Saving the Self?

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In a recent article, *Law, Politics, and the Claims of Community*,[1] Stephen A. Gardbaum accurately diagnoses one of the greatest problems in contemporary political and legal theory: the "complete confusion"[2] about what communitarianism means. Not only do its critics disagree about its content, but, as Gardbaum shows, communitarians themselves fail to comprehend that communitarianism makes several different kinds of claims. Most important, communitarians often fail to see that some communitarian claims can actually underwrite liberalism and defend it from other traditional communitarian critiques. Simply put, Gardbaum argues that much of the communitarian-liberal debate, probably the central debate in political and legal theory for the past twenty years, is no debate at all. Much of the participants' disagreement, though sharp, is only apparent and stems from conceptual misunderstanding. Instead of arguing about the nature, source, and character of human political identity, we have simply been talking past one another all these years.[3]

Gardbaum's basic insight is, I think, both powerful and correct.[4] We have been seeing contradiction and conflict where there often is

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1. Stephen A. Gardbaum, *Law, Politics, and the Claims of Community*, 90 MICH. L. REV. 685 (1992).

2. *Id.* at 691.

3. For a representation of this view in mainstream philosophical literature, see Charles Taylor, *Cross-Purposes: The Liberal-Communitarian Debate, in* LIBERALISM AND THE MORAL LIFE 159 (Nancy L. Rosenblum ed., 1989).

4. Although I do have some objections to his account, they do not detract from his overall accomplishment. For example, Gardbaum's claim that there are only three forms of strong community, *see* Gardbaum, *supra* note 1, at 719, would surprise some feminist scholars and critical race theorists. Also, many might quibble with parts of Gardbaum's particular characterizations of major legal theorists in the second half of his essay. Gardbaum describes Robert Bork, for example, as both a substantive and metaethical communitarian. *Id.* at 747-49. The second characterization is at least unsubtle. As Gardbaum himself notes, Bork gives some play to metaethical subjectivism in even his most recent writings. *Id.* at 747-48 ("[I]n claiming that when a judge invalidates legislation without explicit support from the text of the Constitution, that judge is simply imposing her own moral preferences on that of the majority, Bork is himself relying on moral relativism.") (footnote omitted). In Bork's earlier writings, radical metaethical subjectivism completely predominates. *See* Robert H. Bork, *Neutral Principles and Some First Amendment Problems*, 47 IND. L.J. 1, 8-11 (1971).

none at all. As important and salutary as his account is, however, it deserves response. His taxonomy of communitarianism, the heart of his piece, well shows that communitarianism makes fundamentally different types of claims. It does not, however, make as many different kinds of claims as he suggests; it makes two different types of claims, no more than that. This disagreement may appear a quibble, but by proliferating the claims of community Gardbaum threatens to confuse further the very debate he seeks to clarify and, more important, to undercut some of his own quite powerful insights.

To see the dangers to which this proliferation leads, we must first understand each of the different types of communitarian claims Gardbaum identifies and how he believes they relate to one another. To Gardbaum, communitarianism encompasses three very different claims. These are "(1) community as a causal factor in the constitution of personal identity (antiatomism); (2) community as a particular substantive value (strong communitarianism); and (3) community as the source of value (metaethical communitarianism)."[5] The deep confusion of communitarianism stems from people's not realizing that "the[se] three communitarian claims are independent of each other and are not . . . necessarily connected."[6] In other words, to Gardbaum, adopting or rejecting one claim does not commit one to a particular position on either of the other two. Most interestingly, Gardbaum argues that antiatomism and metaethical communitarianism do not entail strong communitarianism.[7] Contrary to many communitarian attacks on liberalism, we can believe we are socially constituted and still hold strongly individualistic political values.

This last point is clearly correct[8] and goes far toward undermining several well-known communitarian critiques of liberalism, most notably Michael Sandel's.[9] The difficulty lies with Gardbaum's picture of a different relationship, the one between antiatomism and metaethical communitarianism. Simply put, they are *not* independent: accepting metaethical communitarianism *does* commit one to antiatomism. In other words, if we believe community is the source of value, we must also believe in a socially constituted self. Significantly, though Gardbaum several times asserts the independence of all three claims,[10]

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5. Gardbaum, *supra* note 1, at 692.

6. *Id.* at 691-92 (discussing Michael Sandel).

7. *Id.* at 701.

8. *See, e.g.,* Daniel R. Ortiz, *The Price of Metaphysics: Deadlock in Constitutional Theory, in* PRAGMATISM IN LAW AND SOCIETY 311, 317-18 (Michael Brent & William Weaver eds., 1991).

9. *See* MICHAEL J. SANDEL, LIBERALISM AND THE LIMITS OF JUSTICE (1982).

10. *See, e.g.,* Gardbaum, *supra* note 1, at 689, 691-92.

he never specifically argues that antiatomism and metaethical communitarianism are independent from each other. Rather, his argument explicitly addresses only the independence of strong communitarianism from each of the other two claims.[11]

At first glance, antiatomism and metaethical communitarianism do appear quite different. Antiatomism stands for the proposition that individuals are not "essentially self-constituted, unencumbered, and self-sufficient" but rather "are 'partly defined by the communities [they] inhabit.' "[12] It asserts that communities do not exist as collections of sovereign individuals; rather, individuals exist as members of a sovereign group. The community, in other words, enjoys ontological priority over the individual. Metaethical communitarianism, on the other hand, concerns the source of human value. It "holds that values are constituted at the level of community."[13] As Gardbaum notes, it makes a claim about the "source of value, not the content."[14] In other words, it tells us only what "grounds" our values, not what those values are.

In these terms, however, antiatomism is nothing more than one aspect of metaethical communitarianism.[15] Adopting community as the ground for value necessarily commits one to some view of a socially constituted self. As Gardbaum recognizes:

> The social constitution of identity [, antiatomism,] means . . . tha[t] our identities are "embedded" and "implicated" in the purposes and values of our societies. These are our encumbrances. It means no more and no less than the notion that, had we been brought up in a different society from the one we were in fact brought up in, we would now be different people in certain essential respects.[16]

In other words, antiatomism holds that our social beliefs and practices, our history, and our traditions are what make possible our particular conception of the self. The self as the locus of agency is at bottom a social practice just like all the other practices that metaethical communitarianism underwrites. In short, Gardbaum's antiatomism is not an independent communitarian claim, but just metaethical

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11. *See id.* at 693, 701-05 (asserting independence of antiatomism and strong communitarianism); *id.* at 695, 698-99, 705-07, 717-19 (asserting independence of metaethical and strong communitarianism).

12. *Id.* at 701 (quoting Michael J. Sandel, *Introduction* to LIBERALISM AND ITS CRITICS 6 (Michael J. Sandel ed., 1984)).

13. Gardbaum, *supra* note 1, at 706.

14. *Id.*

15. While I am most concerned in this correspondence to establish that metaethical communitarianism entails antiatomism, the converse is also true. Believing that society carves out the self conflicts with both subjectivism and objectivism, the two metaethical alternatives.

16. Gardbaum, *supra* note 1, at 704.

communitarianism applied to the belief and practice we call the *self.* Human identity at this fundamental level is just another social product.

One might try to preserve the independence of antiatomism and metaethical communitarianism by distinguishing between community as the source of abstract selfhood, on the one hand, and as the source of particular, breathing selves, on the other. The former would be a clear metaethical claim, while the latter, one might argue, is not. The community, in other words, might carve out the self as the fundamental unit of agency but define no particular people.

Gardbaum does not make this move, and for good reason. He rightly believes that the community determines the extent to which individuals can choose their ends. As he puts it: "Individual identity depends significantly upon the values embedded in the social practices of society, and the individualistic values of freedom and autonomy are central values embedded in ours. In liberal societies, individuals choose their ends, but they cannot be said to choose to choose them."[17] Metaethical communitarianism entails, moreover, that the community is what defines the costs associated with the particular ends among which individuals can choose. This is part of what it means for the community to determine value. But if the community determines the extent to which people can choose their ends, the ends that are available to them, and the costs associated with different choices, then "individuals are 'partly defined by the communities [they] inhabit,' "[18] which is one of Gardbaum's characterizations of antiatomism. Saying that community grounds all value, in other words, necessarily implies that it grounds identity as well.

Maintaining the independence of antiatomism and metaethical communitarianism endangers Gardbaum's project not just because it confuses what he would make clear, but also because it undercuts his primary achievement. Gardbaum replaces the old, tired picture of atomistic liberalism with a liberalism grounded in community practice. In this world, individuals enjoy autonomy not because they are sovereign subjects but because the community they live in, which is sovereign, believes they should enjoy it. In short, Gardbaum shows how liberalism can rest on communitarian underpinnings. He provides individualist politics with a social ontology, and, to me, this is right. Insisting on the independence of antiatomism from metaethical communitarianism, however, makes this picture difficult to sustain.

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17. *Id.* at 703.

18. *Id.* at 701 (quoting Sandel, *supra* note 12, at 6).

By insisting that the self can be different from all other values, beliefs, and practices, Gardbaum invests it with a different and, one suspects, prior ontological status. Even if all our values ultimately rest on social practice, the self might not. Something else could stand behind it. Whatever this other thing is, however, it has both some role in defining the values the self picks and, eventually, some determining effect on which values circulate through the society in which the individual lives and how they circulate through it. This would contradict, however, the idea that the community itself grounds value. For whatever else underwrites the self now plays some role in constituting value. Thus, if antiatomism is independent of metaethical communitarianism, the community cannot by itself underwrite liberal politics after all. The traditional picture of metaphysical atomism is inconsistent with metaethical communitarianism.

As in all great scholarship, Gardbaum's error instructs us. That Gardbaum, one of the keenest analysts of community, could himself confuse its claims shows how deeply embedded in our thought traditional notions of the individual are. Gardbaum wants to show that community can underwrite liberalism, but at the same time he wants to retain some notion of the self as not necessarily constituted by society. This he cannot do. The self is for us a centrally important construct, but it is a construct nonetheless. We cannot save the kind of independent space for it — apart from all other values — that Gardbaum would permit. We may flatter ourselves by trying, we may even come to believe that our identities are not "just" a question of how our community has raised us to think about ourselves, but if we do believe it, we ultimately undermine all that Gardbaum would achieve.