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It seems increasingly commonplace to assume that there is a fundamental conflict between conscientious participation in civic life or governmental affairs and the private pursuit of happiness. On this understanding, what citizen devotes to one represents just that much endeavor and commitment detracted from the other.

With this one-dimensional model of the citizen, the concern of civic educators becomes how to keep the citizen in a constitutional democracy from “retreating into privacy” or “withdrawing into the private sphere” – or, in more sophisticated accounts, how to strike the right balance between two mutually incompatible expenditures of time,

attention, and activity.

The metaphor of “retreat” and “withdrawal” suggests that the lives of persons are naturally situated in the public domain in the first place. They are thus attracted to the competitive, alternate domain of privacy. Or perhaps they have been intimidated to flee from the public arena into the safe respite of a reassuring private sphere. The picture implied here, of how the person is naturally situated in a political order of constitutional democracy, may itself be inaccurate. If so, strategies of civic education geared to address the possible deficit of democratic commitment and political activism may be improperly designed.

But here may be even more important problems arising from this picture in the implied *dynamic between the public and private spheres* and in the assumed *model of the citizen* in a constitutional democracy. The purpose of this paper is to explore the origination of the private domain in the political theory that underlies constitutional democracy, to frame its relationship (or, more properly, “relationships”) with the community’s domain in its various phases (*public, political, and governmental*), and to portray the character of the citizen that emerges from this larger account.

A sompler error of analysis – though it may be even more pernicious for its false understanding and potential misuse in focusing the purposes of civic education on the wrong questions – is the conclusion that the people’s inattentiveness specifically to election

campaigns and their low voter turnout is somehow in itself the fundamental problem of a democratic polity. These facts may, indeed, pose serious challenges to the concept and the operation of government-by-the-people, but they are “democratic participation” conceived of as not much more than electoral attentiveness and regular voting impoverishes the concept of democracy and diminishes the character of the citizen.

In the first place, an understanding of democracy as essentially *electoral majoritarianism* mistakes the device (voting) for its underlying values (representation and accountability), and confuses the approximation (a majority) for its full presence (the whole people). In both respects, these instrumental processes for connecting the legitimacy of democracy to the authority of governance are, to be sure, extraordinarily valuable human inventions for the practical mechanics of popular self-government. But it is important not to lose sight of what lies behind these instrumentalities. Democracy is much more fundamentally: a *civilizing* way of life for a people, a constitutive relationship between the people and the authority of their political system, and a regular manner of interests of citizens. (The elaboration of this larger view is the purpose of *The International Framework for Education in Democracy*).

In the second place, such a preoccupation, by focusing on what may be the wrong question (e.g., how to get citizens to support elections and vote) may be itself evidence of thinking that is deeply problematic for democracy – conceiving of “democracy” as something required by the “state” instead of by the people. In that view, the state needs its citizens to show up only episodically, and on cue: to legitimize itself or its governing class, to pay for its operations, and possibly to risk life and to die for it. Funneling the richly conceived status of *citizen in a constitutional democracy* into secondary roles like “voter”, “taxpayer”, or “soldier” not only mistakes the institution of citizenship for one or a few of its possible attributes. It also tends to invert the relationship between people and polity, making the citizenry subordinate to the state, so that it is the citizen that is expected to be “responsive” instead of the government.

In a more jocular sense, it often seems that officials in a political system think of themselves in the position of having gone to all the trouble of throwing a big party for the people, who diffidently or contemptuously do not show up for the festivity.

There may be an inclination in all democracies, especially as they are sustained over many years, to move to this inversion of the fundamental relationship of citizen to government, people to polity. But, if the relationship has in fact evolved toward this conclusion, the last

expedient that would offer a solution to it would be to assail the private sphere. For, if it is properly conceived, the domain of privacy may be the best evidence that the people are not only foundational to democracy, they are superior to the polity. Because the zone of private life represents precisely that residuum of rights and power (see, e.g., the Ninth and 10th amendments of the Constitution of the United States) that has not been given in trust to the government, privacy is the proof that the people remain sovereign in a constitutional democracy. Their higher-order consent to the design and establishment of the institutions of politics and government (through the power to authorize and change constitutional arrangements) is separate from their making choices about who will fill the institutions they have created. Both of these are essential phases of liberty and self-government in its fullest sense, and the two phases may be in some tension with each other. But, in countries where the people are not sovereign in this sense of constitution-making, there is that much less democracy. And democracy is that much less fundamentally present.

There does seem to be tendency increasingly to insulate political institutions from this kind of popular power in every established democracy, so that the “popular fiat (Let it be done)” of ratified constitutional becomes the “social fact (It’s a done deal)” of settled convention. And this withdrawal of the fundamental democratic power from the people may be effectively disguised by a preoccupation with the electorate’s political authority to choose from a given selection of potential office-holders. In this way, the people may then be scolded for their withdrawal from this straightened political arena into private lives where they might still hope to govern themselves.

Nevertheless, if we step back from the unreflective view of domains (public and private) in conflict, we might recover (or, if necessary, construct) an understanding of the relationship between public and private that is more consistent with an unperverted form of constitutional democracy that can be grounded in a rigorous political theory. If the sovereign people in a democratic order have not, in fact, given over their fundamental political power to government – but have only authorized representatives to act as their trustees, as the classic theory of constitutional democracy holds – then there need not be an inherent conflict between the reserved domain of popular liberty and the delegated domain of public governance. Nor does it need to be the case that the community’s political energy is lost in the competitive interaction of these spheres.

As I have suggested, therefore, a crucial part of the problem in our understanding of what “participation” is and how it connects with full-scale democracy is a theoretically flawed conception of the relationship between the private and the public. The terms themselves betray some of the distortion: Participation, as taking “part” – as if someone else has already determined the script for the drama and the citizen is faithfully to carry it out, or as if “partiality” were the essential attribute of an individual’s role in self-government; privacy, with its root meaning of “deprivation”, where something essential has been taken away or removed, implying that the public domain is where the real life of the person is sustained and the private sphere has had its substance sucked out. Thomas Hobbes’s view that governmental authority is something that all of the people “own”, as if it were their collective property, is actually more fitting for democratic theory because of its basic perspective on the relationship between the people and the polity. And John Locke’s view that the very ground of political power is the obligation to protect the personal rights or property (life, liberty, and estate) of its citizens provides a revealing twist for our understanding of the relationship between the person and the citizen. Understanding popular self-government as both “exercising the powers of sovereignty (ultimate authority)” and “retaining the rights of autonomy (giving the law to oneself)” are, therefore, much better formulations than the short-hand “participation” and “privacy”. And these alternative formulations may suggest different relationships between the two domains – not least in the picture that these formulations give for the parallel phases of self-government, public and private, both of which reflect spaces where the people exercise their full democratic power.

Getting a more rigorous picture off this relationship is important not merely because it might make our critique of prevailing democratic politics more strategic, but also because a central component of the democratic order is educating ourselves and our fellow citizens about the nature of democracy. To educate falsely, or misleadingly, in the subject of democracy is to subtract from the realization of democracy itself. Because of the close linkage between knowledge and politics (or between reason and governance) in general – but especially in a democratic political system – to promulgate misconception about democracy is tantamount to advocating misgovernment.

Reconceiving the relationship between the “private” and the “public”

Understanding the nature of the “private” sphere within a constitutional-democratic order (that is, in a system of rule-of-law government by the people) entails grappling with the

genetic theory that underlies this form of community life. In crucial ways, the political theory of the social compact – specifically, Thomas Hobbes, John Locke, Jean-Jacques Rousseau, and the authors of *The Federalist* (or the “*Foederalist*”, a term which derives from the Latin *foedus* for “pact” or covenant) – depends more centrally on the Hebrew Bible and the New Covenant for its narrative background than on a conceptual pedigree from the Greek and Roman classics. And this political theory tends to track biblical accounts of creation of the world and covenant with a people in its preoccupation with the origin of political community and the social compact of the citizenry.

In the first account of “beginnings” from the Book of Genesis, God creates only two things as an act of main by speaking: light and life. (The Book of John interweaves these two in its account of creation, through the “world”.) In response to formlessness and void, he makes light. To make an image and likeness of himself, he makes man. The rest of the world is brought into existence not by making but by drawing boundaries in what is already present, separating one thing from another. Created light and uncreated darkness are separated to make day and night, and the “dominion” over each of these by the light-giving bodies of sun and moon provides the first account of “governance” in the creation story. And the series continues: firmament from earth, land from water.

The creation sequence of articulated distinctions is picked up as the strategy for making political order among the social-compact theorists, carving community out of nature. Where Aristotle “draws” no distinction between the natural and the political, Hobbes sets a single boundary – between the safe place of commonwealth and the dangerous space of nature. Locke’s theory establishes a “people” as a separation from the “community of mankind”, as his first boundary-drawing. Separating the institution of government from the political association of people is his second. Rousseau, with his distinctions between “citizen” and “subject”, and between “sovereign” and “state”, moves toward a third boundary, which the Federalist authors realize more fully – the distinctions between people and mediates between Locke’s (and Hobbe’s) first covenant that makes a “people” and Locke’s subsequent, second contract by which the people institute “government” to serve the ends set out as the foundation for their political association in the first place.

The International Framework for Education in Democracy substantially incorporates all three of these boundaries, whose increasing differentiation mark the theoretical evolution of constitutional democracy. Thus the Framework poses a question and provides an introduction that sets out its implications:

How do civic life, politics, and government provide spheres for the practices of democracy? A commitment to democracy potentially affects and transforms all aspects of human life, especially those that pertain to the relationships of persons in any community. These may include the workplace, the arts, and even the mentality of a people. Democratic practices take place in a number of spheres ranging from the most extensive sphere (civic life), to the narrower sphere (politics), and to the most intensively focused sphere (government). Both politics and government are contained within the sphere of civic life and government is contained within the sphere of civic life and government is contained within the sphere of politics. Distinguishing among these three spheres clarifies the domains in which democratic practices can take place (I.D.).

The Framework, moreover, articulates a fourth boundary (one that is also implied in Rousseau): between “civilization” or “humanity” and the world at large. This proto-political space is occupied variously by the concept of the open society, human rights, and the more universal principles of constitutionalism itself. (See the Framework: “What is the relationship of government founded on the people to the idea of a constitution?” “What is constitutionalism and what is its relationship to constitution?” And What is the relationship between democracy and human rights? The Diagram included at the end of this paper – “International Framework for Education in Democracy: The Five-Part Model” – sets out an approximate illustration of the logic of these four boundaries, where each of the bounded zones mapped out actually overlap the more comprehensive domains beneath them.

Acting in the image of the theory that underlies the establishment of our political order, we reason best through our capacity to make or recognize distinctions – distinctions that track the separation of political categories that actually constitute a well-founded democracy. A central component of “reasoning” itself is the ability to draw and defend such distinctions. Our process for making law and interpreting a Constitution advances also as a reflection of such originally constitutive boundary-drawing – e.g., the negatives_ unlawful; void; unconstitutional; “out of bounds”, ultra vires, “bad form”, or not true to form – distinctions that mix the biblical images and the concepts of social-compact theory.

Education for the citizen in a constitutional democracy, then, should also follow this strategy. Using the four sets of boundaries, it is possible to understand that in a well-founded democratic order: (a) The values of a “people” may overlap a part of “civilization”, but not every ideal of the “law of civilized nations” (e.g. the universal declaration of human rights, or the jus gentium) may be incorporated into their covenant; (b) the “polity may overlap a large part of

the domain of a “people”, but the principles of its constitution do not exhaust the full range of their potential civic identity; (c) the “government” may be instituted to provide focused authority to act effectively for the common good of the polity, but the policies and laws carried out under the provisions of the governmental contract do not accomplish all of the political ends and purposes of the constitution.

In each phase shift of these overlapped zones, there is a residuum where the boundaries of the more concentrated zone do not extend to cover the next (more fundamental) zone or any of the ones after that. The boundedness of each of these zones emphasizes the limits on the power of successively intensified users of authority. Thus, for instance, it is possible to say that the “government” should not reach of the community’s “public” character; just as any given “public” does not embody all of the values of “civilized” decency. Moreover, in the metaphorical space of the residual areas lies the possibility for a broader independent critical inquiry about the control exercised with increasingly focused effect in the more narrowly bounded zones.

The underlying model of the Framework presents a multi-level picture of constitutional democracy as:

a movement in the world,
a way of civic life for a people,
a form of polity,
an institutionalization of government,
and a design for citizenship.

This complex model of overlaps, boundaries, residuals, and extensions – which forms a layered map for a well-founded constitutional democracy – also provides important instruction about the range of political participation and the concept of privacy, expanding our understanding of participation and enriching our idea of privacy. In point of fact, the very idea of privacy as a political and constitutional principle in American jurisprudence, for example, has arisen precisely as a consequence of laying out each of these residual spaces. At the same time, each of these zones represents the opportunity for a citizen to participate in fundamentally different ways on behalf of personal benefit and the public good.

1 Articulating the Layers of Privacy

What is called “privacy” in American constitutional interpretation always arises in one of the categories of residual space in the model of constitutional democracy. Thus privacy turns out to have many faces: it is what is not “governmental”, in some cases. It what is not “political” in others. And it is what is not “public”, in still others. In each case, it can serve not only to exemplify the qualities of living or acting in the space (or through the power and rights) left over after the more intense category of political order has been set out; it also represents the effectiveness of the various set of boundaries themselves in limiting the more focused domains of usable power. Privacy, therefore, gives articulated character to the residual domains of the rights and powers of persons; it also has the effect of pressing against the domains of power that the people give over so that they can achieve the benefits of good government. And so, the active concept of privacy moves around a lot in its force and meaning, but that is one of its virtues. And this dynamic of counter-pressure and bounds against the allocation of authority to increasingly more specialized political bodies itself stands for the proposition that the people are the source of the allocated political powering the first place, and the can withdraw it if they solemnly choose to.

Mapping the domains of a citizen’s participation

Conceived in its theoretical role, privacy serves as the fundamental first condition of the constitutional-democratic system, a precondition for the establishment of government itself. It is a central feature that justifies – and thereby – constrains civic and political life in the first place. And it survives, in the context of a well-founded political order, as the variety of phased spaces where personality and citizenship can grow independently of the polity in the case of one’s personality and independent of government in the case of one’s citizenship. From the perspective of a political theory that would undergird the making and maintenance of constitutional democracy, the variety of the phases of privacy is the artifact of the creation of popular sovereignty, political association, and governmental authority themselves.

The hallmark of modern constitutional-democratic forms of political life is a complex layering of the dimensions of human existence, in the Lockean sense of more than one constitutive distinction, and more especially in the Federalist, with yet more political differentiations, as the more intensely organized and instituted political features of a community’s self-governance are distinguished sequentially from the more diffusely public aspects. But these phases overlap, so it is a error in the fundamental theory is to conclude that

these phases are separate in the sense of “autonomous” (i.e., the “state” as autonomous from the “society”, the governmental official as a distinct personality from the citizen).

The meaningful question for political theory, as I have said, is: what is the relationship between the “private” sphere and others zones of human life that pertain to the public (the “people”), the political (the “polity”), and the governmental (“institutions”)? And the more rigorous theory of this relationship leads to the conclusion that it is not just that the private sphere is to be protected because it sustains one important face of the person’s liberty and life (his or her “self-constitution” or self-determination, matched by his or her literal “self-government” – that is, self-making and self-ruling). It is important also to protect the phased zones of privacy because a well-sustained private sphere is essential for the vitality of the public sphere, the political system, and governmental processes. To sustain the zone of privacy is to sustain the well-springs of politics itself – as long as the private zone is not conceived as inherently contradictory and detracting from the public.

From this perspective, herefore, an understanding of the relationship between privacy and participation as a zero-sum calculus will curtail not only the richness of the various zones of privacy for the sustaining of liberty in all of its phases. It will also restrict the dimensions of participation, which are profoundly matched to these phases of liberty and zones of privacy.

The implications of this different view of the relationship between privacy and participation result in a complexly layered model of citizenship can be articulated, for example, in the Framework’s account of:

What are various relationships of democratic citizenship? A simple portrayal of citizenship characterized exclusively by the relationship between the person and the government is insufficient for a full understanding of democracy. In fact, democratic citizenship consists of multiple relationships that reinforce enhance their sense of belonging and their capacity to rule.

1. A citizen’s relationship to him- or herself, e.g. self-confidence, self-reliance, and self-discipline the belief of individual citizens in their capacity to make discriminating judgments relevant to their lives as individuals, and a feeling of empowerment – belief in one’s capacity to have an impact on civic life
2. A citizen’s relationship to other citizens, e.g. civility and tolerance, respect for the rights of others, fulfillment of responsibilities, mutual deliberation, trust and cooperation, reasoned skepticism and wariness, holding each other accountable, competitiveness, sense of conviction and the confidence to express it, and reciprocity

in giving reasons and expecting others to give reasons for the way he or she seeks to direct the use of public power

3. A citizen's relationship to immediate community, e.g. consciousness of community membership, attentiveness to community affairs, consciousness of importance of participation, involvement in community affairs, promotion of social development.
4. A citizen's relationship to governmental institutions, e.g. various forms of political participation, monitoring and influencing use of governmental authority, assessing performance of government, evaluating proposals for institutional reform, expressing opposition to the unconstitutional exercise of government power, achieving a sense of influence and of efficacy
5. A citizen's relationship to the political system, e.g. patriotism or a sentiment of positive attachment to the country, loyalty to fundamental constitutional values and principles, action to improve effectiveness of democratic institutions, attentiveness to public affairs, social trust and truth telling, capacity to withdraw consent from constitutional arrangements
6. A citizen's relationship to the sovereign people, e.g. individual's consciousness of membership in the body politic, contribution to the society, having a stake in sovereignty; civic pride; the right to leave or renounce citizenship; common attachments to other citizens, such as shared values and principles of government: common experience; common attachment to shared history, institutions, and way of life; and solidarity with the people as a whole
7. A citizen's relationship to the world, e.g. observance of human rights, capacity for global understanding, membership in international organizations, concern for the well-being of the earth.