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Russell Kirk and Territorial Democracy

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Russell Kirk is one of the most important American conservative thinkers. This article traces the development of Kirk's understanding of federalism, which was neither nationalistic nor based in the usual arguments about states' rights. Specifically, Kirk adapted what the American thinker Orestes Brownson called "territorial democracy" to articulate a version of federalism that is based on premises that differ in part from those of the Founders and other conservatives. Further, Kirk believed that territorial democracy could reconcile the tension between treating the states as mere "provinces" of the central government and seeing them as autonomous political units independent of Washington. Finally, territorial democracy allowed Kirk to set out a theory of rights that was based in the particular historical circumstances of the United States while rejecting a universal conception of individual rights.

Russell Kirk (1918-1994) is one of the primary architects of the modern American conservative movement. In 1953, he published his doctoral dissertation under the title *The Conservative Mind from Burke to Santayana*. It was reviewed favorably by *Time* and *The New York Times Book Review*, and it launched Kirk into one of the most influential American conservative writers of the twentieth century. Former President George H. W. Bush's speechwriter, David Frum, has written that Kirk "pulled together a series of only partially related ideas and events into a coherent narrative. . . . Kirk did not record the past; he created it."¹ What Kirk called his "prolonged essay in the history of ideas" was one of a small cluster of books - including Friedrich Hayek's *The Road to Serfdom* (1944), Richard Weaver's *Ideas Have Consequences* (1948), Whittaker Chambers' *Witness* (1952), and Robert Nisbet's *The Quest for Community* (1953)—that enabled American conservatives in the 1940s and 1950s to collect what had been a disorganized and splintered body into a coherent social force.

Kirk remains best known for the six "canons" of conservatism he set out at the beginning of *The Conservative Mind*, which he identified as follows: (1) a belief in a transcendent order, which Kirk described variously as based in tradition, divine revelation, or natural law; (2) an affection for the "variety and mystery" of human existence; (3) a conviction that society requires orders and classes that emphasize "natural distinctions;" (4) a belief that property and freedom are closely linked; (5) a faith in custom, convention and prescription; and (6) a recognition that innovation must be tied to existing traditions and customs, which entails a respect for the political value of prudence.² These canons were intended to refute critics, such as

¹David Frum, "The Legacy of Russell Kirk," *The New Criterion* 13 (December 1994): 15.

²Russell Kirk, *The Conservative Mind*, 7th ed. (Washington, DC: Regnery Gateway, 1986), pp. 8-9.

Karl Mannheim, who accused conservatism of being merely a form of pragmatic temporizing without substance.

The son of a railroad engineer, Russell Amos Kirk was born in Plymouth, Michigan, in October 1918. He graduated from what is now Michigan State University with a degree in history in 1940, and received a master's degree, also in history, from Duke University, where he wrote his thesis on the Virginia statesman, John Randolph of Roanoke. Shortly after he returned from Duke, Kirk was drafted into the Army. He was stationed for the entirety of his World War II service at the Dugway Proving Ground in Utah.

It was during the war that Kirk began to form an idea of his life's work. As he later explained: "In the Great Salt Lake Desert . . . he began to perceive that pure reason has its frontiers and that to deny the existence of realms beyond those borders . . . why, that's puerility." Despite his admiration for the great minds of the modern age, "[h]is was no Enlightenment mind. . . it was a Gothic mind, medieval in its temper and structure. He did not love cold harmony and perfect regularity of organization; what he sought was a complex of variety, mystery, tradition, the venerable, the awful."³ This understanding of the place of tradition and mystery were to become cornerstones of his conservatism.

After the war, Kirk returned to Michigan and eventually found a job as an instructor in history at Michigan State. In the fall of 1948, Kirk began doctoral studies at St. Andrews University in Scotland, with a dissertation on the thought of Edmund Burke. Kirk's time in Scotland during the 1950s and early 1960s and the friends he acquired there had a lasting effect on his character and writing. Always shy and laconic, perhaps Kirk found the more courtly and reserved manners of St. Andrews and rural Scotland more to his liking than the brass attitudes of postwar America. The many "ghostly tales" surrounding the Scottish great houses encouraged Kirk's fascination with the occult and the gothic. Although Kirk bore many of the marks of his low-church Puritan ancestors (Kirk's family in America dates to the late seventeenth century), the aristocratic and antique trappings of Scotland's peers appealed to him, especially in light of his growing appreciation for the "medieval" mind.

After the success of *The Conservative Mind*, Kirk resigned from his teaching post and supported himself by writing and lecturing. He published some thirty books, hundreds of articles and reviews, and lectured across the country. His subjects ranged from the poet T.S. Eliot to ghost stories. In 1989, President Ronald Reagan awarded him the Presidential Citizens Medal in recognition of his work. He died, at his ancestral home in Mecosta, Michigan, in 1994.

³Russell Kirk, *The Sword of Imagination: Memoirs of a Half-Century of Literary Conflict* (Grand Rapids, MI: Eerdmans, 1995), pp. 68-69.

FEDERALISM AND THE LIMITS OF POLITICAL ACTION

Although Kirk wrote often on American political history and the Constitution, he spoke little on theoretical issues. “There was only the question of how men best could govern themselves, as experience and circumstances permitted,” so long as “power itself remained properly allocated.”⁴ Federalism was not explicitly a major strand in his writing. Neither of his collections of essays on the Constitution, *The Conservative Constitution* or the later *Rights and Duties*, has an essay devoted to the topic, nor does *The Conservative Mind* identify federalism as one of the six conservative “canons.” Indeed, even at the end of his career, when Kirk reiterated the six canons as ten “conservative principles,” federalism, as such, was not mentioned. Instead, Kirk defended voluntary communities, which he believed represented a more authentic and vital form of democratic self-governance, against the centralizing universal system he saw emerging after the Second World War.

This is not to say Kirk never discussed federalism or the underlying principle of limited government that federalism serves. In several places, Kirk elaborated an understanding of the structure and purpose of the American federalist system. For Kirk, federalism preserved freedom by separating power between the national government and those of the states, and by acting as a bulwark to political or economic centralization. Federalism also served to create local leaders, who strengthened localities and the states against a central government. Indeed, Kirk wrote in 1964 that most of the functions of society were more properly left at the local or state levels.⁵ This understanding of what federalism does is rooted in Kirk’s belief that politics is based upon sentiment—what we love or hate—and that sentiment is ultimately grounded in small communities whose decisions are accessible and debatable by the entire community.

Contrary to liberal assumptions about politics that have become common since at least the New Deal, Kirk believed politics was about restraints and limits rather than grand projects and solving national problems. He had little patience with President Lyndon B. Johnson’s Great Society programs, for example, which perhaps is no surprise. However, he also was not enamored of Republican plans for large-scale government action. Action by a distant government enervates, then corrupts, the populace, whatever the initial intentions.

For Kirk, the Christian doctrine of original sin created the basic limits for political action. Original sin has two consequences for political life: first, that politics cannot create a perfect society, because humanity is imperfect; second, original sin prevents any political motive from being

⁴Russell Kirk, *John Randolph of Roanoke: A Study in American Politics, with Selected Speeches and Letters*, 3rd ed. (Indianapolis: Liberty Fund, 1978), p. 89.

⁵Russell Kirk, “Is Washington Too Powerful?” *New York Times Magazine*, 1 March 1964, p. 22.

completely pure and separate from hopes of gain. Private character—the capacity for good or evil—did have an impact in the public sphere, Kirk wrote in 1988.⁶ What people do in private and the promises made in public are at least in part connected. That connection should also warn the public against entrusting too much power to those who seek it.

But politics is not the same as religion or morality. While Kirk clearly identified the United States with its Judeo-Christian heritage, and believed in norms governing political conduct based on that heritage, he warned against the injection of purely religious concerns into politics. If expressing a religious commitment meant “that a self-righteous politicized Christendom could remedy in short order all the alleged injustices of life in community—why, then we are back with the Fifth Monarchy Men and their cry, ‘The second coming of Christ, and the heads upon the gates!’”⁷ While religion has a political component, for Kirk that component is expressed largely through individual acts and not through wholesale imposition of belief upon others, or in the creation of a theocracy. Indeed, Kirk thought that the most extreme of the “Christian activists” were as afflicted with the modern *libido dominandi* as any secular ideologue.

Given the recognition of these limits arising out of human nature, the virtue of prudence becomes of overriding importance in politics. The political leader must know how to reconcile principle with politics, when to compromise, and when to stand firm. Ideology, in contrast, is a poor guide to solving the intricate and shifting public policies of a large nation because of its rigid adherence to doctrine. Kirk looked to the development of a political rhetoric suited to American federalism to convey the proper prudential spirit. He thought it would reinject into politics sensitivity to historical experience, persuasive force, considerations of culture, and the limits of possible action. Kirk thought that most persons would prefer a federal system to a uniform central government; nevertheless, “incantations” about the supposed ability of the central government to solve every problem can carry the electorate toward results opposite to their intentions.⁸ Political language, such as “democracy” and “the people,” should be used carefully, because such language can have powerful effects. Indeed, Kirk thought that political rhetoric was so powerful that it could overcome even normal self-interest in politics.⁹

If at first Kirk was an ordinary if influential conservative “federalist,” as time went on he adopted a more sophisticated view. Ultimately, Kirk’s federalism is neither nationalistic nor based on usual arguments about states’ rights. Kirk mixed a fidelity to the constitutional structure with what the

⁶Symposium, *Policy Review* (Spring 1988): 29.

⁷Russell Kirk, “Promises and Perils of a ‘Christian Politics,’” *The Intercollegiate Review* (Fall-Winter 1982): 13-14.

⁸Kirk, “The Prospects for Territorial Democracy in America,” *A Nation of States: Essays on the American Federal System*, ed. Robert A. Goldwin (Chicago: Rand McNally & Co., 1963), p. 49.

⁹Kirk, “Territorial Democracy,” pp. 49-50.

American thinker Orestes Brownson (1803-1876) called “territorial democracy” and he articulated a version of federalism that differs—at least in part—from those of the founders. An understanding of territorial democracy solidified Kirk’s belief that “rights,” as understood in the American context, reflect the specific traditions of the United States, not a universal claim or theory. Further, territorial democracy could reconcile the tension between treating the states as mere “provinces” of the central government and seeing them as autonomous political units independent of Washington, D.C.

THE SPIRIT OF PARTICULARISM

The idea of place and the importance of sentiment feature prominently in Kirk’s thinking on politics. Like the Whig statesman Edmund Burke, Kirk saw the emotional and imaginative resources people invest in places as important components of individual and social self-identity. These places are usually, but need not be, physical places, and they can also be social or political spaces. Political boundaries, family homes, old castles, ruins: each contributes to the formation of personal and communal identity in the larger culture. Kirk criticized what he saw as the rootlessness of much modern life, and the associated loss of place as a defining characteristic of contemporary existence. This loss has political consequences. Indeed, Kirk thought that the idea of political order was impossible without “the spirit of particularism, the idea of local associations and local rights.”¹⁰

The value Kirk believed place should have has an obvious resonance for federalism, which is an institutional expression of the “spirit of particularism.” A strong notion of place reduces the power and attraction of a centralized government. People prefer their own neighborhood, town, or state, and choose to remain and build lives there. Moreover, they are reluctant to concede power to distant bureaucrats. The people most directly affected should have the most participation in the decisions that are made; conversely, any damage is localized and need not spread across the nation. Kirk opposed large governments as much as for their inefficiency as for the “moral absolutism” they tended to impose.¹¹ In a lecture given at the Heritage Foundation in 1989, for example, Kirk advocated “[f]amily farms, farmers’ cooperatives for marketing, encouragement of artisans and small traders, the technical and administrative possibilities of industrial decentralization, the diminution of the average size of factories” and other measures to reduce the reliance on a rationalized centralization, which “terribly damages communal existence.”¹²

Kirk stressed that federalism is the result of practical circumstances and the history of the colonies as well as political theory. Issues of national

¹⁰Russell Kirk, *The Conservative Mind*, p. 164.

¹¹Russell Kirk, *Edmund Burke: A Genius Reconsidered* (Wilmington: ISI Books, 1997), pp. 173-175.

¹²Russell Kirk, “A Conservative Program for a Kinder, Gentler America” (lecture presented at the Heritage Foundation, April 1989), 4.

concern should be addressed by the central government, but everything else is properly left to states or localities. The common law system, which the colonies and later states adopted virtually wholesale from England, reinforced this understanding of the proper allocation of power. Kirk condemned, borrowing language from Randolph, the “legislative maggot” that served private interest in the name of the public good. Legislation has two difficulties, which echo the limitations of politics touched on earlier. It can be used to further selfish interest, or it can be employed in the service of an ideology without regard for human nature or historical circumstance. Even when well-intentioned, legislation often fails; it is often written in broad strokes or aspirational terms, leaving the more difficult tasks of interpretation and implementation to administrative agencies, who are not answerable to an electorate, or to undemocratic courts, who are given free rein to insert their own political beliefs into vaguely worded laws. Either way, self-government suffers. Over all, Kirk thought it “preferable usually to permit judges to modify laws by degrees rather than to take the risk of damaging the whole frame and spirit of law by frequent legislative or executive intervention.”¹³ While state legislatures are not immune from the temptation to expand their power, the expansion of the federal administrative state magnifies the danger. With the extension of federal power into areas of political life formerly reserved exclusively for state governments, the opportunities for national legislative tyranny multiply. In addition, the traditional guardians against legislative encroachment—the judiciary—are lured into complicity, as the Congress elevates them with the last word on the constitutionality of its pronouncements. In an essay entitled, “The Behemoth State: Centralization,” Kirk recounts several instances of nationally imposed guidelines in areas formerly reserved to local control and concludes “[i]n consequence of this, the federal character of the United States, this country’s chief contribution to the art of governance has been fading to the shadow of a shade. And where Congress hesitated, the Supreme Court rushed in to nationalize the whole political structure.”¹⁴

A strong sense of place also generates sentiments of loyalty and affection. Kirk defined sentiment as “a conviction derived from some other source than pure reason.”¹⁵ It is sentiment, not reason, that moves us first to action. One does not, according to Kirk, think about something about which one has no feelings, and at bottom, love of country—the large nation—is dependent upon a love for one’s own. Quoting Randolph, Kirk wrote that “in clinging to [the states] . . . I cling to my country; because I love my country as I do my immediate connexions; for the love of country is nothing more than the love of every man for his wife, child, or friend.”¹⁶

¹³Russell Kirk, *Rights and Duties* (Dallas: Spence Publishing, 1997), p. 27.

¹⁴Russell Kirk, *The Politics of Prudence* (Wilmington: ISI Books, 1993), pp. 231-32.

¹⁵Russell Kirk, *Redeeming the Time* (Wilmington: ISI Books 1996), p. 131.

¹⁶Kirk, *The Conservative Mind*, p. 164.

Sentiment assumes a larger importance in Kirk's later work because of his assertion that the coming (post)modern age will be an Age of Sentiments, which will supercede what he called the liberal Age of Discussion. The coming age will be more concerned with the power of images on the heart, in other words, rather than that of logical discourse on the mind. Therefore, Kirk believed that federalism rooted in the natural affections of persons for their localities represented a more stable understanding of government.

STATE POWER AND ITS LIMITS

In *The Roots of American Order*, Kirk argued that federalism was the Founders' answer to the problem of reconciling order with freedom. Arising from the ruins of the Articles of Confederation, the new political structure of the United States needed to "provide a general government with sufficient power to ensure" its proper objects. Among these objects Kirk identified were providing a common defense, promoting the general welfare, and conducting diplomacy. However, this structure also needed to "provide for the survival and vigor of the several state governments, including the free and relatively democratic forms of local government, which had developed first in the colonies then in the states."¹⁷

Federalism rests upon the "autonomy of the narrower communities" and preserves the widest scope of authority for them. It "divides practical power between a general government and territorial governments, with the aim of safeguarding local liberties and choices while securing national interests."¹⁸ Federalism should allow the widest scope for local liberty, even where the national government has the primary responsibility for a particular area. Provocatively, Kirk used the example of national security to support local autonomy and federalism. National security, of course, is one of the areas vouchsafed to the national government in the Constitution. In advocating federalism even here, Kirk was not arguing that each state provide its own army or independently decide issues of security; rather, he believed that the states and localities were closer to their citizens and security risks than the national government. Therefore, they could better contribute to national defense from their own resources, needing only guidelines from the national government. "[I]f there has been negligence," he wrote, "the fault has lain with the very general government upon which the centralizers would load fresh responsibilities."¹⁹ Merely because the central government has authority over an area such as defense, in other words, does not necessarily mean that it should usurp state or local governments where the latter could do a better job meeting national objectives.

Kirk is often thought of as a defender of "states' rights" and is sometimes joined to groups of pre-World War II conservatives such as the Southern

¹⁷Russell Kirk, *The Roots of American Order* (Malibu: Open Court, 1974), p. 421.

¹⁸*Ibid.*, 423.

¹⁹Kirk, "Territorial Democracy," p.52.

Agrarians or their contemporary heirs, the “paleoconservatives.” Kirk certainly thought highly of some Agrarians, such as the critic Donald Davidson, and he defended the rights of the states. With respect to federalism, though, his interpretation is different from the Southern tradition. Contrary to many of the Agrarians, Kirk praised Abraham Lincoln as a great statesman for the democratic age and as a true conservative. More importantly, Kirk stated that the U.S. Constitution created a new system of government that was national in scope. “Federalism” is not an adequate term to describe the current government under the Constitution, though it may once have been sufficient. The Constitution changed the very meaning of the word “federal,” from a government in which the central authority possesses no power apart from its constituent parts and merely serves as the administrator of an alliance of states (a confederated polity) to a government in which the federal authority is separate from and above the subordinate governments (a national polity). “[T]he structure created at Philadelphia amounted to a new pattern of government, not truly ‘federal’ in the old sense,” as in “league” but rather the Constitution “abandoned the plan of a confederacy, and substituted that of a single nation.”²⁰ This “altered the very usage of the word ‘federalism,’ which no longer is generally taken to mean a simple league of sovereign states.”²¹

The states did not have authority, or “rights,” apart from their being part of the general government. The Civil War shattered that arrangement, and its aftermath opened up a new role for the national government. “[W]hether or not the people of America so intended it, sovereignty passed to the general government of the United States, not long after the Constitution was ratified. . . . The ‘federal’ system created by the Constitution established a true general government—which, nevertheless, was not a centralized, unitary, absolute government.”²² It also affected the interpretation of rights. The Civil War and Reconstruction damaged territorial democracy, however, and “confused and obscured the distinction between a unitary, centralized system and the voluntary associations of territorial democracies into states and a republic.”²³ The question the Civil War and its aftermath raised for Kirk was how to reconcile the contingencies of the nation-state with local liberties.

TERRITORIAL DEMOCRACY AND THE UNWRITTEN CONSTITUTION

In Kirk’s distinction between a general government and territorial governments in *Roots*, we see his debt to the American thinker and political theorist, Orestes Brownson. Kirk adopted Brownson as one of his personal heroes early in his career, and promoted him in a number of books and articles.

²⁰Kirk, *Roots of American Order*, p. 422.

²¹Ibid.

²²Kirk, *Roots of American Order*, p. 423.

²³Ibid., 49.

Brownson occupies a unique place in American intellectual history. Born in Vermont of Protestant parents, Brownson moved through most of the varied sects of nineteenth-century America, including Transcendentalism (he was a founding member, with Ralph Waldo Emerson, of the Transcendentalist Club), until he converted to Roman Catholicism in 1844. His most famous book-length work is probably the political treatise, *The American Republic*, published in 1865 at the close of the Civil War. Arthur Schlesinger, Jr. and Woodrow Wilson are among those who considered him one of the few true political thinkers America has produced.

The burden of *The American Republic* was to explain American government in terms of political theory in light of the Civil War. For Brownson (who wrote against northern abolitionist and southern secessionist alike, and who opposed both slavery and the Civil War), the states are neither pre-existing nations that “contracted” with one another to form a more perfect Union, nor were they mere provinces of a general government. The former, for Brownson, contradicted principles of sovereignty; the latter equated the federal system with the centralized democracy of Jacobin France.

Rather, the states were sovereign in their own spheres, but that sovereignty existed only because they were part of a nation. Territorial democracy is based in the conviction that political power must be centered on a geographic unity within which all people participate in governance. Power, in other words, is not portable by a person or class; it inheres only within the society that grants it. Sovereignty is expressed, therefore, through the states only as they exist as units within the United States. This is what Brownson means by territorial democracy; “not territorial because the majority of the people are agriculturists or landholders, but because all political rights, powers, or franchises are territorial.”²⁴ The United States shares sovereignty over a territory with the state in that particular territory. “The American States are all sovereign States united, but, disunited, are not States at all. The rights and powers of the States are not derived from the United States, nor the rights and powers of the United States derived from the States.”²⁵ This analysis leads Brownson to sometimes-odd conclusions, such as holding that the states had no authority to secede and become independent, but did have the authority to cease being states, in which case they would revert to territories of the Union.

To fully explain the American constitutional system, Brownson joined territorial democracy with another interpretive tool, the “unwritten constitution,” which supplements and preexists the written constitution. The unwritten constitution includes all the mores, customs, and ways of life that together form American political culture and support the written Constitution. The latter could not exist without the former, because the

²⁴Orestes Brownson, *The American Republic* (Wilmington: ISI Books, 2003), p. 191.

²⁵*Ibid.*, 142.

unwritten constitution is a more nuanced and complete reflection of a people's political experience.

Kirk adopted Brownson's views on sovereignty and the unwritten constitution to explain how local democracy could be protected within a republican nation. As he explained, "[N]o matter how admirable a constitution may look upon paper, it will be ineffectual unless the unwritten constitution, the web of custom and convention, affirms an enduring moral order of obligation and personal responsibility."²⁶ Relying on the work of Felix Morley, whose book *Freedom and Federalism* appeared in 1959, Kirk argued that the unwritten constitution of these localities in turn supported good—and moral—government at the national level.

The states have a different function. If localities express local democratic sentiment, the states act as buffers between the national government and the localities, and also represent, in a corporate fashion, state, regional, and territorial interests. Kirk explains Brownson's thoughts in a 1990 collection of essays. "Brownson distinguishes between the old American territorial democracy founded upon local rights and common interests of the several states and smaller organs of society, and the pure democracy of [Jean-Jacques] Rousseau, which later writers call 'totalitarian democracy.'"²⁷ This pure democracy of Rousseau is characterized by centralized administration in the name of an abstract "People," with little authority or freedom at the local level. For Kirk, this meant the dissolution of true democracy. This assessment owes obvious debts to Alexis de Tocqueville and his celebration of the township, an insight into the local roots of self-governance that has engendered its own body of scholarship.²⁸

The conversation Kirk envisions among the democratic localities, indirectly democratic states, and a representative national government was the genius of the American system. Federalism was a necessary instrument to protect that conversation. "If the federal character of American government decays badly, then American democracy also must decline terribly, until nothing remains of it but a name; and the new 'democrats' may be economic and social levellers, indeed, but they will give popular government short shrift."²⁹ As he argued in the 1963 essay "The Prospects for Territorial Democracy in America,"³⁰ even for the new western states, whose boundaries were set by fiat rather than by culture or history, territorial democracy can give "Montana and Arizona and Kansas, say, some distinct and peculiar character as political territories, by fixing loyalties and forming an enduring structure of political administration."³¹

²⁶Kirk, *Rights and Duties*, p. 260.

²⁷Orestes Brownson, *Orestes Brownson: Selected Political Writings*, ed. Russell Kirk (New Brunswick: Transaction Publishers, 1990), p. 8.

²⁸See Filippo Sabetti, "Local Roots of Constitutionalism," *Perspectives on Political Science* 33 (Spring 2004): 70-78.

²⁹Kirk, *The Enemies of the Permanent Things*, pp. 239-40 (original emphasis).

³⁰Kirk, "Territorial Democracy," pp. 42-64.

³¹*Ibid.*, 43.

Kirk identified a number of problems that threatened the existence of territorial democracy. For example, the mere size of the nation creates problems of efficiency and scale. Ideas or programs that might work for one state, or even for a small country, cannot easily be adapted to a nation as large and as variegated as the United States. Also, the burdening of Washington with additional duties only hampers its ability to act on its constitutional responsibilities.

The most interesting of the problems a large centralized system posed was in developing a class of leaders. The nation's decentralized structure prevents a national elite from forming even as it nurtures local leadership. The United States, he thought, "accustomed to territorial democracy ha[d] no class of leaders and administrators competent" to oversee so large a nation.³² While Kirk thought that such an elite class might work for smaller nations accustomed to such a class (Kirk had the United Kingdom in mind), it was probably unlikely to succeed in the United States. A centralized government would not be able to sustain the leadership class necessary to make it function effectively or as a body truly representative of the people. In fact, Kirk was generally disappointed with the quality of the leaders America had produced, of whatever party. Partial exceptions were Lincoln, whom Kirk praised for infusing the classical Roman virtues into a democratic mold, and Ronald Reagan, whose gift for language and metaphor came closest to Kirk's idea of a creative and imaginative political leader.

In this context, however, Kirk was not entirely correct. A cadre of administrators, lobbyists, corporate executives, and others has in fact arisen to govern the nation. Later in his career, Kirk criticized the development of this "New Elite," which he described as made up of "bureaucrats, scientists, technicians, trade-union organizers, publicity experts, sociologists, teachers, journalists, and professional politicians." The class lacked the foundations of place and sentiment that Kirk thought important for representative government. As a result, they were themselves at the mercy of the forces they attempted to control. They "are not socialists . . . they do not resemble Norman Thomas or Clement Atlee; they are the new elite, though they constitute no aristocracy of birth or of nature. They are at once jailers and jailed."³³ More familiar with global corporations or K Street lobbyists, this class has lost the sense of place and the sentiments of loyalty between localities and their leaders.

Although local control is long-rooted in the American tradition, Kirk's doctrine of territorial democracy is hard to find in law. American law accords little protection to units of government other than states, and state governments can generally abolish or modify localities within their borders. However, in several different contexts, the U.S. Supreme Court has recognized that localities represent the values and concerns of their

³²Ibid., 60.

³³Kirk, *Conservative Mind*, p. 468.

constituents, and so should be given some degree of legal autonomy in order to affect those concerns. For example, in 1926, the Court held in *Euclid v. Ambler Realty Corp.* that localities have broad control over land use within their boundaries.³⁴ The Court has upheld local restrictions on “adult” businesses and occupancy restrictions.³⁵ More recently, in *Lopez*, the Court made positive references to local control, which many legal observers thought would herald a new era of federalism.³⁶

FEDERALISM AND RIGHTS

Kirk’s understanding of federalism impacted his understanding of rights, which is quite different than conventional American opinion. The American understanding of rights, today, is in many ways affected by the fierce controversies over integration that convulsed the nation in the 1950s and 1960s. To a generation of politicians and law professors, those conflicts have forever shaped their view of the leeway to be given to the states. For them, rights are held only by individuals, and must be articulated at the national level and asserted against government officials, preferably by the courts.

In his introduction to Kirk’s *Rights and Duties*, philosopher Russell Hittinger compares the role of constitutional rights in the work of the late Justice William J. Brennan, Jr. with that of Kirk. Kirk and Brennan shared a belief that the Constitution represents a “complex interplay between written and unwritten norms, including certain transcendental principles of right.”³⁷ But that is where the similarities end. Justice Brennan understood constitutional rights as weapons the individual uses against community coercion, and thought that the Constitution should be interpreted in order to guarantee individuals emancipation from societal control. This view has become widely accepted on the Supreme Court during the last 45 years, culminating most clearly in the “mystery passage” in the Court’s 1992 *Casey* decision.³⁸

Kirk, in contrast, did not starkly separate individual rights from community norms. He adopted from Brownson a conviction that rights are tied to a geographic territory. While there may be universal human rights, these cannot substitute for the actual political rights of a particular community. Drawing from George Mason—perhaps the founder whom he most respected—Kirk wrote that “individuals’ liberties can exist only within a civil social order—that is, in community.”³⁹ Thus, the rights of individuals can be understood and maintained only in community, particularly a community whose members share similar beliefs as to what constitutes a

³⁴*Euclid v. Ambler Realty Corp.*, 272 U.S. 365 (1926).

³⁵*Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *Village of Belle Terre v. Boraas*, 416 U.S. 1 (1974).

³⁶*United States v. Lopez*, 514 U.S. 549 (1995).

³⁷Kirk, *Rights and Duties*, p. xxii.

³⁸*Planned Parenthood v. Casey*, 505 U.S. 833, 851 (1992).

³⁹Kirk, *Rights and Duties*, p. 73.

right.⁴⁰ Indeed, Kirk essentially rejected the idea of “human rights” as improperly descended from the dangerous abstractions of the French Revolution. True rights grow from “old custom, usage, and political tradition, and from judges’ common-law decisions.”⁴¹ Kirk distinguished “human rights” both from natural law as well as from “civil rights,” those practical immunities and privileges developed in every concrete legal system.⁴² Natural law, Kirk argued, was meant primarily as a guide for individual action, and should rarely enter into political or legal issues. “Human rights” he considered only an ideological cover for the lust for power that characterized the Jacobins and their heirs.⁴³

The Bill of Rights, for example, was rooted in colonial experience and British history; it was a world away from the French Declaration of the Rights of Man. Once a community accedes to every individual claim of right, with no thought as to how those rights can be preserved or integrated with others, the community will collapse. As Kirk noted in his study of Randolph, there may be a right to self-defense, and therefore a right to some sort of weapon with which to defend oneself. However, if the person becomes dangerous or mentally disabled, the community has the power, and, in some cases, the obligation, to remove the weapon, and therefore also the means to exercise the right.⁴⁴ The Constitution, in part, protects individual rights by allowing a space for codifying community standards of morality. That is to say, it protects rights by announcing the duties the members of a given community owe to one another.

KIRK, KENDALL, AND MEYER

Kirk is perhaps the most influential conservative writer of the twentieth century. However, his defense of and understanding of federalism is among the least of the ways his influence has been felt. Despite his championing of Brownson, the notion of territorial democracy has not seeped into conservative vocabulary, and the principles it embodies are rarely invoked by conservatives.

This may have something to do with the fact that Kirk’s interpretation of American federalism is different than that other influential conservatives. Kirk openly fought with the political theorist Willmoore Kendall and the essayist and editor Frank Meyer in the 1950s and 1960s. All three agreed that the federal system incorporated certain truths about human nature. Kirk and Kendall in particular shared the understanding that the American system of government should be defended as Americans actually lived it, and not as a theoretical construct of how it ought to work. But Kirk described the founding generation as representing an American conservative

⁴⁰Ibid., 74.

⁴¹Russell Kirk, *America’s British Culture* (New Brunswick: Transaction Publishers, 1994), p. 44.

⁴²Kirk, *Rights and Duties*, pp. 231-232.

⁴³See Gerald J. Russell, “The Jurisprudence of Russell Kirk,” *Modern Age* 38 (1996): pp. 354-363.

⁴⁴Kirk, *John Randolph*, p. 44.

resistance to change. Kendall in contrast argued that in fact “change . . . was the watchword on these shores from the moment of the Mayflower Compact, which in and of itself was a breathtaking political innovation,” as were the Declaration of Independence and the Constitution.⁴⁵ Likewise, Kendall criticized Kirk’s evocation of an “eternal contract” binding the generations. While perhaps appropriate in a British context, in which there is no written constitution, in America “we know perfectly well what contract we are referring to, namely that of the Declaration of Independence as renewed and specified in the Constitution.”⁴⁶

Kirk’s interpretation could not be more different, and it places in sharp relief the difference between his conservatism and Kendall’s. Kirk eclipsed Locke and Hobbes with Burke and Richard Hooker, and argued that the Founders were more influenced by their protestant Christianity, political experience, and common-law background than by political philosophy. “It is a sad error,” he wrote, “to fancy that the American Revolution and the Constitution broke with the British past and the American past. . . It is no less intellectual folly to argue that the Constitution was written in conformity with the ideas of John Locke, subjecting the American people to perpetual obedience to what are alleged to be Locke’s political principles.”⁴⁷ Kirk’s argument emphasized continuity and devalued American “exceptionalism” in favor of inserting it into a wider tradition. While the dispute between Kendall and Kirk did not explicitly concern questions of federalism, Kirk suggests that the “narrow natural rights” that Locke offers as the bases for political society leave out the most important duties of the citizen: “the love of neighbor and the sense of duty.”⁴⁸ And as we have seen, for Kirk, questions of love and duty start in small self-governing communities. The threat of a Lockean contract is that it discards the careful development of a complex political system that ensures local rights with a theory that posits only individual citizens and the centralized state.

Meyer and Kirk clashed over the role of the constitutional system in protecting the individual. In a long review of Kirk’s then-recent books, Meyer argued that Kirk denigrated the individual in favor of a community and represented conservatism, albeit unintentionally, as an ally of collectivism and individual oppression.⁴⁹ Meyer found a “fundamental compatibility” between Kirk’s work and liberalism, and thought the history Kirk set out in works such as *The Conservative Mind* was a shaky foundation upon which to build conservative policies. While conceding that Kirk preferred the individual over collectivism, Meyer thought that Kirk never defined clearly enough a “second set of principles” that would defend this central idea. These secondary principles Meyer defined as the conclusions

⁴⁵Willmoore Kendall, *Willmoore Kendall Contra Mundum* (New York: Arlington House, 1971), pp. 36-37.

⁴⁶ *Ibid.*, 46.

⁴⁷Russell Kirk, *Rights and Duties*, p. 45.

⁴⁸Kirk, *Rights and Duties*, pp. 101-02.

⁴⁹Frank S. Meyer, *In Defense of Freedom and Related Essays* (Indianapolis, IN: Liberty Fund 1996), p. 3.

that “all value resides in the individual; all social institutions derive their value, and in fact, their very being, from individuals and are justified only to the extent that they serve the needs of individuals.”⁵⁰ Meyer did not completely discount tradition or prescription. Rather, he sought to “fuse” the emphasis on individual liberty that he found central to the political history of the West with the conservative defense of tradition and prescription as defenses against arbitrary power over the individual.⁵¹

Meyer caricatured the form of society acceptable to Kirk as “a mixture of . . . eighteenth-century England and medieval Europe—or perhaps, more aptly, . . . Plato’s republic with the philosopher-kings replaced by the squire and the vicar.”⁵² Such a position places tradition and prescription in place of reason, and enshrines “whatever is, is right” as the first principle of Kirk’s political society. However much Kirk professed to favor individual freedom rather than oppression, what he truly desires is a form of “status society” more congenial to his principles. Thus, Kirk’s thought, “stripped of its pretensions, is, sad to say, but another guise for the collectivist spirit of the age.”⁵³

Meyer’s critique is partially correct. Kirk did *not* distinguish between society and the individual as sharply as do libertarians. Kirk argued that rights emerge only within a society, even those rights that can be asserted against oppression by that society. Rights also engender duties that members owe to each other. Tradition, seen by Meyer as a possible danger to individual liberty, is for Kirk a protection for it. The Constitution, in part, protects individual rights by allowing a space for codifying community standards of morality; that is to say, it protects rights by announcing the duties the members of a given community owe to one another. This defense of community, however, does not aim at simply guaranteeing whatever the majority considers a right because often those “rights” will coincide merely with the majority’s wishes. Individual rights are preserved for Kirk by the opposing of powers provided by a common law and federalist system.

CONCLUSION

Kirk has a somewhat ambivalent attitude toward the Founding and the Constitution. He admired its continuity with British tradition, because it represented a valid evolution from British self-government. However, he thought that its premises, insofar as they were based on Lockean individualism or social contract theory, were incomplete. Kirk instead placed America squarely within the larger tradition of political thinking of the West, and argued that American constitutionalism owes more to Burke or to the jurist William Blackstone than to John Locke or Thomas Hobbes.

⁵⁰Ibid., 8.

⁵¹Ibid., 15-17. See “Frank Meyer: the Fusionist as Federalist” in this issue.

⁵²Ibid., 11.

⁵³Ibid., 13.

Unlike conservatives of his generation such as Kendall, Kirk never accepted that America was the culmination of a modern project, and did not agree with Alexander Hamilton's confident assertion in *Federalist* 9 that the American system reflected a new "science of politics." For Kirk, a narrow view that focused on the innovative attributes of the national government obscures the deeper continuities in the American experience.

To accommodate these continuities, Kirk turned to Brownson, among others. These thinkers encourage a different way of thinking about government, one based on an understanding of political society as beginning in place and sentiment, which in turn supports written laws. Territorial democracy, Kirk argued, held the key to preserving the states and localities as the roots of American political experience, while recognizing the reality of national power as it emerged after the Civil War and the wars of the twentieth century.