

The Instrumental Idiom in American Politics: The ‘City on the Hill’ as a Spontaneous Order

COREY ABEL

2530 Eudora Street
Denver, CO 80207
United States

Email: csabel@mac.com

Web: <https://independent.academia.edu/CoreyAbel>

Bio-sketch: Corey Abel is a writer and editor and has taught political theory and humanities at The Colorado College, The University of Colorado, and elsewhere. He is the author of articles on Michael Oakeshott’s relationship to Aristotle, and his ideas on religion and art, and has edited two collections of essays on Oakeshott.

Abstract: In this paper I draw on a few remarks made by Michael Oakeshott about American politics, expanding on them by applying his ideas to several episodes in the American political tradition. Using a selection of notable documents and some examples drawn from more recent political experience, I suggest that Oakeshott’s insights might help us better understand the American regime, refracted through the famous and persistent American metaphor, the city on the hill. In my view, what is exceptional in American politics is the clear-sightedness with which America began not as a self-consciously formulated enterprise but as a “civil association.” The “choice and reflection” that characterizes the Founding is not the discovery of a political creed but rather the recognition that a government of and among free men must pass the crucial (Kantian) test of political obligation. It must rest on the acknowledgment of human agency in one’s fellows. The Founders, including both the Federalists and Anti-Federalists, ultimately reached agreement on a non-purposive conception of government for the United States. In this sense they chose a “Lockean,” enjoyment of rights rather than the pursuit of a “Puritan” goal. The Progressives, on the other hand, were inspired by ideas explicitly hostile to the “civil” tradition, and quite knowingly set about to put the United States on a purposive course. This has led to a divide in the political culture greater even than that between the Federalists and Anti-Federalists, although it has usually been misunderstood in terms of mere policy differences.

Keywords: Oakeshott, Hayek, American tradition, Rationalism, instrumental order, spontaneous order, founders, *teleocracy*, *nomocracy*, enterprise association, civil association, rule of law.

|

In this paper, I draw on the spare remarks made by Michael Oakeshott about American politics, and expand on them by applying some of his key ideas to the American tradition. In a brief treatment, my choice of examples is almost necessarily going to be arbitrary. I have chosen a few notable documents, and some examples drawn from more recent political experience, to show how Oakeshott might help us understand the American regime. I also make some comparisons with the writings of Hayek, since his and Oakeshott’s readers could benefit from visiting the other’s territories. The comparisons drawn are mainly suggestive. Some deeper analy-

ses have been undertaken in recent works by others (Marsh, 2012; Boyd and Morrison, 2007).

After the US Presidential election of 2008, there was a great deal of commentary on the death of conservatism. Within two years there came a counter-movement of commentary. This lead some to rhapsodize on a resurgence of conservatism such that a Wall Street Journal op-ed writer offered an “Autopsy of Liberalism.” Such is the to-and-fro of politics at ground level. Along the way, there has been some slightly more disinterested debate about the character of American politics, the character of American conservatism, and the prospects of liberalism. I do not think I can predict the next elections or decide whether conservatism or

liberalism has really died. Both, I suspect, will survive the recent and the coming elections and go on for some time. But perhaps Oakeshott has something to offer us with a view of things at a few steps of theoretical remove.

I will use Oakeshott to reflect on the possible meanings of a famous and persistent American metaphor, the city on the hill. Since politicians ranging from JFK to Sarah Palin have invoked this metaphor, first introduced by John Winthrop in 1630, it serves as a convenient touchstone for an inquiry into America's political character. Scholars, journalists, and the American Founders themselves have invoked this metaphor, or analogous concepts to describe America's uniqueness, its special historical role, or its exceptionalism.

Oakeshott's remarks on America are limited to two main observations. In a famous essay he criticized the American Founders as Rationalists (Oakeshott 1947/1991, pp. 31-33). (The charge of Rationalism was partly softened later [Oakeshott 1975, p. 166]). In *On Human Conduct*, he praises the American Founding, saying it "was conducted by men endowed with *civilis sapientia* to the degree of genius," who secured the authority of a state understood as a civil association (Oakeshott, 1975, pp. 190, 244). Oakeshott's blend of criticism and praise for the American founders is somewhat confusing. I need first to discuss Oakeshott's ideas on Rationalism. Then I will examine the two *modes* of political association he labels as 'civil' and 'enterprise', and show how they surface in different ways in the American tradition. I will also briefly note some overlap with Hayek's famous contrast between 'spontaneous order' and 'instrumental organization' and his thoughts on the dysfunctions of modern democracies. We will see how Oakeshott can criticize the Americans for Rationalism while praising their work in building a civil association. We will also see how Oakeshott's categories relate to an actual polity.

||

The Rationalist is a modern character type, or disposition, that occurs in the living out of an epistemological error. The Rationalist is much abused by Oakeshott. His criticism is so thorough, at times so satirical, that it has led some critics mistakenly to conclude that Oakeshott was an irrationalist.

The Rationalist scorns the past, thinking it to be composed of unreflective prejudice. He wants to be guided by reason; that is, whatever remains after an individual's searching examination of an opinion. Reason, for him, is what can be proved before the bar of individual insight. Now, there may be something to admire in this. What Hegel called the

"right of subjectivity" is just this demand to have the world make sense to the individual. One does not rely on Oracles, for example, but tests political proposals in public and open debate (Hegel, 1830-31/1956, p. 254). Oakeshott is both Hegelian and an individualist who admires those who have the courage to set off on their own self-defined adventures. So while he may seem critical of the Rationalist's individualism, it is a defective form of individualism and a defective form of reason that concerns him. Oakeshott finds the Rationalist's demand that everything always be put to the test of reason both destructive in practice and impossible in theory. For Oakeshott, Rationalism's belief that in human affairs we can find guidance for our actions by purging our minds of all their content and starting from scratch, on the basis of fixed and demonstrable principles, is wrong. Against coarse Cartesianism, Oakeshott insists on the constitutive role tradition plays in our conscious experience. A good deal of what Oakeshott has to say about tradition resonates with Michael Polanyi's thoughts about the "tacit dimension," Hayek's thoughts about spontaneous orders, and Burke and Hume's rejection of modern ideological politics.

As an illustration of Rationalism and its faults, Oakeshott cites the invention of bloomers (Oakeshott, 1950/1991, pp. 100-102). Bloomers might be thought of, from a rationalistic point of view, as an ideal garment that satisfies a set of rational principles. The design of bloomers takes into account human anatomy and the design of bicycles. It apparently disregards or even upsets tradition by introducing something new.

However, Oakeshott argues, far from upsetting tradition, bloomers actually answer to needs determined by tradition; namely, considerations of decency. They do not answer the question, "What is the ideally best garment for bicycling?" But rather, "What sort of garment is it appropriate for a woman to be seen in while bicycling in England in the 1890s?" One hundred years later, cyclists are nowhere to be seen wearing bloomers. The design of bloomers does take into account human anatomy and the design of bicycles, but also much more, things the rationalist will fail to see or account for. This failure to see may result in distortions or misjudgments in practical life. Regardless of the practical effect, the rationalistic attempt to guide behavior by purely rational principles is, according to Oakeshott, just not possible. What the Rationalist believes is going on when he thinks and acts, is not what is going on. This failure is a destructive feedback loop arising from misunderstanding the character of an activity (or the character of all activity). Instead of seeing the spontaneous and implicit aspect of practices the rationalist

thinks everything can be managed and administered by a supervening intelligence. It amounts to a peculiar view of expertise as divorced from experience in the activities. We will soon see how this impossibility surfaces in American politics at the time of the Founding.

Oakeshott's response to the invention of bloomers situates that invention in a broader cultural and temporal context. He takes the isolated invention and puts it in a more concrete setting. That actions are located within idioms or traditions of activity, he would say is always the case. This is true even for actions that have the appearance of being isolated and set off from other affairs. But the Rationalist tends to see all conduct as a series of isolated acts, with a structure of thought, reflection, and deed. This gives support to another important tendency, which is to characterize human conduct in an intellectualized way as the solving of problems.

A "problem" is an isolated instance of conduct, which ordinarily occurs in a moving stream of activity. But when we identify something as a problem we have abstracted it; we have performed a work of identification and definition that allows us to grasp the issue at hand as a problem. Of course, this usually happens when there is a disruption. When learning a dance, an awkward move is repeated, refined, and eventually smoothed out. And it is often useful, even necessary, to abstract from conduct in this way and to examine the possibilities of action, precisely to resolve the difficulty.

By thinking of conduct as a series of problems, however, we may be unwittingly adopting the belief that all our activities are successions of crises. We may ever master moves but never learn the dance. In particular, to think of an entire institution or the whole of society as such a series of problems distorts its character. Something like an entire social order or tradition is ecologically entwined, continuous, and dynamic. Problem-thinking may lead us to believe that if we are not engaged in "problem-solving" we are somehow inadequate. And yet, by trying to examine everything we are doing and to reflect on every aspect of our lives (which we can't actually do), we may end up creating problems. We may fail to understand the flow of activities, or to see the larger coherencies that contribute to the success of our actions, which always proceed little by little within larger channels of activity. We may miss the interconnectedness of things and the value of what is settled. We may produce false puzzlement and undue complexity, especially if we seek for general principles to follow like rules, or some fool-proof guidance, instead of appreciating how our own experience in the activity supplies us with examples, analogies, precedent, and an awareness of the artful way disruptions can be resolved.

If Rationalism were confined to clothing design, we might wonder why Oakeshott is so concerned with it. But the disposition to invent anew, to follow reason, to ignore or subvert whatever is merely traditional has become prevalent in modern societies. It affects every area of human conduct, including morals, politics, religion, and more.

In politics, the rationalistic disposition is found in efforts to overthrow traditional authorities and replace them with supposedly rationally designed laws or constitutions aligned with, or devoted to, purportedly self-evident principles. In modern times, rationalistic habits of thinking have become quite common. In America, "We hold these truths to be self-evident" has attained the status of a creedal invocation. This is, in part, because of the intellectual authority of science (although genuine science, as Hayek and Polanyi understood, is not Rationalistic). It is also in part because long-standing institutions and practices have been challenged in all domains of conduct, from art to family life, with the demand they be conducted "rationally."

|||

I turn now to examine American politics in terms of the presence of Rationalistic habits of thought, and later, in terms of the tensions between two modes of association, 'civil' (non-instrumental, spontaneous) and 'enterprise' (instrumental, purposive organization).

From very early on, it was plain to the American Founders that they were building a society on the basis of a new science of politics. They were following universal but previously non-recognized principles, and establishing reflection as the basis of a new order. Oakeshott thinks all of that is an exaggeration.

When Hamilton declares in *Federalist 1* that the ratification of the Constitution involves "decid[-ing] the important question, whether societies of men are really capable or not, of establishing good government from reflection or choice, or whether they are forever destined to depend, for their political constitutions, on accident and force" (Publius, 1787/1961, p. 33), and that this decision is so important that "a wrong election of the part we shall act . . . deserves to be considered as the general misfortune of mankind," he is indulging in hyperbole.

As a well-versed reader of English history and European political thought, Hamilton must have known that such rhetoric would appeal to a people that thought of itself as highly independent in spirit and original in its designs. Some of them had, incidentally, a tradition of considering their poli-

tics in light of theories of “election,” or chosenness. He may have been right that a great historic moment was at hand. But he must have known better than to think that all prior history was composed of nothing more than “accident and force.” That takes the “one damn thing after another” view of history to an extreme. Nor could he have thought that from now on, American politics, or anyone else’s politics, could really proceed solely on the basis of “choice and reflection,” as if accident could be removed from political affairs or force removed from the activities of states. Nor could he have believed a political act would settle a moral and anthropological question once and for all—“whether societies of men are really capable,” etc. To think of politics as a surrogate for philosophical debate is textbook Rationalism, and practical hogwash.

Sometimes, political rhetoric may be too successful for its own good, leaving us a legacy of perplexity and misleading our efforts to understand ourselves. The actions of statesmen and the participation of all of us in traditions of behavior have an indirect educative dimension, sometimes referred to as a political (or civic) education. One of the hazards of a Rationalist formulation like Hamilton’s is that it teaches bad lessons. Instead of stressing his own deep historical knowledge and practical experience, instead of showing how the present is tied to the past, he valorized this once-and-for-all, debate-settling mode of political discourse. Elsewhere, he famously disdained “old parchments” and “musty records” (1775/1987)—the very things attention to which civic education now sorely lacks.¹

Hamilton’s exuberant opening to *The Federalist Papers* is hardly the only example of high-flown rhetoric announcing the specialness of American politics. On this theme of Rationalism it is easy to find, in American political writings, invocations of first principles that supposedly guide American political choices, ideals that inform practices (sometimes creating ‘disharmonies’). Whether it is principles supposed to be “self-evident,” or a nation’s “dedication to a proposition that all men are created equal,” we find many examples of a rationalistic frame of mind in the American tradition. With it, we can find many examples of thinking of politics as a technical problem solving activity and as an intellectual debate to be settled through a political demonstration.

Needless to say, the debate is never settled as advertised. Americans still argue about fundamental issues such as the limits of the Fourth Amendment as applied to electronic communications or the need for Presidents to have Congressional approval before initiating military strikes,

among so many others. If these questions were supposed to have been settled in 1789 and they remain unsettled today, it would seem the only possible conclusion would be that men are not at all capable of governing themselves “by reflection and choice.” Are two and one quarter centuries not enough time to draw simple conclusions from self-evident principles?

As Oakeshott pointed out, rights like *habeas corpus* are not “bright ideas” (Oakeshott, 1947/1991, p. 54). Freedom, he says, is not exemplified in *habeas corpus*, it is the availability of that procedure. It is available because human beings have continuously chosen to use, defend, and preserve it over time, not because someone deduced it in 1787. The Rationalist idea of finding principles to guide politics fails because principles are really *post facto* generalizations from experience. Even when they can be articulated, they require an interpretive act or casuistic judgments to apply in practice.

An implicit rejection of Rationalism can also be found even in the mouths of Rationalists themselves. Their writings prove to be informed by tradition and full of links between present and past. Federalist and Anti-Federalist writers quote liberally from Montesquieu and other theorists. They cite examples from the history of Rome, Poland, Germany, England, and other nations. Some examples are used to defend and illustrate principles and critique past errors; but they show more. They reveal that the present conduct of affairs owes much to ancient practices, even when it seeks to correct them. The present’s indebtedness to the past also shows in Federalist and Anti-Federalist debates, as both sides continually refer to their local colonial traditions. A good deal of the debate over ratification turns out to be about whether the existing institutions of government will be subverted or preserved.

Even in individual writers, there may be vacillation. Hamilton, Rationalist in many passages, thinks more in terms of practical contingencies when he explains that a Bill of Rights might actually be dangerous—“why declare that things shall not be done which there is no power to do?” (Publius, 1787/1961, p. 513). But this runs directly contrary to the Rationalist desire to settle great debates once and for all and do as the French did, and many in America wanted to do, expressly declare their rights. Elsewhere, Hamilton judges the Constitution as a whole in practical, not ideal terms: “the best that the present views and circumstances of the country will permit” (Publius, 1787/1961, p. 523). He acknowledges that the conduct of politics cannot be contained within a discreet set of rules in the matter of war, which,

“like most other things, is a science to be acquired and perfected by diligence, by perseverance, by time, and by practice” (italics added). Further, rebellion and discord in various states teaches us “how unequal parchment provisions are to a struggle with public necessity” (Publius, 1787/1961, pp. 166-167.) We find, in *Federalist 57* and elsewhere, Madison admitting that in spite of the brilliantly designed political machinery, the ultimate check on abuse of power will have to be “the vigilant and manly spirit which actuates the people of America.” So America may be founded on true principles, but there is a limit to the value of intellectual articulations of principle; Americans cannot escape the profound effects of contingency, or attain more than the ‘practical best.’ America will rely, when in danger, on its culture and traditions, the people’s ‘esprit.’ The Founders turn out to be traditionalists despite themselves.

When Hamilton announced the great significance of the American experiment, he not only framed it in a rationalistic way, he also invoked America’s world historical role. He was echoing, in a secular idiom, John Winthrop’s suggestions about the unique role America would play in history. Rationalism and teleological politics are not identical, but often align or co-exist, a point made by Callahan (2012). The split in Oakeshott’s criticism and praise reflects this. While exhibiting classic symptoms of Rationalism, the founders nonetheless firmly held to the skeptical idea of the state as a limited, non-teleological association.

IV

This leads me to the second main area of Oakeshottian overtones I would like to explore in the American context, and one that also bears on the question of tensions between spontaneous orders and instrumental orders. Hayek’s criticism of instrumental orders overlaps Oakeshott’s criticisms of both Rationalism and the “inherently belligerent” quality of government that approximates the ideal of enterprise association. Stressing, as Oakeshott does, the associational angle and distinguishing it from the epistemological problem of Rationalism allows us to see that the state conceived as an instrumental order does not merely produce bad outcomes, or rest on bad epistemology, but actually entails a complete reorientation of basic human relationships.

Oakeshott argues that modern European political history and the history of reflection on politics is constituted in a profound tension between the idea that a state is a purposive, or instrumental association, and the idea that the state has no substantive purpose at all.

The ‘city on the hill’ image might support the idea of America as purposive; or, it might have other meanings depending on whether or not one thinks America has a purpose. In other words, there may be a purposive and a non-purposive interpretation of that image. The same duality applies to America’s exceptionalism: the country might be exceptional for having some grand historic purpose; or, it might be exceptional for the clarity with which its Founders saw the dangers of purposive association, eschewed power, and grounded association in genuine consent. On the first view, it is imperative that government be organized so as to maximize the power available and facilitate its use in pursuit of the purpose. The people’s role is to endorse or guide the projects and ensure politicians’ assiduousness in pursuing them. Voters can ‘check’ power by checking to see it is being used well and fully. On the second view, power must be limited because the state has no overarching purpose beyond maintaining an adjudicative order. ‘Theoretic politician’ is a term of abuse. The people’s role is to be vigilant in defense of their own autonomy, even as they submit to legitimate authority grounded in their consent.

V

Rather than make an argument about the size of government or its limitation to some basic, minimal or ‘enumerated’ set of responsibilities and powers, Oakeshott develops a novel and striking argument about the *mode of association*. As a modal argument, it is not a quantitative argument about the size or scope of government. Like Hayek, Oakeshott is explicitly not endorsing a so-called ‘minimal state’ because the size of the government is relative and changing. What matters more than the amount of power is how and why power is used. Although both Hayek and Oakeshott agree that the availability of great power is a standing temptation to governmental mischief.

In his distinction between enterprise association and civil association, the crucial issue turns out to be whether the state is understood as having some identifiable common, substantive purpose or not, whether it is an instrumental association or not. In Hayek, a few different, but overlapping distinctions come into play, such as between “law” and “specific direction” or between “democratic legislation” and “democratic government” (Hayek, 1979; 1982/2013, p. 431). For Hayek, planning is the key issue. He does not, however, hone in on purpose as Oakeshott does. If government has a purpose, it becomes difficult to argue that government should be limited, that it should *not* engage in planning on

a significant scale. On the contrary, government should be vested with as much power as possible to pursue its purpose with as much vigor as possible. In spite of disavowing the 'minimal state', Hayek creates some ambiguity by emphasizing the quantity of resources under state control (Hayek, 1979; 1982/2013, Vol. 3, Ch. 14). Beyond some hard to specify limit and certain spheres of control (some monopolies, for example), government control leads to major economic and social distortions. Oakeshott's argument shows why *any* amount of resources controlled for the sake of pursuing a common substantive end implies a specific mode of association and governance hostile to what he and Hayek understand by the 'rule of law'.

The more sure we are about the desirability of the end to be pursued, the less interested we will be in limiting power and the more we will seek ways to make government effective. In extreme cases, this results in a complete denial of the value of human individuality, political rights, and legal order. Divergence from the common pursuit, hesitancy to commit to it, or a tendency to arrest the exercise of power for merely "technical" legal reasons will be seen as obstruction, possibly as crime, or even sin. This applies with equal force to projects of the political right as well as the left. Whether a regime fosters virtue, seeks global democratization, promotes income equality, or strives for social justice here and abroad, it speaks in the idiom of enterprise association. A Republican President can be a good Wilsonian. Defense spending can add to budget deficits and encroaching government control as easily as welfare, medicine, or education.

A civil association, by contrast, is "the only morally tolerable form of compulsory association" (Oakeshott, 1975a/1991, p. 406). If we are studying spontaneous orders, it is crucial to notice this particular kind of association. We need to ask whether it is possible for compulsory association to retain a spontaneous character. Political association is a specific kind of association, one where power exists and is used on the basis of some claim about its authorization. Without authority, power is just raw force. It is the manner of authorization and the beliefs of the individuals associated in terms of that authority that open at least the possibility that the political use of power is legitimate.

Some question whether government is necessary at all: perhaps we do not need this odd form of association in which power is used to enforce obligations. Along with Aristotle, Madison, and Hobbes, I think it is necessary (and with them I deny that its necessity gives it any prestige or nobility). Among freely interacting human beings, 'collisions' or controversies are likely, without any fault or sin on

the part of the colliders. Many of these conflicts can be and are resolved voluntarily, spontaneously, and without government intervention. However, it is worth considering how much of that voluntary resolution is possible because the participants know themselves to be 'backstopped' by a third party arbitrator, the government. In any case, voluntary and spontaneous resolution of conflict also breaks down; the parties sometimes will not agree. This is the condition of 'nature' as understood by Hobbes, a condition in which there may be natural laws available to the minds of human beings, but in which the natural laws remain ineffective, unenforceable, and ignored. What is needed then is an indifferent, impartial arbiter to whom parties may submit their quarrel. Government comes into being, in principle (but not in fact, as Hume pointed out) as an adjudicator, reconciling numerous and diverse claims to rule (Cf. Aristotle, 1984, Bk. II and Hobbes, 1651/1962, Chaps. 12, 13).

This fundamental agreement to be politically associated needs to rest on consent, in order to bind individuals while acknowledging their freedom. As Hobbes puts it, "The desires, and other passions of man, are in themselves no sin, no more are the actions that proceed from those passions, till they know a law that forbids them: which till laws be made they cannot know: nor can any law be made, till they have agreed upon the person that shall make it" (1651/1962, Ch. 13). Even god's law, the law defining sin, must be secured by the consent of the governed. Without agreement to be governed by law, Hobbes says, there is no justice or injustice: we live in a state as beasts or as moving particles, with no moral relation to one another, but with "a right to every thing; even to another's body" (1651/1962, Ch. 14). So for Hobbes (and Kant, Oakeshott, and others) the agreement to form a political association profoundly changes the human condition; it introduces relationships of justice and injustice, and places those who consent to it under obligations that may be enforced by the use of the government's power. Hayek's efforts to expose the undermining of the classical liberal ideal through the false democracy of interest group politics and administrative bureaucracy is also grounded in this tradition (Hayek, 1979; 1982/2013, p. 412). He repeatedly points out how actions taken in the name of majorities are in fact not supported by open and honest consent. And, he opens "The Political Order of a Free People" with an epigram from Kant.

Oakeshott is at pains to stress the compulsory aspect of the state as a non-voluntary form of association. In both civil and enterprise association, the question why we are using coercion is always a focus of concern. In enterprise association, this is always in relation to the end pursued. The jus-

tification of power, the legitimacy of the regime, hinges on acceptance of the validity or desirability of the end pursued. This makes everyday legislative, executive, and judicial activities contentious; it also puts the very basis of the association on the same contentious plane. For, in any moderately diverse association of human beings, there will be differences of opinion as to what ends in life are worth seeking. The decision to devote resources controlled by the government to the pursuit of one or a few such ends necessarily excludes a significant portion of what a substantial part of the people believe to be their goods. They will be imposed upon for the sake of others' private visions. Oakeshott nails this point in terms of associational theory, while Hayek's scathing account of "government driven by blackmail and corruption" nails it in empirical description (Hayek, 1979; 1982/2013, p. 440).

In civil association, power is used on an "as needed" basis. The reason this non-purposive mode of association is morally tolerable is the same reason why it is more profound than a 'minimal state' argument. What can be unanimously agreed to is almost nothing at all. Agreement to be bound by law needs to be unanimous because no person can live in a political community and exempt himself from its laws. But in agreeing to be bound, we do not agree to be happy about any of the particular decisions, outcomes, or actions of the government we consent to. That is all perpetually up for debate, a debate that is possible because there is an underlying agreement to abide by the non-instrumental rules of the association. Therefore, the more a government acts to direct a society's resources toward substantive goals, the more it seeks to control, the more it moves away from what can be consented to, the more it chafes and aggravates its citizens, and loses their loyalty. The move toward purposiveness is a move toward what cannot be universally consented to, and is therefore a move toward the non-consensual use of power.

A civil association is association in terms of the non-instrumental rules of law that qualify the manner of acting, without giving concrete direction to individual agents. Law, Oakeshott says, has an 'adverbial' character, shaping the manner of acting without 'specific direction' or commands to do specific things. Civil association will seem most compelling and appropriate whenever we are able to focus on the enjoyment of known goods. When we face crises, feel an overpowering need to address great evils, or respond to external threats, the simple pleasures of living peaceably and commodiously with our neighbors fade, and enterprise association restates its argument, always ready for accomplishment.³

To further explore this contrast, it is useful to think of the sorts of things that would be unquestionably legitimate to pursue in voluntary associations, like corporate enterprises, churches, clubs, and so on. Civil society is the realm where these sorts of instrumental organizations have their place and where they flourish. The reason Oakeshott regards the organization of the state along similar lines as *immoral*, is that in these associations, the individual has the freedom to opt out, a freedom lacking in the state (excepting the rare case of emigration). To pursue the common aim of the group is a choice the individual makes, so it does not violate his or her conscience.

Associations within the state can be instrumental, and need not undermine the non-instrumentality of the state. In fact, the only way there can be a variety of instrumental organizations in civil society is if the state as a whole remains steadfastly non-instrumental. If the government 'takes sides' with instrumental organizations (in preferential legislation, tax breaks, subsidies, exemptions, and so on) it sows seeds of jealousy and strife. If it embarks on its own instrumental path, it sets itself at odds with the instrumental activities of its citizens. In the first case, it is entirely reasonable that citizens not receiving preferential treatment wonder why they should be equally obligated to obey the laws, but disadvantaged when it comes to the distribution of benefits. Under a pretense of lawfulness, as Hayek so vividly describes, society becomes a war of all interest groups against all; this is called 'pluralism.' In the second case, all activities are suppressed for the sake of a general push toward perfection, however conceived. This is called a salvation from interest group politics, and appeals to the weary to 'hope for change', or 'win back their country'.

The slide of a state into full-blown purposive association is called different things, but is always a travesty. Occasionally, though, it will turn up comic incidents, as when Iranian authorities decided it was necessary to suppress water gun fights because they violated the principles of the Revolution.⁴ Sadly, the ayatollahs are right: the revolution requires a total transformation of society in alignment with a particular vision of human happiness and social harmony. In implementing the vision, leaders are expected and required to attend to even the smallest detail of everyone's conduct, just as a corporation might monitor every key-stroke of every employee on every company keyboard in its push for higher productivity. Of course, you can always quit your lousy job; it is harder to flee Iran. In a free republic, authorities would never, of course, descend to the level of con-

fiscating school children's water pistols or monitoring their every computer keystroke.

The authorization of power is the critical issue: what makes the use of power acceptable? If the state has an end to pursue, power is justified on the basis of success in pursuing it; to dally or delay is to disqualify oneself from having a claim to rule. Oakeshott's ideal-typical distinction between modes of association leads to understanding a legitimacy crisis in terms of the breakdown of consent when the attempt is made to ground consent in shared aims. Hayek's work on factions is not logically incompatible with such a view, but focuses on the practical activities of governments. The problem as Hayek defines it in dealing with the politics of "blackmail and corruption" is that in the process of coalition building and log rolling, there is no room for democratic consensus at all (Hayek, 1979, 1982/2013, pp. 419, 424, 440-441). Government ends up doing things that no majority actually supports, and that no possible majority could support.

An interesting feature of Hayek's analysis that Oakeshott's theoretical perspective ignores is that this profound dysfunction could occur, it would seem, whether there is a purpose or not. Civil association could degenerate into mere administration and stray from the rule of law. However, since civil association is expressly association in terms of law, one could hope—perhaps predict—that a civil association whose inhabitants were aware of their tradition, would, by dint of that awareness, keep "law" at the forefront of their minds and keep "administration" at bay. Also, as the state shifts to a purposive idiom, it seems likely that the "blackmail and corruption" model will become more prevalent, as the regime finds it needs to manufacture consent.

Individuals will usually bend to the demands of the instrumental state because they have very little choice. But this bending, this mere outward compliance, will likely lead to one of two reactions, or both of them: the individual will be forced into a condition of spiritual or mental duplicity, professing outwardly their willingness to cooperate in the pursuit of the common aim while inwardly dissenting; or, they will actually and outwardly dissent, resist, or act to undermine what they see, quite rightly, as the imposition by force of someone else's vision of a good life.

Moreover, as Hayek has pointed out, in the administrative state pursuing a large-scale social plan, the actual implementation of that plan will require *ad hoc* decisions that degrade the rule-like character of law. Wide discretionary power will have to be wielded by unaccountable bureaucrats, as unpopular decisions have to be taken. The types of peo-

ple suited to this sort of governance will be the worst types (Hayek, 1979, 1982/2007, Ch. 10). A heavenly dream will end up being implemented by devils.

Oakeshott argues that modern European political experience has been composed by the interplay and tensions between these two dispositions: the one tending to understand the state as an enterprise, or as an instrumental organization, the other to see it as a non-purposive, civil association. If he is right, we should be able to find examples of these opposed dispositions in the experience of a modern nation like the United States.

VI

Let me offer just a few examples. In John Winthrop's Massachusetts, we have the makings of an enterprise association. In his "Modell of Christian Charity," he calls for "a due form of government, both civil and ecclesiastical" and identifies a fairly clear end: "to improve our lives to do more service to the Lord / the comfort and increase of the body of Christ / whereof we are members / that our selves and posterity may be the better preserved from the Common corruption of this evil world / to serve the lord and work out our Salvation under the power and purity of his holy Ordinances" (Levy, 1630/1992, p. 11). By contrast, in "The Bloody Tenet of Persecution for a Cause of Conscience," Roger Williams makes an argument, at around the same time, for separating civil and ecclesiastical rule. He notes that uniting these powers will result in oppression of individuals' conscience, which is the opposite of what Christians should want to do. Oakeshott's angle of vision on this allows us to see in it more than—or other than—a debate about church and state. Williams is not endorsing a secular state so much as denying that the power of the state should be used for the pursuit of an end, religious or otherwise (Levy, 1644/1992, pp. 29-37).

We see in some of the debates between the Federalist and Anti-Federalists a similar tension. In some of the letters of Anti-Federalists, for example, we find calls for republican virtue interwoven with and expressed as calls for the enjoyment of liberty. In some cases, for example Agricola's letter No. 4, it is not obvious that we should read his call for laws "to promote the happiness of the people" as a call for purposive association, though it sounds like a purpose (Levy, 1787/1992, pp. 141-142). The "promotion" and the "happiness" sound teleological, but may not add up to what Oakeshott has in mind. Agricola seems to be calling for the enjoyment of liberty, though he is also noting some of the

background conditions he thinks are necessary for liberty to flourish—small states, direct relationships between the rulers and ruled, an adaptation of law to local conditions, and little or no legal innovation. In some other writings, like *Centinel*, No. 1, the call for republican virtue sounds more purposive. He delineates the need for the body of the people to be virtuous, to have an equal division of property, a simple government, direct popular sovereignty, and so on (Levy, 1787/1992, p. 144). In short, he seems to have a more clearly worked out picture of what an ideal regime is, and how to pursue it, than Agrippa has. Yet, this too, falls short of a really purposive vision of the state.

On the Federalist side, some of the comments, usually by Hamilton, relating to the need for power and the potential for commercial development, hint at another idiom of purposive association. But again, these suggestions of a commercial purpose seem to be outweighed by arguments that the real reason for the existence of the United States is simply the enjoyment of liberty.

In other words, a tradition can have multiple or ambiguous voices. Even individual writers can combine different tendencies in their works. On balance, the early periods of American politics suggest a strongly "civil" character and an aversion to "enterprise" association, even where one can find hints of a purposive idiom.

One of the great expressions of the American political character is Madison's *Federalist 10* (Publius, 1787/1961, pp. 77-84). While this text is often seen in the social sciences as a classic of the literature on interest groups, this interpretation limits our ability to understand how it reflects Madison's considered view of the state as non-purposive. To see only the interplay of interest groups limits us to a mechanical theory of opposed actions. But this mechanical view could just as easily suggest that there is some means of balancing and harmonizing these diverse groups, among which Madison included religious sects and political parties, but also economic groupings, and social classes. The goal of a technically achieved harmony of interests would completely undermine Madison's meaning.

The core of Madison's argument, in my view, is the impossibility of making all think alike. This he offers as an impracticable solution to the problem of "factions." His argument is that the effects of faction must be dealt with, not the causes. The causes of faction might be cured—either by "destroying the liberty which is essential to its existence," or "by giving to every citizen the same opinions, the same passions, and the same interests" (Publius, 1787/1961, p. 78). To abolish liberty, Madison says, is utmost folly. For, liberty is

essential to political life. To give all the same opinions is impracticable.

Due to the fallibility of human reason, the prevalence of self-love, and the narrowness of interests, "the latent causes of faction are thus sown in the nature of man." That is a remarkable statement of political skepticism: Human nature limits the ambitions of social harmonizers. We see again how a skeptical idea favoring civil association can be expressed in Rationalistic terms, either in technical terms (balancing interests), as a general principle, or as part of a 'new science'. Because of liberty, faction will be irreducible. No wonder Madison's solution to the problem is not to eliminate its causes, but treat its effects by multiplying factors. The larger the society, the more diverse it is, the less likely it will be to have a majority that tyrannizes.⁴ But there is more going on here than a theory of quantitative pressure and counter pressures. If the problem of factions is dealt with not by perfecting our natures, but by magnifying an apparent vice, one way to understand what Madison is up to is to rearticulate it as the effort to retain, in a compulsory association, a spontaneous and open character. Madison rejects any plan to bring people closer together or use education to promote civic harmony. He goes radically in the other direction and promotes a wilder, less close-knit society.

To see this, a few remarks of Kant's from an essay he wrote in 1793, are helpful (even though I have no evidence of Madison's being exposed to Kant). Kant says, in the context of discussing how his idea of duty relates to the laws of a civil constitution, that "Men have different views on the empirical end of happiness and what it consists of." Their wills cannot be harmonized with the will of others in respect to happiness. Human freedom expressed politically means that "No one can compel me to be happy in accordance with his conception of the welfare of others." To do this, Kant says, results in a paternal government, which he calls "the greatest conceivable despotism, i.e., a constitution which suspends the entire freedom of its subjects, who henceforth have no rights whatsoever" (Kant, 1793/1991, pp. 73-74).

Why is Kant so drastic in his judgments about the political pursuit of a common happiness: "suspend the entire constitution," "no rights whatsoever"? It is not a judgment that a state organized around the pursuit of happiness for all will eliminate freedom piece-by-piece. Rather it is a judgment that freedom *as such* is banished when someone, or some group of persons decides what shall count as happiness for everyone else, and makes it the aim of the government to bring this state of affairs about. It is a judgment, like Oakeshott's, and, I believe, Madison's, about radical dif-

ferences between two modes of association. Roughly four decades later Tocqueville made similar observations and expressed horror at the possibility of a mild, widely accepted form of gentle despotism. Another century later, Hayek explained how the democratic states of the twentieth century were on the road to replicating medieval conditions of servitude of the masses.

My slightly anachronistic Kantian reading of Madison helps to make clear that he was not interested in engineering a common good by bringing the diversity of interests into some sort of ideal balance. Rather, he thought citizens should do what human beings naturally do: pursue their own individual idea of happiness. If they do this, there is a danger they will try to use the powers of the government to further their own cause: “Shall domestic manufactures be encouraged,” he asks, “and in what degree, by restrictions on foreign manufactures?” Of course, it is hard for us to understand such arcane, eighteenth century concerns as the tension between the landed and manufacturing classes, or to envision some groups using political influence to skew the legal rules of society in their favor. But the larger point remains. The value of faction is its essential relation to liberty. You do not multiply factions because you think you can bring about a common good, but because you want to magnify and amplify liberty, giving it the widest possible reign. This skeptical way of dealing with the problem of faction shows Madison to be firmly on the side of understanding the U.S. Constitution as erecting a civil association, not an enterprise association.

I hope these few examples show that Oakeshott’s purposive/non-purposive distinction can be seen operating in American politics, in some of its great debates, sometimes within a single text. I will have to leave it at the level of a barely argued assertion that the American political tradition as a whole is weighted to the side of civil association. There are notable tendencies toward enterprise association, especially as we move into the twentieth century. The tradition is revisited and put to new uses, whether envisioning, with Beveridge, “The March of the Flag,” (1898), or, with Croly, “The Promise of American Life” (1909). But throughout all these changes, Oakeshott allows us to see that beneath the debates about church and state, or about states rights and the interests of the Union, or in other great debates, there is usually another debate lurking about whether or not the state is purposive. This is a rather “high level” concern, but it is vital for the moral reasons Kant, Hayek, and Oakeshott point to.

Enterprise association is an equal opportunity temptation: Hamilton, in certain moments, perhaps some of the

Anti-Federalists, Winthrop, Croly, and Beveridge take their places alongside Woodrow Wilson, George W. Bush, and others as adherents, at least partially and fitfully, but sometimes clear-sightedly and consistently, of enterprise association. However, this tendency is always a reaction against the dominant tendency in American history, to see the state as the site of the enjoyment of liberty, where, as Kant says, the only “aim” we might speak of is for the state “to ensure its continued existence as a commonwealth” (Kant, 1991, p. 80). The spontaneous order of society, governed by consent, only seeks to retain its character as a spontaneous order.

VII

If retaining its character as a spontaneous order is the only aim, or the only thing like an aim that a state may have and still be consistently grounded in consent, is politics just too boring? Should there not be some kind of inspiration in political action, some redemptive, noble cause in which we can all join, so as to avoid living among strangers and seeing each other only at a distance? Shouldn’t political life foster that supreme twenty-first century virtue, community engagement? There are those who think so. I am not one of them.

Let me try to draw out some more contemporary implications of this view to suggest that a boring, ‘civil’ politics may be just fine.

In an enterprise association, it is the end that confers authority to and guides the activities of government. Oakeshott at times calls it “teleocracy,” the rule of the end (as distinct from “nomocracy,” the rule of law). When the end rules, power is desirable. When there is an aim, what counts is whether we attain it. For its attainment, the availability and use of power is almost always preferable to the curtailment of power. The idiom of governance will tend to be managerial, with *ad hoc* decision-making, and constant adjustments made in order to maintain progress toward the end. Recruitment of support will be important. So, with enterprise association, we should expect a heightening of sensitivity among the rulers to dissent, which they will tend to see as disloyalty. The ruled, as I described above, will labor under an inner self-division and resentment against their country. Since an enterprise association loves power, it will often find the analogy of military power appealing for peacetime rule. In the extreme, devotion to a cause can lead to ruthlessness, a logic of “you are for us or against us,” like that of a corporate boss. If you are not contributing, you are dead wood; and you are not being paid to think for yourself.

Hayek, as noted above, pointed out the ruthlessness of central planning, and showed why unscrupulousness was not an accidental feature of centrally planned regimes. However, Oakeshott's argument offers a slightly different view. The issue is less the centrality of planning, but the fact that the planning is directed toward a substantive end. Planning may be decentralized and thereby made more efficient, but it is still the pursuit of an end. It is the coupling of an end with state power that introduces ruthlessness. "Getting something done" is what counts, by hooks or by crooks.

In recent times we have seen a number of political projects couched in war-like terms: wars on poverty, drugs, and terror, for example. We have seen the seductiveness of power coupled with a belief in America's providential role in history. The rise of what Andrew Bacevich and others call the "national security state" has been accompanied by a greater and greater reliance by Presidents on secrecy, executive orders, and declarations of emergency. These are all to be expected in the actions of a state understood as an enterprise. In non-military matters, there has also been an increasing reliance on agency rule-making in regulatory bodies, something Hayek points out was known in post-war Britain as "delegated legislation."

Oakeshott's analysis of the modes of association would lead us further to expect politics in the enterprising mode to lead to intense partisanship, because to govern is to articulate a vision, and one vision usually excludes another—not only excludes it, but views it as wrongheaded and maybe evil. Because managerial discretion is needed, the authorities must take more and more controversial actions, all the while claiming to have a popular mandate. When you are trying to impose your vision of happiness—which is never how you would publicly put the matter—it is easy to become impatient with those who are so benighted that they fail to see their own best interests, to think that you must simply 'stay the course', or do a better job of communicating the significance of your signature legislation. Since reason is universal, well-meaning rational people cannot disagree. So, your opponents must be malicious, stupid, or both. Whether you are promising to rid the world of evil, or heal the planet, you have set yourself a huge task. You may find that having an opposition is most inconvenient. It will not be surprising to have high officials remark upon the inadequacy of Congressional governance, to have editorialists note the impossibility of dealing rationally with 'the people', to have supporters of a President opine on the glories of authoritarian rule in China, or advocate unilateral executive action on policy, whatever the cost, and whatever the legality of the mat-

ter. Nevertheless, the American political system, designed by men who believed in the diffusion and not the concentration of power, who distrusted the promises of visionaries, will still be a stumbling block. Some have said the American system is dysfunctional because it makes sweeping and rapid decisions difficult. It might be that the system is functional for exactly that reason.

Oakeshott gives us a way of seeing that the most common ways of understanding political differences may be misleading. Americans (and citizens in other modern democracies) often argue as if it is assumed that there is a shared commitment to ends and differences only regarding the means to attain them. If that were the case, politics could be reduced to a merely technical matter. Or, we see, when certain intractable differences of opinion present themselves, that there is an argument about the ends to be pursued. This is the level of much contemporary political discourse. But perhaps there is another argument, at least some of the time, about whether or not there is a purpose at all. That is the most significant debate, and the least partisan. If the United States were true to its character as a civil association, it might indeed be a city on a hill as so many people seem to think it is, not because it had seized the sword of Caesar, but because it calmly resolved to be a model of respect for individuality, spontaneous order, and legitimate authority founded on consent.⁵

NOTES

1 In his response to “The Farmer,” Hamilton invokes natural law, natural rights, and ‘axioms’ of politics, and claims, “The sacred rights of mankind are not to be rummaged for, among old parchments, or musty records. They are written, as with a sun beam, in the whole *volume* of human nature, by the hand of the divinity itself” (1775/1987).

³ Oakeshott refers to civil association as “the only morally tolerable form of compulsory association” (1975a; see 1991, p. 46), and argues that enterprise association is “inherently belligerent” (1975, p. 273).

³ The above section was taken, with modifications from (Abel, 2011).

⁴ Reported in the *Wall Street Journal*, Wednesday, August 31, 2001, “Iran’s Wet Blankets Put a Damper on Water-Park Fun,” section A, pp. 1-2.

5 This point was made, incidentally, by Aristotle, in *The Politics* Bk. IV, Ch. 11, 1296^a7, p. 135.

6 The author would like to thank the following: the attendees at a lecture given at Colorado College, December 8, 2010, who provided insightful criticisms and questions on the first version of this paper; the organizers of the *Fourth Conference on Emergent Order*, held October 29–November 1, 2011 in Portsmouth, New Hampshire, where an early version of this paper was presented and whose participants provided valuable criticism; the organizers of the *Cosmos & Taxis Colloquium*, held May 30 – June 2, 2013 in Vancouver, British Columbia, Canada, for hosting a discussion that included themes relevant to the arguments of this paper; and the two anonymous referees whose incisive comments have helped me to improve the paper; and Gene Callahan and Elizabeth Corey, who both provided thoughtful comments.

REFERENCES

Abel, C. and Fuller, T., eds. (2005). *The Intellectual Legacy of Michael Oakeshott*. Exeter: Imprint Academic.

Abel, C., ed. (2011). *The Meanings of Michael Oakeshott’s Conservatism*. Exeter: Imprint Academic.

Aristotle (c. 350 B.C./1934). *Nicomachean Ethics*. Trans. Rackham, H. Cambridge, MA: Harvard University Press.

Aristotle (c. 350 B.C./1984). *Politics*. Trans. Lord, C. Chicago: University of Chicago Press.

Boyd, R. and Morrison, J. (2007). “F.A. Hayek, Michael Oakeshott, and the Concept of Spontaneous Order.” In: McNamara, P. and Hunt, L. (Eds.) *Liberalism, Conservatism, and Hayek’s Idea of Spontaneous Order*. NY: Palgrave Macmillan, pp. 87-106.

Callahan, G. (2012). *Oakeshott on Rome and America*. Exeter: Imprint Academic.

Hamilton. A. (1775/1987). “The Farmer Refuted,” in *The Founders’ Constitution* eds. Philip B. Kurland and Ralph Lerner, vol. 1, chap. 3, document 5. Chicago: University of Chicago Press.

Hayek, F. A. (1944/2007). *The Road to Serfdom: Texts and Documents, The Definitive Edition*. Ed. Caldwell, B. Chicago: University of Chicago Press.

Hayek, F. A. (1979, 1982/2013). *Law, Legislation, and Liberty, Vol. 3: The Political Order of a Free People*. Oxford: Routledge and Kegan Paul, Ltd.

Hegel, G. W. F. (1821/1967). *Philosophy of Right*. Trans. Knox T. M., London: Oxford University Press.

Hegel, G. W. F. (1830-31/1956). *The Philosophy of History*. Trans. Sibree J.; pref. Hegel, C.; and intro. by Friedrich, C. J. NY: Dover Pub., Inc.

Hobbes, T. (1651/1962). *Leviathan*. Ed. Oakeshott, M. New York: Collier MacMillan.

Kant, I. (1793/1991). “On the Common Saying: ‘This Maybe True in Theory, But it Does Not Apply in Practice.’” In Nisbet, H. B., trans; and Reiss, H., ed. *Political Writings*. Cambridge: Cambridge University Press.

Marsh, L. (2012). “Oakeshott and Hayek: Situating the Mind.” In: P. Franco and L. Marsh (Eds.) *A Companion to Michael Oakeshott*. University Park: Penn State Press, pp. 248-267.

Oakeshott, M. (1933). *Experience and Its Modes*. Cambridge: Cambridge University Press.

Oakeshott, M. (1991). “Rationalism in Politics” [1947]; “Rational Conduct” [1950]; “Talking Politics” [1975a]. In: *Rationalism in Politics and Other Essays, new and expanded edition*, ed. T. Fuller. Indianapolis: Liberty Press.

Oakeshott, M. (1975). *On Human Conduct*. Oxford: Clarendon Press.

Publius (Hamilton, A., Madison, J., and Jay, J.). (1787/1961). *The Federalist Papers*. Rossiter, C., intro. NY: Mentor, New American Library.