

From the Politics of Will to a Politics of Judgment: Republicanism in the U.S. and France

Like many inherited historical concepts, »republicanism« has been understood differently in different contexts and at different times. This has resulted in confusion, polemic and, most often, paradoxes that can serve to add depth and richness to the concept itself. So it is today. As used in France, republicanism refers to the *political* project that found its idealized representation in the Third Republic. In the United States, the concept designates the *social* community needed to provide a meaningful identity to the participants in a liberal polity organized to insure abstract individual rights. The paradox is that in practice French republicans defend just the kind of formal abstract rights that American republicans denounce as »liberalism« while American republicans praise the kind of »identity politics« that the French republicans criticize as a threat to the unity of the nation. The paradox is complicated by the fact that both sides seek the same result: inclusion. But the meaning of that concept remains unclear. Is the system to include the individual, or does the action of the individual reproduce and validate (or transform) the system?

Republican political theory has served and continues to serve in both countries as a critique of the existing society. In France, it has led to the use of the concept of »exclusion« to replace the notion of »class« to designate those whom society is unable to integrate not only into its economy – whose capitalist nature is often ignored, or reduced to the euphemism of the »market« – but into its political life. Republicanism and integration stand together as a political program.¹ In the United States, the concept is related to the (often vague) concept of »communitarianism« that is invoked to denounce the abstract legalism and competitive egoism of individualist liberalism which both veil and rationalize a self-denying society through the politics of »thin democracy«. It demands a participatory rather than a merely representative democracy,

and stresses personal virtue and »the good« rather than the individual rights that serve political liberalism as trumps in the game of life. The fact that American republicanism can come to imply the demand for more social – even socialist – measures returns to the initial paradox. It inverts the French quest for a political alternative to radical social – or socialist – demands.

This simple opposition of the French and American representations of republicanism has the virtue of identifying a problem, but the weakness of remaining at a formal level. In both cases, republicanism can play a critical function because it represents a political solution² to social problems. In both cases, it proposes guidelines for eliminating exclusion and insuring inclusion. As such a political concept, it represents the universal, which is always in a position to denounce the particularity and division that are characteristic of any society. But for the same reason, social actors are always able to criticize the formal abstractness of the universal claims of the political. In its concrete form, this abstract opposition expresses the difference between social and political forms of exclusion and inclusion. The American republican treats social inclusion in a community as a political project; the French republican sees inclusion in the polity as the presupposition for a social politics. In the one case, social action is expected to have political con-

1. Of course the excluded don't represent a threat to overthrow the system, as did the working class; but the republican's working class was never seen as the kind of social-revolutionary threat that was represented by Marx's proletariat. The ground of this difference will be seen below, when we consider the French notion of »solidarisme« and its Durkheimian roots.

2. As will be apparent, one of the roots of the paradoxical trajectories of the concept is that the French and the Americans have a different understanding of what counts as »political«.

sequences; in the other, political action is seen as the basis for social intervention.

Historical Symmetries and Asymmetries

The historical genesis of the concept of republicanism in both countries suggests that the duality between a social and a political interpretation has always been present in each of them. In both cases, the concept goes back to the revolutions that gave each nation its claim to being at once unique and a model to be universally imitated. In France, political republicanism made its vital appearance with the events of August 10, 1792 and the Jacobin dictatorship that followed. It can be seen as the rejection of the egoistic individualism that emerged from the »liberté« achieved in the wake of August 4, 1789 and was consecrated in the work of the Constituent Assembly. The republic, legislated into being by the new Convention, stood for the attempt to achieve an »égalité« that would overcome the new forms of social exclusion that had resulted from the political abolition of the Old Order. In this sense, republican politics and socialism could be unified for a moment. That identification of republicanism and socialism explains the passionate reception of the Bolshevik coup in October 1917 by so many French republicans, including the dominant historians of the French revolution Mathiez, Lefèvre and Soboul. The attraction of the French to communism was no accident. But it was far from unanimous. The dominant strand of French republicanism remained political in 1848; and with the foundation of the Third Republic in 1875 the concept came to be represented by the brigades of republican »instituteurs« bringing civilization to the French peasantry along with a crusade against the old (clerical) order. This republicanism returned to its roots in the Enlightenment critique of prejudice and privilege, themselves an older form of exclusion to be overcome by the heritage of the revolution.

The third concept in the French revolutionary trinity, »fraternité«, might be assumed to represent the form of inclusion that could overcome the duality implicit in the republican model. Mona Ozouf's brilliant sketch of the peregrinations of this concept, and its critical afterlife in the 19th cen-

tury,³ shows that it could take on either the connotation of true »liberté« of the individual – for example, in Michelet's stress on the centrality of the Fête de la Fédération (commemorating July 14 and national unity) that joins together free individuals in a higher union that, emphatically, entails no sacrifice of individuality – or true »égalité« within the new social system – for example, in the Terror's attempt to unify society by excluding not just its visible enemies but also its lukewarm camp-followers. Yet, while fraternity cannot be taken for granted, it cannot be imposed either; the political republic cannot guarantee social inclusion any more than the political guarantee of individual rights won in 1789 insured social equality after 1792. »Fraternité« offers no mediation, only an incantation; indeed, it destroys the two poles whose apparent opposition called it forth.⁴ The quest for inclusion that replaces the idealist vision of a revolution that overcomes all opposition demands a rethinking of the inherited categories of French republicanism. The curious symmetrical asymmetry of the French and the American forms of republicanism provides a framework for that historical project as well as an indication of its contemporary implications.

The American revolutionary model seems to start from social diversity and work toward political unity as something derivative, secondary and artificial.⁵ This exposes it to the danger that social diversity – which a republican would denounce as exclusion (and a socialist decry as social division) while the optimistic Americans opt for the more benign label of »pluralism« – will be preserved under the merely formal unity of the political society. This difficulty too has a history that helps

3. C.f., the article »Fraternité«, in *Dictionnaire critique de la révolution française*, François Furet and Mona Ozouf, eds. (Paris: 1989, pp. 731–741).

4. Mona Ozouf recalls Jean-Paul Sartre's attempt to reconcile his existentialist philosophy with his Marxist ideology by inventing the concept of »Fraternité-Terreur«. She doesn't mention that Sartre's position goes even further, in effect justifying Stalinism. I have tried to show why the existentialist lover of freedom could find himself going to this extreme in *The Marxian Legacy* (Second edition revised, London: Macmillan, 1988).

5. The Great Seal of the United States, printed on the back of every US dollar, contains on one side the revolutionary motto »Novus Ordo Seclorum« and on the other side the imperative »E Pluribus Unum«.

clarify the issues at stake. Whereas the French had first to seize state power and use it in order to intervene into artificially fixed and unequal social relations, America appears to have been a country already nearly equal and quite free whose self-governing society was threatened by British political interference after the Seven Years' War. To protect the self-governing society – or more precisely, societies, since there were 13 independent colonies – such outside political intervention had to be rejected. And this gave rise to that psychological perspective that still haunts American politics: »that government is best that governs least.« Its corollary is the demand for a government of laws, not of men, as if any political intervention at all were a danger. In this way, the rights of the individual are supposed to be protected, and equality-before-the-law insured. But how was this to make possible the kind of participatory associative social life admired by observers since Tocqueville. Such free association would permit the natural development of fraternal relations on the basis of actions by individuals with no reference to or need for state intervention. But that is just what market liberalism claims to provide. Yet its competitive egoistic basis is hardly the kind of fraternal community sought by today's American republicans.

The American revolutionary model is thus no more free of internal tension and conflict than the French. The participatory republic that is said to be made possible by the rule of law and the protection of equal rights can effortlessly – and perhaps unthinkingly – be transformed into a liberal democracy whose procedural justice guarantees formal individual rights that cloak factual relations of competition among economic agents that make participation increasingly unlikely. On the other hand, it may seem necessary in times of political turbulence to sacrifice the pleasures of political participation – to weaken republican democracy in order to »save« it from »democratic overload« and the perils of ungovernability (or simply rule of the masses, if not of the mob itself). Can one say that liberty trumps equality in this context by reducing it to the »merely political« form of equality-before-the-law? That is the standard interpretation, but it does not explain how the resulting social form of inequality constitutes a form of exclusion. Yet it is this phenomenon, and

not inequality per se (whatever that might mean), that concerns republicans.

The fact that republican political theory has been reborn in the United States distinguishes it from its French cousin. The dominant self-understanding of American political life had been brilliantly expressed by Louis Hartz's account of »The Liberal Tradition in America« (1955). Following Tocqueville, Hartz developed the old aphorism: »no feudalism, no socialism« to stress the uniqueness of America's historical path. Yet the brief post-war dominance of Hartz and the liberal »consensus-historians« was followed by the emergence within the historical profession of a republican interpretation represented by Bernard Bailyn and Gordon Wood. Similarly, within political theory, the communitarian political challenge to de-ontological liberalism theorized by Rawls began to take shape (at first as the – fore-doomed – search by »radical historians« for an »ersatz«-proletariat). In both cases, the priority of the social system over the action of the individual was stressed. Fraternité was the presupposed solution, liberté and égalité the problem. The solution has remained foreclosed, and the problem is still debated. Meanwhile, the French seemed to avoid the debate altogether by relegating liberalism to the domain of the economy while leaving republicanism free to regulate political relations. In fact, they were constrained to face the same problems as the Americans, and their proposed solution – »solidarisme« – underlines the centrality of the republican concern with the problem of exclusion.⁶

Some Elements of the Debate Today

The most recent sustained political-theoretical critique of American liberal democracy is Michael J. Sandel's »Democracy's Discontent. America in Search of a Public Philosophy« (Cambridge: Harvard University Press, 1996). Sandel's study is useful in our context because its two parts correspond to the dualities found in the concept of republicanism. His conceptual critique of the jurispruden-

6. A useful, though in some ways dated, examination of this French history is found in: Jacques Donzelot, *L'invention du social. Essai sur le déclin des passions politiques* (Paris: Fayard, 1984).

tial deformations of what he calls the »procedural republic« and the vapid rights-based individualism that it guarantees is followed by a provocative historical reconstruction of the devolution by which the republican social institutions that he claims were instituted by the Founders were transformed into the liberal abstractness that he described in the first part of the book. Sandel reconstructs the historical steps by which political life became subordinated to the formal and procedural interventions of the courts, whose presupposition was a rights-based individualism that its judicial intervention then serves to confirm. He retraces a trajectory of crucial turning points at which the values of the participatory social republic were defeated by the formal-individual rights orientation. This historical-conceptual approach suggests the possibility of a comparison to the two centuries of French political evolution. At first glance, the post-revolutionary French appear to have gone from political to social-republican politics whereas the post-revolutionary Americans have passed from social republican politics to formal-procedural politics: the two seem to have inverted and exchanged their revolutionary trajectory. This reformulates usefully the terms of the debate. But Sandel doesn't succeed in weaving together the two parts of his book into a political-philosophical synthesis, which may be why his practical proposals for contemporary America are distressingly modest and stubbornly blue-eyed in their estimation of the future implications of their eventual implementation.

Sandel unfortunately makes no comparisons to other forms of republican politics. This lacune is filled, however, by Sylvie Mesure and Alain Renaut's recent study, »Alter Ego. Les paradoxes de l'identité démocratique« (Paris: Aubier, 1999). The authors reconstruct carefully and artfully the debates in Anglo-American political theory since Rawls and his communitarian critics began their quarrels (one of whose first shots, it should be noted, was fired by Sandel's earlier »Liberalism and the Limits of Justice« (1982)). Two important claims follow from this. While one cannot abandon the individual rights that are the foundation of any political or economic liberalism, this need not result in the formal procedural-individualism denounced by communitarians. Taking the work of Will Kymlicka as their starting point, they reject

the *social* or cultural exclusionism produced by what they see as traditional French political republicanism (i.e., the version that I have identified with American liberalism). They propose to remedy this defect by what they call a »Copernican revolution« that accepts liberalism's basic claim that society exists to further the rights of the individual but then reinterprets this claim to include among those rights what they call »cultural rights« (e.g., pp. 255–6). These cultural rights are not to be confused with the kind of »collective rights« that Kymlicka's liberalism tries vainly to defend. Such a concept would move too close to a communitarian position, threatening the foundation of liberal rights. Rather, the »Copernican revolution« implies that the condition of the possibility of the individual in modern democratic societies entails necessarily the freedom of the Other. The defense of cultural rights implies returning to a conception of politics that makes room for the intervention of political will rather than appeal to a static, juridified conception of individual rights. In this way, Mesure and Renaut hope to insure the protection of individual liberal rights at the same time that they make a place for cultural rights that are not based ascriptively on an essential or pre-political social identity of the type they criticize in communitarianism. Cultural rights on this conception result from a participation that takes the individual beyond his atomistic, pre-political existence precisely because that existence presupposes the freedom of »alter ego«.

This attempt to synthesize American liberalism and French republicanism may call to mind the approach suggested by the subtitle of Michael Walzer's »Spheres of Justice. A Defense of Pluralism and Equality« (New York: Basic Books, 1983). The difference, however, is that Walzer's concern is to develop a theory of distributional justice, which he explicitly opposes to »political prudence« (for example, p. 292 and passim). Politics for him is only another »sphere« in which the conditions of a just distribution must be analyzed and attained. For this reason, it is not clear how Walzer's useful attempt to delimit »spheres« and to determine criteria of justice within them could be applied to either the problem of exclusion, or to the redefinition of political republicanism. Walzer's theory would not so much solve the problem as dissolve it, denying its political character. And despite

shared communitarian affinities, someone like Sandel, or an earlier critic of liberalism like Benjamin Barber, would certainly find this theory too »thin« a description, preferring something more like a »strong democracy«.⁷ But such preferences must be justified politically, rather than by a static theory of distributive justice of the type proposed by Walzer.

Mesure and Renaut's insistence that their »Copernican revolution« retains the gains of rights-based liberalism makes their approach more comprehensive than Sandel's (or Arendt's) vision of a classical participatory republicanism. But Sandel's participatory orientation avoids the potential slippage of cultural rights to collective rights ascriptively based on an essentialist identity politics. The politics of Measure and Renaut's proposal, on the other hand, are based on the claim that the modern democratic individual has also a *cultural* identity which must be explicitly affirmed if the rights of that individual are to be fully recognized. As their book's title indicates, that identity includes a relation to the Other as *both* alter and ego: as an ego like me, and thus equal to me; but also as alter, different from me, and guaranteed an equal right to this difference. Their goal is to preserve a place for both the political determination of society (protecting cultural rights to overcome a type of exclusion) *and* the influence of that same society on political choices (avoiding the formalism of the liberal government of laws rather than of men). This reformulation of the republican challenge is more abstract than Sandel's but it also advances the analysis by clarifying now the (inter)relation of its terms. In doing so, it poses a new question: is it the »same« society that is both the object of political intervention (to protect cultural rights and insure inclusion) and the subject that acts on political choices (to produce the new, inclusive cultural liberalism)? In the first case, the »society« is passive and formally liberal; in the second it is active and oriented to the primacy of the inclusive community. As with the opposition of *liberté* and *égalité* in the case of the French revolution, the intervention of a third term clarifies the issue. Instead of *fraternité*, the concept of »solidarité«, developed at the beginning of the century by the republican followers of Durkheim, helps to clarify the underlying presuppositions and difficulties.

»Solidarisme« claimed to be a social-scientific translation of French political republicanism. The »social fact« of increased interdependence among the actors within complex modern societies transformed externally determined »mechanical« or »segmentary« forms of social interdependence based on resemblance (a sort of pre-political identity) into internally motivated »organic« structures based on the increased division of social labor and the dangerous new freedom that it made possible. The organic metaphor not only served to unify the perspective of system and actor as a way to overcome the duality confronting French republicanism. It meant also that in the normal course of modern social reproduction, deviations from the norm would occur necessarily as the organism adapted to shifts in its environment. The question for politics was to determine when these normal deviations became »anomic« and thereby threatened social reproduction as a whole. The association of »anomic« (as a deviation from the »nomos« or posited law) with the idea of law and legislation pointed to the place and problem of how and on what basis politics determines the stability and reproduction of the whole. But the dilemma which the reformulations of Measure and Renaut made clear returns here. As Christian Ruby shows nicely in »La Solidarité« (Paris: Ellipses, 1997), the society that results from the political intervention is not identical to the one whose »anomie« called for that intervention. »Solidarisme« is ultimately just another »grand récit«, a seamless story with no dark spaces, obscurity or contradiction that humanity recounts to itself to avoid posing the dilemma of and taking the responsibility for its own self-creation. Its sociological functionalism presupposes what it sets out to prove, becoming a theodicy and leaving no room for the creative politics that it claims to

7. The allusion here is to Benjamin Barber, *Strong Democracy. Participatory Politics for a New Age* (Berkeley: University of California Press, 1984). Since Barber's index contains no references to republicanism, however resonant his account may be with some of the categories under consideration here, I leave aside any discussion of its detailed proposals.

found.⁸ That is no doubt one reason why Mesure and Renaut think that they can introduce the social concept of »cultural rights« without abandoning the gains of a liberalism whose rights-based individualism claims to make political intervention possible. The problem – as suggested by the criticism of Walzer – is how to relate a theory of justice to a political theory in the context of a modern democracy where the two senses of republican politics seem constantly to interfere with one another and where contemporary choice and weight of history are knitted together by invisible iron threads.

Beyond the Politics of Will

Despite their asymmetries, contemporary French and American republicanism agree that »something must be done«. The French tend still to expect the state to do it, but they are faced today with the dilemma expressed by Socialist Prime Minister Lionel Jospin after the decision by Michelin (in the Fall, 1999) to reduce drastically its work force despite record profits: »L'Etat n'a pas à administrer l'économie«. Within days, the leader of his own party, François Holland, pointed out to Jospin that state intervention is »nécessaire pour parvenir à une société de plein emploi«. This little exchange signifies that the two republican visions remain with us. Granted, the Prime Minister referred to the economy while the party leader spoke about society. Does the difference make a difference? Does »full employment« depend on the economy or on political choices? Certainly the one justifies inaction by appealing to the self-moving systemic laws of the market, the other calls for political action on the basis of a voluntarism that denies to society the capacity to move on its own. Looking for a way out, the Prime Minister might recall his earlier comment on the Michelin affair, that the trade unions should do the job for which they were created! In that way, apparently, the two positions would be reconciled in a version of solidarisme. But this proposal introduces a new element, for the reconciliation is based on a model of society in which work remains the crucial integrative form of social solidarity. Yet neither form of republicanism – in France or in the U.S., or within each country – is based on this kind of economic foundation: they were both political. But the pro-

posed third way forces us to clarify what is meant by the political. After all, communitarian social republicanism claimed to be political.⁹

»Something must be done«. But who will do it? That too is a political question, as Sandel constantly reminds his readers. The idea of a self-organizing society whose solidarity is based on its work recalls the usual image of America at the Founding period. But that picture is not quite accurate. The »republican« historians who challenged the liberal consensus showed that the Lockean picture of a »state of nature« that needs politics only to avoid »inconveniences« is misleading. The participatory republican Sandel underlines the practical moments at which the republican state and its political institutions could either affirm the need for participation, or could opt for procedural, anti-political solutions to the problems facing a maturing economic society. This implies that the task of republican politics is the reproduction of the conditions of possibility of republican politics. This self-referentiality (or reflexivity) is a virtue in Sandel's concept of the political, which is not a means to an economic end – something Walzer rightly sees as belonging to another »sphere«. But this doesn't explain who will be the agent of republican politics. Sandel's story becomes a »grand récit« that encounters the same problems faced by »solidarisme«: it presupposes what it wants to prove, and is unable to explain how an apparently good republican beginning could devolve into the »anomie« of a procedural republic that reproduces anti-political liberalism rather than political republicanism. At one point, Sandel intuits the root of the difficulty. Government must legislate for (what it takes to be) the common good. This sets up a potential conflict

8. Donzelot, in *op. cit.*, stresses its Rousseauian pre-suppositions that identify the state of nature with Reason and leave no room for political deliberation – i.e., for error, on the part of democratic individuals.

9. Challenged from his left in his own party, and by his Communist Party coalition partners, Jospin tried to have his cake and eat it too in his September 26th speech to the Socialist deputies of the European Parliament meeting in Strassbourg: »The market economy does not spontaneously work in harmony. It needs ground rules to function effectively«. In our context, Jospin's claim would be to combine procedural liberalism with socialism, while ignoring the question of social solidarity and inclusion that is, however, the true challenge to modern republican politics.

between the self-reproducing participatory social conditions of republican politics and the particular governmental decisions made at a given moment – decisions which, as representing the common good, claim universal validity. This clash between the universal claims of the political state with the particular vision of the citizens was seen earlier to explain the critical force of the republican challenge. Are we now in a better position to suggest concretely not only »what is to be done« but who is in a position to do it?

Neither contemporary theory nor political practice suffice on their own; historical experience interferes with the purity and isolation of both, it is an irreducible part of the present. Jospin's recognition that the self-regulating economy is no more realistic an option than is the voluntarist intervention by the state, and Sandel's insistence on the impossibility of a self-governing society that has no need of government or the state share a basic insight into the nature of political action in a modern democracy. There is no single unique and unified will that can either act on society from outside of it *or* that can represent the self-conscious action of society on itself. Politics is neither autonomous nor fully dependent on external conditions that it cannot affect. The simple imperative that »something must be done« presupposes the existence of an unified actor who will »do the right thing«. And it assumes that there is – out there, somewhere, independent of politics – a »right thing«. This is what I call a »politics of will«. Its presupposition of the existence of a circumscribed political agent and end that in modern times is called »sovereignty« must be explained. Rather than debate whether »globalization« has made this notion of sovereignty obsolete today, it is important to see that such »sovereignty« was never real but rather existed as an imaginary representation. But the imaginary is not simply arbitrary; and its analysis often says much more about the reality that calls it forth than could any positive empirical account. A part of that reality is composed by the sedimented history of the two republican traditions, to which we have to return to understand the challenges to contemporary politics.

The French version of a politics of will appears in the very title of the Declaration of the Rights of Man and of the Citizen. Its silent assumption is that these two types of rights are compatible and

mutually reinforce each other. The political logic of the revolution makes clear the difficulty hidden by this presupposition. In the Ancien Régime, the King was the particular incorporation of the sovereign and universal will of the nation; after the revolution, the people as »sovereign« had to step into his place. But the revolutionary elimination of politically instituted hierarchies of the Ancien Régime meant that the individual as such was liberated; the particular individual, even in association with his fellows, could not claim the universality of the sovereign people. The oscillating history of the revolution can be interpreted as the conflict of these two wills, that of the particular »homme« and that of the universal »citoyen«. As a result of their clash, the idea of a political sphere in which the autonomy of the individual would not be transformed into a meaningless fiction could not be established because, by definition, a politics of will can be only total, since a divided will – be it that of the individual or that of the nation – would be incapable of willing. In the language of the revolutionaries, the »pouvoir constituant« can never be finally and completely expressed as »constitué«; no institution can once and for all incarnate the sovereign will of the nation; the past cannot ultimately determine the future, no more than the fathers can determine the freedom of the sons. As a result, the very political conditions that made possible the French revolution – the claim that the people and not the monarch incarnate the will of the nation – made impossible a successful republican conclusion to the revolution. That is no doubt why so many of the revolution's historians sought comfort in socialism or communism.

Proud of their revolutionary exceptionalism, the French tend to deny the radicality of what they call the American »War of Independence«.¹⁰ They

10. In the following paragraphs, I will be summarizing some implications of my essay on *The Birth of American Political Thought* (originally published in French in 1986 by Editions Ramsay, and translated into English in 1990 by the University of Minnesota Press). Its arguments are developed in a more concise and theoretical form in »Demokratische Republik oder republikanische Demokratie? Die Bedeutung der amerikanischen und der französischen Revolution nach 1989« in: *Das Recht der Republik*, ed. Hauke Brunkhorst und Peter Niesen (Suhrkamp: Frankfurt am Main, 1999), and in »Republique démocratique ou démocratie républicaine« in: *Argument*, Nr. 5, printemps 2000.

are not wrong to do so; its intent was surely not revolutionary. And its conclusion neither produced a harmonious union nor conserved an old Eden of social equality. In the national Confederation, but even more within the individual states, disharmony reigned. Too democratic, too dependent on their constituents, the politicians – who once virtuously »stood« for office and were now forced to »run« for it – found themselves the victims of raging and transitory societal passions. Pennsylvania, the most democratic of the states, whose constitution is often compared to the radical Jacobin Constitution of 1793, is the paradigm case. Laws passed during one legislative period were rejected the next; favors were courted, no one could know what tomorrow would bring. And this, of course, was not good for business – which needed formal legal certainties. But it had another, non-economic, signification, which explains why one should not attribute the creation of the strong nation state to the needs of »capital«. This constantly changing legislative agenda meant that, over time, it became impossible not to recognize that the will of the sovereign-people was not One, nor could it be One and, it became clear, it should not become One. Politics had other tasks than those of a politics of will.

The practical lessons drawn from the experience of politics were always more important for the Americans than any political theory. So it was, for example, when the British imposed the Stamp Act, which the Americans somewhat nervously protested and then – to their surprise – found that they could do business perfectly well without the stamp of state authority on their private contracts. So too, in the period that followed the Peace of Paris and preceded the meeting in 1787 that led to the new federal Constitution, they came to realize that there was no one pre-existing and unified subject that had to exercise its »sovereign« will. They came to realize, in short, that the place of power is not occupied by a pre-given social subject; nor ought one to seek to create such a political subject; the place of power must remain empty. Their new institutions incorporated this insight. And it was this insight – rather than the political institutions invented by their »science«, or their naturally egalitarian society – that led them to go beyond a politics of will. It is true that these two options – and the opposition between them – were *both* pre-

sent in the minds of the Founders. The nature of their society is evoked in the Federalist 10 to explain why neither despotism nor factious division threaten the new republic. And the political institutions invoked particularly in Federalist 51 are based on the intricate scientific machinery of checks-and-balances. Political scientists will continue to debate whether these two arguments are or are not compatible; for our purposes, Federalist 63 is more important than either of them because it appeals to the American political experience while drawing conceptual lessons from it.

The choice of a bicameral legislature whose upper chamber bore the aristocratic title of a Senate needed justification in a political society that had just overcome the old monarchy. Of course, the Senate was the result of a compromise that permitted the smaller states to accept the new Constitution. But »The Federalist« could not say that; it had to argue from principle. And so it explained that the Senate, like all the branches of government, was »republican« in the sense that it was representative of the sovereign people. But, the argument continued, this form of political representation differs from that of the Ancients; theirs was based on popular participation whereas the American – called »modern« by »The Federalist« – form of representation differs because it is based on »the total exclusion of the people, in their collective capacity«. Two points should be stressed in this paradoxical formula. The people are excluded, after a comma, »in their collective capacity«. They are not excluded – pace liberalism – as individuals; that was also the point implied by Federalist 10's insistence that societal factions would nullify one another's force. More important, the Senate like all the branches of government is representative – which implies that none of them can claim to incarnate the One will of the people. The sovereign people is everywhere and nowhere, which is why the institutional schema of Federalist 51 insisted that there be no political »will independent of society itself«. In this way, what began as a pragmatic compromise at the Philadelphia convention can be seen also as the theorization of the historical experience that showed the impossibility of a politics of will claiming to be the representative of, or having as its end the production of, the One sovereign

people. American pluralism is thus not based on the nature of American society (or on a naive optimism about good human nature that needs only to be left alone to bloom under a solitary sun); it is a political creation – and depends on continual political action if it is not to become the kind of divisive pluralism that produces what the French rightly fear today: social division and political exclusion.

Republican Politics: Anomie and Judgment

The historical sketch of crossed republican histories that has been followed here suggests the introduction of a final conceptual distinction. The philosophical debate between liberalism and communitarianism, and the historical analysis of the peregrinations of the republican project, can be reformulated as the alternative between a »democratic republic« and a »republican democracy«. The former concept, of course, designated what was formerly called the »socialist bloc«, but it can be seen as a generalization of the model of republican politics that stresses the pole of *égalité* and that insists on the primacy of society or the community. Such a democratic republic would be ideally a direct democracy in which society literally translates itself (or its sovereign will) directly into the political sphere, which thereby loses its autonomy. Thinking that it is based on will, politics shows itself here to be imaginary; more than an illusion it is a self-delusion, but it is not without real effect. Due to the paradoxical self-abnegation of society, which wants only to affirm itself in its sheer positivity and cares nothing about what it could become, the really existing state becomes increasingly powerful. Such a democratic republic was what »The Federalist« rejected as pre-modern, and different from the American historical experience. As a politics of will, it presupposes the existence (or desirability) of a real, or at least potentially real unified sovereign. There is no need to stress the dangerous implications of this model, which took the form of »really existing socialism«. But this does not imply that the opposite pole, republican democracy, avoids these extremes only by becoming what Sandel rightly denounced as the procedural republic. That result makes individual

freedom abstract while appealing to the priority of the right over the good, and to the institutions that insure equality before the law – however that law is made, by whomever and for whomever. The communitarian critique of this vision cannot be ignored.

The introduction of the distinction of a democratic republic and a republican democracy suggests a way to go beyond the increasingly sterile debates between liberals and communitarians. Sandel in his way, and Mesure-Renaut in theirs, try to avoid the ahistorical opposition that has dominated recent Anglo-American political theory. The »Copernican revolution« operated on rights-based liberalism seeks to integrate social considerations by stressing the cultural dimension of individual identity. To avoid an essentialist identity politics and its accompanying problems, it insists that integration takes place in the political sphere (rather than in the domain of distributive justice that concerns Walzer). But what this *politics* actually looks like is not clear in the French philosophers' conclusions. This is where Sandel's arguments can be reinterpreted and his blue-eyed practical optimism overcome. He recognizes the difference of *government* from the republican social community whose possibilities for participation he wants to preserve. In so doing, he helps clarify one dimension of the republican experience that emerged from the American revolution as it has been interpreted here. Insofar as *each* branch of government is representative, its decisions have the force of law, they are valid for the *entire* society – but they therefore risk appearing as resulting from the kind of procedural formality that grates on the nerves of communitarians because it reproduces the opposition of the universal and the particular that republicanism wants to overcome. Yet insofar as *all* branches of government are representative, as we saw, *none* of them can claim definitively and always to represent or to incarnate the reality of the sovereign people. *Each* of them functions, then, like Sandel's »government« in relation to the republican community. This is the structure of a republican democracy: its republican political institutions insure that the *society* remains democratic, pluralist, constantly in movement and defying fixation. As Tocqueville said of democracy, what counts in this republican de-

mocratic politics is not what it is, but »what it leads people to do«.¹¹

Each of these two types of republican institutions would define and confront the problem of »exclusion« differently. For the democratic republic, exclusion would be a form of »anomie« whose remedy would be sought through social measures imposed by the state. Typical would be the attempt to find work for all and to assume that the old form of social integration based on productive labor would thereby be restored. This would entail a slippage away from the more modern organic integration through social division and individual autonomy toward a more segmental form of integration based on shared identity. This would explain why such a model could suggest that manifestations of »cultural identity« – wearing the veil or other religious or ethnic signs – must be simply disallowed as threats to the unity of the society, a social unity that is paradoxically guaranteed not by the attainment of true social equality but of formal equality of all citizens as identical members of a legal republic. This return of the familiar paradox from which we began our discussion is simply a manifestation of the basic republican duality that emerged from the French revolution and whose inability to free itself from a politics of will helps to explain the refusal of cultural political identity by many French republicans two hundred years later. As was the case for »solidarisme«, the root of the difficulty is that there are no criteria that permit one to know whether the »anomic« is a sign of illness or the healthy reaction to a new challenge to the development of the modern social organism. As opposed to this, Mesure and Renaut, for example, might well see the veil as a healthy reaction to the leveling tendencies of modern mass democracy that denies individuals the right to any but an abstract liberty or identity.¹²

The republican democracy that overcomes the politics of will must be able to distinguish the anomic from the healthy if it is to deal successfully with the problem of exclusion. Anomie is not a discrete real property that naturally belongs to a phenomenon; it is a political relation. As implied by its etymology, the anomic is that which doesn't fall under the law. Since the law is posited as universal, the anomic is that which exists as a particular that rejects subsumption under a pre-given law.

Such a particular phenomenon is not naturally present in the world; it is also a political relation. Logically, a particular is only particular insofar as it is one among a plurality of particulars, without whose presence the particularity of any one of them could not be known as such. But the plurality of particulars, in turn, can only be recognized as particular insofar as it is related to a universal that is explicitly posed as universal. The concrete form of this logical figure recalls the relation of government to the republican community suggested by Sandel and made explicit in the reconstruction of the Americans' revolutionary experience: a republican democracy exists insofar as the government posits laws valid for all at the same time that these laws (which are »nomoi«, not »physei«) are never posited as definitive or the irrevocable expression of the naturally existing sovereign will of the (in principle) united people. In this way, the particular phenomena that are the concern of politics are related to the universal claims of the state but they are never defined exclusively or entirely by that political state. That which counts as political is open constantly to redefinition; the anomic is not definitively lost, the sign of a fatal illness. What one branch posits as valid for all may be contested insofar as *some* of the people appeal to another branch – which, after all, is equally its representative. In this way, the anomic can be integrated into a healthy polity – indeed, it can contribute to the health of that polity.

This specification of republican democratic politics points to a political imperative: multiply the number of representative political institutions. This of course cannot be done arbitrarily. But a healthy polity is not one that is fixed forever and immune to change. There is no reason to retain

11. The citation is found, significantly, in the chapter on »The Activity Present in all Parts of the Political Body in the United States: The Influence that it Exercises on Society«, which stresses the influence of the political republic on the social activity of the individual. In: *De la démocratie en Amérique*, 1 (Paris: Editions Gallimard, 1961), Volume 1, p. 254.

12. On the other hand, Renaut is more nuanced in his short essay on *L'individu. Réflexions sur la philosophie du sujet* (Paris: Hatier, 1995) in which he tries to set off his own Kantian-liberal politics against competing French analyses. But this essay was written before *Alter Ego*, which does not refer back to it, since its goal was to inaugurate a debate with the Anglo-Americans.

only the inherited tripartite logical division of (pre-existing) powers.¹³ Indeed, as opposed to the traditional interpretation, the American republican vision of checks-and-balances stresses much less the checks than the balances, which are insured by the fact that each »power« (as in a version of Tocqueville's adage) has an active interest in maintaining itself that becomes the dynamic and political reason for counter-balancing the others by insuring that they cannot pretend to be the sole incarnation of the sovereign popular will. The dynamics of balance in a republican democracy can build from political experience that lies below the usually accepted hierarchy of governmental institutions, or it can take its materials from above that hierarchy. The representative status of trade unions in a society where the integration through work is challenged by the global economy suggests one direction to be pursued; that of the European Union, where misleading rhetorical criticism of a »democratic deficit« is based on the implicit goal of realizing a democratic republican politics of will, is another.¹⁴ One cannot assume that new institutions will emerge according to the »law« of subsidiarity, as it is explicitly proposed in Europe, for that concept is only the translation into modern garb of the implicit realism of the old Catholic natural law tradition that restricts the inventiveness of the legislator and denies the autonomy of politics. Nor can the function of trade unions be reduced to the direct representation of the real »interests« of the working class, as if this class were itself defined as a discrete natural being needing only to be examined by a faithful observer who can diagnose its needs.

The corollary to the imperative of multiplying representative institutions is the recognition that the society or polity that is to be represented is itself active, plural, and constantly open to innovation. But this pluralism cannot become the basis of an identity politics that assumes that representatives must incarnate a discrete essential identity that exists already on a pre-political level. This slippage that rightly worries many French republicans can be avoided if the political search for inclusion takes care to recognize that the anomic is not simply a mass of passive victims outside of social or political relations but that their anomie is defined precisely by their relation to the universal claims of the republican democracy. Although one has to

avoid the temptation to romanticize, this relation means that they are active subjects, and it points to the *political* means for distinguishing the anomic from the healthy: the degree to which the particular phenomenon in question is capable of making itself »heard« at the representative level of the different branches that have multiplied imperatively within the republican democracy.¹⁵ The impetus to seek such a hearing is provided by the representative republican institutions which, with Tocqueville, were seen to provide dynamic incentives to action. In this way, by entering public debate, the particular that appeared to be anomic shows itself to be a legitimate actor with a claim to recognition as universal; it is then no longer anomic, not outside the law; it has changed the law by changing its relation to the law. Of course, this recognition can be contested, and is no more fixed in its validity than any measure passed by one of the branches of the republican democratic government. But because it comes from society even while claiming to belong to a lawful (»nomic«) universe of discourse and action, it opens a mediation that makes the intervention of the government no longer appear abstractly universal. The limits of procedural liberalism are surpassed by this political mode of dealing with the problem of modern exclusion.

13. Indeed, one recalls that for many of the early modern political theorists, the judicial branch did not represent an independent representative power – and its independence is still questioned in many modern nations, such as contemporary France! One might also recall that Locke suggests that the so-called »Federative Power« – which deals with foreign policy – should be considered to represent an autonomous function of government.

14. Still another would lie at the level of international law, as suggested in the provocative study by Agnes Lejbowicz, *Philosophie du droit international. L'impossible capture de l'humanité* (Paris: Presses Universitaires de France, 1999).

15. This metaphor of »being heard« is used effectively in Jürgen Habermas' *Between Facts and Norms* (Cambridge: MIT Press, 1996) which also uses the interesting metaphor of society »laying siege« on the state to which I am also alluding here. I have tried to analyze critically Habermas' attempt to conjoin a discourse theory of law with a communication theory of society to permit a reconciliation of liberal proceduralism and the participatory social vision of the communitarians in »Law and Political Culture«, reprinted in my *Political Judgments* (Rowman & Littlefield, 1996).

The theoretical premise of this practical treatment of exclusion goes beyond the politics of will to what I have called a »politics of judgment«. The anomic structure of exclusion is simply another expression of the paradoxical trajectories of French and American republicanism. That which is anomic is at once outside of the law and yet it can only be defined in relation to the representative political institutions that posit the law. But we saw that the fact that the anomic cannot be subsumed under an existing law does not mean that it cannot propose its own lawful claims to be heard and included as representative. This dynamic structure recalls the concept of the reflexive judgment proposed in Kant's »Critique of Judgment« as the means to understand the justification of the claim that a particular object gives rise to an experience of beauty that is valid universally for any and all individuals. There is no pre-given law that defines the beautiful in the way that physical laws explain occurrences in the natural world. The beautiful can be said to be anomic in this sense.¹⁶ The same situation holds for the particular phenomena that call for political action; they cannot appeal to existing law even though they must demand recognition as themselves lawful. The process by which this political translation of the anomic takes place is suggested by the representative structure of the republican democracy through which the excluded seek to gain a hearing.¹⁷ While the phenomena designated as exclusion are real and can be analyzed by empirical methods – unemployment, homelessness, ethnic discrimination, etc. – the process of exclusion is a relation governed by a dynamic which defines the political. At what point any of these phenomena that are loosely spoken of as »exclusion« becomes a political problem cannot be determined by pre-existing laws.¹⁸ That relation and its dynamic are the object of a politics of judgment which avoids the paradoxes of a republican politics of will.

The politics of judgment has in fact been at work throughout the construction of this analysis. It does not express itself as the willful insistence that »something must be done« (although the author's intent is certainly not that nothing be done). Rather the politics of judgment comes into play when the attempt to do something has failed, or would lead clearly to results that are undesirable. Indeed, expressing a final paradox,

the politics of will always takes precedence over the politics of judgment, just as Kant knew full well that what could be analyzed in terms of the pre-given a priori laws of science and morality should fall into their purview. If I can intervene in the face of a given problem, I should, and I will. But intervention in the modern globalized society is often complicated, faced with ambiguity, confronted by paradox. That is no reason to abandon politics. It calls for a redefinition of the political by means of a confrontation with its limits. While it appeared that the shared American-French imperative to criticize and to transform our present institutions led to a return to the political theory of republicanism and its practical translation, these reflections have led to the recognition of the need to rethink not just the theory but especially the *historical experience* in which that theory is embedded and from which it cannot be separated even when it is facing contemporary problems. Republican theory can too easily mistake itself for the positive model for a democratic republican politics of will. Only when its reflective structure is preserved as a republican democracy can it fulfill Tocqueville's imperative to »lead people to do« the kind of politics that can effectively define and begin to intervene politically to overcome the modern phenomena of exclusion. ◀

16. Of course, this is not Kant's terminology. Moreover, it should be noted that Kant is talking about laws of the natural world, »physei« rather than »nomoi«. Nonetheless, we have seen that in the political world of democratic republicans, there is a constantly present temptation to think of the sovereign will as if it also existed as »physis«, as a natural given.

17. I cannot develop the technical arguments for this structural analogy further here. C.f., *Political Judgments*, op. cit., as well as the systematic philosophical treatment in *From Marx to Kant* (second edition, New York: Saint Martin's Press, 1993).

18. Who would have thought, in the 1970s, that European societies could live with 12% rates of unemployment? At what point does racial discrimination »tip« to become exclusionary? When and under what conditions do the ill-housed represent an instance of exclusion? These are not questions for an objective social science; there are no pre-given laws under which they can be subsumed and in terms of which their weight can be measured. They are political questions.

