselves” allowing for such significant shifts so quickly.

The very balance of the country and legitimacy of the Congress is seriously questioned by this unending change. While the details of the dissent and opinion of the court is outside the scope of this paper, a quote from the dissent in *Wesberry v. Sanders* shows just how sweeping of a change this was. “Today's decision impugns the validity of the election of 398 Representatives from 37 States, leaving a ‘constitutional’ House of 37 members now sitting.”⁴³⁷ This is a fundamental shift in the understanding of apportionment in The United States. The court is overturning previously upheld representation schemes, reinterpreting Constitutional amendments, and reducing a

⁴³³ Bellah, *Habits of the Heart*, 56.

⁴³⁴ Ibid., 62.

⁴³⁵ Ibid., 55.

⁴³⁶ *Grey*, 379.

⁴³⁷ *Wesberry*, 21.

Constitutional body of the House of Representatives to 37 sitting members. This transformation is built on top of several atomizing assumptions outlined above.

The “One Man, One Vote” Decisions Atomizing American Society

The “one man, one vote” decisions are more than atomizing assumptions, they actively contribute to the atomization of American society. The “one man, one vote” decisions undermine covenantalism. They remove communal distinctions from prevalence. The decisions make associations irrelevant concerning elections. Moreover, it prevents friendships from forming around a shared conception of the good in elections. The “one man, one vote” decisions destroy a fabric necessary for self-governance.

Here we must remember what we used Willmore Kendall for in the first section of this chapter. Kendall shows us the distinction between presidential and congressional majorities. Explicitly, the hierarchy of the community, its associational life, religious organization, and communal activities plays a critical role in the congressional majority. The utilization of communal values, specific solutions to communal problems, access to congress people because of status in the community, status arranged around a common conception of the good, and voluntary organization around Covenantalism produces communal representation. With community representation prohibited, it is challenging to imagine congressional majorities maintaining their autonomy or distinction. Rather the congressional majority is forced into extinction and replaced by the un-American presidential majority. When districts can be spread over several counties or packed into an arbitrary grouping, they cannot be centered on communities and community values. The loss of communal representation hollows the meaning, issue-driven, community bound, representation and produces the empty words Kendall says are found in the

Executive Majority. Without coherent communal organization, there are not deep cultural and historic ties to tradition, community, and solidarity fueled selections of representatives. Without these bonds and direct needs, or the communal values and hierarchies they form, a representative is reduced to speaking about pleasant platitudes.

The presidential majority and its ‘high’ rhetoric do violence to American political organization. *Federalist* #64 says “the good of the whole can only be promoted by advancing the good of each of the parts or members which compose the whole.”⁴³⁸ As established, the parts of the founder’s whole were covenantally organized communities.⁴³⁹ The local dependence is so strong society relies upon state documents for a completed constitution.⁴⁴⁰ The national body was incapable of producing a coherent identity without the regional documents. Both chambers of the first branch are dependent upon the states for membership (before the 17th).⁴⁴¹ The executive is elected by a mechanism that gives each state significant control.⁴⁴² The only non-elected branch is dependent upon “advise and consent” of the only branch directly chosen by the states.⁴⁴³ As designed the federal government is entirely dependent upon state governments, who depend upon communal cohesion.

However, the “one man, one vote” decisions destroy the parts that establish the whole. With the hole diluted or fractured, there can be no good of the whole. With the rhetoric around the community impossible to even imagine, the “one man, one vote”

⁴³⁸ John Jay, *Federalist* # 64, The Avalon Project, http://avalon.law.yale.edu/18th_century/fed64.asp paragraph 13. (accessed July 24, 2018]

⁴³⁹ Lutz, *The Origins of American Constitutionalism*, 172.

⁴⁴⁰ Lutz, "The United States Constitution as an Incomplete Text," 30.

⁴⁴¹ Madison, *The United States Constitution*, Article 1.

⁴⁴² Ibid., Article 2.

⁴⁴³ Ibid., Article 3.

decisions atomize society by preventing society from imagining a solution to the real problems they have through representation. Citizens are forced to approach elections with narrow self interest in mind instead of Tocqueville's self-interest properly understood.

The lack of role for community values in selecting representatives degrades the community. Nisbet writes "in hard fact no social group will long survived the disappearance . . . of its reason for being."⁴⁴⁴ The removal of a semblance of communal representation, or representation of cultures, norms, values, communities, churches, and clubs removes much of the purpose for human organization. Mind you, as we've seen, this is a removal of both federal and state communal representation. American society is atomized by "one man, one vote" because society is made less relevant by arithmetic requirements of the court.

According to Nisbet, this is the goal of the ideology of the political community. "The absolute political community, centralized and Omni competent, founded upon the atomized masses, must ceaselessly destroy all those autonomies and immunities that are in normal society the indispensable sources of the capacity for freedom and organization. Total political centralization can lead only to social and cultural death."⁴⁴⁵ We can see echoes of the resulting death of culture in "the liberal anti-culture"⁴⁴⁶ as described by Patrick Deneen. With the loss of political utility of community, of community itself, comes the loss of the need for unique cultures. The result from the loss of utility is all of

⁴⁴⁴ Nisbet, *The Quest For Community*, 53.

⁴⁴⁵ Ibid., 192.

⁴⁴⁶ Deneen, *Why Liberalism Failed*, 64.

America has the same shopping mall, with the same stores, norms, and the same lack of values.

Hanah Pitkin correctly emphasizes that representation requires accountability to the public.⁴⁴⁷ By removing covenants from reasonable connectedness and atomizing representation, we have destroyed the possibility for accountability as well. What could one be accountable to? The same needs that require Willmore Kendal's talk of "nothingness" require an equal lack of loyalty. In *Federalist* # 55, Publius argues that politicians are made to be accountable to their population: "I am equally unable to conceive that there are at this time, or can be in any short time, in the United States, any sixty-five or a hundred men capable of recommending themselves to the choice of the people at large, who would either desire or dare, within the short space of two years, to betray the solemn trust committed to them."⁴⁴⁸ The covenanted communities produced deep webs of association that would allow for the creation of accountability and loyalty spoken of here. By slashing the connections of meaning, the court orders a lack of accountability from the elected to the people. Likewise, Oakerson speaks of the necessity of non-atomized community for reform following accountability.

Oakerson contends "equipping citizens with multiple agents," thus gives citizens the ability to "to challenge the status quo" with several institutions and processes.⁴⁴⁹ Of course, to do so requires a non-atomized society. In fact, "the process of governance" is performed inside civil society and local governance.⁴⁵⁰ Oakerson insists reform comes

⁴⁴⁷ Pitkin, *The Concept of Representation*, 209.

⁴⁴⁸ James Madis, *Federalist* #55, The Avalon Project, http://avalon.law.yale.edu/18th_century/fed55.asp paragraph 5. (accessed July 24, 2018]

⁴⁴⁹ Oakerson, "Representation, a slender thread?" 84.

⁴⁵⁰ Ibid., 85.

out of the civil society.⁴⁵¹ Likewise Robert Bellah informs us that only through memory may community respond to past injustices.⁴⁵² Thus the atomization of society above described prevents community based reform.

Civil society is disincentivized by the “one man, one vote” court decisions. With districts prohibited from representing communities, federal and state government cannot be expected to maintain the same level of importance to its citizens. On the one hand, one may find oneself forced to try and build a relationship with people from three counties and hours away in both directions. In this situation, no social network likely to exist. On the other hand, many districts tie exceptionally rural populations into dense cities. Washington’s 5th district, for example, includes part of the state’s second largest city, and also unincorporated towns so small as to be unable to justify a post office. No common conception of the good could cover that distance and cultural diversity, “one man, one vote” forces such districts with its demand for numerical equality.

The atomizing of electoral districts serves to exasperate a phenomenon natural to democratic social conditions. Tocqueville writes “Thus not only does democracy make each man forget his ancestors, but it hides his descendants from him and separates him from his contemporaries; it constantly leads him back toward himself alone and threatens finally to confine him wholly in the solitude of his own heart.”⁴⁵³ Local government combats American individualism –and atomization-- by using strong personal connections to draw the American outside of himself.⁴⁵⁴

⁴⁵¹ Ibid., 96.

⁴⁵² Bellah, *Habits of The Heart*, 154.

⁴⁵³ Tocqueville, *Democracy in America*, 484.

⁴⁵⁴ Ibid., 57.

The personal and compelling nature of local government rewards an engaged citizen with responsiveness and effectiveness. This actively rewards engagement with local government and creates a sense of ownership. It also reduces atomization.

Tocqueville writes: "When citizens are forced to be occupied with public affairs, they are necessarily drawn from the midst of their individual interests, and from time to time, torn away from the sight of themselves."⁴⁵⁵ The "one man, one vote" decisions minimize this effect by ignoring the existence of communal ties, local government efficiency, and either watering down or fracturing municipal cohesion regarding their representatives. As we saw earlier social institutions derived of their purpose do not maintain their importance to a society.

Removing the possibility for communal representation at state and federal levels removes the potentiality for some of the highest imaginable rewards for civic associations. Americans used civil associations in their day to day life. Tocqueville writes "America is, among the countries of the world, the one where they have taken most advantage of association and where they have applied that powerful mode of action to a greater diversity of objects."⁴⁵⁶ The utility of associations is born from a common problem and an uncommon scenario early in America.

The common problem is a plethora of social needs. The uncommon scenario is the lack of a centralized government, aristocracy, or elite class willing to act on behalf of the society.⁴⁵⁷ The public, in Tocqueville's time, organized itself to resolve the problems.

An obstacle comes up on the public highway, passage is interrupted, traffic stops; neighbors immediately establish themselves in a deliberating body; from this improvised assembly will issue an executive power that will

⁴⁵⁵ Tocqueville, *Democracy in America*, 486.

⁴⁵⁶ Ibid., 180.

⁴⁵⁷ Ibid., 171.

remedy the ill—before the idea of an authority preexisting that of those interested has presented itself to anyone’s imagination. Should it be a question of pleasure, they will associate to give more splendor and regularity to the fête. Finally, they will unite to resist wholly intellectual enemies: they fight intemperance in common. In the United States, they associate for the goals of public security, of commerce and industry, of morality and religion.⁴⁵⁸

Americans use associations to solve their most urgent needs. They purify themselves morally with associations. They party with associations. They worship in associations. More than self-help, the association provides a place for the public to produce better representation for themselves. Tocqueville states the association is more powerful than the press and is capable of focusing different agendas toward a single goal.⁴⁵⁹ The association supplements the power of the local government and provides an additional venue for the community to express power.⁴⁶⁰

In addition to their active political role, Associations generate newspapers to reach their members who are busy working and cannot convene constantly.⁴⁶¹ Due to the nature of democracy, an association must have large numbers of members to hold power.⁴⁶² The function of newspapers is correlated with the civic association and the town, the more associations necessary, the more newspapers are needed.⁴⁶³ One can imagine these associations and their papers incorporated into Wilmore Kendal’s local hierarchies. One almost must imagine local values and representation captured by local, communal newspapers communicating the goings on to essential citizens of the community. However, “one man, one vote” makes such representation impossible. With

⁴⁵⁸Ibid., 180.

⁴⁵⁹ Ibid., 181.

⁴⁶⁰ Ibid.

⁴⁶¹ Ibid., 493.

⁴⁶² Ibid.

⁴⁶³ Ibid., 494,

both representation and community engagement, the associations of America contributed to produce coherent communities. The removal of utility of such a community degrades and eventually destroys such associations.

Robert Wuthnow describes the transformation from local authority to local weakness. Wuthnow speaks of a time when citizens joined together to benefit their community for leisure, and it was the standard of a good man to participate.⁴⁶⁴ It was so important local politicians advertised their long term belonging to local organizations to win elections.⁴⁶⁵ This was not to last attitudes changed around communal belonging. The men of the lodge were chastised for “engag[ing] in arcane masculine rituals” and being away from home too much.⁴⁶⁶ Engagement with the community was understood to be not productive or beneficial. Wuthnow quotes a feminist writer in saying “what politically minded female . . . would join the bland and matronly League of Women Voters when she . . . could shape the debate instead of merely keeping it polite?”⁴⁶⁷ Interestingly, one is likely hard pressed to find feminists discouraging female participation in the selection of congressional members anywhere. Who can imagine women empowerment enthusiasts chastising women in a position to influence local, state, and maybe national elections? The loss of the authority of the community removed the importance and prestige of community engagement, thus encouraging atomization.

⁴⁶⁴ Robert Wuthnow, *Loose Connections: Joining Together in America's Fragmented Communities*, (Cambridge, MA: Harvard University Press), 31.

⁴⁶⁵ Ibid., 32.

⁴⁶⁶ Ibid.

⁴⁶⁷ Ibid., 40.

The loss of communal authority has more of an impact than a loss of prestige. In important ways, the loss of community inhibits our ability to get along with each other.

Tocqueville saw a strengthening of American society through elections.

The longing to be elected can momentarily bring certain men to make war on each other, but in the long term this same desire brings all men to lend each other a mutual support; and if it happens that an election accidentally divides two friends, the electoral system brings together in a permanent manner a multitude of citizens who would have always remained strangers to one another.⁴⁶⁸

Like Wuthnow's organization man joining society to be elected for Tocqueville, friendships were formed around elections. We cannot gather friendships based on shared interest in absurdly large or absurdly unpredictable districts. If the population needed to win an election is divided, so as to take four hours to arrive at the other side of the district, one can hardly imagine district meetings. Likewise, if one's neighborhood is split down the middle, one cannot bring one's relationships to bear on the process. Requiring districts of rural areas to match the population of urban districts numerically will inevitably result in both situations. To return to our previous elaboration on Kendall, these would be friendships formed around nothing. Aristotle informs us friendships require a common conception of the good.⁴⁶⁹ Further, we have already seen the common thread of understanding has been cut by the lack of utility of civic associations. Tocqueville's newspapers were made impracticable, and thus common perception of news and politics is diminished. The "one man, one vote" decisions atomize society by destroying the possibility for friendship and cooperation.

⁴⁶⁸ Tocqueville, *Democracy in America*, 486.

⁴⁶⁹ Aristotle, *Nicomachean Ethics*, Chapter 8.

The Supreme Court has done something the framers and other scholars have charged the government not to do; it has destroyed the capacity for virtue. By destroying the utility of covenant in legislative politics above the county level, the court has destroyed and disincentivized social and political bonds. As Canavan says "Political society and the state depend on social forces that they cannot create but can destroy,"⁴⁷⁰ which would undoubtedly include fundamental social organizations known as covenants. By removing covenantal relationships from political power, we remove the institution that produces what Publius says is necessary for republican government. Publius on the need for virtue:

As there is a degree of depravity in mankind which requires a certain degree of circumspection and distrust, so there are other qualities in human nature which justify a certain portion of esteem and confidence. Republican government presupposes the existence of these qualities in a higher degree than any other form. Were the pictures which have been drawn by the political jealousy of some among us faithful likenesses of the human character, the inference would be, that there is not sufficient virtue among men for self-government; and that nothing less than the chains of despotism can restrain them from destroying and devouring one another.⁴⁷¹

Republics require virtue.⁴⁷² Virtue requires community.⁴⁷³ Community requires trust.⁴⁷⁴ Trust depends upon a common conception of the good.⁴⁷⁵ A common conception of the good requires shared values. Shared values require consent. Consent to shared values is established through covenantalism. Covenantalism is made impotent by

⁴⁷⁰ Canavan, *The Pluralist Game*, 104.

⁴⁷¹ Madison, *Federalist* 55, paragraph 5.

⁴⁷² Ibid.

⁴⁷³ Canavan, *The Pluralist Game*, 102.

⁴⁷⁴ Wuthnow, *Loose Connections*, 179-203.

⁴⁷⁵ Canavan, *The Pluralist Game* 102.

arithmetic redistricting. “One man, one vote” destroys society’s capacity for virtue by destroying covenantalism.

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