

The Consent of the Governed

Richard B. Wells

December, 2016

1. The Challenge of Government in a Free Society

In 1787 delegates from twelve of the thirteen newly independent American states met in Philadelphia to plan a new system of government unlike any other previously known to humankind¹. The delegates recognized that this new government they were meeting to design was a species of republic; but they also knew all too well that previous forms of republican governance were flawed in ways fatal to liberty and justice in the Societies they were supposed to serve, and that these flawed governments had ended up *ruling* rather than *governing* their people. The new form of republic they conceived at the Constitutional Convention is what I have previously called an *American Republic*². James Madison wrote,

The first question that offers itself is, whether the general form and aspect of the government be strictly republican? It is evident that no other form would be reconcilable with the genius of the people of America; with the fundamental principles of the revolution; or with that honorable determination which animates every votary of freedom, to rest all our political experiments on the capacity of mankind for self-government. If the plan of the convention, therefore, be found to depart from the republican character its advocates must abandon it as no longer defensible³.

The Framers were pragmatic men and recognized the difficulty of the task they were facing. They knew the constitution they produced was not perfect, that is was only the best that they could figure out how to accomplish at the time, and that they had begun, as Madison put it, a great political *experiment*. Benjamin Franklin skillfully summarized this point on the last day of the Convention:

Mr. President, I confess that there are several parts of this constitution which I do not at present approve, but I am not sure I shall never approve them. For having lived long, I have experienced many instances of being obliged by better information or further consideration to change opinions on important subjects, which I once thought right but found to be otherwise. It is therefore that the older I grow, the more apt I am to doubt my own judgment and to pay more respect to the judgment of others. . . .

In these sentiments, Sir, I agree to this Constitution with all its faults, if they are such, because: I think a general Government necessary for us; and there is no form of Government but what may be a blessing to the people if well administered; and believe further that this is likely to be well administered for a course of years; and can only end in Despotism, as other forms have done before it, when the people shall become so corrupted as to need despotic Government, being incapable of any other. I doubt too whether any other Convention we can obtain may be able to make a better Constitution. For when you assemble a number of men to have the advantage of their joint wisdom, you inevitably assemble with those men all their prejudices, their passions, their errors of opinion, their local interests, and their selfish views. From such an Assembly can a perfect production be expected? If therefore astonishes me, Sir, to find this system approaching so near to perfection as it does; and I think it will astonish our enemies, who are waiting with confidence to hear that our councils are confounded like those of the Builders of Babel; and that our states are on the point of separation, only to meet hereafter for the purpose of cutting one another's throats. Thus I consent, Sir, to this Constitution because I expect no better, and because I am not sure that it is not the best.⁴

¹ Only the state of Rhode Island declined to attend and participate in the 1787 Constitutional Convention.

² Richard B. Wells (2010), *The Idea of the American Republic*, www.mrc.uidaho.edu/~rwells/techdocs/.

³ James Madison (1788), *The Federalist*, no. 39.

⁴ Max Farrand (1911), *The Records of the Federal Convention of 1787*, vol. II, pp. 641-643, New Haven, CN: Yale

The Framers came to Philadelphia knowing that the government of a free people was expected to accomplish certain objectives for the benefit of the governed. The actual business of working out the design of the Constitution began on May 29th, 1787, with a set of resolutions introduced by Edmund Randolph of Virginia. The first of these was

Resolved that the articles of Confederation ought to be so corrected and enlarged as to accomplish the objects proposed by their institution; namely, "common defense, security of liberty, and general welfare."⁵

By the time the Convention ended, three more objects of government were added to the general objectives of all governments at every level of government; namely, to form a more perfect Union, establish Justice, and insure domestic Tranquility.

Although the specific work of the Convention was the framing of a constitution for a general government, the Framers did not carry out their work in a vacuum. They knew from the beginning that government of their Union of States involved many levels of government ranging from the new general government all the way down to local governments. Indeed, they debated this point very early on at the Convention and deliberately chose to leave this layered structure of governments intact. Madison later explained this decision to American citizens in the following way:

In the first place, it is to be remembered that the general government is not to be charged with the whole power of making and administering laws; its jurisdiction is limited to certain enumerated objects which concern all the members of the republic, but which are not to be attained by the separate provisions of any. The subordinate governments, which can extend their care to all those other objects which can be separately provided for, will retain their due authority and activity.⁶

It has been widely assumed by many people that by "subordinate governments" the Framers were only talking about the state governments. This principle, however, is not so limited. It extends all the way to the people themselves through many layers – state, county, city, township, and any other layers that local bodies of people should choose to institute in order that *local special interests*, congruent with general interests in common with all citizens, would be protected and served. Over the years this principle has been neglected and abused as the American experiment has evolved. The purpose of this paper is to review and renew this basic principle for the governing of an American Republic.

2. Factions and the Phenomenon of Mini-Community

Of all the countries, governments, and Societies that have ever existed in the history of humankind, the vast majority of them exist no longer. Historian Arnold Toynbee famously wrote, "Civilizations fall from within." Research shows this is also true of smaller scale Societies too. Toynbee drew the conclusion 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 their rulers and revolts against its servitude.⁷

Toynbee found all Societies undergo a process of growth and success followed by stagnation and break-

University Press, 1966.

⁵ Max Farrand (1911), *The Records of the Federal Convention of 1787*, vol. I, pg. 20, New Haven, CN: Yale University Press, 1966.

⁶ James Madison (1787), *The Federalist*, no. 14.

⁷ Arnold Toynbee (1946), *A Study of History*, Oxford, UK: Oxford University Press, pg. 246.

down and ending in the failure and disintegration of the Society. The later periods are characterized by the emergence of despotism by dominant minorities – rulers who lose the loyalty of the ruled. Its disaffected people come to form what Toynbee called proletariats. He explained what he meant by 'proletariat' in the following way:

When we first made use of the term 'proletariat' we defined it . . . as a social element or group which is in some way 'in' but not 'of' any given society at any given stage of that society's history. . . . The true hallmark of a proletariat is neither poverty nor humble birth but a consciousness – and the resentment that this consciousness inspires – of being disinherited from his ancestral place in society.⁸

The people making up a Toynbee proletariat generally do not comprise an homogeneous subset of the Society's population. Their only unity is hostility toward being ruled by a dominant minority. This was indeed the case for the thirteen American colonies in 1776, who were united only by their opposition to continuing British rule and saw themselves as sovereign States. A Society begins its decline and fall

when that civilization begins to lose the creative power through which, in its period of growth, it had at one time inspired a voluntary allegiance in the hearts of the people below its surface or beyond its borders. When this happens the ailing civilization pays the penalty for its failing vitality by being disintegrated into a dominant minority, which rules with increasing oppressiveness but no longer leads, and a proletariat . . . which responds to this challenge by becoming conscious that it has a soul of its own and making up its mind to save its soul alive. The dominant minority's will to repress evokes in the proletariat a will to secede; and a conflict between these two wills continues while the declining civilization verges towards its fall, until, when it is *in articulo mortis*, the proletariat at length breaks free from what was once its spiritual home but has now become a prison-house[.]⁹

A Toynbee proletariat is generally an aggregation of distinct special interest groups, each of which constitutes a *faction* in the Society. Furthermore, even Toynbee's dominant minority can itself be comprised of two or more factions. A pertinent present day example is provided by the Republican Party and the Democratic Party. Both parties consist of a minority of people in the United States. In the recent 2016 general election, census figures estimate that there are just under 219 million people eligible to vote in the U.S. Of this number, just over 146 million people (66.8%) are actually registered voters; and of this number just under only 127 million voters (57.8% of those eligible to vote) actually cast their ballots. The election popular vote was split roughly 50:50, which means that *at most* each party consists of fewer than 29% of the eligible voter population of the United States. Because the balance of political power in the United States is always held by one or the other of these parties, and because *both* parties seek to *rule* rather than *govern* the nation, these parties are dominant minorities. The great myth of representative democracy is that the precept "the majority rules" is a *just* precept of government. But, in fact, it is almost never the case in a non-consensus democracy that its rule is made by a majority of its people. As John Stuart Mill pointed out, non-consensus representative democracy is almost always *the rule of the majority by a minority*:

Democracy, thus constituted, does not even attain its ostensible object, that of giving the powers of government in all cases to the numerical majority. It does something very different: it gives them to a majority of the majority who may be, and often are, but a minority of the whole¹⁰.

The other great myth of non-consensus democracy is that *ruling* is the same as *governing*. But this is

⁸ *ibid.*, pg. 377.

⁹ *ibid.*, pg. 77.

¹⁰ John Stuart Mill (1861), *Representative Government*, chap. 7.

manifestly untrue. To *govern* is to organize, administer and regulate *without sovereign power* the actions and interactions of a Society's people in accordance with the six general objectives of government stated earlier. The *Sovereign* is the entirety of the citizen members of a Society whose people live in communal association and in which the citizens bind themselves to each other through a social contract^{11,12}. In contrast, to *rule* is to coerce, by force or threat of force, obedience by those who are ruled. The latter are said to be *subjugated* by the ruler(s) and they obey *only* to protect themselves from the rulers. Rulership stands in contradiction to the first principle of the American Revolution; namely,

We hold these truths to be self-evident, that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed[.]¹³

Just government is only possible when and where the governed have willingly bound themselves to one another by a *social contract* (whether this be written or merely understood) and, by doing so, have chosen to associate with one another in a civil Community. Indeed, anything that breaches or contradicts the social contract is *unjust*. *Justice* is the negating of anything that is unjust.¹⁴ The true and correct first precept of government in an American Republic is *liberty with justice for all*. But this precept is easier said than followed. The great question is: How can it be done? for if it is not then the civil Community will go by the way of all those other Societies in the history of humankind who have failed and fallen. It is a task not to be taken lightly. Madison wrote,

In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable to government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions.¹⁵

'Auxiliary precautions' are necessary because without them 'a dependence on the people' becomes impossible owing to formation of mini-Communities. The common root of both dominant minorities and Toynbee proletariats is *faction*. Every faction is a special interest group – a mini-Community whose overall interests: include special interests that are not shared by *all* citizens; are in many cases *contrary* to the special interests of other mini-Communities, and; at the extreme stand in outright *contradiction* to those other special interests. Potential for conflict between mini-Communities always exists wherever their special interests are contradictory. Preventing these conflicts requires that precautions be instituted.

The Framers were aware of the deadly danger faction poses to a Republic. Madison wrote,

Among the numerous advantages promised by a well constructed union, none deserves to be more accurately developed than its tendency to break and control the violence of faction. The friend of popular governments never finds himself so much alarmed for their character and fate as when he contemplates their propensity to this dangerous vice. He will not fail, therefore, to set a due value on any plan which, without violating the principles to which he is attached, provides a proper cure for it. . . .

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

¹¹ Richard B. Wells (2016), *Wells' Unabridged Glossary of the Critical Philosophy and Mental Physics*, 5th ed., www.mrc.uidaho.edu/~rwells/techdocs/.

¹² Richard B. Wells (2012), *The Idea of the Social Contract*, www.mrc.uidaho.edu/~rwells/techdocs/.

¹³ *The Declaration of Independence*, 1776.

¹⁴ Richard B. Wells (2012), *The Idea of the Social Contract*, www.mrc.uidaho.edu/~rwells/techdocs/, chap. 11.

¹⁵ James Madison (1788), *The Federalist*, no. 51.

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.

There are again two methods of removing the causes of faction: The one, by destroying the liberty which is essential to its existence; the other, by giving to every citizen the same opinions, the same passions, and the same interests.

It could never be more truly said than of the first remedy that it is worse than the disease. . . . The second expedient is as impracticable as the first is unwise. As long as the reason of man continues fallible and he is at liberty to exercise it, different opinions will be formed. As long as the connection subsists between his reason and his self-love, his opinions and his passions will have a reciprocal influence on each other and the former will be objects to which the latter will attach themselves. . . .

The latent causes of faction are thus sown in the nature of man; and we see them everywhere 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 or to persons of other descriptions whose fortunes have been interesting to the human passions have, in turn, divided mankind into parties, and rendered them much more disposed to vex and oppress each other than to cooperate for their common good. . . .

The inference to which we are brought is that the *causes* of faction cannot be removed and that relief is only to be sought in the means of controlling its *effects*.¹⁶

Knowing this, the Framers did the best job they could at the time to design into the U.S. Constitution means of controlling factions. That their efforts were not perfect is no criticism of their work. No one foresaw the coming changes in technology – especially the inventions of the railroad and the telegraph – which a few decades later would abolish the greatest barrier to formation of the most vile of all factions – national political parties. No one foresaw the coming of the industrial revolution to American shores or how this would fundamentally alter the character of business, commerce, and labor in ways that fertilized the emergence of manifold economic factions in the country. These and other factors meant there would be shortcomings in the Constitution. The Framers recognized the imperfectability of the Constitution and tried to provide a remedy for this by means of constitutional amendments.¹⁷

In 1787 the most prominent factions were the individual State governments, and safeguarding against these factions received the most attention from the Framers and consumed more of their time and debate than any other constitutional safeguard. All thirteen of the State governments had been formed in a hurry during the Revolutionary War, sometimes in the shadow of approaching British troops. The need for haste in their institutions, following the call of the Continental Congress on May 10th, 1776, to "adopt such governments as shall . . . best conduce to the happiness and safety of their constituents in particular and America in general,"¹⁸ was a natural consequence of wartime circumstances. There was no time for lengthy theoretical reflections. The individual States put their new governments together according to local customs and circumstances and to a degree – some less, some more – with guidance by opinions of prominent Patriot leaders such as John Adams¹⁹ and the Enlightenment Era scholarship of Montesquieu²⁰

¹⁶ James Madison (1787), *The Federalist*, no. 10.

¹⁷ Richard B. Wells (2010), *The Idea of the American Republic*, www.mrc.uidaho.edu/~rwells/techdocs/, chap. 1.

¹⁸ Albert Bushnell Hart (1897), *Formation of the Union: 1750-1829*, 8th ed., NY: Longman's, Green, and Co., 1907, pp. 80-82.

¹⁹ John Adams (1776), "Thoughts on government," in *The Portable John Adams*, John Patrick Diggins (ed.), London: Penguin Books, 2004.

²⁰ Montesquieu (1748), *The Spirit of Laws*.

and Locke²¹. The outcomes were republican governments of one kind or another modeled along the lines of their own pre-revolutionary customs of self-government. The products were as imperfect as one would expect given the haste with which their institutions had to be established. By 1787 the delegates to the Constitutional Convention had had enough experience with these governments that some of them, *e.g.* Alexander Hamilton, advocated abolishing them altogether. This idea was actually debated but in the end the delegates decided against this radical – and, really, impracticable – idea²². Tension between the state governments and the general government continues to exist in the U.S. to this day.

Nonetheless, this early decision by the Framers was and is a correct decision; the principle of layered government expressed above by Madison is sound; and, as this paper attempts to show, is necessary for the possibility of a robust, stable, and just American Republic. But a question is: to what extent and degree should the principle of layered governments *inside a state* be applied? This paper argues that the answer to this question, congruent with human nature, is: much more than it is now.

The causes of faction are, as Madison observed above, "impulses of passion and interests" commonly shared by members of particular special interest groups but not by others. But what does it mean to say, as Madison did, that these are "sown in the nature of man"? For this we must look at people's interest-driven tendency to join and form mini-Communities because every faction with which the institution of political governance must be concerned is a mini-Community of people sharing one or more special interests.

In Critical social contract theory a *Community* is any voluntary association of people who join together for some common purpose²³. The term 'Community' (capital C) differs from the term 'community' (lower case c) because the latter does not imply any common purpose unites its people. For example, Princeton, Idaho, is an unincorporated concentration of 156 people (as of 2016).²⁴ It has a post office but no local government and is classified as a "census-designated place" by the U.S. Census Bureau. Princeton is an example of a geographic community but the people who live there do not associate as a Community. A purpose is something a person or a group of people is trying to accomplish. When we are speaking of an associated group of people the purpose of their association is called their *common* purpose.

Any Society contains a great number of such distinguishable associations but only a few in which a common purpose is shared by every member of that Society. Often people in a geographic community may share no common purpose yet within that geographic community there may be identifiable subsets of the population who do associate and unite for a special purpose common to them but not shared by others in that geographic community. For example, after the publication of Thomas Paine's *Common Sense* in 1776 roughly 40-45% of free colonial Americans came to favor independence from Great Britain and these people formed an association with one another that came to be called the Patriot party. Roughly 15-20% opposed breaking away from Great Britain, and these people came to be known as the Loyalists. The remaining Americans sided with neither party and are referred to as the neutralists. Colonial America thus came to be divided into two *mini-Communities* (the Patriots and the Loyalists) plus an nonaligned proletariat.

There are many other examples of mini-Communities besides political parties. Labor unions, parent-teacher associations, Boy Scout troops, the U.S. Marine Corps, corporations, college fraternities and sororities, trade associations . . . all of these and many more are mini-Communities. The tendency to form mini-Communities is one of the most pervasive social traits exhibited by human beings. The phenomenon of mini-Community is perhaps the single most important factor in sociology but it is a factor that has

²¹ John Locke (1690), *Second Treatise of Government*.

²² Max Farrand (1911), *The Records of the Federal Convention of 1787*, vol. I, pp. 354-358, New Haven, CN: Yale University Press, 1966.

²³ Richard B. Wells (2012), *The Idea of the Social Contract*, www.mrc.uidaho.edu/~rwells/techdocs/, chap. 1.

²⁴ <http://idaho.hometownlocator.com/id/latah/princeton.cfm>.

received far too little attention from sociologists, political scientists, and other social-natural scientists.

Mini-Community issues are at the root of problems confronting social contracting and the well-being and survival of Societies²⁵. The problem of factions confronting the Framers was – and the problem confronting America today still is – one of the most difficult in the institution of governments. The thing that makes mini-Community the great challenge that it is stems from an important theorem in the Critical theory of social contracting; namely, *every person is always simultaneously a member of many different mini-Communities*²⁶ which each person joins to satisfy different sets of his own personal interests.

The great majority of mini-Communities are informal associations which form out of accidental personal circumstances. They have no formal governing organization, no *formal* social contract binding the members, no lists of membership. They operate on 'understandings' and moral customs. A relatively few of them who do have some or all of these things are not too difficult to identify. But many mini-Communities are extremely difficult to identify. Furthermore, mini-Communities form and dissolve constantly and what was a viable mini-Community ten years ago might not even exist today. Ten years from now mini-Communities will exist that no one today foresees. Like Toynbee's civilizations, mini-Communities arise, develop and grow for a time, encounter challenges, break down, and disintegrate and disappear. They are sub-Societies subject to their own sorts of challenges not so different from those Toynbee found that civilizations face. Toynbee studied Societies and civilizations on the scale of nations and continents, but these are only special cases of Societies in general²⁷.

Governments exist to serve the Societies they govern. These Societies are always amalgams of mini-Communities whose members all associate with many different mini-Communities. It would certainly make the job of political scientists easier if individual people only belonged to one mini-Community at a time; but they don't and this fact really does render theories of government that have been proposed from the time of Thomas Hobbes to the present scientifically invalid because all these older theories fail to recognize the full extent the effects of the phenomenon of mini-Community have on government. When governments, nations, and Societies in general fail it is because they disintegrate into mutually hostile mini-Communities. The institution of government is not wholly driven by considerations of mini-Communities – because individual people are the social atoms of every Society – but government institutions must fail if they are not designed with recognition of mini-Community as one basic factor.

The problem of identifying the existence of real mini-Communities is formidable and empirical scientific methods for doing so are quite nascent. To date only a few examples of scientific identification of mini-Communities have been presented²⁸ and much more work remains to be done. Not every mini-Community is necessarily a problem for the institution of government because the interests and purposes which define it are not necessarily ones affected by or affecting government. For example, one of my own personal mini-Communities is card-playing club some of us founded nearly 38 years ago. Our common purpose is the enjoyment of comradely leisure activity and our common interest is socializing with each other while playing cards. It is a small club – currently there are eight members. Different members have come and gone over the years, although three of us are original founders of the club. We have our own informal system of club governance based on *consensus* democracy (we don't vote on rules or procedures; we arrive at them by unanimous consent and *never* by majority vote). The club got its start when we were in our twenties; today we are all senior citizens except for one young fellow in his fifties. Our club has no effect on, and is unaffected by, politics. Discussing politics or religion is not permitted in our sessions by club moral custom. We are an example of a neutral mini-Community.

²⁵ Richard B. Wells (2012), *The Idea of the Social Contract*, www.mrc.uidaho.edu/~rwells/techdocs/, chap. 11.

²⁶ *ibid.*

²⁷ Richard B. Wells (2012), *The Idea of the Social Contract*, www.mrc.uidaho.edu/~rwells/techdocs/, chap. 10.

²⁸ Richard B. Wells (2013), *Critique of the American Institution of Education*, vol. II of *The Idea of Public Education*, www.mrc.uidaho.edu/~rwells/techdocs/, chap. 11.

However, mini-Communities which are based on interests that actions of government affect generally *do* constitute factions which pose difficulties for continuing viability of an American Republic. Critically, **interest** is anticipation of a satisfaction or a dissatisfaction combined with the *Existenz* of some object of desire²⁹. Every member of a mini-Community has interests he seeks to serve by means of his membership in that particular mini-Community. The *common* interests of a mini-Community are subsets of individual personal interests which are congruent with one another within the membership of the mini-Community. But because not all of these interests are shared by other mini-Communities, those which are not compose the defining *special* interests of the mini-Community. Factions are based upon special interests.

3. The Implications of Special Interests

The 1787 Convention was arguably a gathering of the most learned and skilled body of social-natural political scientists ever assembled in one place at one time. Attentive study of Farrand's *Records of the Federal Convention of 1787* and of *The Federalist* make it obvious that the Framers possessed considerable knowledge about factions and the serious dangers they pose to popular government. That their understandings did not extend far enough into the problem of mini-Community is not a fault for which they can be blamed; political science as a social-natural science had not been advanced far enough in 1787 to bring the magnitude of the issues posed by the phenomenon of mini-Community fully to light. One piece of evidence for this is the omission of a Bill of Rights in the final drafting of the U.S. Constitution – an omission for which the Convention was roundly criticized during the process of ratifying of the Constitution. Congress passed the Bill of Rights amendments in its first session in 1789. These were ratified by the States in 1791.

Madison proposed draft versions for most of the amendments in the Bill of Rights but its final form was in the hands of Congress. The amendments introduced into the Constitution important defects I have discussed elsewhere³⁰. Its chief shortcomings are: (a) underestimation of implications inherent in mini-Community special interests; and (b) a general failure to comprehend that these issues challenge Republican government at *all* levels of government and are not issues pertaining solely to the general government. For example, Article IV section 4 of the Constitution guarantees "to every State in this Union a Republican Form of Government" but provides no definition or specification of *what kind* of republican government is being guaranteed. There were and are important differences to this day found among our divers governments. For example, U.S. Supreme Court justices are nominated by the President, confirmed by the Senate, and serve "during a term of good behavior"; Idaho State Supreme Court justices are popularly elected and serve six year terms. These are two obviously different forms of republican government and the U.S. Constitution seems to be indifferent to this sort of difference. But just because a government fits a general description of a republic is no guarantee this government is not a despotism – a fact stated and debated during the 1787 Convention³¹.

Omission of a Bill of Rights was not an oversight at the Convention. In the waning hours of the Convention delegates Elbridge Gerry of Massachusetts and George Mason of Virginia moved that one be drafted and prefaced to the Constitution. Delegate Roger Sherman of Connecticut counterargued that one was not needed because the declarations of rights already in place in the State governments were not repealed by the Constitution. Mason replied that the laws of the U.S. were superior to those of the states and therefore a Bill of Rights *was* necessary. The motion failed 10-0.³² This was one of several last minute motions put forth in the final few days – others included guaranteeing trial by jury, protection of

²⁹ Richard B. Wells (2016), *Wells' Unabridged Glossary of the Critical Philosophy and Mental Physics*, 5th ed., www.mrc.uidaho.edu/~rwells/techdocs/.

³⁰ Richard B. Wells (2010), *The Idea of the American Republic*, www.mrc.uidaho.edu/~rwells/techdocs/.

³¹ Max Farrand (1911), *The Records of the Federal Convention of 1787*, vol. I, June 4th, 1787.

³² Max Farrand (1911), *The Records of the Federal Convention of 1787*, vol. II, Sept. 10th, 1787, pp. 587-588.

the freedom of the press, and establishing a national university – that failed on the argument that they were unnecessary, either because they were already adequately covered by the State constitutions or because Congress would have the authority to pass legislation to cover it^{33,34}.

The Framers placed great emphasis on the importance of having men in the general government who possessed strong moral fiber and a commitment to the well-being of the whole of the nation. However, they were also pragmatic men who understood that this was an ideal that could not be relied upon. That was why they took such care to institute systems of checks and balances into the Constitution. The concerns they raised again and again at the Convention were later echoed by John Adams:

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? When the government of a great nation is in question, shall the whole nation choose? Will such a choice be better than chance? . . . There is no individual 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, to all the chicanery, impostures, and falsehoods imaginable with scarce a probability of preferring real merit. . . . Real merit is so remote from the knowledge of whole nations that were magistrates to be chosen by that criterion alone, and by a universal suffrage, dissensions and venality would be endless.³⁵

Merit, virtue, and service – as well as chicanery, imposture, and venality – arise in human Nature as a consequence of personal interests and Obligations-to-Self. Mini-Communities form when Obligations-to-Self and self-interests are congruent among the members of the mini-Community association³⁶. A consideration of how special interests impact systematic institution of layered government is therefore of great importance. It is not infrequent to see political commentators and opinion writers express wonder and bewilderment over why voters often seem to fail to place common interests ahead of special interests when they go to the polls. Such bewilderment exposes a fundamental lack of understanding of the human Nature of interest, and it is correct to say that this lack is widespread. The reason for it can partly be laid at the feet of a devolution of political science since the 18th century. The late 19th century saw the start of an intellectual dark age in political science, during which political science ceased to be a social-natural science and became what it is today – and this amounts to a mere tradecraft and natural history labeled as a social science³⁷. Only recently in the 21st century has a renewed *social-natural* science of politics and

³³ At the conclusion of the Convention it was correct to say that the Constitution granted to Congress the authority to legislate such things as a national university, prohibition of child labor, and other nationwide laws. However, the 10th Amendment and the broadly literal legal interpretations of it made later took this power away from Congress and forbade it from passing a number of national laws that the Framers might otherwise have written into the Constitution. This was one consequence of the Bill of Rights receiving much less reflection and debate than was accorded to the Articles. Much of what is in the Bill of Rights reflects the antipathies felt in the Colonies over British laws and actions leading up to the Revolutionary War, and the states' concerns that a general government would act like and promulgate enormities similar to those passed by the British Parliament and the British army prior to the Revolution. As a result, the Bill of Rights is much more *ad hoc* than the main body of the Constitution. The Bill of Rights was more the product of politics than of a political science.

³⁴ When I read Farrand's *Records* I get a sense that in the final few days of the Convention the delegates were in a hurry to wrap things up and head home after spending so many months in Philadelphia.

³⁵ John Adams (1790), "Discourses on Davila," in *The Portable John Adams*, John Patrick Diggins (ed.), London: Penguin Books, 2004, pp. 357-358.

³⁶ Richard B. Wells (2012), *The Idea of the Social Contract*, www.mrc.uidaho.edu/~rwells/techdocs/, chap. 6-7.

³⁷ Richard B. Wells (2014), *The Institution of Public Education*, vol. III of *The Idea of Public Education*, www.mrc.uidaho.edu/~rwells/techdocs/, chap. 17.

government begun to re-emerge in nascent form³⁸.

It has correctly been said that "all politics is local." There is, I think, far more truth to this than even those who speak or write this phrase perhaps appreciate. All politics is *very* local; it begins with the Self-interests of individual people – the social atoms of social-natural science^{39,40}. Individual Self-interests are always uniquely particular because they arise from the individual's uniquely personal experience. Common interests – the basis for mini-Community associations – are always derivative interests. As I have explained previously³⁸, human beings have no innate "social instinct." Socialization is learned in childhood and this learning is entirely empirical. It is no great wonder why people place their special interests ahead of common interests in so many cases. Objects of common interest are discovered, contain a high degree of abstraction, and are learned through individuals' experiences with the mini-Communities in which they associate themselves. The great wonder really is that common interests strong enough to bind a great nation together exist at all, and even this proposition is a speculation. There have been and still are people who question whether there might be a maximum extent of population beyond which a nation that is not a military despotism continues to be viable. Montesquieu wrote,

If a republic be small, it is destroyed by a foreign force; if it be large, it is ruined by an internal imperfection. To this twofold inconvenience democracies and aristocracies are equally liable, whether they be good or bad. The evil is in the very thing itself, and no form can redress it.⁴¹

Rousseau also had a pessimistic outlook:

The body politic . . . begins to die as soon as it is born, and carries in itself the causes of its destruction. But [it] may have a constitution that is more or less robust and suited to preserve [it] 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 nature 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 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.⁴²

People are typically no more disposed to contemplate the disintegration and fall of their nation than they are to contemplate their own death. There is nothing any of us can do about our own mortality, but this does not necessarily mean there is nothing we can do about our nation's. The first objective of government – to form a more perfect Union – has the perpetuation of the nation as its Object. Achieving the objective is opposed by the tendency of a nation to granulate into mini-Communities and for these mini-Communities to become hostile to one another because of contradictory special interests^{39,40}. It should not be forgotten that a special interest is "special" only because it is not shared by other mini-Communities. To the mini-Community holding that interest, it is not "special"; it is a *common* interest.

No person binds himself in a commitment to association and a social contract in order that others may ride roughshod over the interests he holds dear. The fatal flaw in non-consensus democracy is that it is a system that does precisely this. The rule of the majority – even if it really were such – is also the tyranny of the majority. It actively promotes the formation of Toynbee proletariats; it accelerates anti-bonding granulation in the body politic; it exemplifies what Montesquieu called the ruinous internal imperfection of popular and aristocratic governments alike.

³⁸ Richard B. Wells (2012), *The Idea of the Social Contract*, www.mrc.uidaho.edu/~rwells/techdocs/, chap. 1.

³⁹ Richard B. Wells (2012), *The Idea of the Social Contract*, www.mrc.uidaho.edu/~rwells/techdocs/.

⁴⁰ Richard B. Wells (2014), *The Institution of Public Education*, vol. III of *The Idea of Public Education*, www.mrc.uidaho.edu/~rwells/techdocs/, chap. 1.

⁴¹ Montesquieu (1748), *The Spirit of Laws*, vol. I, Book IX.

⁴² Rousseau (1762), *The Social Contract*, chap. 11.

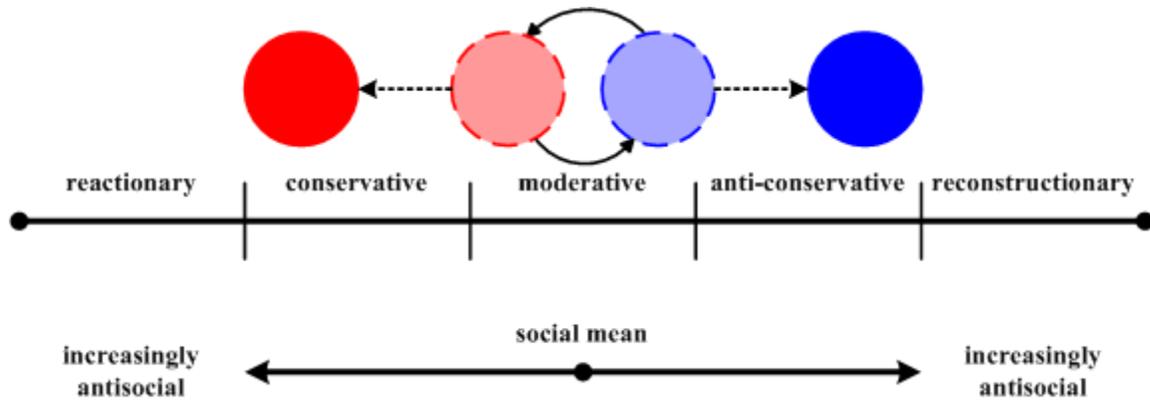


Figure 1: Example of two mini-Communities pushing each other into increasingly antisocial mutual hostility.

Contradictory special interests drive mini-Communities into conflicts with each other that become progressively more antisocial and hostile. Figure 1 illustrates the idea of this phenomenon. The axis labels in the figure are a taxonomy and have the following explanations. The point denoted 'social mean' in figure 1 indicates a balance between feelings of *Lust* and *Unlust* and the corresponding attitudes are ones of preference for moderation in making adjustments and changes. As we proceed in the direction of the left-hand endpoint, preferences are more and more given over to favoring ever smaller and finer adjustments made ever more gradually. At the end denoted 'reactionary' the preference is to preserve things precisely the way they are. In contrast, as we move in the opposite direction the preferences become increasingly inclined to favor larger changes made more rapidly until, at the right-most endpoint, individuals are inclined to favor the complete overthrow of the institution and to change everything immediately. *Both* endpoints are radical in that word's connotation denoting something's basic or root parts. Reactionary judgments are radical for preservation and conservation, reconstructionary judgments are radical for abolition and accommodation. It is an error in language usage to assign the word 'radical' to one extreme and not the other. Furthermore, these judgments are always *ad hoc*. A person who is reconstructionary in regard to an institution is often reactionary in regard to making changes and accommodations in his own ideas and attitudes. *There is no such thing as a person who is reactionary, conservative, &etc.* People are only reactionary, conservative, &etc. with regard to specific judgments of taste pertaining to specific matters of choice.

The illustration of figure 1 is an example of one mini-Community growing more reactionary while the other grows more reconstructionary. However, this is not the only possible case. Other examples include: (1) both mini-Communities growing more reactionary in defense of their special interests; and (2) both mini-Communities growing more reconstructionary in regard to their parent Society, but reconstructionary along incongruent lines of special interests. All these cases are inflamed in a Society in which political party factions are allowed to exercise *rulership* of the parent Society. As uncivil actions continue to be employed, each mini-Community pushes the other toward more extreme attitudes and judgments along the spectrum of controversy. At some point reconciliation between the two mini-Communities become impractical to achieve and an outright rupturing occurs within the parent Society. This is because the controversy undergoes a shift of focus by both factions away from whatever the original provocative *objective* issue or circumstance was. It refocuses competitive behaviors on individuals' privately-held higher moral maxims and practical imperatives pertaining to practical rules of Obligation-to-Self in regard to one's own person. The result is a sort of *jihad* that breaks out between the now-uncivil competitors. Both factions now commit actions that violate the terms and conditions of the social compact of the larger parent Society in which they are both embedded. Thus both groups are committing unjust actions. To the degree these actions are intentional, the factions commit deontological moral *crimes* against the overall parent Society. Their competition drives the Society into a civil war.

At the time I write this, an especially rank example is provided by the two dominant political parties in the U.S. For three decades now these parties have struggled to usurp rulership over the country from each other. All the while their uncivil and internecine competition has been promoting breakdown in the governance of the country, and the last few years have seen other mini-Community groups beginning to call for secession from the United States. Protests and demonstrations are becoming more violent. If the trend continues – and it will so long as the political parties continue to vie for rulership of the country – the foreseeable next phase is violent political and domestic turmoil of the same sort as that which destroyed the Weimar Republic in Germany during the 1930s. The political parties have made themselves cancers growing in the body politic of America. It is as John Adams foretold in 1790:

National passions and habits are unwieldy, unmanageable, and formidable things. The number of persons in any country who are known even by name or reputation to all the inhabitants is, and ever must be, very small. Those whose characters have attracted the affections, as well as the attention, of the whole people acquire an influence and ascendancy that is difficult to resist. In proportion as men rise higher in the world, whether by election, descent, or appointment and are exposed to the observations of greater numbers of people, the effects of their own passions and of the affections of others for them become more serious, interesting, and dangerous. In elective governments, where first magistrates and senators are at stated intervals to be chosen, these, if there are no parties, become at every fresh election more known, considered, and beloved by the whole nation. But if the nation is divided into two parties, those who vote for a man become the more attached to him for the opposition that is made by his enemies. This national attachment to an elective first magistrate, where there is no competition, is very great. But where there is a competition the passions of his party are inflamed by it into a more ardent enthusiasm. If there are two candidates, each at the head of a party, the nation becomes divided into two nations, each of which is, in fact, a moral person, as much as any community can be so, and are soon bitterly enraged against each other.⁴³

The flaw is not unique to non-consensus democracies. It exists as well in monarchies, in oligarchies, and in republics not adequately constituted to protect minorities from case-by-case tyranny of a majority in all legislations and rulings of law. One of the most important factors in mini-Community behaviors that tends toward breakdown and disintegration of their Society is the *necessity* in human nature for *stereotyping*, which inherently tends toward dehumanizing members of rival mini-Communities.⁴⁴

Madison wrote,

It is of great importance in a republic not only to guard the society against the oppression of its rulers; but to guard one part of society against the injustice of the other part. Different interests necessarily exist in different classes of citizens. If a majority be united by a common interest, the rights of the minority will be insecure. . . . In a free government the security for civil rights must be the same as that for religious rights. It consists in the one case in the multiplicity of interests, and in the other in the multiplicity of sects. The degree of security in both cases will depend on the number of interests and sects; and this may be presumed to depend on the extent of country and the number of people comprehended under the same government.⁴⁵

An idea for the solution of the problem lies inherent in this quote. The Framers took some steps to institutionalize solutions to the problem; the shortcoming in their efforts stems from not digging deeply enough into the nature of *interests*. Their remedy was to "expand the sphere" of the Republic and, to a fair degree, they succeeded in this through setting up a system that would multiply the number of States in the Union over time. The shortcoming lies in not likewise "expanding the sphere" *inside* the States according

⁴³ John Adams (1790), "Discourses on Davila," in *The Portable John Adams*, John Patrick Diggins (ed.), London: Penguin Books, 2004, pg. 362.

⁴⁴ Richard B. Wells (2016), "The challenge of mini-Communities," www.mrc.uidaho.edu/~rwells/techdocs/.

⁴⁵ James Madison (1788), *The Federalist*, no. 51.

to the multiplicity of mini-Community interests and limitations on the powers of layered governments.

4. Interests and Their Implications for Government

The challenge for the institution of government is to institute a government that attracts and holds *the consent of the governed* based on a Union of common interests. But even where such a Union initially exists, *rulership* under non-consensus democracy destroys it by perpetuation of unjust laws⁴⁶. When a government sets up unjust laws it necessarily relies on force and the threat of force to coerce individuals whose civic interests have been unjustly thwarted and who are forced into acquiescing to the injustice. But coercion is never consent. It is merely the outcome of individuals' judgments of prudence. Those subjugated by threat of force are *morally released* from *all* commitments of allegiance to the oppressing Society and its social contract. Subjugation by force or the threat of force *creates* outlaw relationships within a once-civil Community.⁴⁷ Rousseau wrote,

The strongest is never strong enough to be always the master unless he transforms strength into right and obedience into duty. Hence the right of the strongest . . . is really laid down as a fundamental principle. But are we never to have an explanation of this phrase? Force is a physical power and I fail to see what moral effect it can have. To yield to force is an act of necessity, not of will – at most an act of prudence. In what sense can it be a duty?

Suppose for a moment that this so-called "*right*" exists. I maintain that the sole result is a mass of inexplicable nonsense. For, if force creates right, the effect changes with the cause: every force that is greater than the first succeeds to its right. As soon as it is possible to disobey with impunity, disobedience is legitimate: and, the strongest being always in the right, the only thing that matters is to act so as to become the strongest. But what kind of right is that which perishes when force fails? If we must obey perforce there is no need to obey because we ought: and if we are not forced to obey we are under no obligation to do so. Clearly the word "*right*" adds nothing to force: in this connection it means absolutely nothing.⁴⁸

Non-consensus democracy is every bit as much predicated on the rule of might over rights as the rankest dictatorship. It coerces prudent submission rather than wins voluntary allegiance. It was not a matter of semantics that the Framers created a Republic and not a democracy. The latter was the creation of the first national political party – the Democratic Party in the 1820s. When the Republican Party was later formed, it was no more predicated on the idea of a Republic than was its chief rival. The Republican Party is *not* Republican. It, like the Democratic Party, is just another powerful Un-American faction. Madison wrote,

If we resort for a criterion to the different principles on which different forms of government are established, we may define a republic to be, or at least bestow the name on, a government which derives all its powers directly or indirectly from the great body of the people and is administered by persons holding their offices . . . for a limited period or during good behavior. It is *essential* to such a government that it be derived from the great body of society, not from an inconsiderable proportion or a favored class of it; otherwise a handful of tyrannical nobles, exercising their oppression by a delegation of their powers, might aspire to the rank of republicans and claim for their government the honorable title of republic. It is *sufficient* for such a government that the persons administering it be appointed, either directly or indirectly, by the people, and that they hold their appointments by either of the tenures just specified[.]⁴⁹

"The great body of the people" does *not* mean a mere majority. It means the citizens of the body politic as

⁴⁶ Every law that violates the terms and conditions of a Society's social contract is an unjust law.

⁴⁷ Richard B. Wells (2012), *The Idea of the Social Contract*, www.mrc.uidaho.edu/~rwells/techdocs/, chap. 10-11.

⁴⁸ Rousseau (1762), *The Social Contract*, chap. 3.

⁴⁹ James Madison (1788), *The Federalist*, no. 39.

a *Sovereign* undivided into classes of citizens and not dominated by any faction.

But are elected officials *really* "appointed directly or indirectly by the people" if the only individuals appearing on the ballot are those who have been selected by a few minority factions whose ranks exclude a majority of the citizens? I noted earlier that in the most recent (2016) national election each of the two dominant political parties in the U.S. accounted for at most 29% of eligible U.S. voters. Four other minor parties, accounting for less than 5% of votes cast, were also represented in the presidential election. This means that over 30% of eligible U.S. voters had no voice at all in choosing *candidates* for office without being forced to side with one or another of the political party factions. Opinion polling data indicates that over one-third of the voters strongly disliked *all* the candidates appearing on the ballot. These voters were left with a choice of either voting *against* the candidate they held in greatest antipathy, voting *for a political party*, or not voting at all. 'None of the above' was not a ballot choice offered to them. It can be strongly argued that this discontented one-third really had no uncoerced choice at all. To argue this is to argue that Madison's "sufficient condition" for an American Republic, quoted above, was not met. But is it possible for this condition to ever be met? Is government with the consent of the governed really possible or is it nothing but an unreachable and impracticable ideal?

This question requires a closer look at what is meant by the idea of "consent." I use the word **consent** in this paper in its connotation of "voluntary allowance or acceptance of something done or proposed." The stress here is on a person's *uncoerced* allowance or acceptance. A person does not have to like or even *agree* that a law, regulation, or action is just, proper, wise, or good. It is sufficient for him to merely *not object* to it or *not care about it* in order for him to give his consent to it. It follows from this that the idea of "consent of the governed" has for its *practical* meaning the uncoerced willingness of the governed to agree to go along with the actions of their government at least as far as to see if the consequences of these actions are not-unacceptable to satisfaction of their individual and collective interests as each citizen exercises his *civil* liberties.

Herein enters the challenge of mini-Communities. How can a large population of people, each of whom belongs to a multiplicity of mini-Communities and has special interests that are not-congruent with those of some other people, ever come to a unity of consent over agents of government, legislation, and laws? Two special interests are *incongruent* if satisfaction of one of them *necessarily* thwarts satisfaction of the other. The mini-Community whose not-unjust special interest is legally thwarted will never give its consent to a law or ruling favoring another faction. It might be intimidated into submitting to that law or ruling by threat of force, but if so this is an act of prudence, not consent. Viewing the law as unjust, it will bid its time and look for the opportunity to overthrow that law for one favorable to its own interest. If the latter happens to then thwart another faction's interest satisfaction their attitude will be: so be it.

An institution of government that not only permits but actually encourages this uncivic competition is self-doomed to fail in meeting the objectives of government; its failure will take its Society down with it. Emerson wrote,

Society is an illusion to the young citizen. It lies before him in rigid repose, with certain names, men, and institutions rooted like oak trees to the center, round which all arrange themselves the best they can. But the old statesman knows that society is fluid; there are no such roots and centers; but any particle may suddenly become the center of the movement and compel the system to gyrate round it . . . But politics rest on necessary foundations and cannot be treated with levity. Republics abound in young civilians, who believe that the laws make the city; that grave modifications of the policy and modes of living and employments of the population; that commerce, education, and religion, may be voted in or out; and that any measure, though it were absurd, may be imposed on a people if only you can get sufficient voices to make it a law. But the wise know that foolish legislation is a rope of sand which perishes in the twisting; that the State must follow and not lead the character and progress of the citizen; the strongest usurper is quickly got rid of; and they only who build on Ideas build for eternity; and that the form of government which prevails is the

expression of what cultivation exists in the population which permits it. The law is only a memorandum. We are superstitious and esteem the statute somewhat: so much life as it has in the character of living men is its force. The statute stands there to say, yesterday we agreed to so-and-so but how feel ye this article today? Our statute is a currency which we stamp with our own portrait: it soon becomes unrecognizable, and in process of time will return to the mint. . . . Meantime the education of the general mind never stops. The reveries of the true and simple are prophetic. What the tender poetic youth dreams, and prays, and paints today, but shuns the ridicule of saying aloud, shall presently be the resolutions of public bodies, then shall be carried as grievance and bill of rights through conflict and war, and then shall be triumphant law and establishments for a hundred years until it gives place, in turn, to new prayers and pictures.⁵⁰

Government inevitably teaches lessons of good or ill by its actions. Non-consensus democracy by its very nature promotes uncivic competitions by factions and thereby teaches lessons of ill will. To this person it says: you are righteous and your voice shall prevail; to that one it says, you are unvalued, what you think and feel count for nothing, and you must submit to those who are favored. Ultimately the lesson people take from it is that the Society's social contract is a lie and a deception spun by designing enemies. This lesson creates the Toynbee proletariats who some day will rise up and tear the Society apart.

The challenge to government by the phenomenon of mini-Community is to make its institutions such that they work to transform *contradictory* special interests into either *contrary* or *neutral* special interests. When two or more special interests are contradictory, satisfaction of one of them is at the same time the thwarting of the others. But *all* mini-Community interests originate from the private and practical moral codes individuals have constructed for themselves⁵¹. This means that to those whose interests are thwarted the issue quickly becomes not just a disagreement but rather a *moral conflict* – and such issues can ignite social conflagrations when thwarted interests affect a mini-Community.

But when two special interests are merely contrary, satisfaction of one does not necessarily mean that satisfactions of the others are thwarted. The ideas of how to satisfy them might have to be altered, but alteration remains possible and satisfaction remains achievable. The task of agents of government is not to choose between the interests of parties; it is to mediate and stimulate changes in how each views its own interests so that their special interests are transformed from incongruent ones to ones which are either congruent or not-incongruent. This is the difference between an institution of government that *rules* vs. one which *leads*.⁵² In a civil Community there are very, very few actual "zero-sum games."

There is a subtle difference between special interests which are *not-incongruent* and special interests which are *congruent*. The two terms do not quite mean the same thing. Special interests are congruent if satisfaction of one of them does not *necessarily* prevent satisfaction of the other. One or both parties might need to modify *how* their interest is to be satisfied, but satisfaction is still possible for both. Not-incongruent special interests are such that the mini-Communities are each *indifferent* to the special interest of the other because the *ways and means* each mini-Community adopts in order to satisfy their own interests have no effect at all on the ways and means used by another mini-Community. Pairs of such special interests are neutral in regard to each other. When government chooses one special interest over the other, it *rules*. When it acts to bring about reconciliation of them, it *leads*. Leadership is essential for good government. Rulership is tyranny.

One often finds that a person or a mini-Community becomes attached to specific ways and means of achieving satisfaction of his or its special interest. A conflict between this mini-Community and another is not a conflict over their two interests *per se* but, rather, a conflict over ways and means. It is entirely

⁵⁰ Ralph Waldo Emerson (1844), "Politics," in *Essays and Poems*, Rutland, VT: Charles E. Tuttle Co., 1997, pp. 275-286.

⁵¹ Richard B. Wells (2012), *The Idea of the Social Contract*, www.mrc.uidaho.edu/~rwells/techdocs/, chaps. 4-6.

⁵² Richard B. Wells (2010), *Leadership*, chap. 6, §4, www.mrc.uidaho.edu/~rwells/techdocs/.

possible – in fact, it is preponderantly likely – that if each mini-Community alters its ideas of ways and means the conflict itself vanishes. A conflict arose between them *only* because the ways and means one (or both) of them proposes to use to satisfy its interest conflicts with the possibility of the other's achievement of satisfaction. Because it is only the ways and means that produce the conflict, the conflict can be removed by reconciling each other's ways and means. Emerson put it this way:

Every man's nature is a sufficient advertisement to him of the character of his fellows. Whilst I do what is fit for me, and abstain from what is unfit, my neighbor and I shall often agree in our means and work together for a time to one end. But whenever I find my dominion over myself not sufficient for me, and undertake the direction of him also, I overstep the truth and come into false relations to him. I may have so much more skill or strength than he that he cannot express adequately his sense of wrong, but it is a lie and hurts like a lie both him and me. Love and nature cannot maintain the assumption: it must be executed by a practical lie, namely, by force. This undertaking for another is the blunder which stands in colossal ugliness in the governments of the world. It is the same thing in numbers as in a pair, only not quite so intelligible. I can see well enough a great difference between my setting myself down to a self-control and my going to make somebody else act after my views; but when a quarter of the human race assume to tell me what I must do, I may be too much disturbed by the circumstances to see so clearly the absurdity of their command. Therefore, all public ends look vague and quixotic beside private ones. . . . If I put myself in the place of my child, and we stand in one thought and see what things are thus or thus, that perception is law for him and me. We are both there, both act. But if, without carrying him into the thought, I look over into his plot, and, guessing how it is with him, ordain this or that, he will never obey me. This is the history of governments – one man does something which is to bind another. A man who cannot be acquainted with me taxes me; looking from afar at me, ordains that a part of my labor shall go to this or that whimsical end, not as I but as he happens to fancy.⁵⁰

A key strategy to meet the challenges mini-Community poses to civil government is therefore to take advantage of the human tendency *to be indifferent to most of the special interests of others*. Interests, whether personal or mini-Community, can be classified into logical categories: pragmatic interests, moral interests, and ideological interests. A pragmatic interest is an interest for which satisfaction is achieved by the practical employment of prudence in exercising one's liberty of actions. The ways and means to satisfaction are ways and means of *expediency*. By this I mean actions to be taken to satisfy the interest are not based on notions of good vs. evil or even on notions of right vs. wrong, but merely on judgments of skill and taste. The *sine qua non* of civic ways and means of interest satisfaction is merely that the actions taken are civic – which is to say these actions visit no injustice on any other citizens of the civil Community at large. As it is always the Duty of a citizen to make only civic use of his liberty of action, and because there are always multiple ways and means of satisfying civic interests, reconciliation of conflicting pragmatic special interests is generally the easiest type of reconciliation to achieve. In this case the Duty of government is to insure that no injustice – whether intentional or unintentional – is *perpetuated* because of the action. Fulfillment of this Duty necessitates that the agents of government be competent to *make* a judgment about the matter which preserves the integrity of the social contract.

Reconciliation is much more challenging when moral interests are involved. Moral interests are those in which are contained rules and notions of right vs. wrong or good vs. evil. The difficulty exists because every person constructs for himself his or her own private and practical moral code in his or her manifold of rules, and no two people ever construct exactly the same practical moral code.⁵³ The mores of a Society are derivative moral tenets and maxims; these are possible only because its members have moral interests which are *congruent enough* to allow common moral customs to become established.^{53,54}

The phenomenon of moral judgment is a consequence of practical rule structures the individual builds

⁵³ Richard B. Wells (2012), *The Idea of the Social Contract*, www.mrc.uidaho.edu/~rwells/techdocs/, chaps. 4-6.

⁵⁴ Richard B. Wells (2016), "The challenge of mini-Communities," www.mrc.uidaho.edu/~rwells/techdocs/.

up in his practical manifold of rules. However, all such rule constructs remain unconscious and are non-objective in regard to empirical Objects. Moral *concepts* – Duties, objective ideas of right and wrong, ideas of honor, honesty, etc. – are products of *thinking*⁵⁵. These concepts, like all others, are constructed to serve the regulation of pure Reason and because of this have neither permanence nor the same force of law in determinations of human behavior that representations of practical rules command. Concepts that adults identify as "moral" imply "I ought to" and "I ought not to" influences on behavior – which means that a person is not necessitated to obey them. When and under what circumstances such ideas are formed and which substructures within the manifold of rules stimulated their formulation make pronounced differences in their objective character and account for not only the diversity of people's various systems of ethics but also why what is "moral" to one person can be amoral or even immoral to another. Studies have shown that the moral judgment of a person develops in stages, and that childish morality is quite a different thing than adult morality^{56,57}. Let us look at some examples of ideas held to be moral by significant numbers of people.

There has always been a close tie between religion and customs bearing the force of moral law in Society. Kant defined "religion" as *the contemplation of moral law as divine precept*⁵⁸. There are people who think religion was/is the foundation of morality but this is provably false. The world's oldest Society, the BaMbuti Pygmies of the Congo, have had very refined moral customs for thousands of years but no recognizable theology or organized religion in all that time⁵⁹.

Religions generally organize, record, and to some degree establish their Society's moral customs, but the phenomenon of social morality is rooted in human Nature and individuals' constructions of their manifolds of rules in pure practical Reason. Religions only try to codify and technically specify – and sometimes enforce – those moral customs that are already in place in their religious Community. And, too, religious authority figures try to extend or generalize the typically vague general understandings of these doctrines. Major religious texts – the *Christian Bible*, the *Koran*, the *Bhagavad Gita*, the *Analects* of Confucius, the *Tao Te Ching* of Lao Tsu, etc. – are replete with examples of this. However, most such religious laws are as transient and fleeting as are the statute laws of popular government. Consider: is there any nation on earth where Christians or Jews still obey the following law of Deuteronomy?

If a man has a stubborn and rebellious son, who will not obey the voice of his father or the voice of his mother, and, though they chastise him, will not give heed to them, then his father and his mother shall take hold of him and bring him out to the elders at the gate of the place where he lives, and they shall say to the elders, 'This our son is stubborn and rebellious, he will not obey our voice; he is a glutton and a drunkard.' Then all the men of the city shall stone him to death with stones[.] – Deuteronomy: 18-21.

Anyone who actually carried out this religious law today would be charged with murder.

A few nations today are governed by a theocracy or are otherwise self-proclaimed "religious states"; Iran and Israel immediately come to mind here. In a great number of nations a multiplicity of religions exist, and if such a nation makes freedom of religion a civil liberty guaranteed to all its citizens then any *religious* law of *any* kind is an unjust law regardless of 'the rule of the majority.' One of the most pernicious lies spoken in a non-consensus democracy is, "The people have spoken," when all that has happened is that a law is passed or an official elected by a mere majority of votes cast.

Tenets and maxims of morality and moral custom go to the very root of how people judge good vs.

⁵⁵ Richard B. Wells (2016), "Why people think," www.mrc.uidaho.edu/~rwells/techdocs/.

⁵⁶ Jean Piaget (1932), *The Moral Judgment of the Child*, NY: The Free Press, 1965.

⁵⁷ Richard B. Wells (2012), *The Idea of the Social Contract*, www.mrc.uidaho.edu/~rwells/techdocs/, chap. 5.

⁵⁸ Immanuel Kant (c. 1783-88), *Reflexionen zur Metaphysik*, in *Kant's gesammelte Schriften, Band XVIII*, pg. 515.

⁵⁹ Colin M. Turnbull (1962), *The Forest People*, NY: Simon & Schuster.

evil and right vs. wrong. For this reason, incongruent moral special interests always have the greatest potential to become political flashpoints and to pose the greatest danger to Society and government. Not the least contributor to this danger is a human tendency to take moral customs for granted until someone calls one of them into question. As Mill put it,

The effect of custom, in preventing any misgivings respecting the rules of conduct which mankind impose on one another, is all the more complete because the subject is one on which it is not generally considered necessary that reasons should be given . . . People are accustomed to believe . . . that their feelings on subjects of this nature render reasons unnecessary.⁶⁰

The human ability to think adds an additional synthetic dimension to concepts of right vs. wrong. This dimension is not generally regarded as a moral dimension and is classified as an *ideological* dimension. An ideal is an Object that exhibits in its representation *in concreto* the most perfect instantiation of an idea. An Ideal is an Object by which a human being understands an Idea not merely *in concreto* but rather as an individual thing determinable through the Idea alone. An Idea is a regulative principle of Reason. An ideology is a usually-systematic body of ideas about human life or culture. It is a set of interests – all speculative – that generally concerns theoretical maxims of what would constitute a perfect or more perfect set of circumstances in comparison to other possible circumstances. For example, the present Republican Party has an ideology that, among other things, holds that "a free market" always has superior benefits to the quality of people's lives than any circumstance when government intervenes insofar as circumstances pertain to economic matters. The party's ideologues elevate this maxim to what almost amounts to a religious conviction. Historical facts, on the other hand, repeatedly demonstrate that sometimes the "free market" does produce superior results but sometimes it produces appalling enormities. So it also is with other political ideologies. For example, in the first half of the 20th century the Progressive Education Movement in the United States clung to an ideology that public education had a Duty to segregate twelve-year-old children into different classes of workers (according to a precept that some children were *innately* intellectual inferiors on a bigoted scale of intelligence). This ideology led to a great social disaster and appalling enormity in America's public education system in the 20th century⁶¹.

Ideologies are formulated by a synthesis of pragmatic and moral interests and thus contain elements of both. Generally they contain some elements of truth and some elements of falsity in their Ideals. People who hold strongly to an ideology oftentimes are more passionate about ideological convictions than they are about their religious convictions. When a person combines ideology and religion it can result in the most highly antisocial maxims – so antisocial that the person holding to them is incapable of making a real commitment to the social contract of a Society. *Such a person is unfit for citizenship in a Republic.*

The three general classes just described – pragmatic, moral, and ideological – all spring from interests. The great question confronting the institution of government is: Is it possible to form a Union out of a great population, whose members hold such potentially opposing sets of interests, in a way that is capable of ensuring liberty with justice for *all* of these people? Because their conflicts among themselves stem from diversity of interests, this implies that the organization and structure of good government *must* begin with the phenomenon of diversity-of-interests.

5. Mechanical Functions of Government

What are what one might call the proper 'mechanical' functions of a Republican government? By the adjective 'mechanical' I mean the special duties agents of government are expected to perform and to the

⁶⁰ John Stuart Mill (1859), *On Liberty*, NY: Dover Publications, 2002, pg. 5.

⁶¹ Richard B. Wells (2013), *Critique of the American Institution of Education*, vol. II of *The Idea of Public Education*, www.mrc.uidaho.edu/~rwells/techdocs/, chaps. 13-16.

performance of which these agents are accountable to the citizens of the governed Society. A government is tasked with organizing and conducting those collective affairs of the civil Community necessary for the protection of the welfare and civil liberties of each and every citizen in accordance with the Community's social contract. It is to gain this protection that individuals agree by a social contract to alienate some of their natural liberties in exchange for guaranteed civil liberties of action. Achievement of this protection concomitant with preservation of civil liberties is an essential condition of social contracting. As Rousseau put it,

The problem is to find a form of association which will defend and protect with the whole common force the person and goods of each associate, and in which each, while uniting himself with all, may still obey himself alone, and remain as free as before.^{62,63}

Every popular government from the time of the Athenians in the 4th century BC to today has been organized around three basic functions: Legislative (the mechanism for crafting and passing laws and decrees); Executive (the mechanism for administering and managing the day to day operations of government); and Judicial (the mechanism for settling disputes and interpreting laws in relationship to the Society's social contract). If the governed population is large enough, these functions are usually arranged in layers of government with some sort of assigned superior-subordinate scheme of prioritization in defining these layers. The functions, however, tend to be the same regardless of whether the structure of the government is hierarchical or heterarchical⁶⁴. In terms of the overall governmental structure these three principal functions are defined as follows:

- the legislative function is that part of government assigned the expectation of authority to make statutory law;
- the executive function is that part of government assigned the expectation of authority to manage the operations of governance;
- the judicial function is that part of government assigned the expectation of authority to ensure liberty and justice for all are upheld according to the Society's social contract.

Expectation of authority is the demand by citizens of a Community that a person (or, in this case, an organization of people) holding a position as a designated authority figure possess the *Kraft* of authority and will actualize it for the benefit of their common association. *Authority* is possession of the *Kraft* of causing something to become greater, to increase, to be strengthened, or to be reinforced in some way⁵². The technical term *Kraft* refers to the ability of a person to do or to cause to be done something in particular that stands as the Object of that *Kraft*.

Other important special functions (such as command and control of armed forces, law enforcement, or public education) have historically been assigned to one or more of these three general branches of government or delegated to designated layers of government within the general system of governance. As an example of the latter, in ancient Athens the people were divided into *demes* – what we might today call precincts or districts – and enrollment of a person as a citizen of Athens was made by the *deme* in which he lived. *Demes* were the smallest administrative units of the Athenian state. Contrast this with the United States today, where enrollment of a person as a U.S. citizen is granted by either birth or undergoing the process of naturalization (the 14th Amendment). Naturalization is administered by the U.S. Citizenship and Immigration Services (USCIS) according to laws passed by Congress with the final oath of citizenship administered by a U.S. federal court. In Athens citizenship was under local control of the

⁶² Rousseau (1762), *The Social Contract*, chap. 6.

⁶³ Richard B. Wells (2012), *The Idea of the Social Contract*, www.mrc.uidaho.edu/~rwwells/techdocs/, chap. 2.

⁶⁴ Richard B. Wells (2015), "Heterarchical Organization and Management," www.mrc.uidaho.edu/~rwwells/techdocs/

smallest administrative unit; in the U.S. it is the general government – in all three of its branches – that controls granting citizenship. There could hardly be a greater difference in assignment of a specific authority than this one. It is also interesting to note that prior to the 14th Amendment the determination of who was and who was not a citizen of the United States was decided by local government agents in a way not all that different from ancient Athens. The 14th Amendment (adopted July 9th, 1868) was a product of the Reconstruction era following the civil war and was in response to issues related to the former slaves in the defeated Confederacy. Local control of who determined citizenship was taken away and given to the general government of the United States in order to codify a guarantee of civil liberties for almost the entire population of the U.S. (Native Americans being the notable exclusion; Congress did not extend citizenship to all Native Americans until June 2nd, 1924).

I will return to the question and issue of distribution of authorities in the next section. Here let us focus on these general mechanisms. Our heritage of theories of popular government is descended from a beginning in the 17th century theories of Thomas Hobbes⁶⁵ and John Locke⁶⁶. Political theory was further developed during the 18th century Enlightenment by numerous authors, of whom the most notable included Montesquieu, Rousseau, and America's Founding Fathers. Beginning with Hobbes, distinct legislative and executive functions have regularly been a part of the theory of government. The recognition of the judicial function *as a separate and distinct branch* of government is primarily owed to America's Founding Fathers⁶⁷ with John Adams deserving of special recognition⁶⁸.

Adams wrote "Thoughts on government" when the rebelling colonies were in the process of forming their own new state governments. No state followed all of Adams' advice but all states adopted most of it. The Framers at the Constitutional Convention in 1787 likewise considered and debated his advice and took many ideas from the Massachusetts Constitution⁶⁹ (to which Adams was the primary contributor) as they painfully worked out their plan for the general government⁷⁰.

Adams said almost nothing about the executive function in "Thoughts on government," perhaps because the need for having a governor and what a governor did was evident enough to Americans of that day. Government is in at least partial operation every day (e.g. law enforcement and the armed forces) and requires someone to manage and administer these operations as a regular full time job. The chief executive officer is tasked with seeing to it that the administrative functions of government are *executed*. A President or a Governor is the people's hired help. This is a principle as old as democracy itself:

[Is] this not immediately apparent, that no art or office provides what is beneficial for itself but . . . provides and enjoins what is beneficial to its subject, considering the advantage of that, the weaker, and not the advantage of the stronger? That was why . . . I was just now saying that no one of his own will chooses to hold rule and office and take other people's troubles in hand to straighten them out, but everybody expects pay for that, because he who is to exercise the art rightly never does what is best for himself or enjoins it when he gives commands according to the art, but what is best for the subject. That is the reason, it seems, why pay must be provided for those who are to consent to rule . . . [That] is why the good are not willing to rule either for the sake of money or of honor.

⁶⁵ Thomas Hobbes (1651), *Leviathan*.

⁶⁶ John Locke (1690), *Second Treatise of Government*.

⁶⁷ There has always been a judicial function of some sort in governments. But, with the exception of ancient Athens, recognition of this function as a *distinct* branch of government did not clearly emerge until Adams and the other Founding Fathers. Other forms of government, e.g., the Roman Republic or the monarchies of Europe, subsumed this function under the Executive function.

⁶⁸ John Adams (1776), "Thoughts on government," in *The Portable John Adams*, John Patrick Diggins (ed.), London: Penguin Books, 2004.

⁶⁹ <https://malegislature.gov/laws/constitution>.

⁷⁰ Adams was not a delegate to the Constitutional Convention. At the time he was in England serving as the first U.S. ambassador to Great Britain.

They do not wish to collect pay openly for their service of rule and be styled hirelings, nor take it by stealth from their office and be called thieves, nor yet for the sake of honor for they are not covetous of honor. . . . That is perhaps why to seek office oneself and not await compulsion is thought disgraceful.⁷¹

The last sentence in this quote was also the attitude which prevailed in the early years of the American Republic. That it has not been so for many years now reflects only a devolution in social morality brought about by despotisms of rulership in government as well as in business⁷².

Adams had a great deal more to say about the legislative function, and his thoughts here were echoed in the debates at the 1787 Convention:

As good government is an empire of laws, how shall your laws be made? In a large society inhabiting an extensive country, it is impossible that the whole should assemble to make laws. The first necessary step, then, is to depute power from the many to a few of the most wise and good. . . . The principal difficulty lies, and the greatest care should be employed, in constituting this representative assembly. It should be in miniature an exact portrait of the people at large. It should think, feel, and reason like them. That it may be the interest of this assembly to do strict justice at all times, it should be an equal representation, or, in other words, equal interests among the people should have equal interests in it.⁶⁸

Mark carefully the last sentence in this quote. Geographic interests – our traditional dividing up of the people according to state, county, and districts – is not the only kind of division of interests there is, and in the modern age it might not even be the most important. It was in the nation of factiously independent American states in 1787 but only because America was still an agricultural nation with a tiny minority population of small non-farm businessmen and hired laborers. (According to the U.S. Census Bureau, even by 1820 only 12.5% of the total U.S. population was gainfully employed in non-agricultural occupations; in 1859 U.S. factories employed an average workforce of 9.3 wage earners per factory⁷³ and the large corporate conglomerates of today were still a thing of the future).

Adams also authored the then-novel idea that the judicial branch of government should be a separate and independent branch with equal powers of checks and balances in government. He wrote,

The dignity and stability of government in all its branches, the morals of the people, and every blessing of society depend so much upon an upright and skillful administration of justice that the judicial power ought to be distinct from both the legislative and executive, and independent of both, that so it may be a check upon both, as both should be checks upon that. The judges, therefore, should always be men of learning and experience in the laws, of exemplary morals, great patience, calmness, coolness, and attention. Their minds should not be distracted with jarring interests; they should not be dependent upon any man or body of men. To these ends, they should hold estates for life in their offices; or, in other words, their commissions should be during good behavior, and their salaries ascertained and established by law. For misbehavior, the grand inquest of the colony, the house of representatives, should impeach them before the governor and the council, where they should have time and opportunity to make their defense; but, if convicted, should be removed from their offices and subjected to such other punishment as shall be thought proper.⁶⁸

It should be carefully noted that the Object of the judicial function is *justice*, not *legality*. Justice is definable only in terms of a Society's social contract, not in terms of those memoranda we call laws. Laws

⁷¹ Plato (c. 380-370 BC), *Politeia* (frequently mistranslated as 'Republic'), Book I, 346e-347d.

⁷² Richard B. Wells (2010), *Leadership*, www.mrc.uidaho.edu/~rwells/techdocs/, chap. 11.

⁷³ Richard B. Wells (2013), *Critique of the American Institution of Education*, vol. II of *The Idea of Public Education*, www.mrc.uidaho.edu/~rwells/techdocs/, chap. 7.

can be and sometimes are unjust. Justice can never unjust. "Unjust justice" is self-contradictory.

These, then, are the three principal branches of representative government. The great challenge, as the Framers well knew, is in how to keep them separate, distinct, and in balance with one another, so that no one or two of them can subjugate the third, and to keep government itself under the sovereignty of the citizens whose consent to their actions must always be the original source from which government derives its just authority. Adams wrote,

It has been said that it is extremely difficult to preserve a balance. This is no more than to say that it is extremely difficult to preserve liberty. To this truth all ages and nations attest. . . . A balance, with all its difficulty, must be preserved or liberty is lost forever. Perhaps a perfect balance, if it ever existed, has not long been maintained in its perfection; yet, such a balance as has been sufficient to liberty, has been supported in some nations for many centuries together; and we must come as near as we can to a perfect equilibrium or all is lost. When it is once widely departed from, the departure increases rapidly till the whole is lost. If the people have not understanding and public virtue enough, and will not be persuaded of the necessity of supporting an independent executive authority, an independent senate, an independent judiciary power, as well as an independent house of representatives, all pretensions to a balance are lost, and with them all hopes of security to our dearest interests, all hopes of liberty.⁷⁴

The balance of which he speaks is lost when *any* special interest faction – including political parties – succeeds in usurping power over any of the three functions of government.

6. The Inverted Pyramid

Every human being governs himself according to his personal interests. Mini-Communities govern themselves according to *congruent* interests common to their members. People who are capable of uniting to govern themselves with liberty and justice for *all* are capable of this *only* because: *all* of them share and are committed to congruent interests common *throughout* their body politic; *and* their government is confined to governing *only* for these interests. The number of *common* interests shrinks as more people enter into the civil association. A civil Community granulates into a multitude of mini-Communities precisely because individuals always have special interests – many of them arising from the individual's Duties-to-himself. Furthermore, every person is simultaneously a member of *multiple* mini-Communities, membership in each of which serves some part of his overall set of personal interests. In addition, mini-Communities constantly undergo formation and disintegration from pressures that on-going changes in circumstances applies. The great challenge facing the institution of government by consent of the governed lies in designing a *structure* of government that can be conserved even while circumstances are altering the divers special interest mini-Communities who comprise the whole of the civil association.

It is beyond reasonable doubt that mimesis has major, oftentimes dominating, effects on how human beings deal with problems and design solutions to them. Toynbee wrote about this aspect of human Nature with a discernible air of contempt – as if it were a flaw or shortcoming of character – but this attitude of his was entirely misplaced. Human beings are satisficing problem solvers, and imitating what others have done before is often the quickest and most expedient route to solving one's own problem^{75,76}. Mimesis behavior is clearly observable in young children early in their mental development⁷⁷. Thus it is a

⁷⁴ John Adams (1790), "Discourses on Davila," in *The Portable John Adams*, John Patrick Diggins (ed.), London: Penguin Books, 2004, pp. 393-394.

⁷⁵ Harold J. Leavitt (1972), *Managerial Psychology*, 3rd ed., Chicago: University of Chicago Press, pp. 63-66, 279-282.

⁷⁶ Richard B. Wells (2015), "Heterarchical Organization and Management," www.mrc.uidaho.edu/~rwells/techdocs/

⁷⁷ Jean Piaget (1981), *Possibility and Necessity*, vol. I, Minneapolis, MN: the University of Minnesota Press.

part of human Nature and not, as Toynbee seems to have presumed, a character flaw. Indeed, mimesis is, in a manner of speaking, "wired into" a human being's process of reasoning in the sense that the process of practical Reason is an impatient process and, all else being equal, will "stick at" the first thing its groping for a solution finds that satisfies an unceasing demand for equilibrium. This impatience can only be counteracted by satisfaction-thwarting experiences and education^{78,79,80}. Imitating what others do in similar circumstances (mimesis) is frequently the quickest way to come up with a satisficing solution.

The traditional forms and tactics of government – in particular their reliance upon precepts of rulership – exemplify application of mimesis to ideas of government. Figure 2 illustrates these traditional forms in circumplex model form.⁸¹

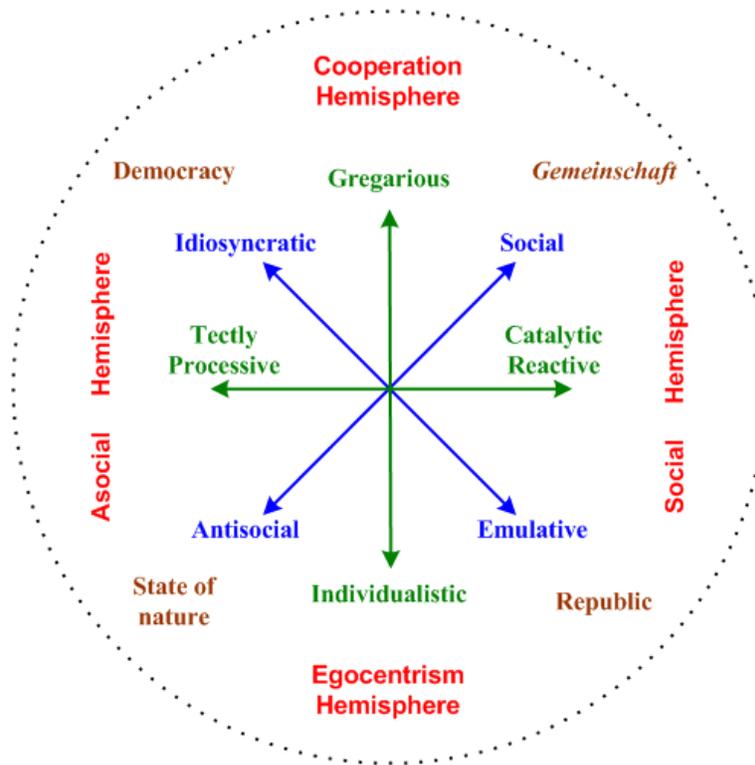


Figure 2: Circumplex model of historical forms of government. The state of nature form is the monarchy/oligarchy form of government. The democracy form in the figure is non-consensus democracy. The *Gemeinschaft* form is also known as consensus democracy. See footnote 81's reference (chapter 11) for detailed descriptions of these forms.

⁷⁸ Richard B. Wells (2016), "Why people think," www.mrc.uidaho.edu/~rwells/techdocs/ .

⁷⁹ Richard B. Wells (2012), *Education and Society*, vol. I of *The Idea of Public Education*, www.mrc.uidaho.edu/~rwells/techdocs/ , chaps. 5, 7.

⁸⁰ For people afflicted by pathologies of severe personality disorders even experience and education is usually not enough. These are people who for some reason have developed a narrowly striated and rigid manifold of practical rules and made themselves captive to what Piaget called 'pseudo-necessities' that carry the force of practical imperatives of Reason. These act, for them, as unconditioned moral imperatives. As a result their patterns of behavioral responses are extremely limited regardless of their persistent lack of successes in dealing with situations. It may seem very strange indeed to call such self-destructive imperatives 'moral' imperatives, but the fact is that, for these pathologically afflicted individuals, these imperatives do carry the force of basal obligations-to-Self. What the deficiencies in early development are that produce this is not sufficiently well understood at this time. It remains an important open research question for studies of abnormal psychology.

⁸¹ Richard B. Wells (2012), *The Idea of the Social Contract*, www.mrc.uidaho.edu/~rwells/techdocs/ , chap. 8.

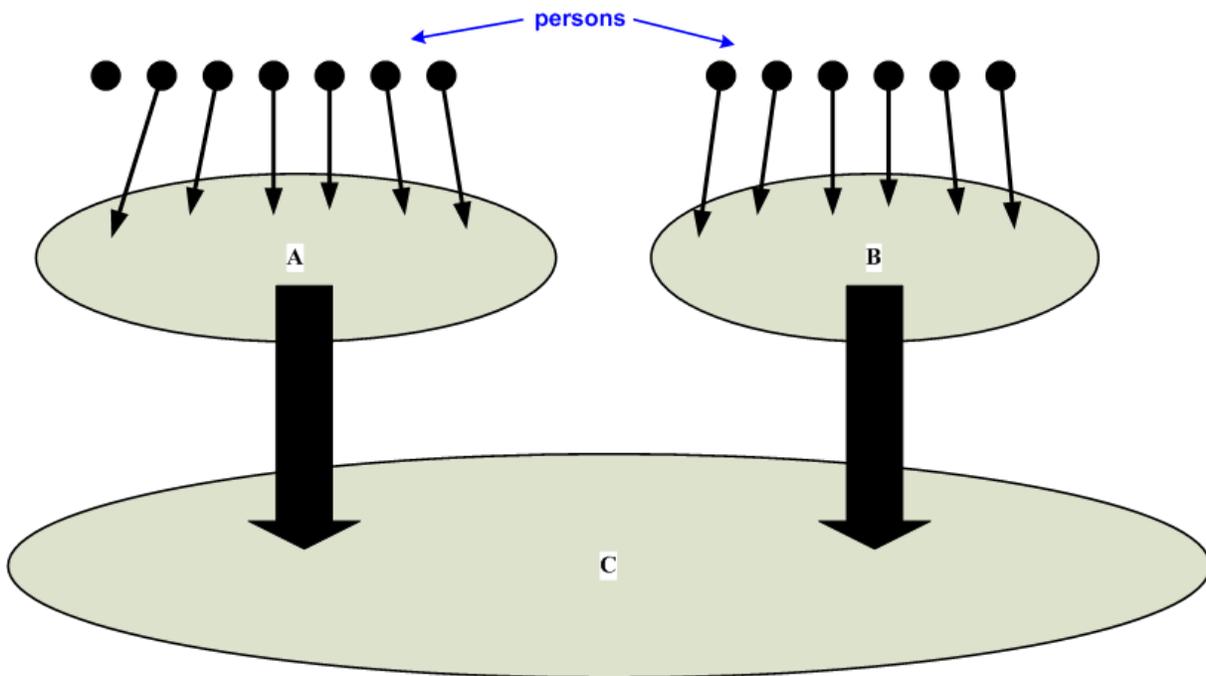


Figure 3: Associations formed by social accretion into basal Communities (A and B) followed by an association of mini-Communities to form a larger Community (C). A non-associated person is outlaw to the Community.

There seems to be a frequent presupposition made in theories of government that views the formation of governments as a process which begins with one or a few individuals (e.g. Sargon the Great of Akkad, Toynbee's 'creative minority') who attract an initial following and gradually come to rule over a larger population. A less frequent but not uncommon presupposition begins with an association of some initial population group who band together out of practical self interest and establish a minimal governance method for their association (e.g. Aristotle's families, Thomas Paine's original settlers). This subsequently evolves, typically into one or the other *asocial* forms in figure 2, as more people are added (either voluntarily or forcibly) to the association. Both these forms govern by rulership. In some cases a form of government arises out of a rebellion that overthrows a previous form of government (e.g. the Roman republic, the American Republic, the Roman Empire, the Soviet Union, the French republic).

There are two viewpoints from which an establishment of government can be understood. One is an ancient king/warlord point of view in which a ruling minority subjugates a larger population either by persuasion (e.g., most commercial businesses arrive at their form of governance in this way) or by conquest (e.g., the empire of Sargon the Great). Sometimes this evolves as a mixture of both (e.g. the Reconstruction United States after the American civil war of 1861-65). This viewpoint begins with one or a few individuals who then induce other people to come into or under their already established system. By far the most historically common form of government structure that results from this is the hierarchical pyramid structure. Governance of most commercial businesses, for example, almost always develops into such rulership pyramids. So have many of the world's major religious associations.

The second viewpoint regards the evolutionary development of government as a voluntary process of social accretion. Paine's *Common Sense* is one example. Figure 3 is a schematic of this view. While the first way of viewing formations of governments leads quite naturally to the development of pyramidal hierarchy structures, the second prepares the way for the possibility of heterarchy structures⁸².

⁸² Richard B. Wells (2015), "Heterarchical Organization and Management," www.mrc.uidaho.edu/~rwells/techdocs/

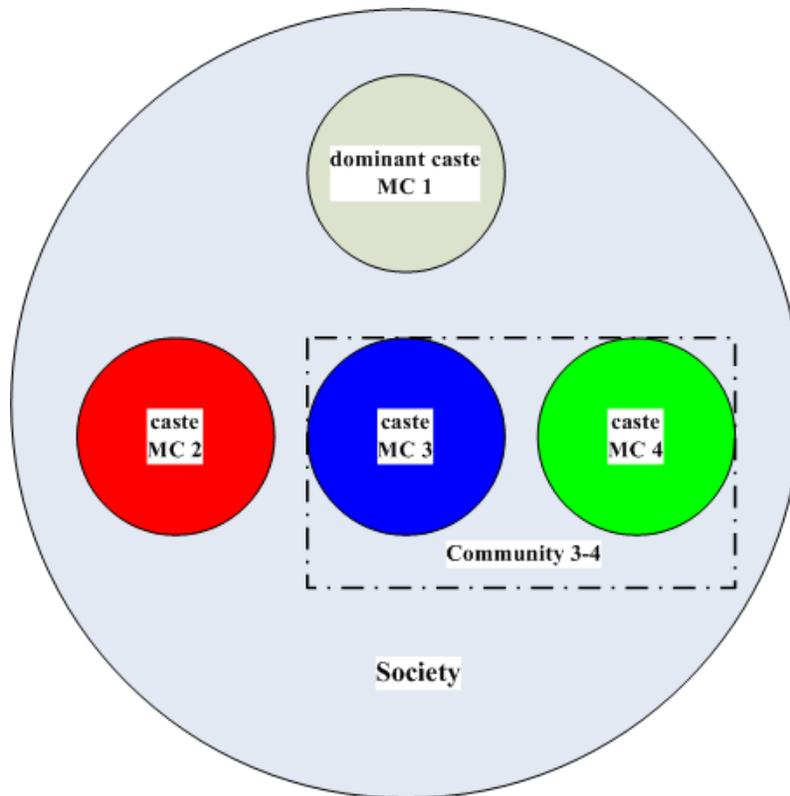


Figure 4: Schematic illustration of a caste Society. The Society is ruled by a dominant mini-Community caste (MC 1) which rules over subjugated mini-Community castes, some of which might ally with others to form mini-Community layers within this overall granulated Society (MC 3 + MC 4 → Community 3-4).

In both cases, social accretion happens because of diverse interests in the population. The hierarchical forms tend to be motivated by self interests and Duties-to-Self. Socially reciprocal Duties of citizenship play a weaker role if any at all. It tends to be the norm in such cases that a caste or class system develops within the Society. Figure 4 is a schematic illustration of this. Toynbee's analysis found that eventually a Society so structured undergoes breakdown and disintegration. It becomes a fallen Society because of uncivic conflicts among competing special interest groups whose means of competition are uncivic.

The alternative is a heterarchical structure of civil Community. Such a Community is also founded on the basis of self-interests. The distinction is that the structure of government is explicitly designed with the phenomenon of mini-Community in mind and with *overlapping* interests incorporated into its theory of government. One outcome this design *techné* makes possible is called the *inverted pyramid* structure of government. This form attempts to synthesize into one schema of government the strength and protection of a Republican Union with the beneficial aspects of a *Gemeinschaft* consensus-democracy. I call such a schematic of governance by the name *Tocqueville governance*.

Once a governed population exceeds some critical size then an organizational pyramid of some kind becomes necessary. This is fundamentally due to stereotyping as a result of the fact that not all members of the civil association know one another personally⁸³. Stereotyping is not a mere habit of choice. It is an essential part of the human Nature of the reasoning process. Some writers denounce stereotyping as somehow being an antisocial character flaw, but this idea is wrong. Stereotyping is a human being "filling in the blanks" lack of direct experience leaves in his knowledge of others so he can function in a Society.

⁸³ Richard B. Wells (2016), "The challenge of mini-Communities," www.mrc.uidaho.edu/~rwells/techdocs/.

Stereotyping is a form of reasoning in which judgment by inference of analogy is central. Suppose you are out walking at night and encounter a stranger. You have to immediately make some pretty key decisions about this person based upon your own knowledge of experience with other people. Is he a threat or not-a-threat? Is he a "good guy" or a "bad guy"? Is he friendly or unfriendly? You immediately and automatically make judgments about these sorts of things at a "gut level" based on non-verbal cues such as the other person's appearance, dress, and body language. None of us could function in a Society of even modest size without being able to make determinations of these kinds. But these determinations are based on judgments of an *abstract* person, not the real human being coming toward you. This is stereotyping. All of us do it all the time out of necessity. A maxim stating, "You should never stereotype other people" is a maxim it is impossible to follow and its pseudo-moralizing tone is utterly pretentious.

In a great many instances, stereotyping judgments – whether they are actually true or false – are sufficient for responding to everyday circumstances. Unfortunately, in many other instances they produce social conflicts because they judge people in the abstract, i.e. as abstract persons rather than real ones. There is always a pronounced degree of egocentrism⁸⁴ contributing to stereotyping. A number of years ago there was an elderly woman living in the tiny Idaho town of Elk River who used to write weekly letters to the editor at the Lewiston Tribune. One of her recurrent topics was to warn everyone that all college professors were communists seeking to overthrow the government. Here is a rather obviously ridiculous example of stereotyping that the editors of the Tribune seemed to enjoy printing. Truth be told, as a college professor at the time I missed the entertainment value of her letters after she passed away.

The nature of their jobs requires agents of government to perform their duties without personally knowing every citizen who is affected by their decisions and actions. Because of this, it is the nature of government to function using a large measure of stereotyping. The smaller the scope of a governed population is, the less abstract the stereotypes can be made because the agents of government are more intimately embedded in the mini-Society they serve. Their knowledge of local circumstances and situations can be both broader and deeper and their understanding of local special interests can be more comprehensive. But as the scope of government increases with increasing population, *direct* knowledge possessed by agents whose scope of responsibilities contains this greater number of people must necessarily become less. To these agents the people who are being governed in effect inevitably come to be known by the agents as abstract people: "the farmers"; "the small businessmen"; "working men and women"; &etc. At some point in this expansion, agents of government must necessarily become "out of touch" with individual and mini-Community special interests. To avoid producing intolerable levels of frustrations within the population – which invariably leads to a loss of domestic tranquility – a layered organization of government becomes practically necessitated in order for government to function. But this layering produces a pyramid of governance defined by scopes and responsibilities. That is why pyramidal structures of government must invariably emerge and evolve in a populous Society.

A hierarchy is an arrangement of persons or things in order of rank, grade, class, function, etc. In and of itself, a hierarchy is neither good nor bad. Hierarchy is a useful and important tactic of organization. But how its *ordering* structure is defined can and does make an important difference; namely, a difference between a ruling hierarchy with political power running down from its pyramidal apex to its base vs. a heterarchy of governance that places, conserves, and maintains the sovereignty of the governed. The former is implied when a pyramid of authority is depicted with its apex at the top ('the highest authority'). It is a picture taking this ordering structure for granted because of habits of usage practiced for many centuries. But in a free Society in which the people are sovereign, the ultimate sovereign authority is not the pyramidal apex but, rather, the base of the pyramid. This is the ordering structure that is depicted by an inverted pyramid such as the one illustrated in figure 5.

⁸⁴ Egocentrism is an empirical character of human reasoning processes in which one practically presumes that other people regard objects and events in the same way he does and understand phenomena in the same way he does.

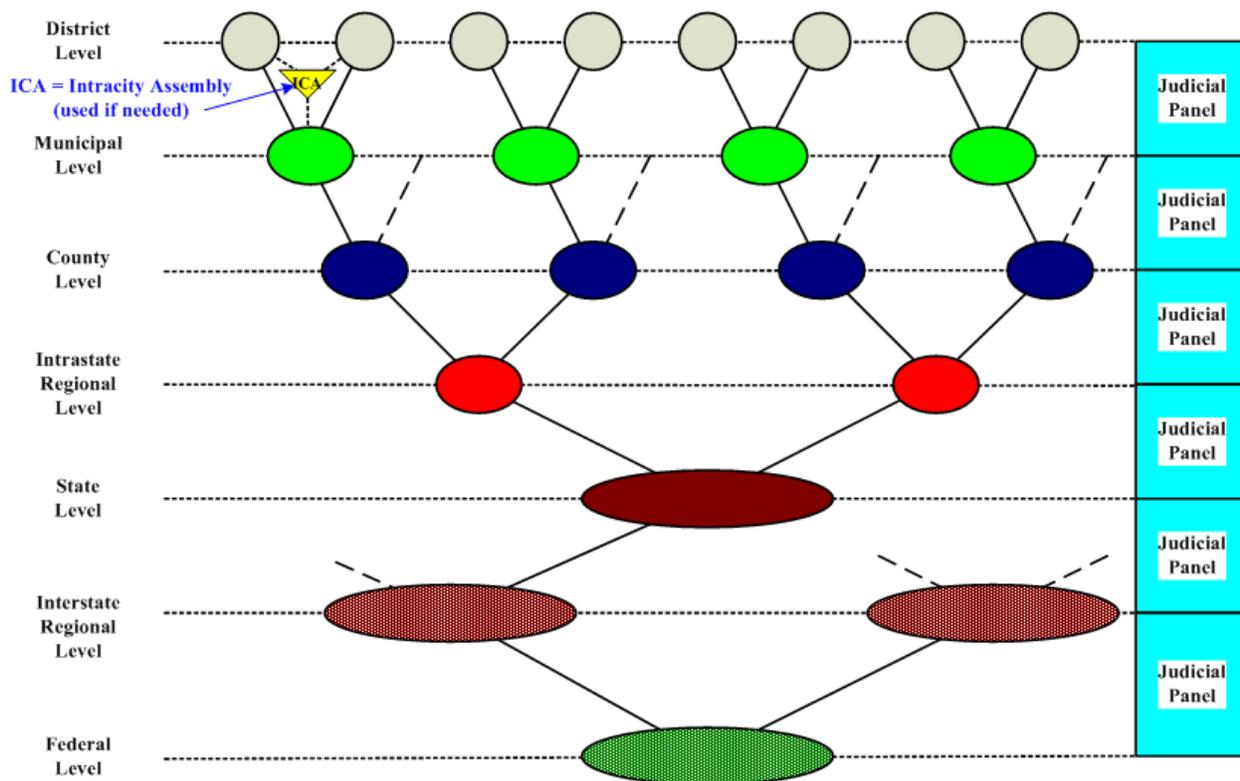


Figure 5: Schematic illustration of an inverted pyramid structure of government as defined by geographical regions. Each circle or oval in the figure depicts a Community and its government defined by geographic jurisdictions.

The depiction in figure 5 is organized by geographic jurisdictions and recognizes divisions of common interests insofar as these interests are peculiar to where people live. However, such interests comprise only some of the interests people hold to be important. In addition, mini-Communities are defined by such things as business interests, religious interests, safety interests, etc. For example, in the Western United States the threat of forest fires is an important *regional* safety concern. It is much less of a concern in Iowa, Minnesota, and other Midwestern states.

The inverted pyramid structure of figure 5 is generalized by adding additional dimensions of mini-Community interests that give deeper comprehension of the multiplicity of special interests which are found to be represented in the people of the various layered divisions. The essential *negative* principle of government by consent of the governed is: liberty cannot be preserved nor justice established unless the actions of government do not thwart civic special interests permitted by the civil liberties that are guaranteed under the terms of the Society's social contract. This principle has fundamental implications for how the governing branches are constituted in a heterarchical government.

There is little room to doubt that when the Framers met in Philadelphia in 1787 their deliberations were heavily if to a degree unconsciously guided by mimesis. One clue this was so is found in analogies the delegates used during their debates and documented in Farrand's *Records*. The bicameral legislative branch they developed bore a strong resemblance to that of the Parliament of Great Britain with its House of Commons and House of Lords. This was despite the fact that the original unrest in the colonies leading up to the outbreak of the American Revolution was primarily blamed on the Parliament. Colonial animus did not become directed at the British king until after the publication of Paine's pamphlet⁸⁵. There is also

⁸⁵ Thomas Paine (1776), *Common Sense*, NY: Everyman's Library, pp. 249-306, 1994.

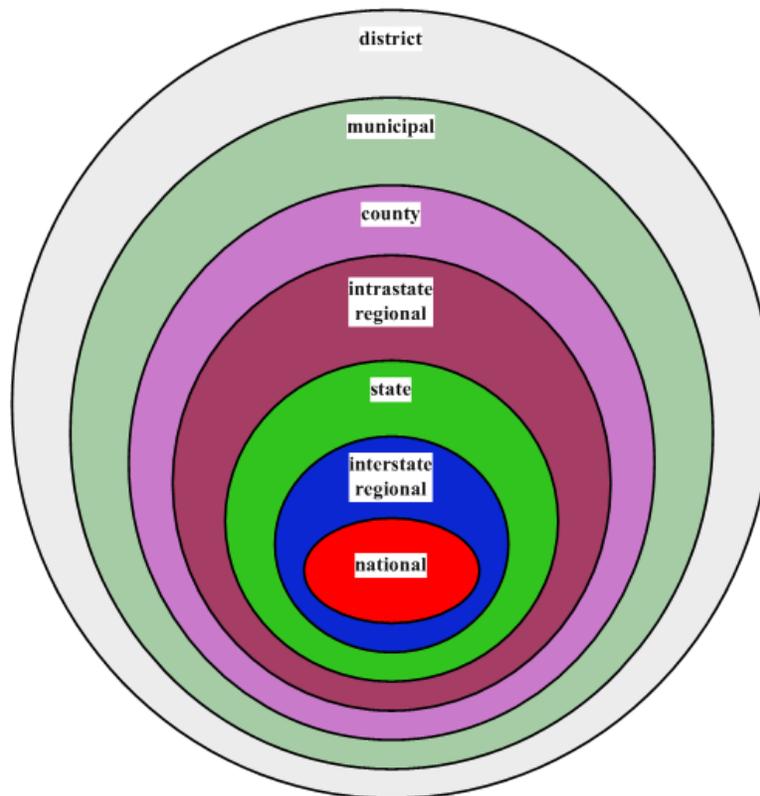


Figure 6: Illustration of overlapping common interests according to population sizes classified by regions.

little room to doubt that the structures of the state governments heavily influenced the delegates' understandings of ideas for how to design a representative government. State government structures, as I noted earlier, were constituted while the war was being waged, were influenced by Adams⁸⁶, and also drew heavily upon examples already set by the systems of colonial self-government that had been in existence since the earliest days of colonial America⁸⁷.

These models were, in the main, examples of top-down hierarchical government. They were not copied wholesale by the Framers, who introduced important elements of heterarchy into the Constitution and designed a system for the general government that was neither a national nor a federal system⁸⁸. Even so, it remains more or less obvious that neither the Framers nor Adams drew that important distinction between ruling and governing which is so vital to realizing the phrase in the Declaration of Independence, "governments are instituted among men drawing their *just* powers from the consent of the governed." As a consequence of all this, while the Framers recognized that personal and local interests were the basis of factions, and that factions were the greatest internal threat to liberty with justice for all, it did not occur to them to place divisions by interests at the center of consideration in designing heterarchical government.

Figure 6 illustrates the principle of heterarchical division of government according to interests. At the core of this principle is the fact that as the number of people compounded in a population increases, the number of common interests they share decreases. It follows directly from this that the *just* scope of

⁸⁶ John Adams (1776), "Thoughts on government," in *The Portable John Adams*, John Patrick Diggins (ed.), London: Penguin Books, 2004.

⁸⁷ Marcus Wilson Jernegan (1929), *The American Colonies 1492-1750*, NY: Frederick Ungar Publishing Co., chap. 11.

⁸⁸ James Madison (1788), *The Federalist*, no. 39.

authority for institutions of government and a government's own interest in preserving and protecting civil liberties *is greatest where that government comprehends the smallest population*. It is this facet of human Nature that "flips the pyramid" on its apex. Equivalently, the scope of authority granted to a government must necessarily be the least when that government comprehends the greatest number of people. *This is the principle that figure 6 attempts to illustrate.*

As layers of government descend the pyramid of figure 5 the common interests each layer can justly serve become fewer in number and the interests themselves cannot help but become increasingly abstract. This alone does not make them incomprehensible to any citizen, although it does place additional burdens on the *public education* function of Republican government⁸⁹. The social devolution in public education that continued and accelerated during the 20th century under the influence of the Progressive Education Movement dealt a serious blow to the American Republic⁹⁰. Common interests are inextricably connected to Duties of citizenship, and in an American Republic this connection gains an importance far greater than in the various despotic and semi-despotic governments of the world. It would be going too far to say that all the Founding Fathers explicitly recognized this, and it would also be going too far to say that those who did fully comprehended the consequences of the new Republic. But some of them grasped it more firmly than others and recognized that the success of the American experiment placed new burdens on citizenship Duties as well as on public education. Benjamin Rush wrote,

The business of education has acquired a new complexion by the independence of our country. The form of government we have assumed has created a new class of duties to every American. It becomes us, therefore, to examine our former habits upon this subject, and in laying the foundations for nurseries of wise and good men, to adapt our modes of teaching to the peculiar form of our government. . . .

Our country includes family, friends, and property, and should be preferred to them all. Let our pupil be taught that he does not belong [entirely⁹¹] to himself but that he is [also] public property. . . . He must watch for the state as if its liberties depended on his vigilance alone, but he must do this in such a manner as not to defraud his creditors or neglect his family. He must love private life but he must decline no station, however public or responsible it may be, when called to it by the suffrages of his fellow citizens. He must love popularity but he must despise it when set in competition with the dictates of his judgment or the real interest of his country. . . . He must avoid neutrality in all questions that divide the state, but he must shun the rage and acrimony of party spirit. He must be taught to love his fellow creatures in every part of the world, but he must cherish with a more intense and peculiar affection the citizens of [his state] and of the United States. I do not wish to see our youth educated with a single prejudice against any nation or country; but we impose a task upon human nature – repugnant alike to reason, revelation, and the ordinary dimensions of the human heart – when we require him to embrace with equal affection the whole family of mankind. He must be taught to amass wealth, but it must be only to increase his power of contributing to the wants and demands of the state. He must be indulged occasionally in amusements, but he must be taught that study and business should be his principal pursuits in life. Above all he must love life and endeavor

⁸⁹ Richard B. Wells (2012), *Education and Society*, vol. I of *The Idea of Public Education*, www.mrc.uidaho.edu/~rwells/techdocs/, chaps. 1, 3.

⁹⁰ Richard B. Wells (2013), *Critique of the American Institution of Education*, vol. II of *The Idea of Public Education*, www.mrc.uidaho.edu/~rwells/techdocs/, chaps. 8-9, 13.

⁹¹ Rush did not use the word 'entirely' in this place. I have taken it upon myself to add bracketed *qualifiers* to bring Rush's *ideas* back into better agreement with the more moderate views of other Founding Fathers. Rush tended to write polemically and to forget some crucial conditions Rousseau had set out in *The Social Contract*. The quote given here contains instances of his over-enthusiasm for the Republic, an over-enthusiasm in which other Founding Fathers, *e.g.* Adams, Jefferson, Madison, and Washington, did not partake. Nonetheless, Rush did make some valid points and that is why I quote him here. At the same time, he provides a very educating example of why one person's or one faction's view should never prevail unchecked in the councils of Republican government. Single faction rule is efficient in the short run and is sometimes appropriate during an emergency, but efficient tyranny is still tyranny.

to acquire as many of its conveniences as possible by industry and economy, but he must be taught that this life "is not his own" when the safety of his country requires it. . . .

While we must inculcate these republican duties upon our pupil, we must not neglect, at the same time, to inspire him with republican principles. He must be taught that there can be no durable liberty but in a republic, and that government, like all other sciences, is of a progressive nature. The chains which have bound this science in Europe are happily unloosed in America. Here it is open to investigation and improvement. While philosophy has protected us by its discoveries from a thousand natural evils, government has unhappily followed with an unequal pace. It would be to dishonor human genius only to name the many defects which still exist in the best systems of legislation. . . . In like manner, I conceive that it is possible to combine power in such a way as not only to increase the happiness but [also] promote the duration of republican forms of government far beyond the terms limited for them by history or the common opinions of mankind.⁹²

When Rush wrote "he must be taught" he was writing about the public Duties of a citizen. When citizens come together to delegate particular responsibilities to agents of government, they do not alienate their civil liberties but neither do they abrogate their public Duties. As dangers to the first and derelictions of the second both have their sources in special interests, the primary design tenet of good government is to institute governments that will protect *civically just* special interests while at the same time ensuring common interests, as they exist at each layer of government, are satisfied. The challenge for self government of a free nation is: How can this be done? Government must simultaneously promote a maximum of *civil* liberty and protect individuals and minorities from asocial despotisms of rulership, whether these be from ascension of a ruling caste or from the despotisms of non-consensus democracy.

Ideas for such institution of government existed in America prior to the American Revolution. These ideas were implied in practices of local governments rather than formalized by theoretical political science. They were a consequence of human nature occurring naturally to the early inhabitants of isolated colonies in New England, who were largely cut off from domination by the British government or British commercial companies⁹³. These practices and cultural attitudes arising from them were the seeds of what James Madison⁸⁸ would later call "the genius of the American people." Colonial self government was imperfect and colonial America was not free of prejudices, distinctions of class, and petty despotisms. Nonetheless, the precepts of enlightened institution of self government⁹⁴ were present. Formalized, they are the nascent basis for a form of Republican governance I call Tocqueville governance.

7. Tocqueville Governance

I use the term 'Tocqueville governance' to mean an organization of government based on decentralized distribution of political authority and organized in an inverted pyramid of jurisdictional common interests with each layer having a limited government organized in a heterarchy. Remnants of this governance still exist in the United States but are not-infrequently overruled by state legislatures – politburos who effect centralized control by legislating morality, religious doctrines, and prejudicial laws favoring commercial corporations and political factions over citizens' civil rights. The rise of national political parties, uncivic factors in the so-called 'gilded age' of the American industrial revolution⁹⁵, and an antisocial political

⁹² Benjamin Rush (1798), "Of the mode of education proper in a republic," in *The Selected Writings of Benjamin Rush*, Dagobert D. Runes (ed.), NY: Philosophical Library, undated, pp. 87-96.

⁹³ Marcus Wilson Jernegan (1929), *The American Colonies 1492-1750*, NY: Frederick Ungar Publishing Co., chap. 5.

⁹⁴ Richard B. Wells (2014), *The Institution of Public Education*, vol. III of *The Idea of Public Education*, www.mrc.uidaho.edu/~rwells/techdocs/, chap. 2.

⁹⁵ Richard B. Wells (2013), *Critique of the American Institution of Education*, vol. II of *The Idea of Public Education*, www.mrc.uidaho.edu/~rwells/techdocs/, chap. 8.

ideology introduced by the so-called Progressivism Movement in the 20th century produced a number of distinctly anti-Republic changes in how the United States is governed today. There was no one single factor that led to this; I have previously documented some of the more important contributing factors⁹⁵. The American industrial revolution stimulated a population migration taking the U.S. from a primarily rural nation to a primarily urban nation. The industrial revolution itself was preceded by an economy revolution that produced a serious eroding of the individual capitalism characteristic of colonial America prior to 1750 and exacerbated economic class divisions in the U.S.⁹⁶ These were made worse by the *institutionalized* bigotry of 20th century Progressivism^{97,98}. National political parties – the chief antisocial factor – were quick to exploit these divisions to centralize the powers of government in the statehouse and, for the larger cities, in city hall. The political parties usurped the power to govern and turned it into the power to rule by confiscating the mechanisms of elections, thus guaranteeing that elected officials would be party members. By doing so, they overcame the safeguards against factions the Framers set up. These officials produced legislation inimical to *locally-civic* common-interest mini-Communities using *divide-and-rule* tactics. All of us grew up under this system so it is instructive to look at what the political landscape in America was *before* all this was effected and dressed up in disguise by political propaganda.

In 1831 French diplomat, writer, and political scientist Alexis de Tocqueville arrived in America on a mission to study the American penal system. He stayed to tour the United States and study the strange-to-European-eyes system of government the Americans had established after independence. He put what he had found in a two volume book, *Democracy in America*, the first volume of which appeared in print in 1835.⁹⁹ Tocqueville found that in America there were important variations in government as one traveled from region to region and especially from New England to the south and west. He seems to have been most favorably impressed by the political system in New England – a system which showed the most radical departure from what 19th century Europeans were used to seeing. The characteristics of New England government that so impressed him are characteristics of the prototype for what I call 'Tocqueville government.' I have previously published a summary and commentary on Tocqueville's findings in chapter 6 of *The Institution of Public Education*¹⁰⁰ and so I only briefly summarize them here.

The most distinctive feature of Tocqueville governance is its thoroughly decentralized character. It is this decentralized organization that figure 5 illustrates. The design of a Tocqueville system of government is aimed at ensuring and securing the sovereignty of the citizens at all levels. It is intended to: (1) reproduce in a large and geographically dispersed population those desirable features of *Gemeinschaft* governance Tocqueville observed in New England towns in the early 19th century; while (2) adapting the structure of governance to overcome *Gemeinschaft* governance limitations and disadvantages. Chief among these limitations and disadvantages are the following: (a) *Gemeinschaft* Societies are unstable in regard to population growth and tend to devolve into asocial Societies as they grow (i.e. they fall under rulership in the form of either monarchy/oligarchy or non-consensus democracy governance); (b) if a *Gemeinschaft* (consensus-democracy) Society does not break down and come under the aforementioned despotisms of rulership then it typically becomes what Toynbee called an *arrested* Society. It ceases to grow both in terms of population and in terms of commerce¹⁰¹. Tocqueville governance is a species of

⁹⁶ Richard B. Wells (2013), *Critique of the American Institution of Education*, vol. II of *The Idea of Public Education*, www.mrc.uidaho.edu/~rwells/techdocs/, chap. 5.

⁹⁷ Richard B. Wells (2013), *Critique of the American Institution of Education*, vol. II of *The Idea of Public Education*, www.mrc.uidaho.edu/~rwells/techdocs/, chap. 14, pp. 525-531.

⁹⁸ Richard B. Wells (2013), "Critical review of the Dewey-Bode applied philosophy of education, Part I: Schooling and Society," pp. 7-18, www.mrc.uidaho.edu/~rwells/techdocs/.

⁹⁹ Alexis de Tocqueville (1835, 1840), *Democracy in America*, in two volumes, NY: Everyman's Library, 1994.

¹⁰⁰ Richard B. Wells (2014), *The Institution of Public Education*, vol. III of *The Idea of Public Education*, www.mrc.uidaho.edu/~rwells/techdocs/, chap. 6, pp. 157-166.

¹⁰¹ Richard B. Wells (2012), *The Idea of the Social Contract*, www.mrc.uidaho.edu/~rwells/techdocs/, chap. 11.

American Republic government by which these vulnerabilities and instabilities can be remedied.

Tocqueville commented,

It was never assumed in the United States that the citizen of a free country has a right to do whatever he pleases; on the contrary, more social obligations were there imposed upon him than anywhere else. No idea was ever entertained of attacking the principle or contesting the rights of society; but the exercise of its authority was divided, in order that the office might be powerful and the officer insignificant, and that the community should be at once regulated and free. In no country in the world does the law hold so absolute a language as in America; and in no country is the right of applying it vested in so many hands. The administration of power in the United States presents nothing either centralized or hierarchical in its constitution; this accounts for it passing unperceived. The power exists, but its representative is nowhere to be seen.¹⁰²

This decentralization is the key characteristic of the inverted pyramid structure (figure 5). The pyramid is structured geographically in order to combat the ill effects of stereotyping – which can only be done by arrangements that provide the opportunity for more people to know one another personally and have local knowledge of the circumstances and situations confronting their fellow citizens. The agents serving at each layer are tasked with *making a Community of common interests* for the citizens covered by each layer. The number of *common* interests monotonically *decreases* in moving from the district levels toward the federal level. The authority of the agents is restricted to serving these and *only* these interests. The agents have no authority to command other layers. The *power of the office* subsists in the number of people it affects; the power of the *agents*, however, is limited by the scope of their authority. The scope of their authority decreases as the number of common interests decrease. Thus the offices are powerful but the officers *relatively* insignificant. ***The more powerful the office is, the more insignificant the officer is.***

Each geographic mini-Community (represented by circles and ovals in the figure) consists of multiple special interest mini-Communities. Examples include business establishment mini-Communities (*e.g.* a "downtown merchants' association"), religious mini-Communities, labor mini-Communities, etc.). These special interest mini-Communities, in order to be recognized as such, must apply for and receive a special charter of recognition (in order to avoid sham or 'ghost' mini-Communities – fictitious entities that do not exist because they have no identifiable membership). Part of the executive branch function for each geographic mini-Community is to establish a process for recognizing and chartering special interest mini-Communities. The charter itself is granted by the judicial branch of the geographic mini-Community government. Obtaining a charter gives a special interest mini-Community representation in the legislative body of the geographic mini-Community but binds it by *obligatio externa* to the social contract.

It matters very little whether this legislative body is called a committee, a council, or a legislature. What is essential in this body is that all its legislative acts be passed ***with unanimous consent*** of all of the representatives. Any representative in this legislative body is empowered to *veto* any measure proposed by this body. The intent of this restriction is to ensure that any and all democratic mechanisms instituted for purposes of government be consensus-democracy mechanisms. Non-consensus democracy methods are forbidden in order to secure the civil liberties and guarantee the civil rights of minority groups. Because special local circumstances exist in geographically-defined political mini-Communities, there is no one-size-fits-all formula for defining the legislative body, but I have previously given an example of how one might be constituted for public education.¹⁰³ The example includes discussions of uncivic abuses of representatives' voting powers and how these might be prevented and remedied. Special interest mini-Communities represented in this body are bound by *obligatio externa* to uphold the social contract.

¹⁰² Alexis de Tocqueville (1835), *Democracy in America*, vol. I, NY: Everyman's Library, 1994, pg. 71.

¹⁰³ Richard B. Wells (2014), *The Institution of Public Education*, vol. III of *The Idea of Public Education*, www.mrc.uidaho.edu/~rwells/techdocs/, chaps. 6, 7.

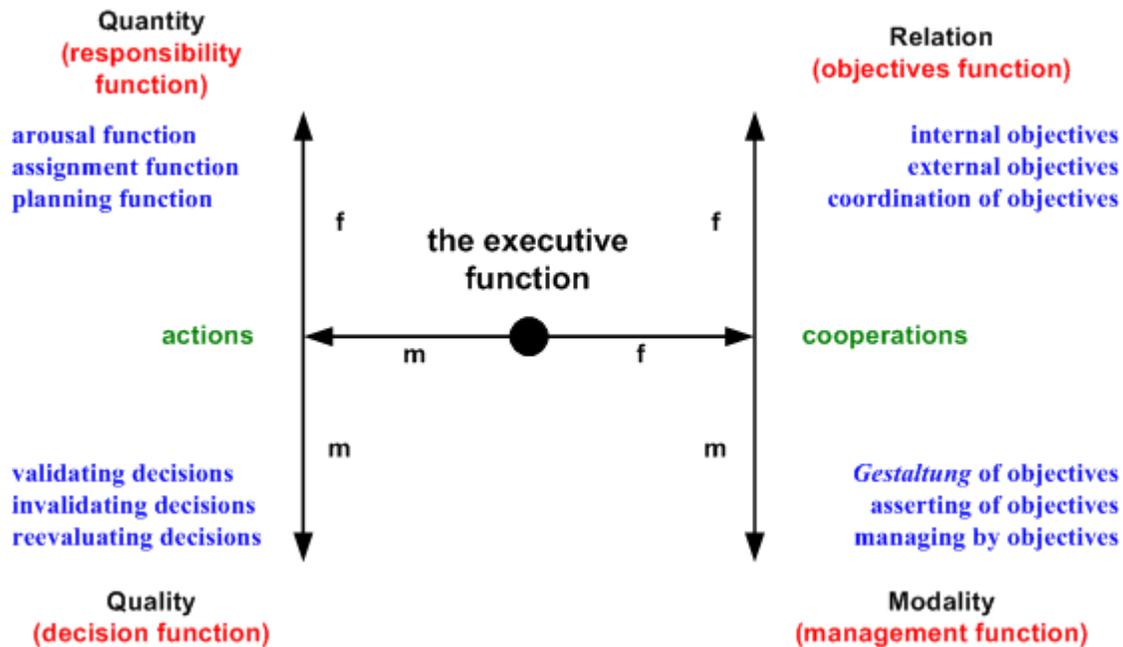


Figure 7: The executive functions of American Republic government.

Establishing and upholding *justice for all* within each political mini-Community and across the multiple layers of jurisdictions in the inverted pyramid requires an establishment of a judicial branch functioning in and between each. In figure 5 the organization of this judicial function is denoted by the term *judicial panel*. It is the function of each such panel to ensure that the social contract by which each mini-Community is bound and the overall Union of the divers levels is comprised is upheld. Again, I have given an example of how this branch might be constituted using the special case of public education as the basis for this example.¹⁰⁴ All social contracts are grounded in common interests and so it becomes the Duty of the judicial branch to see to it that civic interests are protected and uncivic ones denied. One point that is important to make clear is that interests which are *common* interests at the apex (federal) level of the pyramid are still common interests at the interstate regional level, those of the interstate regional level are still common at the state level, &etc. Their number decreases in the direction of the federal level (because the other layers of the structure have their own special circumstances), but *at a minimum* the six general objects of *all* Republican government (forming a more perfect Union, establishing justice, etc.) are common interests at every level of the pyramid. Were this not so, there could be no actual Union.

The purpose of the executive branch of government is to administer the day to day operations of the government as legislated by the legislative body having jurisdiction at each particular level. Because the set of common interests vary from layer to layer as well as by geographic locale, there is, again, no one-size-fits-all formula for how the executive branch is to be organized. There are, however, general principles concerning the executive *functions* that executive branch agents are required by Duty to fulfill. Figure 7 describes the structure of these executive functions. The functions themselves are explained in chapter 9 of *The Institution of Public Education*, pp. 260-266. One thing that executive function *does not necessarily require* is the establishment of a chief executive officer. Circumstances at particular levels in the pyramid (e.g. the state and federal levels) *might* be best dealt with by having one. The obvious example that comes to mind is command of armed forces (e.g., National Guard and the U.S. Armed Forces). But in many circumstances it is more appropriate to have two or more general executives whose

¹⁰⁴ Richard B. Wells (2014), *The Institution of Public Education*, vol. III of *The Idea of Public Education*, www.mrc.uidaho.edu/~rwells/techdocs/, chap. 8.

specific executive Duties overlap only slightly or not at all. I have previously given an example of this in chapter 9 of *The Institution of Public Education*. History provides additional examples: the Roman republic had two chief executives (the Roman consuls); Sparta had two kings who were co-equal chief executives; a factory can be co-managed by two co-equal managers, e.g. a production operations manager and a production engineering manager; the executive authority in ancient Athens was divided up among administrative committees. Aristotle named 25 such committees and estimated the total number of municipal officials at around 700. The notion that an executive unit of government requires a single chief executive officer is nothing but a hangover from habits set by monarchy rulership and military command structure¹⁰⁵. A single chief executive is in no way necessary for the efficient execution of government. The government of Massachusetts in Tocqueville's day is an outstanding example of the decentralization of executive authority in government:

I have already mentioned that the independent townships of New England were not under guardianship, but took care of their own private interests; and the municipal magistrates are the persons who either execute the laws of the state or see to it that they are executed. Besides the general laws the state sometimes passes general police regulations; but more commonly the township and town officers, conjointly with the justices of the peace, regulate the minor details of social life according to the necessities of the different localities, and promulgate such orders as concern the health of the community and the peace as well as the morality of the citizens. Lastly, these town magistrates provide, of their own accord and without any impulse from without, for those unforeseen emergencies which frequently occur in society.

It results from what I have said that in the state of Massachusetts the administrative authority is almost entirely restricted to the township, and that it is there distributed among a great number of individuals. In the French commune there is properly but one official functionary – namely the *maire* ["mayor"]; and in New England we have seen that there are nineteen. These nineteen functionaries do not, in general, depend one upon another. The law carefully prescribes a circle of action to each of these magistrates; within that circle they are all-powerful to perform their functions independently of any other authority.¹⁰⁶

Perhaps the greatest risk involved with heterarchy government based on local common interests is the risk that common interests of greater geographic sphere might be uncivilly undermined by local prejudices. The outstanding examples of this are bigotry and religious intolerance. These and other kinds of local prejudices do have the potential to violate the civil liberties or deny the civil rights of those citizens who are targeted by these prejudices. This, however, is where the importance of the national social contract shows itself most clearly. Whatever the local or regional social contracts might be anywhere in the pyramid, these cannot gainsay – by prejudice or any other means – the *national* social contract and it is the Duty of the judicial branch at every layer to see to it that *general* civil liberties and civil rights are not subjected to injustices or enormities at *any* layer or locale of government within the Union. The Object of the judicial branch is *justice*, not *law*. Are you, as a storekeeper or a landlord doing business with the general public, at *civil* liberty to deny service to any person on the basis of your own religious doctrine or racial/ethnic or other prejudices? **NO**. In America you do not, and if you claim to be an American then any such action on your part is a deontological *crime*.

8. Concluding Remarks

In every Society of every kind the *just* powers of government are derived from the consent of the

¹⁰⁵ Almost by definition, in a free country an army exists to respond to emergency situations threatening the lives and welfare of the citizens. Dire emergency circumstances constitute the *one* special case where appointing a Roman-style *temporary* dictator is justifiable by the common objective of providing for the common defense.

¹⁰⁶ Alexis de Tocqueville (1835), *Democracy in America*, vol. I, NY: Everyman's Library, 1994, pp. 71-72.

citizens it governs. Every *just* government is charged by its citizens with the expectation and demand that it will govern according to six general Objects of government: to form a more perfect Union; to establish Justice; to insure domestic Tranquility; to provide for the common defense; to promote the general Welfare, and to secure the civil Liberty of every one of its citizens now and in the future.

Any government institution that ignores or gainsays any of these Objects or attempts to rule rather than govern is a despotism. Eventually – perhaps later, perhaps sooner – it will destroy the very nation it is Duty-bound to serve. Despotism will – perhaps sooner, perhaps later – become evidenced: by protests demanding redress of grievances; by riots and breakdown of civil Order; by widespread derelictions of citizens' Duties; by secession movements; by failure of citizens to vote and participate in governance.

Political parties – whether there are one, two, or a hundred – are special interest Communities and they have historically always acted to usurp government and impose their rulership over their fellow citizens. Political parties are banefully and antisocially spirited, and, as Washington said long ago,

[The spirit of party] exists under different shapes in all Governments, more or less stifled, controlled, or repressed; but in those of the popular form it is seen in its greatest rankness and is truly their worst enemy.¹⁰⁷

The rule of a political party is always the rule of coercion and force no matter how skillfully party propaganda portrays it as something else.

Government by consent of the governed is not an easy thing to achieve. No nation on earth, including the United States, has ever achieved it for very long. Today we find it only rarely, as for example in the case of primitive Communities such as the BaMbuti Pygmies of the Congo. Achieving it and making it stable and robust always comes back to roots in common interests with justice for special interests that are understood in terms that do not gainsay these common interests nor hinder the civic special interests of others. The difficulties in achieving it arise from the phenomenon of mini-Communities, and no practical and deontologically *just* means of preventing or even hindering mini-Community formation exists. The only alternative, therefore, is to institute a system of government that can and will find means and methods to turn the fact of mini-Communities from a hindrance to an advantage. This is the topic and the challenge this paper is intended to treat – not as a final word on the challenge, but as a first word on it.

Endnotes:

A glossary of technical terminology used in this paper is provided by

Richard B. Wells (2016), *Wells' Unabridged Glossary of the Critical Philosophy and Mental Physics*, 5th ed., www.mrc.uidaho.edu/~rwwells/techdocs/.

For legal terminology consult *Black's Law Dictionary*.

¹⁰⁷ George Washington (1796), "Farewell Address," in *George Washington Writings*, NY: The Library of America, pg. 969.