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One Person, One Vote and the Possibility of Political Community

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ONE PERSON, ONE VOTE AND THE POSSIBILITY OF POLITICAL COMMUNITY

James A. Gardner*

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The Supreme Court's 1962 decision in *Baker v. Carr*¹ initiated a brief but highly significant period in the constitutional life of the nation during which the Court moved quickly, aggressively, and effectively to eliminate population inequalities in political representation at every level of American government. By the time the Court decided *Avery v. Midland County*² in 1968, it had imposed the doctrine of one person, one vote on virtually every jurisdiction at every level of governance that had chosen to rule itself through a representative body comprised of more than one member. Following this series of rulings, which brought about what has been aptly termed a "reapportionment revolution,"³ jurisdictions across the country, from the national and state levels down to the smallest council-

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1. 369 U.S. 186 (1962).

2. 390 U.S. 474 (1968).

3. See GORDON E. BAKER, *THE REAPPORTIONMENT REVOLUTION: REPRESENTATION, POLITICAL POWER, AND THE SUPREME COURT* (1966).

governed village, were required to review and in most cases to revise the ways in which they determined the composition of their basic institutions of self-governance.

In construing the Equal Protection Clause of the Fourteenth Amendment to require a top-to-bottom regime of one person, one vote, the Court not only formally rejected, but also decisively delegitimized, the new doctrine's logical and historical alternative: one community, one vote. The systems of representation the Court displaced typically allocated representation in governing bodies not to equipopulous groups of individuals, but to the various counties, towns, neighborhoods, or other subcommunities of which the larger jurisdiction was understood to be comprised.⁴ The one-person, one-vote standard displaced such systems by putting every jurisdiction to a stark choice. On one hand, a jurisdiction could comply with one person, one vote by aggregating itself into a single, undifferentiated political community and selecting all representatives collectively using at-large voting.⁵ On the other hand, a jurisdiction could also comply by continuing to allocate representation among politically recognized subdivisions, but only if it redefined their boundaries after each decennial census to achieve population equality across all subdivisions. In either case, traditionally recognized subcommunities were rendered politically irrelevant either by being submerged into the whole, or by being broken up and rearranged into new groupings, not just once, but every ten years, to maintain compliance with the constitutional requirement of equal population.

In its heavy emphasis on the individual as the appropriate unit of political power, and its corresponding indifference to local community as an organizing principle for the exercise of political power, the one-person, one-vote standard seems to reflect an underlying liberal nationalism that elevates to primacy the relationship of individuals to the nation and to one another, unmediated by intermediate community groupings. Certainly the doctrine has been applied in a way that seems calculated to flatten and homogenize local identity, a process likely to disrupt the

4. See 14 THE BOOK OF THE STATES 58-62 (1962-63).

5. This mode of compliance was soon eliminated for jurisdictions that used at-large voting as a means of racial discrimination. See *White v. Regester*, 412 U.S. 755, 765-66 (1973); *Mobile v. Bolden*, 446 U.S. 55, 66-67 (1980); *Thornburg v. Gingles*, 478 U.S. 30, 48 (1986). Where at-large systems have been used for discriminatory purposes, division of the multimember jurisdiction into equipopulous districts has long been the Court's remedy of choice. *Chapman v. Meier*, 420 U.S. 1, 17-19 (1975); *Mahan v. Howell*, 410 U.S. 315, 333 (1973); *Connor v. Williams*, 404 U.S. 549, 551 (1972); *Connor v. Johnson*, 402 U.S. 690, 692 (1971).

formation in any given place of a politics based upon meaningful, organic, local political community. If it is true that “[t]he civic experience . . . is fundamentally local,”⁶ then the one-person, one-vote standard, by undermining the local, may also undermine the possibility of the civic experience itself. If so, the doctrine may achieve formal political equality only by exacting a heavy, unanticipated price.

In this Essay, I examine two related questions. First, is the one-person, one-vote standard actually incompatible with the development of a meaningful community-based local politics? Second, if it is, what justifies the Court’s application of the doctrine in such a way as to preclude states and localities from structuring their political institutions so as to create and foster such a politics, should they deem it desirable to do so? Part I of the Essay takes a first cut at the problem by laying out the case for the proposition that the one-person, one-vote standard is liberal and nationalizing at the expense of local community. Part II examines potential alternative representational structures, including one community, one vote, in which established communities rather than groups of individuals are represented, and explores why such structures might be desirable and how they might be institutionalized. Part III takes a second cut at the problem by inquiring more closely whether the two kinds of structures really are so fully incompatible that the interests served by both cannot be accommodated under a constitutional rule of one person, one vote. I conclude that the two regimes are deeply in tension. Finally, Part IV explores some possible justifications for resolving this tension as the Court has: by discouraging the coalescence of meaningful local political community. Specifically, Part IV raises the possibility that a cosmopolitan uniformity might be preferable to a free-wheeling local differentiation because the latter, at least in the United States, too often serves as a ready cover for racial discrimination.

I. ONE PERSON, ONE VOTE AND LIBERAL NATIONALISM

According to Tip O’Neill, the consummate politician and former Speaker of the House, all politics is local.⁷ O’Neill’s dictum, however,

6. Lawrence Cahoon, *Locale and Progress* 3 (Aug. 31, 2001) (unpublished manuscript, presented at American Political Science Association Annual Meeting), available at <http://pro.harvard.edu/abstracts/002/002022CahoonLaw.htm> (on file with the North Carolina Law Review).

7. TIP O’NEILL & GARY HYMEL, *ALL POLITICS IS LOCAL, AND OTHER RULES OF THE GAME* (1994).

is misleading: all politics may be local, but not all forms of local politics are equivalent. One way in which forms of politics may differ is in their "thickness." Liberal theories typically advance a somewhat thin notion of democracy that conceives of politics as a forum for the mutual pursuit of self-interest.⁸ In this model, rational individuals choose their own goods, and then enter the political arena for the purpose of striking instrumental bargains designed to protect their liberties and advance their interests.⁹ Individuals often join with others in politics, but in this model coalitions are evanescent and shifting, and last only so long as mutual advantage holds them together.¹⁰

In contrast, communitarian and civic republican theories advance a thicker conception of democracy in which citizens are firmly situated by membership in a meaningful political community that partly constitutes their values and desires.¹¹ Citizenship, in this model, is a demanding social role that requires individuals to lead political lives dedicated to the pursuit of the common good of their communities.¹² On this view, individuals join with others not primarily because they choose to (although they have some agency in the matter), but because membership in the groups to which they belong contributes fundamentally to constituting their identities—it helps make them who they are. Separation from one's group, then, is not something to be undertaken lightly, for it may inflict a potentially

8. See, e.g., BENJAMIN BARBER, *STRONG DEMOCRACY: PARTICIPATORY POLITICS FOR A NEW AGE* 4 (1984) ("Liberal democracy is thus a 'thin' theory of democracy, one whose democratic values are prudential and thus provisional, optional, and conditional—means to exclusively individualistic and private ends.").

9. See, e.g., MICHAEL SANDEL, *DEMOCRACY'S DISCONTENT* 4–7 (1996).

10. This aspect of the theory, often known as interest pluralism, is especially well-developed in the empirical political science literature. See ARTHUR F. BENTLEY, *THE PROCESS OF GOVERNMENT* (Peter H. Odegard ed., Belknap Press 1967) (1908); ROBERT A. DAHL, *A PREFACE TO DEMOCRATIC THEORY* (1956); ROBERT A. DAHL, *WHO GOVERNS?: DEMOCRACY AND POWER IN AN AMERICAN CITY* (1961); DAVID B. TRUMAN, *THE GOVERNMENTAL PROCESS: POLITICAL INTERESTS AND PUBLIC OPINION* (1951).

11. MICHAEL SANDEL, *LIBERALISM AND THE LIMITS OF JUSTICE* (1982); Robert M. Cover, *The Supreme Court, 1982 Term—Foreword: Nomos and Narrative*, 97 HARV. L. REV. 4, 11–25 (1983); Frank Michelman, *The Supreme Court, 1985 Term—Foreword: Traces of Self-Government*, 100 HARV. L. REV. 4, 17–36 (1986).

12. CASS R. SUNSTEIN, *THE PARTIAL CONSTITUTION* 23 (1993); Amy Guttmann, *The Disharmony of Democracy*, in *DEMOCRATIC COMMUNITY: NOMOS XXXV*, at 126, 141 (John W. Chapman & Ian Shapiro eds., 1993); Frank I. Michelman, *Conceptions of Democracy in American Constitutional Argument: Voting Rights*, 41 FLA. L. REV. 443, 489 (1989); Michelman, *supra* note 11, at 4, 33, 40.

serious injury by depriving a person of a significant constitutive element of his or her identity.¹³

The Supreme Court's one-person, one-vote standard seems plainly to contemplate a democratic politics of the thin variety. First, by measuring the equality of citizens in terms of the fractional value of their vote, the standard tends to equate citizenship narrowly with voting, and to define participation in politics by reference to a voter's bargaining strength. In the Court's view, citizenship is exercised primarily by voting for legislators.¹⁴ Malapportionment is thus a direct affront to citizenship because it dilutes the value of votes cast in large districts compared to the value of votes cast in smaller districts.¹⁵ For the Court, in other words, equality in politics means that everybody comes to the table with the same grubstake. One who is forced to play the game of politics with less than the standard stake "is that much less a citizen."¹⁶

Second, the one-person, one-vote standard tends to portray citizens abstractly, outside of any concrete context in which they might actually exercise the privileges or undertake the burdens of citizenship. The "fundamental principle of representative government in this country," the Court has held, "is one of equal representation for equal numbers of people, without regard to . . . place of residence."¹⁷ It is not enough, then, that citizens may enjoy equal status within the community in which they live; their status as citizens is something universal, to be measured against the status of citizens everywhere: "all voters, as citizens of a State, stand in the same relation regardless of where they live."¹⁸ This is a cosmopolitan view that treats citizens as largely equivalent and interchangeable, rather than as unique members of distinct communities.

Third, by ignoring the relation of individuals to local communities or of local subcommunities to one another, the one-person, one-vote standard tends to undermine the possibility that an

13. ALISDAIR MACINTYRE, *AFTER VIRTUE: A STUDY IN MORAL THEORY* 33-34 (2d ed. 1984).

14. *Reynolds v. Sims*, 377 U.S. 533, 565 (1964) (stating that "each and every citizen has an inalienable right to full and effective participation in the political processes" of the state; "[m]ost citizens can achieve this participation only as qualified voters through the election of legislators").

15. *Wesberry v. Sanders*, 376 U.S. 1, 7 (1964) (stating that malapportionment "contracts the value of some votes and expands that of others," giving them different "weight").

16. *Reynolds*, 377 U.S. at 567.

17. *Id.* at 560-61.

18. *Id.* at 565.

enduring link might be forged between persons, places, and politics. Under the standard, localities are understood to lack political integrity: "Political subdivisions," the Court said in *Reynolds v. Sims*, "have been traditionally regarded as subordinate governmental instrumentalities created by the State to assist in the carrying out of state governmental functions."¹⁹ If localities are not discrete communities with some kind of political integrity, but are instead mere administrative subdivisions of the state, then their boundaries, their functions, their powers—even the number and identity of their inhabitants—are nothing more than artifacts of the exercise of centralized power, the kind of power that, the Court intimates, serves as the true organizing structure around which genuine citizenship can only coalesce.

This point of view makes it possible for the Court to construe one person, one vote to require decennial redistricting for the purpose of maintaining population equality among political subdivisions. The process of constantly redrawing electoral district boundaries, however, is one that must deeply stress, if it does not actually erase, the political significance of local boundaries. A boundary that is continually moving is one that is unlikely to serve as any kind of imaginative focal point for communal identity,²⁰ much less as a dividing line between genuinely distinct political communities. In this way, one person, one vote continually impedes the formation (or re-formation) of meaningful local political identity. Moreover, even if some kind of local identity can flourish under these circumstances, the redistricting process would seem to exert a homogenizing pressure by continually linking and unlinking different groups of individuals to particular places and to other groups of individuals. Redistricting thus flattens identity within a jurisdiction by preventing subcommunities from enjoying the kind of stability and sense of permanence that are necessary ingredients for communal self-identification and, ultimately, differentiation.

Finally, redistricting inevitably creates a population of political transients—people who, though they never physically relocate, are

19. *Id.* at 575. This doctrine goes back in federal constitutional law to *Hunter v. Pittsburgh*, 207 U.S. 161 (1907).

20. BENEDICT ANDERSON, *IMAGINED COMMUNITIES: REFLECTIONS ON THE ORIGIN AND SPREAD OF NATIONALISM* 163–78 (1983). As Liah Greenfeld has observed, because of the ideological nature of American nationalism, one of the earliest disputes faced by Americans concerned "what was to be the concrete geo-political referent of the American national loyalty." LIAH GREENFELD, *NATIONALISM: FIVE ROADS TO MODERNITY* 403 (1992).

taken from one district and placed in another to satisfy the demands not of community, but of population equality.²¹ Local political bonds of any significance cannot be made and unmade by government fiat, of course, and the process of district reassignment thus can only further weaken the bonds of political and communal affiliation.

To put this another way, we might ask: what kind of political community could *survive* application of the one-person, one-vote standard and the decennial process of redistricting? Such a community would have to be one whose members judge their political power in their own community by comparing it to the political power exercised by complete strangers in other communities, and who derive no significant cues about their political identity from the physical place in which they engage in politics, the boundaries of their political jurisdiction, or the identity of those with whom they collectively engage in local politics. Membership in such a community could not easily rest on personal loyalties or commitments to particular places, people, or groups. The community's members would be cosmopolitan, neither belonging deeply to nor strongly concerned with the place in which they lived. Such a community would be liberal; it would be national; it would be thin.

II. THE POLITICAL REPRESENTATION OF COMMUNITIES

A. *The Origins of Community Representation*

The roots of Anglo-American political representation lie in the representation of communities, not individuals. Originally, representation in Parliament was a metaphorical representation of the land itself. Landholding in feudal England carried with it certain obligations, among them the duty to provide various forms of aid to the crown, including, upon request, financial assistance.²² Because, by tradition and under Magna Charta, financial impositions could not be assessed without the consent of those tenured in the lord's land, representatives of the land were summoned to Parliament for the purpose of giving their consent to taxation.²³ Thus, representation in

21. Aleinikoff and Issacharoff memorably referred to such individuals as "filler people" in T. Alexander Aleinikoff and Samuel Issacharoff, *Race and Redistricting: Drawing Constitutional Lines After Shaw v. Reno*, 92 MICH. L. REV. 588, 601 (1993).

22. M.V. CLARKE, *MEDIEVAL REPRESENTATION AND CONSENT* 253 (1964).

23. G.L. Harriss, *The Formation of Parliament, 1272-1377*, in *THE ENGLISH PARLIAMENT IN THE MIDDLE AGES* 41 (R.G. Davies & J.H. Denton eds., 1981) [hereinafter *THE ENGLISH PARLIAMENT*]; WILLIAM STUBBS, *2 THE CONSTITUTIONAL HISTORY OF ENGLAND: ITS ORIGINS AND DEVELOPMENT* 199-201 (1880).

England was "not the offspring of a democratic theory," but "an unpleasant incident of feudal service."²⁴

By the early fourteenth century, the rise of wealth not derived from rights in land created new potential sources of royal revenue. To put these sources within reach while still satisfying the requirement of consent, representation in Parliament was expanded to include representatives from corporate towns and boroughs.²⁵ Although town representatives may have been understood to represent roughly the interests of non-geographic mercantile classes,²⁶ they were nevertheless selected, in keeping with the universal practice, from "geographically defined communities."²⁷ In England, it seems, "political geography was deemed to determine something essential."²⁸ Yet this something inhered in the place rather than its inhabitants or its representatives, for any relationship among them had no bearing on the nature of representation. Thus, because feudal service was deemed to be due "from the land rather than from the individual tenant, . . . so long as the crown obtained its service it cared little who performed it."²⁹ Representation was consequently based on the unit from which consent was required, irrespective of any other characteristic, including who or how many happened to live there, or even the amount of revenue due from the taxable unit.³⁰ Thus, by the late fourteenth century, the representatives in Parliament consisted of two knights from each county and two citizens or burgesses from each city or borough within the represented counties, regardless of population, wealth, or property value.³¹

This model was duly exported to America, where representation in colonial legislatures was allocated on a per-town basis. In Maryland in the 1640s, for example, the assembly was constituted by "each community in the colony choosing, by majority rule, a representative who would stand for the whole community . . . [and who] would cast a single vote in the assembly, regardless of the size of

24. A.F. POLLARD, *THE EVOLUTION OF PARLIAMENT* 109, 153 (1920).

25. See POLLARD, *supra* note 24, at 51-55; STUBBS, *supra* note 23, at 170-71, 176, 208-10.

26. STUBBS, *supra* note 23, at 210.

27. EDMUND S. MORGAN, *INVENTING THE PEOPLE: THE RISE OF POPULAR SOVEREIGNTY IN ENGLAND AND AMERICA* 41 (1988).

28. CLARKE, *supra* note 22, at 285.

29. POLLARD, *supra* note 24, at 156.

30. For a thorough discussion of medieval taxation policies, see G.L. HARRISS, KING, *PARLIAMENT, AND PUBLIC FINANCE IN MEDIEVAL ENGLAND TO 1369* (1975).

31. A.L. Brown, *Parliament, c. 1377-1422*, in *THE ENGLISH PARLIAMENT*, *supra* note 23, at 109, 117-18.

United States they reached their culmination in the *Baker* line of cases.

We can of course no longer justify communal representation in relation to rights in land, but liberalism does not provide the only conceivable model for reconceptualizing the historical Anglo-American model of political representation of communities. Alternative political theories of more recent vintage that focus as much on the community as on the individuals who constitute it provide a framework in which it is possible to perceive important benefits from the former system's stress on the independence, political integrity, and permanence of local communities—aspects of political community to which the Court has been, it seems, largely indifferent.

B. The Importance of Local Political Community: Contemporary Views

If formal, universal equality and a cosmopolitan orientation toward centralized power are the most desirable characteristics of a political system, the Court is surely correct that one person, one vote is the representational structure of choice. Clearly, a system of one community, one vote can be desirable only on some very different set of assumptions. What might these be? It seems to me that any satisfactory account of such a system would have to explain why it is important for democratic politics to be conducted in a community that is (1) local, (2) comparatively permanent, and (3) situated in a particular, concretely identifiable place. In light of space limitations, I shall attempt here only the briefest review of how these issues are handled by some contemporary, non-liberal theories of democracy. All of the theories I discuss below share three fundamental premises: that politics consists of much more than merely voting; that the self who participates in politics, defined in this broader sense, is strongly situated by living a particular life, among particular people, in a particular place; and that citizenship means living such a life well, with due regard to the common good of one's fellow citizens.

One group of theories emphasizing the importance of the local clusters around the concept of what is sometimes known as "developmental democracy."⁴⁰ Theories of developmental

prerequisite to meaningful legislative representation. See BERNARD BAILY, *THE IDEOLOGICAL ORIGINS OF THE AMERICAN REVOLUTION* 160-75 (1967).

40. See DAVID HELD, *MODELS OF DEMOCRACY* 72-102 (1987); C.B. MACPHERSON, *THE LIFE AND TIMES OF LIBERAL DEMOCRACY* 44-69 (1977).

the community he represented.³² In Massachusetts, representatives represented towns; in Virginia, plantations, hundreds, or counties; and in the Carolinas, parishes.³³ This approach persisted well into the eighteenth century. Vermont, in its first constitution of 1777 allocated one representative to each town in the state.³⁴ The 1776 constitutions of Virginia and North Carolina provided for an assembly composed of two representatives from every county, and one from each city or borough.³⁵ Although some early state constitutions took rough account of population in determining the number of representatives to which each jurisdiction was entitled, representation was always allocated to counties, parishes, or some other communal unit.³⁶

From the seventeenth century onward, accelerating changes in the nature and distribution of economic and political power, ideological developments, the rise of nationalism, and the expansion of the franchise eventually wore away at the prevailing model of parliamentary representation.³⁷ Liberal principles of popular sovereignty could not be squared with feudal notions of the representation of land and taxation as a feudal service, or with received traditions based on such principles. Instead, it became necessary to reconceptualize parliamentary representation as the political representation of the people in their collective capacity.³⁸ By the early nineteenth century, these ideological developments produced the first serious legislative efforts at reforming the badly malapportioned representational system in Great Britain,³⁹ and in the

32. MORGAN, *supra* note 27, at 40.

33. *Id.* at 41.

34. VT. CONST. ch. II, §§ VII, XI (1777).

35. N.C. CONST. art. III (1776); VA. CONST. ¶ 25 (1776).

36. *E.g.*, MASS. CONST. art. II, § 3 (1780) (townships); S.C. CONST. art. XI (1776) (parishes). For a thorough account of how representation was handled in revolutionary-era state constitutions, see MARC W. KRUMAN, *BETWEEN LIBERTY AND AUTHORITY: STATE CONSTITUTION MAKING IN REVOLUTIONARY AMERICA 65-76* (1997).

37. D.H. Pennington, *A Seventeenth-Century Perspective, in THE ENGLISH PARLIAMENT, supra* note 23, at 185, 189-90; POLLARD, *supra* note 24, at 157-65.

38. MORGAN, *supra* note 27, at 46-50.

39. G.J. PULZER, *POLITICAL REPRESENTATION AND ELECTIONS: PARTIES AND VOTING IN GREAT BRITAIN 32-33* (Malcolm Anderson ed., 1967). Interestingly, so complete was the shift to a national orientation that reapportionment in Britain was initially resisted on the Burkean ground that the broad, general outlook of the representatives made direct representation of any given community, group, or interest unnecessary. See David Eastwood, *Parliament and Locality: Representation and Responsibility in Late-Hanoverian England, in 17 PARLIAMENT AND LOCALITY, 1660-1939*, at 68 (David Dean & Clyve Jones eds., 1998). Similar arguments were, however, resisted in America, where a strong acquaintance with local conditions was deemed to be a

democracy hold that democracy is justified primarily by its effect on the citizenry. Active participation in a democratic polity creates informed, politically aware, and public-spirited citizens who, as a result of participating jointly in the public enterprise of collective self-government, enjoy meaningful membership in a genuine community.⁴¹ In some accounts, democratic citizenship is understood as the ultimate fulfillment of human life, and thus an end in itself. This view has its roots in Aristotelian notions of the political nature of human beings,⁴² and probably found its most influential modern expression in the writings of John Stuart Mill.⁴³ A more recent version of developmental democracy focuses on the institution of "participatory democracy." Advocates of participatory democracy contend that the machinery of government must be radically opened to popular participation and control, primarily by distributing meaningful power downward toward decentralized local bodies small enough to allow individual citizens to experience self-government in an authentic way.⁴⁴

In these theories, political participation is thought to be most effective and most meaningful when undertaken at the local level. Generally, participation is most meaningful when it is a means by which citizens can play a significant role in shaping the decisions that affect their lives.⁴⁵ For this condition to hold, citizens must feel that there is some reasonable prospect for their participation to lead eventually to actions that affect them.⁴⁶ The local arena thus provides a much more congenial environment for citizens to derive the developmental benefits of democratic participation than national or other comparatively remote levels of government because the opportunities for participation are more numerous on the local level, and because individuals can make more of a difference in small-scale local politics.

41. HELD, *supra* note 40, at 72, 80, 86–89; MACPHERSON, *supra* note 40, at 47–48, 51–52.

42. See ARISTOTLE, *POLITICS* I.ii, § 9, at 4–5 (1253a) (Ernest Barker ed. & trans., 1978).

43. JOHN STUART MILL, *Considerations on Representative Government*, in *ON LIBERTY AND OTHER ESSAYS* 205, 328–329 (John Gray ed., 1998).

44. See CAROLE PATEMAN, *PARTICIPATION AND DEMOCRATIC THEORY passim* (1970); *PARTICIPATION IN POLITICS: NOMOS XVI passim* (J. Roland Pennock & John W. Chapman eds., 1975); *THE CASE FOR PARTICIPATORY DEMOCRACY passim* (C. George Benello & Dimitrios Roussopoulos eds., 1971).

45. MILL, *supra* note 43, at 328.

46. BENJAMIN BARBER, *STRONG DEMOCRACY* 117–39 (1984); David Braybrooke, *The Meaning of Participation and of Demands for It: A Preliminary Survey of the Conceptual Issues*, in *PARTICIPATION IN POLITICS: NOMOS XVI*, *supra* note 44, at 56, 59.

Furthermore, an individual's political participation is more likely to be effective when he or she has the opportunity to learn from experience and thereby develop sound political judgment and strong political skills.⁴⁷ These kinds of benefits are more readily available when the local political community is also stable and relatively permanent. If the community's boundaries or populace change too often or too dramatically, not only will the relevant cast of political characters change, but its problems will change as well. These kinds of changes, at least when they are significant, impair citizens' political learning and complicate their acquisition of political judgment.

A particularly pertinent example of this civic training justification is Nancy Schwartz's defense of single-member election districts as the ideal arena for producing good democratic citizens. In *The Blue Guitar*,⁴⁸ Schwartz argues that modern-day citizenship "requires specific arenas for its exercise," and that these arenas must be of an appropriate size. An arena too large, such as a world state, would forfeit "the possibility of direct citizen interaction;" an arena too small, such as a town meeting, would have "neither the diversity nor the power to be a meaningful totality" under the circumstances of modern life.⁴⁹ In this setting, the collective selection of a political representative continually reconstitutes the polity: "[i]t is a process in which a people makes a choice about how it will be recognized politically, and hence becomes self-conscious about who they are collectively."⁵⁰ The single-member districts of the Anglo-American system, Schwartz argues,

best encourage the development of political individuality, the civic status of being a citizen who retains his or her own particular loyalties yet acknowledges membership in the whole. By having set boundaries to a district one defines a relevant constituency not just by one aspect of its life at a moment in time but rather by the totality of its political life over the years.⁵¹

For Schwartz, then, the standard American election district is the best civic training ground for producing good democratic citizens, provided it is of appropriate size and sufficient permanence.

47. JOHN DEWEY, *DEMOCRACY AND EDUCATION* 22 (1944).

48. NANCY L. SCHWARTZ, *THE BLUE GUITAR: POLITICAL REPRESENTATION AND COMMUNITY* 73 (1988).

49. *Id.*

50. *Id.* at 129.

51. *Id.*

Another group of theories focuses even more strongly on the salience of the place in which members of a community live their political lives; such theories thus deal with the situatedness of the political subject in its most literal sense. As Hannah Arendt notably observed, “human life in so far as it is actively doing something, is always rooted in a world of men and of man-made things which it never leaves or altogether transcends.”⁵² The physical, public realm is a crucial space for the conduct of politics, Arendt argued, because it is the place in which persons who are different can join in common recognition of common objects, a fundamental condition of political community.⁵³ The experience of place is necessarily social and collective,⁵⁴ and thus political. In the most basic sense, place shapes politics because it frames issues as politically salient, both in virtue of the physical characteristics of the place,⁵⁵ but more fundamentally because “[t]he neighborhood is . . . the landscape of persons with whom one habitually deals, or with whom one may well have to deal. These are the people to whom one *must*, with rare exceptions, be civil;”⁵⁶ one must, that is to say, relate to them politically. Places could be interchangeable as venues for politics only if these factors were largely irrelevant to politics—“if *where* I do most of my living, hence my relations to others in the same locale, were not particularly important *for* that living.”⁵⁷

A final group of theories that supports an emphasis on local political community falls under the heading of what I call “viewpoint pluralism.” Unlike interest pluralism, which postulates a political arena in which diverse interests compete for satisfaction, viewpoint pluralism holds that a healthy politics is characterized by general contemplation and open, serious discussion of a wide diversity of political viewpoints. Theories of viewpoint pluralism range from

52. HANNAH ARENDT, *THE HUMAN CONDITION* 22 (1958).

53. *Id.* at 57–58; see also Alexandra Kogl, *Toward a Democratic Theory of Place: Place and the Public Realm* 1–5 (Aug. 31, 2001) (unpublished manuscript, delivered at American Political Science Association Annual Meeting), available at <http://pro.harvard.edu/abstracts/002/002022KoglAlexan.htm> (on file with the North Carolina Law Review).

54. EDWARD S. CASEY, *GETTING BACK INTO PLACE: TOWARD A RENEWED UNDERSTANDING OF THE PLACE-WORLD* 31 (1993) (“We partake of places in common—and reshape them in common. The culture that characterizes and shapes a given place is a shared culture, not merely superimposed upon that place but part of its very facticity.”).

55. PETER DREIR ET AL., *PLACE MATTERS: METROPOLITICS FOR THE TWENTY-FIRST CENTURY* ch. 1 (2001).

56. Cahoone, *supra* note 6, at 24.

57. *Id.* at 15.

minimal versions focused relatively narrowly on justifying diversification of legislative representation,⁵⁸ to more elaborate versions associated with theories of deliberative democracy in which legislative diversification is a central component of a more comprehensive program of political reform.⁵⁹ In all their varieties, however, theories of viewpoint pluralism strive to justify a politics in which all serious points of view are included and treated respectfully in public political discourse.⁶⁰

If a political community is the collective bearer of some particular point of view, then viewpoint pluralism offers a strong justification for treating local communities respectfully, individually, and equally. In viewpoint pluralism, social diversity arises not so much because communities' different situations provide them with distinct sets of interests (though this may occur), but because their differing situations cause their members to develop distinct, sincerely held, and epistemologically valid viewpoints.⁶¹ Views held by political communities are, according to viewpoint pluralism, entitled to a respectful hearing in decision-making bodies, and each view is to be accorded weight not on the basis of the number of people or communities holding or expressing it, but on its merits. Viewpoint pluralism thus furnishes a potentially strong justification not only for respecting the integrity of enduring local political communities, but for treating them equally as representatives of the viewpoints they hold.⁶²

58. LANI GUINIER, *THE TYRANNY OF THE MAJORITY* (1994); WILL KYMLICKA, *MULTICULTURAL CITIZENSHIP: A LIBERAL THEORY OF MINORITY RIGHTS* (1995); ANNE PHILLIPS, *THE POLITICS OF PRESENCE* (1995).

59. JÜRGEN HABERMAS, *BETWEEN FACTS AND NORMS: CONTRIBUTIONS TO A DISCOURSE THEORY OF LAW AND DEMOCRACY* (William Rehg trans., 1996); Joshua Cohen, *Deliberation and Democratic Legitimacy*, in *THE GOOD POLITY: NORMATIVE ANALYSIS OF THE STATE* 17 (Alan Hamlin & Philip Pettit eds., 1989).

60. For a fuller discussion, see James A. Gardner, *Democratic Institutions of View Pluralism* (Aug. 31, 2001) (unpublished manuscript, delivered at American Political Science Association Annual Meeting) (on file with author).

61. PHILLIPS, *supra* note 58; IRIS MARION YOUNG, *JUSTICE AND THE POLITICS OF DIFFERENCE* (1990); Iris Marion Young, *Difference As a Resource for Democratic Communication*, in *DELIBERATIVE DEMOCRACY: ESSAYS ON REASON AND POLITICS* 383 (James Bohman & William Rehg eds., 1997).

62. It might be objected that communal representation is in fact antithetical to any serious concept of viewpoint pluralism because legislative representation of communities suppresses representation of viewpoints held by minorities within the represented communities, thereby narrowing the range of viewpoints that will achieve consideration in legislative deliberations. This is a potentially serious objection to which I cannot fully respond here. Briefly, however, I do not find it troubling for the following reasons. The strength of this objection depends upon the validity of two underlying assumptions: (1) the legislature is preferable to the local community as a forum for considering and

C. Communal Representation: Equality or Proportionality?

Let us assume for the moment that at least some of these theories have some merit, and that there are potential benefits to be gained from designing legal institutions in a way that respects and fosters the development of local political community. How, then, might an electoral system be legally structured so as to achieve some of these benefits?

Although there are undoubtedly numerous ways to institutionalize the benefits of local political community, any such system, in light of the preceding discussion, would have to possess a few salient characteristics. First, to assure proper deference to the significance of locality in political life, such a system would have to treat local politics as an important constitutive element of individual and communal identity. Second, to provide a degree of autonomy sufficient to make local community meaningful, it would have to treat political boundaries as at least potentially significant reference points for collective self-definition. Third, to assure the continuing stability and integrity of local political communities, such a system would have to permit local communities to maintain a distinct political identity by acting as coherent wholes regardless of their size.

These conditions have definite ramifications for the structuring of electoral institutions. They are clearly inconsistent with the kind of instrumentalism, endorsed by the Court, that permits states to manipulate at will the boundaries, powers, and populations of local political jurisdictions as a matter of administrative convenience.⁶³ Instead, they seem to point toward a communal rather than individual basis of representation in national, state, and local legislatures. It

debating political viewpoints; and (2) legislative decision-making is improved by consideration of the greatest possible number of different viewpoints. Each of these assumptions presents significant problems. First, most conceptions of viewpoint pluralism contemplate that the benefits of political deliberation materialize when deliberation is conducted by citizens, not by legislators. See, e.g., BENJAMIN BARBER, *STRONG DEMOCRACY: PARTICIPATORY POLITICS FOR A NEW AGE* (1984); Cohen, *supra* note 59, at 17-34; HABERMAS, *supra* note 59. Local communities would seem to make better forums for meaningful citizen deliberation than artificial election districts precisely because they are *communities*, that is, entities whose members already possess a set of established relations that make meaningful political deliberation possible. Second, it is not the case that legislative deliberations are improved by introduction of every conceivable viewpoint, no matter how ill-considered or unmeritorious; only the introduction of *good* viewpoints improves legislative debate. So long as it is conducted according to the ground rules of open, respectful debate, communal representation might actually serve as a useful filtering device that would transmit to the legislature only the better viewpoints, filtering out locally the poorly considered ones.

63. See *Hunter v. Pittsburgh*, 207 U.S. 161, 179 (1907).

must be borne in mind that legal frameworks structuring politics are not themselves capable of summoning into existence any particular kind of politics. They are, however, capable of impeding or facilitating efforts by citizens or governments to bring about a politics which they otherwise wish to establish.⁶⁴ In this context, some kind of system of communal representation thus seems to be the structure best suited to facilitate the creation of a meaningful local politics, should a state or locality wish to attempt to do so.

Although there may be many ways in which a system of communal representation could be structured, history seems to furnish two principal examples. One system treats all subcommunities of the whole as equal, regardless of their characteristics, by providing each with the same number of representatives—a true system of one community, one vote. The other system recognizes subcommunities as the relevant unit of representation, but allocates them different numbers of representatives depending upon certain qualities, typically population. Both kinds appear frequently in Anglo-American history. We have already seen the medieval system of equality in communal representation, which was replicated in the American colonies and in many of the earliest post-revolutionary state legislatures. The same system also was employed in the Continental Congress under the Articles of Confederation⁶⁵ and in many state senates prior to *Baker v. Carr*,⁶⁶ and exists today in the United States Senate.⁶⁷ On the other hand, systems of communal representation have also been employed in the United States in which subcommunities are represented not equally, but in rough proportion to their populations. Representation of states in the House of Representatives was from the beginning of this type,⁶⁸ as was representation in many state assemblies before the Court's ruling in *Baker*.⁶⁹

One question often raised regarding the latter, roughly proportional kind of representation is whether such a system really represents communities, or something else—people, perhaps, or

64. See James A. Gardner, *Can Party Politics Be Virtuous?*, 100 COLUM. L. REV. 667, 670 (2000); James A. Gardner, *Madison's Hope: Virtue, Self-Interest, and the Design of Electoral Systems*, 86 IOWA L. REV. 87 (2000) [hereinafter Gardner, *Madison's Hope*].

65. Articles of Confederation, art. 5, § 4 (1778) (“[E]ach State shall have one vote.”).

66. 14 THE BOOK OF THE STATES, *supra* note 4, at 58–62.

67. U.S. CONST. art. I, § 3, cl. 1.

68. *Id.* § 2, cl. 3.

69. 14 THE BOOK OF THE STATES, *supra* note 4, at 58–62.

wealth, or power. The Framers, for example, believed that the Senate's equality of state representation would make it a body in which political subcommunities—states—were represented in their capacity as political communities. The House's proportionality, in contrast, would render it a body that represented people, despite the fact that representation was formally allocated among states rather than groups of individuals.⁷⁰ Similarly, the Three-fifths Clause, which calculated representable state populations by adding to the number of free persons three-fifths of all slaves,⁷¹ was widely understood to implement a compromise under the terms of which the House would represent a mix of people and property.⁷²

I do not propose to enter into this metaphysical discussion about what is properly understood to be represented in a legislative body. Instead, I want to ask a more directly pertinent question: does the choice of a system of strict equality or proportionality of community representation have any ramifications for the quality of politics practiced in the subcommunities themselves? If the contemporary goal of communal representation is to facilitate the development of a meaningful local political community with a satisfying politics, it is important to know whether the way in which communities are represented in the legislature has any impact on achievement of that goal. Specifically, the concern is this: it would hardly do to reject a liberal, cosmopolitan politics of self-interest by establishing a strong system of local political community, only to have such a politics reappear within local communities as an indirect result of incentives created by the nature of state or national legislative politics.

As an initial matter, there seems to be no necessary connection between the cultivation of a meaningful community-centered politics at the local level, on one hand, and the kind of politics in which the various community representatives may engage among themselves, on the other. No matter how communities choose their representatives, communal representation is just as consistent with a supralocal legislative politics of crass self-interest as it is with a legislative politics of virtuous and deliberative pursuit of the common good. On the other hand, it is possible that proportional rather than equal representation of communities tends to be more congenial to one kind of politics than another. If so, then certain kinds of

70. Compare 2 THE FOUNDER'S CONSTITUTION 43–50 (Philip B. Kurland & Ralph Lerner eds., 1987) (debates concerning the basis of representation in the House), with *id.* at 183–208 (same concerning the Senate).

71. U.S. CONST. art. I, § 2, cl. 2.

72. See 2 THE FOUNDER'S CONSTITUTION, *supra* note 70, at 87–144.

representatives are likely to be more effective than others at the kind of legislative politics so produced. This could in turn affect the nature of politics within the represented communities by giving citizens incentives to pick one kind of representative over another, and to marshal some kinds of reasons for their choices and not others. These are considerations that go to the heart of political life in a local community.

For reasons that I have elaborated elsewhere,⁷³ I am inclined to think that proportional representation is in general more congenial to the establishment and maintenance of a liberal politics of self-interest than to a politics of developmental, deliberative, or viewpoint-plural democracy. When communal representation is proportional, numbers count in ways they do not when representation is equal. When one community has more representatives than another, larger communities may carry legislative decisions by relying more on their own voting strength than is possible when communities are represented equally. This means that winning coalitions can be built around representatives of fewer communities, representing fewer viewpoints. Deliberation, persuasion, and inclusion become less necessary, and thus less useful; decisions may be carried as much by the exercise of raw, instrumental power as on their merits.

Some support for this supposition may be drawn from observations of existing political institutions. It is often said, for example, that the United States Senate is a more deliberative body than the House of Representatives. I would be the last to accuse the Senate of engaging in the highest quality politics, and if the quality of politics is actually better there than in the House it might well be due to factors other than the equality of representation in the Senate, such as the length of terms and corresponding infrequency of the need to run for reelection. Nevertheless, it is also possible that the need to attract representatives from a wider array of political subcommunities requires a kind of coalition building, inclusiveness, and consequent deliberativeness that is not necessarily mandatory in the House, where the power of numbers may be easier to wield.

Better evidence may come from the experience of other nations with consociationalism, a form of government employed in the Netherlands,⁷⁴ Belgium,⁷⁵ and possibly other nations including

73. Gardner, *Madison's Hope*, *supra* note 64.

74. AREND LIJPHART, *THE POLITICS OF ACCOMMODATION: PLURALISM AND DEMOCRACY IN THE NETHERLANDS* (2d ed. 1975).

75. *CONFLICT AND COEXISTENCE IN BELGIUM: THE DYNAMICS OF A CULTURALLY DIVIDED SOCIETY* (Arend Lijphart ed., 1981).

Switzerland, Canada, and India.⁷⁶ Consociationalism is a structure that permits a measure of democracy in societies that are deeply divided by the kinds of ethnic, cultural, or religious cleavages that prove difficult to transcend in the give and take of ordinary democratic politics. Its purpose is to create an arrangement that permits the constituent communities of a divided nation to govern by a mutual accommodation in which each community has a significant and permanent say in the formation of government policies. According to Arend Lijphart, its leading student, consociationalism's most important characteristic is government by a "grand coalition" of leaders from each significant segment of the plural society.⁷⁷

When the constituent communities of a consociational nation are of different sizes, Lijphart observes, they will often demand some form of proportionality in communal representation.⁷⁸ Yet the politics that emerges from proportional representation of communities in consociationalism, Lijphardt claims, is one characterized by bargaining, logrolling, and, worst of all, closed-door decision making by high-level leaders from each group.⁷⁹ This arrangement is conducive to maintaining stability, because "in intimate and secret negotiations the likelihood of achieving a [mutually satisfactory] package deal is maximized";⁸⁰ but this stability clearly is purchased at some cost to the democratic quality of consociational politics.

If the proportional variety of communal representation yields a legislative politics of what amounts essentially to interest pluralism, then the best representatives any community can send to the legislature are those most capable of advancing the community's interests in the give and take of interest-based bargaining. These are not likely to be the same people the community would select to represent it in a deliberative legislature whose members were

76. Hans Daalder, *On Building Consociational Nations: The Cases of the Netherlands and Switzerland*, in CONSOCIATIONAL DEMOCRACY: POLITICAL ACCOMMODATION IN SEGMENTED SOCIETIES 107, 107-24 (Kenneth McRae ed., 1974) (Switzerland); CONSOCIATIONAL DEMOCRACY, *supra*, at 235-99 (Canada); Arend Lijphart, *The Puzzle of Indian Democracy: A Consociational Interpretation*, 90 AM. POL. SCI. REV. 258 (1996) (India). The concept of consociationalism has occasionally been criticized for being too indeterminate, and thus allowing too many nations to qualify as consociational. *See, e.g.*, Brian Barry, *The Consociational Model and Its Dangers*, 3 EUR. J. POL. RES. 393 (1975); Ian S. Lustick, *Lijphart, Lakatos, and Consociationalism*, 50 WORLD POL. 88 (1997).

77. AREND LIJPHART, DEMOCRACY IN PLURAL SOCIETIES: A COMPARATIVE EXPLORATION 25-36 (1977).

78. *Id.* at 38-41.

79. *Id.* at 39-40.

80. *Id.* at 40.

committed to open, respectful listening and the pursuit of consensus based on mutual understanding.⁸¹ It also seems likely that the kind of local politics most conducive to the selection of one or the other kind of legislator might differ substantially. While there is perhaps no necessary conflict in the notion that a deliberative local politics could produce an instrumental representative, it does not seem the most natural or likely of arrangements. For these reasons, it strikes me as plausible to conclude, at least provisionally, that the form of communal representation best suited to secure the benefits of strong local political community is a system of one community, one vote.

III. IS ONE PERSON, ONE VOTE NECESSARILY INCOMPATIBLE WITH POLITICAL COMMUNITY?

Having laid out the major differences between the one-person, one-vote and one-community, one-vote approaches to political representation, I turn now to a more practical issue. The two systems of representation are clearly in tension at a theoretical level. But does this tension inevitably translate in practice into actual incompatibility? More specifically, does the use of a one-person, one-vote system necessarily undermine the formation of meaningful local political communities? In this part, I consider two possible ways in which the incompatibility problem might be avoided. First, perhaps it is possible to implement a one-person, one-vote system in a way that is sensitive to the preservation of existing political communities, potentially allowing them to survive and flourish in the long term. Second, and more fundamentally, perhaps there is no real contradiction between one person, one vote and political community because a genuinely local, communal politics is simply impossible in the contemporary United States.

A. *Respect for Existing Local Political Communities: The Center-Periphery Model*

In developing the one-person, one-vote principle in actual cases, the Supreme Court has introduced some flexibility into the doctrine for the express purpose of permitting states to show greater respect for existing local political communities than a strict application of the doctrine might otherwise allow. In the most national-oriented elections to which the doctrine applies—elections for the United States House of Representatives—the Court has sternly required that

81. See sources cited *supra* notes 58, 60.

congressional election districts within a state be of nearly precisely equal population.⁸² The more rigidly this requirement is enforced, of course, the more necessary it becomes to break up recognized local political communities because their populations fail to add up to the required numbers.

In state and local districting, however, the Court has taken a somewhat more lenient approach. There, the Court requires only that election districts be “as nearly of equal population as practicable.”⁸³ In practice, the Court is routinely willing to tolerate deviations of up to ten percent from the ideal population distribution.⁸⁴ Although the Court allows states this latitude, it requires deviations from strict equality to be justified by valid reasons. Among the reasons that the Court has approved for deviating from the strictest application of one person, one vote are two that seem pertinent here: maintaining the integrity of political subdivisions⁸⁵ and keeping intact communities of interest.⁸⁶ Both of these exceptions seem calculated to provide limited protection for local political communities by granting redistricters a degree of flexibility in line-drawing which they might on occasion invoke to avoid splitting identifiable political communities among more than one election district.

Do these doctrinal exceptions to the strict requirement of population equality make the one-person, one-vote standard in practice sufficiently sensitive to the values of political community to rescue it from the charge that it thwarts the establishment and maintenance of meaningful local political communities? Probably not. In the first place, the exception for preserving “communities of interest” seems largely irrelevant to any thick concept of meaningful political community. To speak of a community of interest is to presuppose a thin form of community based on nothing more than shared interests—we are all poor, perhaps, and thus share an interest in poverty programs; or we are all riparian homeowners and thus share an interest in flood protection. A shared interest is central to

82. *Karcher v. Daggett*, 462 U.S. 725, 730 (1983).

83. *Reynolds v. Sims*, 377 U.S. 533, 577 (1964).

84. *Mahan v. Howell*, 410 U.S. 315, 320–33 (1973); *Gaffney v. Cummings*, 412 U.S. 735, 740–51 (1973). In *Brown v. Thomson*, 462 U.S. 835, 842–43 (1983), the Court suggested that state apportionment plans with population deviations below ten percent are prima facie valid under the one-person, one-vote standard.

85. *Mahan*, 410 U.S. at 321–29; *Bush v. Vera*, 517 U.S. 952, 974 (1996).

86. *Bush*, 517 U.S. at 966; *Miller v. Johnson*, 515 U.S. 900, 919–20 (1995).

an advocacy organization, perhaps, but it hardly describes a three-dimensional political community.

The exception for recognized political subdivisions seems more promising. A town, village, or city, perhaps even a county, is capable of describing not merely a set of acknowledged borders but also, at times, a genuine political community whose members share a history and collective sense of identity. Moreover, by taking the position that political subdivisions are entitled to some degree of integrity, the Court treats them as natural, almost as though a community were a feature of the landscape itself, like a river or a mountain ridge, that divides people into organically distinct groupings.

This view is notably at odds with the Court's generally instrumental approach to local boundaries in one-person, one-vote cases.⁸⁷ Furthermore, the Court has complicated the discrepancy by consistently explaining the exception for political subdivisions in surprisingly instrumental terms. For example, in *Bush v. Vera*, the Court criticized a Texas districting plan for exhibiting "utter disregard of city limits, local election precincts and voter tabulation district lines."⁸⁸ This was bad, the Court explained, because professional campaigners "had to carry a map to identify the district lines," and because it "created administrative headaches for local election officials."⁸⁹ The disruption of local community does not figure prominently in the Court's analysis. More to the point, however, is that the Court's apparently grudging willingness to recognize the value of political community seems directly at odds with its unwillingness to relax the equipopulation requirement of one person, one vote by more than ten percent and its insistence on decennial restructuring of political boundaries, both of which enhance the likelihood of disrupting the integrity of established political communities. If a political community is organic, like a river, it is a river that may be dammed or redirected to a very great extent.

There may be, however, a possible way to reconcile the Court's seemingly contradictory impulses if we conceive of a political community as comprising not a uniform whole throughout its geographical extent, but rather a center and a periphery. At the core, and smaller than the whole, is the heart of the community, the place

87. Richard Thompson Ford has well described the Court's longstanding vacillation between treating political boundaries as instrumentally meaningless and as organically meaningful. See Richard Thompson Ford, *The Boundaries of Race: Political Geography in Legal Analysis*, 107 HARV. L. REV. 1841, 1877-78 (1994).

88. *Bush*, 517 U.S. at 974.

89. *Id.* (internal quotation marks omitted).

where citizens develop meaningful attachments to one another and lead shared political lives. Farther out are the hinterlands, places connected to the political center by ties of economics, culture, and information, for example, but less so by the kinds of ties characteristic of a common political life. These peripheral areas thus need not be considered an integral part of the relevant political community. When we think, say, of ancient Athens, history's quintessential political community, we think of the Acropolis, and perhaps the fortified city surrounding it that comprised the city of Athens proper. We do not think much about the Piraeus, the Athenian harbor two miles to the west, or about the outlying countryside of Attica which contained crucial Athenian farmlands and numerous smaller towns.⁹⁰ Would Athens have been any the less Athens if some outlying tract of farmland were lopped off and reassigned to neighboring Megara or Boeotia? Perhaps the Court takes the same view of American political jurisdictions: outlying areas form a political as much as a geographical periphery, and reassigning them from one district to another simply does not do much damage to the true political community at the center.

If the Court really has been thinking in these terms, it would represent a truly dramatic reversal of the usual American approach not only to apportionment, but to rural life itself. Before *Baker* opened up the subject to judicial inquiry, malapportioned state legislatures tended to be dominated by rural interests because the greatest deviations from population equality were most often caused by the rapid growth of cities in the first half of the twentieth century. In American political thought, however, this may not have been considered the greatest of sins. Cities were viewed suspiciously in Jeffersonian and then Progressive ideology as incubators of political dependence.⁹¹ City life was considered shallow and ephemeral

90. See J.B. BURY & RUSSELL MEIGGS, *A HISTORY OF GREECE TO THE DEATH OF ALEXANDER THE GREAT* 235–38 (4th ed. 1975).

91. As Jefferson put it:

Corruption of morals in the mass of cultivators is a phenomenon of which no age nor nation has furnished an example. It is the mark set on those, who . . . for their subsistence, depend for it on casualties and caprice of customers. Dependence begets subservience and venality, suffocates the germ of virtue, and prepares fit tools for the designs of ambition. . . . The mobs of great cities add just so much to the support of pure government, as sores do to the strength of the human body.

THOMAS JEFFERSON, *Notes on Virginia* (1782), reprinted in *THE LIFE AND SELECTED WRITINGS OF THOMAS JEFFERSON* 259–60 (Adrienne Koch & William Peden eds., 1993). Regarding the Progressive view, which feared cities as havens of dependent immigrants not schooled in American democratic traditions, see, for example, RICHARD

compared to the sturdy permanence of country life. A center-periphery model of political community in the apportionment context would reverse that equation. It would now be the city that comprised the stable and enduring political community, while outlying rural areas could be swapped freely among city-dominated districts without significant loss of political connection and community. The Court's approach would now be as urban in outlook as the prior approach was rural.

In any event, I think that the center-periphery model of political community ultimately cannot dissolve successfully the apparent conflict between one person, one vote and the maintenance of strong local political communities. First, even if the model might hold some appeal in the context of state legislative apportionment, it has no obvious application to local apportionment. The doctrine of one person, one vote applies not just to state legislatures, but also to local councils and boards, including the division into wards or precincts of small cities and rural townships. Does a bedroom suburb have an identifiable center and periphery? Perhaps, but the concept seems too attenuated to do any real work here.

Second, the center-periphery notion may not accurately describe many political communities. It could well be that the citizens of a town, a village, or a city collectively identify themselves as a single community, in which case the imposition of the center-periphery model to justify doling out pieces of the jurisdiction to its neighbors would represent a clear violation of the community's integrity. In this respect, the center-periphery model does not take sufficiently seriously the potential meaningfulness of boundaries or place, and as a result consigns some groups to disaffiliation and transience.⁹²

Finally, and perhaps most significantly, the decennial redistricting process itself may be intrinsically inconsistent with a respect for the integrity of local political community. One of the most consistent findings of those who study the reapportionment process is that it is conducted strategically, by those who already hold power, with an eye toward keeping or gaining power.⁹³ As Robert Dixon observed, all districting is in some sense gerrymandering.⁹⁴ someone stands to gain or lose from any conceivable redrawing of district lines.

HOFSTADTER, *THE AGE OF REFORM 7-9* (1955); ROBERT H. WIEBE, *THE SEARCH FOR ORDER 1877-1920*, at 77-79 (1967).

92. ANDERSON, *supra* note 20.

93. *See, e.g.*, BRUCE E. CAIN, *THE REAPPORTIONMENT PUZZLE* (1984).

94. ROBERT G. DIXON, JR., *DEMOCRATIC REPRESENTATION: REAPPORTIONMENT IN LAW AND POLITICS* 462 (1968).

If that is the case, then it may simply be impossible for the redistricting process to proceed on any basis other than the pursuit of political self-interest. In that setting, providing local political communities with a limited safe harbor, as the Court has done, may amount to whistling in the wind.

B. Is a Local, Communal Politics Even Possible?

I want now to touch briefly upon a much more fundamental objection to the contradiction that I have been exploring between one person, one vote and the cultivation of local political community. The objection is this: no actual contradiction between these principles can ever appear because the kind of meaningful local political community contemplated by non-liberal democratic theory is, at least in the contemporary United States, impossible; it simply does not and cannot exist.

This is a serious and potentially valid objection. Community in the United States has always had an element of transience. American society developed to some degree under the influence of the frontier: people have always felt they could pick up, move someplace else, and start over.⁹⁵ Many have done so. According to census figures, seventeen million Americans—more than one in twenty—moved to their present county of residence within the last year alone.⁹⁶ At least forty percent of Americans live in a political community different from the one into which they were born.⁹⁷ Indeed, the U.S. Constitution confers upon all Americans an individual right to migrate internally.⁹⁸

The possibility of a distinctive local identity is under siege from many other directions. Today, twenty-three corporations of

95. FREDERICK JACKSON TURNER, *THE FRONTIER IN AMERICAN HISTORY* (1976). This view has been called into question by more contemporary historians of the American West. See, e.g., PATRICIA NELSON LIMERICK, *THE LEGACY OF CONQUEST: THE UNBROKEN PAST OF THE AMERICAN WEST* (1987); TRAILS: *TOWARD A NEW WESTERN HISTORY* (Patricia Nelson Limerick et al. eds., 1991).

96. U.S. Census Bureau, *Profile of Selected Social Characteristics: 2000*, <http://factfinder.census.gov/servlet/BasicFactsServlet> (last visited Jan. 25, 2002) (on file with the North Carolina Law Review).

97. *Id.* The number is probably much higher, as the Census Bureau tracks movement only from county to county. Movement from town to town is not reported nationally.

98. See U.S. CONST. amend. 14, § 1 (“All persons born or naturalized in the United States . . . are citizens of the United States and of the State wherein they reside.”); Saenz v. Roe, 526 U.S. 489, 498–504 (1999) (recognizing the right to travel as a privilege or immunity of U.S. citizenship); Shapiro v. Thompson, 394 U.S. 618, 629–31 (1969) (recognizing a constitutional right to travel); *The Passenger Cases*, 48 U.S. (7 How.) 283, 305–10 (1849) (holding that states cannot restrict the interstate movement of persons).

nationwide reach control most of the more than 25,000 media outlets in the United States.⁹⁹ The daily newspaper business is dominated by fourteen companies.¹⁰⁰ Three companies own a majority of the nation's magazines and six own a majority of its book publishers. Three companies own a majority of television stations; four own a majority of movie studios.¹⁰¹ Control over the images that Americans see each day, the images that provide them with much of their basic stock of concepts, is concentrated in the hands of just a few national corporations.

Things are much the same in the world of commerce. By the mid-1970s, 15,000 shopping centers had been built, accounting for nearly half of the nation's retail sales. Nearly a third of this amount was taken in by 800 large regional malls.¹⁰² The mall has become not only a powerful economic engine, but "a national common denominator, an experience few could not relate to."¹⁰³ If local customs, beliefs and ways of life are somehow embodied or reflected in the goods produced, sold, and consumed in a place, then local variations across the nation are being flattened by a single consumer culture of national scale.¹⁰⁴ It is questionable whether distinctively local community can survive such an onslaught.

Another possible difficulty is that the typical American election district may be too large to comprise a genuine community. After the current round of redistricting, the average congressional district will contain nearly 650,000 people.¹⁰⁵ The average state assembly district in California will contain over 420,000 people; in Texas approximately 144,000; in North Carolina more than 70,000.¹⁰⁶ On the other hand, local legislative districts may contain numbers small enough to be consistent with the formation of meaningful local political

99. BEN H. BAGDIKIAN, *THE MEDIA MONOPOLY* 4 (4th ed. 1992).

100. *Id.* at 18, 23-24.

101. *Id.* at 18.

102. BERNARD J. FRIEDEN & LYNNE B. SAGALYN, *DOWNTOWN, INC.: HOW AMERICA REBUILDS CITIES* 69 (1989).

103. *Id.*

104. *See, e.g.*, PETER APPLEBOME, *DIXIE RISING: HOW THE SOUTH IS SHAPING AMERICAN VALUES, POLITICS, AND CULTURE* 15 (1996) ("No one who compares the segregated, largely rural South of just three decades ago and the strip-malled South of Tex-Mex chains, bagel shops, and designer coffee kiosks today could fail to see that the South now is part of a national commercial culture in a way that it never was in the past.").

105. U.S. Census Bureau, *Census Brief*, <http://www.census.gov/prod/2001pubs/c2kbr01-7.pdf> (last visited Jan. 25, 2002) (on file with the North Carolina Law Review).

106. All population data from the 2000 census was obtained from www.census.gov. *See* U.S. Census Bureau, *Census 2000*, <http://www.census.gov/population/www/censusdata/apportionment.html> (last visited Jan. 25, 2002) (on file with the North Carolina Law Review).

communities. An average ward in the city of Buffalo, New York, for example, contains about 32,500 people,¹⁰⁷ and districts in smaller communities may contain substantially fewer people.

It might also be argued that an election district cannot comprise a genuine community because politics, in contemporary America, is too trivial a basis upon which to constitute a meaningful communal life. Perhaps American politics simply is, empirically, a thin, interest-based politics:¹⁰⁸ perhaps we are all self-interested utility-maximizers now. There is a strand of constitutional doctrine that seems to suggest quite strongly that a genuinely communal life is constituted by *private* associations, defined mostly as intimate associations such as family, religious groups, private clubs, and the like.¹⁰⁹ The Court's jurisprudence in these areas may thus create a dichotomy whereby public communities may be rearranged at will because they are by definition thin, while presumptively thick private associations can almost never be disrupted by the state.

All of these things may well be true: the United States today may have little in the way of meaningful, local, public community, so that when redistricters break up counties, towns, and city neighborhoods they are not breaking up anything of real significance. Yet it is far from clear that these facts, if they are facts, justify the Court's application of the one-person, one-vote doctrine so as to *preclude* a state or locality from *attempting to create* a more meaningful local politics if it wishes to do so. As things now stand, the one-person, one-vote doctrine prevents a state from adopting a representational system of one community, one vote, or even any weaker system of communal representation that would accord more respect to the integrity of local communities than the one-person, one-vote doctrine presently permits. What must be justified, it seems to me, is the Court's application of the doctrine in a way that

107. Based on 2000 municipal population, the city was divided into nine wards. See City of Buffalo, District Listing, at http://www.city_buffalo.com/document_31_5.html (last visited Jan. 25, 2002) (on file with the North Carolina Law Review); U.S. Census Bureau, Profile of General Demographic Characteristics: 2000, <http://factfinder.census.gov/servlet/BasicFactsServlet> (last visited Jan. 25, 2002) (on file with the North Carolina Law Review).

108. If a general lack of knowledge concerning political issues is evidence of a thin politics, then political scientists have been documenting such thinness since *The American Voter*, which revealed systematically the public's general ignorance about government policies, political issues, candidates, and the positions taken by candidates on issues of the day. See ANGUS CAMPBELL ET AL., *THE AMERICAN VOTER* (1960).

109. E.g., *Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston*, 515 U.S. 557, 568–70 (1995); *Roberts v. United States Jaycees*, 468 U.S. 609, 617–29 (1984); *Moore v. City of E. Cleveland*, 431 U.S. 494, 498–506 (1977).

precludes states and localities from attempting to foster a meaningful local politics, and that commits us everywhere, at every level, to the kind of liberal, national political life that one person, one vote tends to foster.

IV. JUSTIFYING THE SUPPRESSION OF LOCAL POLITICAL COMMUNITY

The United States Supreme Court has long maintained, in many cases arising in many different contexts, that states have enormous discretion in structuring their political institutions. They may create offices as they wish, making them elective or appointive.¹¹⁰ They may create local governments and structure them in a great variety of ways, granting or withdrawing powers as expediency dictates.¹¹¹ They may treat local jurisdictions instrumentally, altering their boundaries and powers as they see fit,¹¹² or they may treat local jurisdictions as having greater significance and permanence, a decision which federal courts are then bound to respect.¹¹³ If states have such discretion in so many other areas, why, then, are they denied the discretion to attempt to foster meaningful local political life through a system of communal representation such as one community, one vote? Why, in other words, is a cosmopolitan uniformity to be preferred to communal diversity and differentiation, even at the cost of sacrificing the many civic benefits that might accrue from a strong, independent local politics?

One possible justification for striking the balance in this way is suggested by the historical context in which the Court developed the one-person, one-vote doctrine. In a recent book, Lucas A. Powe, Jr., argues that the jurisprudence of the Warren Court was directed overwhelmingly at a single goal: breaking the back of southern regionalism.¹¹⁴ The "local regime of race," he writes, "was

110. *Rodriguez v. Popular Democratic Party*, 457 U.S. 1, 8 (1982); *Fortson v. Morris*, 385 U.S. 231, 234 (1966).

111. See *Holt Civic Club v. City of Tuscaloosa*, 439 U.S. 60, 74 (1978); *Avery v. Midland County*, 390 U.S. 474, 485 (1968); *Sailors v. Bd. of Educ.*, 387 U.S. 105, 110-11 (1967).

112. See *Hunter v. Pittsburgh*, 207 U.S. 161, 179 (1907) (upholding the consolidation of two neighboring cities).

113. See *Lockport v. Citizens for Cmty. Action*, 430 U.S. 259, 271-72 (1976) (upholding a New York law granting counties more organization independence from cities); *Milliken v. Bradley*, 418 U.S. 717, 752 (1974) (overturning a desegregation plan that addressed Detroit's problems on a metropolitan basis).

114. LUCAS A. POWE, JR., *THE WARREN COURT AND AMERICAN POLITICS* 490 (2000).

nationalized with a single operative standard for the entire country. But the effort was not a national one. It was directed exclusively at the South and was designed to force the South to conform to northern—that is, national—norms.”¹¹⁵ Interestingly, Powe views the Court’s one-person, one-vote jurisprudence as one of the few areas in which the Court attacked a nationwide rather than a regional, southern problem; its decisions, he argues, “were explicitly designed to transfer political power from rural America to urban America.”¹¹⁶ Yet perhaps Powe misses an important connection between one person, one vote and the Court’s “assault on the South as a unique legal and cultural region.”¹¹⁷ If, as I have argued, strong systems of communal representation such as one community, one vote are more conducive to the creation and preservation of distinctive local political communities, then such systems may provide the conditions in which a local political culture of racial caste can flourish. Nationalization and cosmopolitanism have long been among the strategies invoked by the civil rights movement against the local particularism of racial discrimination.¹¹⁸ To the extent that the one-person, one-vote standard encourages a politics that is liberal and national, it too may serve as a weapon against racialism.

There is a significant problem with this account, however. If the one-person, one-vote standard was meant to disrupt local community in the belief that local autonomy and distinctiveness too easily serve as incubators of racial discrimination, the standard has been a notorious flop. In practice, the decennial districting process has had just the opposite effect: it has provided frequent opportunities for new and creative forms of racial discrimination. Black citizens have been packed into heavily black districts and scattered among heavily white ones, depending upon the political objectives of redistricters. The Court’s current, utterly confused jurisprudence under the Voting Rights Act concerning the appropriate uses of racial criteria in the districting process¹¹⁹ is nothing if not testament to the way that reapportionment has become thoroughly racialized. And the Court’s growing hostility to national administration of southern redistricting

115. *Id.*

116. *Id.* at 493.

117. *Id.* at 490.

118. In a classic work, the pioneering political scientist E.E. Schattschneider argued that manipulation of the level at which problems get resolved is a universal tactic of politics. E.E. SCHATTSCHNEIDER, *THE SEMI-SOVEREIGN PEOPLE: A REALIST’S VIEW OF DEMOCRACY IN AMERICA* 78–96 (1960).

119. See *Hunt v. Cromartie*, 532 U.S. 234, 257 (2001); *Miller v. Johnson*, 515 U.S. 900, 923 (1995); *Shaw v. Reno*, 509 U.S. 630, 653–57 (1993).

by the Justice Department¹²⁰ seems to signal a loss of faith in nationalizing legal institutions as a means of suppressing a local politics of racial inequality.

A second possible justification for insisting on liberal nationalism at the expense of strong local community might be that the latter promotes disruptive differences capable of weakening larger communities that are more important in today's world. Benjamin Barber has made such an argument in his book *Jihad vs. McWorld*.¹²¹ There, Barber argues that the world is simultaneously disintegrating into ethnic, religious, and local particularism (jihad), and becoming melded by global communication and global capitalism into a single metaculture (McWorld). Barber points out that these opposing trends are united by their assault on the nation-state as the primary political, social, and economic organizing unit of modern life. He finds this troubling on the ground that the nation-state has been instrumental in creating and maintaining not only democracy, but also the kind of flourishing liberal humanhood created by democratic citizenship and civil society.

If Barber is correct, then perhaps we have reason to fear political institutions capable of fostering strong and independent local political cultures. The nationalizing doctrine of one person, one vote may thus implement a desirable level of protection for the integrity of the nation against a dangerous splintering into distinctive local communities. In a nation with a history of ideological support for secession as a means of resolving political differences among regions, perhaps such a precaution makes sense.

If either of these reasons sufficiently justifies promoting liberal cosmopolitanism, the result certainly comes at a price. In the first place, as I have repeatedly emphasized, a liberal, nationalizing politics sacrifices the many potential civic and personal benefits associated with strong local political community. These costs include lost opportunities for citizens to develop personal political skills, awareness, and judgment; to experience a sense of agency and self-mastery by shaping their own lives through meaningful local political participation; and to enjoy the potential satisfactions of becoming, and relating to others as, citizens in the thickest sense of the term. In the second place, the liberal, national politics that substitutes for the local variety tends toward the opposite extreme: a politics of

120. See *Miller v. Johnson*, 515 U.S. 900, 915 (1995) (severely criticizing the Justice Department for attempting to maximize the number of majority-minority districts).

121. BENJAMIN R. BARBER, *JIHAD VS. MCWORLD* (1995).

detached, rational self-interest. This kind of politics could not be more different from the local variety. It encourages citizens to think about their own interests first, to pay less attention to the common welfare, to disengage from active political participation, and to retire into private rather than public life.

I do not intend by any means to suggest that any or all of these consequences should be laid at the feet of the one-person, one-vote doctrine. That doctrine is, after all, only one small piece of a comprehensive legal regulatory structure for the American political process, and other aspects of this system undoubtedly contribute to the institutionalization of a liberal politics of self-interest.¹²² More importantly, though, such a politics may simply be an unavoidable price of modern life: self-interest just may be the only realistic basis upon which political relations may be successfully conducted in the kind of immense, mass democracy characteristic of modern Western society. If that should turn out to be the case, then the one-person, one-vote doctrine should not be viewed as an impediment to the improvement of politics, but as a concession to the inevitable.

122. So I have argued in the sources cited *supra* note 64.

