


ARTICLE

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Political Theory and the Volunteer: Lessons from Kahn's Ethnography of 'Our Unhappy Politics'

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Abstract

This article offers a reading of Paul Kahn's *Democracy in Our America* that places this intimate "work of local political theory" in a central position in the landscape of his political thought. The article argues that the figure of the volunteer, as it appears in the volume, holds a space for love and meaning—and for political happiness—that secures for it a critical role in the system of beliefs and practices that sustain self-government in the United States. That framing draws the volunteer into relationship with Kahn's thinking about the family, the veteran, and law. But it also means that the erosion of the volunteer spirit that Kahn traces in his own New England town of Killingworth, Connecticut, is best understood as the loss of the site of action that reflects a reaching for political meaning beyond self-interest and, with it, the loss of the possibility of self-government. Reading the volunteer as a powerful placeholder for the erotic at the heart of the political—and then tracing eros and happiness through Plato, Freud, and Arendt—this article reconstructs Kahn's link between our unhappy lives and our unhappy politics.

Keywords: political theory; self-government; volunteer; law; eros; political happiness; Kahn; Freud; Arendt

"Our unhappy politics reflects our unhappy lives."¹

"[T]he libidinal, sexual or life instincts . . . are best comprised under the name Eros; their purpose would be to form living substance into ever greater unities, so that life may be prolonged and brought to higher development."²

A. Introduction

Paul Kahn's volume *Democracy in Our America* is a book about happiness. It does not present this way, beginning as it does with an ominous engagement with the question posed in its subtitle: "Can we still govern ourselves?" Kahn opens the book in a familiar register, one of lament—even elegy—for the state of democracy and democratic institutions in the United States. It is a condition of profound institutional instability, deep political polarization, and populism. American politics "has become more intolerant and more threatening, even as it has become less

¹KAHN, PAUL W., *DEMOCRACY IN OUR AMERICA: CAN WE STILL GOVERN OURSELVES?* xi (2023).

²Sigmund Freud, *Two Encyclopedia Articles*, 18 in *THE STANDARD EDITION OF THE COMPLETE WORKS OF SIGMUND FREUD*, 258 (James Strachey ed., 1975).

serious and more entertaining.”³ The 2016 election crystallized the culture war in the US into “a civil cold war,”⁴ one that—once combined with the Covid pandemic—was complete with casualties in the form of the dead and injured.

But the volume swiftly turns to the emotional quality of the lives lived beneath and through these structural shifts. Kahn is centrally interested in the anger, the resentment, the tension, anxiety, and uneasiness evident in those around him. Why this anger? Why this anxiety? “Our unhappy politics,” Kahn explains in what I take to be the axial observation in this volume, “reflects our unhappy lives. We need, accordingly, to have a better sense of the sources and character of that unhappiness.”⁵

This is where political theory has failed us. The contemporary focus of political philosophers and social scientists, alike, on questions of legitimacy and institutional design does not take us where we need to go. Nor is Kahn satisfied by the familiar move of pointing to structural inequality as an explanation for the illnesses afflicting US politics. For Kahn, this misunderstands the relationship between our political imaginations and our material realities: “Facts do not generate political responses. It is the other way around: political responses identify which facts matter and how they matter.”⁶ In many respects, this is a recognizably Kahnian move. We need to understand the shape of our political imaginaries and our best evidence of this landscape of meanings is found through sensitive reading of our cultural practices and their artefacts, be they judicial review⁷ and the opinion,⁸ violence,⁹ drama,¹⁰ or movies.¹¹ And yet, at this moment, there’s a need for something new. What might we examine to better understand our unhappy lives?

The answer determines the unique character of *Democracy in Our America*. The source of anxiety and unease is something about “the way we live today”¹² and so “[w]e have to expand our inquiry to look at how people live and work today, how they experience their communities of home, religion, work, and politics.”¹³ And so Kahn turns to an intimate account of the ways of being together found in a small New England town—his town—Killingworth, Connecticut. We are drawn close to the practices and beliefs of the community, through a detailed portrait of town meetings, the life of churches and schools, the role of the local newspaper, debates about public works, and happenings at the town dump. One can understand this volume as a piece of detailed ethnographic work by a participant observer; it is political ethnography of Killingworth.

But, as intimated by the epigraphs to this piece, there is another model for a detailed examination of behaviors, habits, relationships, conflicts, histories, forgettings, and pathologies, all directed at understanding the sources of our unhappiness: the case history. Kahn’s description of his project is evocative here. He describes the book as a “work of local political theory” in which he “takes the perspective of a participant-theorist,” whereby it is “both an interpretation of politics and a political intervention.”¹⁴ As in the analytic situation, the interpretation is the intervention. And as in that setting, where we are concerned with the gap between how we wish to be and how we find ourselves, here Kahn seeks to “see more clearly the gap between our aspirations for collective self-government and how we live our lives.”¹⁵ I will return to this resonance toward the end of this article.

³KAHN, *supra* note 1, at x.

⁴*Id.*

⁵*Id.* at xi.

⁶*Id.* at xi.

⁷PAUL W. KAHN, *THE REIGN OF LAW: MARBURY V. MADISON AND THE CONSTRUCTION OF AMERICA* (1997).

⁸PAUL W. KAHN, *MAKING THE CASE: THE ART OF THE JUDICIAL OPINION* (2016).

⁹PAUL W. KAHN, *SACRED VIOLENCE: TORTURE, TERROR, AND SOVEREIGNTY* (2008).

¹⁰PAUL W. KAHN, *LAW AND LOVE: THE TRIALS OF KING LEAR* (2000).

¹¹PAUL W. KAHN, *FINDING OURSELVES AT THE MOVIES: PHILOSOPHY FOR A NEW GENERATION* (2013).

¹²KAHN, *supra* note 1, at xiv.

¹³*Id.* at xi.

¹⁴*Id.* at xii.

¹⁵*Id.* at xiv.

The immediate purpose of this piece, however, is to solve something of a readerly puzzle presented by the book, and by so doing to argue for the important place of *Democracy in Our America* in the body of Kahn's political theory. That puzzle centers on the volunteer. It swiftly becomes clear that the volunteer is to play a pivotal role in both Kahn's diagnosis and prognosis for self-government in Killingworth, and in the U.S. Toward the end of the preface, Kahn writes, "Our national political polarization may overwhelm Killingworth's capacity for self-government. If not, it will be because Killingworth can still call upon a long tradition of volunteerism."¹⁶ Though the connection between self-government and volunteerism in Killingworth is peculiarly vivid, Kahn is making a more fundamental claim about the role of the volunteer in the system of beliefs and practices that sustain self-government in America. Precisely what that role is, however, remains somewhat opaque in the book. Kahn offers the idea that the volunteer is the agent of building and maintaining an "ethos of care,"¹⁷ but that concept is not developed in the book, nor is it one that finds immediate links with his other work. My purpose here is, therefore, narrow: to offer a reading of the volunteer, as that figure appears in *Democracy in Our America*, that places it in the broader landscape of Kahn's ideas. On my reading, the volunteer holds a space for love and meaning, ultimately bringing us back to the question of political happiness.

In what follows, I begin by picking up the thread of the distinctiveness of Kahn's chosen method and position, which, in this volume, is inseparable from the insights that the book yields. Seeing the theoretical centrality of the volunteer is, indeed, a consequence of carefully attending to the method itself. Kahn's authorly approach is what brings him—and us—to the feet of the volunteer. The first section of the article explores this point, and gives a sense of the broader claims in this volume, by focusing on the way in which it is in conversation with Tocqueville's *Democracy in America*.¹⁸ That in place, I turn to my central claims about how we might profitably read the volunteer into the landscape of Kahn's larger political thought. My argument brings the volunteer into relationship with Kahn's thinking about the family, the veteran, and law. The article ends with a turn to Arendt, her concept of political happiness, and what that idea can reveal about Kahn's diagnosis of the state of democracy in "our America."

B. The Path to the Volunteer: The Tocquevillian Inversion(s)

Kahn's volume is, in its essence, Tocquevillian. Kahn invites this comparison with his title, of course—which is a play on Tocqueville's *Democracy in America*—but also explicitly at points in the text. The relationship between these texts is not, however, exhausted by the common subject; it's more genetic than that, working at the level of method. Just as Tocqueville did in the early 19th century, Kahn is seeking to read the nature and condition of American politics from the life and practices of a small town in New England. The approach of the book—the political ethnography from which insights about the character and operative forces that define American self-government—is what makes *Democracy in Our America* a kind of "Tocqueville for the 21st century."

But it is an uncanny Tocqueville, familiar yet acutely strange. Holding this methodological echo in mind foregrounds the distinctiveness and importance of what Kahn shows us in this volume. The key to understanding this book and its significance is seeing that it pivots around this uncanniness, or what Kahn calls at one point, a "Tocquevillian inversion."¹⁹ In fact, I suggest that there are ultimately two such Tocquevillian inversions, or fundamental reversals, at the heart of the book.

¹⁶KAHN, *supra* note 1, at xiv.

¹⁷*Id.*

¹⁸ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* (Arthur Goldhammer trans., 2004).

¹⁹KAHN, *supra* note 1, at 138.

The first, which operates explicitly in the volume, is the reversal of the formative vector of influence in US political life. Tocqueville famously concluded that one of the distinctive features of the American project of national self-government, and one of its geniuses, is that it arose out of the ways and forms of life at the local level. The practices of self-government and the spirit that informed civil society provided the template—and the building blocks—for a unique and attractive project of national politics. By contrast, while following Tocqueville’s essential method—indeed, making it even more intimate, even more empathically local—Kahn concludes that, today, it is the national that permeates, formats, and even directs the local. This flip is what Kahn himself refers to as the “Tocquevillian inversion” and it is this observation, along with the evidence for it and the consequences of it, that suffuses much of the book. Today, “the nation is everywhere.”²⁰

The story is of the national coming to dominate the local, alongside a disruption in what Tocqueville found so inspiring there. At its heart, what Kahn shows us is a crisis in the nature of the project of self-government that corresponds with the penetration of national partisan patterns into the day-to-day lives of those living together in Killingworth. This is a matter of deep correlation, not causation; it’s not as simple as a matter of the raw force of partisan politics ruining the local. More forces and changes are at work than that. But this Tocquevillian inversion is diagnostically central. The signs and symptoms are many, and Kahn traces them with (often loving and troubled) detail in the book: This Tocquevillian inversion corresponds with an atrophying of the politics of persuasion, and it is facilitated by changes in news and media. Kahn reflects on the effects of social media and how it both creates communities and alters or even extinguishes forms of political action, and he shows how changes in the nature of churches and religious attachment co-evolve with these alterations in the practices of self-government.

And yet amidst this range of complex phenomena and shifts, there is a core disruption or disturbance to which they all connect. As Kahn traces the reversed flow created by this Tocquevillian inversion—from the national down to his own town—everything ultimately passes through the volunteer. The volunteer is the “switch” in the circuit that reverses the flow. The volunteer becomes the character of central interest in Kahn’s diagnosis of the state of American democracy, and volunteering—not voting—is the essential activity of self-government.²¹ This stands to reason. For Tocqueville, the volunteer played this pivotal role in the distinctiveness of American political life; as Kahn follows the flow of the inversion and describes the ways of being together that surround it, he, too, arrives at the volunteer as central to his study of the distinctive pathologies afflicting American political life today. In his personal relationship with Killingworth, Kahn is conscious of this role for the volunteer from the beginning. Describing his thinking as he and his wife, Catherine Ino, moved to Killingworth in 1996, Kahn writes:

I had read Tocqueville, who describes a close and intimate connection between civil society and local government. Local political life, he argued, is rooted in civil practices and beliefs—“mores.” Americans, he observed, spontaneously join associations; they are naturally volunteers. We were about to test his views.²²

Another way of putting this is that, for Tocqueville, character was central to the geniuses of American self-government, and this character or spirit was found at the local.²³ From the local, it

²⁰*Id.* at 156.

²¹KAHN, *supra* note 1, at 71. As Kahn puts it, “the distinguishing feature [of the small town] is the way self-governance operates through volunteerism.”

²²*Id.* at 62.

²³*Id.* at 51 (“Character was at the heart of Tocqueville’s inquiry. He looked for the ground of character in practices of religion, education, commerce, family and informal associations. He thought all of these factors worked together to support local, self-government.”).

would flow upward, shaping national practices of self-government. Kahn's story of life within this political inversion is also centrally a story about character, as found at the local. It is about a change in the willingness to serve but also in the character of those who do.²⁴

In one respect—in the ethnographic description of the place of volunteering in local self-governance—*Democracy in Our America* is a confirmation of Tocqueville's description of 19th century New England life; that is, it is an account of continuity. Kahn gives us a vivid portrait of the centrality of the volunteer to life in Killingworth. "The town is run by volunteers."²⁵ Volunteers run the town dump, the fire department, the ambulance service, the library, and the land trust. We learn about Jim Lally, citizen of the year in 2012, who both volunteers himself and his construction crew to public building projects, and chaired the parks and recreation commission. Kahn brings to life a town hall filled in the evenings with the discussions of volunteer boards, committees, and panels conducting the business of the town. We meet Tom and Lucinda Hogarty: She chairs the library board and the historic preservation review committee, among other volunteer activities; "he is on the school building committee, the planning and zoning commission, the town barn renovation committee, and the alternative housing committee."²⁶ This politics of participation is about affection, care, and joining together. Kahn is building a case, here, for the indistinction between volunteering and self-government, one that reformats "self-government as a practice of taking care."²⁷

And yet the valence becomes entirely different than Tocqueville's because, within this frame, Kahn's story is of loss: of the retreat of this ethos and, with it, the possibility of self-government. Here we arrive at the second "Tocquevillian inversion." Tocqueville would readily recognize the institutions and organization of political life in Killingworth but, owing to the consequences of this withdrawal of the spirit of volunteering, "he would be astounded by the way they now undermine self-government."²⁸ "Killingworth self-government confronts pathologies that arise from a mismatch between its formal institutions and its residents' willingness to participate. Institutions of self-government designed in the eighteenth and nineteenth centuries are faltering."²⁹ Note that if we substituted "Americans" for "residents" we would still have an eminently recognizable claim. And, indeed, tracing the erosion of the volunteer spirit in Killingworth, and all that supports and accompanies it, Kahn understands himself as tracing the loss of the capacity for self-government in America. This is not because of any expectation that volunteering elsewhere in the US should look as it does in Killingworth—"Citizen participation will take different shape in different settings"³⁰—but rather because the volunteer embodies something central to the theory and practice of self-government.

In the next section I pursue a finer understanding of what that "something" is and, with it, a role for the volunteer in the landscape of Kahn's broader landscape political and legal thought.

²⁴*Id.* at 91 ("Killingworth was suffering from a range of democratic pathologies well before Donald Trump came to dominate the national scene. As early as twenty-five years ago, those committed to the idea of local politics as a common project of volunteering began to see something deeply disturbing. Institutions designed to be maximally participatory were beginning to operate in an undemocratic fashion. It was not just that people were failing to volunteer for service or come to town meetings. Equally important was the character of those who did come.").

²⁵KAHN, *supra* note 1, at 69.

²⁶*Id.* at 70.

²⁷*Id.* at 60.

²⁸*Id.* at 97. Kahn describes this inversion another way: "The Town Meeting attended by a few dozen voters is now among the least democratic moments in town governance. This reverses one of the key assumptions behind American self-government. Distance is now inversely related to democracy."

²⁹*Id.* at 90–91.

³⁰*Id.* at xiv.

C. Eros and the Volunteer

The drama, and pathos, of *Democracy in Our America* arises out of the intimate stories Kahn tells, detailing the effects on political life in Killingworth as the volunteer—so central to the town’s history and being—withdraws. “An older generation of residents, who grew up with an ethos of volunteering, is disappearing. The younger generation is less interested.”³¹ But this volume is not an exercise in nostalgia. The concern is too urgent and existential for that. As is so often true in Kahn’s work, this threat to being is simultaneously political and personal, and importantly so. It is about the disappearance of a form of action essential to the survival of a political community. The withdrawal of the volunteer comes to serve as synecdoche for the eroded possibility of self-government. And meanwhile—and this is a quintessentially Kahnian move—we are reminded that we ought not to be surprised that it works in the concrete register of life and death: “A low voter turnout may make little difference to the outcome of an election. A low turnout of volunteers for the ambulance service may mean that someone we know dies.”³² With the loss of volunteer, Killingworth is left with democratic institutions that, worse than enervated, actively work against self-government. They are vulnerable to government by faction, are filled with harassment and aggression, and defined by political dysfunction. Kahn offers story after story displaying this pattern. This is the heart of things: The institutions and arrangements described by Tocqueville and Kahn become vehicles for the realization of self-interest rather than self-government. Everything about this book, even the dedication,³³ is urging us to think about the volunteer as a site for political theory, grounded in the meanings and motivations of the citizen.

What, exactly, has changed? What shift within the psychology of the political subject has taken place to so erode this spirit of volunteering? Some form of hardened self-concern seems central: “As soon as one asks, ‘Why me?’,” Kahn explains, “the ethos of volunteering has been lost.”³⁴ But how to think about this “Why me?” It is tempting to rest on an inchoate sense of a certain loss of commitment to a collective project of self-government. At points, Kahn speaks in these terms; it is part of the picture. Describing the way that a politics focused on winning and losing would be at odds with the ethos of volunteering, he explains that this is because it “would undermine the sense of a common project that is both the ground and the result of volunteerism.”³⁵ But this is still too remote; it is a response that could be offered without needing to come so close to the lives of the people of Killingworth.

Kahn pushes us a level deeper when he suggests the “ethos of care” as the operative force in the heart of the volunteer. The thing that has atrophied is not as intangible as a “common project.” It is more affective, more relational than that. We see this in Kahn’s portrait of Fred Dudek, someone in Killingworth who still robustly reflects this volunteer ethos, now in decline. Fred is a Republican, who both served with Catherine, Kahn’s wife, and eventually ran against her for the position of first selectman. During that election, Fred had no wish to participate in a debate. Defenses of his reticence were offered in Killingworth, but Kahn reads his decision as “reflect[ing] a more general attitude”:

He had spent most of his life in town and had served in many positions, including seventeen years as fire chief. For him, politics was about taking care of common concerns, not about publicly expressing disagreement. Running for first selectman, he was volunteering to lead the town; he was not campaigning for elected office. As he explained, “I will continue to volunteer, win, lose, or draw . . . I care about the community, and I care about the people in the community.”³⁶

³¹*Id.* at 61.

³²*Id.* at 61.

³³*Id.* at *Dedication*. Kahn dedicates *Democracy in Our America* “To the volunteers of Killingworth.”

³⁴*Id.* at 61.

³⁵KAHN, *supra* note 1, at 84–85.

³⁶*Id.* at 64.

This is Kahn's "ethos of care." Listening carefully to Fred, we hear that service to a common project is an artefact of care for the other. Fred even wards off a reading of "care about the community" as an intellectual commitment to an idea. No, he cares about *people* in the community.

We can profitably understand Kahn's "ethos of care" by reference to its opposite, self-interest. The market is the quintessential domain of interest, and in example after example, we watch as what was once, in Killingworth, a matter of the spirit of volunteerism is replaced by the logic of the market. "Why me?" is a question posed from the stance of self-interest that is very much at home in a world of efficiency and market relations. The volunteer begins to make less sense as the self-interest of the market takes hold. As we begin to confuse politics with markets, we lose sight of the volunteer. The ethos of care—the spirit of volunteerism—puts a willingness to sacrifice before self-interest, escaping the logic of the market by reaching for meaning and happiness beyond oneself.

Democracy in Our America summons us to treat the volunteer as an essential site for political theory. For readers of Kahn this is notable because the volunteer is simply not a figure in his other work. We are accustomed to thinking about the family, the soldier, and the constitutional judge, but not the volunteer. But in this book, which tethers our unhappy politics to our unhappy lives, the volunteer becomes central. My offering is that we can make sense of this by understanding Kahn's "ethos of care" precisely as this drive to reach beyond oneself for meaning and by seeing that there is happiness—personal and political—in this. Equally, pathologies—personal and political—flow from distortions in this drive.

Our unhappy lives and its relationship to the drive to reach beyond oneself . . . this is Freud's *Eros*. When, in 1920, with his "Two Encyclopedia Articles," Freud undertook his reframing of drive theory, he recast the sexual drive as *Eros*. *Eros*, the love or life instinct, is not a drive toward pleasure.³⁷ It is the desire "to form living substance into ever greater unities, so that life may be prolonged and brought into higher development."³⁸ "The main purpose of *Eros*," Freud explains, is "that of uniting and binding."³⁹ As Lear puts it, with this turn to *Eros*, "Freud is trying to do justice to the fact that all of these teeming, bodily, sexual drives are, in their own strange ways, *reaching beyond themselves*."⁴⁰ He is describing the role of reaching beyond ourselves in the affective complexion of our lives. But for Freud, his *Eros* was, in fact, none other than Plato's *Eros*. Rather than a drive to procreation or gratification, it has "far more resemblance to the all-inclusive and all-embracing *Eros* of Plato's *Symposium*."⁴¹ Indeed, Freud goes so far as to assert that "the enlarged sexuality of psychoanalysis coincides with the *Eros* of the divine Plato."⁴² Plato's *Eros* was a reaching for beauty itself—"the divine character of human life"⁴³—and, with it, the possibility of philosophy and higher meanings beyond oneself.

We do well, I am suggesting, to think of the "ethic of care" as *eros*, and the volunteer as a powerful placeholder for the erotic at the heart of the political. The loss of the volunteer is the loss of the site of action that reflects this reaching for meaning beyond self-interest. It is also, thereby, the loss of the possibility of self-government. Perhaps with this—from Kahn, through Freud and

³⁷It is, in this sense, "beyond the pleasure principle": Sigmund Freud, *Beyond the Pleasure Principle*, 18 in THE STANDARD EDITION OF THE COMPLETE WORKS OF SIGMUND FREUD (James Strachey ed., 2001).

³⁸Freud, *supra* note 2, at 258.

³⁹Sigmund Freud, *The Ego and the Id*, 19 in THE STANDARD EDITION OF THE COMPLETE WORKS OF SIGMUND FREUD 1, 45 (James Strachey ed., 2001).

⁴⁰JONATHAN LEAR, FREUD 86 (2d ed. 2015) (emphasis in original).

⁴¹Sigmund Freud, *The Resistances to Psycho-Analysis*, 19 in THE STANDARD EDITION OF THE COMPLETE WORKS OF SIGMUND FREUD 211, 218 (James Strachey ed., 2001). This framing leans heavily on Lear's description, *supra* note 40, at 86–87.

⁴²Sigmund Freud, *Three Essays on the Theory of Sexuality*, 7 in THE STANDARD EDITION OF THE COMPLETE WORKS OF SIGMUND FREUD 123, 134 (James Strachey ed., 2001).

⁴³PAUL W. KAHN, PUTTING LIBERALISM IN ITS PLACE 200 (2008).

Plato, to the volunteer—we have reconstructed the link between our unhappy lives and our unhappy politics.

Viewing the volunteer as a critical site of eros, of the love and meaning found in reaching beyond oneself, is the path to understanding the importance of this figure as a matter of political theory. It is, meanwhile, the key to placing the volunteer in the landscape of Kahn's body of thought. Across his work, Kahn variously insists on eros—sometimes “love”—as the essence of the political; *Democracy in Our America* casts the volunteer as decisive in the political project of self-government. The relationship between these two observations can be seen through certain associations between the volunteer in *Democracy in Our America* and more established themes in Kahn's work.

I. The Volunteer and the Family

We might regard the parent as the quintessential volunteer. The parent takes responsibility for the conditions in which the family can thrive; must regard this duty as a matter of love, not efficiency; and embodies the commitment to sacrifice for the sake of that community. Indeed, when a parent rejects this ethic of volunteer service—in terms drawn from *Democracy in Our America*, when the parent begins to ask, “Why me?”—the meaning of the family collapses. We might have children and adults but, without eros, we do not have a family. Without the volunteer we might have politics, but we do not have self-government. There is an echo here, too, between the parent and the volunteer in the tense relationship between both and the market: Neither is sustainable, neither makes much sense, in a world indexed to efficiency. “A community is not a family, but neither is it a market.”⁴⁴

The intimate relationship between the family and the political, and the role of eros in tethering the two, is familiar in Kahn's other work. The essential tie is that “both are love's proper domain.”⁴⁵ The erotic motive is what binds the family and the political and distinguishes both from the self-interest of the market—and, we shall see, from law. Indeed, it is wrong to think of these domains of family and politics as merely tied to one another; at points in Kahn's thought, their genetic connection makes them better understood as different parts of a larger unity, such that “[t]here is no political world that transcends the family,”⁴⁶ even as he is also deeply interested in the pathologies that arise when one loses track of the differences between the two.⁴⁷ Interestingly, when he observes that this connection between the family and the political is “found at the core of Plato's thought about the nature of eros,”⁴⁸ Kahn drops a footnote, observing that “Plato's thought finds a distant mirror in Freud's account of the family in *Civilization and its Discontents*, in which family is both the ‘germ-cell of civilization’ and a force powerfully ‘in opposition to civilization.’”⁴⁹ But that “mirror” is not at all distant, as I have observed; they are working with the same essential understanding of eros.

In *Democracy in Our America*, the erosion of the spirit of volunteering is closely tied to “the overwhelming privatization of family life today.”⁵⁰ This surfaces, as we should expect, in the town's relationship to its children and their schools. In one place, Kahn describes certain residents' objection to the school board's investment in computers on the basis that they did not have them when they were in school, and references a sentiment amongst some that “the town directs a

⁴⁴KAHN, *supra* note 1, at 66.

⁴⁵KAHN, *supra* note 43, at 189.

⁴⁶*Id.* at 197.

⁴⁷See KAHN, *supra* note 10.

⁴⁸KAHN, *supra* note 43, at 189.

⁴⁹*Id.*

⁵⁰KAHN, *supra* note 1, at 130.

disproportionate amount of its resources to the schools and children, often ignoring the needs of low-income seniors.”⁵¹ “One can appreciate the sentiment of equality,” Kahn observes, “but wonder whether it is misplaced when children are viewed as a special interest.”⁵² This is exactly right. The child is properly the object of political eros, not fairness or efficiency. The child is what binds the family and the political: “Children pull polity and family together and make them one.”⁵³ Love of, and care for, the child draws the parent into the world: Children, “just as much as the political world of actions and words, connect me to a world that was and will be. Indeed, they connect me to that same political world.”⁵⁴ Or, as he puts it in this volume, “[p]olitics is an intergenerational enterprise.”⁵⁵ But so is volunteering, and that tradition is fading in Killingworth.⁵⁶

II. The Volunteer and the Veteran

The volunteer is also a key carrier of the theme of sacrifice, so central to Kahn’s political thought. Elsewhere, sacrifice is found most vividly in the soldier—the veteran—who embodies the willingness to kill and be killed and thereby becomes a marker in Kahn’s work for the “autonomous domain of meaning”⁵⁷ that is the political. Here we might feel rather distant from the kind of sacrifice involved in volunteering we see at work in Killingworth. We come closest, perhaps, with the volunteer firefighters, but even then, one is left searching for the “killing” part of the equation. And that part of the equation matters a great deal to Kahn: sacrifice “becomes a distinctly political act when it is linked to the reciprocal possibility of infliction of injury.”⁵⁸ The soldier carries this openness to the meaning of political sacrifice so well because of their literal proximity to killing and being killed, but also because the soldier so readily fits within a conception of the political that turns on the friend/enemy distinction, which it does in so much of Kahn’s work.

But then again, the portrait of the ethos of volunteering in Killingworth, and its essential role in the political project of self-government, participates in much of what defines political sacrifice for Kahn. The ethos of volunteering on display in *Democracy in Our America* shares the peculiar moral arbitrariness that characterizes the soldier’s sacrifice. Recall Kahn’s claim that “[a]s soon as one asks, ‘Why me?’ the ethos of volunteering has been lost.”⁵⁹ Consider the following passage from *Putting Liberalism in its Place*:

Killing and being killed for the state will always support a sense of moral arbitrariness. *There is no good answer to the question, why me?* except for the arbitrary fact that you are in this place at this time. Political sacrifice, then, is not a product of justice, but neither is it wholly beyond the demands of justice. In this respect, it is like love within the family.⁶⁰

⁵¹*Id.* at 96.

⁵²*Id.* at 96.

⁵³KAHN, *supra* note 43, at 197.

⁵⁴*Id.* at 200. Note that there is also a link here between self-government and parenting. Both children and our political institutions are objects of our love because they are tied to who I take myself to be. For Kahn, “[m]y children are mine because they embody an idea of the self: not a narrow idea of the self as a natural body, but an idea as rich as the subject I take myself to be.” *Id.* Equally, he argues that the political project of self-government depends on being able to see ourselves in our institutions and practices of political life.

⁵⁵KAHN, *supra* note 1, at 125.

⁵⁶*Id.* at 74. Kahn notes that the fire department and the ambulance service, “the two most prominent sites of volunteering” in Killingworth, have this familial, multigenerational quality.

⁵⁷KAHN, *supra* note 43, at 236.

⁵⁸*Id.* at 234.

⁵⁹KAHN, *supra* note 1, at 61.

⁶⁰KAHN, *supra* note 43, at 234 (emphasis added).

Examples from life in Killingworth show the ethos of volunteering as being in the same relationship with justice that Kahn describes here: neither a product of justice nor beyond its demands. And we see here the same echo between the structure of the family and the nature of the political that I discussed above.

This spirit of sacrifice is what Kahn pays tribute to in the history of Killingworth and what, seeing it deteriorate and watching the effects on democracy, leads him to wonder about the capacity for self-government. That spirit is eros, enacted: “Sacrifice is always an act of love.”⁶¹ What the volunteer and the veteran share is that they demonstrate an openness to a meaning beyond themselves, which is precisely where we find the experience of the sacred at the heart of the political.⁶² By following the volunteer we have found our way to political theology, as Kahn understands it. *Democracy in Our America* can well be read as an insistent case for the essential role of the volunteer (and not just—or perhaps as importantly as—the soldier) in the “political formation of the experience of the sacred,” which “is the subject of political theology.”⁶³

Though I am suggesting that it is immanent throughout the volume, the continuity between the volunteer, the veteran, and the sacred becomes manifest in Kahn’s account of Memorial Day celebrations in Killingworth. Kahn’s story of a political community defined from the start by the volunteer is also a story about a town shaped at its origins by religion, specifically Congregationalism. When “congregation and town coincided,”⁶⁴ the public, the private, the secular, and the religious were a welter. Though Kahn traces the arc of disestablishment and a species of secularization in Killingworth that shadows (even if it does not exactly cause or precisely track) the erosion of the spirit of volunteering, all of this collapses in the Memorial Day celebrations. Even with the movement of Congregationalism away from the center of town life, the annual Memorial Day parade ends at the Congregational Church, with the first selectman (for most of this volume, Catherine) standing before the Church, honoring the veterans. If it starts to rain, the convergence is perfected, as the celebration moves inside the Church.

At that point, with the residents in pews and the town leadership standing with the local religious authorities in the front, we reenact Killingworth’s practices—a convergence of sacred and public, of church and town.⁶⁵

The veteran is, of course, also the exemplary volunteer, embodying the most dramatic or “thickest”⁶⁶ expression of the willingness to sacrifice for the community. In a political community fundamentally defined by and dependent upon this spirit of volunteering, there is a decidedly Durkheimian feel to this scene, one in which the sacred and the community fuse.⁶⁷

Kahn is clear that not all sacrifice is political. He does not, in this volume, resile from the literality of the willingness to kill and be killed that defines political sacrifice elsewhere in his work, nor from the fundamental role of the friend/enemy distinction in defining the distinctive domain of political meaning. And yet it is very difficult to read *Democracy in Our America* and to regard the volunteer as anything other than elemental and emphatically political. So it might go too far to

⁶¹KAHN, *supra* note 43, at 234.

⁶²Elsewhere, Kahn describes this “experience of the sacred in and through the political” as “a willingness to sacrifice for some meaning greater than the finite self.” PAUL W. KAHN, *POLITICAL THEOLOGY: FOUR NEW CHAPTERS ON THE CONCEPT OF SOVEREIGNTY* 22 (2011).

⁶³*Id.* at 23.

⁶⁴KAHN, *supra* note 1, at 108.

⁶⁵*Id.*

⁶⁶Kahn describes forms of sacrifice, including forms that are not political, as both commonly defined by love and existing along a spectrum: “Just as I had to speak of diverse forms of love—from the particularism of romance to the universalism of a love of humanity—we should speak of sacrifice extending from the thick to the thin.” KAHN, *supra* note 43, at 233.

⁶⁷EMILE DURKHEIM, *THE ELEMENTARY FORMS OF RELIGIOUS LIFE* 351 (Karen E. Fields trans., 1995) (“[T]he sacred principle is nothing other than society hypostasized and transfigured.”).

say that, with *Democracy in Our America*, the volunteer replaces the veteran as the key sacrificial figure in Kahn's thought; but it perhaps offers an alternative path, through sacrifice and its link to eros, to understanding the structures of meaning and action that support a political project of self-government.

III. Law, Love, and the Volunteer

If we view the volunteer as a placeholder for the erotic core of the political, we are also prepared to see the way that this interacts with another core theme in Kahn's political thought: the relationship between law and love.⁶⁸ This entwinement can be pointed to more briefly because it is tacit in the first two that I have explored. In the world of Kahn's ideas, associating the volunteer so closely with eros thereby places that figure resolutely on the "politics" side of the law and politics membrane, and in structural and ethical tension with both law and reason. In one important articulation of this law/love binary,⁶⁹ Kahn explains that "[l]ove and law cannot be brought into a unitary, harmonious order. Love will always move beyond law; law will always threaten love."⁷⁰ In *Democracy in Our America* we find echoes of this essential tension, even antagonism, expressed in the relationship between law and the volunteer.

In fact, most interesting in this regard is the notable absence of law from *Democracy in Our America*. Along with *Testimony*,⁷¹ which is in this and other ways best thought of as a companion volume to this volume, *Democracy in Our America* is Kahn's book in which law and the rule of law is most apparently distant from his concern. Law is simply not a significant player in this story, which is arresting given that it is also an account of American self-government. But law is, of course, not at all absent; it is constantly present in the background, shaping the space in which politics is experienced. But there are places where this tension between the volunteer spirit, or ethos of care, and law becomes overt.

In one telling passage, Kahn recounts his reaction, in his first years in Killingworth, to the first selectman's refusal to use the power of eminent domain to secure the most appropriate location for a middle school.⁷² The first selectman's explanation was simply that the town "would never do that." "I could not fathom," Kahn explains, "why the town would not use all of the legal resources available to build the school in the very best location in light of projections of the likely course of town development over the life of the school. Now, I think he was right."⁷³ The lesson Kahn draws from this episode places the ethos of volunteering in opposition to the domain of law: "Law does not get much done in town; volunteers do. Governance must tend to the ethos that supports volunteering. Absent that, the town cannot flourish; indeed, it cannot even survive."⁷⁴ Here, the volunteer is occupying the position of love, including in its existential significance. But more than just not getting much done, law is viewed by those in the community as something dangerous, or evidence of a fallen condition in the political project of self-government. Noting the community's preference for public service over taxes, Kahn explains that many residents in Killingworth "are skeptical of requirements imposed by law and even think of law itself as a failure of community.

⁶⁸On this theme, see centrally, KAHN, *supra* note 10; KAHN, *supra* note 43; PAUL W. KAHN, *THE CULTURAL STUDY OF LAW: RECONSTRUCTING LEGAL SCHOLARSHIP* 119–23 (2000).

⁶⁹And thinking with and through binaries is central to Kahn's method of the cultural study of law, be it law and love or project and system. See generally PAUL W. KAHN, *ORIGINS OF ORDER: PROJECT AND SYSTEM IN THE AMERICAN LEGAL IMAGINATION* (2019).

⁷⁰KAHN, *supra* note 10, at 169. As Kahn frames this centrally important opposition elsewhere in his work, "[t]here are two alternative symbolic forms that actively compete with our conception of a community under law: *political action* and *love*." KAHN, *supra* note 68, at 120.

⁷¹PAUL W. KAHN, *TESTIMONY* (2021).

⁷²KAHN, *supra* note 1, at 85–86.

⁷³*Id.* at 86.

⁷⁴*Id.* at 86.

To rely on law is to be governed, rather than to govern oneself.⁷⁵ Like law and love, law and the “ethos of care” work in different registers; more than this, each is a menace to the other. Kahn explains that “[t]he demands that law places on the erotic quality of the soul threaten the order of love.”⁷⁶ *Democracy in Our America* in hand, we might transpose this insight: The demands of law are at odds with the erotic quality of volunteering.

This article is organized around the conceit of testing the adequacy of the term “ethos of care” to capture what is about the volunteer—about what Kahn elsewhere calls the “ethos of volunteering”—that makes it both central to the political and the agent of the unhappiness that so concerns Kahn. I think we do best to call this quality eros, and the very challenge of describing this “something,” of putting a term to it, supports my reading. In *Law and Love*, Kahn describes, with great power, King Lear’s inability to name love. He concludes: “What cannot be named, cannot be controlled by law.”⁷⁷

IV. Eros and Method

In the introduction to this article, I suggested that *Democracy and Our America* is distinguished by a certain unity between method and insight. Within the body of Kahn’s work, the book is unusual in its ethnographic quality; or, perhaps, given the strength of Kahn’s presence in the account—his own history, observations, experiences, and relationships—“political memoir” captures the form somewhat better.⁷⁸ Kahn gives us a sense for the geography, the natural environment of the town, and the rhythm of the seasons as they effect access through a local shortcut, “Lovers Lane,”⁷⁹ as well as the controversies that surround it. The book draws us into the working of the town dump and library, the day-to-day complaints and concerns of neighbors, and the sometimes very personal lives of those families. This is unusual work for a political philosopher.⁸⁰ Why is it important that we see the animosity between Walt and Fred, the road crew foreman and a selectman, and the unexpected alliance between Fred and Walt’s son, Jeremy? Or to trace the generational change specifically through Eric Auer Sr.’s and Eric Auer Jr.’s respective relationship to the town?

Acknowledging the central role of the volunteer in the volume, and finding the theoretical significance of that figure in its embodiment of the eros at the heart of political life, makes some sense of this. To see the way in which something can be the object of love, we need to see this texture, these details, intimacies, and, most decidedly, idiosyncrasies and failings. Kahn is painting a portrait of a political community in a fashion that makes it a candidate for care and concern, for erotic connection; we are invited to see Killingworth as someone who loves it, and would therefore sacrifice for it, might. Indeed, we suspect we are seeing it through the eyes of someone who does. Describing the “challenge of taking care of an essential part of Killingworth: its forests, streams, paths, and wildlife,” Kahn reflects on his reaction when a local developer clear-cut part of the woods in an adjacent lot. “Not only was he violating the land use regulations; he was breaking my heart.”⁸¹

Love is a function of the particular. To understand the drive to reach beyond oneself for meaning, the forms of political action that embody it, one must be near. Equally, drawn close, we can see the shape and causes of unhappiness in our personal lives. The book’s method thereby

⁷⁵*Id.* at 72.

⁷⁶*Id.* at 137–38.

⁷⁷KAHN, *supra* note 10, at 16.

⁷⁸In this, one sees another way in which this volume is best read as a companion to KAHN, *supra* note 71.

⁷⁹KAHN, *supra* note 1, at 65.

⁸⁰Though no more unusual, perhaps, than the study of popular film, which performs a similar function: to bring us close to our day-to-day mental lives within the field of political meanings that we inhabit. KAHN, *supra* note 11. To place it in an analogy at work in this article, *Finding Ourselves at the Movies* is Kahn’s *The Interpretation of Dreams*.

⁸¹KAHN, *supra* note 1, at 68.

equips us to grasp the effects when that spirit is withdrawn. In this, the analogy I earlier suggested between the form of this book and the analytic “case history” holds. Concerned with the pathologies that afflict our lives, the analyst explores origins, attachments, object relations, and dreams, tracing how eros moves in our experience of the world and its effect on our happiness. Kahn’s search for the relation between our unhappy politics and our unhappy lives compels his method.

D. Eros, Public Happiness, and Tyranny

In the world of the psyche, Freud’s conception of eros has a directional quality. The bundle of instincts that *Eros* describes seek to bring “living substance into ever greater unities, so that life may be prolonged and brought to higher development.”⁸² Mindful of Freud’s alignment of his and Plato’s *Eros*, I take this as warrant to end this article by tracing my reading of Kahn’s story of political life in Killingworth back upwards, against the flow of his Tocquevillian inversion, to see the consequences of disturbances in this ethos of volunteering on “greater political unities.” What does life in Killingworth, and the role of the volunteer, teach about the state of the American national political project and the larger question with which Kahn frames *Democracy in Our America*, “can we still govern ourselves?” Or put differently, how might the volunteer spirit in Killingworth interact with the American “civil cold war” and “constitutional coup”?

In final paragraphs of the book, Kahn suggests that the path is through the relationship between a community of volunteers and a particular form of happiness. Reflecting on the range of ways in which volunteers in Killingworth care for the town and one another, Kahn writes:

Doing these things together, we are promised something more than the sum of the parts—public happiness. If we can find this in our local communities, it gives us something to hold up to national politics. We can ask of national institutions why they are causing so much pain, instead of realizing their own forms of public happiness.⁸³

The use of the term “public happiness” is an invocation of something in Hannah Arendt’s thought about the essence of the American project of self-government,⁸⁴ and it is a rich gesture about which there is much more to be said.

In a section of *On Revolution*, Arendt reflects, with a sense of lament, on Jefferson’s use of the phrase “pursuit of happiness” in the Declaration of Independence. He could have spoken of “political happiness,” a term familiar in the political literature of the age.⁸⁵ This idea of “public happiness” was closely associated with the “central idea of revolution, which is . . . the foundation of a body politic which guarantees the space where freedom can appear.”⁸⁶ Freedom, for the revolutionary thinkers, was not a private liberty but, rather, “could only exist in public; it was a tangible worldly reality, something created by men to be enjoyed by men rather than a gift or a capacity.”⁸⁷ This is a freedom to be visible and significant in public space, a freedom found in “laying claim to a share in public power.”⁸⁸ Arendt explains:

This freedom they called later, when they had come to taste it, ‘public happiness’, and it consistent in the citizen’s right of access to the public realm, in his share in public power—to be a ‘participator in the government of affairs’ in Jefferson’s telling phrase—as distinct from

⁸²Freud, *supra* note 2, at 258.

⁸³KAHN, *supra* note 1, at 222.

⁸⁴Kahn elsewhere explicitly recognizes this, *see* KAHN, *supra* note 1, at 175.

⁸⁵HANNAH ARENDT, *ON REVOLUTION* 118–19 (2006).

⁸⁶*Id.* at 116.

⁸⁷*Id.* at 115.

⁸⁸*Id.* at 118.

the generally recognized rights of subjects to be protected by the government in the pursuit of private happiness⁸⁹

The idea of public happiness reflected “that men knew they could not be altogether ‘happy’ if their happiness was located and enjoyed only in private life;”⁹⁰ to be happy, one must be a “participator in the government of affairs.”

This was a vision of real human happiness, not just a metaphor for welfare. When Adams and Jefferson exchanged ideas on what the afterlife might look like, Jefferson imagined heaven as Congress, and joy in recognition for a life of public service. “May we meet there again, in Congress,” Jefferson wrote, “with our antient Colleagues, and receive with them the seal of approbation ‘Well done, good and faithful servants.’”⁹¹ Arendt observes:

Here, behind the irony, we have the candid admission that life in Congress, the joys of discourse, of legislation, of transacting business, of *persuading and being persuaded*, were to Jefferson no less conclusively a foretaste of an eternal bliss to come than the delights of contemplation had been for medieval piety.⁹²

The political implications of this conception of a happy life lay in a fundamentally different conception of tyranny and, with it, the very spirit of the American Revolution.

Since antiquity, explains Arendt, tyranny was understood as a form of rule in which the ruler, in pursuit of his own interests, “offend[s] the private welfare and the lawful, civil rights of the governed.”⁹³ On this conception, monarchy was not necessarily tyrannical. This changed with the revolutionaries. For them, tyranny was found in “a form of government in which the ruler . . . monopolized for himself the right of action, banished the citizens from the public realm into the privacy of their households, and demanded of them that they mind their own, private business.”⁹⁴ Monarchy was now tyranny, *per se*. The essence of tyranny is that it “deprived of public happiness, though not necessarily of private well-being, while a republic granted to every citizen the right to become ‘a participator in the government of affairs’, the right to be seen in action.”⁹⁵ On this account, the essential political ideal of the republic—the spirit of the revolution—is a vision of happiness.

Arendt’s arresting claim is that Jefferson’s very choice to use the term “happiness” rather than “political happiness” meant that the “second task of revolution, to assure the survival of the spirit out of which the act of foundation sprang, to realize the principle which inspired it . . . was frustrated almost from the beginning.”⁹⁶ With this substitution of terms, the “danger of confusing public happiness and private welfare”⁹⁷ was present in the Declaration itself. Arendt suggests that the Declaration still invites us (she says, “intends us”⁹⁸) to hear both private welfare and the freedom found in being a participator in public affairs, in the term “pursuit of happiness.” “But,” she suspects:

⁸⁹*Id.* at 118.

⁹⁰*Id.* at 118.

⁹¹As cited in ARENDT, *supra* note 85, at 122.

⁹²ARENDT, *supra* note 85, at 122 (emphasis added). The state and fate of a politics of persuasion is a central concern in *Democracy in Our America* (see ch. 5, “Taking to Each Other”).

⁹³ARENDT, *supra* note 85, at 121.

⁹⁴*Id.*

⁹⁵*Id.*

⁹⁶ARENDT, *supra* note 85, at 117. Arendt emphasizes that this “second task” was “a task which . . . Jefferson especially considered to be of supreme importance for the very survival of the new body politic.”

⁹⁷*Id.* at 119.

⁹⁸*Id.* at 123.

the rapidity with which the second meaning was forgotten and the term used and understood without its original qualifying adjective may well be the standard by which to measure, in America no less than in France, the loss of the original meaning and the oblivion of the spirit that had been manifest in the Revolution.⁹⁹

In *Democracy in Our America*, Kahn offers another measure—the ethos of volunteerism. Participating “in the government of affairs,” the volunteer reaches for meaning in political life and, with it, public happiness; this is the same as saying that they act in service of the particular form of political freedom found at the foundation of American self-government. Equally, the withdrawal of that volunteer spirit—a retreat into self-interest and private welfare, a self-banishment into the privacy of one’s household and business—marks the undoing of what defined the Revolutionary project. Read alongside Arendt’s account of public happiness, we might say that disappearance of the volunteer marks the appearance of tyranny, an invited tyranny of self-interest. Here we arrive, with Kahn, at what joins the 2016 presidential election, the erosion of the politics of persuasion, and political life in Killingworth. It is why the book is equally about the riot in the Capitol and practices at the Killingworth dump. It is why Killingworth matters to political theory:

Of course, no one should care too much about Killingworth’s problems—it is a well-off town that fend for itself. But if those problems are grounded in social, cultural, and economic changes common to much of the nation, then Killingworth’s problems are everyone’s problems. Its practices and history . . . bring to the surface an idea of self-government that is richer and deeper than counting votes.¹⁰⁰

Through his portrait of Killingworth, Kahn offers a warning about the consequences for democratic self-rule of a commitment to freedom uncoupled from the pursuit of public happiness. Can we still govern ourselves? To find out, Kahn tells us, we must look to the volunteer.

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⁹⁹*Id.* at 123.

¹⁰⁰KAHN, *supra* note 1, at 98–99.