Democracy Ten Years After 9/11

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I was born in New York City and spent 33 of my 58 years living, working, and going to school there before moving to Michigan in 2002. On the morning of September 11, 2001, I was dressing to take my wife to the oncologist when I saw the broadcast of the second plane hitting the South Tower of the World Trade Center. As we drove to the appointment, we could see the smoke fill the sky some twenty miles away. Just as we approached the hospital, the news came over the radio that the Twin Towers had collapsed. I was sure it was a mistake—an exaggeration, misperception, or rumor spawned in the confusion following the attack. It was only when we returned home and I saw the footage of the collapsing towers that I could finally accept what had earlier seemed impossible.

My cousin Howard had been working in the North Tower back in 1993 at the time of the first World Trade Center bombing. He was working there again on September 11th—though for a different employer—when the planes hit that Tuesday. Fortunately, his new office was on a low floor and he was able to evacuate safely. Still, it was nighttime before he could call home and tell his wife that he was alive and all right; it was another day or two before he could make it across the river home to New Jersey. My friend Larry Joseph—a poet and law professor, an Arab-American and native Detroiter—was in the subway on the way to teach his torts class when the planes hit. His wife was still in their apartment directly across West Street from the World Trade Center, trapped without electricity or news of the outside world. It was more than 24 hours before he saw her again; he had to talk his way through a police cordon and hike up 30 flights of

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stairs under police escort to find her. Those 24 hours, he told the New York Times, "were a lifetime."[1]

So many others that day suffered tragedy and loss. A week after the attack, one of my students came to see me in my office with tears in his eyes. His wife had worked for Cantor Fitzgerald, which had occupied the 101st through 105th floors of the North Tower, just above the point of impact of the first plane. She died in the fiery aftermath, along with every one of the 658 employees in the office at the time.

The days following the attack were scary. It is a cliché to say that the fear was palpable, but that is exactly how it felt. Everyone was braced for another attack; every bridge, every tunnel, a potential scene of disaster. A suspicious van stopped by police on the Brooklyn Bridge ignited a panic that shut down traffic for five or six hours; downtown Brooklyn was a five mile radius of impassible gridlock. There was nothing to be done. I called ahead to cancel class and sat there in my car until it was possible, several hours later, to get to the office.

People were afraid; they were angry; they wanted to do something. Much anger was misdirected: In the town where we lived, someone smashed the plate-glass windows of both the local Afghan and Indian restaurants. But beyond the bumper stickers and the flags that sprouted like red-white-and-blue wildflowers from people's cars, most Americans didn't do much at all. But, then, neither were they asked to. The response of our elected officials was the most disappoint-ing. The very night of the attacks, President Bush went on television to affirm that "the American economy will be open for business."[2] Three weeks later, Mayor Giuliani spoke at the United Nations urging people to "come to take a stand against terrorism" by patronizing New York's "restaurants and museums and sporting events and shopping and Broadway."[3] Two weeks after that, President Bush urged Americans to get back out there with their credit cards

lest "the terrorists achieve the objective of frightening our nation to the point where we don't conduct business, where people don't shop."[4]

It was a tragically missed opportunity. The sense of solidarity—not just in the United States, but amongst people in many parts of the world—was a powerful force waiting to be mobilized. President Bush was rightly criticized for failing to use the occasion to rally the American people. At a time when he should have been calling on all of us to sacrifice, he instead assured us that our privileged, comfortable lives would be undisturbed. The wars in Afghanistan and Iraq were the first major wars since the Mexican-American War of 1846 to be fought without a draft or a tax increase. No bond drives. No Liberty Gardens. Guilt-free, effortless patriotism. Go back to your big screen televisions. Leave the driving to us.

Tonight, I want to consider the impact of this failure on our democracy.

I start with President Bush's three most significant rhetorical responses to 9/11. The first came in a speech before a Joint Session of Congress on September 21, 2001, in which he characterized our attackers as "enemies of freedom" who "follow in the path of fascism, Nazism and totalitarianism."[5] As he elaborated: "They hate our freedoms, our freedom of religion, our freedom of speech, our freedom to vote and assemble and disagree with each other."[6] This soon became the familiar sound bite: "They hate us for our freedoms." The second, already noted, was his exhortation that Americans shop lest the terrorists win. The third came on the first anniversary of 9/11 in an Op-Ed piece in the New York Times in which he insisted that the events of September 11th had forced the West to reexamine whether its commitment to freedom "is a reflection of convention and culture or the universal demand of conscience and morality."[7]

It is easy enough to identify the worldview that unites these three comments. It is the view that we are endowed by the Creator with inalienable rights that include not just the liberties

of speech, conscience and belief, but also the liberties of the market. In contemporary America, it is particularly the view trumpeted by those who call themselves Tea Party Patriots, free market conservatives, and libertarians. But it is also the unreflective worldview of most Americans. It seems principled and—in the words of Thomas Jefferson—"self-evident."

Appearances, however, can be deceiving. For all its seductive simplicity, the conventional understanding of freedom is both mistaken and dangerous.

Consider the first of President Bush's three comments: the claim that "They hate us for our freedoms." It is, of course, wrong. What Al Qaeda actually objected to was the U.S. presence in Saudi Arabia and various related Mid-East policies. The claim nevertheless seemed plausible because it reflected our smugness and soothingly appealed to our sense of superiority. We have something that others want or cannot, in their hatred, understand. The idea that Western freedom is not the hard-won result of an historical struggle, but a Divine endowment was an invitation to passivity and docility. And that, indeed, was the point of the Bush Administration's rhetoric as it paved the way for the Partriot Act, two wars, a clandestine wiretapping program that bypassed even the secret FISA courts, and the systematic use of torture first through extraordinary rendition and later by "enhanced interrogations."

As we are reminded this year by so many valiant Tunisian, Egyptians, Yemenis, Libyans, and Syrians, freedom is not something we just "have." It is something that a people must struggle for and fight to maintain. The notion of freedom as a natural state of affairs consisting in the right to purchase goods in a consumer market represents both a degraded concept of democracy and a distraction from the real issues and burdens of democratic self-government. As if consumer choice were the banner under which the founding generation fought; as if the original Tea Party were just about the liberty to choose a different brand of tea.

The revolutionary era slogan "No taxation without representation" has today been transformed into the "no new taxes" pledge; the original demand for self-governance has been re-made into a rallying cry against government itself. It has become a staple of American politics over the last quarter century that regulation and social welfare programs—proverbial "Big Government"—are the enemies of freedom (rather than, say, its precondition) and that tax cuts are a kind of moral imperative because "its your money, and you can spend it more wisely." At a time when we face ever more acute collective action problems—systemic economic instability, widespread unemployment, increasing income inequality, mounting national debt, decaying infrastructure, runaway health care costs, and global climate change—nothing could be more dangerous than the idea that everything would be all right if only we were left alone to spend our money as we please.

How did we get here?

The answer has two parts: the first conceptual, the second historical.

Conceptually, the conventional understanding of freedom as the absence of constraint is a psychological primitive. The embodied experience of physical motion gives rise to a metaphorical, conceptual mapping in which the experience of physical motion is mapped onto abstract social or intellectual actions.[8] The mapping is systematic, which means that each of the entailments from the domain of physical mobility—the experience of blockage, containment, and movement through space toward desired objects—is also carried over to the target domain of abstract social action. This mapping thus yields a series of correlative metaphors, in which:

- ACTIONS ARE MOTIONS
- CONSTRAINTS ON ACTION ARE CONSTRAINTS ON MOTION
- PURPOSES ARE DESTINATIONS
- IMPEDIMENTS TO PURPOSES ARE OBSTACLES TO MOTION
- FREEDOM IS THE ABSENCE OF CONSTRAINT

In a corollary of these metaphors, life is conceptualized as a purposive journey. This what motivates such expressions as "it's time to *get on* with your life" and "I *overcame* my problem with alcohol."

These conceptual metaphors and their attendant metaphorical mappings make sense of a tremendous range of common expressions. For example, the ACTIONS ARE MOTIONS metaphor explains why a person active in his or her community is a *mover and shaker* or why someone who pulls rank is said to be *throwing one's weight around*. Correspondingly, since CONSTRAINTS ON ACTION ARE CONSTRAINTS ON MOTION, a person too busy to get free is said to be *all tied up with work*. So, too, the LIFE IS A JOURNEY metaphor explains why an individualist is colloquially described as *marching to the beat of a different drummer* and the PURPOSES ARE DESTINATIONS metaphor accounts for the ubiquitous *light at the end of the tunnel*.

These embodied metaphorical conceptions yield both the conventional understanding of freedom as the absence of constraint (we are, then, free to act) and the primacy of the liberal conception of freedom as negative liberty—that is, as freedom from interference by the State—which, in the technical terms of cognitive science, emerges as a prototype effect.[9]

This underlying metaphorical conception is deeply entrenched and, therefore, ubiquitous. We thus see the same metaphorical mapping at work not only in the conventional understanding of freedom as absence of constraint, but also in substantively different conceptions of freedom. In his 1941 State of the Union address, for example, President Roosevelt listed among the "four essential human freedoms" the positive liberties of "freedom from want" and "freedom from fear." Here, the idea is that a person cannot be free when she is in the grip of want or fear and, therefore, that the social, economic, and political conditions must be such as both to provide for all and to protect against international physical aggression. Similarly, in his famous examination

of freedom as a situated quality, the philosopher Maurice Merleau-Ponty explained that: "If freedom is to have room [*avoir du champ*] in which to move, if it is to be describable as freedom, there must be something to hold it away from its objectives, it must have a field."[10] One might think that the Kantian conception of freedom as self-rule—that is, being governed only by those rules that, as dictated by reason, I acknowledge for myself—surely must be different. But, in fact, the basic idea is the same: the subject is bound by no constraint it does accept as its own; it follows no rule except that which it lays down for itself (and notice, particularly, that—in an instantiation of the CONSTRAINTS ON ACTIONS ARE CONSTRAINTS ON MOTIONS metaphor—a rule is a path that is *laid down* and *followed*).[11]

Historically, the conventional understanding of freedom has roots in the Enlightenment's dualist schema of subject and object. By radically separating the subject from the objects of its inquiry, the dualist schema makes modern science possible. But it also conduces to a series of abstractions that confound our understanding of ourselves. The objectification of nature is extended to human activities and, as the philosopher Charles Taylor observes, this leads to behaviorism in psychology, utilitarianism in ethics, atomism in politics and social policy, and "ultimately a mechanistic science of man."[12] Whether in psychology or economics, human behavior is represented "scientifically" in abstraction from history and social context.

The Enlightenment schema of subject and object not only isolates the subject from the objects of its inquiry, itself, and its history, it also isolates the subject from other subjects. Its focus is on the individual consciousness and its relation to the world. (One can scarcely imagine Descartes proclaiming: "We think, therefore we are.") From the perspective of the Enlighten-ment schema, social context can only be understood as an external condition and—as such—it can only be seen as a source of constraint. Freedom, on this view, can only be conceptualized, as

Taylor says, in terms of "a set of limits to be overcome, or a mere occasion to carry out some freely chosen project, which is all that a situation can be within the conception of freedom as self-dependence."[13]

The modern understanding of freedom, then, is of a self-propelled agent released from the limits of the older feudal and religious orders who is now free to think, act, and choose according to reason alone. It expects—indeed, is expected—to rise above the social limits of origin and class to achieve according to merit and ambition. It acknowledges no constraints except those it recognizes for itself. Social context is not just something to be transcended; it is exactly what the Enlightenment has sloughed off in the name of freedom.

But there is a small problem with this view: Actual human beings are socially situated and socially dependent. We are embodied creatures who exist in time, in culture, and in language. We are finite and fallible. We are the products of particular forms of life and possessed of (and by) particular perspectives. In fact, the modern understanding of freedom is itself a particular, historical development nurtured by an entire ensemble of social and political institutions that extend from the modern novel to the apparatus of the liberal State. It emerges from and is sustained by a form of life that validates the individual over the social, the chosen over the inherited, and what is exceptional and unique over what is common and shared. This view of freedom and individualism is constitutive of who we are; yet, and here is the paradox, it is not a philosophy or value-system that we ourselves have chosen. For us, it has the force of necessity.

If the social is constitutive of the "self" that overcomes then the conventional conception of freedom as rising above or being released from external social constraint—what I will call freedom-as-transcendence—is unattainable. Indeed, the promise of freedom-as-transcendence

cannot be redeemed. At the pragmatic level, social context is not something that can be sloughed off; particular social structures can be transformed or replaced, but another social structure always takes its place. I may leave a family, a job, or a profession because I find it too stifling. But I inevitably start another relationship, take another job, or choose another business that brings with it some new set of constraints. At the theoretical level, freedom-as-transcendence is either impossible or empty. It is impossible, as Taylor explains, because if freedom entails the removal of all obstacles to action it would mean the elimination of the social.[14] It is empty because a "free" self that had transcended all the traditions, institutions, relationships, groups, values, and social expectations that defined it would, as Taylor says, be "characterless" and "without defined purpose."[15] How would it choose? What could it strive for? On what terms would it even think?

Worse yet, the radical freedom envisaged by the conventional understanding represents a kind of pathology. The slide from individualism to subjectivism progresses inevitably through atomism to alienation. Nowhere is this more evident—and more pronounced—than in our country today. We see it in the political polarization of and widespread disaffection from Washington. We see it in the belief that taxes paid to sustain the common enterprise of democratic self-government are a kind of extortion. We see it in the absurd claim that a program of mandatory participation in an insurance pool run by private, for-profit firms is a form of socialism. And, more profoundly, we see it in the phenomena of contemporary consumer and celebrity culture that dominate our everyday lives.

In a more rational world, Bush and Giuliani's post-9/11 exhortation to fight terrorism by shopping would have dissolved into a chorus of derisive giggles. It didn't because the assertion tapped into a deep strain of contemporary culture. For shopping *is* our form of life. If the terrorist

attack on 9/11 was an attack on our way of life, then it was an attack on consumerism and all the trivial choices that it entails. In the immortal words of Fox News's Brian Kilmeade, "Nothing spells Freedom like a Hooters meal." (I'm not kidding; you can find the clip at http://www.thedailyshow.com/watch/wed-june-9-2010/moment-of-zen---let-freedom-wing-day.) Everyone here knows the bumper sticker: "When the going gets tough, the tough go shopping." The Bush/Giuliani message resonates because, in our culture, there is no better remedy for adversity than the self-indulgence of a day at the spa or an afternoon at the mall.

This overwhelming sense of personal entitlement is a constitutive element of consumer culture. Only in a society where one is defined by what one accumulates could the most vocal and unruly of the disaffected during the raucous Summer of 2009 be not those left unemployed and dispossessed by the recent recession, but the better-educated, wealthier citizens who actually comprise the bulk of the Tea Party movement.[16] We can see the full force (not to mention, perversity) of this cultural logic in that Summer's well-publicized incident at a South Carolina town hall meeting during which a constituent berated his representative: "Keep your government hands off of my Medicare!"[17] We could write this off to simple ignorance. (And many have.) But the sentiment—which first surfaced in the 1990s health care debate—has proven largely immune from factual correction. The South Carolina representative, in fact, politely tried to explain that Medicare is government program. "But he wasn't having any of it."[18] In the cultural logic of self-definition through possession, an entitlement like Medicare is simply another element of the material accumulation that becomes part of a person's identity. Indeed, in American constitutional law, statutory entitlements of this sort *are* property protected from arbitrary governmental interference.[19]

On occasion, this dysfunctional sense of entitlement can even turn deadly. At the peak of the financial crisis of 2008, a Wal-Mart worker on Long Island was trampled to death by a desperate Black Friday crowd who had been waiting all night for the 5 AM opening. Just before the deadly stampede, someone taped up a sign that read: "Blitz line starts here." An eyewitness reported that, when the crowd was told that a man had died and was asked to leave, they just kept on shopping. "People were yelling, 'I've been on line since yesterday morning.'"[20]

Celebrity culture represents the other principal pathology of individual freedom. We see this in the narcissistic compulsion for 15-seconds-of-fame that drives reality television. But it is yet more disturbing in its more standard form: The central dynamic of identification with favorite sports, music, or movie stars is to participate vicariously in their triumphs and adulation; fans "live in imagination the sumptuous and full life" that they can never experience on their own, but which the media "dramatically describe[s] to them daily."[21] Celebrity culture is, as the socio-logist Roger Caillois observes, an institutionalized form of alienation: "This superficial and vague, but permanent, tenacious, and universal identification constitutes one of the essential compensatory mechanisms of democratic society."[22]

The common product of consumer and celebrity culture is that a passive and disaffected citizenry who, to borrow from Hannah Arendt,[23] relinquish the burdens of self-government to the State and accept for themselves the role of mere clients. As the political theorist and noted Arendt scholar Dana Villa explains:

> Arendt was convinced by her analysis of totalitarianism that many in the modern world were eager to abdicate their civic freedom and responsibility, thereby relieving themselves of the "burden" of independent action and judgment. The rise of totalitarian movements was the most spectacular expression of this tendency, but it could also be found in liberal democratic societies (such as the United States). . . . If the majority of people in a particular polity thought of freedom as essentially the freedom *from* politics (as in America) . . . , then the public realm and its distinctive freedom were bound to be in jeopardy.[24]

In short, the conventional understanding of freedom as the mere absence of governmental constraint leads precisely from estrangement through disaffection to democratic decline. And this has been confirmed by our experience in the decade since 9/11.

The "leave to live by no man's leave" was one of the watchwords of our revolutionary forbearers. (For those not familiar with this slogan, you will find it invoked against the English by one of the characters in Michael Mann's 1992 film remake of *The Last of the Mohicans*, starring Daniel Day Lewis.) Although this maxim *sounds* like the notion of freedom as absence of constraint that I have been criticizing, in fact it is not. The full phrase was "leave to live by no man's leave, underneath the law,"[25] and those last three words make all the difference. As with the other revolutionary slogan—"No taxation without representation"—the essence of the revolutionary complaint was not the oppression of governmental regulation as such, but the tyranny of living under rules not of one's own making. What our revolutionary forbearers fought for was not the freedom to do whatever they might want, but the freedom to rule themselves. In a word, they fought for autonomy—that is, to live only by those rules that they collectively gave to themselves through processes of democratic self-government.

Hence, democracy was necessarily tied to "the rule of law." No one could be above the law because everyone must be governed by the same law, the law that the people collectively gave to themselves. For government officials, this meant accountability not just at the ballot box but also at the bar of justice.

As Linda Greenhouse of the New York Times recently wrote, after 9/11 "the fabric of the rule of law was stretched thin."[26] Nowhere more so than in the practice of torture, first through surrogates pursuant to the policy of extraordinary rendition and then directly by American officials under the policy of so-called "enhanced interrogations." The Bush Administration's

abrogation of the Geneva Convention and its hyper-technical attempt to define torture out of existence were tragic enough. But the complete failure of the Obama Administration to hold anyone accountable—neither Bush, Cheney, Powell, Rumsfeld, Rice, and Tenet who authorized the policy, the former Justice Department officials John Yoo and Jay Bybee who rationalized it, nor the many underlings who carried it out—has done irreparable damage to the founding ideal that we are a government of laws and not of men.

At this point in the argument, the contours of an alternative conception of freedom should slowly be emerging. Freedom is not the license to do whatever we will, unconstrained by rule or convention. It is, rather, the condition in which people collectively decide the terms of social life. Freedom, in other words, can only be understood in terms of collective self-governance.

It follows, however, that freedom is necessarily shared and dependent. This will seem paradoxical, as we are accustomed to thinking of freedom and autonomy as attributes of individuals. That this is mistaken is easiest to see with respect to the issues of sexual autonomy that—from the right to use contraception upheld by the Supreme Court in *Griswold v. Connecticut*[27] and *Eisenstadt v. Baird*,[28] through a woman's right to terminate a pregnancy recognized in *Roe v. Wade*[29] and *Planned Parenthood v. Casey*,[30] to constitutional protection for same-sex intimacy in *Lawrence v. Texas*[31]—have held center stage in American constitutional law over the past fifty years. For while we think of these as cases vindicating individual rights, the plain fact is that sexuality is a profoundly interpersonal experience. This is peculiarly clear in *Eisenstadt*, the second of the Court's contraception cases. There, Justice Brennan declared that: "If the right of privacy means anything, it is the right of the *individual*, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child."[32] The first thing to note about this statement is

that it characterizes sex and procreation as matters of individual autonomy when they are, ineluctably, activities we engage in *with* others.[33] Indeed, on reflection, Justice Brennan's characterization of sexual autonomy as an individual right takes on a surreal quality: After all, when one is alone one doesn't *need* a contraceptive.[34]

Just as one's personal autonomy can only be elaborated in conjunction with others, freedom in the political sphere can only occur in collaboration with one's fellow citizens. This was the core insight of the older, civic republican conception of democracy that had its birth in ancient Athens, was revived during the Italian Renaissance, and so strongly influenced our constitutional founders. Politics, on this classical view, requires civic virtue defined as the citizen's capacity to place the common good before his or her own.

For our purposes, perhaps the most important of classical republican thinkers is Niccolò Machiavelli.[35] Most people know Machiavelli as the cynical counselor of *The Prince* and, indeed, his name has become synonymous with manipulation and intrigue. But Machiavelli was both an official in and staunch supporter of the Florentine republic; the cynical political realism of *The Prince* was, in part, an attempt by Machiavelli to gain footing with the Medici once they had returned to power. But in his civic republican work, Machiavelli was concerned with the means by which a republic maintains its virtue or falls into corruption.

In Machiavellian thought, virtue has the doubled meaning as both the disposition to act for the greater good and the capacity to impose form on fortune.[36] For Machiavelli, we might say, virtue requires the capacity to *pursue* the common good. It requires, in other words, not just the motivation to subordinate one's own interests to those of the polity but also the capacities—boldness, fortitude, adaptability, resilience, judgment, and most importantly initiative—necessary to achieve it.[37] One of Machiavelli's singular contributions to republican thought was

his recognition that military virtue conduces to civic virtue in both these senses and, therefore, that a militia of citizen-soldiers was an indispensible element of a "sociology of liberty."[38] Notwithstanding, the Supreme Court's recent rewrite of the Second Amendment as a manifesto of individual self-defense,[39] it was Machiavelli's concept of the militia as an institution of republican self-governance that informed the Framers when they drafted that provision.[40] Among Machiavelli's arguments for the citizen-soldier was, as they knew, the observation that the use of mercenaries conduces to corruption: The citizens are corrupted because they allow others to do what they should do themselves for the common good; the soldiers become instruments of corruption because they act for purely mercenary reasons—that is, without concern for the common good; and the leader can thereby destroy the republic because he can employ military force for his purposes without the constraint of civic virtue that, as a result of their passivity, the citizens' have allowed to pass out of public control.[41] If this doesn't sound like the political dynamic of the Iraq War—with its toxic mix of a professional army, wayward president, and manipulated and quiescent public—I don't know what does.

We are now in a position to offer an alternative conception of freedom. Freedom requires the capacity to overcome obstacles in the pursuit of one's goals. It is shared and dependent, requiring the cooperation of others. And it cannot be reduced to rational self-legislation (as in the Kantian model) for the same reason that freedom-as-transcendence is impossible: The "self" that steps outside itself would have to be the very same situated self—that is, the one constituted by the very aims, values, and commitments that it is deciding whether to adopt as its own. Just as I eye myself in the mirror with all the subjectivity of my already extant self-image—which depending on who I am may be unrealistically self-flattering or witheringly self-critical—the process of self-reflection cannot be innocent, untainted, or (in the Kantian sense) autonomous.

The following working definition of freedom as self-governance, adapted from Arendt, expresses all of these conditions: Self-governance consists in the ability to exercise initiative with respect to one's fate.

Note five things about this way of thinking about self-governance.

First, it recognizes self-governance as a relative capacity both in the sense that it may be possessed in various degrees (that is, a person may have a greater or lesser capacity for self-governance or may be more able to take initiative in some areas of life than in others) and in the sense that as humans our control over our lives is always partial and contingent. It may be dependent on luck, circumstance, good health, and a thousand other fortuities. *Second*, self-governance entails both agency and responsibility. To take initiative with respect to one's fate is necessarily to presuppose that the world will (at least to some degree) be responsive to one's actions, that one's actions have consequences, that one's actions therefore matter, and that one takes responsibility both for oneself and for what one's actions mean to others. To put it another way, a self-governing person is one who understands that the world is response-able to one's initiatives and, therefore, that one bears responsibility for one's actions. *Third*, self-governance is a situated, developmental capacity: It can be nurtured or destroyed in the process of coming to maturity; so, too, it can be facilitated or suffocated by the social practices available to the self as it elaborates its life in the relationships, groups, and activities through which it comes to understand and define itself.

Fourth, self-governance is multi-dimensional and incomplete. It is multi-dimensional because personal and collective self-governance are not merely a single phenomenon as it is applied to the individual and to the group. If I am hungry, I can teach myself to cook. If I need to get to another city for a conference, I can go online and find the best flight at the cheapest fare. If

I need to change careers, I can go back to school to acquire new skills. If I want to stop global warming, I am going need to do a lot more than just take the initiative to replace my incandescent light bulbs with the more planet-friendly, squiggly kind. Indeed, even personal self-governance, as we saw in the case of sexuality, will often require the assistance or participation of others; in other words, it will often require one to engage in politics. Accordingly, the capacity for self-governance is incomplete because the move along the continuum from personal to collective self-governance requires additional capacities such as the ability to empathize, identify, coordinate, and cooperate with others. It follows closely that, *fifth*, personal and collective self-governance are mutually constitutive and reinforcing, just as appreciated by the classical republican theorists. Some capacity to engage in personal self-governance is necessary for me to exercise the initiative to engage with others in order to influence our shared fate; successful participation in collective self-governance reinforces my sense of competence and ability to control my fate.

Freedom and democracy thus require more than the formal opportunity for citizens to participate and register their choice through voting. As the example of the Iraq War suggests, they must also have the active habit of exercising responsibility and control. To be a free, self-governing people, citizens must display the fortitude and initiative—the virtue—to insist on public control of the institutions of public power. Freedom, autonomy, and self-governance are not capacities or states of being that one just "has," but fragile social constructions that require active cultivation and constant maintenance. Self-governance is a practice and not, simply, a matter of values or institutional arrangements.

Reification in this form is the dirty little secret of contemporary liberal democracy. Just as freedom is transformed into something we just "have," self-governance is reified in the

formalized practice of periodic voting. Even the idealized modern from of representative democracy in which candidates offer substantive policies and programs between which voters choose (and this is, of course, a far cry from our actual electoral politics of carefully managed imagery and sound bites) is already a commodified and degraded form of democracy. Voters are reduced, in Arendtian terms, to "mere clients" or passive consumers who choose among preexisting products rather than self-governing citizens exercising initiative with respect to their fate. More profoundly, perhaps, citizens are in this picture fetishized in their role as voters. The "one person, one vote" principle signifies, according to Yale Law School Dean Robert Post, "that each person is to be regarded as formally equal to every other in the influence that their agency can contribute to public decisions."[42] This is not a social imaginary of human beings engaged together in collective action, but the picture of an inanimate mechanism composed of interchangeable parts.

The question that haunts us now, in this post-9/11 world, is how we could meaningfully reawaken an alienated and disaffected citizenry to active self-governance. It is a tall task, especially given the polarization and vitriol of our current politics. It requires a radical rethinking of the relation between the personal and the political. The redefinition of freedom as a shared social capacity puts both the political at the heart of everyday life and the everyday at the heart of the political. If I am to take initiative with respect to my fate and do so with any hope of success, I will require the assistance or participation of others. Democracy—no less than personal intimacy—requires that I engage with others in their full humanity. It calls for such skills as empathy, negotiation, compromise, cooperation, recognition of and respect for the other. In the wake of 9/11, the lesson we so desperately need to learn is that our democracy can only survive if we appreciate that we are all in this together. In the words of my friend Larry Joseph: "The arc

of all our lives is accumulated violence, but with this also comes intensification of the will to live and to love."[43]

[1] Chris Hedges, *Love Conquers Evil: Poetry Is About the Timetable*, N.Y. Times, April 3, 2002, at B2.
[2] *A Day of Terror; Bush's Remarks to the Nation on the Terrorist Attacks*, N.Y. Times, September 12, 2001, at A4.
[3] Serge Schmemann, *The Mayor; Giuliani Is Blunt in Rare U.N. Talk*, N.Y. Times, October 2, 2001, at A1.
[4] *A Nation Challenged; Excerpts From the President's Remarks on the War on Terrorism*, N.Y. Times, October 12, 2001, at B12.
[5] *President Bush's Address on Terrorism Before a Joint Meeting of Congress*, N.Y. Times, September 21, 2001, at B4.
[6] *Id.*
[7] George W. Bush, *Securing Freedom's Triumph*, N.Y. Times, Sept. 11, 2002, at A33.
[8] Steven L. Winter, *A Clearing in the Forest: Law, Life, & Mind* 1-32 (2001).
[9] On prototype effects, see *id*. at 76-85.
[10] Maurice Merleau-Ponty, *The Phenomenology of Perception* 438 (Colin Smith trans. 1962).
[11] *A Clearing in the Forest, supra* note 8, at 206-09.
[12] Charles Taylor, *Hegel* 539 (1975).
[13] *Id*. at 63.
[14] *Id*. at 561.
[15] *Id*. at 373.
[16] Kate Zernike, *Doing Fine, but Angry Nonetheless*, The New York Times, p. 1 (April 18, 2010).
[17] The incident was widely discussed in the media, but seems to have been first reported in the Washington Post and then quickly picked up by Paul Krugman in the NY Times. Phillip Rucker, *S.C. Senator Is a Voice of Reform Opposition*, The Washington Post, p. A1 (July 28, 2009); Paul Krugman, *Health Care Realities*, The New York Times, p. 23 (July 31, 2009).
[18] *Id*.
[19] *See, e.g.*, Goldberg v. Kelly, 397 U.S. 254 (1970); Cleveland Board of Educ. v. Loudermill, 470 U.S. 532 (1985).
[20] Robert D. McFadden & Angela Macropolous, *A Crowd Seeking Holiday Deals, and a Rush for the Door That Turned Fatal*, N.Y. Times, November 29, 2008, at A16.
[21] Roger Caillois, *Man, Play, and Games* 125 (Meyer Barash trans. 1961).
[22] *Id*. at 122.
[23] Hannah Arendt, *The Origins Of Totalitarianism* 141-42 (1968) ("By assigning his political rights to the state the individual also delegates his social responsibility to it: he asks the state to relieve him of the burden of caring for the poor precisely as he asks for protection from criminals.").

[24] Dana R. Villa, "Introduction: The development of Arendt's political thought" in *The Cambridge Companion To Hannah Arendt* 1, 8 (Dana Villa ed. 2000).
[25] *See* Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 654 (1952) (Jackson, J., concurring) ("The essence of our free Government is 'leave to live by no man's leave, underneath the law'—to be governed by those impersonal forces which we call law.").
[26] Linda Greenhouse, *Lessons Maybe Learned,* The New York Times Blogs (Opinionator) September 7, 2011.
[27] 381 U.S. 479 (1965).
[28] 405 U.S. 438 (1972) (state law prohibiting distribution of contraceptives to unmarried persons but not to married persons violates equal protection clause).
[29] 410 U.S. 113 (1973).
[30] 505 U.S. 833 (1992)
[31] 539 U.S. 558 (2003).
[32] *Eisenstadt*, 405 U.S. at 453 (emphasis in original).
[33] Even autoeroticism typically involves an imagined other. Sex becomes fetishistic when the other is replaced with or reduced to a thing
[34] In the first contraception case, in contrast, the Court focussed on the relational nature of the affected interest. Thus, Justice Douglas argued that "[t]his law . . . operates directly on an intimate relation of husband and wife" and that the statute must be struck down because, "in forbidding the use of contraceptives rather than regulating their manufacture or sale, [it] seeks to achieve its goals by means having a maximum destructive impact upon that relationship." *Griswold*, 381 U.S. at 482, 485. *See* Steven L. Winter, *Indeterminacy and Incommensurability in Constitutional Law*, 78 California Law Review 1441, 1534-38 (1990).
[35] See J.G.A. Pocock, *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition* (1975); Hanna Fenichel Pitkin, *Fortune Is a Woman: Gender and Politics in the Thought of Niccolò Machiavelli* (1984).
[36] "It was the virtue, as it was the end, of man to be a political animal; the polity was the form in which human matter developed its proper virtue, and it was the function of virtue to impose form on the matter of *fortuna*." Pocock, *supra* note 35, at 184.
[37] *Id*. at 194 ("*Virtú* must be constitutive of virtue."). Thus, Arendt observes that: "Freedom as inherent in action is perhaps best illustrated by Machiavelli's concept of *virtú*, the excellence with which man answers the opportunities the world opens up before him in the guise of fortuna. Its meaning is best rendered by 'virtuosity,' that is, an excellence we attribute to the performing arts. . . ." Hannah Arendt, *Between Past and Future* 153 (1968).
[38] Pocock, *supra* note 35, at 201-02, 211-13.
[39] District of Columbia v. Heller, 554 U.S. 570 (2008); McDonald v. Chicago, 561 U.S. ___, 130 S.Ct. 3020 (2010).
[40] *See* Pocock, *supra* note 35, at 528 ("the Second Amendment to the Constitution, apparently drafted to reassure men's minds against the fact that the federal government would maintain something in the nature of a professional army, affirms the relation between a popular militia and popular freedom in language directly descended from that of Machiavelli. . .").
[41] *Id.* at 203-04.
[42] Robert Post, *Democracy and Equality*, 1 Law, Culture & Humanities 142, 148 (2005).
[43] *Supra* note 1.