Chapter 12 Heterarchical Justice Systems

1. Mini-Communities

We have seen that "injustice" is a subjective *feeling* (specifically, a feeling of *Unlust*) that the person transfers to some other person(s) or object(s) he blames for causing it. Frequently he labels the object of transference as "unfair" or "unjust." The feeling of injustice, furthermore, arises from hindrances or threats to, or denials of, the individual's satisfaction of his *interests*. This subjective origin of injustice means that in a state of nature *Existenz* there is no objectively valid concept of "justice" because, in order to be objectively valid, some group of persons must *agree upon* the object of justice. But if a group of people *does* so come to such an agreement, what they have done is, in effect, agreed upon a social *convention*[1]. Common urban street gangs do something like this when they divide a city up into "gang turfs" and "neutral territories." Local citizens - and local law enforcement - generally don't recognize this convention and typically regard the gangs as outlaw (non-observers of the city's social contract), but for gang members such "treaties" are agreed to as a means of avoiding gang wars. Nations more or less do the same thing when they co-sign international treaty agreements.

These simple conventions often tend to be *ad hoc* and resemble in some ways the hodge-podge of laws contained in the ancient legal codes we reviewed in chapter 1. In most instances, they are composed on the basis of unpleasant past experiences. They often fall short of being *civil* conventions because they lack the condition fundamental to all true civil conventions, namely the condition that the members of their association will defend and protect all the members with their whole common force. Members of the United Nations do sign on to articles establishing this condition (and therefore the UN Charter is an example of a civil convention)[2]. But even more is required for a civil convention to become a social compact - namely, the fundamental term of a social compact that places *civic Duties* upon the members. The UN Articles also contain this clause (Article 43-1) but with a "special agreement or agreements" clause attached to members' commitments that makes the UN charter something a little less than a social compact. Observing the behavior of the UN since its founding led one critic of the UN to call it "an association of poachers turned game wardens." The NATO Charter does satisfy both the condition and the term requirements and is, consequently, an actual social compact in a context by which NATO is regarded as a confederation of nations[3].

An action by which any person or group of persons fails to satisfy the condition requirements of a social compact is said to be "unjust." Justice is the negating of anything that is unjust. From this one can easily see that justice and justice systems are practically possible only in a civil Community, i.e., a Community bound together by a social compact.

Here, however, we run headlong into a problem that has plagued, and I would say baffled, sociologists for as long as that scholarly field has existed. The problem is the existence of mini-Communities embedded within larger Societies. Sociology does not even have a technical definition for the term "mini-Community" nor, arguably, a technical definition of what a "society" is. (Neither do historians nor any other scholarly field of what is commonly called "social science"). Abercrombie *et al*. tell us,

> **society** The concept is a commonsense category in which 'society' is equivalent to the boundaries of nation states. While sociologists in practice often operate with this everyday terminology, it is not adequate because societies do not always correspond to political boundaries (as in 'Palestinian society'). Globalization in particular has exposed the limitations of traditional theories which equated societies with the nation state. [Abercrombie *et al.* (2006), "society"]

[1] See the chapter appendix for definitions of these technical terms.
[2] https://www.un.org/en/about-us/un-charter/full-text
[3] https://www.nato.int/cps/en/natohq/official_texts_17120.htm

But mini-Communities are an indisputable fact of human experience. Making the issue even more challenging is the fact that the vast majority of human beings belong not just to one mini-Community but to several. And, if that was not complication enough, most mini-Communities belong to more than one larger mini-Community. (They are said to be "embedded" in that larger mini-Community). These nesting and branching phenomena of mini-Communities within and with other mini-Communities typically continues to the level of nation states, but it doesn't stop even there. We find multinational commercial companies and international professional Societies embedded in multiple nation-states even though some of these, e.g. Doctors Without Borders[4], might deny they "belong" to any nation-state. Perhaps this is so officially for non-government organization civil Communities, but it isn't so for their *members*.

Mini-Community members are bound together by sets of congruent common interests that Community membership provides them all with an enhanced collective *Personfähigkeit* to satisfy. The diversity and scope of possible human interests is limited only by human ingenuity, creativeness, and intelligence. Social dynamics produced by this scope and diversity far exceeds the capacity of simple-minded traditions of organized governance to manage and makes the human condition unsuited for any one-size-fits-all scheme of political, and especially justice, systems.

"Man is not willingly a political animal," but human beings *are* creatures of settled habits and traditions passed along generation to generation long after the reasons and circumstances that originally brought them about have been forgotten. Social organization by hierarchical structures is one such tradition. There *are* circumstances under which hierarchy and rulership works well and might even be vital to success. Military organization is perhaps the most outstanding example of this - and *all* the first ancient civilizations we know about were governed by military rulers. Dyer points out,

> It is not necessary for Acme Carpet Sales or the Department of Motor Vehicles to regiment their employees and rigidly routinize every aspect of their work, for they operate in an essentially secure and predictable environment. The mail will be delivered each morning, the sales representatives will not be ambushed and killed on the way to their afternoon appointments, and the secretarial pool will not be driven to mass panic and flight by mortar rounds landing in the parking lot. Armies in peacetime look preposterously over organized, but peace is not their real working environment.
>
> In battle, however, the apparent lunacy of orders given and acknowledged in standard forms, of rank formalized to an extent almost unknown elsewhere, of training that ensures that every officer will report his observations of enemy movements in *this* format rather than some other, when there seems no particular virtue in doing it one way rather than another, all find their justification by bringing some predictability and order to an essentially chaotic situation. [Dyer (1985), pg. 136]

Society, especially in peacetime, also operates in a social environment where events are unpredictable and somewhat chaotic, at least occasionally and to some degree, but the causes and situations encountered are vastly different in character from the sort of chaos and "fog of war" confusion that rules a battlefield. Every Society from the largest nation-state down to the smallest BaMbuti hunting group is a conglomeration of mini-Communities; and what might be the best justice system organization for one mini-Community might be wholly unsuitable or much too simpleminded for another. When the cause for having an organization is subjective - as injustice is - one size does *not* fit all mini-Communities, and this is where we find *heterarchy*, rather than hierarchy, organization of justice systems to be practically advantageous.

There are many kinds of mini-Communities whose members' sets of congruent common interests do not differ from those of the geographic mini-Community in which they are embedded in any way that might justify that mini-Community having a distinct special-purpose justice system established different from that of the mini-Community in which they are embedded. A recreational mini-Community, such as a city softball or soccer league, would be one example. Municipalities embedded in a common county are

[4] https://en.wikipedia.org/wiki/M%C3%A9decins_Sans_Fronti%C3%A8res

usually another example of this although there are sometimes exceptions to this. (For instance, in the U.S. some states stipulate by law the jurisdiction of the administrative boards of homeowners' associations and require particular judicial hearings such a board must hold regarding fines for covenant violations.)

Some mini-Communities are formed for purposes of their members that justify establishing specialized judicial functions not common to (but still congruent with) other mini-Communities or the embedding geographical mini-Community from which its members are drawn. For these mini-Communities a special purpose justice system, operating congruently with but outside the jurisdiction of that of the embedding mini-Community, is often justifiable. An example of this is provided by some churches (religious mini-Communities) who establish church or ecclesiastical courts for settling religious disputes inside the church or dealing with matters of receiving or excommunicating church members. Wells (2014) and Wells (2017) proposed heterarchical systems for governing civic public instructional education and civic free enterprise, respectively, which included special-purpose judicial panels for these institutions. As a general rule-of-thumb, non-traditional "justice mini-systems" find justifiable grounds in mini-Community special interests not shared by the general deontological citizenry of civil Communities in which they are embedded.

In point of fact, heterarchy in the present U.S. *legal* system is not a new idea. Figure 1 illustrates the existing federal court system organization with the addition of the proposed judicial panels of public education from Wells (2014). The "Courts of Limited Jurisdiction" shown in this figure are examples of heterarchy in a justice system (embedded, in this case, within a hierarchy of court systems) set up to handle issues involving particular mini-Community interests and issues.

Mini-Communities generally form out of a combination of local interests, special circumstances, and the human nature of satisficing decision making. Their institution is therefore empirical and heuristic rather than designed according to some carefully thought out rational master plan. Furthermore, mini-Communities tend to come into and go out of existence continually. This aspect of human nature not only makes mini-Communities a challenge for Societies generally but also favors heterarchy institution.

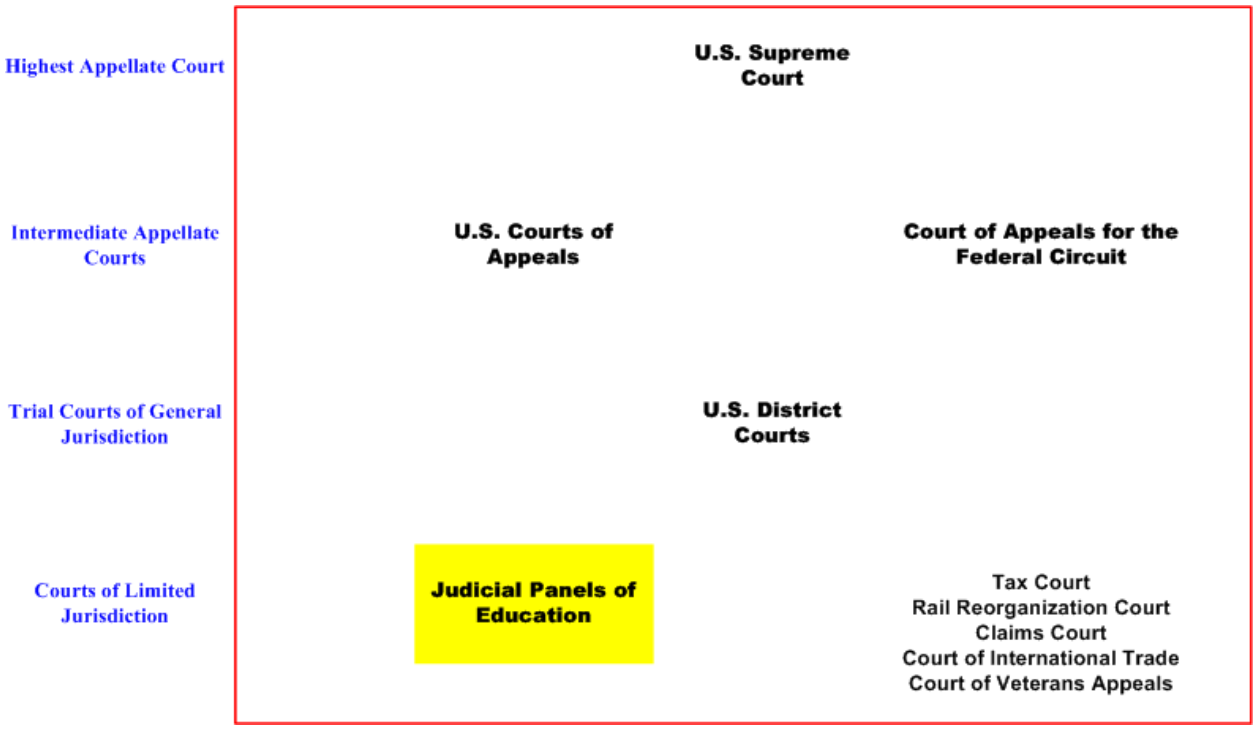

Figure 1: U.S. federal judicial branch court system with proposed placement for judicial panels of public education [Wells (2014)]. The Rail Reorganization Court was a short-term special court that was discontinued in late 1996.

In this treatise, we have discussed a number of circumstances and historical outcomes that have pointed to amending or augmenting traditional institutions of justice systems. The term I use for such agencies of justice is "judicial panels." Let us now turn to these innovations in more detail.

2. Boards of Merit

Beginning in 1776, the newly-declared United States of America were faced with an urgent need to set up new governments - sometimes with the shadow of an approaching British army looming over those who were trying to do so. Under such conditions, it is little wonder that expediency played a major role in this process, or that by 1787 it had become evident that their original plan of confederal government had fatal flaws in its design. It had been clear from the start to America's revolutionary leaders that only some kind of republican government, as this had been described by Montesquieu nearly three decades earlier, would be acceptable to the American people. But, however much inspiration they drew from Montesquieu's *The Spirit of Laws*, they found in its pages no detailed plan for instituting such a government but only, as the title of that work had clearly stated, the "spirit" of such a government. Beyond that, the Americans had only their own experiences with their colonial assemblies, parish governments, and local institutions to draw upon. These leaders also had only very limited experience with judicial functions of government and although many Patriot Party leaders had served in colonial assemblies, very few of them had ever served in the capacity of judges or magistrates. In this crisis, many of them turned to John Adams for advice. His advice [Adams (1776)] subsequently had enormous influence on the course of the institutions of U.S. governments.

One of the first things Adams advised was:

> We ought to consider what is the end of government before we determine which is the best form. Upon this point all speculative politicians will agree, that the happiness of society is the end of government, as all divines and moral philosophers will agree that the happiness of the individual is the end of man. From this principle it will follow, that the form of government which communicates ease, comfort, security, or, in one word, happiness to the greatest number of persons, and in the greatest degree, is the best. . . . If there is a form of government, then, whose principle and foundation is virtue, will not every sober man acknowledge it better calculated to promote the general happiness than any other? [Adams (1776), pg. 234]

By "end" Adams means "purpose." His statement about "virtue" is straight out of Montesquieu:

> There is no great share of probity necessary to support a monarchical or despotic government. The force of laws in one, and the prince's arm in the other, are sufficient to direct and maintain the whole. But in a popular state, one spring more is necessary, namely, virtue. . . .
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> When virtue is banished, ambition invades the minds of those who are disposed to receive it, and avarice possesses the whole community. The objects of their desires are changed; what they were fond of before has become indifferent; they were free while under the restraint of laws, but they would fain now be free to act against the law; and as each citizen is like a slave who has run away from his master, that which was a maxim of equity he calls rigor; that which was a rule of action he calls constraint; and to precaution he gives the name of fear. Frugality, and not the thirst for gain, now passes for avarice. Formerly the wealth of individuals constituted the public treasure; but now this has become the patrimony of private persons. The members of the commonwealth riot on the public spoils, and its strength is only the power of a few, and the license of many. [Montesquieu (1748), pp. 21-22]

Just as Pontius Pilate cynically asked Christ, "What is truth?" so the cynic of today will ask, "What is virtue?" The deontological answer to this is, "the individual's constant disposition (unwavering attention) to carry out his Duties." A *meritorious person* is a person whose action has the quality of merit and who consistently exhibits virtue in his attention to his Duties. And merit is the quality of an action whereby

more good occurs from it than that for which the actor was morally responsible; it is an action taken in accord with either *obligatione externa* or *interna* such that the action could not have been externally compelled in the measure to which it actually took place, action "above and beyond the call of Duty."

As you saw in the earlier pages of this treatise, justice, administration, and lawmaking are tightly bound together. When laws are *just* then it is true, as Adams wrote, "that form of government which is best contrived to secure an impartial and exact execution of the laws is the best of republics" [Adams (1776), pg. 235]. However, therein lies the catch: ensuring the laws are *just*.

> 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, reason, and act 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. Great care should be taken to effect this, and to prevent unfair, partial, and corrupt elections. [Adams (1776), pg. 235]

Adams was enough of a pragmatist to recognize that in the crisis time of 1776 expediency and speed were more important that leisurely and scholarly reflection on the design of government. Indeed, he advised,

> Such regulations, however, may be better made in times of greater tranquility than the present; and they will spring up themselves naturally, when all the power of government come to be in the hands of the people's friends. At present, it will be safest to proceed in all established modes, to which the people have been familiarized by habit. [*ibid*.]

But, apparently, "tranquility" was a longer time in coming than Adams hoped. Naturally, he did not immediately participate in the making of the various state constitutions, nor was he a delegate to the 1787 Constitutional Convention in Philadelphia. While he did generally approve of the constitutions, it seems he was not entirely satisfied that his "great care should be taken" precaution had been met by them nor properly revisited at a later "more tranquil" moment. In a letter dated 11 October, 1798, he wrote,

> Our Constitution was made only for a moral and religious people. It is wholly inadequate to the government of any other. [Adams (1798)]

Personally, I do not agree with Adams that the U.S. Constitution is "wholly" inadequate, nor do I agree that people must be religious in order for it to be able to work. Religion is not the source in human nature of deontological morality. But I do agree it is vital and necessary for agents of government and mini-Community administration to be meritorious persons if popular sovereignty and liberty with justice for all is to endure. Any Community where there is justice only for a few is a Community where there is civil liberty only for a few.

Adams clearly recognized that the administration of justice could not safely be left in the hands of legislative assemblies nor administrative executives. He was the leading proponent of creating a third branch of government which would make *justice* its principal concern. As a lawyer, he was familiar with the colonial court systems of his day. He advised,

> 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 upon both, that so it may be a check on both, as both should be checks upon that. The judges, therefore, should be always 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. [Adams (1776), pg. 239]

It is perhaps interesting that Adams did not offer advice on what qualities of temperament, talent, and morals ought to be required of lawmakers or executives. Years later he wrote,

> There is a voice within us, which seems to intimate, that real merit should govern the world; and that men ought to be respected only in proportion to their talents, virtues, and services. But the question has always been, how can this arrangement be accomplished? How shall the men of merit be discovered? [Adams (1790), pg. 357]

He did live in an age when and in a culture where: a person's reputation could and often did directly bear upon his livelihood and social standing; where people addressed each other as "Mister" or "Missus"; boys were called "Master" and girls were called "Miss"; sons were taught and expected to call their fathers, "sir"; and officials were addressed by such honorifics as "your Excellency" or "your Honor" - politeness's often found in cultures where dueling is sanctioned by customs and traditions if not by law - and so it seems not-unlikely a great many people would have agreed with his "voice within us" comment. Indeed, a reputation for being a scoundrel or a public scandal were often sufficient to drive an officeholder from office in America until late in the twentieth century. Those days now seem to have passed, and who can foresee when or if a like time will come again? The questions Adams asked in 1790 not only remain unanswered today; they are rarely asked anymore, and those who do asked them are not-unlikely to be sneered at as dreamers or idealists by a dispirited many.

Adams did recognize the principal obstacle to "discovering the men of merit." He stated it:

> There is no individual personally known to an hundredth part of the nation. The voters, then, must be exposed to deception, from intrigues and maneuvers without number, that is to say, from all the chicanery, impostures, and falsehoods imaginable, with scarce a possibility of preferring real merit. [*ibid*.]

You cannot judge a person to be meritorious from a stereotype. A stereotype is a mathematical model, a caricature of a person; and the object of a stereotype is not-real, i.e., not an object of experience.

It is a time-proven maxim that *people are the best judges of things they know best and the worst judges of things about which they possess few or no facts or experience*. Tocqueville even commented about this:

> I have lived much with the people of the United States, and I cannot express how much I admire their experience and their good sense. An American should never be led to speak of Europe, for he will then probably display much presumption and very foolish pride. He will take up with those crude and vague notions which are so useful to the ignorant all over the world. But if you question him respecting his own country, the cloud that dimmed his intelligence will immediately disperse; his language will become as clear and precise as his thoughts. He will inform you what his rights are and by what means he exercises them; he will be able to point out the customs which obtain in the political world. You will find that he is well acquainted with the rules of the administration, and that he is familiar with the mechanisms of the laws. The citizen of the United States does not acquire his practical science and his positive notions from books; the instruction he has acquired may have prepared him for receiving those ideas, but it did not furnish them. The American learns to know the laws by participating in the act of legislation; and he takes a lesson in his forms of government from governing. The great work of society is ever going on before his eyes and, as it were, under his hands. [Tocqueville (1836), pg. 318]

Every large Society is a conglomeration of many small mini-Communities and mini-Communities conglomerated from other smaller mini-Communities. In the smallest of these, it *is* possible for people to know their fellows more from experience than from stereotyping, and for them to be more competent

judges of the merits and demerits of one another. In America, the old New England townships provided what is probably the best living example of *Gemeinschaft* citizenship in advanced Societies. Tocqueville, at any rated, seemed to think so [*ibid*., pp. 64-79].

In modern days, with higher population levels more geographically dispersed, technology-boosted travel and transportation, and wider networks for person to person communication, the natural simplicity of the old New England township and the old southern-rural marketplace is a thing of the distant past. People's day to day lives are less interconnected with their neighbors, and the number and kinds of mini-Communities has expanded significantly. Geography is still a factor in establishing common interests, but there are now a number of other factors that have grown much more significant than in the 18th and 19th centuries. One sees this in the greater number of formal and informal associations people in modern times have formed. Mini-Communities still form and dissolve continually [Wells (2013), chap. 11, pp. 423-425], stereotyping outpaces knowledge from actual interpersonal experience, and this increased diversity and faster-moving pace means that methods for social, political, and economic organization in Society must evolve to keep up with real social circumstances. I propose for your consideration that one such Societal need is the need for organized heterarchical *Boards of Merit*.

This idea has its roots in my previous work, *The Idea of the American Republic* [Wells (2010), chap. 9], that I presented thirteen years ago, and two years before the publication of the comprehensive theory of human social-nature presented in *The Idea of the Social Contract* [Wells (2012)]. It proposes regarding *chartered Mini-Communities* as the fundamental "social molecules" of a Society in its spheres of political, judicial, and commercial organization. (*Chartered* mini-Communities are discussed in the next section). The purpose for institution of Boards of Merit is ***to provide a mechanism of candidate identification and filtration that improves the general degree of merit in the candidates offered for election or appointment to public offices, and to conduct merit reviews of public officer performance***. Its intended effect is to answer Adam's question of how to better the chances that public servants are meritorious people. *All* elected and appointed political officeholders *are*, first and foremost, public servants and *never* rulers in a Society where the body politic of deontological citizens is sovereign. Boards of Merit fit into the idea of a justice system in the role of special investigators of the backgrounds and qualifications of office-seeking candidates as well as impeachment juries. Their mission is "to prevent the rich from buying and the scoundrel from smiling" their ways into positions of power and authority.

There are some who will feel uncomfortable about any idea of having any body interposed between the voter and the office-seeker, especially in the United States where the hopeful myth that "any boy can grow up to be President of the United States" is so cherished. To this concern, I answer that political party bosses and partisan news media organizations *already* stand between the voters and the candidates they are *allowed* to choose from. Candidates are already identified and filtered by these factions. What else do you think a state Republican or Democratic Committee does? What do you think the function of a political party primary election is? And what special interests of *theirs*, not *yours*, do you think motivates this candidate filtering? In 1909, college professor of history Woodrow Wilson wrote,

> New York politics had produced that system of party organization whose chief instrument was the nominating convention made up of delegates selected, in caucus, by local party managers, and organized to carry out the plans of coteries of leaders at the State capital. This coterie was known in New York as the "Albany Regency," and its guiding spirit was Martin Van Buren, whom [Andrew] Jackson had called from the governor's chair to be Secretary of State and his trusted personal friend and advisor. The system Mr. Van Buren represented had come to completion with the extension of suffrage. A great maze of voters, unable of themselves to act in concert or with intelligent and independent judgment, might by careful management and a watchful sagacity be organized in the interest of those who wished to control the offices and policy of the State. Neither the idea nor the practice was confined to New York. Pennsylvania also had attained to almost as great a perfection in such matters. . . . The offices of State government were used . . . as prizes to be given to those who had rendered faithful party service, in due submission to those in command; and there were pecuniary rewards to be had, too, in the shape of lucrative contracts for public works [Wilson (1909), pp. 32-33].

These were the circumstances in 1828 when state parties in the then-twenty-four United States conglomerated behind the candidacy of Andrew Jackson and so formed the national Democratic Party. At the time Wilson wrote these words, he was still a college professor and the 13th President of Princeton University; it would be another two years before he became the 34th Governor of New Jersey. Wilson is likely correct in saying that "not all" the organizers and bosses of political parties were dishonest or corrupt men. But it is beyond reasonable doubt that *some* of them were, and that avarice and personal ambition were principal motivators for some of them:

> "When they are contending for victory," said Mr. Marcy in the Senate, speaking of the group of New York politicians to which he himself belonged, "they avow the intention of enjoying the fruits of it. If they are defeated, they expect to retire from office. If they are successful, they claim, as a matter of right, the advantages of success. They see nothing wrong in the rule that to the victors belong the spoils of the enemy." There was nothing consciously sinister in this avowal. It was, on the contrary, the language of an upright, if not a very wise, man; and it contains a creed which Jackson accepted at once, by natural instinct, without perceiving either the demoralizing or corrupt meaning of it. . . . It was thus unwittingly that he [Jackson] debauched national politics. [Wilson (1909), pp. 33-34]

"A matter of right"? "To the victors belong the spoils of the enemy"? This is a debauched way indeed to look at the *hired-hand* job of *public servant*. And a thoroughly Unamerican way of looking at it as well. This is precisely the sort of "intrigues and maneuvers, chicanery, impostures, and falsehoods" that institution of Boards of Merit is tasked to put a stop to.

But, again, *Quis custodiet ipsos custodes?* Who insures the *members* of Boards of Merit are *themselves* meritorious people? Here we find a situation in which the phenomenon of mini-Communities *can be an advantage* in securing liberty with justice for all in heterarchical systems of institutions. An example illustrating the idea of heterarchical coordination of mini-Community institutions is shown in figure 2.

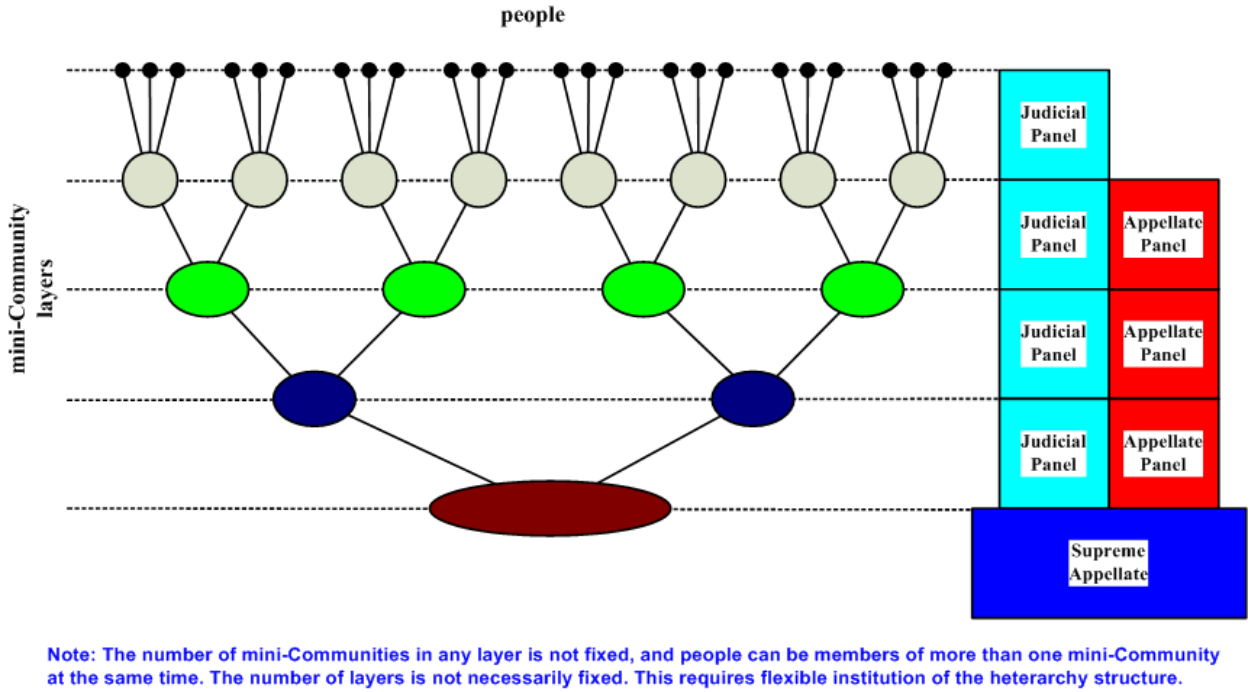

Figure 2: An example of "inverted pyramid" heterarchy structure. The figure illustrates pairwise social accretion of mini-Communities to form larger (conglomerated) mini-Communities, but conglomerations of three, four, or more mini-Communities can also be formed. Any mini-Community can also be conglomerated in multiple mini-Communities. The inverted pyramid idea was first introduced in Wells (2014), chapter 6, and was called "Tocqueville organization" in that work for reasons explained there.

Groups of people form themselves into mini-Communities when they have on-going interactions with each other (social "commerce") during which the individual involvements serve to satisfy their congruent interests. The phenomenon is not restricted to politics, and it can be observed even in relatively small commercial Enterprises, in institutions of public instructional education, and even in day-to-day life in the small BaMbuti hunting group studied by anthropologist Colin Turnbull [Turnbull (1962)]. Mini-Community might well be the most ubiquitous and omnipresent human social phenomenon of all. Once you make a habit of looking for it, you might begin to wonder how sociology ever failed to notice it.

In the smallest-population mini-Communities - those depicted in the top layer of figure 2 - it generally doesn't take a very long time before, as people often say of small Midwest towns, "everybody knows everybody" either through direct personal experience or, if not so much by that, at least by "name recognition" of reputation. As one minor example, when I was a boy growing up in my Iowa hometown (population *circa* 6000), I "knew" by name recognition and reputation (as much as a boy ever notices anyone's reputation) a man named Dennis Voy. Mr. Voy owned the local radio station and movie theater, and I'd heard of him long before he ever became the mayor of the town. As it turns out, he doesn't remember me but he did know my parents and older brother and sister. (As of the date of this writing, Mr. Voy is still there and as much a "solid citizen" of the town as he always has been. Just a few weeks ago he announced that he was finally retiring). Later, during my mid-teenage years, we moved to a smaller town (population *circa* 2000) and I was surprised to soon learn that "everybody" knew *me* (I was known as "the baker's boy"). Multiply these two homely examples by tens of thousands and you will get something of an idea how ubiquitous this phenomenon really is. You might even be surprised by how many people you might never have heard of "know" *you*.

The immediate implication of this phenomenon is this: Members of those smallest "top level" mini-Communities depicted in figure 2 *are in the best position to make good judgments about who the meritorious people in their mini-Community are and are not*. These judgments won't always be perfect. But, as Tocqueville remarked above about the Americans he met, these judgments can be expected to be the most accurate ones empirically available. This is how mini-Community phenomena can be advantageously employed as perhaps the best answer humankind has yet found for the *Quis custodiet ipsos custodes?* question. This heuristic hypothesis is the starting point for Boards of Merit.

The basic plan is as follows. Each top-layer *chartered* mini-Community (figure 2) is to appoint its representatives to Boards of Merit overseeing candidacies for public office at each of the next lower layer of mini-Communities with which that top-layer mini-Community is an associate Community, as well as candidacies for judicial and appellate panels (again, figure 2) established at its level. Each Board of Merit is to be the assembly serving in the role of an investigative and evaluative agency having for its task and authority: the identification and certification of deontologically meritorious persons as candidates for other offices of public trust and authority; and removal of officeholders for transgressions. Because a Board of Merit is fundamentally an investigative agency, board members may employ experienced professional investigators to support its function, but the authority to pass judgments of merit and virtue lies solely with the board members and not the investigative personnel the board employs. In its decision making, the board will operate by consensus (unanimous consent) and not by the principle of "majority rules." No member of a Board of Merit is allowed to hold, at the same time, any other office of public trust or authority. Board membership is a privilege and not a civil right, and any mini-Community at any time can recall and replace its board representative if, in the sole determination of that mini-Community, its representative is not fulfilling and satisfying the Community's expectation for authority for the office. (See the chapter appendix for definitions of these terms).

There are also to be Boards of Merit established for the lower layers of mini-Community in figure 2. In order to sustain the element of personal knowledge needed to judge the qualities of merit and virtue of the members, representatives of the boards at the next lowest layer of mini-Community will be selected by the appointing Boards of Merit, and these appointments can be changed by the appointing boards at the sole discretion of that board. These lower-layer boards will also operate by consensus decision making.

Boards of Merit will render only decisions about the fitness of a candidate for public office to *be* a public officeholder. They will not have the authority to *appoint* public officials. Any reasonable suspicion that a prospective candidate has committed any moral transgression is a sufficient ground for disqualifying his candidacy. A public office is a position of trust, and holding it is a privilege, not a right. For each candidate qualified by a Board of Merit, the board will present to the public a report on that candidate that lays out and explains why the board has judged that person to be a meritorious person fit for public trust. A board will not present any such public report for disqualified candidates, although it may transmit a report to law enforcement authorities of any suspicion of criminal behavior by a candidate.

Candidates must still win election to the office by vote of the citizens of the top-level mini-Communities *voting as Communities* and not as individuals. The size of the population of a mini-Community is irrelevant in this voting process; it is, in a manner of speaking, a "federated" voting system made necessary by the fact that every person is simultaneously a member of more than one mini-Community, and public officials are held responsible for serving well the *common interests* of the Community, not the private special interests of individuals. Such a "federated" process is similar to the delegation-vote system used at the 1787 Constitutional Convention in Philadelphia, where the voting was by delegation and not by individual delegates [Farrand (1911)].

This specification of voting mechanism is likely to seem very strange in view of the Rousseau-like tradition of "one man, one vote" democracy. The reason and purpose for this, however, lie: (1) in the fact that *every person is simultaneously a member of more than one mini-Community*; and (2) in Adams' maxim that *equal **interests** among the people must have equal interests in the office*. Mini-Communities are founded upon interests common to its members, and these common interests are what are to be reflected in the selection of public officials. Neglect of the principle of equal interests opens the gate for secretive lobbying of public officials and a present danger of corruption of officials.

This function in the institution of a justice system is reminiscent of the "character examination" process (called the *dokimasia*) used in ancient Athens [Durant (1939), pg. 263]. In the case of Athens, public offices were bestowed by lottery and the Athenian *dokimasia* was a sort of safety precaution to prevent unsuitable people from holding important offices. But, as Adams observed, voting for or against people who are strangers to you personally is little different from a lottery [Adams (1790), pg. 357]. Boards of Merit are a reasonable precaution for promoting good governance for much the same reason the Athenian *dokimasia* was a sound precaution for Athenian democracy.

Some people will argue that, at least in the political domain, journalists and news media outlets perform a sort of "background check" function on state and national political candidates. To a degree, that is true. However, again, we encounter the *Quis custodiet ipsos custodes?* issue because one never knows if the journalists, editors, and anchorpeople doing these "checks" are themselves politically biased. Merrill and Lowenstein, for instance, wrote:

> It would be rather presumptuous to say that all journalists are propagandists, but it is probably safe to say that most of them are. We may not like to think about them in his way, but a careful observation and analysis of journalists will indicate that they at least have the traits and characteristics of propagandists, at least in many of their activities. [Merrill & Lowenstein (1971), pg. 221]

Among these propaganda techniques they list: use of stereotypes; presenting opinions as facts; biased attributions; information selection; misleading headlines; biased photographs; censorship; repetition; negativism; appeals to "authorities"; and fictionalizing [*ibid*., pp. 221-225]. Such practices disqualify the news media as neutral agencies for identifying and qualifying meritorious persons.

3. Boards of Charter

The idea of granting legitimacy to a mini-Community by means of charters was raised in a previous work,

The Idea of the American Republic [Wells (2010), chap. 4, pp. 127-128] as a way of safeguarding against unjust or unbalanced representations of the special interests of single mini-Communities, and as a mechanism for identifying actual and legitimate mini-Communities (as opposed to false pseudo-Communities). I pointed out earlier in this chapter that not every mini-Community is justifiably distinct from the larger mini-Community in which it is embedded. A city softball league was one such example. Such mini-Communities need not be chartered when no conflicts exist between their special interests and the interests of other mini-Communities. But where such conflicts, or the potential for them, exist then chartering is a justifiable requirement for specifically recognizing them.

The idea of a charter has been around for a very long time, arguably dating back to the time of the Roman Republic. *Black's Law Dictionary* defines a charter as

> 1. An instrument that establishes a body politic or other organization, or grants rights, liberties, or powers to its citizens or members;
>
> 2. An instrument by which a municipality is incorporated, specifying its organizational structure and its highest laws;
>
> 3. A governmental act that creates a business or defines a corporate franchise;
>
> 4. The organic law[5] of an organization; loosely, the highest law of any entity;
>
> 5. A governing document granting authority or recognition from a parent organization to a subordinate or constitutive organization. [Garner (2019), "charter"]

Most of the American colonies were originally established by charters from Britain's Crown Government. So, too, were commercial companies (such as the British East India Company). Charters have been used to establish public corporations for such public services as railways, water works, gas works, and for charitable purposes. They were also used to establish towns, cities, guilds, merchant associations, universities, and religious associations. Each one of these entities, we may note, is a mini-Community. It is not-incorrect to say that the U.S. Constitution is the charter for the U.S. House of Representatives, the U.S. Senate, the Executive (Office of the President of the United States), and the U.S. Supreme Court. The UN Charter is another familiar example of chartering. Chartering is not a new or strange idea.

In a heterarchical justice system organized according to common and special interests of mini-Communities, chartering of mini-Communities serves two very important purposes. First, it brings more clarity to a mini-Community's special interest - with which, being special and strictly localized to that mini-Community, other mini-Communities and the civil Community overall cannot justifiably intervene. This is a mechanism for protection of civil liberties. As discussed in the previous chapter, it belongs to the sovereign citizens to instruct their government what their civil rights are, and to their government to instruct the citizens on what corresponding civic Duties must then be joined with those civil rights.

Secondly, chartering is a means of protecting the determination of the general will of the body politic. It would be a simple matter for the leaders or membership of a mini-Community to recognize corporate advantages they might obtain if they were to obtain distinct charters for as many of their special interests as possible - and thereby increase their apportioned representation and power in government. But this is a tactic that, in effect, sets up *false* mini-Communities by presenting what in actuality is a single mini-Community as if it were several independent ones. Every body applying for a charter must be required to prove and demonstrate its legitimate independence from other chartered mini-Communities.

Legitimate mini-Communities make up the "social molecules" of a Society. The institution of justice in a Society depends in a fundamental way on insuring civic cooperations among these "molecules" and, for this, mechanisms for the administration and governance of charters is required. This is what the proposed

[5] *Black's* defines "organic law" as the body of laws (as in a constitution) that define and establish a government; fundamental law.

Boards of Charter are tasked with doing.

To apply for and be chartered, a mini-Community must provide, to the judicial panel acting as its Board of Charter, an identifying list of its members or, in cases where the mini-Community is formed by combining higher-layer chartered mini-Communities, an identifying list of its member Communities. Because new members can be admitted to its association and old members can withdraw from it, a chartered mini-Community must also annually provide the board of charter with an updated membership list. Further, it must disclose and declare what civic special interests of its members that the association will serve. The adjective "civic" used here means these special interests are not incongruent with the common interests of all larger Communities in which the chartered mini-Community is embedded. (See chapter appendix). It must also provide proposed Articles of Association or of Incorporation, that establish for it a constitution, and Bylaws governing its self-administration. These latter documents are defined according to *Black's Law Dictionary* as:

> **Articles of Association:** A governing document that legally creates a nonstock or nonprofit organization;
>
> **Articles of Incorporation:** A governing document that sets forth the basic terms of a corporation's[6] existence, including the numbers and classes of shares or memberships and the purpose and duration of the corporation;
>
> **Bylaws:** A rule or administrative provision adopted by an organization [mini-Community] for its internal governance and external dealings. Although the bylaws may be an organization's most authoritative document, they are subordinate to a charter or Articles of Association or of Incorporation. [Garner (2019)]

Commercial Enterprises are, by definition, mini-Communities under civic free enterprise [Wells (2017)]. It is the prerogative of the judicial panel acting as a Board of Charter to require amendment of any term or condition in these that is incongruent with the social contract of the Community in which the chartered mini-Community is embedded. No association formed for uncivic purposes can be chartered.

4. Boards of Right

The original idea for institution of Boards of Right grew out of a phrase borrowed from English law, namely, a Petition of Right [Wells (2010), chap. 6, pp. 192-196]. Prior to 1948, this was merely a remedy available to subjects to recover property from the Crown (since the Crown could not be sued). However, its purpose and usage here goes far beyond this limited context. The English petition contained a phrase, *fiat justitia*, that British law interpreted to mean "let right be done" although this Latin phrase is properly translated as "let justice be done" (and is so translated in *Black's Law Dictionary*).

In institutions of popular government, every deontological citizen knows a psychological tension within himself because of his dual roles in the civil Community: 1) his interests and Duties-to-himself as an individual and a *part* of the Sovereign (from which arise his civil rights); and 2) his common interests and reciprocal Duties-to-others that come with his role as a *subject* of the Sovereign (from which arises his civic Duties). Mill expressed something of this tension when he wrote,

> A time came in the progress of human affairs, when men ceased to think it a necessity of nature that their governors should be an independent power, opposed in interests to themselves. It appeared to them much better that the various magistrates of the State should be their tenants or delegates, revocable at their pleasure. In that way alone, it seemed, could they have complete security that the powers of government would never be abused to their disadvantage. . . . What was now wanted was that the rulers should be identified with the people, that their interest and will should be the interest and will of the nation. The nation did not need to be protected against its own will. . . . But in

[6] see Garner (2019), "corporation".

> political and philosophical theories, as well as in persons, success discloses faults and infirmities which failure might have concealed from observation. The notion, that the people have no need to limit their power over themselves, might seem axiomatic when popular government was a thing only dreamed about, or read of as having existed at some distant period of the past. . . . In time, however, a democratic republic came to occupy a large portion of the earth's surface, and made itself felt as one of the most powerful members of the community of nations, and elective and responsible government became subject to the observations and criticisms which wait upon a great existing fact. It was now perceived that . . . [the] "people" who exercise the power are not always the same people over whom it is exercised, and the "self-government" and "the power of the people over themselves" is not the government of each by himself, but of each by all the rest. [Mill (1859), pp. 2-3]

Thoreau, in one of his passionate moods, gave fiery expression to much the same thing when he wrote,

> I think that we should be men first, and subjects afterward. It is not desirable to cultivate a respect for the law so much as for the right. The only obligation which I have a right to assume is to do at any time what I think is right. It is truly enough said that a corporation has no conscience; but a corporation of conscientious men is a corporation *with* a conscience. Law never made men a whit more just [Thoreau (1849), pg. 2].

The plain and simple fact is that human beings - all of us - sometimes mistake their judgments, frame their interests too narrowly or too broadly, and perpetrate actions arousing feelings of injustice in others. A single perpetration is not an action that endangers a civil Community. Rather, it is *perpetuation* of injustice, through violations of the social contract, that tears a Community apart and brings about its fall. The function of Boards of Right is to end perpetuations of injustice, to redress legitimate grievances that violations of the social contract causes, or, simply put, "to make right be done."

Even America's Founding Fathers sometimes confused "leaders" with "rulers" and mistook governance for rulership. We can see examples of this sprinkled throughout *The Records of the Federal Convention of 1787*, *The Federalist*, and Adams' *Thoughts on Government*. We see it constantly in today's popular governments and in management practices of uncivic free enterprise [Wells (2017)]. We see it displayed in the error of mistaking *law* for *justice*. If all laws were just then the law would be, as the French Declaration of the Rights of Man and the Citizen proclaims, the general will of a Sovereign people. But no government on earth has been instituted with agencies expressly tasked with seeing to it that mistakes and legal injustices are not perpetuated. Boards of Right are proposed here as a mechanism in a process for correcting that design omission.

This process begins with the filing of a Petition of Right, i.e., a petition filed by a citizen with a Board of Right seeking redress of grievances for violation of civil rights under the terms and conditions of a social contract. The Board is to then conduct an *inquisitorial*, not an adversarial, investigation into the merits of that petition according to *obligatione externa* relationships established by the mini-Community or mini-Communities who are jurisdictional parties to the *social contract interests* raised in the petition. The Board's inquiry is not a consideration of legal merits because a dispute over or a question of rights must first determine if associated laws are just or unjust. The law *itself* is one of the things being questioned in this inquisition. The Board's inquiry, furthermore, is non-adversarial because the inquiry is being made into a *question of the general will* of the Community regarding the matter of the grievance. A question of the general will, by the nature of social contracts, is not an adversarial question.

The first question that must be answered in this process is the question of whether or not the grievance, or the grievance in an amended form, is justified under social contract. After all, a petitioner might not have correctly understood contractual Duties and Obligations involved in his situation. Or it might be that the empirical circumstances involved might have uncovered an ambiguity or unconsidered variation in a Community's understanding of its own social contract. In this case, the contract itself, as object of general will, becomes the topic of the inquiry and redress of the issue might require legislative action within guidelines to be set out by the Board. Here is where Boards of Right must have the authority to issue a

writ of mandamus, i.e., a writ issued by the Board in the name of the Sovereign commanding an agent or an agency to act[7] and to review those actions afterward.

In chapter 7, three tasks, to be regarded as goals of a justice *system*, were discussed. These are:

> Task A: Mediating conflicts of incongruent interests when it is possible for both parties to *reconceptualize* their objects of interest so that both parties are able to reconcile their private interests without necessarily preventing the other's satisfaction of their reconceptualized interests;
>
> Task B: Deciding cases of irreconcilable conflicts of interests, by a criterion of the civic interests of the body politic as a whole according to Relations of *obligatio externa*, and prescribing just punishments and/or compensations for the party found to be the transgressor in the case;
>
> Task C: Adjudicating and deciding cases in which some, but not all, incongruent interests are reconciled by the parties, and prescribing for those remaining transgressions just punishments and compensations favoring the civic interests of the civil Community.

Boards of Right are not intended to accomplish all three of these tasks by themselves. Task A suitably fits into a Board's judicial expectation of authority, but the remaining two tasks are more well-suited for also involving the jurisdictions of more traditional trial courts, which still have indispensable roles in a justice system. Boards of Right have the authority to refer grievances to such courts along with the authority to issue instructions to these courts concerning how social contract issues involved are to be regarded by those courts. I will also note here that *jury pools* are subject to qualification by Boards of Merit.

Let us take a quick look at one social-natural consequence of *not* dealing justly with grievances and conflicts between incongruent interests. Figure 3 illustrates a socio-political spectrum of attitudes and interests regarding changes and reforms to a Society's institutions and laws. People exhibiting attitudes and opinions near the center of this spectrum (the social mean) are said to be moderative. They are willing to give reasonable consideration to change but are cautious and favor incremental change over sudden, wide reaching, or radical change. Their attitudes and opinions present generally healthy civic and open-minded approaches to investigations and civil debate over determinations of a Community's general will.

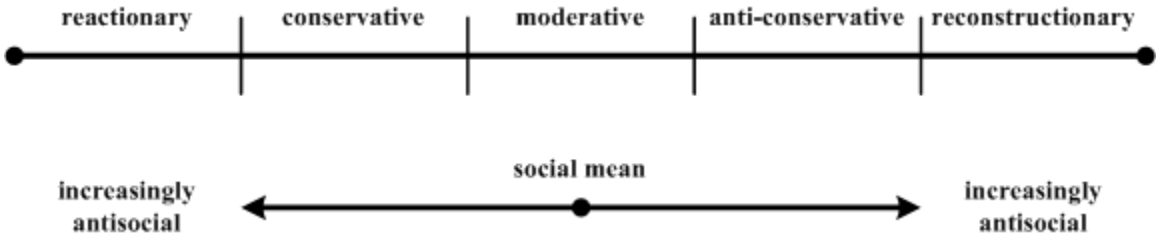

Figure 3: Socio-political spectrum of attitudes and interests in regard to changes and reforms. Midway between the two endpoints depicted lies the social mean of healthy and civic attitudes in a Society. People and groups exhibiting attitudes and opinions near this mean are said to be moderative. Exhibited attitudes and opinions departing in either direction from this mean are increasingly antisocial and uncivic in character and tend to granulate the Society.

[7] This authority given to Boards of Right would be - and in a fashion was - opposed by some of the delegates to the 1787 Constitutional Convention. Their principal objections centered around: a desire to preserve the legislative power of Congress to rule rather than govern; and their convictions that judges were not competent to make laws [Farrand (1911), vol. II, pp. 73-83]. July 21st, 1787, saw a contentious debate about the issue by the delegates on the question of "involving the judiciary in the 'Revisionist Power' (veto power) of the Executive." They decided against it but today, in light of nearly two centuries of political party mischiefs and connivances, that was a poor decision even if Alexander Hamilton did applaud it in *The Federalist*, no. 78. The delegates in 1787 were by no means in consensus about the question, as today's Federalist Society in the United States seems to assume they were. The Framers were, beyond doubt, men of great political acuity and extraordinarily gifted social-natural political scientists, but they were by no means infallible or omniscient.

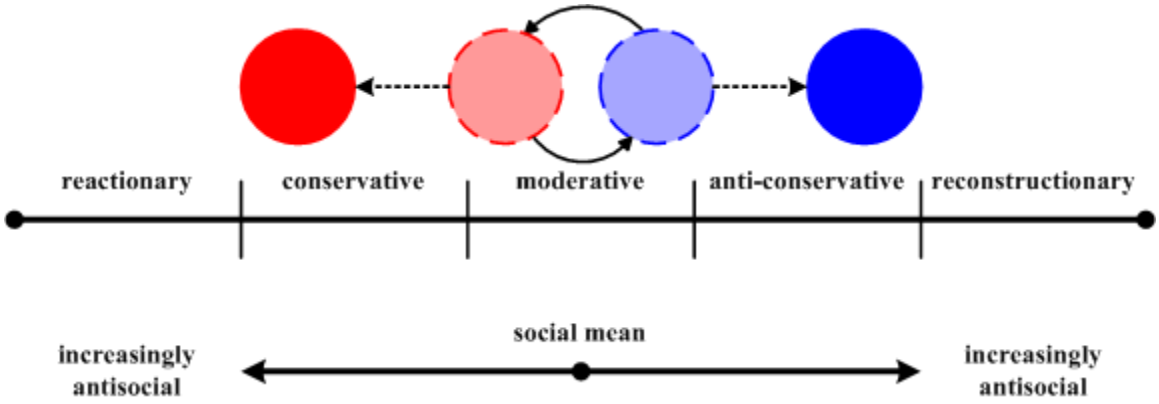

Figure 4: Social granulation brought about through uncivic socio-political competitions over change proposals between different groups. Uncivic competitions tend to create antibonding relationships between competitors and usually result in the two groups "pushing each other away" into increasingly extreme attitudes and interests. Both groups tend to stereotype the other as abstract corporate persons, and then to regard these fictious persons of their own creation as enemies whose interests and opinions are increasingly regarded as "evil" and antisocial. In point of fact, both groups become more antisocial the greater their departure from the social mean becomes. Injustices become perpetuated and their civil association eventually breaks down and disintegrates in a slaughter of civil war. *Actual* Progress in a civil Society only occurs in the moderative category of the spectrum.

Figure 5: "Republicans and Democrats." This figure is taken from an animated cartoon, "Olive Oyl for President," © 1948 by Paramount Pictures, Inc. It was recently re-presented in an online article called "How Little Things Have Changed."

As attitudes and opinions shift in either direction away from the social mean, these become increasingly antisocial by means of increasing disregard for the legitimate interests and concerns of others. A shift to the left of the social mean in figure 3 represents feelings of *Unlust* for a change, i.e., increasing Desire for changing as little as possible until, at the endpoint, no change at all becomes an Object of *Lust*. Such attitudes are labeled "conservative" and "reactionary" in the figure. A shift to the right of the social mean in figure 3 represents feelings of *Lust* for a change and Desire to disestablish "the status quo." This, too, is an increasingly antisocial shift because, like the other, it is accompanied by increasing disregard for the legitimate interests and concerns of others until, at the endpoint, wholesale abolition of the status quo and change for the sake of change becomes the Object of Desire. These attitudes are labeled anticonservative and reconstructionary in figure 3.

At this point, it is quite important to point out that *there is no such thing as a **person** who is reactionary,*

conservative, moderative, anticonservative or reconstructionist. Attitudes and interests are always directed toward specific objects, and one and the same person can be absolutely reactionary toward one kind of change or policy while simultaneously being absolutely reconstructionary toward another. To label a person as reactionary or etc. is to stereotype by extravagance of reasoning - a manner of stereotyping that easily devolves into bigotry and tends to produce uncivic granulations in a Society, as depicted in figure 4. To stereotype an entire group of people into any of these label categories almost always becomes bigotry because the stereotype is a mathematical fiction and a caricature. Political parties are chronically guilty of bigotry through stereotype. Figure 5 is taken from a 1948 animated cartoon lampooning both major U.S. political parties for automatically opposing each other's political and policy positions. If it seems all too familiar to you, well . . . it does to me, too.

Uncivic competition between two people or groups of people are characterized by uncivic personal interactions (the arrows in figure 4) that, often enough, lead to acts of retaliation or revenge in tit for tat social exchanges that produce feelings of hostility between the competing parties. As this mutual hostility grows more intense, it tends to "push" both of them in opposite and more extreme directions along the spectrum shown in figure 4 while, at the same time, stereotyping increases their mutual enmity and the grievances each holds against the other. Toynbee wrote,

> It is evident, then, that, whenever the existing institutional structure of a society is challenged by a new social force, three alternative outcomes are possible: either a harmonious adjustment of structure to force, or a revolution (which is a delayed and discordant adjustment) or an enormity. It is also evident that each and all of these three alternatives may be realized in different sections of the same society . . . If harmonious adjustments predominate, the society will continue to grow; if revolutions, its growth will become increasingly hazardous; if enormities, we may diagnose a breakdown. [Toynbee (1946), pg. 281]

When passions for either revolution or for the commission of enormities intensifies to the point where what are called "mass movements" appear, this marks a point of dangerous social granulation. Eric Hoffer wrote,

> All mass movements generate in their adherents a readiness to die and a proclivity for united action; all of them, irrespective of the doctrine they preach and the program they project, breed fanaticism, enthusiasm, fervent hope, hatred, and intolerance; all of them are capable of releasing a powerful flow of activity in certain departments of life; all of them demand blind faith and singlehearted allegiance. [Hoffer (1951), pg. xi]

The principal social task entrusted to a justice system is to prevent the disunity and breakdown of Society that granulations and mutual hostilities give rise to. Boards of Right are institutions aimed directly at fulfilling this mission.

5. Non-judiciary Justice Agencies

Black's Law Dictionary defines "judiciary" as

> **judiciary**. (18th century) **1.** The branch of government responsible for interpreting the laws and administering justice. **2.** A system of courts. **3.** A body of judges. [Garner (2019), "judiciary"]

It further defines the "judicial branch" of government as

> **judicial branch**. (18th century) The branch of government consisting of the courts, whose function is to ensure justice by interpreting, applying, and generally administrating the laws; judiciary.

But, as has already been put forth several times in this treatise, a justice system and a legal system are

not the same thing, and the latter exists to serve the former. We have also noted and disapproved the idea that justice is "the fair and proper administration of laws" (as stated by *Black's* definition of this term). A justice system does not fall into crisp and neat divisions of legislative branch, executive branch, and judicial branch as these are understood by, e.g., the system of government in the United States. As in any organization of human agencies instituted and intended for some purpose, there are a number of vital functions for which their purposes do not immediately bear upon legislating, executive, or judging functions. They bear instead upon operational aspects of the agency, one of which is the "mechanics of how the agency does its day-to-day job."

This aspect involves stimulating the leadership dynamic [Wells (2010 b), chap. 6] of the agency and then guiding and shaping the course of subsequent actions of its agents such that these actions accomplish the aims and fulfill the purposes of the organization. The entirety of such activities is what Critical organization theory calls ***management*** [Wells (2014), chap. 9]. Note especially, and carefully, that management is not rulership[8]. It pertains instead to the *coordinating of the operations* carried out by individual agents of an agency.

A second aspect is the technical aspect of an agency's function. In a world of wax candles and quill pens the individual's "common sense" and wisdom gained from personal experience was sufficient, in most cases, for making wise and just decisions if that individual was also what Kant called a person of "good will" [Kant (1785), 4: 393-395]. In a world of high technology devices, global Internet access, so-called "artificial intelligence" and special interest propaganda baths, "common sense" and "good will" are not enough. Every technology is capable of being used abusively, and understanding in detail the possibilities of its civic and uncivic applications, and of how to justifiably regulate its uses for the Community's welfare, is of fundamental importance. Gaining such understanding from experience is an art. Let us borrow from Aristotle and call this aspect the *téchne* aspect of institution. He wrote,

> It is from memory that men acquire experience, because the numerous memories of the same thing eventually produce the effect of a single experience. Experience seems very similar to science and art [*téchne*], but actually it is through experience that men acquire science and art [*téchne*]. . . . Art [*téchne*] is produced when from many notions of experience a single universal judgment is formed of like objects. [Aristotle (*c*. 335-332 BC), vol. 1, pg. 4 (981^a1-15)]

Our modern word "technique" derives from the Greek word *téchne* although this Greek word itself is often translated into English as "art" (as, e.g., in "state of the art").

A third aspect is how an agency maintains civic virtue in the actions of its agents and its operations. This aspect can properly be called the *deontological ethics* aspect.

Taken together, these three aspects make up the terms of a synthesis of justice system institution. Figure 6 provides what is called a "first level synthetic representation" (1LSR) of their relationships. The management aspect is a *practical* aspect; the ethics aspect is a *judicial* aspect; and the *téchne* aspect is a *theoretical* aspect of the art. Their combinations in synthesis are co-determining, i.e.,

management + ethics $\rightarrow$ *téchne* ;

ethics + *téchne* $\rightarrow$ management;

téchne + management $\rightarrow$ ethics.

[8] Equating management with rulership is a byproduct of millennia-old traditions of hierarchical organization. Such an equating is a Critical error that can be, and not-infrequently is, fatal to organizations, Communities, and nations. As I write these words, the United States House of Representatives is entering its fourth week of complete break-down as a direct result of this ego-driven blunder of misidentification. At the moment of this writing, the United States is without an operating general government for the first time since 1856 [reference: https://www.govinfo.gov/content/pkg/GPO-HPRACTICE-108/html/GPO-HPRACTICE-108-35.htm].

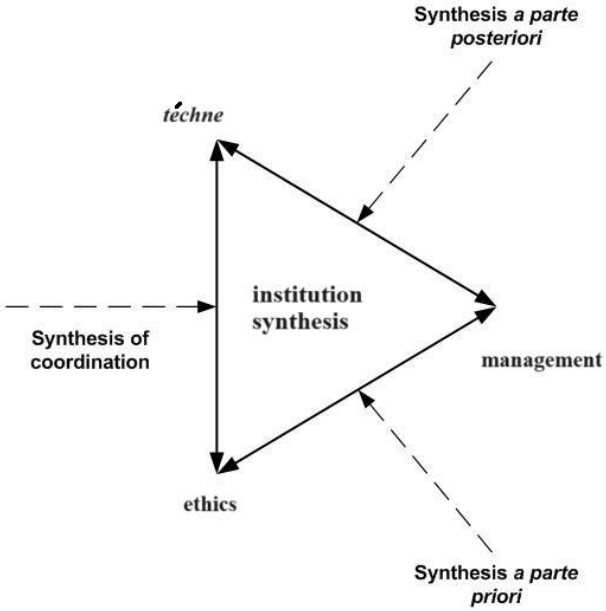

Figure 6: 1LSR depiction of institution operation as the synthesis of management, ethics, and *téchne*.

5.1 The Management Aspect. It is of fundamental importance to understand that management and leadership are not the same thing, nor is a "manager" the same thing as a "leader" [Wells (2010 b)]. The vast majority of people do *not* understand this distinction and, in an even worse fallacy, habitually think "manager" and "leader" both equate to "ruler." This simply isn't true even though sometimes, but rarely, the same person *momentarily* might be acting in a threefold capacity as manager, leader, and ruler. This nearly universal fallacy of habitual thinking dates back a very long time - to the time of the ancient Sumerian city of Kish (*circa* 4500 BC) and to the myths of Gilgamesh of Uruk (*circa* 2900-2700 BC). Detailed presentation of the Critical theory of leadership is provided in Wells (2010 b). Definitions for key technical terminology is provided in the chapter appendix. This treatise will be limited to a partial summary of it in order to focus the main discussion on the management aspect.

Every cooperative human activity, however well-organized or disorganized it may appear, involves the phenomenon of leadership and involves more than one person. Leadership is a social dynamic. In the greater number of instances of cooperative activity encountered in life, we do not even find explicit designation of who is leading and who is following and, indeed, these roles can and do constantly switch from one person to another. The leader-of-the-moment is whoever the others follow and the follower-of-the-moment is whoever is self-determining his action from the partial cause of a leader's actions. The purest and least visible form of leadership occurs in cases where decisions and actions are reached through a process of finding consensus. In healthy and well-functioning institutions, the leadership dynamic is fluid, often fast-paced, and creative. In unhealthy ones, such as those that arise in so-called "scientific management" (Taylorism) or under a plutocratic autocracy, the dynamic is usually petrified, ineffective, and uncivic.

Management is also a social dynamic but, in contrast to leadership, the management dynamic (the coordinating of the operations carried out by individual agents) tends to be more highly structured, less spontaneously creative, and much more tightly bound to the principle of *stare decisis* (the doctrine of precedent). The reason for this is quite practical: it promotes efficiency in the carrying out of routine matters because agents better understand and are familiar with what is expected of them and what every-one's particular roles and responsibilities are in the overall organized Enterprise. There are some people, who often tend to exhibit more "mercurial" personalities, who often chaff at the restrictions and more deliberate pace of management structures and decry them as "bureaucratic"; but *every* system of

management exhibits this "bureaucratic" character to a greater or lesser degree because the alternative is for an organization to lose coordination and behave chaotically and unpredictably. I once remarked to one of my colleagues - a man who tended to regard most organizational form and structure as "bureaucracy" - that, "An organized bureaucracy is better than a disorganized one."

In new institutions the management dynamic tends to develop rather slowly and through trial and error experiences that unveil what works well and what doesn't really work at all. Often mimesis (copying what others have done in the past) provides an initial management dynamic. For example, when the 1787 Constitutional Convention met in Philadelphia, it devoted its first five days (May 25th to May 29th) to organizing itself and drawing up procedural rules by which it would manage itself [Farrand (1911), vol. I, pp. 2-16]. There was very little controversy and the "rules" they agreed to mimicked those with which the delegates were familiar from their experiences with the state governments or the Continental Congress.

By way of contrast, when the Romans overthrew their monarchy in 509 BC and established the Roman Republic, they began a nearly four centuries long period of trial-and-error evolution in the constitution of their government and the procedures and rules under which their government operated. From 509 BC to 133 BC, these underwent on-going, and sometimes disorderly, changes and a significant evolution away from where the Romans started. In the beginning the Romans had very little experience in governing and the Roman Senate up until 509 BC was nothing more than an advisory council to the king. Being a pragmatic people, the Romans began with what they knew best - which in their case was Roman religious beliefs, rituals, and practices - and modified their largely informal and uncodified constitution of government and traditional management practices as they perceived the need to do so to settle civil disorders, respond to military defeats, or deal with other situations that posed threats to their republic. Roman republican government arguably reached its pinnacle in 133 BC, after which increasing political violence and murder led to civil wars, the collapse of the republic, and ushered in the Roman Empire under Caesar Augustus [Durant (1944)]. Arguably, the death knell for the republic sounded on Jan. 10th, 49 BC, when Julius Caesar crossed the Rubicon with one of his legions, in defiance of Roman law, and a civil war that finally toppled republican government in Rome began.

Like the 1787 Constitutional Convention, when the first session of the U.S. Congress convened in 1789 one of the first things it had to do was set up the rules by which it operated. The House of Representatives appointed a special committee to draw up its rules, and this committee reported them on April 7th, 1789, according to the House Journal[9]. The Senate, on the other hand, seems to have muddled along in its own fashion by borrowing heavily from the rules that had governed the Continental Congress and the 1787 Constitutional Convention[10]. In 1801, then-Vice President Thomas Jefferson, acting in his constitutional role as President of the Senate, published *A Manuel of Parliamentary Practice for the Use of the Senate of the United States* [Jefferson (1801)]. The House of Representatives formally incorporated Jefferson' *Manual* into its rules in 1837; the Senate has never regarded it as the authoritative document for its own procedures, although it did begin publishing it and, presumably, making some limited use of it in 1828. It wasn't until 1935 that the Senate established and staffed an Office of the Parliamentarian as an *advisor* to the Senate on interpreting Senate standing rules and parliamentary procedure. The House had done the same in 1927 by establishing its own Parliamentarian as part of the House's staff[11].

It is notable here that in both cases, the House and the Senate, U.S. congressmen have jealously maintained their respective powers to exert rulership over the management systems of both houses of Congress, and to ignore their own rules and parliamentarians whenever partisan political considerations have moved them to do so. While "mere staff positions" are in fact filled by employees of the Congress, senators and congressmen have a habit of conveniently ignoring the fact that *they are also nothing more*

[9] https://memory.loc.gov/cgi-bin/query/r?ammem/hlaw:@field(DOCID+@lit(hj00131))
[10] https://www.senate.gov/about/powers-procedures/rules.htm
[11]https://www.house.gov/the-house-explained/officers-and-organizations/parliamentarian-of-the-house#:~:text=The%20Office%20of%20the%20Parliamentarian,serves%20as%20the%20House%20Parliamentarian.

than employees of the institute of Congress and are constitutional *public servants*, and not constitutional *rulers*, regardless of how forcefully Adam's passion for Ambition sways them otherwise. Allegiance to political factions and passions for Ambition toppled the Roman republic. In today's political climate in the United States, these same factors seem to be taking the U.S. in the same direction.

The professional occupation of lawmaking and the professional occupation of managing are two different kinds of occupation, and the justifications for each are also different. No legislative, executive, or judicial assembly is ever instituted for the purpose of managing itself. The management function is instituted for the purpose of promoting the efficiency and fairness of an Institute's justified operations. Professional skills needed for practicing good management are different in kind from those needed for crafting just laws. Furthermore, when the role of managing is confounded with that of lawmaking (or of executive function, or of judicial function), this opens the door for corruption of the process of the latter by means of the former. Examples of this corrupting influence are readily exhibited in the history of the Rules Committee of the U.S. House of Representatives[12], although the U.S. House is in no way unique in this pattern of corruption. The confounding of the legislative and management functions is the traditional practice of every legislative body in every present-day Western democracy. It is conducive to rulership at the expense of justice and to a tyranny of a minority over a majority of the people.

Neither is it prudent nor conducive to justice for the operational agents of an Institute (e.g., the elected representatives of the people) to hire or appoint the managing agents of that Institute. That is the current practice that has just been criticized above. A senator, for example, is ideally chosen for office not because of his exceptional skills of management but, rather, for his fidelity and allegiance to the common interests of the civil Community or mini-Community he is chosen to represent. This is the basis for the expectation of authority entrusted to him by those he represents and the limit of the designated power of his office. Madison wrote,

> It is agreed on all sides, that the powers properly belonging to one of the departments ought not to be directly and completely administered by either of the other departments. It is especially evident that neither of them ought to possess, directly or indirectly, an overriding influence on the others in the administration of their respective powers. It will not be denied that power is of an encroaching nature, and that it ought to be effectually restrained from passing the limit assigned to it. [Hamilton *et al*. (1787-8), no. 48, pg. 275]

Madison was explicitly talking about the legislative, executive, and judicial branches of government here. But his observation applies with equal force to the distinct powers of the operating vs. the managing agents of an institute of government. Let lawmakers make laws; do not let them manage the Institute.

It is worth noting at this point that this idea of functionally distributing the powers of occupationally distinct agents of government is, at root, no different from the character of American heterarchy that Tocqueville so admired in the early 19th century United States:

> 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 on 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 administrative power in the United States presents nothing either centralized or hierarchical in its constitution; this accounts for it passing unperceived. The power exists but the representative is nowhere to be seen. [Tocqueville (1836), pg. 71]

[12]https://en.wikipedia.org/wiki/United_States_House_Committee_on_Rules#:~:text=The%20Committee%20on%20Rules%2C%20or,a%20specific%20area%20of%20policy.

5.2 The Technical Aspect. Technology presents its effects on human welfare and social tranquility in a twofold character. First, it has its physical-natural character. This character is understood, to the extent that it *is* understood, by means of the physical-natural sciences (physics, chemistry, biology, geology, meteorology, oceanography, medicine, physiology, engineering, metallurgy and other sciences derived from combinations of physics, chemistry, and biology). These make up what Critical Epistemology calls the "dead matter" sciences. They are called this because the theories and doctrines of these disciplines contain nothing whatsoever explanative of the idea of "life." Indeed, medical science only began making significant progress from the state bequeathed to it from classical times when the idea of "life" was rigidly excluded from physical-natural scientific doctrines:

> When an obscure or inexplicable phenomenon presents itself, instead of saying "I do not know," as every scientific man should do, physicians are in the habit of saying, "This is life"; apparently without the least idea that they are explaining darkness by still greater darkness. We must therefore get used to the idea that science implies merely determining the conditions of phenomena; and we must always seek to exclude life entirely from our explanations of physiological phenomena as a whole. Life is nothing but a word which means ignorance, and when we characterize a phenomenon as being vital, it amounts to saying we do not know its immediate cause or condition. Science should always explain obscurity and complexity by clearer and simpler ideas. Now since nothing is more obscure, life can never explain anything. [Bernard (1865), pg. 201]

The second character of technology immediately follows from an epistemological limitation of the physical-natural sciences and brings us to what Critical Epistemology calls the social-natural sciences. Bloom wrote,

> But where [physical-] natural science ends, trouble begins. It ends at man, the one being outside its purview, or to be exact, it ends at that part of man that is not body, whatever that may be. Scientists as scientists can be grasped only under that aspect, as is the case with politicians, artists, and prophets. All that is human, all that is of concern to us, lies outside of [physical-] natural science. That should be a problem for natural science, but it is not. It is certainly a problem for us that we do not know what this thing is, that we cannot even agree on a name for this irreducible bit of man that is not body. Somehow this fugitive thing or aspect is the cause of science and society and culture and politics and economics and poetry and music. We know what these latter are. But can we really if we do not know their cause, know what its status is, whether it even exists? [Bloom (1987), pp. 356-357]

Pursuit of a better understanding of Bloom's "fugitive thing that is not body" was one of the principal motivations in the development of epistemology-centered metaphysics and its application in this treatise [Wells (2006), chap. 1]. Because I do not think there is anything "unnatural" about human and social phenomena, this theory was given the name "social-natural science."

All natural sciences study phenomena of objects of human experience (usually called "phenomena of nature") and strive to explain these phenomena. However, the objects studied by physical-natural science and those studied by social-natural science *differ in kind*. More specifically, they differ in their theoretical notions regarding explanations of causality-and-dependency [Wells (2012), chap. 1, pp. 20-21]. Now, scientists - like lay people - don't actually use words like "cause" and "causality" as *technical* terms, and this raises problems in science *and* in civil lawsuits. Physicist-philosopher Henry Margenau wrote,

> The words *cause* and *effect* are among the most loosely used in our language. Elsewhere in this book, when we found a similar tangle of usage and desired pentecostal illumination, we turned trustingly to science for a decision on the proper meaning of words. Unfortunately, we shall find science of no help in our present quandary, for cause and effect are not primarily scientific terms, despite widespread opinion to the contrary. Science uses them with no less variety of meanings than does common speech, and, it may at once be noted, the more sophisticated mathematical investigations of science do not use them at all. When scientists talk about causality, they do not talk as experts in a technical field, as they do when discussing the meaning of force or energy or enzymes or mutations. [Margenau

(1977), chap. 19, pg. 389]

Notions of cause-and-effect and causality-and-dependency are, at root, deeply *metaphysical* notions. As Hume so forcefully argued, objectively valid understanding and explanations of these notions cannot be found in ontology-centered systems of metaphysics [Hume (1739), pp. 73-94]. They can be sought only through epistemology-centered metaphysics.

Why should we care about this here in this treatise on the topic of justice? The reason we should care is not difficult to discern. New technology developments in the physical-natural sciences produce new social forces that carry into and affect the lives of people and the relationships among them. As one example, consider the contemporary controversies involving "social media" and whether or not this technology is harmful to the psychological well-being of children. Some psychologists and parents are deeply concerned that it does; social media companies largely deny this is so. There is a cause-and-effect question here, and this question is pertinent to the *regulatory* functions of government, to civil court cases where someone is seeking damages from someone else, and to the issue of whether or not an industry can or will "regulate itself" in a way consistent with the fundamental terms and conditions of a social contract. The topic and its issues are therefore very pertinent to the subject of this treatise.

We inherit from Aristotle ideas of four distinguishable types of "causes" (formal, material, efficient, final cause). Piaget's child development research turned up no fewer than *17* distinguishable types of causal relation in children's thinking [Piaget (1930), pg. 258-273]. In Critical metaphysics, *causality* is the notion of the determination of a change by which the change is established according to general rules (see chapter appendix). The general notion of causality is called causality *per se*. Under this genus we have two species of causality called *physical* causality and *psychological* causality (which Kant called "the causality of freedom"). Roughly speaking, physical causality corresponds to Aristotle's "efficient cause" and is the only objectively valid kind of causality in the physical-natural sciences. Psychological causality roughly corresponds to Aristotle's "final cause" and is the only objectively valid kind of causality in the social-natural sciences. The seventeen distinguishable ways children think about causal relations Piaget found in his studies contain examples of both kinds of Critical causality as well as cases where the two are mixed together in how children conceptualize causal relations. The Critical theory of physical causality is developed in Wells (2006), chapters 8-9. The Critical theory of psychological causality is called "the teleological function" and is developed in Wells (2006), chapters 16 and 18. It will not be necessary to go into the "deep weeds" of Critical metaphysics in this treatise; it will be enough for our purposes to point out and discuss how physical and psychological causality combine in technical aspects of the institution of justice.

As already pointed out, technology, in and of itself, is neither deontologically "good" nor "bad" in moral contexts because its invention and developments take place in the "dead matter" context of physical-natural science and mathematics. But technology *does*, nevertheless, affect the well-being of human beings in ways that can be *made* beneficial or *made* harmful. It is this power of beneficially or adversely affecting human well-being that brings into play deontologically moral contexts and raises questions of socially justifiable and unjustifiable ways of *regulating* technologies.

Black's Law Dictionary defines "regulation" as "control over something by rule or restriction" [Garner (2019), "regulation"]. The technical aspect of justice institution is the aspect pertaining to justifiable and unjustifiable regulation, and who is to do the regulating, in the context of a social contract. Most typically when one thinks about this topic this thinking is done in a technology context of physical-natural science. However, this does not mean there are no similar issues pertaining to technical aspects of social-natural science. Technical issues here involve such things as labor contracts, working conditions, treaties (as in, e.g., "Indian Affairs"), public education, health, and safety. This treatise draws a logical distinction between the ethics aspect and the technical aspect but this does not imply technicalities of social-natural sciences are outside of the technical aspect of justice institution.

Developed nations enjoying representative government all have their own systems of regulatory

agencies and approaches. These systems and approaches developed in *ad hoc* fashions (not unlike the developments of ancient legal codes) in response to experiences with problems and issues as they arose. For this reason, the systems and approaches used by various developed nations differ from one to another but, just as all these nations tend to experience the same sorts of problems, similar functions are instituted within their agencies. Because the United States is not especially different from other developed nations in terms of problems and issues, we can use the U.S. system for a source of agency examples.

In the U.S. is found a mixture of federal, state, and private sector agencies performing its regulative functions. Calling this mixture a "system" is being somewhat generous because these divers agencies operate more or less independently of each other with only limited degrees of cooperation. Some answer to federal or state executive branches of government, some are "independent" agencies established by legislative statute, and some are non-government "private sector" establishments answering to no governmental authority figures and their authority is based upon voluntary compliance. The operations of some of these agencies primarily pertain to technical aspects of physical-natural science but include to a lesser degree some aspects of social-natural science. In other cases, the role primarily fits under a social-natural science but with some technical aspects of physical-natural science in lesser degree.

Among the agencies whose operations fall primarily under the technical aspects of physical-natural science we can find the following examples: the Bureau of Alcohol, Tobacco, Firearms, and Explosives; the Federal Communications Commission; the Food and Drug Administration; the Centers for Disease Control and Prevention; the Environmental Protection Agency; and the Federal Aviation Administration. Examples of agencies whose primary authority arises out of social-natural considerations include: the Occupational Health and Safety Administration; the Department of Labor; the U.S. Securities and Exchange Commission; the Federal Deposit Insurance Corporation; the U.S. Department of Transportation; the Office of the Comptroller of the Currency; the Federal Reserve; and various state and local school boards and Boards of Education. Among the private sector non-government organizations we can point to: the American Bar Association; the American Medical Association; the National Society of Professional Engineers; and the Internet Corporation for Assigned Names and Numbers. When television was a new social medium, the National Association of Broadcasters established the Code of Practices for Television Broadcasters to self-regulate the new industry. From 1952 to 1983, the Code set ethical standards for television programming and, indeed, was the only *de facto* instrument for nationwide public education in regard to cultural folkways and social mores in the United States[13]. One notably troubling aspect of private-sector regulatory NGOs is that they are observed to sometimes slowly turn themselves into special interest lobbying groups serving their own, and not the general public's, interests.

This potpourri of regulatory agencies in the United States is obviously heterarchical but it cannot be called "organized" in any systematic way. As institutes of justice they are as devoid of discernible principles of organization, and as vividly *ad hoc*, as the ancient Code of Hammurabi was as a legal code. In my opinion, "an organized bureaucracy is better than a disorganized one" because "Man is not willingly a political animal." Just because a Society has a heterarchical organization in its justice system is no guarantee of successful maintenance of that Society's civil character. Heterarchical organization is better suited for dealing with the contingencies of new experience and new social forces than hierarchy, but only if that heterarchy is designed and organized to deal with these according to fundamental principles of the phenomena of social contracting. Either a Society pays attention to Toynbee's grim warning about the effects of new social forces or it eventually pays the price of ignoring them and loses that character noted and admired by Tocqueville of a Society that is "at once regulated *and* free."

Turning now to the technical agents, it seems axiomatic that agencies intended and designed to regulate

[13] One widely aired 1967 public service announcement, narrated by celebrity Dick Cavett, taught possibly every child in America two moral lessons: bad guys can't be heroes; and crime doesn't pay. It is a mark of how America has abandoned these lessons that https://weirdovideo.com/television-code-seal-of-good-practice/ is the Internet URL where this video can still be viewed today. Personally, I don't think this PSA is the least bit "weirdo."

the technical aspects of justice should employ a technical staff of meritorious people who are also qualified by education, training, and experience to do this work and understand the science and engineering aspects of it. In cases where this technical background is in the physical-natural sciences, this is in fact the usual practice of these agencies.

In cases where the technical background is in the social-natural sciences, however, we find a major problem. Simply put, it is this: those fields of scholarship that are called "the social sciences" - such as social psychology, economics, sociology, &etc. - are not presently *natural* sciences. Indeed, education in fields such as these are generally set apart in different colleges from the physical-natural sciences and many of them are not regarded by physical-natural sciences as "sciences" at all. Mankind's scientific and technical understanding of "this part of man which is not body" woefully lags far behind the physical-natural sciences in terms of demonstrated achievements of scientific reliability. Even Bloom refused to designate them "natural sciences" in his scathing criticism of post-1960s higher education [Bloom (1987), pp. 356-380]. His polemics offended and antagonized many of his academic peers, but the fact is that most of his criticisms were spot-on and a likely majority of physical-natural scientists quietly agree with them. Some of them loudly agree with him. A major part of the reason for their clearly visible lack of reliability to the degrees demonstrated by the physical-natural sciences is metaphysical. The Objects of the social-natural sciences are - all of them - not physical objects of nature, yet these disciplines universally approach their study using ontology-centered "ways of looking at the world." In these fields, ontology-centered metaphysics has *zero* chance of being successful and *only* an epistemology-centered metaphysic offers any chance of catching them up to the levels of demonstrated reliability achieved by the physical-natural sciences. These latter, too, are ontology-centered, and so ultimately flawed, but in their cases direct recourse to actual experience, experimentation, and instrumentation that extends their horizon of possible experience all serve to push out reaching a point at which their reliability will also falter from ontology-centered fallacies.

But at the present time, there is an urgent need to improve the reliability of the social-natural sciences. The burden here falls mainly upon the scholarly field of philosophy (rebased upon epistemology-centered metaphysics), public higher education in social-natural science, and all layers of government acting upon their Duties to form a more perfect union, establish justice, insure domestic tranquility, promote the general welfare, and secure the blessings of *civil* liberty. This can seem a daunting task, and success is in no way guaranteed. But failure to make the effort guarantees failure to fulfill any of these Duties and promises only the horrid vision of a future penned by Yeats,

> Things fall apart; the center cannot hold;
> Mere anarchy is loosed upon the world,
> The blood-dimmed tide is loosed, and everywhere
> The ceremony of innocence is drowned.
> The best lack all conviction, while the worst
> Are full of passionate intensity. [Yeats (1920)]

5.3 The Ethics Aspect. In civil associations unified by social compacts, every deontologically justifiable agency is a civil mini-Community embedded in a larger mini-Community. It might perhaps have already occurred to you that the threefold synthesis structure depicted in figure 6 seems reminiscent of the traditional threefold branches of representative government: Executive, Legislative, and Judicial. Is not a resemblance of the management aspect and the Executive Branch function clearly similar? And is not a resemblance of the *téchne* aspect and the Legislative Branch function likewise similar? If so, perhaps you will not be surprised when I say the ethics aspect is analogous to the Judicial Branch function and that *justice* is the prime Object of the deontological ethics aspect of justice system institution.

However, the ethics aspect of civil institutions historically has not fared very well or very reliably. In part this can be attributed to controversies and lack of general agreement about what the idea of "ethics" means or should mean. The idea has been entangled with that of "morality" ever since Cicero used the

word *moralem* as the Latin equivalent for the Greek word *ēthos* [Cicero (45 BC), pg. 192]. Cicero's equation is reflected in the definition of "ethics" found in *Black's Law Dictionary*:

> **ethics.** (16th c.) A system of moral tenets or principles; the collective doctrines relating to the ideals of human conduct or character. [Garner (2019), "ethics"]

Black's also provides a separate specialized definition of "legal ethics":

> **legal ethics.** (1828) Standards of professional conduct applicable to members of the legal profession. [Garner (2019), "legal ethics"]

It goes on to explain that these standards are primarily set by the American Bar Association. Use of an adjective modifier ("legal") in this definition establishes "legal ethics" as a species of ethics under the genus of "ethics." This is a not-really-subtle subtlety regarding ideas of ethics. You should note that such an adjective modifier, *deontological* ethics, is being used in this section. There are many species of ideas of ethics and confounding them with one another is a sure path to error and controversy. One should also notice that a "standard of professional conduct" is not quite the same thing as "a system of moral tenets."

Philosophy dictionaries treat us to a variety of usages and connotations for the word (most of which reference divers theories of ethics). Psychology adds to this its own comment, i.e.,

> **ethics** A branch of philosophy concerned with that which is deemed acceptable in human behavior, with what is good or bad, right or wrong in human conduct in pursuit of goals and aims. There is a tendency to use the term in consideration of theoretical treatises, or examination of the ideal; when actual human behavior in social or cultural settings is under consideration (particularly with regard to developmental issues and the acquisition of codes of ethics) many authors use *morality* and related terms. [Reber & Reber (2001), "ethics"]

But there is a more fundamental issue from which ideas of "ethics" suffer. This is the fact that the typical species of "ethics" one usually encounters are grounded in ontology-centered metaphysics (such as consequentialist ethics or virtue ethics) and, like all ontology-centered ideas, it necessarily ends up appealing to some sort of deity for its ultimate grounding - and humankind has never been able to come to universal agreement on *that* topic. The result is subjectivity that taints the topic of ethics both in theory and in practice. As a cynic once put it, "Right is what *I* do; wrong is what *you* do."

The situation is different with epistemology-centered metaphysics. But we must also use caution in regard to the term "deontological ethics" because there are also multiple different ideas about what "deontological ethics" is or means. Most theories of deontological ethics refer back to Kant's writings on the subject but - and perhaps this might surprise you - Kant's theory also suffers from a fatal flaw born of what Palmquist has properly called the "theocentric orientation" of Kant's philosophy. Briefly put, in formulating his theory Kant made an ontology-centered mistake by speculating there was something called "the moral law within me" that was the same for every human being. By doing so, this part of his philosophy ceased to be epistemology-centered and entered into the error of transcendental illusion. This error is corrected in the modern Critical theory [Wells (2006)] as follows.

Every human being does develop a private and personal "moral code" for himself. It subsists in practical hypothetical imperatives he structures into his practical manifold of rules under the regulation of *the* practical categorical imperative - the master regulatory law of human mental phenomena that regulates *only* for the equilibration of disturbances to a person's mental equilibrium. No two human beings develop the *same* "moral code" because this development is the product of experience-driven judgmentation (see chapter 3). Representations in the manifold of rules are *never* conscious representations (never are perceived) and, consequently, people do not even fully understand *their own* "moral codes" or ethical tenants (in their manifolds of concepts) they derive from this imperfect understanding.

Where, then, does this leave the ethics aspect of justice? Institution of ethical standards and practices, in order to have *practical* objective validity, can arise only from one source: namely, from moral civic Duties with regard to the situation of others *as agreed to by members of a civil association in their social compacts*. And *this* is the context of the term "deontological ethics" I am using in this treatise.

Some - but certainly not all - mini-Communities institute "ethics committees" aimed at setting common standards of conduct and/or leveling sanctions on those Community members who ignore or violate these standards. Examples can be found in some commercial mini-Communities, government agencies, agencies of instructional education, and professional societies such as the American Bar Association and the American Medical Association. In those cases where the aim of the mini-Community is adequately met, such standards are not properly regarded as either "regulations" or "laws." Instead, they are to be regarded as extensions of the terms and conditions of that mini-Community's social compact.

However, and unfortunately, most communities, organizations, government agencies, and commercial Enterprises are unaware of (or deny) the basic notion that their unity and cohesion relies essentially on the particular and *de facto* social compact in place and by virtue of which they are able to operate at all. If you neither know nor recognize "the invisible hand" of a social compact for your association, what else is left to you other than to regard ethics standards as either regulations or laws *or merely suggestions*? And if a person is actually unaware that his association is bound together by social compact, then that person is, because of this unawareness, an *outlaw* in his relationships with others in their common association.

In view of this all-too-common unawareness, it is little to be wondered at if an agency's "ethics committee" is, from a practical point of view, a toothless and impotent body. The United States Congress provides one troubling example where we find ineffective ethics committee mechanisms. Neither the House Ethics Committee, the Office of Congressional Ethics, nor the Senate Select Committee on Ethics is set up and instituted in such a way that these committees can *mandate* sanctions for violations of their standards of ethics. Instead, they are relegated to a mere advisory role and the final say over their recommendations is in the hands of the congressmen and senators - and, therefore, the political parties - they were meant to oversee. The poachers are made the game wardens. This situation is contradictory to what Madison wrote in *The Federalist*:

> No man is allowed to be a judge in his own cause; because his interest would certainly bias his judgment, and not improbably corrupt his integrity. With equal, nay, with greater reason, a body of men is unfit to be both judges and parties at the same time [Hamilton *et al*. (1787-8), no. 10, pg. 54].

And yet this is precisely the situation to be expected when the judicial character of the ethics aspect goes unrecognized or ignored. *Calling* a committee or body "independent" does not *make* it independent because, in Lincoln's words, "Calling a tail a leg doesn't make it a leg."

There have been examples of effective and socially-beneficial implementations of mechanisms for the institution of the ethics aspect in a few mini-Community associations in the U.S. and other countries. As one example, let us briefly look at the U.S. trade association[14] presently called the National Association of Broadcasters (NAB)[15]. The NAB played a major role in the development and evolution of the network of licensed for-profit commercial broadcasters in the United States.

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[14] A trade association is an association in which the members of the associations are themselves associations (businesses) operating in the same commercial industry. A trade association might or might not be a civil mini-Community. If it is not then it is an *outlaw* association embedded within a broader Society, and, not-infrequently, some of the human beings who comprise its "social atoms" commit deontological crimes in its service. Adult human beings are simultaneously members of more than one mini-Community and, in a civil Society, this means that uncivic actions a person might undertake in the service of his trade association are, by definition of the term "uncivic," intentional transgressions of the social contract of the parent civil Society (deontological crimes).

[15] The NAB has its origins dating from 1923 as the National Association of Radio Broadcasters. In 1951 it changed its name to the National Association of Radio and Television Broadcasters. In 1958 it took its present name.

Like the vast majority of mini-Communities, the NAB has both civil and uncivil internal aspects - not so much by deliberate intention of the people who comprise its member mini-Communities but primarily due to unawareness of the social-natural phenomenon of mini-Community itself and the general failure to understand or appreciate the phenomenon of social contracting that prevails in the U.S. public-at-large[16]. It is not my intention here to critique the NAB overall as a trade association; rather, my intention is to highlight its institution of the ethics aspect called the Code of Practices for Television Broadcasters.

The Television Code (as it was popularly known) was first issued in 1951. Amended a number of times from 1951 to 1983, the Code set out social compact conditions ("broadcasting standards") its members were expected and required to uphold in their television programming. Among these were bans on: profanity; negative portrayal of family life; irreverence for God and religion; illicit sex; drunkenness and biochemical addition; presentation of cruelty; detailed techniques of crime; the use of horror for its own sake; and negative portrayal of law enforcement officials. Moral lessons conducive to social Order that it was intended to promote included "bad guys can't be heroes" and "crime doesn't pay." Its standards further were intended to assure that performances "remained within the bounds of decency" (U.S. mores and folkways), that news reporting should be "factual, fair, and unbiased", and news commentary and analysis should be "clearly defined as such." (This is one of the few examples where an attempt was made to hinder deceptive propaganda in journalism and news reporting). It also limited how many minutes of air time per hour could be used for commercial advertising.

While any of these social contracting conditions might be opposed or snickered at by some people (and all of them were at times by some people), the point here is that, on the whole, the Television Code by and large did much more good than harm to the maintenance of Order and the stabilizing influence of public standards of social mores. Why, then, was the Code dropped in 1983 and replaced by more or less toothless statements of "encouragement" to broadcasters "to exercise responsible and careful judgment in selection to material relating to violence, drug abuse, and sex"? The factors primarily responsible for this were *federal court rulings* that held the Code was a violation of the free speech amendment - by which the courts were in fact ruling in favor of licentious and uncivil liberty of speech - and prosecutions launched *by the U.S. Department of Justice* alleging the NAB standards constituted violation of antitrust laws. Both of these actions were primarily spurred by lobbying instigated by a so-called "conservative" ideology usually called the "anti-regulatory movement." This movement began in the early 1970s and is a product of the environment of uncivic free enterprise that prevails in the legal and commercial systems of the United States [Wells (2017), chap. 4, pp. 107-126]. The movement favors rulership over citizen Sovereignty and is a major contributor to perpetuations of injustice in the United States. There is a steep price being paid for legal tolerance of this deontologically unethical outlaw element in U.S. Society.

Now let us look at a second example of ethics aspect institution, this time by an agency of government. From 1949 to 1987, the Federal Communications Commission's Fairness Doctrine required holders of broadcast licenses to present controversial issues of public importance and to do so in a manner that fairly reflected opposing views. The FCC itself was established by Congress, in the Communications Act of 1934, as an "independent" agency[17] of the U.S. government to regulate communication by radio, television, wire, satellite and cable across the United States for the stated purpose of making "available so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex, rapid, efficient, nationwide, and world-wide wire and radio

[16] Mini-Community and social contracting are natural phenomena of human behavior. Both arise out of pragmatic Duties-to-Self in response to the dangerous and unstable conditions that characterize living in a state-of-nature. Life in the state-of-nature is life in an environment which, as Hobbes put it, is "solitary, poor, nasty, brutish, and short" [Hobbes (1651), pg. 78]. You don't have to be a zoologist to know it's better to be in a tree than on the ground when a pack of hyenas comes calling.

[17] In the language of U.S. government-speak, an independent agency of the U.S. government is an agency that lies outside the federal executive departments headed by cabinet secretaries and outside the Executive Office of the President of the United States.

communication services with adequate facilities at reasonable charges." The Communications Act further stated that the FCC was created "for the purpose of national defense" and "for the purpose of promoting safety of life and property through the use of wire and radio communications." Most of the FCC's functions fall into the management and *téchne* aspects of agency operations, but the Fairness Doctrine was directly aimed at the ethics aspect.

As a regulatory agency of government, FCC rulings and doctrines have "teeth" in the sense that they can be and are backed up by the full law enforcement powers of the U.S. general government. In principle, if not in actual political fact, the FCC, as an "independent" agency, is not subject to rule and control by the executive branch of government. However, as an agency created by act of Congress, it *is* subject to rule and control by the legislative branch - a subjugation that would be clearly justified *if* the U.S. Congress were in fact a representative body of citizen Sovereignty, anchored by ethics to terms and conditions of social contracts, rather than a representative body of the two major special-interests U.S. political parties. One just criticism that is leveled against its Fairness Doctrine is that the doctrine was exploited by the Democratic Party in the 1960s to harass right-wing critics of the Party by embroiling them in costly litigations they could not afford. Another, usually not heard as loudly, is that proponents of the anti-regulatory movement, in support of the so-called "free market economy" (i.e., uncivic free enterprise), apply political pressure to the FCC itself (e.g., by threat of legislation).

By and large, those "right-wing critics" who suffered harassment by the Democrats were deceptive, and often vicious, propagandists exploiting "free speech" (licentious and uncivil liberty of speech) to attack those who were opposed to these critics' special interest agendas (such as opposition to the civil rights movement in the late 1950s and the 1960s). It is-not deontologically unjust to oppose outlaw agendas like these; it is deontologically unjust and unwise to exploit laws for political party advantage rather than to clearly enforce general social contract civility. As the old aphorism warns us, "the road to hell is paved with good intentions."

On the whole, the Fairness Doctrine produced a great deal more social good than harm to deontological citizens of the U.S. The FCC's decision, in 1987, to end the Fairness Doctrine was and is controversial to this day. Attacks upon it by the anti-regulatory movement during the 1980s, with support from Republican administrations, challenged the doctrine in court on "free speech" grounds but these legal attacks on it were generally rebuffed by the Supreme Court in several decisions. However, the Court's rulings were only lukewarm in their support of "legality" of the doctrine. In effect, the Court ruled that the FCC "could" enforce the Fairness Doctrine but that it was not *required* to enforce it. The FCC commissioners eventually bowed to political pressure and dropped the Fairness Doctrine in 1987. This was soon followed by a surge of deceptive propaganda on so-called "talk radio" and, more recently, by more blatant propagandizing by radio and television news programs. Smelling sulfur in the air, there have been some bills proposed or introduced in Congress to bring back the Fairness Doctrine, but none of these have so far become law.

There are some important facts that these two examples exhibit. One is that institution of the ethics aspect is vulnerable to special-interest attack if the agency of its institution is placed under subjugation by either the management or the *téchne* aspects of institutions. It is weakened if its essential basis in social compacting is not explicitly recognized and the service and allegiance of its agents directly to Sovereignty of the deontological citizens is not made its explicit and governing first principle. Its operations will become incompetent and ineffectual for the public good if it is not authoritative in its agents' knowledge of the terms and conditions of social compacting in each layer of heterarchical political organization that it serves. Its agencies must be flexible in their institutions and harmoniously adapt to new social forces and conditions. Finally, because deontological ethics is something new to social-natural science, the ethics dimension is something largely untried in popular self-governance. For this reason, its institution can be expected to be an empirically trial-and-error-and-adjustment process - in the process of which that process will manifest new facts of experience for study by social-natural political science.

6. Justifiable Hierarchy

The terms "hierarchy" and "heterarchy" refer to structures of the management aspect of an association. How these designations are used in management theory and practice is historically vague. This treatise uses them in the following ways. A ***heterarchy*** is *an organization of management structure which coordinates divers interests of various groups such that common interests are satisfied without justifiable special interests being thwarted*. It can be regarded as a kind of coordinated *Gemeinschaft* system of management, i.e., as a Community of coordinated and cooperating mini-Communities. A ***hierarchy*** is *an organization of management structure ordered by rank, grade, or classes of authority figures in which rulership and ranks of rulers are an integral part of the organization*. Hierarchy is by far the most common historical form of management structure encountered in Western experience [Wells (2017), chap. 13, pp. 372-379].

The phenomenon of interest-based mini-Communities embedded in civil Society, in conjunction with the empirical fact that individuals are simultaneously members of multiple mini-Communities, brings as a social consequence a practical necessitation for heterarchical organization and institution of Societies that are united by social compacting. In *almost all* social, political and commercial spheres, heterarchy is practically necessitated by the human-natural fact that reciprocal Duties and Obligations have their point of origin in Duties- and Obligations-to-Self that each individual determines uniquely *for* himself. At his practical roots, Man is *reluctantly*, not willingly, a political animal. He becomes one only because he judges that state as better suited to serve his interests and Duties-to-Self.

"Almost all" is not "all." To fail to note this distinction is to make an error of extravagance in reasoning. Sometimes circumstances and situations are present or arise in which a civil Community's ability to meet and satisfy the most fundamental terms of a social compact - namely, protection of the person and the well-being of each civil associate (citizen) - practically *justifies* a hierarchical institution and its under-other-circumstances-noxious factors of rulers and rulership. Such circumstances and situations are found in occasions of *emergencies* wherein actual dangers threaten people's lives or well-being. I use the term "emergency" here in the connotation defined in *Black's*, i.e.,

> **emergency.** (17th c.) 1. A sudden or serious event or an unforeseen change in circumstances that calls for immediate action to avert, control, or remedy harm. [Garner (2019), "emergency"]

The premier example of justifiable hierarchy is provided by the armed forces. This ancient institution has historically set the example for all other hierarchical forms of organization. The practical justification for hierarchy in the military is likely, I think, already well understood by you. But let's briefly set it out anyway. We live in a world of independent nation-states with different cultures, traditions, beliefs, and often conflicting interests. Dyer wrote,

> Each state is solely responsible for its own survival and can only ensure it by having sufficient military force, either on its own or in alliance with others, to resist the armies of those who are in a position to threaten it. The threat is real: over 90 percent of all the states that have ever existed have been destroyed - and often their people with it - because they failed to have enough military power available at the critical moment. It is a lesson indelibly engraved in the consciousness of every government from Pharoah Narmer's to Premier Gorbachev's.
>
> Nobody now alive, nor anybody on this side of the historical horizon, has "chosen" war instead of peace; that would be like saying someone has chosen to breathe air instead of water. Individual leaders and even whole nations may decide from time to time that they want a particular war (although far more wars begin as a result of miscalculation), and other leaders and countries may strive desperately to stay at peace, but it all takes place in a political context wherein war is always an option. That context has been the same since the beginning of recorded history. Indeed, it is almost certainly a good deal older than history. [Dyer (1985), pp. 18-19]

It only takes one of the parties involved in an adversarial conflict of interests to start a war; the other party or parties then have no practical option but to reply in kind or see an ending of their interests - and often their survival.

I think it is likely true that most people - as most of us have never participated as combatants in a war - have no adequate concept of the degree of horror, terror, and savagery war involves. War is so utterly unlike life in peacetime that it should surprise no one if military institution is also unlike civilian institutions. Dyer tells us,

> Armies exist ultimately to fight battles - the most complex, fast-moving, and essentially unpredictable collective enterprises (not to mention the most dangerous and confusing) that large numbers of human beings engage in - and that purpose conditions almost everything about them. It guarantees them their high position in the list of priorities of every government (for historically the outcome of those battles has mattered greatly to the armies and their owners). It also explains why they are so different from other human organizations, and so similar from one country to another. [*ibid*., pp. 132-133]

I think it is unnecessary for the purposes of this treatise to delve deeply into the myriad of details involved in theories of military organizations and why hierarchy and rulership have been and are the norm for these most peculiar of human institutions. Anyone desiring more of these details can find them described in minute detail in Clausewitz' *On War* and Sun Tzu's *The Art of War*. I hold as a matter of personal opinion that a person who has not studied both of these works is incompetent to comment on the human nature of military organization. Peacetime is not the condition militaries are designed to operate in, and the ever-present threat of war justifies the permanence of its hierarchy structure, under overall civilian control, in the military. If a Society has no standing military and a war breaks out, by the time it can establish one it will probably be too late.

Military institution is not the only case where at least a significant degree of hierarchy and rulership is justifiable. In non-military cases, the justifiable extent is usually significantly less than in the case of a military. Quasi-military institutions such as a police force or a fire department are familiar examples where a restricted degree of rulership and a hierarchical management structure are justifiable because, in both cases, these institutes are designed and purposed to deal with sudden dangerous emergencies and are authorized by citizens' expectations of authority under terms and conditions of their social contracts.

In commercial and other civilian institutions, hierarchy and rulership are rarely justifiable, and those rare occasions are found only in extraordinary circumstances of a temporary duration. When such is the case, the justifiable institution is bound to the Duties of specific offices with carefully delimited bounds and circumstances. Exemplary models of moral leadership under such conditions and circumstances include Cincinnatus[18] in Roman folklore and George Washington in U.S. history. In a heterarchy system of management structure, a substitution of hierarchy structure can be introduced during an emergency but this substitution is both *brief* and *temporary*. When the emergency is over, management reverts to the normal heterarchical structure [Wells (2017), chap. 12, pp. 345-346].

Not all emergencies need to have an imposition of even a temporary hierarchy. Instead, circumstances attending it are such that an already-existing heterarchy management structure is able to adequately deal with it. The way the government of Idaho dealt with the Covid-19 crisis provides one example of this. Idaho is a state with very significant county-to-county diversities in population density, commerce, the distribution of available medical care, technology, and other factors. When the Covid pandemic arrived in Idaho in 2020, Idaho's governor (Brad Little) delegated wide-ranging decision making and management authority to the state's municipal and county governments for putting in place public health and safety measures to combat the spread of the disease. Local government agencies proved themselves capable of the task and, on the whole, these local measures were as effective in dealing with the pandemic as any

[18] https://en.wikipedia.org/wiki/Lucius_Quinctius_Cincinnatus

taken anywhere else in the U.S. according to tracking statistics made publicly available on state and national health department "dashboard" websites. At the time, the Governor's heterarchical policy was scathingly criticized by national news media propaganda - which advocated imposition of more uniform state-mandated (hierarchy) policies - and by the majority faction of the Idaho Legislature (which opposed *any* imposition of public health and safety measures at all). Fortunately for the citizens of Idaho, the pandemic hit the state after the legislative session had adjourned,[19] and so-called "liberal" news outlets are unpopular with the greater majority of Idahoans, most of whom frequently ignore their propaganda.

7. The Objects of Popular Government

Government is the system of institutions formed by members of a Society for the purpose of realizing Order and Progress through the dynamics of governance. From the practical Standpoint of Critical Epistemology, governance is the exercise of authority in management and administration of the leadership dynamics within a Community. Order is an Object subsisting in the preservation of the degree of all kinds and amounts of objective good people deem to already actually exist; while Progress is an Object subsisting in increasing the kinds and amounts of objective good people deem to be possible to realize (make actual). Inherent in the idea of Progress is the condition of preservation of already-existing good, and so any manner of increasing the kind or amount of some specific objective good that diminishes the amount of a different and already-existing objective good is-not Progress [Mill (1861), pp. 12-17].

This purpose of government sets the foundations and standards of the more specific goals for government demanded by its citizens in their collective expectations of authority for the agents and agencies of their government. Different people in different cultures and in different times can and do set different goals for their government, and these goals establish the justification of their government under whatever social compact binds them together as *one* people. The late-18th century French took from the ideas of the Enlightenment the following declaration: "The goal of any political association is the conservation of the natural and imprescriptible rights of man. These rights are liberty, property, safety and resistance against oppression" [Article II of *The Declaration of the Rights of Man and the Citizen*]. The ideas of the Enlightenment led the Framers of the U.S. Constitution in 1787 to set out six goals for their republican form of government. These were and are:

-- to form a more perfect [civil] union

-- to establish justice

-- to insure domestic tranquility

-- to promote the general welfare

-- to provide for the common defense

-- to secure the blessings of liberty. [*Preamble to the Constitution of the United States*]

Without a too-strenuous exercise of imagination, it seems clear enough that the four French "rights" in

[19] Legislatures are tasked with the expectation of authority for statute lawmaking. As a body, legislators are especially incompetent and wholly unsuited for management or administrative roles - a point Mill made long ago [Mill (1861), pp. 51-62]. The Idaho Legislature, however, is jealous of anyone else having management or administrative power, and exhibits a predictable pattern of imposing rulership by taking away others' authority by passing statute laws when someone else makes decisions or policies the majority faction disagrees with. During the Covid crisis, Idaho's legislature was forbidden by the state constitution from calling itself back into special session so that they could overrule the Governor's Covid policies. In their 2021 session, they moved to change this by crafting an amendment to the Idaho Constitution, which finally passed in November of 2022 despite opposition by Idaho's commercial lobbying groups [Moseley-Morris, Kelcie (2022), *Idaho Capital Sun*, Nov. 9, 2022]. It was a telling victory for uncivic legislative rulership and political propaganda in Idaho.

their Declaration fit conformably into the Americans' six general goals of government. It might perhaps require deeper reflection to also see that the six goals of government listed above all derive from the fundamental condition of a social contract, i.e., that the association will defend and protect with its whole common force the person and goods of each associate in such a way that each associate can unite himself with all the other associates while still obeying himself alone. The powers of government receive their justification from this condition.

Concurrently, the civic Duties required of every deontological citizen derive from the fundamental terms of the social contract, i.e., that each associate is to put his person and all his power in common with those of the other associates under the supreme direction of the general will, and that each associate, in his corporate capacity, will regard every other associate as an indivisible part of their whole body politic. The clause "while still obeying himself alone" is not a justifiable basis for licentious libertarianism[20]. The concept of libertarianism is an *outlaw* concept. *Civil* liberty, not libertarianism, is the liberty meant by the sixth goal. In his sixth State of the Union message to Congress, Washington reported:

> During the session of the year one thousand seven hundred and ninety, it was expedient to exercise the legislative power, granted by the constitution of the United States, "to lay and collect excises." In a majority of the States, scarcely an objection was heard to this mode of taxation. In some, indeed, alarms were at first conceived, until they were banished by reason and patriotism. In the four western counties of Pennsylvania, a prejudice, fostered and embittered by the artifice of men, who labored for ascendency over the will of others by the guidance of their passions, produced symptoms of riot and violence. It is well known that the Congress did not hesitate to examine the complaints which were presented, and to relieve them, as far as justice dictated or general convenience would permit. But the impression, which this moderation made on the discontented, did not correspond with what it deserved. The arts of delusion were no longer confined to the efforts of designing individuals.
>
> The very forbearance to press prosecutions was misinterpreted into a fear of urging the execution of the laws; and associations of men began to denounce threats against the officers employed. From a belief, that by a more formal concert their operations might be defeated, certain self-created societies assumed the tone of condemnation. Hence, while the greater part of Pennsylvania were conforming themselves to the act of excise, a few counties were resolved to frustrate them. It was now perceived that every expectation from the tenderness which had been hitherto pursued, was unavailing, and that further delay would only create an impression of impotency or irresolution by the government. Legal process was, therefore, delivered to the marshal against the rioters and delinquent distillers. . . .
>
> While there is cause to lament that occurrences of this nature should have disgraced the name or interrupted the tranquility of any part of our community, or should have diverted to a new application any portion of the public resources, there are not wanting real and substantial consolations for the misfortune. It has demonstrated that our prosperity rests on solid foundations: by furnishing an additional proof that my fellow citizens understand the true principles of government and liberty; that they feel their inseparable union; that notwithstanding all the devices which have been used to sway them from their interest and duty, they are now as ready to maintain the authority of the laws against licentious invasion as they were to defend their rights against usurpation. It has been a spectacle, displaying to the highest advantage the value of Republican Government, to behold the most and least wealthy of our citizens standing in the same ranks as private soldiers; pre-eminently distinguished by being the army of the constitution; undeterred by a march of three hundred miles over rugged mountains, by the approach of an inclement season, or by any other discouragement. [Washington (1794), pg. 888-892]

The incident to which Washington refers is the famous Whiskey Rebellion. He described in more detail: how he had led a large force of militia from Pennsylvania, New Jersey, Virginia and Maryland, called up in the service of the United States; how additional citizens voluntarily joined with these forces; the

[20] **libertarian.** (18th c.) Someone who strongly believes that people should be free to do and think as they please without any government interference [Garner (2019), "libertarian"].

support and cooperation he received from the Governor of Pennsylvania; and how the insurrection was put down almost without armed resistance and the rule of law restored.

In the degree to which Lord Acton's dictum, "Power corrupts; and absolute power corrupts absolutely," is true, heterarchy institutions of government better serve the above goals than do hierarchy institutions of government. It does so by setting tighter bounds and limits on any individual's power to govern by *rulership*. It was the heterarchical form of government in the early-19th century U.S. that, as Tocqueville put it, created a system of government in which "the office is powerful and the officer is insignificant." Hierarchy in government attracts office seekers prone to succumb to Adams' passions of Ambition, Vanity, Jealousy, or Envy. At the time Tocqueville wrote those words, national political parties, as we know them today, were still in their infancy and their baleful spirit of rulership and hierarchy had not yet been widely felt. In the present day, the Democratic Party is a coalition of four major factions (commonly labeled the Centrist Democrats, the Conservative Democrats, the Liberal Democrats, and the Progressive Democrats) while the Republican Party is a coalition of five major factions (commonly labeled the Conservatives, the Right-Libertarians, the Religious Right, the Right-wing Populists and the Moderate Republicans). Within each party, some of these factions are outlaw factions. In both their coalition is held together primarily by regarding the other party as an enemy in the spirit of an old Arab proverb that says, "The enemy of my enemy is my friend." If either party ever succeeds in vanquishing the other so thoroughly that it disintegrates and disappears, the "winning" factions will at once turn upon one another out of their incongruent special interests, and internecine political battles will recommence.

The Framers of the U.S. Constitution correctly saw factions as the biggest threat to civil liberty. Because factions are grounded in special interests, the Framers saw the best safeguard against them in deliberately multiplying the number of factions as much as possible. They called this "extending the sphere". Madison wrote,

> The other point of difference [between the republican and democratic forms of government] is the greater number of citizens, and extent of territory, which may be brought within the compass of republican, than of democratic government; and it is this circumstance principally which renders factious combinations less to be dreaded in the former than in the latter. The smaller the society, the fewer probably will be the distinct parties and interests composing it; the fewer the distinct parties and interests, the more frequently will a majority be found within the same party; and the smaller the number of individuals composing a majority, and the smaller the compass within which they are placed, the more easily will they concert and execute their plans of oppression. Extend the sphere and you take in a greater variety of parties and interests; you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens, or if such a common motive exists, it will be more difficult for all who feel it to discover their own strength and to act in unison with each other. [Hamilton *et al*. (1787-8), no. 10, pp. 57-58]

In 1787, the individual states of the union presented the most obvious and serious factions, and so "extending the sphere" meant multiplying the number of states (rather than allowing the existing states to expand their territories westward). Interests-based heterarchy also accomplishes this extending, and does so to a far greater extent, but it does so only if its justice system is layered, distributed, decentralized, and instituted with interests-based jurisdictions aligned with the layered terms and conditions of the divers social compacts of chartered civil mini-Communities (figure 2).

8. Heterarchical Law and Mini-Communities

Law in general is defined as the system of rules ("regime") that orders human activities and relationships through systematic application of the force of politically organized Society [Garner (2019), "law"]. In modern nation-states, as in the ancient ones reviewed in the first two chapters, this system has the features of decentralized, distributed, and jurisdictional heterarchy. Having divers municipal, county, state, and federal statutes, regulations, and ordinances illustrate this heterarchical systemization.

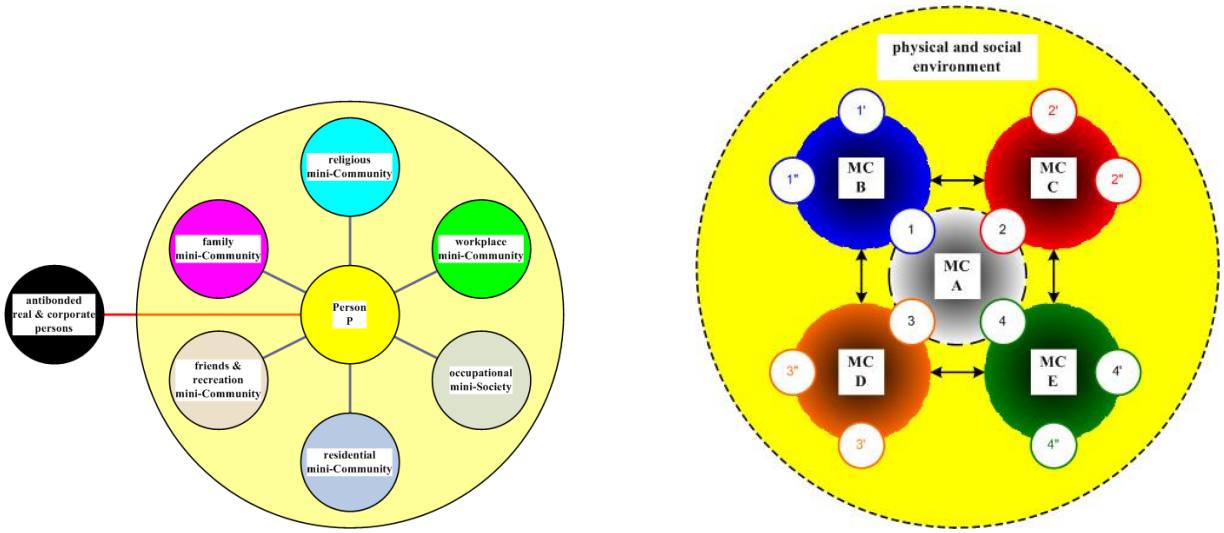

Figure 7: A) Personal society of a person P illustrating his multiple mini-Communities and other persons and mini-Communities with whom he has adversarial ("antibonded") conflicts of interest; B) Illustration of interactions among mini-Communities within a general Society. B also indicates that some individuals (1-4) in MC A can have simultaneous memberships in these different mini-Communities while others in mini-Community MC A have no immediate personal interactions or familiarities with these other mini-Communities.

Throughout human history, the basis for heterarchical systems of law has been geographical. Institution by means of geographic diversity is certainly the easiest to design and comprehend as well as the simplest to immediately recognize and define. Later socio-economic innovations, such as "interstate commerce" or radio and television broadcast communications, do present some significant challenges to the simplicity of geography-based jurisdictions because of their non-geographical features. Different methods of accommodating non-geographical challenges have been worked out by *ad hoc* adjustments such as assigning jurisdictions to federal or state level agencies when legislators choose to do so, or by the simpler-still expedient of handing off the lawmaking function to "private" non-government organizations (such as the National Broadcasters Association). It has been not-uncommon for later issues or problems to emerge which then tend to pit one "type" of jurisdiction against another. In the U.S., the intervention of the Supreme Court, in striking down NBA provisions in its Television Code in favor of licentious uncivil liberty of speech, is one example. Another example is provided by the attempt by Congress to outlaw child labor under the guise of its power to regulate interstate commerce (the Keating-Owen Act of 1916) which was struck down by the Supreme Court in the case of *Hammer v. Degenhart* in 1918 on the ground that the Act also inherently regulated commerce that did not cross state lines[21].

Injustice is a subjective feeling of *Unlust*, arising from hindrances or threats to, or denial of, a person's satisfaction of some interest; the person objectifies this by psychologically transferring the feeling to some person(s) or object(s) he blames for causing the feeling. Because the practical root context of injustice is the interest involved, and because mini-Communities form out of congruent common interests, it logically follows that instituting the design of a justice system should also be focused on interests rather than geography. As always, "the devil is in the details" and the question is: how can this be justly accomplished? A civil Society's mini-Communities are *embedded* within it, and so the question really amounts to asking what the real implications of the phenomenon of mini-Community are for the function of lawmaking. To understand this, we begin with figures 7 A and 7 B above.

[21] Eventually U.S. federal and state governments concocted means for prohibiting at least the more egregious kinds of child labor that the Supreme Court has not (yet) overruled. However, in recent years there has been an effort by special interest groups in the U.S. to weaken or altogether strike down child labor laws.

Figure 7 A illustrates the idea of a person P's *personal* society. Every person defines *for himself* the other persons who, collectively, make up *his* society according to his own purposes and interests. His society is of his own choosing and person P is its sole determiner. Every person attempts to accomplish his diverse purposes and satisfy his diverse interests by means of interactions with other people who can be logically partitioned into associations of mini-Communities. Person P's essential motivations for his associations have their sources in the Duties to himself that form his personal and private moral code. But in order to be able to satisfy these Duties to himself, person P finds that he must also commit himself to reciprocal Duties to the situations of others to secure the cooperation he needs from them in order for him to be successful in fulfilling his own purposes and satisfying his own interests. These Duties are public, objective, and constitute the ***moral laws*** of civil associations (see the chapter appendix below). These moral laws practically antecede the making of formal *legal* codes and the laws that comprise them because without the former no civil state of liberty at all is possible and a *de facto* state-of-nature exists among people. For a law to be a ***just*** law it must be congruent with *all* moral laws of a civil association as the moral laws are those which constitute the determinations of a civil association's social compact.

Person P might also (and almost always will) have interactions and relationships of an antagonistic or adversarial nature with some particular other people (either as individuals or corporate persons). This is the "antibonded" relationship illustrated in figure 7 A. Here we find incongruent interests; because these incongruent interests are specific ("special") to the individuals, the relationships involve *conflicts* of interests. Person P deliberately *excludes* these other people from his *personal* society. They are *outlaws to him* and he, likewise, is outlaw to them. Ironically, however, these people can, at the same time, be regarded by the general Society, in which person P is embedded, *as* members of that same Society. For example, I consider myself - and am so considered by others - to be a citizen of the United States. The USA is "my" Society. But "my" Society considers certain other people - who I regard as outlaws - to also be citizens of the United States. A Society is a *mathematical* Object (specifically, the Object understood as a higher concept of divers individual concepts of society retaining what is contained in common among these divers concepts). No *one* person defines (or is allowed by others to define) his political Society[22] on any scale above that of a tiny *Gemeinschaft* Society, where everyone personally knows everyone else and *all* agree that everyone who is in his or her personal society belongs to their general Society. And here is where we encounter one of the most fundamental challenges to political government, and to justice, that is produced by the phenomenon of mini-Community: the problem of forming and maintaining a civil Community in the face of granulated mini-Community relationships.

Figure 7 B presents a simplified picture of this challenge. Not only do people simultaneously belong to multiple mini-Communities; these mini-Communities *interact* with each other (as corporate persons) and the effects of these interactions can and do ripple through the general Society. In figure 7 B these interactions are denoted by double-headed arrows. The actions of some person or group of people in, say, mini-Community MC B might later affect someone (or some group of people) in, say, MC E who do not even know the original actors or the actions that were the cause of the effect they experienced. The effect might even reach MC E in more than one way and, often, arrives only after a significant time lag. Social-natural Sociology calls this a "field effect" [Wells (2014), chap. 3, pp. 81-82; chap. 4, pg. 107]. It is not an especially novel idea. Toynbee wrote:

> The truth seems to be that a human society is, in itself, a system of relationships between human beings who are not only individuals but are also social animals in the sense that they could not exist at

[22] In nation-states ruled by an absolute monarch or an oligarchy, the rulers usually presume to define Society (to suit their own purposes), generally relying on force or the threat of force to uphold the definition. But such dictators are fooling themselves. The subjugated people over whom they rule will usually behave according to maxims of prudence and not openly contest the imposition of such an edict; but they are very likely to reject it. When word that Alexander the Great had died reached them, revolts against their Macedonian rulers broke out in every city in Greece and Alexander's empire disintegrated into pieces. Aristotle had to flee for his life from Athens because the Greeks regarded him as a Macedonian.

> all without being in this relationship to one another. A society, we may say, is a product of the relations between individuals, and these relations of theirs arise from the coincidence of their individual fields of action. This coincidence combines the individual fields into a common ground, and this common ground is what we call a society. [Toynbee (1946), pg. 211]

Theoretical psychology also has long employed notions of "field effects":

> **field theory** Really a broadly based set of theories all of which focus on the total psychological environment and attempt to explain behavior in terms of dynamic interactions between the forces in one part of the field and forces in the rest of the field. . . . Köhler drew the parallel between psychological field processes and electromagnetic fields of force. His argument was that any psychological process is dependent upon the interactions in the field and cannot be viewed except from this dynamic point of view. The position is highly holistic . . . Lewin's theory focused more on social psychology and personality theory. The field represented the total environment, including the individual and all significant other people [Reber & Reber (2001), "field theory"].

In a Society of millions of people there is likewise a very large (and constantly fluctuating) number of mini-Communities in direct or indirect interactions with each other. This presents a very complicated and empirical situation with which lawmaking and justice systems are forced to deal. Indeed, the complexity is so staggering that it is unrealistic to think lawmakers and justice agencies will not make mistaken judgments and decisions. These agencies are, after all, staffed by human beings who are themselves member associates in the Society they strive to serve. This is enough, all by itself, to tell us flexible institutions and on-going adaptations are a practical necessity for justice and good government in a large Society. In my opinion, traditional legal and political traditions are entirely too simpleminded in how they view their roles. Perhaps this is why the American legal system tries to falsely equate justice with administration of laws. America has a legal system; it doesn't have a deontological justice system. The Congo's BaMbuti Pygmy groups have a justice system but not a legal system. I sometimes wonder which is really the more civilized?

The primary justification for establishing agencies of justice is to evaluate, adjudicate and enforce the terms and conditions of the social compacts and social contracts that: 1) constitute the legitimate bases for the *Existenz* of every *chartered* civil mini-Community (sec. 3 of this chapter); and 2) establish the *expectations of authority* justifying the scope of that authority in regard to the legislative and executive functions of its government. Let us call this the ***judicial function*** of a justice system, i.e., the judicial function is that part of government assigned the expectation of authority to ensure liberty and justice are upheld according to a civil Community's social contract. Let us call an agency tasked with carrying out the judicial function by the name ***judicial panel***, i.e., a judicial panel is an instituted agency of judicial function, such as a panel of judges or a board, constituted as a formal part of the justice system of a civil Community.

Now, every civil mini-Community has local special interests unique to it and justified under its social contract, and it has congruent common interests it shares with one or more other civil mini-Communities within the general civil Society in which they are embedded. It follows from this that some judicial functions and agencies fall *within* the sole jurisdiction of a mini-Community when cases involve only those local special interests. Others, involving common interests of multiple mini-Communities at particular layers in an inverted pyramid heterarchy, are properly under the jurisdiction of judicial panels assigned to those particular layers of mini-Community. (See figure 2). The number of common interests generally declines the further down one goes in the layers of an inverted pyramid heterarchy because the mini-Communities represent more and more abstractions in the terms and conditions of social contracting in the union of a civil Society. Thus, the scope of authority for legislative, executive, and judicial powers of government waxes as we move toward the deontological citizens (the "social atoms") of the Society and wanes as we move toward the most general levels of the institution of government. At these most general levels, the common interests pertain to perfection of the union, establishment of justice (not

"law"), domestic tranquility, the common defense of Society, improvement of the state of general welfare of the citizens, and preservation of civil liberty. This principle opposes the popular slogan, "That government is best that governs least" (a slogan that, logically, means anarchy - no government at all - is best). The principle instead proposes "That layer of government is best that governs most conformably with its proper sphere of civic common interests." Do "states have rights" (legitimate powers)? Yes, of course. But so do municipalities and municipalities have more of them than states do. And *all* layers of a heterarchy share the same *basic* common interests and, therefore, the same basic civil rights. Governance by rulership is not one of them in a free Society. Neither "the extreme left wing" of the Democratic Party nor "the extreme right wing" of the Republican Party in the U.S. understand this principle. This makes them both *uncivic* associations.

Occasions of civil injustice always involve some hindrance, thwarting or denying of a justifiable civic interest. The deontological citizens of the civil mini-Community, in every layer of mini-Community as depicted in figure 2, have an expectation of authority for its justice system to negate the effects of injustice so far as it is possible to do so[23]. The "victims rights" movement in the U.S. that began in the 1970s is a *just reaction* to the legal system's failures to adequately negate effects of unjust acts perpetrated on the victims - a failure born of the legal system's zeal to safeguard the civil rights of defendants[24] while forgetting that the victims have had their civil rights violated.

Expectation of authority is a ***demand***, not a request, of the citizens. Grace - by which I mean unmerited clemency in this treatise - is *not* a prerogative of government to grant because a deontological criminal *necessarily forfeits* his deontological citizenship and the protections of civil rights by his intentional transgression of the social contract. A deontological outlaw is not a deontological citizen and likewise has no entitlement to the protections of civil rights because these protections *always come with a price* under the terms of social compacting. An outlaw is a person who makes no self-commitment to obey and uphold these terms. The situation is, of course, different in cases of transgressions of moral fault because in these cases the transgression is *unintentional*. This is the justifiable basis for the "mistake of fact" defense in court proceedings [Garner (2019), "mistake of fact" under "mistake"]. When the justice system of a Society risks allowing perpetrations of injustice to be perpetuated, for whatever reason, that Society is on the path to breakdown and disintegration. This is what Toynbee was referring to in his famous remark, "Civilizations fall from within."

9. Closing Remarks

The thesis set out in this treatise will no doubt seem very strange, even radical, to some readers. And, I admit, if we use the strict primary definition of the word "radical" ("relating to or affecting the fundamental nature of something") then the theory presented here can fairly be so-labeled. The legal systems of different nations have been around for a very long time, their people are used to them, and so they are habituated to them. Justice, on the other hand, is an idea that has apparently *always* been more notional and a subject of widely differing opinions *in the particular* even when all agree *in general* about what we might call a *Gestalt* of Justice's shadow. This treatise makes the proposition that the Idea of Justice is entirely bound up with and is part of the Idea of a Social Contract. Your author agrees with Rawls when he said,

> Now let us say that a society is well-ordered when it is not only designed to advance the good of its members but when it is also effectively regulated by a public conception of justice. That is, it is a society in which (1) everyone accepts and knows that others accept the same principles of justice, and

[23] Some injustices, by their nature, cannot be fully negated. Murder is one example; nothing anyone can do can restore life to the victim of a murder. Retribution - punishment imposed for serious offense - is the most that any justice system can do to partially negate the injustice.

[24] https://en.wikipedia.org/wiki/Victims%27_rights#:~:text=Victims'%20rights%20are%20legal%20rights,speak%20at%20criminal%20justice%20proceedings.

> (2) the basic social institutions generally satisfy and are known to satisfy these principles. In this case while men may put forth excessive demands on one another, they nevertheless acknowledge a common point of view from which their claims may be adjudicated. If men's inclination to self-interest makes their vigilance against one another necessary, their public sense of justice makes their secure association together possible. Among individuals with disparate aims and purposes a shared conception of justice establishes the bonds of civic friendship; the general desire for justice limits the pursuit of other ends. One may think of a public conception of justice as constituting the fundamental charter of a well-ordered human association.
>
> Existing societies are of course seldom well-ordered in this sense, for what is just and unjust is usually in dispute. Men disagree about which principles should define the basic terms of their association. Yet we may still say, despite this disagreement, that they each have a conception of justice. That is, they understand the need for, and they are prepared to affirm, a characteristic set of principles for assigning basic rights and duties and for determining what they take to be the proper distributions of the benefits and burdens of social cooperation. [Rawls (1999), pp. 4-5]

The great challenge in this is in getting different people to not only "each have a conception of justice" but to also come to a *consensus* with each other about what the common conception needs to look like. *How* to accomplish this is the great question. Rawls mentioned the necessity for "vigilance against one another" and I have very little doubt most adult human beings will agree with and understand this need. The major innovations discussed in this chapter - Charter Boards, Boards of Merit, Boards of Right, and the synthetic unity of the management, *téchne*, and ethics aspects of institutions - are all aimed at this vigilance need and at perfecting Man's justice system by instituting just changes in agencies of justice and government when the need for such a harmonious adjustment to them is revealed by empirical findings.

On those points where the theory of justice presented here and the theory of justice presented by Rawls depart in particulars, the differences are generally grounded in metaphysical differences. As I said back in chapter 3, metaphysics matters. Rawls provides what I regard as a very good and insightful summary of what he calls "the Kantian interpretation of justice as fairness" [Rawls (1999), pp. 221-227]. He interprets it in ways consistent with how that interpretation has been viewed by most moral philosophers since Kant and points out some of its faults. The problem, though, is this: these interpretations of Kant's theory - and Kant's treatment of it as well - is ontology-centered. It centers around Kant's error of reifying "the moral law within me." The theory presented in this treatise is epistemology-centered - a recentering of "the way one looks at the world" and human nature in relationship to the Idea of Justice.

One would have to be a Pollyanna indeed to suppose that the Idea of Justice presented in this treatise would or could rapidly gain public acceptance or institution. The legal systems we have today evolved over the course of millennia, and people living today are used to them as they are now. They are much more likely to be suspicious of changes to them than to be eager to adopt them. Friedman makes some very pertinent observations that touch upon this.

> Americans are naturally used to American laws. Law is an integral part of American culture. Americans could adjust to *very* alien laws and procedures about as easily as they could adjust to a diet of roasted ants or a costume of togas. . . . Many people think that history and tradition are very strong in American law. There is some basis for this belief. Some parts of the law can be traced back very far . . . But other parts of the law are quite new. The living law, the law that we use every day, the law that affects us every day . . . is comparatively recent on the whole. . . . The new presses down on the old, displacing, changing, altering, but not necessarily wiping out *everything* that has gone before. Law, by and large, evolves; it changes in piecemeal fashion. Revolutions in essential structure are few and far between. That, at least, is the Anglo-American experience. Most of the legal system is new, or fairly new; but some bits of the old get preserved among the mass of the new. [Friedman (2005), pg. xi]

If this is true of a justice system's servant - its legal system - would we expect conceptions of justice and its agencies to really be all that much different empirically? One principal factor that contributes to the

sometimes quixotic evolutionary character of law, and which is not explicitly pointed out by Friedman in the quotation above, is the sheer complexity of legal systems resulting from millennia of evolvement. As evidence of this, one can note that the 11th edition of *Black's Law Dictionary* catalogs over 55,000 legal terms, more than 3,300 Latin legal maxims from Roman law, and has a bibliography of over 1000 classic law references. Revolutions in legal structure are "few and far between" because simpleminded alterations to it are incapable of dealing with this great factor of complexity even though a new law can be put into effect with, literally, the stroke of a pen. Thoughtful people of good will, such as Emerson, who know this have also been around for a long time:

> 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 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 around it, as every man of strong will, like Pisistratus or Cromwell, does for a time, and every man of truth, like Plato or Paul, does forever. 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 policies 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. [Emerson (1844), pp. 275-276]

As I write these words, we appear to be living in a time when "particles", the likes of which haven't been seen since the 1920s and 30s, are "compelling the system to gyrate around" them in the Middle East, in Asia, and in the Western nations. The "Longshoreman Philosopher" Eric Hoffer wrote, in 1951,

> All mass movements generate in their adherents a readiness to die and a proclivity for united action; all of them, irrespective of the doctrine they preach and the programs they project, breed fanaticism, enthusiasm, fervent hope, hatred and intolerance; all of them are capable of releasing a powerful flow of activity in certain departments of life; all of them demand blind faith and singlehearted allegiance.
>
> All movements, however different in doctrine and aspiration, draw their early adherents from the same types of humanity; they all appeal to the same types of mind.
>
> Though there are obvious differences between the fanatical Christian, the fanatical Mohammedan, the fanatical nationalist, the fanatical Communist and the fanatical Nazi, it is yet true that the fanaticism which animates them may be viewed and treated as one. The same is true of the force which drives them on to expansion and world dominion. There is a certain uniformity in all types of dedication, of faith, of pursuit of power, of unity and of self-sacrifice. There are vast differences in the contents of holy causes and doctrines, but a certain uniformity in the factors which make them effective. He who, like Pascal, finds precise reasons for the effectiveness of Christian doctrine has also found the reasons for the effectiveness of Communist, Nazi, and nationalist doctrine. However different the holy causes people die for, they perhaps die for the same thing. [Hoffer (1951), pp. xi-xii]

Hoffer finds a common ground for his thesis in a notion of "frustration." But frustration, as psychologists like to tell us, "is a feeling, not a fact." What sort of feeling, then, seems to be "the same thing" characteristic of Hoffer's "true believers"? I suggest for your consideration that it is a feeling of injustice.

The times we are living in today seem to inform us that it is more important than ever for Mankind to try to better perfect the institutions of justice systems, to try to end perpetuation of unjust actions, and to try to heal the bleeding wounds in bodies politic made by the outlaws and criminals every Society harbors

among its deontological good citizens. This treatise has analyzed the issues and challenges of doing so. It is not an easy task, nor one that anyone should expect to accomplish overnight, because these challenges to human institutions of Justice are indeed quite daunting. It is impractical to hope we could simply leap to some better state of Society. Perfection is a process, a journey, and, as Lao Tsu said long ago, "a journey of a thousand miles begins with a single step." I hope that this treatise can serve to help us take that first step.

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Chapter Appendix

action (*Wirkung*, *actio***):** in Critical metaphysics, action is change in appearance of accidents.

authority: possession of the *Kraft* of causing something to become greater, to increase, to be strengthened, or to be reinforced in some way. *See also*: expectation of authority.

authority figure: the position of an agent of leadership governance charged with the duty of causing the association's general success and welfare to become greater, to increase, to be strengthened, or to be reinforced. Success and welfare are measured in terms of average Progress and Order in the Community.

causality: the notion of the determination of a change by which the change is established according to general rules.

causality of freedom: causality for which the rule governing the change is grounded in the formula of the categorical imperative of pure practical Reason and which is not bound to determination by sensuous representations. Also called psychological causality.

causality *per se*: the Object in which the idea of physical causality and the idea of the causality of freedom are united.

causality, physical: the objectified idea of cause-and-effect relationships, under which all effects are determined by actions according to general rules. Also called empirical causality.

causality, psychological: see causality of freedom.

change: in Critical metaphysics, change is perception of differentiable moments in time.

citizen (deontological): a member of a Community who accepts mutual Obligations to-and-with its other members and who accepts the performance of acts of citizenship as a reciprocal Duty he owes to the Community.

citizen (legal): a person accorded a legal entitlement that grants him the protections of civil rights and permits him the exercise of civil liberties without necessarily requiring him to give up his outlaw status in relationship to the Community or to consent to assuming all the Duties of citizenship. A legal citizen is not necessarily a deontologically citizen. If he is not, then he is an outlaw.

citizenship: the actuality of individual actions congruent with conventional general standards of expectations for civic actions. It is grounded in reciprocal Duties of association. Real citizenship is a social dynamic of relationship and subsists only in the practical actions of individuals.

civic: applying or pertaining to the conduct or behavior of an individual in his social interactions.

civic action: an action operationalized by an individual that is congruent with his Duties under the terms of a social compact.

civil Community: an association of people sharing a civil convention (a civil association) having common civil rights and civil liberties with a common system of governance.

civil convention: a form of association which will defend and protect with the whole common force the person and goods of each associate and by which each associate, while uniting himself with all the other associates, may still obey himself alone and remain as free as he was before joining the association.

confederation: A league or union of states or nations, each of which retains its sovereignty but also delegates some rights and powers to a central authority.

context (*Zusammenhang*): the sphere of concepts, combined by judgment with the concept said to have the context, which delimits the applicable scope involving that concept in Reality.

convention: a form of association by means of common and agreed upon empirical rules of associating.

corporate person: the regulative Idea of the one-ness of the Community of a group of people regarded as a body politic. The object of a corporate person is a Community in its entirety.

crime: any intentional transgression.

criminal: a person who commits a crime.

***Dasein*:** existence in the context of that-which-exists.

deontological: not grounded in or deduced from an ontology-centered metaphysic. A deontological concept or theory is always grounded in an epistemology-centered metaphysic, i.e., Critical metaphysics.

deontological ethics: an epistemology-centered doctrine of social-natural obligations and duties grounded in the mental physics of the phenomenon of mind.

Duty (*Pflicht*)**:** a necessitated and objectively practical act in accordance with an idea of objective moral law that excludes all personal inclinations from serving as the ground of the action.

duty: a necessitated action connected in a formula of obligation corresponding to a form of Duty. A duty is composition (matter) for the *nexus* (form) of obligation.

dynamic: a representation of the *Existenz* of a potential power of organization for a particular type of spontaneity. *See also* social dynamic.

Enterprise: the common Object of all the individual instantiations of personal enterprises carried out by a group of people associated with each other in a united Community.

enterprise, personal: any undertaking actualized by an individual for reasons grounded in duties to himself or Duties to himself reciprocally with others to whom he had bound himself by Obligation.

ethics: deontologically, ethics is the social-natural science of acts imputable to the actor through being attributed to Duties of a person in regard to the situation of other persons, such Duties being established according to terms and conditions of a social contract.

***Existenz*:** existence in the context of the-manner-in-which-something-exists. The term designates the forms of appearance of an object and its formal relationships with other objects.

expectation of authority: the demand by citizens of a Community that a person holding a position as a designated authority figure possess the *Kraft* of authority and will actualize it for the benefit of their common association.

extravagance in reasoning: an error in reasoning and judgmentation producing false conclusions that are brought about because of either over-generalization or over-specification of concepts.

feeling (*Gefuhl*)**:** sensation in an affective perception. A feeling is that in sensation that can never become part of the representation of an object.

feeling of *Lust*: the feeling of *Lust* and *Unlust* in its attractive or positive character as a feeling presenting the promotion of happiness in life.

feeling of *Unlust*: the feeling of *Lust* and *Unlust* in its negative or repulsive character of a feeling presenting the hindrance of happiness in life.

follower: a person is a follower if the act of his Self-determination is stimulated by the actions of another person. That other person is his leader.

Gemeinschaft: governance of a Community through loosely organized cooperations by groups of individuals on specific matters of direct interest to them, and in which cohesion of governance is primarily reliant upon citizens' civic conformity to Community mores and folkways.

***Gemeinschaft* federalism:** the principle that a *Gemeinschaft*-like quality in the governance of a republic requires that governing bodies and agencies consist only of small numbers of distinct persons or corporate person representatives such that all decisions and actions can be reached by consensus democracy. Agencies of governance, viewed as corporate persons, must be relatively ungranulated mini-Communities with no internal hostilities serious enough to threaten the civil Order of the agency.

governance: from the practical Standpoint, the exercise of authority in management and administration of the leadership dynamics within a Community.

government: the system of institutions formed by members of a Society for the purpose of realizing Order and Progress through the dynamics of governance.

granulated socialization: a complex social environment in which the person regards himself and all the other associated people as being members of the same abstract society, but which he further subdivides into logical sub-societies. Specific individuals or groups of individuals are classified by the person as belonging to one or more of these sub-societies. The person regards his relationships with these sub-societies as non-bonded, bonded or anti-bonded relationships, depending on what specific tenets or maxims he applies to the particular sub-societies.

granulated Society: a Society in which granulated socialization hinders the achievement of equilibrium in the corporate person of the Society.

granulated society: a society with granulated socialization by the person whose society it is.

heterarchy: an organization of management structure which coordinates divers interests of various groups such that common interests are satisfied without justifiable special interests being contradicted.

hierarchy: an organization of management structure ordered by rank, grade, or classes of authority figures in which rulership and ranks of rulers are an integral part of the organization.

Idea (*Idee*)**:** a pure regulative principle of actions. An Idea is conceptualized and comprehended by representing it from notions, the Object of which is beyond the possibility of actual experience; the Object can therefore have only practical objective validity as a regulative principle of actions.

idea (*Begriff*)**:** (1) in cognition, an empirical idea is an empirical concept containing notions, which therefore cannot be completely exhibited in an intuition, and for which the object of the representation is a *noumenon*; (2) in general, a perception for which the object of the perception is not completely exhibited in an intuition.

injustice: a subjective feeling of *Unlust*, arising from hindrances or threats to, or denial of, a person's satisfaction of some interest; the person psychologically transfers to feeling to some person(s) or object(s) he blames for causing the feeling.

Institute: the object of an institution.

institute (noun)**:** the Object of an institution.

institute (verb): to set up; establish.

institution: the action of instituting some Object.

interest: anticipation of a satisfaction or dissatisfaction combined with a representation of the *Existenz* of some object of desire.

interest, deontologically valid: an interest grounded in a person's satisfaction of Duties or Obligations.

interest, frustrated: an interest is said to be frustrated when an action or event contradicts realizing a satisfaction of that interest and makes its satisfaction impossible to achieve.

interest, special: a mini-Community interest that is not shared in common by another mini-Community.

interests, common: the set of congruent mini-Community interests shared by two or more persons or mini-Communities. The idea of a *set* of interests is essential in this definition because the specific individual interests that make up one *common* interest are not necessarily identical. Instead, these individual interests are *congruent* interests, i.e., interests that can coexist to the satisfactions of interacting persons as practical determiners of their individual actions.

interests, congruent: an interest of a person A and an interest of a person B are said to be congruent interests if and only if a satisfaction of interest by either person does not necessarily prevent the satisfaction of interest by the other person.

interests, incongruent: an interest of a person A and an interest of a person B are said to be incongruent interests if a satisfaction of interest by either person prevents the satisfaction of interest by the other person.

interests, mini-Community: the set of all pairs of congruent interests common to every pair of persons belonging to the same mini-Community.

judgmentation (*Beurtheilung*)**:** the overall process of exercising reasoning, determining judgment, reflective judgment, the synthesis of sensibility, and the regulation of motoregulatory expression by which understanding is attained.

judicial function: that part of government assigned the expectation of authority to ensure liberty and justice are upheld according to a civil Community's social contract.

judicial panel: an instituted agency of judicial function, such as a panel of judges or a board, constituted as a formal part of the justice system of a civil Community.

just: that which is congruent with the conditions of a social contract.

just law: a legislated law in a Society's legal code that is not-incongruent with the Society's social contract.

justice: the negating of anything that is unjust.

Kraft: the ability of a person to do or to cause to be done something in particular that stands as the Object of the particular *Kraft*.

leader: a person who purposively stimulates the Self-determination of another person to express an action congruent with the leader's purpose.

leadership dynamic: the potential power of spontaneity in the reciprocal relationships between two or more people by which the Self-determinations of actions by followers are stimulated by the actions of momentary leaders.

legal code: a complete system of positive law, carefully arranged and officially promulgated; a systematic collection of laws, rules, or regulations [Garner (2019), "code"].

Lust (pronounced 'loost')**:** *Lust per se* in its positive or attractive character of an adaptation towards making actual the *Existenz* of some condition of desiration that is judged as expedient for equilibrium.

***Lust per se*:** the fundamental property of adaptive *psyche* for determining adaptation to a state of equilibrium; *Lust per se* is the unity of *Lust* and *Unlust*.

manager: a person who holds the office of an authority figure within the Community of an association of people.

merit: 1) the quality of an action whereby more good occurs from it than that for which the actor was morally responsible; 2) an action taken in accord with either *obligatione externa* or *interna* that is such that the action could not have been externally compelled in the measure to which it actually took place (an action said to be "above and beyond the call of duty").

meritorious person: a person whose action has the quality of merit and who consistently exhibits virtue in his attention to his

Duties.

mini-Community: a civil Community constituted as a proper subset defined by the intersect of its members' societies.

mini-Society: the mathematical object constituted as a mathematical set of people defined by the union of all people belonging to the divers mini-Communities of the members of a common mini-Community.

moral law (*Sittengesetz*)**:** a man-made law (a convention) of custom, manners, or propriety held to be a law of civil behavior and regarded as a social law.

moral transgression: any deed contrary to Duty.

***noumenon*:** an object understood without the testimony of the senses and represented under an Object of reason. *Noumena* holding objectively valid ontological significance do not have representations that lack all immediate connection to phenomena. A representation that does lack all such immediate connection has no ontological significance and is a transcendent idea.

Object (*Objekt, Object*)**:** that in the concept of which the manifold of a given intuition is united, which stands as subject of a judgment that can contain different possible predicates, and which has no opposite. The matter of an Object is the object; the form of an Object is the representation. The objective validity of the idea of 'Object' is practical objective validity as a schema of the organization of knowledge.

object (*Gegenstand*)**:** the matter of an Object; that which is a unity of concepts, in the concepts of which meanings are vested, and which is contrary to cognitions being haphazard or arbitrary. An object and its representation are epistemologically distinct but not ontologically distinct.

obligation (*Obligation***):** (1) in the narrow sense, the necessity of a free act under a theoretically categorical imperative of Reason; (2) in the wide sense, a ground for an act that originates from the manifold of rules of practical Reason through ratio-expression.

obligatione externa: ("outward legal liability"). A liability attached to any failure to perform some action a person or Community has pledged to perform and for which failure others can justly hold him or them culpable and justly compel him or them to negate the injustice perpetrated by his deed.

Order: an Object subsisting in the preservation of the degree of all kinds and amounts of objective good people deem to already actually exist.

outlaw: a person having relationships of interactions between himself and others who he regards as members of a Society, but who regards all of these relationships as without any reciprocal commitments or obligations and who judges his interactions with that Society only in contexts of Duties-to-himself with respect to his own situation. The outlaw relationship is reciprocal: the Society regards this individual as outlaw with respect to itself, and he regards the Society as outlaw with respect to himself.

***Personfähigkeit*:** the organization of the capacities of a person for realizing or attempting to realize the objects of his appetites. Its 2LAR structure is: the person's physical power, which subsists in the capacities of his body (Quantity); the person's intellectual power, which subsists in his knowledge, intelligence and judgment (Quality); the person's tangible power, which subsists in his stock of tangible personal goods, fungible skills, and his stock-of-time available to him for using them (Relation); and the person's persuasive power, which subsists in his ability to sufficiently communicate his thoughts and ideas to other persons and thereby gain their consent, agreement or cooperation.

Progress: an Object subsisting in increasing the kinds and amounts of objective good people deem to be possible to realize (make actual).

reasoning: 1) the capacity for the determination of the particular through the general; 2) the process of Self-regulation of the general process of judgmentation.

ruler: a leader whose leader actions are premised on tenets of a rulership relationship between himself and the follower, and who is at liberty to unilaterally take actions the follower judges to be detrimental to his welfare and counter to his purposes.

rulership: the relationship between a ruling leader and one or more followers in which Self-determination of behavior by a follower is grounded in Duties-to-himself conditioned by precepts of self-protection from possible actions the ruler is at liberty to take unilaterally. The follower is said to be subjugated by the ruler.

rules of justice (*Regeln des Rechts*)**:** concepts of rules involving one's commitment-to-obligation (*Verpflichtung*).

social: of or having to do with human beings living together in a situation requiring that they have dealings with one another.

social compact: any agreement between individuals pertaining to their association with each other in a state of Community.

social compact, condition of: that the association will defend and protect with its whole common force the person and goods of each associate in such a way that each associate can unite himself with all the other associates while still obeying himself alone.

social compact, terms of: that each associate is to put his person and all his power in common with those of the other associates

under the supreme direction of the general will, and that each associate, in his corporate capacity, will regard every other associate as an indivisible part of their whole body politic.

social contract: a specific social compact entered into by all members of an association by which each member pledges himself to specific terms under a specific condition.

social dynamic: the totality of interacting spontaneous actions of two or more persons.

Society: the Object understood as a higher concept of divers individual concepts of society retaining what is contained in common among these divers concepts.

society: the mathematical object of a mathematical concept formed by an individual and: (1) suitable for one or more of his purposes; (2) having its principal quantities represent appearances of individuals; (3) having no ontological significance whatsoever; and (4) in logical essence, the concept is a concept of relationships and associations.

synthesis: the act of combining diverse representations. Synthesis is an act of the spontaneity of the power of representation and, therefore, constitutes an act of understanding.

***téchne*:** the art of making design decisions from subjective determinations of reflective judgment, especially those of teleological reflective judgment.

transgression: any deed contrary to Duty.

uncivic: pertaining to conduct or behavior by an individual that is contrary or contradictory to civic action.

unjust: anything that breaches or contradicts the condition of a social contract.

unjust law: a legislated law in a Society's legal code that is incongruent with the Society's social contract.

Unlust (pronounced 'un-loost')**:** *Lust per se* in its negative or repulsive character of an adaptation towards abolishing the actual *Existenz* of some condition of desiration that is judged as inexpedient for equilibrium.

virtue: the individual's constant disposition (unwavering attention) to carry out his Duties.

virtue, civic: virtue in the context of (deontological) citizenship.