

Chapter 8 Justice and Social Compacts

1. The Objective Ideal of Justice

The *objective* noumenon we call "justice" has its originating roots in *subjective* affectivity (i.e. from that feeling of *Unlust* called a "feeling of injustice" in chapters 6 and 7) arising when actions taken by one party in pursuit of satisfying their interests necessarily prevents satisfaction of an interest by a person who *feels* an injustice has been done to him. Now, an affective perception is a perception that cannot become part of the representation of an object. *Objective* understanding of "justice" and "injustice" results from a process of judgmentation wherein a *cause* for a *feeling* is sought as practical Reason gropes for a way to restore the equilibrium that was disturbed when some event provoked that feeling of *Unlust*.

Do you see the formidable problem facing us here? Labeling *phenomena* as acts of "justice" or "injustice" involve what psychology calls a "transference" (the passing-on or displacing of an emotion or an affective attitude from one person to another person or object) [Reber & Reber (2001)]. *Understanding* "justice" and "injustice" in a social context suitable for institution of any justice system is tasked with finding ways to *objectify* something which *at its roots* isn't objective. Furthermore, this objectification has to be done in such a way to produce general understandings which gain consent from an entire body politic of citizens. Such an object of understanding is an example of what Critical metaphysics calls an *ideal*, i.e., an Object that exhibits in its representation *in concreto* the most perfect instantiation of an idea.

Santayana's idea of what he called a "free society" has pertinence to this ideal. He wrote,

Free society differs from that which is natural and legal precisely in this, that it does not cultivate relations which in the last analysis are experienced and material, but turns exclusively to unanimities in meanings, to collaborations in an ideal world. The basis of free society is of course natural, as we said, but free society has ideal goals. Spirits cannot touch save by becoming unanimous. . . . Friendship, springing from accidental association, terminates in a consciousness of ideal and essential agreement. [Santayana (1905), pp. 146-147]

The Object of the idea of justice subsists in such unanimities in meanings, collaborations, and ideal and essential agreements. A legal system is a means by which a Community strives to achieve this ideal goal. As the Romans said, *Ius est ars boni et aequi*¹.

There is an appropriateness to calling justice an art. Free societies evolve from what Santayana called "natural" societies, and they develop as their people attain symbolic common understandings of ideals. He wrote,

Natural society unites beings in time and space; it fixes affections on those creatures on which we depend and to which our actions must be adapted. Natural society begins at home and radiates over the world, as more things become tributary to our personal being. In marriage and the family, in industry, government, and war, attention is riveted on temporal existences, on the fortunes of particular bodies, natural or corporate. There is then a primacy of nature over spirit in social life; and this primacy, in a certain sense, endures to the end, since all spirit must be spirit of something, and reason could not exist or be conceived at all unless a material organism, personal or social, lay beneath to give thought an occasion or a point of view, and to give preference a direction. Things could not be near or far, worse or better, unless a definite life were taken as a standard, a life lodged somewhere in space and time. Reason is a principle of order appearing in a subject-matter which in its subsistence and quantity must be an irrational datum. Reason expresses purpose, purpose expresses impulse, and impulse expresses a natural body with self-equilibrating power.

At the same time, natural growths may be called achievements only because, when formed, they support a joyful and liberal experience. Nature's works first acquire a meaning in the commentaries

¹ "Justice is the art of the good and the fair."

they provoke; mechanical processes have interesting climaxes only from the point of view of the life that expresses them, in which their ebb and flow grows impassioned and vehement. Nature's values are imputed to her retroactively by spirit, which in its material dependence has a logical and moral primacy of its own. . . .

Thus it comes to pass that rational interests have a certain ascendancy in the world, as well as an absolute authority over it; for they arise when an organic equilibrium has naturally established itself. Such an equilibrium maintains itself by virtue of the same necessity that produced it; without arresting the flux or introducing any miracle, it sustains in being an ideal form. This form is what consciousness corresponds to and raises to actual existence; so that significant thoughts are something which nature necessarily lingers upon and seems to serve. . . . The mind spreads and soars in proportion as the body feeds on the surrounding world. Noble ideas, although rare and difficult to attain, are not naturally fugitive.

Consciousness is not ideal merely in its highest phases; it is ideal through and through. On one level as much as on another, it celebrates an attained balance in nature, or grieves at its collapse . . . It sees even nature from the point of view of ideal interests, and measures the flux of things by ideal standards. It registers its own movement, like that of its objects, entirely in ideal terms, looking to fixed goals of its own imagining . . . Ideal society is a drama enacted exclusively in the imagination. [Santayana (1905), pp. 137-140]

Santayana's somewhat poetical descriptions here find support from both psychology research and from the Critical theory of the phenomenon of mind. One can at times marvel at the fact that human beings, born with no innate concepts of objects, come to achieve concepts of not only empirical phenomena but also of noumenal objects and ideals which, themselves, do not belong to actual experience. As Piaget said,

Life is a continuous creation of increasingly complex forms and a progressive balancing of these forms with the environment. To say that intelligence is a particular instance of biological adaptation is to suppose that it is essentially an organization and that its function is to structure the universe just as the organism structures its immediate environment. . . . What we must translate into terms of adaptation are not the particular goals pursued by the practical intelligence in its beginnings . . . but it is the fundamental relationship peculiar to consciousness itself; the relationship of thoughts to things. The organism adapts itself by materially constructing new forms to fit into those of the universe, whereas intelligence extends this creation by constructing mentally structures which can be applied to those of the environment. In one sense and at the beginning of mental evolution, intellectual adaptation is thus more restricted than biological adaptation, but in extending the latter, the former goes infinitely beyond it. [Piaget (1952), pp. 3-4]

Ideals are implicitly representations of goals to be achieved. But goals are always future-directed, representations of what is *to be* achieved, and, therefore, inherently teleological in mental-nature. The engine of teleological mental-nature is the process of reflective judgment in *nous* and its reciprocity of intercourse with the logical division of *psyche*. In the Critical theory of mind, objectivity is one of the functional aspects of this intercourse. Let us explore this aspect in a little more detail.

2. The Mental Function of Objectivity

It becomes obvious after very brief reflection that, among the properties and characteristics of the phenomenon of mind, human beings have a capacity for exhibiting a teleological function of mind [Wells (2006), chap. 16]. It is exhibited in every act of planning or preparation as well as in every act of design. The very word "teleology" derives from the Greek words *telos* ("end" or "purpose") and *logos* ("reason") and means "explanation by reference to some purpose, end, goal, or function." In *physical*-natural science "teleological causality" utterly lacks objective validity in scientific explanation; but this idea does have *practical* objective validity as a way to explain human *mental*-nature and in *social*-natural science.

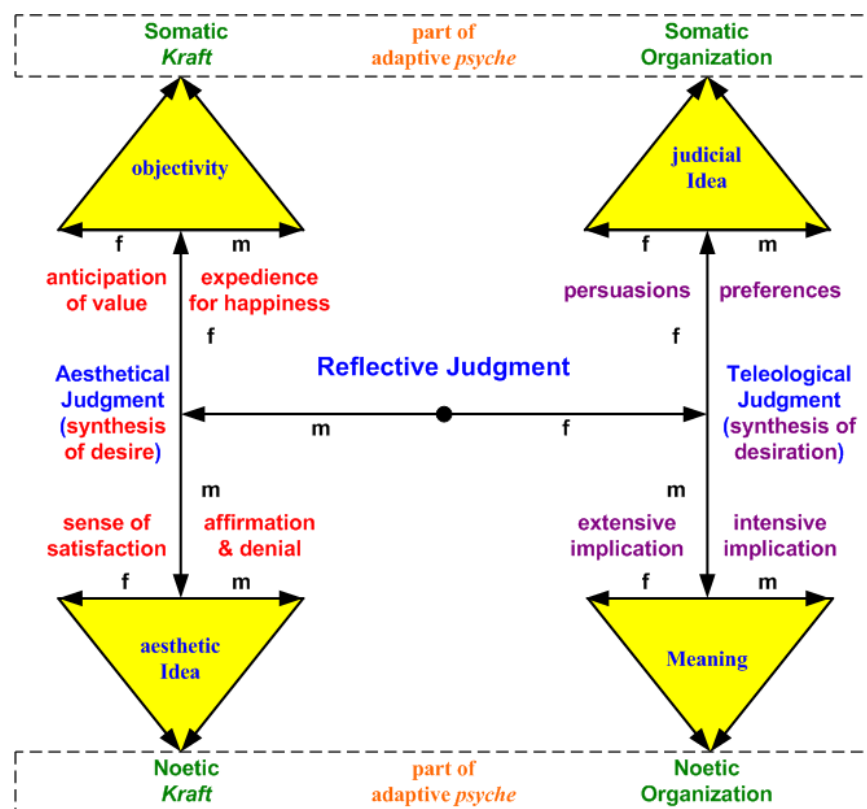


Figure 1: Mathematical organization of the functional reciprocity of reflective judgment and *psyche*. In the technical terminology of the Critical theory of the phenomenon of mind, this structure is called "the synthesis in continuity of reflective judgment and adaptive *psyche*."

Critical deduction of the discussion that follows is found in chapter 16 of Wells (2006). That discussion is quite technical and dives deeply into Critical metaphysics. The discussion here does not delve into all of the details Wells (2006) goes into (which takes up 146 pages in that source); rather, it tries to provide an adequate overview and summary of the conclusions drawn from that original deduction. Unfortunately, even just an adequate overview and summary is rather technical, for which I apologize to the reader. I begin this discussion with a reminder that the mathematical divisions of *nous*, *soma*, and *psyche* in the Organized Being model (chapter 3, sec. 4.1) are merely *logical* (that is, mathematical) divisions, and that a human being must be regarded as a *real* unity in which these mathematical parts are reciprocally co-determining. The mathematical division of *psyche* in the Organized Being model is *made necessary* by the requirement of this real unity in the human being regarded as an Organized Being.

Mathematical *psyche* is that part of the model providing animating principles for *nous-soma* reciprocity. However, the theory of *psyche* does not consist merely of a list of such principles; it also consists of the mathematical structure and form this logical division must have from the Critical principle that everything in the theory must be necessary for the possibility of experience as human beings know it [Wells (2009), chap. 4, sec. 3]. From an empirical perspective of Critical metaphysics, the name for this structural and functional aspect of the theory of *psyche* is "the adaptive *psyche*." To do the basic "job" of *psyche* - namely, maintaining *nous-soma* reciprocity - requires synthetic functions for integrating the division of *psyche* with the division of *nous*. Now, representation of objects (i.e., intuition) as well as motoregulatory expressions of actions in *soma* are all adjudicated in reflective judgment and, so, these synthesizing functions mathematically and functionally must be placed as shown in figure 1 above. There are four of these functions and, collectively, they are called *the synthesis in continuity* [Wells (2006), chap. 16].

In the context of this discussion, continuity is a mathematical idea credited to Leibniz and governed by

four negatively-expressed principles [Kant (1783), 29: 862]:

In Quantity, *in mundo non datur saltus* ("a leap is not given in the [sensible] world");
 In Quality, *in mundo non datur hiatus* ("a gap is not given in the [sensible] world");
 In Relation, *in mundo non datur casus* ("chance is not given in the [sensible] world"); and
 In Modality, *in mundo non datur fatum* ("fate is not given in the [sensible] world").

To these correspond the four functions of the synthesis in continuity in figure 1. These are, respectively, objectivity, the aesthetic Idea, the judicial Idea, and Meaning. These four synthesizing functions provide an organic unity of reflective judgment and *psyche* and produce [Wells (2006), chap. 16], [Wells (2009), chap. 7]:

objectivity: the synthesizing function for continuity in Nature;
 aesthetic Idea: the synthesizing function for continuity in perception;
 judicial Idea: the synthesizing function for continuity in *Existenz*; and
 Meaning: the synthesizing function for continuity in coherence in the context of life.

In Critical epistemology, the technical term **Nature** (capitalized), when applied to a specific object, is the objective representation of all its characteristics and relationships with other objects. Continuity in Nature, as we are discussing it here, refers to continuity in all the phenomena we find in the experience of being a human being, both physical and mental. The synthesis in continuity of objectivity is the mathematical enforcement of the requirement that there can be no *saltus* ("leap") in going from mentality (*nous*) to physicality (*soma*), or vice versa, in that object we call the human being. It is a synthesis of Quantity in reflective judgment overall with Quantity in *psyche*. The latter is called somatic *Kraft* [Wells 2009), chap. 4, sec. 3.1] and is defined as the power of *soma* to either produce or suffer effects.

Quantity in the 2LAR of reflective judgment is Relation and Modality in *aesthetical* reflective judgment. (see figure 1). These headings, respectively, are called **anticipation of value** and **expedience for happiness**. The first has three *senses of interest* for its functional *momenta*; the latter has for its *momenta*: *feeling* of tendency; *feeling* of presentment; and *feeling* of accord [Wells (2006), chap. 14]. The synthesis of these functions of sense and feeling produces, via the animating principles of *psyche*, motoregulatory expressions in *soma*. Symbolically [Wells (2009), chap. 7, pp. 256-260],

anticipation of value + expedience for happiness → somatic expression through somatic *Kraft*.

But, since these factors are all *subjective* and *affective*, why is this called a synthesis in *objectivity*? To best understand this, we must recall that somatic activity provides kinaesthetic feedback to sensibility via receptivity in *psyche*. This was depicted in figure 4 of chapter 3. That figure is reproduced below as figure 2. The emotivity expressed in *soma* gives rise to sensible effects in *nous* which, in turn, affects the cognitive processes that produce objective intuitions and concepts. In this way *affective perceptions and aesthetical reflective judgment give rise to object concepts*, which, in turn, then alter affective perception.

To some this might seem uncomfortably like the old James-Lange theory of emotions, a theory that has been out of favor in psychology for a long time. And, candidly, it is a kind of neo-Jamesian theory but one in better conformity with the "emotion theory" of noted neurologist Antonio R. Damasio [Damasio (1994), pp. 129-142]. Damasio holds that James-Lange was not so much "incorrect" as it was "incomplete." He has proposed a neuroscience theory that goes greatly beyond where William James traveled in the late 19th century to provide a broader and deeper neurological picture in which he contends that "emotions" are a central and necessary constituent of objective thought and rational reasoning. Critical theory does not disagree with Damasio's theory but it does modify and correct certain ontology-centered problems with it.

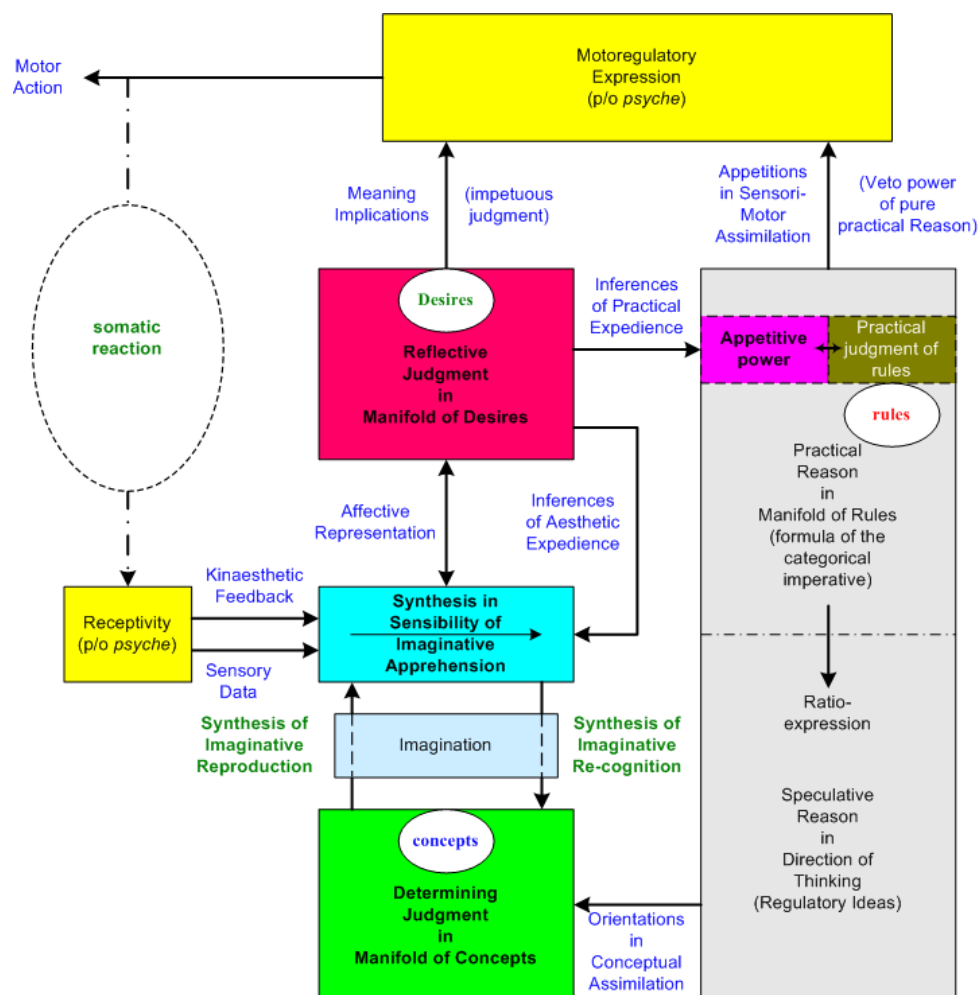


Figure 2: The mathematical organization of the Organized Being in terms of mental organization. Note the kinaesthetic feedback from somatic reactions (in *soma*) via receptivity to the synthesis in sensibility in *nous*.

Damasio wrote,

Regardless of the mechanisms by which emotions are induced, the body is the main stage for emotions, either directly or via its representation in somatosensory structures in the brain. But you may have heard that this idea is not correct, that in essence this was the idea proposed by William James - in brief, James proposed that during an emotion the brain causes the body to change, and that the feeling of emotion is the result of perceiving the body's change - and that time has cast the idea aside. First, there is more to my proposal than what was advanced by James. Second, the attack against James, which held sway throughout most of [the 20th century] and still lingers, is just not valid, although his proposal is neither flawless nor complete. [Damasio (1999), pp. 287-288]

And so we have here the explanatory background needed to deal with the "transference problem" raised in the first section of this chapter. To implement a justice system we must find ways to deal with conflicts of interests - either those of two parties in a dispute or those of the civil Community in relationship to actions by individuals or parties contrary to or in contradiction with those social common interests.

3. The Pervasiveness and Diversity of Social Compacts

Throughout the world we find human beings living in peaceful interaction with other people and doing so

over long intervals of time in Community environments. We are habituated to take this state of affairs for granted and most of us do so most of the time. John Adams called this the gregarious nature of human beings. In his view,

Men, in their primitive conditions, however savage, were undoubtedly gregarious; and they continue to be social, not only in every stage of civilization, but in every possible situation in which they can be placed. As nature intended them for society, she has furnished them with passions, appetites, and propensities, as well as a variety of faculties, calculated both for their individual enjoyment, and to render them useful to each other in their social connections. There is none among them more essential or remarkable than the *passion for distinction*. A desire to be observed, considered, esteemed, praised, beloved, and admired by his fellows is one of his earliest, as well as keenest, dispositions discovered in the heart of man. If any should doubt the existence of this propensity, let him go and attentively observe the journeymen and apprentices in the first workshop, or the oarsmen in a cockboat, a family or a neighborhood, the inhabitants of a house or the crew of a ship, a school or a college, a city or a village, a savage or a civilized people, a hospital or a church, the bar or the exchange, a camp or a court. Wherever men, women, or children are to be found, whether they be old or young, rich or poor, high or low, wise or foolish, ignorant or learned, every individual is seen to be strongly actuated by a desire to be seen, heard, talked about, approved and respected by the people about him and within his knowledge. [Adams (1790), pp. 338-339]

Adams exhibits an extravagance of reasoning here, both in reifying a "nature" that "intended men for society" and in universalizing it to "every possible situation in which they can be placed." A statistician might say Adams falls victim to "sample bias" in his conclusion from the fact that all his "data points" are people who have chosen to live in community or association with others for whatever reasons they may have. By Aristotle's "nothing formed by nature can develop habits contrary to that nature," if a creator-nature "intended them for society" then the phenomenon of antisocial individuals should be an impossibility. Man has no innate social instinct but he doesn't need one; when he *chooses* to live in Community with others, he serves his own Duties-to-himself by means of self-obliged reciprocal Duties to others. Where the latter frustrates the former, there sociability breaks down and Community collapses.

Nonetheless, it is true that in the greater majority of instances, and over considerable stretches of time, the gregariousness Adams so admired is in fact more often the rule than the exception. *Self-interest* lies at its roots but this gregariousness is nonetheless evidence of the *Existenz* of social compacts between and among individuals on a wide scale of human life. That people become habituated to them detracts not one iota from their importance.

But herein also lies the rub; we do not find one single and universal social compact in force among human beings. We find instead a great diversity of them - almost all of which are largely uncoded, unwritten, and more the products of accidental associations and habituations than of consent by designed intent. Mill wrote,

People are accustomed to believe and have been encouraged in the belief by some who aspire to the character of philosophers, that their feelings on subjects of this nature are better than reasons and render reasons unnecessary. [Mill (1859), pg. 5]

Social compacts are as varied as are the divers kinds of human associations we find exhibited in life. All of them manifest in appearances some number of expectations for how people ought to behave in their social interactions, and all of them allow for some liberties of action but also set limits upon what these liberties allow. Regarding this, Mill also wrote,

But though this proposition is not likely to be contested in general terms, the practical question, where to place the limit - how to make the fitting adjustment between individual independence and social control - is a subject on which nearly everything remains to be done. All that makes existence valuable to anyone depends on the enforcement of restraints upon the actions of other people. Some

rules of conduct, therefore, must be imposed, by law in the first place, and by opinion on many things which are not fit subjects for the operation of law. What these rules should be is the principal question of human affairs; but if we except a few of the most obvious cases, it is one of those which least progress has been made in resolving. No two ages, and scarcely any two countries, have decided it alike, and the decision of one age and country is a wonder to another. Yet the people of any given age and country no more suspect any difficulty in it than if it were a subject on which mankind has always been agreed. The rules which obtain among them appear to them self-evident and self-justifying. [*ibid.*, pg. 4]

Mill's words can seem as if he presupposes that there is, or ought to be, some one fundamental set of rules of conduct that can or ought to apply to all of humankind and to every mini-Community universally. Is such a presupposition really valid or even desirable as a goal? Some might, and do, argue that Christianity's "Golden Rule," i.e., "In everything, do to others what you would like others to do to you" [Matthew 7:12], is such a rule. However, some disagree even with this. Irina Cozma, writing in *The Harvard Business Review* (Aug. 2, 2022), says, "It's time to adopt a new 'Golden Rule:' Treat others as *they* would like to be treated. It's a small change, but one that can make a huge difference."

Theories are pretty things until they are juxtaposed with actual facts and real circumstances. Mill did propose his own universal, albeit limited, rule. He wrote,

The object of this essay is to assert one very simple principle, as entitled to govern absolutely the dealings of society with the individual in the way of compulsion and control, whether the means used be physical force in the form of legal penalties, or the moral coercion of public opinion. That principle is, that the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number is self-protection. That the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. [Mill (1859), pg. 8]

This seems to be, in at least its first appearance, a reasonable prescription although, again, there have been and are some people who express disagreement even with this precept. As a moral principle, Mill's principle is at least congruent with what Santayana wrote about morality:

The sad business of life is rather to escape certain dreadful evils to which our nature exposes us, - death, hunger, disease, weariness, isolation, and contempt. By the awful authority of these things, which stand like specters behind every moral injunction, conscience in reality speaks, and a mind which they have duly impressed cannot but feel, by contrast, the hopeless triviality of the search for pleasure. [Santayana (1896), pg. 17]

One question that can be asked about Mill's principle is: "What is 'harm'?" For instance, if you are a Buddhist and I am a Christian, does *your* religious faith harm *me* in any way? Speaking for myself, I say it does not and I additionally hold that *I* possess no warrant whatsoever to interfere with your holding-in-faith to Buddhism. But there are other people, found among the memberships of all major religions, who think that, in some generally unspecifiable way, a person's belief in some other religion does do harm to them. Views of this sort are generally examples of adult moral realism. Not infrequently, one also finds naked religious bigotry evidenced as well, e.g. in Smith (2022) where one reads:

All non-Biblical religions are inspired by lying spirits. This includes not only Hinduism, but Buddhism - a Hindu "heresy" - Islam - a Judeo-Christian "heresy" - post-Biblical Judaism, and the thousand other religions and cults that do not confess Jesus as the One True Lord and Savior. . . . Until the end of history, when Christ returns in judgment, there is warfare between the Truth in Christ and the lies of the Devil and his emissaries. [Smith (2022)]

Do you suppose rhetoric like this could lead to harm? For the record, I do. I think it is very likely to. Again speaking for myself, I think essays like this one are Unchristian. At the same time, I have no

reasonable doubt the author of Smith (2022) would deny his words harm anyone and, as "proof," would point out another part of that essay where he writes: "So, what is my point? Am I writing to say something like India and Hinduism are evil? No. I am writing to say Christians should pray for India - for the Indian people to be released from their bondage to Hinduism, to pray for the Holy Spirit to do a work in this great nation to bring this great people to true enlightenment: the light of the knowledge of God in the face of Jesus Christ" [Smith (2022)]. In mathematics a "proof" is "an argument that convinces"; I am not convinced; it reminds me too much of the popularized misquote attributed to Henry II: "Will no one rid me of this meddlesome priest?" The article blatantly promotes the self-bondage of moral realism.

So, what is "harm"? Some cases seem to be clearcut and obvious: murder; inflicting physical injury; theft of property; theft of persons (kidnapping); extortion; breach of a legal contract; fraud; and other such actions proscribed in the legal codes of Western nations. In other cases, whether or not some action does harm to someone is much less clearcut. At root, injustice is a feeling and is tied up with an individual's personal and private practical "moral code" he has constructed in his manifold of rules. Therefore, people can and do sometimes subjectively disagree about whether some action causes "harm" to someone. What Justice Potter Stewart said about "hard core pornography" in *Jacobellis v. Ohio* in 1964 can often be said of "harm" as well:

I shall not attempt today to further define the kinds of material I understand to be embraced within that shorthand description; and perhaps I could never succeed in intelligibly doing so. But I know it when I see it [Justice Potter Stewart (1964), *Jacobellis v. Ohio*].

The dictionary definition of the noun "harm" is "physical or mental damage; hurt; injury." If you were to accidentally shoot someone in the foot, this would certainly meet the dictionary definition of harm. But if you were to "hurt someone's feelings" have you "harmed" that person? Most people would likely say no, but some people would say yes. The notion of "harm" has an objectivity transference issue not too far removed from the objectivity transference issues that confront "injustice" or "hard core pornography." Legal systems grapple with these sorts of issues all the time; legislatures persistently create them.

Every human constructs his or her own practical manifold of rules. These representations are all non-conscious, arise from actual experience (and the affective perceptions that go with it), and the individual manifolds differ from person to person. They are "objective" only from the practical Standpoint of Critical Epistemology and only in the sense that they lead directly to appetites and actions by individuals. Even Krista, the antisocial person whose case we briefly looked at earlier, has a "moral code"; it merely is vastly different from what I and, I hope, you call "moral." To her, doing "harm" to someone is merely a means to her ends and she regards that means as morally permissible because she has constructed no representations of reciprocal Duties or Obligations in her manifold. All her Duties and Obligations are Duties- and Obligations-to-herself. This is why psychiatrists describe her as a person "who has no conscience" and "exhibits an antisocial personality disorder."

This is why it is an error, and contrary to human nature, to suppose there is or could be a universal moral code (as Kant erroneously presumed) or some absolutely uniform *and just* "one-size-fits-all" legal code that "establishes justice" in every and all possible cases that could arise in human experience. Actual human experiences - and arousals of feelings of injustice - are contingent, and what experience has taught in the past can be gainsaid by what happens tomorrow. A "uniform code of Justice" applicable in every situation may be a very pretty and desirable mathematical ideal, but it is a thoroughly impractical Object. The question then becomes one of how to institute a justice system capable of learning, adapting, and improving itself, of learning "how to right new wrongs," or, in short, how to be a *flexible* institution by *design*.

Here is where *practically* valid understanding and analysis of the pervasiveness and diversity of social compacts becomes crucial for institution of justice systems. Since the earliest days of the theory in the hands of Hobbes, Locke, and Rousseau, social contract theory has been treated as if there were only one

such compact in a given Society. *This is not true.* There is one operating in every cooperating association of people. In very few cases are the participating associates conscious of it or think of their association in these terms; but nonetheless these associates each have some common set of expectations governing their behaviors and conduct in the cooperative interactions they have with each other. It can be seen even in the games that groups of little boys play with each other once these children are old enough to understand that their games must be played according to rules. One of Piaget's observations illustrates this phenomenon:

Rue (11) belongs to the third stage in regard to the practice of rules. He claims that he often invents new rules with his playmates: "*We make them [up] sometimes. We go up to 200. We play about and then hit each other, and then he says to me: 'If you go up to 100 I'll give you a marble.'*" Is this new rule fair like the old ones, or not? - *Perhaps it isn't quite fair, because it isn't very hard to take four marbles that way!*- If everyone does it, will it be a real rule, or not? - *If they do it often, it will become a real rule.* - Did your father play the way you showed me, or differently? - *Oh, I don't know. It may have been a different game. It changes. It still changes quite often.* - Have people been playing for long? - *At least fifty years.* - Did people play marbles in the days of the 'Old Swiss'? - *Oh, I don't think so.* - How did it begin? - *Some boys took some motor balls (ball bearings) and then they played. And after that there were marbles in the shops.* - Why are there rules in the game of marbles? - *So as not to be always quarreling you must have rules, and then play properly.* - How did these rules begin? - *Some boys came to an agreement amongst themselves and made them.* - Could you invent a new rule? - *Perhaps . . . [he thinks] you put three marbles together and you drop another from above on the middle one.* - Could one play that way? - *Oh, yes.* - Will that be a fair rule like the others? - *The chaps might say it wasn't very fair because it's luck. To be a good rule, it has to be skill.* - But if everyone played that way, would it be a fair rule, or not? - *Oh, yes, you could play it just as well with that rule as with the others.*" [Piaget (1932), pg. 66]

Compared to the lofty, and sometimes mystic, esteem some accord the Idea of the Social Contract, it might seem like a demotion in stature to point out the *Dasein* and roles social compacts have in the games of little children. I would argue, however, that the pervasive presence of social compacts in every sphere of human social interaction is indicative of not only great importance for the Idea but, also, that the phenomena of social compacts is of the highest importance for the possibility of Societies overall. And, as they are human-caused phenomena, they reflect something fundamental in the character of human nature. Traditionally, social contract theory has been seen almost exclusively as a topic belonging to formal institution of government (even if its treatment has been rather less than formal). But, on the contrary, its real scope goes far beyond this historical limitation.

I think it is instructive to think about little Rue's explanation for why the game of marbles *necessarily* must have rules: "*So as not to be always quarreling you must have rules, and then play properly.*" In this innocent, and thoroughly practical, maxim we can discern why nations and Societies have laws. Rue's little Society of marble-players would disintegrate if the boys were always quarreling constantly. If it did, then no one would get to have fun playing marbles anymore - and the occurrence of fistfights would likely go up in frequency. It is not too much of a stretch to say "the rules of marbles" constitute the body of a "legal code" these boys erect for themselves around a social compact for their own satisfactions. Note, too, what else he says: "*It may have been a different game. It changes. It still changes quite often.*" There is nothing either sacred or eternal in laws or, for that matter, in social mores and folkways. Rue and his playmates are quite content to make changes to their "laws" when all agree a change in some way enhances or, as Mill might have put it, "increases the kinds and amounts of objective good" the boys find in their games of marbles. This is the definition of Progress. Note, too, his statements about: the origins of the rules, "*Some boys came to an agreement amongst themselves and made them [the rules]";* as well as the contingency of the "rule fabric" itself: "*Oh, yes, you could play it just as well with that rule as with the others.*" Is there not a faint echo of Thoreau discernible in these maxims, i.e., "*Can there not be a government in which majorities do not virtually decide right and wrong, but conscience? - in which majorities decide only those questions to which the rule of expediency is applicable?*" [Thoreau (1849), pg. 2].

It is true, of course, that the mini-Communities children form with their playmates do not, and need not, make provisions in *their* social compacts to cover many of the considerations *adult* Societies must take into account for purposes of public safety, commonwealth prosperity, or defense against external enemies. A Society protects its children and provides for these needs in the social compacts of adult governance. No one, after all, would take the phrase from Isaiah 11:6, "a little child shall lead them," too literally. Still, there are lessons adult theorists - especially those who bind themselves up in adult moral realism - might learn from study of children's mini-Communities and comparison of child social compacts with those of the uncounted multitude of adult mini-Communities - small businesses, union locals, athletic and social clubs, churches, municipal governments, and so on in seemingly limitless mini-Community applications where peaceful human coexistence is found. Scholars of social-natural sciences - including political science, economics, and legal science - err whenever they forget this teaching of Francis Bacon:

There are and can exist but two ways of investigating and discovering truth. The one hurries on rapidly from the senses and particulars to the most general axioms, and from them, as principles and their supposed indisputable truth, derives and discovers the intermediate axioms. This is the way now in use. The other constructs its axioms from the senses and particulars by ascending continually and gradually till it finally arrives at the most general axioms, which is the true but unattempted way. . . .

Each of these two ways begins from the senses and particulars, and ends in the greatest generalities. But they are immeasurably different; for the one merely touches cursorily the limits of experiment and particulars, while the other runs duly and regularly through them - the one from the very onset lays down some abstract and useless generalities, the other gradually rises to those principles which are really the most common in nature. [Bacon (1620), pp. 15-16]

The earliest Mesopotamian legal codes (chapter 1) tried Bacon's "first way" inasmuch as they flowed from the interests of kings (absolute monarchs) as these rulers and their councilors *thought* they understood what those interests were and what measures would serve them. These measures they could back with the threat or actual application of deadly force. If ever Bacon's "first way" could succeed in politics and law, it should have been in that time, place, and circumstance. Yet even then and there, those ancient rulers found it expedient, at the least, and sometimes practically necessary to hand down *de facto* local expectations of ruling authority to local judges and magistrates, who then recognized and accommodated their rulings to *local* mores, folkways, and traditions. Pirie writes,

In practice, most legal disputes were probably resolved locally, through mediation or intervention of officials, regional governors, or respected elders. Farmers would have appealed to a local official if they felt that a moneylender was charging too much interest; a freeman in the city could have asked a government official to help recover his runaway slave; and an artisan might have gathered friends and neighbors to persuade a mediator that he was being unfairly accused of a scam. The mediators would have treated each individual case on its own facts, but they would have taken account of the general principles expressed in Hammurabi's laws. [Pirie (2021), pg. 31]

The mental phenomena of interests, feelings of injustice, and private personal "moral codes" in the manifold of rules are inseparably bound together in cycles of human judgmentation. Interests (anticipation of satisfactions or dissatisfactions) and feelings of injustice (as species of the feeling of *Unlust*) are adjudicated by aesthetical reflective judgment, while practical rule structures pertaining to "right vs. wrong" or "good vs. evil" action determinations (practical "moral" rule structures) are judged by the process of practical judgment in the synthesis of appetites in practical Reason. *None* of these judgments are judgments of ontological Objects, and their relationships to expressed actions require the transference effected in the synthesis of objectivity as discussed above. When an interest of a person is hindered, threatened or thwarted, by the actions of another person, that hindering, threatening or thwarting is felt to be "an injustice" in the eyes of that person. The issue confronting a civil Society is how to deal with this given the innumerable differences and potential conflicts raised by the individuality of every human being and the fundamentally subjective human-natural roots of "justice" and "injustice."

4. Institution by Pyramidal Hierarchies

The historically most often used approach, taken by non-consensus democracies, republics, and monarchy/oligarchy-ruled Societies alike, fails to recognize the *Dasein* of the transference issue and makes no attempt to address it. This practice has been to erect a division of labor in the form of a pyramidal *hierarchy* of authority figures. These authority figures decree what the laws will be; they administer, manage and enforce the various decrees, functions and departments of government; and they determine how disputes and conflicts will be resolved and crimes are punished. When one remembers that our early models of "civilized" government in ancient Mesopotamia were military dictatorships, it is not surprising that these institutions took "authority" to mean either "institutionalized and legal power as manifested in a social system" or as "the individuals who wield such power" [Reber & Reber (2001)]. But what is "power" in social contexts? The usual dictionary definition of this word is "possession of control, authority, or influence over others," but "possession of," "control," "authority," and "influence" are all ambiguous and noumenal terms when viewed through the lens of ontology-centered metaphysics. Bealey writes,

Power is the central concept in political science, yet it remains elusive. There is no unit of power so it cannot be quantified. We can speak of some having 'less power' or 'more power' but these are assessments, even guesses. . . . Probably the best known definition of power is that of Max Weber (1864-1920) who described it as 'the chance of a man or number of men to realize their own will in a communal action against the resistance of others who are participating in the action'. [Bealey (1999)]

A description is not a definition or an explanation. One might just as well describe "power" as "the likelihood of success in getting one's way." And so, again, we turn to epistemology-centered metaphysics.

Deontologically, **authority** is possession of the *Kraft* of causing something to become greater, to increase, to be strengthened, or to be reinforced in some way. Here **Kraft** refers to the ability of a person to do or cause to be done something in particular that stands as the Object of the *Kraft*. One English translation of the German word *Kraft* is "power." An **authority figure** is the position of an agent of leadership governance charged with the Duty of causing the association's general success and welfare to become greater, to increase, to be strengthened or to be reinforced. Success and welfare are evaluated in terms of manifest Progress and Order for the body politic of the Community.

In pyramidal hierarchy governance institutions, those who determine how disputes and conflicts will be resolved, and pass sentences on those who are judged guilty of offenses, are the authority figures in its legal system. It is true that, in matters of dispute, mediators or arbitrators might be and frequently are called in first to help resolve disputes; but if mediation or arbitration fail then the matter resorts back to those authority figures. To paraphrase Santayana, these authority figures "stand like specters behind" every mediation and arbitration because, as Hobbes put it,

Hereby it is manifest, that during the time men live without a common Power to keep them all in awe, they are in that condition which is called War; and such a war as is of every man against every man. [Hobbes (1651), pg. 77]

Hobbes is not correct in his conclusion, although his error is understandable. There was no "common Power to keep them all in awe" in the BaMbuti Pygmy group Turnbull lived with and studied in 1962 [Turnbull (1962)]. Many uncounted centuries had gone by since Europe had been inhabited by hunter-gatherer Communities living in *consensus* democracy (*Gemeinschaft*) Societies like the BaMbuti, and Hobbes - although an educated man for his time - knew nothing at all about Communities like theirs. The governance of Society by hierarchical political and legal structures is not an innately driven consequence of human nature. Indeed, the characteristics of pyramidal hierarchies are often contradictory to it. One reason for this is the baneful effect of Adam's passion for Ambition that drives some authority figures to place their own self-interests above those public Duties expected and demanded of the offices they hold.

In a system of popular governance, the legitimacy of and justification for the office held by an authority figure comes from the citizens whose congruent interests are served by the function performed by that office. Critical theory of social-natural political science calls this the ***expectation of authority*** - the demand by citizens of a Community that a person holding a position as a designated authority figure possess the *Kraft* of authority and will actualize it for the benefit of their common Community. As Tocqueville remarked about New England township government in the early 1800s, "the office should be powerful and the officer insignificant" [Tocqueville (1836), pg. 71]. He also wrote,

The township of New England possesses two advantages which strongly excite the interest of mankind: namely, independence and authority. Its sphere is limited, indeed, but within that sphere its action is unrestrained. This independence alone gives it a real importance, which its extent and population would not insure. . . .

In the American townships power has been distributed with admirable skill, for the purpose of interesting the greatest possible number of persons in the common weal. Independently of the voters, who are from time to time called into action, the power is divided among innumerable functionaries and officers, who all, in their several spheres, represent the powerful community in whose name they act. The local administration thus affords an unfailing source of profit and interest to a vast number of individuals.

The American system, which divides the local authority among so many citizens, does not scruple to multiply the functions of town officers. For in the United States it is believed, and with truth, that patriotism is a kind of devotion which is strengthened by ritual observance. In this manner the activity of the township is continually perceptible; it is daily manifested in the fulfillment of a duty or the exercise of a right; and a constant though gentle motion is thus kept up in society, which animates without disturbing it. [Tocqueville (1836), pp. 66-68]

This character of popular governance is one of many things that hierarchy tends to corrupt and destroy. A number of others are detailed and discussed in chapter 13 of Wells (2017). Hierarchy, practiced as it is by monarchy/oligarchy ideas of rulership, appeals not only to the passion for Ambition but to the passion for Vanity as well [Adams (1790), pg. 140].

The political characteristics of New England which Tocqueville so clearly admired were not found throughout the young United States, as he himself also observed. As one traveled south and west from New England, other more hierarchical systems were encountered and increasingly tended towards more of a resemblance to the pre-15th century English feudal system. The resemblance was greatest in the Old South and what was called its "Planter Aristocracy." Indeed, a quarter-century after Tocqueville published the words above, this Planter Aristocracy, seeking to protect its institution of slavery and taking advantage of the absence of state-instituted public education in the South [Wells (2013), chap. 4, §§ 5-8], formed the Confederate States of America and ignited America's Civil War of 1861-1865.

Even in colonial New England itself, hierarchical corruption of governance could be observed in going up to the level of colony government. Indeed, the colonial government of Massachusetts had displayed what could accurately be described as "imperial" tendencies. Jernegan wrote,

Massachusetts by an unwarrantable construction of her charter now laid claim to all the land of New Hampshire and Maine lying east of the most northerly source of the Merrimac. Having secured the patent rights to the Dover lands, and taking advantage of a church quarrel (1641), she annexed the town of Dover as well as Portsmouth, and two years later allowed the election of deputies to the general court although they were not church members. Soon Exeter was claimed and absorbed, and New Hampshire for the next forty years was a part of Massachusetts. [Jernegan (1929), pg. 138]

Governance by pyramidal hierarchy is merely a tradition of larger-populace human associations whose people do not know everyone personally, and whose size and geographic extent render consensus democracy impractical. How this might evolve can be seen in how New England townships developed.

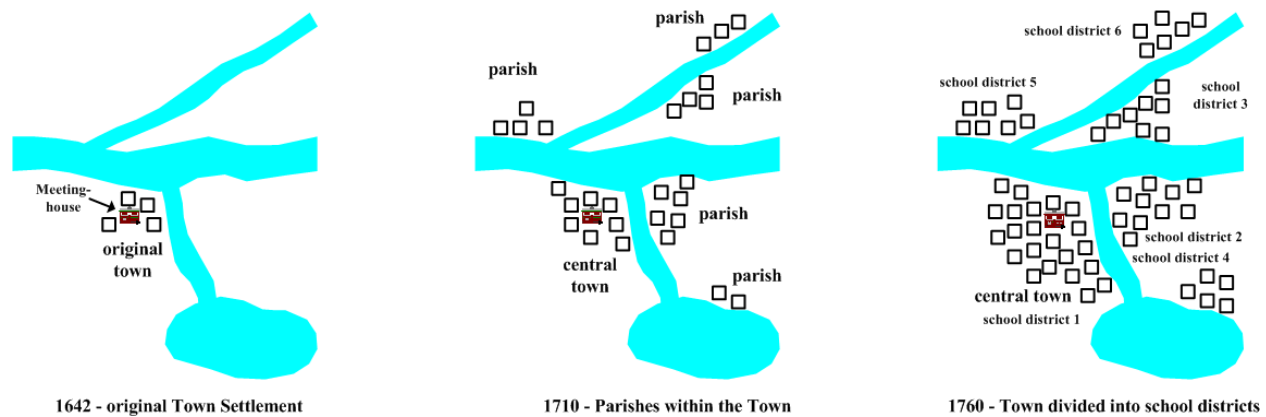


Figure 3: Evolution of Massachusetts townships from 1642 to 1760.

The people of early Massachusetts founded a Puritan Society in which the Meeting-house was the center of town life, religion, politics, and public education for children (1642). As time passed and the population level grew, practical necessity led to more people living at ever greater distances from the Meeting-house. People no longer personally knew everyone else, it grew increasingly impractical for everyone to journey to the Meeting-house for church services, and a system of local parishes developed. At this stage of the development, the town settlement had evolved from a single *Gemeinschaft* Community into an association of parish *Gemeinschaft* Communities. When Puritan Society fell and was replaced by Yankee Society, these parishes further evolved into school districts. The township itself turned into a more diverse but still highly unified association of *Gemeinschaft* mini-Communities and, in Tocqueville's words, "The administrative power in the United States presents nothing either centralized or hierarchical in its constitution" [Tocqueville (1836), pg. 71]. That has become less true today in the United States than it was in 1836, but Tocqueville's chapter V presents in splendid detail the evolution of American political and legal institutions.

A hierarchy is an arrangement of persons or things *in order of* rank, grade, class, function, etc. There are no grades, classes, or social functions in a BaMbuti group and no class divisions except between the adults and the children (who do not participate in their democratic process of consensus building). Pyramidal hierarchy in human political institution is in no way necessary, as Tocqueville's history shows us, and it is a structure inimical to human nature, to liberty, and to justice.

5. The Idea of Heterarchy Structure for Justice Systems

Governance by hierarchy is not the only way for human beings to institute a government or a justice system. The BaMbuti, for example, govern themselves by their none-too-rigid mores and folkways, and deal with the worst cases of criminal behavior through banishment [Turnbull (1962)]. Another example of non-hierarchical governance is called **heterarchical** governance. The word "heterarchy" literally means "multiple rule" and refers to an organization of governance which coordinates diverse interests of various groups such that common interests are satisfied without special interests being frustrated [Wells (2017), chap. 13]. Tocqueville's New England is an example of a system much more heterarchical than hierarchical. It did, however, owe this character to some key elements of a social contract, as well as to particular conditions of education in America [Wells (2013), chaps. 4, 7]. Tocqueville wrote,

I have already observed that the principle of the sovereignty of the people governs the whole political system of the Anglo-Americans. . . . In the nations by which the sovereignty of the people is recognized, every individual has an equal share of power and participates equally in the government of the state. Why, then, does he obey society, and what are the natural limits of this obedience? Every individual is always supposed to be as well informed, as virtuous, and as strong as any of his fellow

citizens. He obeys society, not because he is less capable than any other of governing himself, but because he acknowledges the utility of an association with his fellow men and he knows that no such association can exist without a regulating force. He is a subject to all that concerns the duties of citizens to each other; he is free, and responsible to God alone, for all that concerns himself. Hence arises the maxim, that everyone is the best and sole judge of his own private interest, and that society has no right to control a man's actions unless they are prejudicial to the common weal or unless the common weal demands his help. This doctrine is universally admitted in the United States. [Tocqueville (1836), pp. 64-65]

Much of what Tocqueville says here is true but his statement also contains subtle shortcomings - the chief of which is his failure to recognize the *Dasein* of mini-Communities and their effects on the state-at-large. A Society is comprised of mini-Societies with their own special interests and social compacts that are binding upon their specific members but not on members of other mini-Societies. Most of these mini-Societies' special interests bear only indirectly, and sometimes not at all, on overall political governance of the parent Society. Another complication Tocqueville's statement does not address or recognize is the fact that adult human beings are almost always members of *multiple* mini-Communities *simultaneously*. A third complication is that memberships in mini-Communities are frequently not tied to geography. The association might, for example, be a professional or trade association. The American Medical Association, the Wisconsin Bakers Association, the American Bar Association, the American Federation of Teachers, the Roman Catholic Church, the Civil Air Patrol, and the United States Marine Corps are just a few of many that come to mind. Any two mini-Communities might or might not routinely interact with each other, or they might interact indirectly through some third mini-Community. When Tocqueville, Mill, and others set the individual next to "society" or the individual's well-being next to "the common weal" and seem to thereby imply that these are the only juxtapositions that need be considered in institution of the justice system of a Society, this is an extravagance of reasoning by over-specification. Society is a much more complicated social phenomenon than that picturing presents. What Donne wrote is food for thought for all social institutors as much as for the poet or the preacher:

No man is an island, entire of itself; every man is a piece of the Continent, a part of the Maine; if a Clod be washed away by the Sea, Europe is the less, as well as if a Promontory were, as well as if a Manor of thy friends, or of thine own were; Any Man's death diminishes me, because I am involved in Mankind; And therefore never send to know for whom the bell tolls; It tolls for thee. [Donne (1623), 17th Meditation]

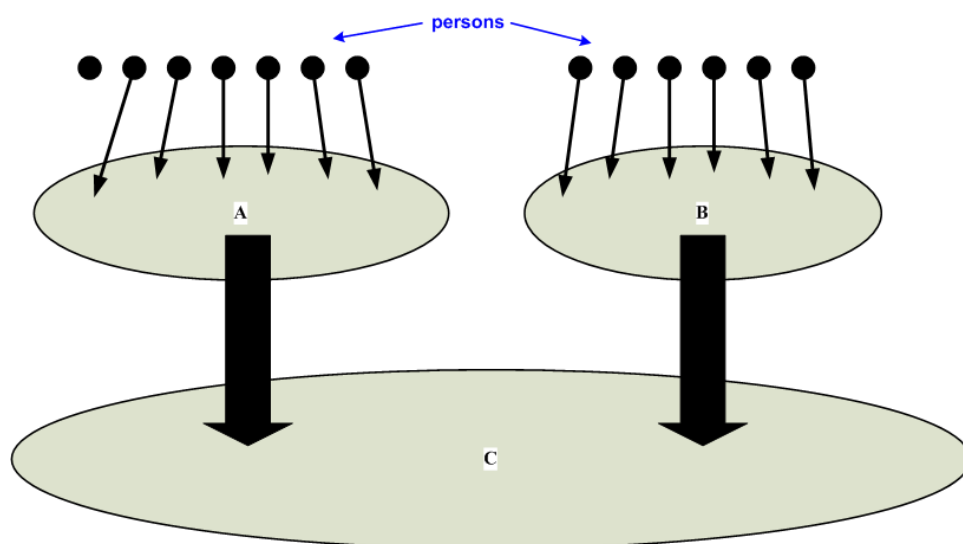


Figure 4: Illustration of Community Growth by Accretion. A and B are mini-Communities. C is a Community formed from uniting them. The figure also depicts one person who is outlaw to all three Communities.

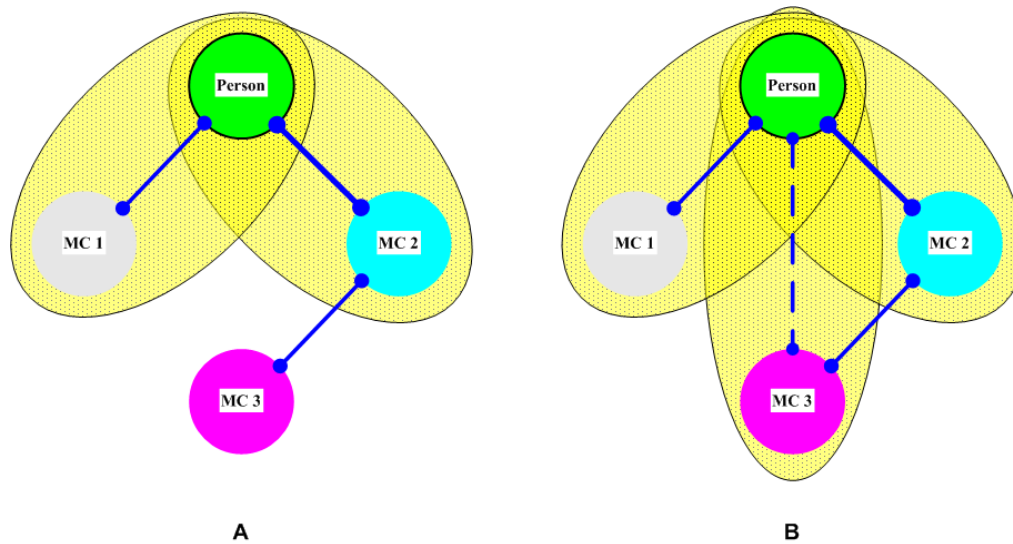


Figure 5: Buildup of an individual person's personal society by accretion. The ovals indicate mini-Community memberships for the Person's personal society. The blue lines denote bonding relationships he has with his mini-Communities. Figure 5-A depicts a situation where the person is a member of mini-Communities MC1 and MC2 and one of these (MC2) comes to bind itself with a third mini-Community (MC3) because these mini-Communities have congruent interests served by this binding. The person whose personal society is being depicted might not know one single individual in MC3 yet, because of his membership in MC2, he nonetheless expands his personal society to include MC3, as depicted in figure 5-B. His personal society grows although he knows not one person in mini-Community MC3.

Large civil Societies develop and grow through a process of social accretion when smaller mini-Societies and mini-Communities join with one another. The basic idea of this accretion process is pictured in figure 4 above. This figure depicts two groups of persons who initially form two mini-Communities, A and B. The figure also depicts one person who does not join either of these mini-Communities, choosing to remain an outlaw to both. Members of mini-Communities A and B each have their own common binding interests and each mini-Community has special interests, peculiar to it and different from those of the other. At some later point, mini-Communities A and B choose to join together to form a larger mini-Community, C. This larger Community is bound together by common interests shared by the members of A and B. The number of Community C common interests is smaller than those of either A or B because those Community C common interests omit interests special to and peculiar of A or B.

Figure 4 is, of course, a greatly simplified depiction of the social accretion phenomenon. Now imagine what the social situation would look like when every person in the figure belongs not only to one but to several *additional* mini-Communities simultaneously, whose memberships include additional persons who do not belong to either mini-Community A or to mini-Community B. As you can appreciate, this "network" of interacting and inter-joining mini-Communities can quickly become extremely complicated, and especially so as the population of persons in overall Society grows. Figure 5 illustrates one feature of this, in which a Person's personal society grows to include people he does not even personally know. At this point in a Society's accretion grow process, the phenomenon of *stereotyping* becomes a crucially important factor; his knowledge of people in MC3 the Person depicted in figure 5 has is *entirely theoretical* because he has no immediate knowledge of experience with anyone in MC3. He knows them as abstract persons (stereotypes) rather than as real persons known to him through experience.

There is a darker side to the phenomenon of accretion-by-stereotyping. This darker side is depicted in figure 6 below. Figure 6 depicts the same situation as figure 5 except, in this case, the relationship between mini-Community MC2 and mini-Community MC 3 is an *antibonding* relationship; the two groups have incongruent interests and potentially could harbor feelings of hostility toward each other.

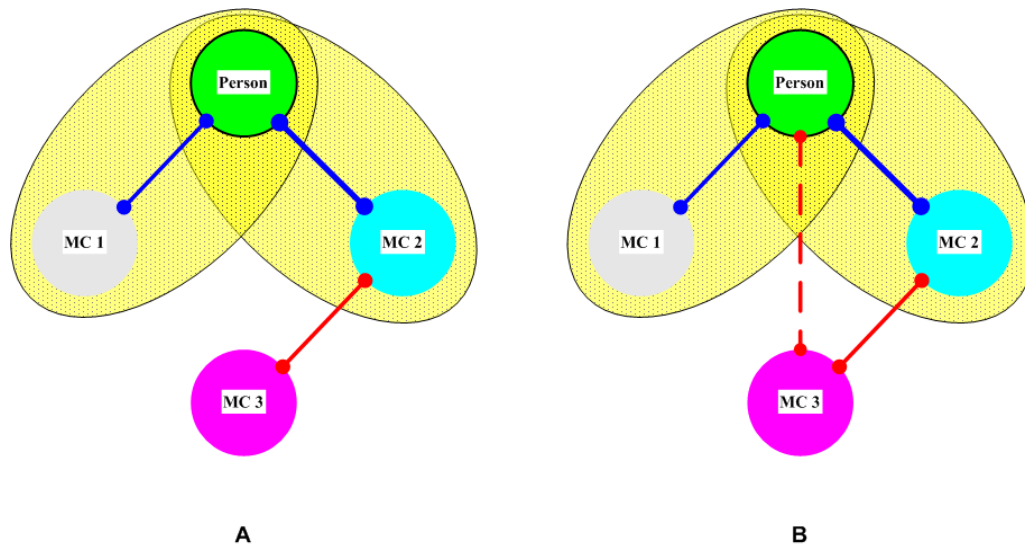


Figure 6: Enemy-building by social accretion. The situation depicted here is similar to that of figure 5 except that in this case MC2 and MC3 feel hostility toward each other, typically because the two groups have incongruent interests important enough to each that these incongruent interests are not subordinated to any congruent interests they might have. In this case, Person *excludes MC3 from his personal society* and harbors hostility toward its members merely because he knows them only as abstract people (stereotypes).

The process depicted in figure 6 is a process of enemy-building through social accretion by stereotyping. Demagogues and other people with sinister designs exploit stereotyping, and many of the uglier uses of deceptive propaganda are aimed at achieving this effect. Indeed, the tactic is used so often that a person would be exercising prudence if he were to make it his maxim to suspect sinister intent whenever he encounters propaganda and demagoguery. It is prudent because, as a wise man said long ago,

He who has a thousand friends has not a friend to spare,
And he who has one enemy will meet him everywhere. [Ali ibn Abi Talib, *A Hundred Sayings*]

Complications introduced by social accretion factors such as this present a justice system with a great many formidable challenges.

A large and populous civil Society is a network of interconnecting and interacting mini-Communities forming *layers* of bonded mini-Communities which have joined together for specific purposes benefitting their members. What these purposes might be in any particular instance, and what tacit or explicit expectations these members have for their layered associations, can and do differ from those seen in other instances of civil associations and their bonding interrelationships. The members of these associations are that *association's* citizens, and the membership of one particular association does not necessarily extend to all the citizens of a general Society, e.g., a nation-as-a-whole. Likewise, the rules ("laws") and customs of one particular association do not *necessarily* extend or apply to other associations, or theirs to its. As a simple example, consider a group of friends who decide to form a card club that meets once a month to play cards and enjoy each other's fellowship. Their social compact they establish for governing and guiding the customs, rituals, and rules of their club do not extend to people who are not its members, nor are they compelled to admit a new member to their ranks by command of anyone. Yet all of their members are also particularly and individually members of other mini-Communities, and when each of them is acting *in these other contexts* the social compact of their card club mini-Community does not apply in those other contexts. *All social compacts are context specific.* In Critical epistemology, **context** (*Zusammenhang*) is the *sphere of concepts, combined by judgment with the concept said to have the context, which delimits the applicable scope of that concept in Reality.* The idea of context is of crucial and fundamental importance in Critical Epistemology and in every social-natural science.

Pyramidal hierarchy institutions are constitutionally unfit to deal with the complexities of context in social organization. Hierarchy tends to appeal to many people who are very idealistic or who are ideology-driven, and it appeals to them to look for precepts, maxims, and rules of the most generalized type, which hierarchical organization seems to offer the best possibility for instituting. However, this simplicity and possibility are illusional because, to achieve it, abstractions have to be made from the contexts that shape human reasoning; but contexts shape all forms of human association and all rules of social compacting that preserve and promote them. Hierarchical institution favors extravagances of reasoning. *Heterarchy* institution, on the other hand, does potentially - and often actually - have the flexibility to better deal with complexities and varieties contexts produce in human interrelationships.

Montesquieu seems to have had some notion of this (or at least he can be so interpreted) when he wrote,

Better it is to say that the government most conformable to nature is that which best agrees with the humor and disposition of the people in whose favor it is established.

The strength of individuals cannot be united without a conjunction of all their wills. "The conjunction of those wills," as Gravina again very justly observes, "is what we call the civil state."

Law in general is human reason, inasmuch as it governs all the inhabitants of the earth: the political and civil laws of each nation ought to be only the particular cases in which human reasoning is applied.

They should be adapted in such a manner to the people for whom they are framed that it should be a great chance if those of one nation suit another. [Montesquieu (1748), pg. 6]

Tocqueville also observed features of heterarchy in the socio-political character of the early 19th century United States:

The township, taken as a whole, and in relation to the central government, is only an individual, like any other to whom the theory I have just described is applicable. Municipal independence in the United States is therefore a natural consequence of this very principle of the sovereignty of the people. All American republics recognize it more or less, but circumstances have peculiarly favored its growth in New England.

In this part of the Union political life had its origin in the townships, and it may almost be said that each of them originally formed an independent nation. When the kings of England afterward asserted their supremacy, they were content to assume the central power of the state. They left the townships where they were before; and although they are now subject to the state, they were not at first, or were hardly so. They did not receive their powers from the central authority, but, on the contrary, they gave up a portion of their independence to the state. This is an important distinction, and one that the reader must constantly recollect. The townships are generally subordinate to the state only in those interests which I shall term *social*, as they are common to all the others. They are independent in all that concerns themselves alone, and among the inhabitants of New England I believe not a man can be found who would acknowledge that the state has any right to interfere in their town affairs. The towns of New England buy and sell, sue and are sued, augment or diminish their budgets, and no administrative authority ever thinks of offering any opposition.

There are certain social duties, however, that they are bound to fulfill. If the state is in need of money, a town cannot withhold the supplies; if the state projects a road, the township cannot refuse to let it cross its territory; if a police regulation is made by the state, it must be enforced by the town; if a uniform system of public instruction is enacted, every town is bound to establish the schools the law ordains. [Tocqueville (1836), pp. 65-66]

This last paragraph is called the doctrine of preemption [<https://www.law.cornell.edu/wex/preemption>] - the idea that a higher authority of law displaces the law of a lower authority when the two authorities come into conflict. The very explanation of this term demonstrates a presumption of hierarchy in social and legal organizations. Part of the doctrine of preemption - specifically, the part of it called "implied

preemption" [*ibid.*] - is controversial and, quite candidly, has been frequently abused in the past in order, for example, for state legislatures to subjugate local governments for the sake of political party interests of a majority political party that has chosen to *rule* licentiously rather than submit to the sovereignty of the citizens and *govern* in the citizens' interests. For example, during the recent Covid-19 pandemic, republican-party-ruled-legislatures in several states in the U.S. introduced, and in several instances passed, laws preempting the authority of local city and county governments, as well as private sector employers, to pass and enforce local ordinances aimed at protecting public health and combatting the spread of the disease. Another example is seen where state legislatures preempt local gun licensing and control ordinances that local municipalities regard as important for, again, protecting public safety.

It is, in practical fact, very difficult to entirely eliminate elements of hierarchy in heterarchy institutions; and, in point of fact, it is not at all established that completely eliminating every element of it is either prudent or desirable. The mere fact that an organization is instituted as a heterarchy is not sufficient to ensure that it succeeds. As in everything else, there are wrong ways to do things that produce unforeseen defects and failures, and result in unintended consequences. As Mill sagely remarked,

But in political and philosophical theories, as well as in persons, success discloses faults and infirmities which failure might have concealed from observation. [Mill (1859), pg. 3]

The law, as Emerson said, is just a memorandum.

All systems of governance, administration, and management of civil Communities are tasked, by the expectation of authority, with counteracting social disintegration and strengthening accretion bonding between mini-Communities within the general Community. In both cases, factors of individual interests and transferences from subjective feelings to Objects cannot safely be ignored or minimized. I think you can likely appreciate how complex and complicated the task becomes as the size of the civil Community grows. Many of Rousseau's ideas of social contract theory can work very well in small *Gemeinschaft* Community consensus democracies, where stereotyping effects are counteracted by personal knowledge of other Community members that make them "real" rather than "abstract" persons to their neighbors. But his idealistic and somewhat romantic views quickly begin to break down as Community size grows and consensus building fails. In one of Rousseau's relatively rare moments when pragmatic practicality overcame his idealistic romanticism, he wrote,

The body politic, as well as the human body, begins to die as soon as it is born, and carries in itself the cause of its destruction. But both may have a constitution that is more or less robust and suited to preserve them a longer or shorter time. The constitution of man is the work of nature; that of the State the work of art. It is not in men's power to prolong their own lives; but it is for them to prolong as much as possible the life of the State, by giving it the best possible constitution. The best constituted State will have an end; but it will end later than any other, unless some unforeseen accident brings about its untimely destruction. [Rousseau (1762), pg. 93]

Toynbee's history of the fall of civilizations tends to support Rousseau's gloomy assessment of the mortality of the State. He goes further, though, in his study of *why* civilizations fall. He takes hundreds of pages to bring out his points, but his "executive summary" is:

We have seen, in fact, that when, in the history of any society, a creative minority degenerates into a dominant minority which attempts to retain by force a position that it has ceased to merit, this change in the character of the ruling element provokes, on the other side, the secession of a proletariat which no longer admires and imitates its rulers and revolts against their servitude. . . .

On this showing, the nature of the breakdown of civilizations can be summed up in three points: a failure of creative power in the minority, an answering withdrawal of mimesis on the part of the majority and a consequent loss of social unity in the society as a whole. [Toynbee (1946), pg. 246]

What Toynbee calls the "creative minority" most people call the "leaders" of Society; and what he calls "mimesis" most people call "following a leader." What he calls the "dominant minority" most people call the "ruling class." At its core, civilizations (Societies) fall from within when, concurrently, authority figures turn themselves into rulers instead of servants, consensus is abandoned, and principal elements of social compacting are ignored or repeatedly violated.

Hierarchy institutions historically tend to lead to these effects through Adams' passion for Ambition and passion for Vanity. Hierarchies might seem "natural" for Societies because they have been around for thousands of years. But, in fact, hierarchical organization is not innate in human nature; it is merely a result of habit and familiarity going back to the ancient Mesopotamian kings. No trace of it is seen in a BaMbuti hunter-gatherer group, which typically numbers from 15 to 60 people. After providing a number of examples of how they resolve problems and issues, Turnbull observed,

If you ask a Pygmy why his people have no chiefs, no lawgivers, no councils, or no leaders, he will answer with misleading simplicity, "Because we are the people of the forest." The forest, the great provider, is the one standard by which all deeds and thoughts are judged; it is the chief, the lawgiver, the leader, and the final arbitrator. [Turnbull (1962), pg. 125]

Nor do the BaMbuti organize their Society as a heterarchy. They have no *rulers* at all even though they do have mini-Communities centered around families [Turnbull (1962)]. Their institution is that of *consensus* democracy, adapted to the condition of living in the Ituri Forest, and without class striations.

In instituting heterarchical governance, the guiding design principle is to try to prevent the breakdown and disintegration that emergence of a "dominant minority" presages by preventing or neutralizing its emergence. But is this design principle one that is practically achievable? If so, then the question is *How*? And is it achievable in a *pure* form or are there important contingencies under which *mixed* elements of heterarchy and hierarchy are justifiable?

As an example by analogy of what I mean by "contingency-based mixed element," let us look at one instituted in the Roman Republic. In the days of the republic, Rome was governed by a complex system of officials and institutions aimed at providing checks and balances to prevent the restoration of any sort of monarchy rule. Its Senate, consuls, tribunes, assemblies, censors, and magistrates were set up to administer the state and maintain social order in peacetime and in "normal" wartime. But,

If all these maneuvers failed, a last bulwark of social order remained - dictatorship. The Romans recognized that in times of national chaos or peril their liberties and privileges, and all the checks and balances that they had created for their own protection, might impede the rapid and united action needed to save the state. In such cases the Senate could declare an emergency, and then either consul could name a dictator. In every instance but one the dictator came from the upper classes; but it must be said that the aristocracy rarely abused the possibilities of this office. The dictator received almost complete authority over all persons and property, but he could not use public funds without the Senate's consent, and his term was limited to six months or a year. All dictators but two obeyed these restrictions, honoring the story of how Cincinnatus, called from the plow to save the state (456 B.C.), returned to his farm as soon as the task was done. [Durant (1944), pp. 30-31]

The Romans were an unrelentingly practical people who did not allow *theoretical* purity to overrule *practical* necessity. Still, their Republic eventually devolved into a hierarchical Empire and then fell.

6. Heterarchy and Hierarchy

Toynbee did not explicitly agree with Rousseau's gloomy prediction that all Societies eventually fall, but he did voice some concern that the Societies of 1946 were showing signs of entering into breakdown and disintegration. Even if new "civilizations" do arise centuries later, following the fall of old ones and the interregnum of a prolonged dark age, that is of no comfort to people who must endure that dark age. *Must*

every Society eventually disintegrate and fall? We do not know if this is true or not. We do know that past ones, ones which were based on hierarchical organizations, did fall and that our present ones are in no way immune from doing so. We know, too, that feelings of injustice do provoke the secessions of what Toynbee called "proletariats" that bring about those falls. There seems to be little doubt, from the findings of history, that Adams' passions for Ambition, Vanity, and Jealousy play very large roles in bringing about circumstances provocative of widespread feelings of injustice. Can heterarchy institution cure this?

In a theoretically pure pyramidal hierarchy, official authority is centralized inasmuch as authority figures at its apex are able to preempt and overrule official authorities at its lower levels. Power, in Weber's connotation of that word, is greatest at the peak and lessens as one descends toward its base. Does this then imply that the opposite situation occurs in a theoretically pure heterarchy? Is Weberian power in a heterarchy greatest in the smallest mini-Communities and decrease as social accretion acts to produce larger composite mini-Communities? Or is a theoretically pure heterarchy something else? For that matter, what is a "theoretically pure heterarchy" and is one *practically* possible?

It might seem to some that the first government of the United States, under the Articles of Confederation, is an example of heterarchy. The individual states, after all, were regarded as independent nations merely *cooperating*, by means of the Congress, in "a firm league of friendship with each other, for their common defense, the security of their liberties, and their mutual and general welfare" [Articles of Confederation, Art. Three]. Furthermore, "Each State retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not by this Confederation expressly delegated to the United States in Congress assembled" [*ibid.*, Art. Two].

This, at first glance, seems to fit an idea of heterarchy as "multiple rule." However, this "multiple rule" was the "multiple rule" of concurrently acting *competitive* nations rather than the coordinated *cooperative* actions of multiple parts of a single whole. In *practice*, the phrase "United States in Congress assembled" meant little more than a gathering of delegates meeting to talk about things and make recommendations that were consistently stalemated by the refusal of the state governments to agree to them. In the fall of 1786, Virginia congressman Edward Carrington said, "the truth is, we have not a government to Wield and Correct" - i.e., that the Confederation had collapsed [Van Cleve (2017), pg. 256]. The United States was not *one* nation but, rather, *thirteen* nations - somewhat like today's less fractious European Union. Without Great Britain as a wartime common enemy to unite the states' interests in a common cause, there was very little united about the United States. The individual states in this confederation were organized, by and large, as multi-apex pyramidal hierarchies. Such an institution is *not* what is meant in this treatise by the term "heterarchy."

Looking at the other side of the institutional picture (hierarchy), the theoretical idea of the pure pyramidal hierarchy seems never to be encountered in practical experience. Large commercial businesses are often taken as the archetype of hierarchical organization and management, a view expressed by the classic "Organization Chart" most large companies routinely publish. Yet, as managerial psychologist Harold Leavitt noted,

Organizations can be thought of as lively sets of interrelated systems designed to perform complicated tasks. We can try to manipulate at least three dimensions of those systems in order to get the performance of tasks changed or improved. We can manipulate the organization structure - which means we can manipulate the communication system or the authority system or the system of work flows and processes. We can manipulate the tools and techniques used in the system - which means we can provide new and better hammers or new and better information-processing devices. And we can enter from the people side, to change bodies or attitudes or interpersonal relations - which means we can change the training and skills of our people or the numbers of people involved or the kinds of people we hire.

But we must never for a moment forget that when we tamper with any one of these three variables, structure or technology or people, we are likely to cause significant effects on the others, as well as on the task.

And we must never forget that the organization operates in a world of other organizations and institutions, changing that world, but also being changed by it. [Leavitt (1972), pg. 265]

One widely held myth of theoretical pure hierarchy is that orders are issued from the top and faithfully carried out down through the lower levels of the hierarchy. This myth gets called by various names: the military model; scientific management; Taylorism; the rational model; and Theory X. The myth almost certainly was originally inspired by the propaganda issued by the ancient Mesopotamian kings and their courtiers; for example:

. . . Ur-Namma, the mighty warrior, king of the city of Ur, king of the lands of Sumer and Akkad . . . he established 21,600 silas of barley, 30 sheep, 30 silas of butter, per month, as regular offerings . . . in the land. . . . At that time, I, Ur-Namma, mighty warrior, lord of the city of Ur, king of the lands of Sumer and Akkad, by the might of the god Nanna, my lord, by the true command of the god Utu, I established justice in the land. . . . I established freedom for the Akkadians and foreigners in the lands of Sumer and Akkad, for those conducting foreign maritime trade free from the sea-captains, for the herdsmen free from those who appropriate oxen, sheep, and donkeys. . . . I made the copper bariga-measure and standardized it at 60 silas. I made the copper seah-measure and standardized it at 10 silas. I made the normal king's copper seah-measure and standardized it at 5 silas. I standardized all the stone weights from the pure 1 shekel to the 1-mina. I made the bronze 1-sila measure and standardized it at 1 mina. At the same time I regulated the river-boat traffic on the banks of the Tigris River, on the banks of the Euphrates River, on the banks of all rivers. . . . [Roth (1995), pp. 15-16]

It is one thing for a king to say "I did this, I did that," and quite another for "this and that" to actually be done. Competent generals with actual combat experience know very well that the idealized "military model" of organization, where orders flow from a supreme commander to the lowest private soldier, doesn't actually work in practice despite what the myth suggests. Napoleon said,

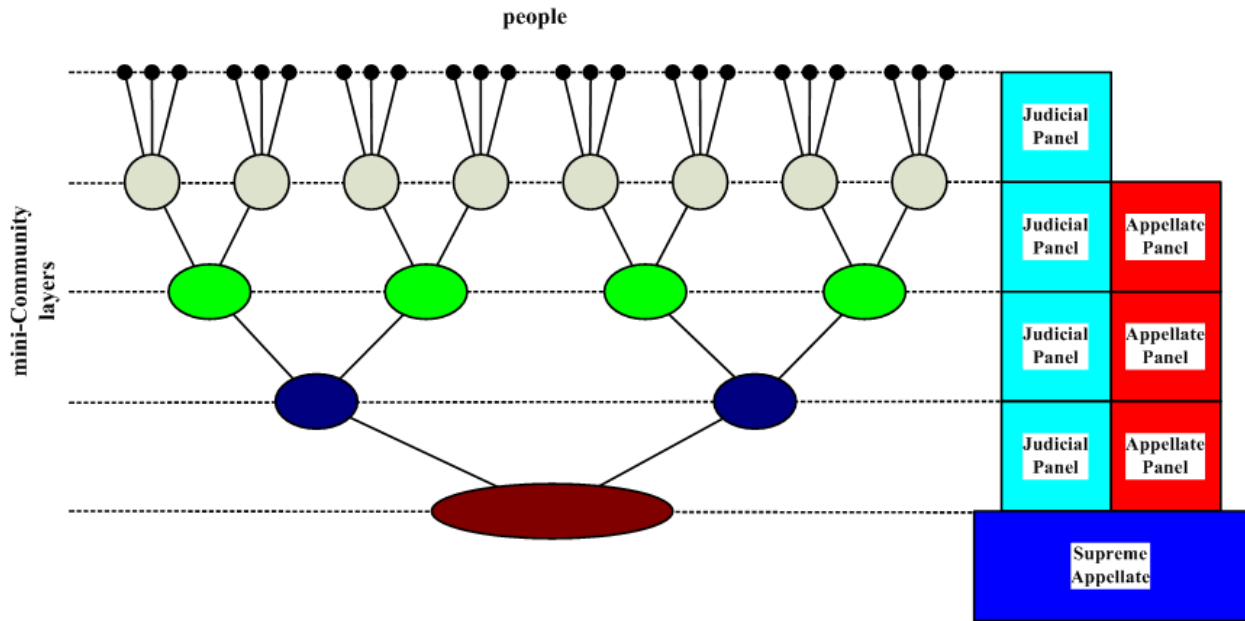
A commander in chief cannot take as an excuse for his mistakes in warfare an order given by his minister or his sovereign, when the person giving the order is absent from the field of operations and is imperfectly aware or wholly unaware of the latest state of affairs. It follows that any commander in chief who undertakes to carry out a plan which he considers to be defective is at fault; he must put forward his objections, insist on the plan being changed, and finally tender his resignation rather than be the instrument of his army's downfall. [Napoleon, "Military Maxims and Thoughts"]

In the world of business, believers in the myth ("Taylorites") have been largely responsible for filling the graveyards of dead corporations. Peters and Waterman wrote,

Professionalism in management is regularly equated with hard-headed rationality. We saw it surface at ITT in Harold Geneen's search for the "unshakable facts." It flourished in Vietnam, where success was measured by body counts. Its wizards were the Ford Motor Company's whiz kids, and its grand panjandrum was Robert McNamara. The numerative, rationalist approach to management dominates the business schools. It teaches us that well-trained professional managers can manage anything. It seeks detached, analytical justification for all decisions. It is right enough to be dangerously wrong, and it has arguably led us seriously astray. [Peters & Waterman (1982), pg. 29]

Formalized theories of pure heterarchy models haven't been around for nearly as long as those of pure hierarchy, and haven't had anywhere near the same opportunity to produce notable successes or failures as they have. Fairtlough credits the term to James Ogilvy², although the term is older, there have been numerous scholars who use the term and there is, as of yet, no one standard definition for it. Fairtlough cites as examples of heterarchy: the children's game of rock, scissors and paper; partnerships, such as in law and accounting firms; corporate finance and human resources departments; strategic business alliances; and political separation of powers [Fairtlough (2007), pp. 22-23].

² author of "What Sartre can teach strategists," *Strategy and Business*, Issue 33, 2004.



Note: The number of mini-Communities in any layer is not fixed, and people can be members of more than one mini-Community at the same time. The number of layers is not necessarily fixed. This requires flexible institution of the heterarchy structure.

Figure 7: The Inverted Pyramid Model of heterarchy organization [Wells (2014), (2017)].

Except for the children's game, Fairtlough's examples clearly suggest elements of heterarchy, although none of them actually provide any detailed picture of heterarchical institution. Figure 7 illustrates one proposed model for heterarchy organization - the Inverted Pyramid Model. This model was first introduced in Wells (2014) in the context of the institution of public education systems. It was later adopted, with contextual modifications, as a model for heterarchy institution of commercial Enterprises in Wells (2017). The Inverted Pyramid Model is a model *schema* for heterarchy institution rather than a "one size fits all" prescription for social institutions. A "one size fits all" prescription would, from logical necessity, ignore important and nonnegligible *contexts* that differentiate one kind of institution from another. The task which lies ahead of us in this treatise is to discuss and explain important factors going in to the Inverted Pyramid schema.

For the remainder of this chapter, I discuss general considerations and maxims to be applied in the design of Inverted Pyramid (IP) institutions. The chapters which follow will dive deeper into more specific and particular aspects of the various elements of an IP institution. Particular emphasis will be given to those aspects important for the institution of justice systems.

People: Firstly and fundamentally, we have the *people* who comprise the body politic of the Society to whom the institution belongs. *No* individual is *sovereign* but *every deontological citizen* is a *part* of the *sovereignty* of their civil Community *by virtue of* their individual commitments to the social compacts that establish civil liberties and civil rights in the overall civil Community and in its divers parts. Here *licentious* natural liberties have no legitimate place and the most basic term in all social compacts is the individual's voluntary alienation of some of his natural liberties in exchange for protection of his person and his civil liberties. What these liberties are to be at any particular time in history is, of course, determined according to the *context* of their civil association and its common interests, and by those emerging contingencies and challenges facing their association. In these associations there is no place for outlaw, much less criminal, licentiousness, and very little place for traditional entitlement citizenship.

A social-natural factor of utmost importance to sovereignty of the people is the fact that, beginning when children first begin the process of their socialization, every person is simultaneously a member of

more than one mini-Community. This factor, all by itself, has the most profound consequences for any civil Community. Most obviously, it entirely contradicts and renders unjust nonconsensus democracy's principle of "one person, one vote." People are the "social atoms" of a Society, but the Society's "social molecules" are its divers mini-Communities. *Within* any mini-Community, institutions of voting *mechanisms* have a legitimate but carefully delimited place; but when this is so, *every* person enjoying the franchise enjoys it in *every* mini-Community in which he is accepted as a citizen. Mini-Communities result from the congruent common interests of their members, and common interests are the glue binding a Society itself and from which springs the social Idea of Justice. If the number of people in each mini-Community in figure 7 were added up and compared to the total number of voters along the top mini-Community level in that figure, the number of *voters* will outnumber the number of *people*.

Mini-Communities: Mini-Communities are the bone, muscle, and vital organs of the body politic. Their social functions are the constituted functions of what we call civilized life. Each mini-Community contains its own local institutions of justice even though, in the great majority of instances, these are manifested only in the social mores and folkways characteristic of the associations of their members. At the same time, *not every mini-Community is pertinent to the institutions of justice systems for the parent Society in which it is embedded*. To see this, consider the following instances of mini-Community: a city softball league; a bowling league; a Little League Baseball league; a bridge club; a library book club; a local church parish; a choir; a community theater group; a high school science or math club. While all of these contain rudimentary elements of a justice system - even if this is manifested only by the mores and folkways of their association - it is obvious that, e.g., the rules of softball have no bearing on a municipal court system or the funding of a local school district. On the other hand, the mini-Community of a local labor union or a trade association *is* pertinent to civil legislation governing commerce in a Society. Perhaps the most obvious difference between types of mini-Communities is that, e.g., the activities of a bowling league do not reach out to interact with other mini-Communities, while those of a union local very frequently are in interaction with and affect other mini-Communities. A teacher strike, for example, results from disputes with administrators of a school district but directly affects pupils and parents.

This aspect of the phenomenon of mini-Community complicates the institution of justice systems, and it seems perfectly clear that this complication requires means and mechanisms for logically bringing some kind of definable structure and order to mini-Communities' relationships within the parent Society. One practical instrument for doing this is by means of legal charters. By charter I mean an instrument that recognizes a body politic, identifies its membership, and delimits rights, liberties, or powers of a mini-Community. The idea owes its origin to the traditional charter method going back to early medieval Britain and still recognized in American law [Garner (2019)]. One difference, however, in the idea of a mini-Community charter that is distinct from traditional ones is this: granting of a mini-Community charter is a *judicial* function rather than a legislative or executive function, and the grantor of a charter is not *sovereign* over a new mini-Community although it does delineate who, if anyone, is granted just preemption authority over it. Chartering authority is one part of an expansion of the "three branches" idea of governance I have previously called a system of *Boards of Right* [Wells (2010), chap. 6, pp. 194-196]. I explain the idea of Boards of Right in greater detail later in this treatise. While it can be argued that a chartering function and Boards of Right are logically part of a judicial branch of governance, the principal function served by them is that of *insuring domestic tranquility* in the parent Society [Wells (2010), chap. 6]. It is, therefore, a *coordinator* function for legislative, executive, and judicial mechanisms and its acts are specifically focused upon a Society's social contracts in regard to both civil liberties and civil rights. In a heterarchy system such as the one depicted in figure 7, this coordination function properly is part of those functions labeled judicial panels and appellate panels because, organizationally, these panels cover the spans between different levels of the heterarchy. In contrast, offices of authority established for a specific mini-Community are *local* and are located *in* the mini-Community ovals in figure 7.

One very important reason chartering is necessitated for heterarchical organization is found in its non-centralized and distributed character. In the inverted pyramid structure, the greatest scope of authority

resides in the mini-Communities because they, collectively, have jurisdiction over the larger number of locally-common (special) interests. As one moves down the inverted pyramid, combining two or more mini-Communities in broader associations, the levels of mini-Communities come to take in increasing numbers of people but decreasing numbers of *common* interests. The legitimacy of governance agencies' expectations of authority is tied to common *interests* in the body politic, not *individuals'* private and sometimes licentious interests. This makes the civil Society vulnerable to machinations aimed at subverting and corrupting the establishment of mini-Communities.

One possible and not-infrequent tactic, used by scheming persons to further their passions for Ambition, Vanity, Envy, or Jealousy, is to try to artificially inflate the number of mini-Communities embraced in the system by inventing false or antisocial interests. These are used to create "mass movements" by setting up *false* mini-Communities - fictitious "ghost communities" with no real memberships - for the recruits to their manufactured movement to oppose. One infamous example of this is "the international Jewish conspiracy" - which features a completely fictional ghost community ("International Jewry") in which there are no *real* people. Another contemporary example in the U.S. is the "Woke Movement" - another ghost community invented by white supremacists and some Republican Party politicians to promote discrimination, oppose truth in history education, and to vilify both protesters of injustice in Society and the Democratic Party. Ghost communities are a staple of insidious deceptive propaganda by outlaws and deontological criminals preying upon people's anxieties and uncertainties. Eric Hoffer wrote,

There is in us a tendency to locate the shaping forces of our existence outside ourselves. Success and failure are unavoidably related in our minds with the state of things around us. Hence it is that people with a sense of fulfillment think it is a good world and would like to conserve it as it is, while the frustrated favor radical change. The tendency to look for all the causes outside ourselves persists even when it is clear that our state of being is the product of personal qualities such as ability, character, appearance, health and so on. "If anything ail a man," says Thoreau, "so that he does not perform his functions, if he has a pain in his bowels even . . . he forthwith sets about reforming the world."

It is understandable that those who fail should incline to blame the world for their failure. The remarkable thing is that the successful, too, however much they pride themselves on their foresight, fortitude, thrift and other "sterling qualities," are at bottom convinced that their success is the result of a fortuitous combination of circumstances. The self confidence of even the consistently successful is never absolute. They are never sure that they know all the ingredients which go into the making of their success. The outside world seems to them a precariously balanced mechanism, and so long as it ticks in their favor they are afraid to tinker with it. Thus the resistance to change and the ardent desire for it spring from the same conviction, and the one can be as vehement as the other. [Hoffer (1951), pp. 6-7]

Another tactic open to ambitious schemers is *false membership* in as many mini-Communities as he or she can gain admission. Each such membership adds, in principle, to that individual's "voting power" via the franchise power of the mini-Community. But recall: admission to any civil Community, under the basic terms of *any* social compact, requires a moral *commitment* (*obligatio externa*) by every member "to put his person and all his power in common with those of the other associates." A scheming person can say he makes this commitment *with no intention of actually honoring it*. By doing so he becomes a deontological criminal *regardless of whether there is a legal statute somewhere declaring it to be a crime*. One common U.S. example of this is called *labor racketeering*. Part of the chartering function is to insure that prospective and chartered mini-Communities put into practice safeguards against false pledgers.

Mini-Communities are "power blocks" in the Weberian sense. There is much truth in Lord Acton's famous saying, "Power corrupts, and absolute power corrupts absolutely," although it is more accurate to say, "Power *tends* to corrupt, and absolute power *tends* to corrupt absolutely." A mini-Community is a *faction*, in Madison's sense of that word, because many of its interests are interests special to that Community and potentially contradictory to the interests of other mini-Communities. As Madison warns us,

By a faction, I understand a number of citizens, whether amounting to a majority or a minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community.

There are two methods of curing the mischiefs of faction. The one, by removing its causes; the other by controlling its effects. . . .

The latent causes of faction are thus sown in the nature of man, and we see them every where brought into different degrees of activity, according to the different circumstances of civil society. A zeal for different opinions concerning religion, concerning government, and many other points, as well of speculation as of practice; an attachment to different leaders, ambitiously contending for pre-eminence and power; or to persons of other descriptions, whose fortunes have been interesting to the human passions have, in turn, divided mankind into parties, inflamed them with mutual animosity, and rendered them much more disposed to vex and oppress each other than to co-operate for their common good. So strong is the propensity of mankind to fall into mutual animosities, that where no substantial occasion presents itself, the most frivolous and fanciful distinctions have been sufficient to kindle these unfriendly passions, and excite their most violent conflicts [Hamilton, *et al.* (1787-8), no. 10].

In the institution of justice, human nature can never be disregarded or subordinated to logic-chopping or mathematical extravagances of reasoning.

Agency Functions: From the practical Standpoint of Critical Epistemology, ***governance*** is the exercise of authority in the management and administration of the leadership dynamics within a Community. In formally organized governments, governance is effected through functional agencies by the actions of their agents. Agents and agencies are two of the three *momenta* of the principle of justifiable institutions in the Enlightenment idea of the perfectibility of mankind's institutions.

Recall that *authority* is possession of the *Kraft* of causing something to become greater, to increase, to be strengthened, or to be reinforced in some way. This is not the same thing as an *authority figure*, who is a human being holding *an office* established to exercise authority, and of whom the Community's citizens expect and demand that the officer can and will exercise the authority of his office for their general benefit. It is also important to understand that *leadership is a social dynamic*, i.e., the reciprocal relationships between two or more individuals in which the Self-determined actions by followers are stimulated by a leader. The leader is not necessarily the authority figure - in fact, in a healthy leadership dynamic, most of the time he is *not* - and *the leader of the moment* is *any* person who purposively stimulates the Self-determination of another person to express an action congruent with the leader's purpose. The persons so expressing such actions are called his *followers* [Wells (2010 b)]. The well-being and success of any Community - political, commercial, educational, or otherwise - crucially depends on the quality of its overall leadership dynamic. Indeed, the most important task for an authority figure who has supervisory duties is to see to it that appropriate momentary leaders step forth at appropriate times to affect the actions taken by others in fulfillment of functions that benefit the Community [*ibid.*].

I bring this up because, historically, many office-holding authority figures mistakenly think - and are often even *taught* to think - that "leadership" is a personal trait. It therefore isn't surprising if authority figures mistakenly personify leadership and confuse it with their own person. If this is then joined with a passion for Ambition or a passion for Vanity, this erroneous confounding of the *social phenomenon* of leadership with the traditional but false notion of *personified* leadership can and does harm the Community. It can, and frequently does, disrupt a Community's leadership dynamic to the extent that the Community breaks down and disintegrates as, e.g., happens under Toynbee's dominant minority, or when rulers are challenged by civil war as, e.g., was the case of the immodest Shalmaneser III of Assyria:

Shalmaneser, the Mighty King, King of the Universe, a King without rival, the Autocrat, the Powerful One of the Four Regions who shatters the princes of the whole world, who has smashed all his foes like pots. . . . Conqueror from the Upper Sea to the Lower Sea - the lands of Hatti, Luhute, Adri,

Labnana, Kue, Tabali, Melidi. Discoverer of the sources of the Tigris and the Euphrates. [Luckenbill (1926), pg. 243-244]

The traditional mistaken notion of personified "leadership" is more accurately characterized as an idea of *rulership*, under which followers are said to be *subjugated* by the ruler [Wells (2010 b)]. Rulership is the breeding ground for Toynbee proletariats and the principal characteristic of Toynbee's dominant minority.

The practical need for agencies emerges whenever a mini-Community population grows beyond the limit where *Gemeinschaft* governance breaks down. This happens because members no longer all know each other personally through direct experience and stereotyping takes the place of interpersonal experience. A mini-Community must form a union of its members in order to meet the most fundamental condition for which the Community is formed in the first place, i.e., that their association will defend and protect with its whole common force the person and goods of each associate in such a way that each associate can unite himself with all the other associates while still obeying himself alone. To do this, they must be willing to *cooperate* with each other in many ways. *Expectations* for how such cooperation is to be *manifested* in the many divers situations and circumstances that occur in their social dynamic must gain common consent, and such common agreements can be called the *rules* of their social compact. *Codified* rules, including rules about *changing* the rules, must be proposed, refined, and then gain the consent of those who are to be governed by them. Once made and agreed upon, these rules must be administered and enforced because not every individual human being, acting out of self-interests, will necessarily obey all of them. Furthermore, people will sometimes agree to a rule but understand that rule differently from how others understand it. Therefore, some agency for resolving disputes and reaching *common* understanding of the rules becomes practically necessitated. We see here the root origins for traditional legislative, executive, and judicial functions of formally organized popular governments.

But although these three functions are found in civil mini-Communities, how they are organized into divisions of labor and put into practice differs, often widely, from one set of circumstances to another and from one mini-Community to another. To borrow Mill's phrase again, "No two ages, and scarcely any two countries, have decided it alike, and the decision of one age or country is a wonder to another" [Mill (1859), pg. 4]. As Leavitt points out, human beings are *satisficing* problem solvers [Leavitt (1972), pp. 63-64]. He describes this problem-solving method using a needle-in-a-haystack metaphor:

The satisficing man searches through the haystack until he finds a needle; then he tries it and if it is sharp enough to sew with he gets on with his sewing; and that's the end of it. If not, he searches some more until he finds one that is satisfactory. [Leavitt (1972), pg. 64].

Satisficing behavior is, by another name, called expedient behavior. Some people use and regard the idea of "expedience" in a slightly pejorative way. But in the context of human nature, there is nothing pejorative about expedience; the principle of formal expedience is the fundamental law of reflective judgment in Critical epistemology. Mimesis (copying what someone else has done) is often an expedient way to accomplish something "well enough." Many borrowed traditions are like this. For instance, the traditional view of the "executive branch" of government places responsibility for both administration and enforcement of laws in one branch of government even though administration and enforcement are, in their particulars, two different activities. The "legislative branch" of government codifies criminal and civil laws but the "judicial branch" of government makes common laws. The dividing lines between rule codification, rule administration, rule enforcement, dispute resolution, and rule understanding are not so crisp as our traditions-based experiences with the "three branches of government" model tends to make us think. This is why I emphasize the idea of agency *functions* rather than *agencies* here. Simply tossing one function into some predefined "branch" is a fiat of expedience and not a law of good governance *per se*.

I posed the question earlier (in chapter 7) if three branches of government are enough to institute justice in popular government. What I have just written above is a first step toward answering this question, and this first step is leaning toward answering it in the negative. I propose to approach the issue by looking at

functions and functional agencies rather than by mimesis of traditional models.

One proposition I will make at this time, though, is the following. While all of the functions just named (rule codification, rule administration, rule enforcement, dispute resolution, and rule understanding) are practical necessitations for every mini-Community and *between the levels* of mini-Communities in the inverted pyramid model of civil Society, specific agencies for actualizing these functions are not necessarily the same in every mini-Community *or* in the cooperative coordination of different levels of mini-Community. While some people exhibit a tendency to think institution ought to be uniform throughout the structure, such uniformity is an extravagance of reasoning and real Societies gainsay it in practice. For example, some municipalities set up a mayor-and-city-council form of local governance while, in other municipalities, a mayor, city-manager, and city-council form is used. Mill wrote,

[It] is also to be borne in mind that political machinery does not act of itself. As it is first made, so it has to be worked by men, and even by ordinary men. It needs, not their simple acquiescence, but their active participation; and must be adjusted to the capacities and qualities of such men as are available.
[Mill (1861), pg. 4]

As "the capacities and qualities of men" are not uniformly distributed in a large Society, so too should we expect *diversity rather than uniformity* in the forms of agency expedient in a Society's divers places and times. Platonic idealism may be pretty to look at, but Plato never founded a Society nor governed one outside of his role as founder and "head master" of his Academy. All real experience, and the situations and circumstances arising out of experience, are contingent, and therefore agency definition and design is a *practical* art.

7. Qualifying Authority Figures

Whether we're talking about two eleven-year-old team captains choosing up sides for a playground baseball game, the prime minister of Great Britain, the Magistrate Judge of Latah County, Idaho, the state lawmakers of Texas, or the deputies of a county Sheriff's Office, every civil Society has mechanisms for somehow determining who is to serve as its authority figures. The methods employed for doing so vary widely from place to place and time to time. In ancient Athens,

As early as 487, perhaps earlier, the method of election in the choice of archons is replaced by lot; some way must be found to keep the rich from buying, or the knave from smiling, their way into office. To render selection less than wholly accidental, all those upon whom the lot falls are subjected, before taking up their duties, to a rigorous *dokimasia*, or character examination, conducted by the council or the courts. . . . [The official's] whole life is on this occasion exposed to challenge by any citizen, and the prospect of such a scrutiny presumably frightens the most worthless from the sortition. . . . Nine times yearly the archon is required to obtain a vote of confidence from the Assembly; his actions and judgments may be appealed . . . and any citizen can indict him for malfeasance. At the end of his term all his official acts, accounts, and documents are reviewed by a board . . . responsible to the Council; and severe penalties, even death, may avenge serious misconduct. . . .

The archons are but one of many committees which, under the direction and scrutiny of the Assembly, the Council, and the courts, administer the affairs of the city. . . . Nearly all of these are chosen by lot; and since no man may be a member of the same committee twice, every citizen may expect to be a city dignitary for at least one year of his life. Athens does not believe in government by experts.

More importance is attached to military than to civil office. The ten *strategoi*, or commanders, though they too are appointed for a year only, and are at all times subject to examination and recall, are chosen not by lot but by open election in the Assembly. Here ability, not popularity, is the road to preferment [Durant (1939), pp. 163-164]

One can wonder how many of the present members of the U.S. Congress would be congressmen if they

had to face an Athenian review process. Selecting officials has always been an important challenge in popular governance. John Adams wrote,

There is a voice within us, which seems to intimate, that real merit should govern the world; and that men ought to be respected only in proportion to their talents, virtues, and services. But the question has always been, how can this arrangement be accomplished? How shall the men of merit be discovered? How shall the proportions of merit be ascertained and graduated? Who shall be the judge? . . . There is no individual personally known to an hundredth part of the nation. The voters, then, must be exposed to deception, from intrigues and maneuvers without number, that is to say, from all the chicanery, impostures, and falsehoods imaginable, with scarce a possibility of preferring real merit. . . . Real merit is so remote from the knowledge of whole nations, that were magistrates to be chosen by that criteria alone, and by a universal suffrage, dissensions and venality would be endless. . . . As no appetite in human nature is more universal than that for honor, and real merit is confined to a very few, the numbers who thirst for respect are out of all proportion to those who seek it only by merit. The great majority trouble themselves little about merit, but apply themselves to seek for honor, by means which they see will more easily and certainly obtain it, by displaying their taste and address, their wealth and magnificence, their ancient parchments, pictures, and statues, and the virtues of their ancestors; and if these fail, as they seldom have done, they have recourse to artifice, dissimulation, hypocrisy, flattery, imposture, empiricism, quackery, and bribery. What chance has humble, modest, obscure, and poor merit in such a scramble? [Adams (1790), pp. 357-358]

The different means of "seeking for honor" he mentions above in *Discourses on Davila* evolved out of social traditions with roots going back to the times of kings and their aristocrat lieutenants, or revolutionary mass movements and their leaders, or orators who effectively use propaganda to enlist the passions of a crowd and convert it into actions. Hoffer said of the leaders of mass movements,

Charlatanism of some degree is indispensable to effective leadership [of mass movements]. There can be no mass movement without some deliberate misrepresentation of facts. No solid, tangible advantage can hold a following and make it zealous and loyal unto death. The leader has to be practical and a realist, yet must talk the language of the visionary and the idealist. [Hoffer (1951), pg. 116]

Faced with the effectiveness of such time-tested tactics of celebrity, one could give up the search for merit, shrug, and draw lots - with the hangman standing by in case the method of chance should fail. This was done to a notable degree in Athens. They were, however, wise enough and pragmatic enough to install the safeguard of following up *ex post facto* on dumb, blind chance with examination and scrutiny of the character of those whom their lottery produced as candidates.

Alternatively, one can instead make the process proactive by taking note of Adams' remark about there being "no individual personally known to an hundredth part of the nation" and turn to those multitudes of "hundredth parts" wherein there are found people who *do* personally know people within their mini-Community who have won their respect and trust by the personal history of their deeds and characters. To do this, it is perhaps obvious that, *first*, such mini-Communities must exist. It is not difficult to find many examples of special interest (mini-Community) organizations that are so large that most of its members only know most of the other members as stereotypes rather than real people. One example is the Institute of Electrical and Electronic Engineers (IEEE), a nonprofit professional association with over 423,000 members at present. Another is the Roman Catholic Archdiocese of New York, an "ecclesiastical territory" of the Roman Catholic Church which encompasses 296 parishes and 2.8 million members. Still another example is the American Federation of Teachers (AFT), a teachers' labor union with 1.7 million members. These are all mini-Communities but not *Gemeinschaft* Communities and no one in any of them knows every other member *personally*. In fact, your author is a past member of IEEE and a retired member of AFT and, I quite frankly admit, on the infrequent occasions when I want to be reminded of who the current president of either organization is, I have to look up that person's name. I have never

personally met any of them, past or present.

This size aspect of large mini-Communities poses a problem and an issue for governance of civil Societies, especially when it comes to insuring that its authority figures are people of merit. Deontological *merit* is the quality of an *action* whereby more good occurs from it than that for which the actor was morally responsible. A *meritorious action* is an action taken in accord with either *obligatione externa* or *interna* that is such that the action could not have been externally compelled in the measure to which it actually took place (i.e., an action "above and beyond the call of Duty"). A *meritorious person* is a person whose action has the quality of merit and who consistently exhibits virtue in his attention to his Duties. *Virtue* is the individual's constant disposition (unwavering attention) to carry out his Duties [Kant (1793-4), 27: 492]. However, heterarchical organization can resolve this issue in the chartering process by limiting the population size of base mini-Communities (e.g., "local chapters") and providing for further restrictions on the form of governance for mini-Communities at lower levels in the inverted pyramid. The sort of such further restrictions is illustrated by examples in Wells (2014), chap. 6-7.

Proactively taking steps to insure, to as great an extent as is practically possible, that only people of merit attain to the offices of authority figures is one of the necessary functions for justice in heterarchical social organization [Wells (2010), chap. 9]. How Athens approached this was described above, but there are also other ways of doing so. In Athens the character examination was performed by citizens, selected by lot to a seat in the Assembly, the Council, or the court, and term limited to one year at a time until every citizen had had his turn. As Durant said, Athens did not believe in government by experts. These sovereign bodies were huge in numbers³ - far too large for everyone to personally know everyone - but large enough so that every prospective office holder was personally known by *some* of the examiners. The practical advantage of this arrangement was its ability to hinder and dilute the influence of cabals of parties with special private interests who might wish to corrupt the choices of office holders for their own private advantages.

The world of Athens was a simpler place than is our present day world, and its population of citizenry is dwarfed by the populations of the great civil Societies of today. By 1787 the population of the new United States was a hundredfold larger than that of ancient Athens. It rendered impractical the Athenian method of examining and qualifying office holders, and so the Framers of the U.S. Constitution modified their approach to trying to assure merit in the person who would hold one of the country's important offices - namely that of its "chief magistrate" - the President of the United States. Their solution is known today as the Electoral College; however, they did not come easily or quickly to this solution. Debates over the election or selection of the President lasted from July of 1787 to September 6th, 1787 before they were able to agree [Farrand (1911), vol. II]. It can be difficult to follow the points and counterpoints raised in debate over such an extended period of time in the Convention Record, but Hamilton summarized their reasonings in *The Federalist*, no. 68:

It was desirable that the sense of the people should operate in the choice of the person to whom so important a trust was to be confided. This end will be answered by committing the right of making it, not to any pre-established body, but to men known to the people for the special purpose and at the particular conjuncture.

It was equally desirable that the immediate election should be made by men most capable of analyzing the qualities adapted to the station, and acting under circumstances favorable to deliberation and to a judicious combination of all the reasons and inducements which were proper to govern their choice. A small number of persons, selected by their fellow-citizens from the general mass, will be most likely to possess the information and discernment requisite to such complicated investigations.

. . . Nothing was more to be desired than that every practical obstacle should be opposed to cabal,

³ There were 500 jurors for the trial of Socrates. He was convicted by a margin of 60 votes. The Athenians afterwards regretted his conviction and death sentence, and convicted and executed Socrates' accusers, presumably for "misleading the Assembly" [Durant (1939), pp. 452-456].

intrigue, and corruption. The most deadly adversaries of republican government might naturally have been expected to make their approaches from more than one quarter, but chiefly from the desire in foreign powers to gain an improper ascendent in our councils. How could they better gratify this than by raising a creature of their own to the chief magistracy of the Union? But the convention have guarded against all danger of this sort with the most provident and judicious attention. They have not made the appointment of the President to depend on any pre-existing bodies of men, who might be tampered with beforehand to prostitute their votes; but they have referred it in the first instance to an immediate act of the people of America, to be exerted in the choice of persons for the temporary and sole purpose of making the appointment. And they have excluded from eligibility to this trust all those who from situation might be suspected of too great a devotion to the President in office. No senator, representative, or other person holding a place of trust or profit under the United States can be of the numbers of the electors. Thus without corrupting the body of the people, the immediate agents in the election will at least enter upon the task free of any sinister bias. Their transient existence, and their detached situation, already taken notice of, afford a satisfactory prospect of their continuing so to the conclusion of it. [Hamilton *et al.*, no. 68]

History would later reveal that Hamilton was too optimistic in his assertion that "the convention have guarded against all danger" of corrupting the electoral college mechanism. In 1787 the national political party had not yet been invented in the United States, nor did the Framers foresee that they would one day confiscate the selection of electors and shoulder the voters out of all say in the matter. A "political party" is not really the people who vote for its candidates; it is the cabal of party bosses, committees, and professional political operatives who devote themselves to electing candidates subservient to their particular *special* interests. The *people* who *actually* comprise a "political party" are nothing else than "a pre-existing body" of people mostly unknown to the voters, unelected to their positions, and devoted to their own special interests. Not even the names of their "slate" of electors is known to the voters-at-large. By stealth and by confiscation of the choice of electors, political parties circumvent the intended Constitutional safeguards against "cabal, intrigue, and corruption." They succeed in turning elections away from a process of voting for a *person* to one of voting for a *faction*. George Washington warned Americans that

the common and continual mischiefs of the spirit of Party are sufficient to make it the interest and the duty of a wise people to discourage and restrain it.

It serves always to distract the Public Councils and enfeeble the Public Administration. It agitates the Community with ill founded jealousies and false alarms, kindles the animosity of one part against another, foment occasionally riot and insurrection. It opens the door to foreign influence and corruption, which find a facilitated access to the government itself through the channels of party passion. . . . There is an opinion that parties in free countries are useful checks upon the Administration of the government and serve to keep alive the spirit of Liberty. . . . But in those of popular character, its government purely elective, it is a spirit not to be encouraged. [Washington (1796), pg. 970]

America today does not have the electoral college envisioned by the Framers. It has a sham of one going by that name that is owned and operated by America's major political parties, the would-be aristocrats of which eschew powdered wigs and gold snuff boxes to travel under the radar of public attention.

As you might (correctly) suspect, I am about to argue in favor of instituting an *actual* system of electoral colleges. Before doing so, however, let us take a moment and examine the argument that democracy "demands" there be *no* "intervening body" of electors standing between the voters and the candidates for office. In the first place, the world's first non-consensus democracy - Athens - saw fit to place precisely such a body between its citizens and many of its office holders. These were the examiners appointed by and answering to the Athenian Assembly as explained earlier. *Every* institution of *representative* government is a republic of some form or another even if it calls itself a democracy or something else. *Only* civil Communities governed without representatives, councils, or chiefs - e.g. a

consensus democracy like that of a BaMbuti group - actually institute a democracy. In all other cases of popular governance, "democracy" is a *mechanism*, not a "government" *per se*, instituted to help decide upon who specifically shall serve as "the representatives of the people." If the people making up the top level mini-Communities in figure 7 directly elect the electors from their mini-Communities, this *is* a mechanism of democracy.

In the second place, the Framers did consider two other mechanisms during the 1787 Convention before hitting upon the idea of an electoral college. One mechanism was to have the chief executive (President) selected by means of vote in the "national Legislature" (the House of Representatives); the other was to elect the President by direct popular vote. Debate over the pros and cons of these alternatives was wrangled over for months before both mechanisms, for good reasons, were discarded. For example, the debate on July 17th, 1787, raised the following points and counterpoints:

Mr. Gouverneur Morris [of Pennsylvania] was pointedly against [the President] being [chosen by the national Legislature]. He will be a mere creature of the Legislature if appointed and impeachable by that body. He ought to be elected by the people at large, by the freeholders of the Country. That difficulties attend this mode, he admits. But they have been found superable in New York and Connecticut and would, he believed, be found so in the case of an Executive for the United States. If the people should elect, they will never fail to prefer some man of distinguished character or services; some man, if he might so speak, of continental reputation. If the Legislature elect, it will be the work of intrigue, of cabal, and of faction . . .

Mr. Sherman [of Connecticut] thought that the sense of the Nation would be better expressed by the Legislature than by the people at large. The latter will never be sufficiently informed of characters, and besides will never give a majority of votes to any one man. They will generally vote for some man in their own State, and the largest State will have the best chance for the appointment. If the choice be made by the Legislature a majority of voices may be made necessary to constitute an election.

Mr. Wilson [of Pennsylvania]: two arguments have been urged against an election of the Executive Magistrate by the people - 1. the example of Poland where an election of the supreme Magistrate is attended with the most dangerous commotions. The Polish nobles have resources and dependents which enable them to appear in force, and to threaten the Republic as well as each other. In the next place, the electors [voters] all assemble in one place, which would not be the case with us. The second argument is that a majority of the people would never concur. It might be answered that a majority of people is not a necessary principle of election, nor required as such in any of the States. But allowing the objection all its force, it may be obviated by the expedient used in Massachusetts where the Legislature by majority of voices decide in case a majority of people do not concur in favor of one of the candidates. This would restrain the choice to a good nomination, at least, and prevent in great degree intrigue and cabal. . . .

Mr. Pinkney [of South Carolina] did not expect this question would again have been brought forward, an Election by the people being liable to the most obvious and striking objections. They will be led by a few active and designing men. The most populous States by combining in favor of the same individual will be able to carry their points. The National Legislature being most immediately interested in the laws made by themselves, will be most attentive to the choice of a fit man to carry them properly into execution. [Farrand (1911), vol. II, pp. 29-30]

All the objections raised were valid, all the difficulties were real. And so it went, back and forth and back and forth, for weeks until the Framers agreed to instead adopt the method of an electoral college.

The points and counterpoints brought out in regard to determining who would be President were and are no less valid and real in the cases of other elected official - congressmen, senators, state legislators, state governors, etc. One can wonder why, after choosing the electoral college method for the office of President, the Framers did not reconsider the method of choosing congressmen as well. Perhaps it was just a matter of fatigue; by September of 1787 the Convention had been going on for four months and

some of the delegates were getting anxious to wrap up their work and go home. We will never know if any of them thought about re-raising the question; we only know that none of them did.

We also know that the safeguards they included and thought the electoral college method offered were inadequate to resist the cabals and intrigues later effected by political parties to overcome them. Because the institution of justice depends crucially on the moral character of those who hold public office, it is important to examine in a little more detail how the confiscation of the electoral college method was effected by the political parties.

The Framers intended and assumed that electors would be chosen "district by district" by direct popular vote; however, they failed to explicitly require this in the final Constitution. Instead, the method of selecting electors was left up to the State governments, almost all of whom immediately put it in the hands of their State legislatures, where it remained until it was challenged by and ultimately replaced, in 1824, by the "winner take all" statewide election method still used today. Even by 1820, "slates" of electors put up by political parties had largely done away with any pretense of electors being independent of "any pre-existing bodies of men" [McCarthy (2012)], [Wilson (1909), pg. 18].

Political parties, as such, did not yet exist in 1787 America but the State governments *were* controlled by special interest factions. By 1789,

The chief intellectual interest of the people was in politics. The State and the national constitutions both protected freedom of speech, and Americans were accustomed freely to discuss public men and public measures. Public opinion was, however, created by a comparatively small number of persons - the leading planters of the South, merchants and great families in the Middle States, the gentlemen and clergy in New England. . . . In 1789 the secret Columbian Order, or Tammany Society, was formed in New York. At first benevolent and literary . . . by 1800 it had become a political organization and was controlling local elections. In several states, and particularly in New York, factions had grown up about leading families of public men; in a few years they had become political machines subject to the direction of a few leaders. [Hart (1907), pp. 140-141]

National political parties formed soon after the Constitutional government began. The first one, which came to be called the Federalist party, was organized and led by Alexander Hamilton, then Secretary of the Treasury, in 1789. In response to Hamilton's and the Federalists' policies, Thomas Jefferson, then Secretary of State, along with James Madison and James Monroe founded an opposition party in 1792 that eventually came to be known as the Democratic-Republicans party. Hart tells us,

The foundation for the first two great national parties was a difference of opinion as to the nature and proper functions of this new government.

During the second Congress, from 1791 to 1793, arose an opposition to Hamilton which gradually consolidated into a party. It came chiefly from the Southern and Middle States, and represented districts in which there was little capital or trade. Arrayed among [Hamilton's] supporters were most of the representatives from New England, and many from the Middle States and South Carolina: they represented the commercial interests of the country; they desired to see the debt funded and the State debts assumed; they began to act together as another party.

The final form taken by these two parties depended much upon the characteristics of their leaders. Hamilton, a man of great personal force and of strong aristocratic feeling, represented the principle of authority, of government framed and administered by a select few for the benefit of their fellows. Jefferson, an advocate of popular government extended to a point never before reached, declared that his party was made up of those "who identified themselves with the people, have confidence in them, cherish and consider them as the most honest and safe, although not the most wise, depository of the public interest." Between two such men controversies were certain to arise. In May, 1792, Jefferson wrote that Hamilton had introduced speculation and a dangerous construction of the Constitution; and Hamilton wrote that Jefferson was at the head of a hostile faction dangerous to the Union. Washington attempted to make himself an arbiter of this quarrel but was unable to reconcile the two men. They

both urged him to accept a second term for the presidency, and he was again unanimously elected in 1792. The quarrel between the two great chiefs had by this time got abroad. Hamilton was said to be a monarchist. His administration of the Treasury was attacked, and an investigation was held early in 1793; but no one was able to find any irregularity.

By this time the followers of Jefferson had begun to take upon themselves the name of Republicans. They held that the government ought to raise and spend as little money as possible; beyond that they rested upon the principles first definitely stated in Jefferson's opinion on the bank; that Congress was confined in its powers to the letter of the Constitution; and that the states were the depository of most of the powers of government. [Hart (1907), pp. 155-156]

Over the years since, as old political parties dissolved and new ones formed, the political "principles" expressed above have moved and realigned with the formations of new parties but have nonetheless remained bedrock contentions between these special interests. One can today still see them in statements of party propaganda put out by the present day Republican and Democratic parties. Also more or less constant over the centuries has been party control of the "slates of electors" to the Electoral College selected, at first, by the State Legislatures, and later by "winner take all" statewide elections. These electors, like the parties to whom they give their allegiances, ensure that the Executive and Legislative branches of the general government govern for the special interests characteristic of the parties to whom these elected officials belong.

Madison, Hamilton, and Jefferson were all alarmed and upset about how electors came to be selected. Madison and Hamilton both contended that the Framers had intended for electors to be chosen "district by district" so that the voters would have the personal familiarity with their characters and reputations needed to insure, as much as possible, the quality of merit in the person of the President. Both men, in fact, attempted to introduce constitutional amendments requiring this method be used. Neither of these attempts were successful in overcoming the strong resistance put up by the political parties, whose political successes were better promoted by having lackeys of the parties serve as electors. While the system as it still exists today contradicts what we may call "the Spirit of the Constitution," it does not expressly violate "the letter of the law" - a prime example of how legalism can subvert the social contract implicit in *The Federalist* and the Constitution and act to submerge merit under a sea of special interests.

Injustice is a subjective feeling of *Unlust* provoked in the individual when satisfaction of his interest is hindered or thwarted by the actions of another person. An institution of justice can do no more than address and redress its causes and effects in Relation to the *obligatio externa* of social compacts. Anything contradicting or violating a social compact is unjust; in this context, justice is the negating of anything that is unjust. Mini-Communities, and their combinations in larger mini-Communities as we travel downward in the inverted pyramid model of heterarchy illustrated in figure 7, are at the root of the causes of injustice. Establishment of justice in a civil Society crucially depends upon having meritorious persons occupying the positions of authority figures in the Society. I propose for your consideration, and will discuss in more detail in the chapters to come, that a properly instituted system of electors is a sound and necessary mechanism for the establishment of justice in a civil Society under popular governance.

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