

Chapter 12

Republican Governance of Leadership**§ 1. The Idea of a Republic**

The word republic derives from the Latin *res publica*, the public affair or interest. Webster's Dictionary lists four entries for this word:

republic, n. [Fr. *république*; L. *respublica*; *res*, an affair, interest, and *publica*, f. of *publicus*, public.]

1. (a) a state or nation in which the supreme power rests in all the citizens entitled to vote (the electorate) and is exercised by representatives elected, directly or indirectly, by them and responsible to them; (b) the form of government of such a state or nation.
2. any group whose members are regarded as having a certain equality, common aims, etc.; as the *republic* of letters.
3. a state or nation with a president as its titular head; distinguished from *monarchy*.
4. common interest; the public. [Obs.]

Political entities calling themselves republics would do well to *not* regard the fourth dictionary definition just given as obsolete. It is precisely when this usage of the word is abandoned that the essential defining concept of "republic" – *res publica* – is forgotten. There is also an essential difference between a republic and a democracy. This difference is captured in the etymology of the word "democracy." It derives from the Greek, *dēmokratia* (popular government), which itself comes from *dēmos* (the people) and *kratein* (to rule). It is the presumptive attitude contained in this latter part of the word – the idea of *ruling* – that sows the seeds of auto-destruction that have historically characterized every past democracy in history. As for those with us today, material *Existenz* today is no guarantee they will still have material *Existenz* tomorrow, next week, or next year. The historical fact is that every major democracy that has ever been instituted has eventually decayed into perverse democracy – tyranny of the majority over the minority – and has eventually disintegrated and fallen. The power to govern is not in the least degree the same thing as the power to rule. Rather, ***the power to govern is the right to regulate civil liberty.***

The trademark act of modern democracy is the holding of elections. Rousseau was a proponent of this democratic element of republicanism, and upon this point his theory ran into numerous difficulties. He viewed voting and majority rule as the appropriate mechanism for determining what he called "the general will" – a vaguely expressed idea of what was in his mind no more than an ontology-centered Platonic *noumenon*. He wrote,

Apart from [the social contract], the vote of the majority always binds all the rest. This follows from the contract itself. But it is asked how a man can be both free and forced to conform to wills that are not his own. How are the opponents at once free and subject to laws they have not agreed to?

I retort that the question is wrongly put. The citizen gives his consent to all the laws, including those which are passed in spite of his opposition, and even those which punish him when he dares to break any of them. The constant will of all the members of the State is the general will: by virtue of it they are citizens and free. When in the popular assembly a law is proposed, what the people is asked is not exactly whether it approves or rejects the proposal, but whether it is in conformity with the general will, which is their will. Each man, in giving his vote, shares his opinion on that point; and the general will is found by counting votes. When therefore the opinion that is contrary to my own prevails, this proves neither more nor less than I was mistaken, and that what I thought to be the general will was not so. If my particular opinion had carried the day I should have achieved the opposite of what was my will; and it is in that case that I should not have been free.

This presupposes, indeed, that all the qualities of the general will still reside in the majority: when they cease to do so, whatever side a man may take, liberty is no longer possible. – Rousseau, *The Social Contract*, IV, 2

Rousseau's presupposition presupposes much – far too much. First is the obvious retort, namely, "When did anyone ever cast his vote after pondering, 'Now what is the general will on this matter?' rather than, 'What is my will on this matter?'" Second, Rousseau argues in a circle: "If I am in the minority I was wrong about what the general opinion is because the majority is always the general will. Therefore others know better than I what is best for me and know me better than I know myself." What patent nonsense this is. What sort of general will could possibly be said to be asserted when nine hundred thousand plus one vote 'aye' and nine hundred thousand minus one vote 'nay'? If we follow Rousseau's earlier argument, namely that particular wills cancel each other out in the process of voting, what we have in this example is not a proclamation of a general will but merely one un-cancelled vote out of 1.8 million cast.

It is true that if an individual gives his consent and commitment to joining himself to others in an already existing association that has adopted majority rule as a contract principle, then he is bound to abide by the will of the majority. This merely becomes one of the material reciprocal duties he then assumes of his own will in the very act of joining the association. But exactly the same thing is true of a street hoodlum who joins a gang with the understanding that a condition of his membership is that he will obey the orders of the gang's recognized chieftain. Beyond the essential term and essential condition of any social contract, its material constitution becomes the *legal* foundation of the compact.

Not surprisingly, it is Rousseau's "general will" that proves to be the fundamental weakness in his treatise *The Social Contract*. This opaque term was meant to convey the idea that among the divers opinions, mistaken ideas, mistaken judgments, and misunderstandings that produce conflicts among men, there is in any political body some set of interests shared in common by *all* members, and the general will is supposed to be or to represent this *commonality* of interest. Taken to this point, there is truth in the notion; the difficulty is and has always been clarifying the notion in a practical and universal way. Yet this clarification is necessary because the notion of

the general will is written into the essential term of Rousseau's social contract.

Elections do not measure "the general will." Any election is and can be nothing else than a sampling of people's opinions taken at a snapshot moment in time. Rousseau's idea – and that of all proponents of democratic rule – is that those divers private opinions and interests that do not properly belong to "the general will" are numerically cancelled out by the voting process *provided that the number of voters is large enough*. This is nothing but a mathematical idea with utterly no connection whatsoever to human nature or experience – a purely Platonic Object that is never encountered in real political experience. Rousseau was not a mathematician, but it appears he did have a vague appreciation of the phenomenon of statistical variance:

[The] general will is always right and tends to the public advantage; but it does not follow that the deliberations of the people are always equally correct. Our will is always for our own good, but we do not always see what that good is . . .

There is a great deal of difference between the will of all and the general will; the latter considers only the common interest, while the former takes private interest into account, and is no more than a sum of particular wills: but take away from these same wills the pluses and minuses that cancel one another, and the general will remains as the sum of the differences.

If, when the people, being furnished with adequate information, held its deliberations, the citizens had no communication one with another, the grand total of the small differences would always give the general will, and the decision would be good. But when factions arise, and partial associations are formed at the expense of the great association, the will of each of these associations becomes general in relation to its members, while it remains particular in relation to the State: it may then be said that there are no longer as many votes as there are men, but only as many as there are associations. The differences become less numerous and give a less general result. . . .

It is therefore essential, if the general will is to be able to express itself, that there should be no partial society within the State, and that each citizen should think only his own thoughts – Rousseau, *The Social Contract*, II, 3.

The impracticality of this idea glares at us from every paragraph. The idea that a large number of voters would always automatically lead to cancellation of the divers particular interests so that the majority vote would reflect nothing but the common interest is totally without human-nature foundation and is not even sound mathematics. The science of statistics teaches us that with any finite number of votes we must regard a small difference between the count of the majority and the count of the minority as insignificant to some prescribed level of confidence if this difference lies within some prescriptive range. It teaches, in other words, that unequal vote counts can still be a statistical tie vote. But it also teaches us we cannot know what this range is when the voting is either 'aye' or 'nay' and only one sampling (election) is made. Even if this mathematical defect were patched up, the idea itself is still merely mathematical and disconnected from human nature. Furthermore, the idea that the members of a community could be or would choose to remain out of "communication" with others is an idea so absurdly contrary to human nature we need not

dwell on it. The same must be said of the idea that a large community could exist without also having embedded within it a host of "partial associations." The historical failure to recognize the *Existenz* of mini-communities within the larger body politic is a shortcoming of political theory that affects at a fundamental level most of the key ideas of representative government.

Rousseau did recognize many inherent weaknesses that gainsay the romantic ideal of democracy. He also wrote,

If we take the term in the strict sense, there never has been a real democracy, and there never will be. It is against the natural order for the many to govern and the few to be governed. It is unimaginable that the people should remain continually assembled to devote their time to public affairs, and it is clear that they cannot set up commissions for this purpose without the form of administration being changed.

In fact, I can confidently lay down as a principle that, when the functions of government are shared by several tribunals, the less numerous sooner or later acquire the greatest authority, if only because they are in a position to expedite affairs, and power thus naturally comes into their hands. . . .

It may be added that there is no government so subject to civil wars and intestine agitations as democratic or popular government, because there is none which has so strong and continual a tendency to change to another form, or which demands more vigilance and courage for its maintenance as it is. Under such a constitution above all, the citizen should arm himself with strength and constancy, and say, every day of his life, what a virtuous Count Palatine said in the Diet of Poland: "*Malo periculosam libertatem quam quietum servitium.*"¹ – [*ibid.*, III, 4]

In the United States today, to speak against the so-called "unconditional good of democracy" is to utter words so unpopular as to risk damnation and tar-and-feathering at the hands of one's neighbors. Yet, although the utter *absence* of democracy *is* despotic and foolish, democracy *as governance* is not universally good, is often not particularly good, nor does it defend liberty, nor is it a fountain of wise counsel and sage decision-making. In action it is oftentimes contrary to liberty, to wise counsel, and to the production of sage and sound decisions. To discuss problems and jointly seek agreement for their resolution is sound and wise practice; to suppose there is a magic in democracy that guarantees correct solutions is a childish fantasy. Aristotle, with considerably less passion, rhetoric and romanticism than Rousseau, discoursed at length on the fundamental and irresolvable problems of democracy; indeed, he called democracy a perversion of government. It is not vital to this treatise to recount his treatise in detail here; your author recommends to you Aristotle's own words and arguments in his *Politics*, especially Books III-VI.

Closer to our own times and situations are the considerations and views about democracy held by the Framers of the U.S. Constitution. The many extremely difficult problems that confront the role of democratic mechanisms in the government of and for a free people were the principal

¹ "I prefer liberty with danger to peace with slavery."

sources of contention and argument among the delegates at the 1787 Constitutional Convention, and it was upon these issues – and not, as some moderns argue, the issue of slavery – where the Convention came closest to faltering and breaking up. None of the delegates proposed or argued for a pure democracy; all were republicans in the spirit of a Montesquieu or a Rousseau. This is to say they favored representative government but disagreed over the wisest means of choosing who those representatives were to be. It is instructive to examine the debate over the question of whether members of the U.S. House of Representatives should be directly elected by the people. Robert Yates (delegate from New York) recorded that debate in his Convention minutes:

Mr. Pinkney²: I move *that the members of the first branch* [the House of Representatives] *be appointed in such manner as the several state legislatures shall direct*, instead of the mode reported³. If this motion is not agreed to, the other will operate with great difficulty, if not injustice – If you make district elections and join, as I presume you must, many counties in one district, the largest county will carry the election as its united influence will give a decided majority in its favor.

Mr. Madison⁴: I oppose the motion – there are difficulties, but they may be obviated in the details connected with the subject.

Mr. Hamilton⁵: It is essential to the democratic rights of the community that this branch be directly elected by the people. Let us look forward to probable events – There may be a time when state legislatures may cease, and such an event ought not to embarrass the national government.

Mr. Mason⁶: I am for preserving inviolably the democratic branch of the government – True, we have found inconveniencies from pure democracies; but if we mean to preserve peace and real freedom, they must necessarily become a component part of a national government. Change this necessary principle, and if the government tends to taxation, the states will oppose your powers.

Mr. Sherman⁷ thought that an amendment to the proposed amendment is necessary.

Gov. Rutledge⁸: It is said that an election by representatives is not an election by the people. This proposition is not correct. What is done by my order is done by myself. I am convinced that the mode of elections by legislatures will be more refined, and better men will be sent [to Congress].

Mr. Wilson⁹: The legislature of the states by the proposed motion will have an uncontrollable sway over the general government. Election is the exercise of *original* sovereignty in the people – but if by representatives, it is only *relative* sovereignty.

Mr. King¹⁰: The magistrates of the states will ever pursue schemes of their own, and this, on the proposed motion, will pervade the national government – and we know the state governments will be ever hostile to the general government.

² delegate from South Carolina

³ direct election of the representatives by the people according to election districts

⁴ James Madison, delegate from Virginia

⁵ Alexander Hamilton, delegate from New York. Hamilton favored abolishing the state governments.

⁶ George Mason, delegate from Virginia

⁷ Roger Sherman, delegate from Connecticut

⁸ John Rutledge, delegate from South Carolina

⁹ James Wilson, delegate from Pennsylvania

¹⁰ Rufus King, delegate from Massachusetts

Mr. Pinkney: All the reasoning of the gentlemen opposed to my motion has not convinced me of its impropriety. There is an *esprit de corps* which has made heretofore every *unfederal* member of congress, after his election, become strictly *federal*, and this I presume will ever be the case in whatever manner they may be elected.¹¹

Question put on Mr. Pinkney's motion and carried by 6 states against 4 – one divided.¹²

Question then put on the resolve¹³ – 9 states for – 1 against – 1 divided.¹⁴ – Max Farrand, *The Records of the Federal Convention of 1787*, vol. I, June 21, 1787

The great issue and problem with constituting any form of governance is, of course, that all these men were right *and* all these men were wrong. In the end, the Constitutional Convention decided to constitute the general government of the United States as a *democratic republic* – that is, a republic in which *some* democratic mechanisms were provided but which was in no way *democracy government*. In the two hundred twenty-three years since the Convention, changes have been made in the Constitution of the general government of the United States, and today it is no longer a democratic republic; it is now a *representative democracy* and there is an essential difference between the two in regard to safeguarding liberty from democracy.

That this government by representative democracy is in a state of stagnation and breakdown is too-well evidenced in recent U.S. history. It has become a government of rulers rather than agents of the people and it operates on the *oligarchic* principle of *tyranny of the majority by a minority*. Its factions – the two principal ones bearing the utterly misleading names Republican Party and Democratic Party – employ vicious and misleading propaganda that proves to be effective in swaying the transient opinion poll that is the modern day popular election. As entities these political parties have only one remarkably common agenda: both seek nothing else than to hold *the power to rule*. Neither seeks *to serve* the people of the United States. Neither has any clear idea of what to do with power when they have it. Neither demonstrates the least fidelity to the six ***essential objectives of republican government***: (1) to form a more perfect union; (2) to establish justice; (3) to insure domestic tranquility; (4) to provide for the common defense; (5) to promote the general welfare; and (6) to preserve the blessings of liberty. Neither is stalwart or faithful to the oath elected officials make to the American public to preserve, protect, and defend the Constitution of the United States. Both are uncivic antisocial entities.

Fulfillment of the six objectives named above constitutes the ***real essence of a republican system of governance***. Government, as a noun, is nothing more than a name for those individuals

¹¹ Pinkney refers to the Continental Congress and to the Congress under the Articles of Confederation.

¹² Massachusetts, New York, Pennsylvania, Virginia, North Carolina, and Georgia voted 'no'; Connecticut, New Jersey, Delaware, and South Carolina voted 'aye.' The Maryland delegation split over the vote. Rhode Island and New Hampshire were absent.

¹³ that is, that members of the House of Representatives be directly elected by the people

¹⁴ New Jersey voted no; Maryland was divided (neither yea nor nay). New Hampshire was not present until July 23rd and Rhode Island refused to send a delegation to the Convention.

who, collectively at any particular moment in time, are responsible to the members of the community for administration of public work done in the common public interest, the *res publica*. The real purpose of any body of governors and agents is the governance of leadership – the guiding of the various leader-follower interactions by which an aggregate of individuals is able to cooperate in concert according to and in strict compliance with a social contract. It is through the governance of leadership that the "vigor" of Toynbee's "growing civilization" – or of any community – is brought to realization. At the same time, it is the misgovernance of leadership and its corruption by the plutocratic condition through which this vigor is sapped, stagnation sets in, the breakdown of community begins, and its disintegration finally results.

No one joins in an association with his fellow human beings for the grounding purpose of devoting all his time and expending all his personal power on affairs of governance. That is why a community of republicans sets up an agency for accomplishing the management of these affairs and entrusts it with the *expectation* of authority. The management of leadership for the successful realization of public interests is the sole purpose and justification for any system of government that can claim a deontological mantle of a *right* to govern, a *right* to enforce compliance with the laws of the body politic, and a *right* to determine what these laws shall be. At any particular moment in time the body of legislation – laws, policies, and directives – is nothing more than an imperfect current instantiation of the understandings held by agents of government of that vague something-or-other Rousseau tried to grasp with his idea of "the general will."

§ 2. The Idea of the General Will

Let us pay special heed to the word *right* just used above. The idea of any right¹⁵ is always an idea of morality. It is also an idea that is utterly without real social-natural meaning in any doctrine of morality grounded in ontology-centered or in religious tenets and principles. The only real social-natural possibility for a universal and objectively valid doctrine of rights is grounded in deontological tenets and premises. It must be epistemology-centered, and it must be based upon human nature as we understand this nature through mental physics.

At root, all *universal* objectively valid tenets of governance are deontological moral tenets. Otherwise the system of governance is nothing else than subjugation of the less powerful by the more powerful. No person voluntarily joins any association and takes upon himself tenets of mutual obligation or makes a self-determination to take action from a ground in reciprocal duties in order so that he may be subjugated by others in violation of the condition of a social contract. It

¹⁵ other than the carefully delimited context of the human-nature right of self-determination, which is a right only in the sense that no power in the world can prevent self-determination

seems probable, in the opinion of your author, that the term and the condition – which are the *essence* of any social contract – cannot be too often repeated in this treatise:

The term: Each individual puts his person and all his power in common under the supreme direction of the general will, and, in the corporate capacity of the community, all citizens receive each member as an indivisible part of the whole.

The condition: The association (community) will defend and protect with the whole common force the person and goods of each associate in such a way that each member, while uniting himself with all, may still obey himself alone and remain as free as he was prior to joining in the association of the community.

It is in the term where we encounter Rousseau's idea of the general will. If any real social contract is to be possible, we must obtain the *Critical Realerklärung* of this idea.

The Critical problem of the general will in the context of the governance of leadership must be seen in relationship to the tenet of moral legislation: *Act so that the maxim of your will always can hold good at the same time as a principle of universal legislation.* Here it is a requirement that legislation *said to present* the general will must be *universal* in its character. But in what connotation is it to be held-to-be-universal?

We can begin by noting that universal character is unrelated to determinations made by votes. Thoreau correctly observed,

All voting is a sort of gaming, like checkers or backgammon, with a slight moral tinge to it, a playing with right and wrong, with moral questions; and betting naturally accompanies it. The character of the voter is not staked. I cast my vote, perchance, as I think right; but I am not vitally concerned that right should prevail. I am willing to leave it to the majority. Its obligations, therefore, never exceed that of expediency. Even voting *for the right* is *doing* nothing for it. It is only expressing to men feebly your desire that it should prevail. A wise man will not leave the right to the mercy of chance, nor wish it to prevail through the power of the majority. – Henry David Thoreau, *Civil Disobedience*

Decision-making *on matters of mere expediency* by means of voting is a pragmatic and workable way of resolving differences that do not touch upon the core condition of a social contract. It makes no real difference to me if the law mandates cars will be driven on the right-hand side of the street rather than the left-hand side, or if a red light means "stop" instead of "go." It does matter to me, for reasons of my own safety, that there be traffic laws all can follow and be required to follow. I do not care if such laws are established by vote or by the order of an executive agent of government. I do care that laws covering this matter be made and I will accept whatever seems expedient for seeing to it that they are. But in matters touching upon the fulfillment of the condition of the social contract, it is a different matter altogether. Here *I will not accept* interference or abrogation of the condition by a majority vote, even if that vote should be two hundred fifty million "aye" to just my "nay." I will not accept the most imperious command to submit nor a command to be silent in my opposition. As Mill famously wrote,

If all mankind minus one were of one opinion, and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person than he, if he had the power, would be justified in silencing mankind. – John Stuart Mill, *On Liberty*, 2

A person determines himself to leave the state of nature in favor of joining in an association with his fellow men, and to determine himself to mutual obligations and reciprocal duties in that association, from grounds pragmatic, rational, and *personal*. When he enters into the association he obliges *himself* to alienate particular natural liberties in exchange for a *convention* of civil liberties and civil rights. His rational motivating factors include the securing of greater protection, for his person and for his intimates, and to promote the growth of his own personal power – physical, intellectual, tangible, and persuasive. His motivating factors and incentives are selfish at root but not, because of this, either amoral or immoral because those natural incentives that stimulate him to his determination he obliges himself to meet and respond to *as a duty to himself*. In a state of nature this is the only kind of duty to which he obliges himself, and this is nothing more and nothing less than a fundamental characteristic of being a sentient living being. A duty one gives to oneself as a duty to oneself is either a categorical duty (insofar as it concerns a relationship to one's own personality) or a hypothetical duty (insofar as it concerns relationship to one's situation in nature).

What he takes on in addition by the association is the reciprocal relationship (the Relation between himself and the situation of others). *This* relationship can be amoral (as in the case of an outlaw who only feigns to make a compact without taking upon himself the least obligation to the association) or it can be moral, which is the case when he does take upon himself an obligation to the association. The outlaw is driven only by expediency in the service of his own interests. The citizen of a republic is driven, in part, by mutual obligation and duties until and unless he elects to make himself a criminal by unilaterally withdrawing, without civic justification, his allegiance to the association and the abandonment of his commitment to reciprocal obligation.

*It is by understanding the Relation in which the individual holds himself with respect to the association that we can approach the difficult question of whether there is any practical objective validity to the idea of the general will and, if so, in what this objective validity subsists. We begin by noting that once the individual has taken up mutual obligation in the association, it is no longer morally possible¹⁶ for him to withdraw this obligation unilaterally without just cause and revert to the outlaw status he held previously. This is because the statement of the problem to which the social contract is the proposed solution is *explicit*:*

¹⁶ The author intends for the reader to interpret his use of the word "moral" and its related terms in this chapter deontologically and *only* deontologically.

"The problem is to find a form of association which will defend and protect with the whole common force the person and goods of each associate, and in which each, *while uniting himself with all*, may still obey himself alone, and remain as free as before." – Rousseau, *The Social Contract*, I.6

Here the italicized phrase is the keystone of the act of association. Once the individual has chosen to unite himself with others and they with him, he alienates his natural liberty to withdraw from that association unilaterally without *just cause*, and there is no just cause for this withdrawal *other than failure by the community to meet the condition of the social contract*. He can not unilaterally choose to pass from citizen back to outlaw. He can only choose to remain a citizen or become a *criminal*. In Rousseau's words,

This formula shows us that the act of association comprises a mutual undertaking between the public and the individuals, and that each individual, in making a contract, as we may say, with himself, is bound in a double capacity; as a member of the Sovereign he is bound to individuals, and as a member of the State to the Sovereign. But the maxim of civil right, that no one is bound by undertakings to himself, does not apply in this case; for there is a great difference between incurring an obligation to yourself and incurring one to a whole of which you form a part. – [*ibid.*, I.7]

This also tells us how the idea of the Sovereign is to be understood. It is the *entirety* of the membership of the association, i.e. the entirety of *all* its citizens. This entirety, this Sovereign, composes *the universe* for all acts of governance of the community so formed. And this is how we take the context of *universal* in reference to the moral tenet of legislation. We call this *the formula of the Sovereign* and, because it is a crisp *mathematical* definition, it is objectively valid. It is, at the same time, nothing else than a *formal* definition, its object is an object of mathematics (and, as such, the validity of its idea is practical, not ontological, validity), and to *apply* it we must face an *empirical* ambiguity. Among the totality of the people in a *geographic* community, there is an unknown and unidentified number of outlaws and criminals. The outlaws have never committed themselves to mutual obligation, the criminals have *intentionally* transgressed their duty to the association. Complicating this situation is the fact that there is also some number of citizens who have *unintentionally* transgressed their duty to the association. In their case, the transgression (being unintentional) is a *moral fault*; in the case of the criminal, his intentional transgression is a *crime*. This is the *deontological* distinction between moral fault and crime. It is deontological because it is referred to and grounded in that power of *determination* of appetitive power every human being possesses, i.e., his capacity of pure practical Reason.

The individual's self-determination of his actions – that is, the determination of his appetitive power in practical Reason – is influenced by those tenets of reciprocal duties he *conceptualizes* when once he has determined himself to join with others in a social compact. Such conceptualized reasons he makes for acting or not acting in particular circumstances reflect in his

understanding the practical and private moral code he *constructs* with his manifold of rules. Kant taught that a human being must be regarded in two co-equal aspects. The first is the human being as an intelligent being, and this is the aspect of being human that is demonstrated in his personal capacity to act as an agent who makes choices. The *ground* for this purely intelligible aspect of being human is the *I* of transcendental apperception (the knowledge *a priori* we each have of our own *Dasein* without any accompanying knowledge *a priori* of the Nature of our own *Existenz*). Kant called this the *homo noumenon* aspect of being human. The second aspect is the human being as a physical being in a physical world and as a phenomenon in Nature. This is the aspect of experience, through which each comes to construct his individual understanding of the Nature of his own *Existenz*. Kant called this the *homo phaenomenon* aspect of being a human being. This aspect of being human is influenced by the interplay of his actual interactions with the physical world combining with his feelings of *Lust* and *Unlust* to produce personal experience.

One can choose to act on the basis of one's concepts of tenets, the possibility of which is laid to the *homo noumenon* aspect of being human. However, the practical objective validity of such a tenet is and can only be that of a mere formula. As concepts of pure form, they are devoid of the empirical matter that must always attend, like muscle on bone, every action he takes as *homo phaenomenon*. The *formula alone* can command universality and necessitation, but applying his *tenets* in the physical world can never be undertaken without, in a manner of speaking, "filling in the blanks in the formula" with the speculative concepts by which he understands specific objects. This latter knowledge is empirically contingent, and in this lie the roots for mistaken judgments, wrong conclusions, unexamined premises, and affective prejudices. To quote again what Onora Nell said of a human being's moral choices,

It was assumed that it could be discovered when an agent's action was inappropriate to his situation or to his act, or when the agent was acting on the basis of a mistaken means/ends judgment. But when we act we are not in that position. Once all reasonable care has been taken to avoid ignorance, bias, or self-deception, an agent can do nothing more to determine that his maxim does not match his situation. Once an agent has acted on his maxim attentively, he can do no more to ensure that his act lives up to his maxim. We cannot choose to succeed, but only to strive. Once he has taken due care to get his means/ends judgments right, he can do nothing further to ensure that they are right. Agents are not simultaneously their own spectators. In contexts of actions they cannot go behind their own maxims and beliefs. We can make right judgments, but not guarantee right acts. – Onora Nell, *Acting on Principle*

This is the role *individuality* plays in the problem of understanding the idea of the general will. *All* cognitions one forms and then applies to acting in the particular in a specific circumstance are theoretical conceptions, depend on one's personal store of experiential knowledge, and, by this dependency, can never *practically* be more than merely hypothetical imperatives of action. This

is so even when one regards his conceptualized maxim as a *theoretically* categorical imperative (that is, when the person knows of no exceptions to his conceptualized rule for how he *ought* to act). This is the fundamental challenge and issue in applying the tenet of moral legislation.

The consequence for the problem of understanding the idea of the general will is this: the general will conceived by Rousseau is and can never be anything else than an *ideal* – something to strive to understand more perfectly with, *at the same time*, full consciousness of the fact we cannot guarantee this task can ever be completed. Through the medium of experience *we can do no better than to identify imperfections* in our collective sculpturing of this ideal by means of legislation, policies, legal judgments, and the accepted or tolerated mores and folkways of the social community. The body politic of the community *will make mistakes*. It will on occasion *perpetrate injustices*. There is neither fault nor blame to register here because this is a fundamental consequence and property of being human and living in a community of human beings. Nothing can be done to change this, nothing can be done to abolish it.

There is an enormous practical difference between perpetrating an injustice and *perpetuating* it, though. If *pure* general will can never be anything other than a speculative ideal, it is another matter altogether with *practical* general will. Here the objective validity does not lie with some ontological *thing* beyond the horizon of possible experience. Rather, *it subsists in the methods and collective actions by which the association is progressively made more ethically perfected*. The objectively valid and deontological idea of the general will therefore comes down to this: (1) We hold the totality of laws, policies, precedents, mores and folkways of the community to be the instantiation at the present moment in time of a snapshot portrait of an appearance of the general will; (2) the community also establishes a process to ensure on-going case-by-case reviews of actually experienced consequences of the outcomes of applying this empirical system to specific instances; (3) this judicial process *passes judgment on these consequences according to the standard of a social contract to determine if the condition of the contract is met for everyone*; and (4) if the judgment is that the condition of the contract has been violated, changes are instituted in law, policy, more or folkway as appears necessary so that the injustice is not perpetuated. This is the practical *Realerklärung* of a *justice system* for the community of the association.

From this the practical and objectively valid *Realdefinition* of the general will follows: *the general will is the unity in acting to improve the communal idea of ethical and moral perfection of the association through an on-going process of review, evaluation and refinement, taking as its aliments all factors pertinent to the maintaining and sustaining of civil tranquility within the community*. In this we see that we must draw a distinction between *the mechanisms of a justice system* the community must establish – which belongs to the

governance of leadership – and the *purpose* for which this justice system is established – which is none other than ensuring that transgressions of the social contract are not perpetuated. The general will subsists in the purpose of the community's justice system.

§ 3. The Republican Justice System

It cannot be over-emphasized that a legal system is not a justice system. Every entity of enterprises has a legal system even if it is nothing more than the law of despotism voiced by the commercial proverb, "the boss makes the rules." In asocial relationships a legal system is only a convention backed by some power of coercion; in it there is nothing moral and nothing ethical. In republican Enterprise, on the other hand, the legal system is nothing else than the instantiated mechanisms of the governance of leadership set up *to serve the justice system*. Again, anything that violates the term or the condition of the social contract is *unjust*. *Justice* is the negating of anything that is unjust. The *justice system* of a republican Enterprise is *the institution of mechanisms for the purpose of realizing universal justice within the community*.

The too-often-heard aphorism uttered by some agents of the legal system in the U.S., namely, "the justice system is about the law, not about justice," is a pernicious social falsehood. There is no totemic sanctity that subsists in a mere legal system. The legal system is nothing more than a present instantiation of mechanisms intended to reflect the community's ideal of its general will at the present moment in time. In simile, it is like a person's corporeal body that physically enacts the determination of his appetitive power. In this same simile, the justice system is like a person's power of appetition. The legal system is always subservient to the justice system, and where the legal system fails to prevent or negate injustice, it must be changed. The legal system is the mere appearance of justice, the justice system is its object.

The aliments of the process of justice (the system of on-going review and social adaptation whose functional unity *is* the practical general will) include all factors pertinent to the sustenance of civil tranquility in the community. In political systems, this civil tranquility is called *domestic* tranquility; its promotion by the political system of government is one of the six fundamental objectives for government of any free people. All the aliments of the process of justice are empirical factors and we learn them through experience. For this reason, it is not possible to compile a complete list or menu of these factors and hold this list to be perfect or complete. Perfection is a process, not an end-point, because the end-point is always an Ideal. However, it is possible to compile and maintain a list of empirically known aliments that provide a *differential orientation towards* tranquility. Such a list must, from experience, include the following factors:

- insuring the just resolution of legitimate grievances according to the ultimate standard of a social contract;

- distinguishing and treating between those grievances that arise from conflicts of private interests, which are not necessarily pertinent to the common interests of the community even when they are just, and those which impact the general will of the Sovereign;
- distinguishing between those issues of grievance that require immediate actions to redress vs. those pertaining to the general governance of leadership, which will often require time for reflection and a refinement of ideas before a just redress is possible;
- removal of all barriers that impede or suppress petitioning for redress of grievances by any member of the community;
- insuring the establishment of a judicial agency of governance for conducting the timely review, evaluation and judgment of all petitions for redress of grievances;
- insuring that the judgments of this agency are carried out by executive agents of the system of governance and, where necessitated, by reform of the legal system by legislative agents of governance;
- insuring that redress concerning any one of the six general objectives of republican governance is carried out in a manner not prejudicial or harmful to any of the other general objectives of governance; the general objectives must *all* be satisfied.

In all of this, we must carefully distinguish between the idea of *civil ethics* and the idea of *legal ethics*. Civil ethics is the doctrine of justice under the social contract of the community. Legal ethics is the doctrine of rules and methods for realizing the requirements of the legal system. It is possible for a tenet of legal ethics to come into conflict with a tenet of civil ethics, and where this occurs the legal tenet must give way to the civil tenet of justice. For example, it is a duty of every citizen of a community to obey the just laws of that community. This is a matter of legal ethics. However, it is also a duty of every citizen to *disobey and oppose* an *unjust* law, and this is a matter of civil ethics. An unjust law is one under which the essential condition of the social contract is violated. One who violates this duty of disobedience makes himself an abettor of the perpetuation of injustice and commits a transgression against the community. The duty of disobedience is at the heart of the justice in Charles Eliot Norton's call for patriotism:

The voice of protest, of warning, of appeal is never more needed than when the clamor of fife and drum, echoed by the press and too often by the pulpit, is bidding all men fall in and keep step and obey in silence the tyrannous word of command. Then, more than ever, it is the duty of the good citizen not to be silent. – Charles Eliot Norton, *True Patriotism* (1898)

Citizenship in a republic is not and can never be an entitlement. It carries duties as a condition and at times requires courage. In civil affairs, cowardice is *at the least* a moral fault and *can be* a crime. Courage subsists in carrying out one's duty when one is fearful. Fear and bravery are constant companions, and the latter has no real social-natural context without the former.

Republican governance of leadership requires institution of a justice system for the purpose of civil community in the Enterprise. The justice system is the arbiter of the social contract and has for its motto the imperative *realize liberty with justice for all*. It must include in its institution a

mechanism of petitioning for redress of grievances, a mechanism for judging the legitimacy of the grievance under the social contract, and a mechanism for causing these judgments to be enforced by accommodations made to the legal system. The most serious matters impacting the insurance of civil tranquility are often those matters arousing the greatest passions and conflicts among the citizens of the community. These are the situations that give rise to the greatest threats to the sustaining of Enterprise and most directly provoke formation of a Toynbee proletariat. The republican governance of leadership must always take these matters with grave seriousness.

Let us not misunderstand the social-natural root of all civil malcontent. In every community there will be on-going tension felt by the individual between the impetuosity of his natural liberty and the civil constraints on his actions imposed by and for the community. It is, therefore, an important problem of governance to ensure that a proper understanding is achieved by the community's members concerning what natural liberties are to be alienated in entering into the social contract. The purpose of the community's legal code is not to homogenize the society but rather to maintain civil relationships among its members and promote the development of civic tenets by all members of the community. The tensions of conflict between the exercise of natural liberty and the constraints on civil liberty must be turned and channeled by proper leadership to objects of relationships rather than to objects of personality because when the latter occurs tension becomes frustration and the situation becomes dangerous to community. Each member expects and requires *of the community and all its members* protection against dangers to himself. He requires this as a necessary benefit he obtains *by right* from his exchange of natural liberty for civil liberty. The community, in turn, requires of him *his personal service in the common cause*.

It is from this two-way condition for civil tranquility of Enterprise that we come to four specific objectives of implementation for the governance of justice in republican Enterprise:

1. *to set up mechanisms necessary for effecting a process for the Petition of Right;*
2. *to establish a system of Boards of Right to receive and judge the merits and legitimacy of Petitions of Right, and to insure such Boards are empowered to render the best republican judgments of legitimacy and merit;*
3. *to insure that agents appointed to the system of Boards of Right are qualified, capable, and committed to act as civically moral judges of petitions; and*
4. *to implement a process of mandamus whereby judgments of right are made actual in the governance of the Enterprise.*

Our next task is to explain and clarify these objectives of republican governance of justice.

The term "Petition of Right" is borrowed from English law. It is a petition for redress of a grievance and is issued containing the imperative, "Let right be done." A Petition of Right in the context of this treatise is a petition to counter or overturn policies, practices, or actions that are

injurious to the condition of the Enterprise's social contract. However, it must be recognized that not every such petition will bear a legitimate grievance under the social contract. Self-interests will clash with the common interest of the body politic of the Enterprise. It cannot be presumed that every member of the Enterprise will have an equally valid understanding of the terms and conditions of the social contract. Mill wrote,

When we talk of the interest of a body of men, or even of an individual man, as a principle determining their actions, the question what would be considered their interest by an unprejudiced observer is one of the least important parts of the whole matter. What it is the man's interest to do or refrain depends less on any outward circumstances than upon what sort of man he is. If you wish to know what is practically a man's interest, you must know the cast of his habitual feelings and thoughts. Everybody has two kinds of interests, interests which he cares for, and interests which he does not care for. Everybody has selfish and unselfish interests, and a selfish man has cultivated the habit of caring for the former and not caring for the latter. Everyone has present and distant interests, and the improvident man is he who cares for the present interests and does not care for the distant. It matters little that on any correct calculation the latter may be the more considerable if the habits of his mind lead him to fix his thoughts and wishes solely on the former. . . . On the average, a person who cares for other people, for his country, or for mankind, is a happier man than the one who does not; but of what use is it to preach this doctrine to a man who cares for nothing but his own ease or his own pocket? . . . It is like preaching to the worm who crawls on the ground how much better it would be for him if he were an eagle. – John Stuart Mill, *Representative Government*, 6

A petition must be judged solely in terms of merit in regard to whether or not the object of the petition is in fact an object injurious to the communal commitment to "defend and protect with the whole common force the person and goods of each associate in such a way that each member . . . may still obey himself alone and remain as free as he was prior to joining in the association of the community." All civil rights and all civil liberties granted to the members of an Enterprise are so granted only so that *both* the term of the social contract is met by each individual yet the condition of the social contract is met by the community as a whole.

To adjudicate these matters it is necessary that the governance of leadership of the Enterprise be organized such that it provides a system for impartial review. This is the reason for stating above that a *system* of Boards of Right be established. It is unwise to empanel only one single adjudicating body of representatives for these matters or to not provide a structure that promotes and encourages both judicial review and on-going interchanges between the Boards that refresh and remind their members of the necessity that their standards of judgment remain focused upon the good of the Enterprise as a whole in terms of its *survival* factor of *individual liberty combined with reciprocal duties*. A peculiar task of this system is the prevention of abuse of power, whether that abuse arises from the actions of an individual or from a tyranny of folkways that introduce unconscious institutionalized bias. It is as vital to safeguard the Enterprise from the tyranny of democracy as from the tyranny of a despot and the actions of a criminal. Watson wrote,

[IBM's] early emphasis on human relations was not motivated by altruism but by the simple belief that if we respected our people and helped them to respect themselves the company would make the most profit.

Our management also recognized the individual has his own problems, ambitions, abilities, frustrations, and goals. We wanted to be certain that no one got lost in the organization and, most of all, that no individual became a victim of any manager's unfairness or personal whim. In this regard, we developed what we call our "Open Door" policy. This is a key element in our employee relations. . . .

The Open Door exists today as it did [in the days when Watson's father ran IBM]. I'm sure that a policy of this kind makes many a traditional manager's blood run cold. He probably sees it as a challenge to his authority or, worse yet, as a sharp sword hanging over his head. But the fact remains that in IBM it has been remarkably effective, primarily because – by its mere existence – it exercises a moderating influence on management. . . . And by its existence, I believe, it acts as a deterrent to the possible abuse of management power. – T.J. Watson, Jr., *A Business and Its Beliefs*, 2

A *system* of Boards of Right is central to the realization of *justice* within the Enterprise. This requires particular personal qualities of intellect and experience be present in the members of the Boards. The first of these is that every member must place the value of corporate *citizenship* above all other values within the context of the Enterprise. Again, citizenship is the actuality of individual actions congruent with conventional general standards of expectation for civic actions. It is grounded in reciprocal duties of association.

Secondly, each Board member must know and remain ever conscious of the fact that the concept of "right" can have universal objective validity *only* if this concept is deontological. If concepts of consequentialist, virtue or religious ethics are permitted to displace the deontological evaluation of right, an institutionalized bias is introduced into the justice system with the *inevitable* result that injustice and the creation of a Toynbee proletariat will follow thereafter.

Thirdly, the outlook and loyalty of the Boards individually and collectively must remain catholic in the connotation that word carries of being general, all-inclusive, liberal, and not prone to narrow-mindedness or partiality. The members of an Enterprise come into it with different classes of interests grounded in duties-to-the-self. Those of the capital investor are not the same as those of the wage-seeking craftsman or other laborer. Civic goals of each class of enterprise in the overall union of enterprises must all be respected and promoted to the fullest extent that this promotion does not injure the civic goals of the other classes of enterprise. The Enterprise must be and remain an actual civil *union* of its members or it soon breaks down into a mere entity.

Fourthly, placement in a position as a member of a Board of Right is not an honor bestowed upon an individual – although such a placement reflects honored evaluation of the person's character in the esteem of his fellow citizens. By practical definition, the members of the Enterprise have an expectation for authority to be demonstrated by every member of a Board. Again, authority is possession of the *Kraft* of causing something to become greater, to increase, to

be strengthened, or to be reinforced in some way. In the case of Boards of Right, this something is nothing else than the deontological general will of the Enterprise. A person accepting a position as a member of a Board of Right is accepting a *duty* to the community of the Enterprise. His loyalty must be loyalty to the Enterprise alone and never to particular individuals within the Enterprise. Fulfillment of this duty will sometimes require personal courage be demonstrated by a Board member because each adjudication of each petition will probably dissatisfy someone. *In effect*, every action by every Board of Right is a *de facto civics lesson* taught to the membership as a whole. The actions of governance are *always* at the same time *acts of education*. The lessons they impart teach the membership whether they are in fact members in a community or denizens in a social jungle.

For all these reasons, it is foundationally essential that the agents of the Boards of Right be the most ably civic-minded representatives who can be found. They should not be appointed by fiat, by random lot, or by an impersonal democracy. To the extent that democratic mechanisms might be employed in appointing Board members, it must be a very personal kind of *local* democracy because it is vital that a Board member be personally known, trusted and respected by those who elect him. Socio-political *parties* – affiliations in sub-communities of special interests – must be permitted to play *no role whatsoever* in determining who is to be entrusted with the duties of a Board member (or any other agent of governance). George Washington wrote,

The Unity of Government, which constitutes you one people, is also now dear to you. – It is justly so; for it is a main Pillar in the Edifice of your real independence; the support of your tranquility at home; your peace abroad; of your safety; of your prosperity in every shape; of the very Liberty which you so highly prize. – But as it is easy to foresee that, from different causes and from different quarters, much pains will be taken, many artifices employed, to weaken in your minds the conviction of this truth; – as this is the point in your political fortress against which the batteries of internal and external enemies will be most constantly and actively (although often covertly and insidiously) directed, it is of infinite moment that you should properly estimate the immense value of your national Union to your collective and individual happiness; – that you should cherish a cordial, habitual, and immovable attachment to it; accustoming yourself to think and speak of it as the Palladium of your political safety and prosperity; watching for its preservation with jealous anxiety; discountenancing whatever may suggest even a suspicion that it can in any event be abandoned, and indignantly frowning upon the first dawning of every attempt to alienate any portion of our Country from the rest, or to enfeeble the sacred ties which now link together the various parts. . . .

Let me now take a more comprehensive view and warn you in the most solemn manner against the baneful effects of the Spirit of Party, generally.

This spirit, unfortunately, is inseparable from our nature, having its root in the strongest passions of the human mind. – It exists under different shapes in all Governments, more or less stifled, controlled, or repressed; but, in those of the popular form, it is seen in its greatest rankness and is truly their worst enemy. –

The alternate domination of one faction over another, sharpened by the spirit of revenge, natural to party dissension, which in different ages and countries has perpetrated the most

horrid enormities, is itself a frightful despotism. – But this leads at length to a more formal and permanent despotism. – The disorders and miseries, which result, gradually incline the minds of men to seek security and repose in the absolute power of an Individual; and sooner or later the chief of some prevailing faction, more able or more fortunate than his competitors, turns this disposition to the purposes of his own elevation on the ruins of Public Liberty. . . .

It serves always to distract the Public Councils and enfeeble the Public administration. It agitates the community with ill-founded jealousies and false alarms, kindles the animosity of one part against another, foment occasionally riot and insurrection. – George Washington, *Farewell Address*, Sept. 19, 1796

Finally, a system of Boards of Right is of utterly no practical efficacy if its judgments are impotent. This system must have the power to compel the governors of the Enterprise to do their duty under the social contract. A writ of mandamus is a command to an official to carry out his duty. Matters of right are not matters of constitutionality but rather matters of *deficiency* of law, *excess* of law, or *imbalance* of law. A judgment of right without subsequent action of redress is without benefit and only fertilizes the growth of a Toynbee proletariat. Thoreau wrote,

How can a man be satisfied to entertain an opinion merely, and enjoy *it* ? Is there any enjoyment in it, if his opinion is that he is aggrieved? If you are cheated out of a single dollar by your neighbor, you do not rest satisfied with knowing you are cheated, or with saying that your are cheated, or even with petitioning him to pay you your due; but you take effectual steps at once to obtain the full amount, and see that you are never cheated again. Action from principle – the perception and performance of right – changes things and relations; it is essentially revolutionary, and does not consist wholly with any thing which was. – Henry David Thoreau, *Civil Disobedience*

However, although the system of Boards of Right must have the power to compel action for the just redress of grievances, it must not itself hold the power to *legislate*. John Adams wrote,

The dignity and stability of government in all its branches, the morals of the people, and every blessing of society depend so much upon an upright and skillful administration of justice, that the judicial power ought to be distinct from the legislative and executive, and independent of both, that so it may be a check upon both, as both are a check upon that. The judges, therefore, should always be men of learning and experience in the laws, of exemplary morals, great patience, calmness, coolness, and attention. Their minds should not be distracted with jarring interests; they should not be dependent upon any man or any body of men. – John Adams, *Thoughts on Government*

It always requires the keenest judgment and the finest balance to ensure that in the governance of leadership too much power is not concentrated in too few hands, for such a concentration of power, invariably by human nature, devolves from governing to ruling. Mill wrote,

Now it is a universally observed fact that the two evil dispositions in question, the disposition to prefer a man's selfish interests to those which he shares with other people, and his immediate and direct interests to those which are indirect and remote, are characteristics most especially called forth and fostered by the possession of power. The moment a man, or a class of men, find themselves with power in their hands, the man's individual interest, or the class's separate interest, acquires an entirely new degree of

importance in their eyes. Finding themselves worshipped by others, they become worshippers of themselves, and think themselves entitled to be counted at a hundred times the value of other people; while the facility they acquire of doing as they like without regard to consequences insensibly weakens the habits which make men look forward even to such consequences as affect themselves. This is the meaning of the universal tradition, grounded on universal experience, of men's being corrupted by power. – John Stuart Mill, *Representative Government*, 6

This natural propensity is grounded in maxims of self-determination answering to practical maxims and tenets of duties to oneself. The propensity itself is neither surprising nor mysterious when once we remember that practical maxims giving rise to concepts of reciprocal duty and obligation are themselves originally grounded in acts of self-determination that responded to the person's practical hypothetical imperatives of duties of himself. The manifold of concepts obtains the orientation of its structuring from ratio-expression, and ratio-expression belongs to the process of pure Reason and is oriented by the cognitively dark and affectively cold manifold of rules. Once a man brings himself to thinking of himself as the king of the jungle, the jungle is the home he prefers. The experience-founded intuition of this led Montesquieu, Locke, and the Framers of the U.S. Constitution to embrace the concept of checks and balances between the legislative, executive, and judicial functions of governance.

§ 4. Checks and Balances in the Governance of Leadership

There are four distinguishable institutions in the governance of Enterprise. It is not an over-stretched metaphor to say the justice system is the conscience of the Enterprise. Its objective is to sustain the essential union and liberty of the community and to ensure that the aims of the individual enterprises within it are not thwarted in any sphere where those aims are civic. It has *two* principal authorities: (1) prevention of plutocracy in governance; and (2) protection of the members from criminal actions of citizens operating within its community and outlaw actions by individuals who feign being citizens of the Enterprise. In a sense, these two are really one and the same because plutocracy becomes criminal sooner or later within any community organized as a republic. The first constitutional objective of the justice system is *to establish justice* (and, most emphatically, it is *not* to establish legality). The social effect of a properly functioning justice system is what Montesquieu called *virtue in a republican*. He wrote,

Virtue in a republic is a most simple thing: it is a love of the republic; it is a sensation, and not a consequence of acquired knowledge: a sensation that may be felt by the meanest as well as the highest person in the state. When the common people adopt good maxims, they adhere to them more steadily than those whom we call gentlemen. It is very rarely that corruption commences with the former: nay, they frequently derive from their imperfect light a stronger attachment to the established laws and customs.

The love of our country is conducive to a purity of morals, and the latter is again conducive to the former. The less we are able to satisfy our private passions, the more we

abandon ourselves to those of a general nature. – Montesquieu, *The Spirit of Laws*, V.2

It is virtue in this connotation of *civic virtue* that is lost under plutocracy. Montesquieu was presciently clear about what the loss of civic virtue meant for the community:

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 desire 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 styles 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 upon the public spoils, and its strength is only the power of a few and the license of many. – [*ibid.*, III.3]

A justice system is thus indispensable for the general welfare of republican Enterprise. It is not, however, the sole function in the governance of Enterprise. There must also be an institution of governance for codifying the laws that represent the community's contingent understanding of the general will. This is called the *legislative branch* of governance. There is also indispensable need for an institution that attends to day-to-day guidance and direction in coordinating the various enterprises, including those of the institutions of governance. This is the *executive branch* of governance. There is, in addition to these, another necessary institution of governance – the *education institution* – that we will take up in chapter thirteen. For now we confine ourselves to the first three. The division of labor among these three branches is quite distinct, and the purpose of checks and balances is to see to it that this clear division of labor is maintained while, at the same time, the laborers are *co-operative*. 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.¹⁷ It is equally evident that neither of them ought to possess, directly or indirectly, an overruling influence over 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 limits assigned to it. After discriminating, therefore, in theory the several classes of power, as they may in their nature be legislative, executive, or judiciary; the next, and most difficult task, is to provide some practical security for each, against the invasion of the others. What this security ought to be is the great problem to be solved. – James Madison, *The Federalist*, no. 48

There is probably no one single prescription for effectual checks and balances that can be found to universally apply to every organization and every Enterprise. The formula that checks and balances must be built in as safeguards is universal, but the matter of what checks and what balances must always be particular. And, as Madison cautioned, these decisions are of the utmost

¹⁷ The departments to which Madison refers are the legislative, executive, and judicial branches of government.

delicacy and require the most penetrating study, thought and discussion. Even that will not suffice to stand unaltered forever, and so the system of checks and balances must also be liable to amendment over time – and amendment of the constitution of an Enterprise is itself a process of checking and balancing.

It is very rare for any Enterprise in its beginning to pay attention to the division of labor among the executive, legislative, and judicial functions, much less to heed the need for checks and balances among these divisions. A man starting a bakery or a farm implement dealership has matters and a host of petty yet vital details more urgently pressing that require his attention than does the less immediate task of thinking about how to best organize leadership for the community that will, if his enterprise succeeds, accrete around that enterprise. Even this presupposes the man has the education or experience to be cognizant of these constitutional considerations, and in the great majority of all actual instances he has not adequate knowledge for this. It is instead the nearly universal history of humankind that the birth and early genesis of enterprises of all kinds evolves and develops in response to event-driven circumstances, groping for solutions to immediate problems with merely satisficing responses to situations. Indeed, it is difficult to imagine that a person would or could make a deontologically moral obligation to an Enterprise that does not yet exist (except perhaps in the imagination of a founder-to-be). Most Enterprises, especially but not exclusively commercial ones, accrete around the enterprise of one or a few capital investors, whose investment enterprises provide the materials and other tangible assets that make it possible for *other* enterprises to attach themselves to theirs.

It must also be recognized that in most cases a nucleating capitalist's enterprise is founded upon intentions that go no further than the founder's immediate duties to himself and to those who he has intimately bound himself. The satisficing nature of the process of equilibration expressed by means of the process of judgmentation is sufficient to explain this behavioral tendency. Those considerations that must be initially paid to the governance of his enterprise usually borrow their equilibrating short-term solutions from metaphors, usually taken from other example enterprises the founder has come to know, however imperfectly, through earlier experiences. Further complicating the social-natural situation is the fact that some individuals have constructed, in the manifold of rules, practical maxims and imperatives that are reflected by strong affective needs to not place much or any dependency on the assistance of other people. Rather, these individuals' private maxims of action promote powerful desiderations to "be the boss," the "chieftain," or the "prince" of his enterprise entity and to suffer no constraints of mutual obligation or reciprocal respect for, as the commercial phrase puts it, "the hired help." Psychologists call behavioral traits exhibited by such individuals *antisocial personality traits*. This is an important social-natural

factor underlying the historical fact that the great majority of all entities form or come to form plutocratic methods for the governance of leadership. More than just a few adults find it psychologically very difficult to leave the jungle and the state of nature¹⁸.

Even those who do make republican reflections are confronted with a formidable challenge in regard to the establishment and constitution of an Enterprise. Mill stated this challenge:

There is a limit to the legitimate interference of collective opinion with individual independence: to find that limit, and maintain it against encroachment, is indispensable to a good condition of human affairs, as protection against political despotism.

But though this proposition is not likely to be contested in general terms, the practical questions, where to place the limit – how to make the fitting adjustment between individual independence and social control – is a subject on which nearly everything remains to be done. All that makes existence valuable to anyone depends on the enforcement of restraints upon the actions of other people. Some rules of conduct, therefore, must be imposed, by law in the first place, and by opinion on many things which are not fit subjects for the operation of law. What these rules should be is the principal question in human affairs; but if we except a few of the most obvious cases, it is one of those which least progress has been made in resolving. No two ages and scarcely any two countries have decided it alike; and the decision of one age or country is a wonder to another. Yet the people of any given age and country no more suspect any difficulty in it than if it were a subject on which mankind has always been agreed. – John Stuart Mill, *On Liberty*, I

In every Enterprise, laws – by whatever label is chosen to designate them – are necessary in the governance of leadership in order to clarify and communicate the general will. That is the sole *just* function of legislation. The legislative institution is the institution of governance holding the task of *codifying* a system of laws of leadership governance. The Enterprise common purposes it serves are: (1) to form a more perfect union; (2) to insure civil tranquility; and (3) to promote the general welfare of the Enterprise community.

The day-to-day affairs of the Enterprise must be coordinated, the contract enforced, and a common orientation and movement of its various enterprises must be guided. This is a function tasked to the executive institution of leadership governance and is its sole *just* function. The Enterprise common purposes it serves are: (1) to form a more perfect union; (2) to provide for the common defense of the Enterprise against all forces and factors inimical to its survival; and (3) to promote the general welfare of the Enterprise community. Not coincidentally, it is to service the second of these general purposes that the power of *law enforcement* is properly placed in the hands of the executive institution of governance.

¹⁸ It is important for the reader to understand that the antisocial personality trait is not the same thing as what psychiatrists call the *antisocial personality disorder*. Many psychiatrists hypothesize that all human beings exhibit to at least some degree behaviors called antisocial personality traits. It is only when the exhibition of these traits is so extreme that they impair the person's ability to function within a society that the label is attached and diagnosis is made that the individual has an antisocial personality *disorder*. This hypothesis is not incongruent with the mental physics of human nature.

The term of the social contract must be satisfied *by* every member of the Enterprise and the condition of the social contract must be satisfied *for* every member. This function is tasked to the judicial institution of leadership governance and is its sole *just* function. The Enterprise common purposes it serves are: (1) to form a more perfect union; (2) to establish justice; and (3) to secure the individual civil liberties of every *citizen* of the Enterprise community.

The prime purposes of governance are *action purposes*; note that each is expressed as a verb phrase. This means the root Meaning of each purpose is *practical* in its social nature. But note, too, that these purposes *overlap* in the tasks assigned to the three branches of governance. All three carry the mandate to form a more perfect union – that is, to work for the continuing perfection of the alliance of individuals who have bound themselves together in association under a social contract. Two of the three share a second common purpose, namely to promote the general welfare of the Enterprise community. All three differ in at least one of the common purposes. Further, it is because these purposes are themselves *deontological* in their essential meanings that we can correctly call civic governance of leadership in an Enterprise ***moral leadership***. It is because fulfillment of these purposes betters the situation of every member of the Enterprise that the agents of governance are accorded *the expectation of authority*, in an assigned sphere of responsibility, by the membership of Enterprise citizens.¹⁹

The overlap of purposes is the wellspring from which flow practical issues that make checks and balances necessary for the *civic* governance of Enterprise leadership. Disagreement of opinions held by the agents of governance, over how to properly serve these purposes, will stimulate tensions felt by each agent. Each, therefore, feels an inclination to attempt *to command* the tension-producing situation (i.e., to take leader's actions), and this inclination to command leads to development of destructive habits and maxims of *rulership*.

The same is no less true for bodies of men than it is for individual men. The predominant historical solutions of the problem of governance, in commercial entities as in nations, have been: (1) rule by a single individual (monarchy); (2) rule by a small and elite group (aristocracy); and (3) rule by the majority of people (democracy). In commercial entities, the first is typical for small businesses, the second for large businesses, while the third is rarer but is often the foundation of labor unions. It is also part of the historical record that each of these tends to decay in civic morality, turning into what Aristotle called the *perversions of government*. Monarchies tend over time to decay into tyrannies; aristocracies tend over time to decay into oligarchies; democracies tend, usually quickly in historical time, to fragment into factions (parties) which then

¹⁹ It is here noted *en passant* that, to be able to fulfill the purposes of governance, the governors and agents must be able to rely upon the citizenship of the members. This is where the education institution enters in.

proceed to war upon each other, forsaking duties of governance in favor of lust for power. Hand in hand with this deontological moral decay goes the destruction of the union of community and the rise of plutocracy.

The republican form of government, based on representation and division of power, was invented and proposed as an alternative to these three common forms of governance. John Adams wrote,

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 form? . . .

The foundation of every government is some principle or passion in the minds of the people. The noblest principles and most generous affections in our nature, then, have the fairest chance to support the noblest and most generous models of government.

A man must be indifferent to the sneers of modern Englishmen . . . No small fortitude is necessary to confess that one has read them. The wretched condition of this country, however, for ten or fifteen years past, has frequently reminded me of their principles and reasonings. They will convince any candid mind that there is no good government but what is republican. That the only valuable part of the British constitution is so; because the very definition of a republic is "an empire of laws, and not of men." That, as a republic is the best of governments, so that particular arrangement of the powers of society, or, in other words, that form of government which is best contrived to secure an impartial and exact execution of the laws, is the best of republics. – John Adams, *Thoughts on Government*

Yet, here in lawyer-Adams' last two sentences, stands a problem confronting even republican governance: the laws. If laws – which are un-living declarations, made by living men, set as rules over men – are to found a government, upon what are laws to be founded? Should we accept without examination and Critique the assertion that a republic is "an empire of laws"? Is this a definition of substance or essence? Or is it merely a descriptive metaphor? If a republic is substantially an empire of laws, what is a law? "Laws," Montesquieu wrote, "in their most general signification are the necessary relations arising from the nature of things." He went on to explain,

Law in general is human reason . . . I have not separated the political from the civil institutions, as I do not pretend to treat of laws but of their spirit; and as this spirit consists in the various relations which the laws may bear to different objects, it is not so much my business to follow the natural order of laws as that of these relations and objects. – Montesquieu, *The Spirit of Laws*, I.3

The relation at issue for us is the complex of human relationships that bear upon conditions necessitated by human nature for the possibility of a union based upon mutual obligation. In this

context, a system of communal laws (merely *idolized* in the phrase The Law) is and can be nothing else than the collection of official statements of a community's current common *consent* to particular terms and particular conditions that *seem* to follow from the general term and the general condition of their social contract. In this is an intangible quality that distinguishes a just law from a mere act of legislation. It is a distinction lawmakers frequently tend to forget and even not to notice. A law is never an end; it is always a means to an end and, in republican Enterprise, that end is always the realization of the general term and the general condition of a social contract. Thus we must conclude that Adams and the English authors to whom he referred have made an ontology-centered mistake if what he meant to convey was a substantial definition of a republic.

Common consent does not come into being spontaneously and issue forth from a body politic of an Enterprise community. Nor, once that community surpasses some ill-definable threshold of size, is that which is to be presented in appeal for common consent something that can be practically expected to have its determined statement governed by a general assembly. The impracticality of this – which was amply demonstrated in the actual history of the Assembly in ancient Athens – was recognized by eighteenth century political scientists such as Adams. This recognition was incorporated into their ideas of what a republic is. He wrote,

In a large society . . . it is impossible that the whole should be assembled 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. – John Adams, *Thoughts on Government*

Probably the most fundamental error made by the Framers of the U.S. Constitution was their unexamined presupposition that the principal divisions of interest among the people of their new nation was adequately represented by the classified division of the body politic in terms of the thirteen individual states. There was in all their debates at the Constitutional Convention of 1787 a notable absence of a recognition of the importance of the *Dasein* of different *special* interests among people within one and the same geographical state. They failed to foresee that future developments in technology would make it possible and practicable for these special interests to combine to form factions that defied state boundaries. This was the most serious overlooked consideration in their deliberations. It was this oversight that made possible the later formation of political parties and the eventual breakup of the American Republic into a plurality of warring parties and a Toynbee proletariat that will someday discover its power to bring the whole

institution crashing down when it undertakes its final moral secession from the present order. Then will come the enactment of another dreary replay of the history of the fall of civilizations along with the lethally brutal *interregnum* of a new Dark Age. No civilization ever, in the words of Dylan Thomas, goes "gentle into that good night"; its people do always violently "rage, rage against the dying of the light." And violent rage always produces casualties and fatalities.

Even so, Adams and others clearly recognized the dangers to republican governance posed by deputing all power to a single body of representatives, and it was from this recognition that the principle of divisions of power with checks and balances was adopted. He wrote,

I think a people cannot long be free, nor ever happy, where government is in one assembly. My reasons for this opinion are as follows: –

1. A single assembly is liable to all the vices, follies, and frailties of an individual; subject to fits of humor, starts of passion, flights of enthusiasm, partialities, or prejudice, and consequently productive of hasty results and absurd judgments. And all these errors ought to be corrected and defects supplied by some controlling power.
2. A single assembly is apt to be avaricious, and in time will not scruple to exempt itself from burdens, which it will lay, without compunction, on its constituents.
3. A single assembly is apt to grow ambitious, and after a time will not hesitate to vote itself perpetual. This was one fault of the Long Parliament; but more remarkably of Holland, whose assembly first voted themselves from annual to septennial, then for life, and after a course of years, that all vacancies happening by death or otherwise should be filled by themselves, without any application to constituents at all.
4. A representative assembly, although extremely well qualified, and absolutely necessary, as a branch of the legislative, is unfit to exercise the executive power, for want of two essential properties, secrecy and despatch.
5. A representative assembly is still less qualified for the judicial power, because it is too numerous, too slow, and too little skilled in the laws.
6. Because a single assembly, possessed of all the powers of government, would make arbitrary laws for their own interest, execute all laws arbitrarily for their own interest, and adjudge all controversies in their own favor.

But shall the whole power of legislation rest in one assembly? Most of the foregoing reasons apply equally to prove the legislative power ought to be more complex; to which we may add, that if the legislative power is wholly in one assembly, and the executive in another, or in a single person, these two powers will oppose and encroach upon each other, until the contest shall end in war, and the whole power, legislative and executive, be usurped by the strongest. – [*ibid.*]

So it was that America's Revolutionary leaders foresaw the coming necessity of dividing the institutions of republican government with checks and balances even as the Revolutionary War was still being waged. Madison would later write,

In order to lay a due foundation for that separate and distinct exercise of the different powers of government, which, to a certain extent, is admitted on all hands to be essential to the preservation of liberty, it is evident that each department should have a will of its own; and consequently should be so constituted that the members of each should have as little

agency as possible in the appointment of members of the others. Were this principle rigorously adhered to, it would require that all the appointments for the supreme executive, legislative, and judiciary magistracies should be drawn from the same fountain of authority, the people, through channels having no communication whatever with one another. . . . Some difficulties, however, . . . would attend to the execution of it. Some deviation, therefore, from the principle must be admitted. . . .

But the great security against a gradual concentration of the several powers in the same department consists of giving to those who administer each department the necessary constitutional means, and personal motives, to resist encroachments of the others. The provisions for defense must in this, as in all other cases, be made commensurate to the danger of attack. Ambition must be made to counteract ambition. The interest of the man must be connected with the constitutional rights of the place. It may be a reflection on human nature that such devices should be necessary to control the abuses of government. But what is government itself but the greatest of all reflections on human nature? If men were angels, no government would be necessary. . . . In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. – James Madison, *The Federalist*, no. 51

It was upon these foundations of principles, deduced as theorems of human nature as the Framers understood human nature, that the U.S. Constitution took the form they produced. It is why the President has a veto power over the legislation of Congress, and Congress has the power of overriding the Presidential veto. It is why the House of Representatives was elected directly by the people of identified districts while the Senate was appointed by the state governments. It was why Justices of the Supreme Court were nominated by the President but confirmed by the Senate and, afterwards, held lifetime appointment. It was why the Supreme Court was granted judicial review of the laws but not granted either the power of enforcement (this power being vested in the Executive branch) or the power of veto over legislation *before* it became law. It is instructive to note some of the details of the debate over this last point by the delegates to the 1787 Convention:

Mr. Pinkney [South Carolina] opposed the interference of the Judges in the Legislative business: it will involve them in parties, and give a previous tincture to their opinions.

Mr. Mercer [Maryland] heartily approved the motion [to give the Supreme Court veto power over Congressional legislation]. It is an axiom that the Judiciary ought to be separate from the Legislative: but equally so that it ought to be independent of that department. The true policy of the axiom is that legislative usurpation and oppression may be obviated. He disapproved of the Doctrine that the Judges as expositors of the Constitution should have the authority to declare a law void. He thought laws ought to be well and cautiously made, and then to be uncontrollable. . . .

Mr. Dickenson [Delaware] was strongly impressed with the remark of Mr. Mercer as to the power of the Judges to set aside the law. He thought no such power ought to exist. He was at the same time at a loss of what expedient to substitute. The Judiciary of Aragon, he observed, became by degrees the lawgiver.

Mr. Govr. Morris [Pennsylvania] suggested the expedient of an absolute negative in the

Executive. He could not agree that the Judiciary, which was part of the Executive²⁰, should be bound to say that a direct violation of the Constitution was law. A control over the legislature might have its inconveniences. But view the danger on the other side. The most virtuous of citizens will often as members of a legislative body concur in measures which afterwards in their private capacity they will be ashamed of. Encroachments of the popular branch of the Government must be guarded against. . . .

Mr. Sherman [Connecticut]: Can one man be trusted better than all the others if they all agree? This was neither wise nor safe. He disapproved of Judges meddling in politics and parties. . . .

Mr. Gorham [Massachusetts] saw no end to these difficulties and postponements. Some could not agree to the form of Government before the powers were defined. Others could not agree to the powers till it was seen how the Government was to be formed. . . .

Mr. Wilson [Pennsylvania] after viewing the subject with all the coolness and attention possible was most apprehensive of a dissolution of the Government from the legislature swallowing up all the other powers. He remarked that the prejudices against the Executive resulted from a misapplication of the adage that the parliament was the palladium of liberty. Where the Executive was really formidable, *King* and *Tyrant* were naturally associated in the minds of the people, not *legislature* and *tyranny*. But where the Executive was not formidable, the last two were most properly associated. – Max Farrand, *The Records of the Federal Convention of 1787*, vol. II, Aug. 15, 1787.

Montesquieu pointed out in clear terms that there is no one unique and particular system of governance that is appropriate to every community, to every situation, and to every application. The formal principle of republican governance goes only so far as to agree on these points: (1) that distinct and independent legislative, executive, and judicial institutions are necessary; (2) that it is necessary for checks and balances to be instituted among them so that no one of them can usurp all the powers of governance; (3) that some democratic mechanisms are necessary but that democracy itself is wholly inappropriate to apply to all the institutions of governance; (4) that in every particular case the form and definition of the overall institution of governance must receive the most careful scrutiny; and (5) that mistakes will be made, times and circumstances will change, that the institution of governance must allow for amendment, and that amendments be carefully designed with determined checks and balances being applied to this process as well.

§ 5. The Republican Legislative Institution of Governance

A system of laws – or, at least, some collection of laws distinct from public laws that apply to every member of a particular political community – is necessary for the coordinated and routine functioning of any entity made up of collective individual enterprises. In most organizations and institutions these are not called laws but, rather, typically bear other titles such as conditions of employment, policies, procedures, and so on. Many of these are not written down, other than being communicated by memorandum. Those that are often are codified in some document that

²⁰ The Convention had voted to make the Supreme Court a distinct branch of government on July 18. Morris had voted "aye" on that question, so this remark is curious and possibly was misreported.

bears a title such as a "policies and procedures handbook," "By-Laws," and so on.

These laws are generally divisible into two distinct types differing in kind: (1) those governing expected practices for "how to do" specific and usually vocationally-related tasks or procedures; and (2) those governing civic behavior of the members of the entity. Laws of the first type are expectations for standards of proper vocational practice within some defined or definable division of labor. They are generally *ad hoc* and we will not discuss them further. It is with the second type of entity-law that we are concerned in this treatise.

An example of this type of law, commonly found throughout commercial entities and public institutions, is provided by the near-universal law that a subordinate must obey directives given to him by his supervisor or manager. Failure to comply with this law is called "insubordination" and in most entities committing an act of insubordination is a ground for immediate termination of the violator's employment – a form of punishment that in ancient city-states and medieval kingdoms was called "banishment" or "exile." In other cases of entity-law, e.g. failure to meet a mandated work quota, other less-final forms of corrective action are usually prescribed, to which the law-violator is subjected. Usually it is the case that standing behind these somewhere is some final sanction – banishment – that will be applied if the corrective action process does not produce the mandated change in behavior by the violator. One difference between an entity of private concerns (entity of enterprises) and political entities (cities, states, nations) is that the private-concern entity usually does not choose (or is forbidden to choose) jail or prison as a punishment. This is not entirely general; detention – a form of punishment for misbehavior often used by schools – is a mild and brief type of imprisonment. So too, in a generalized context, is the action of compelling a person to work hours in excess of the entity's general policy and for no additional pay. A person subjected to a corrective action process is usually said to have been "disciplined" by the action. The dictionary definition of the verb "to discipline" has "to educate" for one of its definitions, but it also has other defined connotations of "to chastise or punish" and "to keep in subjection; to regulate; to govern." The latter connotations are often descriptive of the intention of the leader and, even if this is not the actual case, the person being disciplined often suspects or presumes this intention on the part of the leader. He externalizes this interpretation when he denounces the corrective action as "unfair."

A person, either as an individual actor or acting as part of a body of designated persons, who codifies entity laws is called a law-giver, a law-maker, or a legislator. In usage these terms are synonymous. Because every entity necessarily requires entity-laws if the governance of leadership is to be practically possible, every entity has some form of legislative system. These range in particular cases across the spectrum from relatively unorganized and *ad hoc* activities to

rigidly defined and dogmatic functional structures. It is a peculiar habit of most entities that its legislative institution is often given little attention or forethought in its planning and constitution. By far the most common form encountered is monarchical legislation – e.g., the capital investor who is also titular head of a small business usually "makes the rules" (acts as law-giver) in the manner of a petty king. Larger commercial entities usually assign by default the legislative function to its hierarchy of managers, thereby combining the legislative and executive functions in one person or identified group of persons. Public-sector institutions frequently attempt to organize the legislative function by means of specifically designated committees, and here we see the attempt to separate the legislative function from the executive function. A few private-sector entities also do something like this on occasion, although it is more common to see this take the form of "boards" or "panels." These merely *advise* the entity's executives, who retain the final power to decide. These bodies are the modern equivalent of a king's "privy council."

None of these manifestations of formal organization constitute the condition of a republic merely by virtue of their form of appearance. It is quite possible – and not uncommon – for the titular owner of a small cafe to be a more exemplary republican legislator than is the Congress of the United States – a body that today is republican only in name and rarely in deed. The United States Congress is a conclave of oligarchs split between two major warring factions of special interests and in neurotic denial of the practical fact that their deeds contradict their ideals and conform to the worst scenarios dreaded by the Framers of the U.S. Constitution and by such Revolutionary leaders as Adams and Washington. Many state legislatures in the U.S., such as the Idaho Legislature, are barely distinguishable from the Supreme Soviet of the former U.S.S.R.

Neither do democratic processes or mechanisms suffice to guarantee a republican institution of legislation. Indeed, democratic bodies are frequently inimical to republican governance. It is not uncommon for a monarchical titular owner of a lumber yard or a bicycle shop to be a more republican legislator than a typical elected member of a state legislature. His self-interests and his personal enterprise are so tightly bound to and dependent upon those of his employees that his exercise of legislative power is self-regulated by republican considerations. Such an individual is often proclaimed "a good boss" by his employees. This is a badge of honor and a mark of *actual* deontological authority. Taylor Caldwell's "Mr. Healey" character in the novel *Captains and the Kings* was both a brigand chief and a republican legislator within his own little nefarious entity of societal outlaws²¹.

The justification of all legislation in the governance of leadership in an Enterprise is the social

²¹ In contrast, Robert Louis Stevenson's "Long John Silver" character was no republican. He was simply an outlaw living entirely in state of nature relationships with other people.

contract. The only deontological standard with objective validity in assessing legislation as just or unjust is this: Is the legislation necessary for the possibility of satisfying the term and the condition of the social contract? Put into other terms, does the legislation satisfy the tenet of moral legislation? If the legislative actions of the Enterprise's legislators consistently meet this standard – allowing for those inevitable occasions where mistakes in judgment are made – then the Enterprise governance operates with a republican institution of legislation.

Acts of legislation that do not meet the standard of necessity for the possibility of satisfying the social contract are *arbitrary acts* of legislation. If such legislation *obtains the consent of all members of the Enterprise* it can stand as a folkway of the Enterprise community, but this is an entirely different-in-kind form of legislation covering a mere expediency because *if even one citizen* of the Enterprise community finds it so objectionable that he withholds his consent, the Enterprise can do without it.²² Enforcement of such an act of legislation is then a *crime* perpetrated on the dissenting members by the rest of the community because it violates the condition of the social contract. It is the tyranny of democracy in action and an act of injustice.

Republican legislation is not easy to accomplish and cannot be accomplished with surety that mistakes will never be made. This is why the institution of mechanisms for legal reform are necessary for the Enterprise. Legal reform is nothing else than an organized justice process serving the purpose of perfecting the union of the Enterprise. Laws must serve justice; justice never serves laws. The preservation of justice is the practical reason an Enterprise must have a justice system and a judicial branch of governance. The judiciary is its safeguard against mistakes and errors in legislating.

Centralization of power and decision-making is generally inimical to republican legislation and further compounds its difficulty of achievement as the population of the Enterprise grows. It is far easier for the titular head of a small business to succeed as a republican legislator than it is for the top management of a large corporation to do so. The small businessman-and-capital-investor is daily in intimate social contact with the other members, can be more aware of what the relationship issues and problems are, and has an immediate self-interest, grounded in duty-to-himself, in protecting the bonds of mutual obligation between himself and the other providers of enterprises. Centralization of power and decision-making cuts the connection in real experience between those who legislate and those who are made subject to the legislation. James Wilson (Pennsylvania delegate to the 1787 Constitutional Convention) and James Madison (delegate

²² It matters not at all if a current outlaw or a current criminal objects to the legislation. Neither the outlaw nor the criminal are citizens of the community, both reject the social contract, and neither is granted any civil rights *whatsoever* by the community because the price of civil rights is mutual obligation. No duty to tolerate the presence of outlaws or criminals in their midst can ever justly be expected of any citizen.

from Virginia) seem to have foreseen this aspect of growth and the weakness it implied for the form of government taking shape during the Convention debates. Madison recorded in his Convention journal,

Mr. Wilson contended strenuously for drawing the most numerous branch of the legislature [the House of Representatives] immediately from the people. He was for raising the federal pyramid to a considerable altitude, and for that reason wished to give it as broad a base as possible. No government could long subsist without the confidence of the people. In a republican Government this confidence was peculiarly essential. He also thought it wrong to increase the weight of the State Legislatures by making them the electors of the national Legislature. All ~~competition~~ interference between the general and local Governments should be obviated as much as possible. On examination it would be found that the opposition of States to federal measures had proceeded much more from the Officers of the States than from the people at large.

Mr. Madison considered the popular election of one branch of the national Legislature as essential to every plan of free Government. He observed that in some of the States one branch of the legislature was composed of men already removed from the people by an intervening body of electors. That if the first branch of the general legislature should be elected by the State Legislatures, the second branch [the Senate] elected by the first – the Executive [President] by the second together with the first; and the other appointments made again for subordinate purposes by the Executive, the people would be lost sight of altogether; and the necessary sympathy between them [the people] and their rulers and officers too little felt. He was an advocate for the policy of refining the popular appointments by successive filtrations, but thought it might be pushed too far. He wished the expedient [of successive filters] to be resorted to only in the appointment of the second branch of the Legislature, and in the Executive and judiciary branches of the Government.
– Max Farrand, *The Records of the Federal Convention of 1787*, vol. I, May 31

None of the delegates to the Convention trusted democracy absolutely, many trusted it very little, and a few were strenuously opposed to it. Wilson was one who had lenient regard for it, Madison took a more or less middle position on it, while Gerry (Massachusetts) and Butler (South Carolina) strongly opposed it. In the same journal entry, Madison recorded,

Mr. Gerry did not like election by the people. The maxims taken from the British constitution were often fallacious when applied to our situation, which was extremely different. Experience, he said, had shown that the State Legislatures drawn immediately from the people did not always possess their confidence. He had no objection however to an election by the people if it were so qualified that men of honor and character might not be unwilling to be joined in the appointments. He seemed to think the people might nominate a certain number out of which the State Legislatures should be bound to choose.

Mr. Butler thought an election by the people an impracticable mode.

On the question for the election of the first branch of the national Legislature by the people . . . Ayes – 6; Noes – 2; Divided – 2 – [*ibid.*]

Taken in combination, Wilson's idea of "raising the pyramid to a considerable altitude," Madison's idea of "successive filtration" and Gerry's idea of popular nomination of a pool of candidates for appointment to the legislative agency foreshadow the idea of an electoral college. This is an idea that does not enjoy great popularity today – by whichever side's Presidential

candidate loses a close election – and is frequently subjected to propaganda attack and denounced as undemocratic. In point of fact the U.S. Electoral College *is* an institution with problems, but these problems are caused *directly* by the fact that it is an institution wholly owned by the political parties, perverted to serve their special interests, and divorced from and unanswerable to individual citizens. By leaving the constitution of the Electoral College in the hands of the state legislatures, the delegates at the Constitutional Convention committed a terrible blunder in their efforts to effect checks and balances in government. The blunder comes from inadequate Constitutional provision for, as Gerry put it, ensuring that only "men of honor and character" would become *legislators*.

Properly organized and implemented, an electoral college is probably the best known mechanism for a large Enterprise to promote and safeguard the deontological *civic morality* and *civic merit* in its body of legislators that justice utterly depends on in a republic. The specifics of its implementation will vary from one Enterprise to another according to its population, the nature of its general product and the market for that product, and the type of civics knowledge and levels of education possessed by its broad membership. But the formal structure of some institution of an electoral college is probably the most appropriate approach of all those mankind has yet invented for perfecting republican institution of legislation in all but the smallest Enterprises.

What is the *Realerklärung* of the deontological idea of civic merit? Kant taught,

Meritorious action or merit is the quality of an act whereby more good occurs than to which end the actor was responsible for under laws of right; or, a law-abiding act yet such that the act could not have been compelled in the measure in which it actually took place; e.g., when charity, philanthropy are coupled thereto. An unmeritorious action – fault – on the other hand, is a transgression of obligation in which less than what ought to occur is achieved. – Kant, *Metaphysik der Sitten Vigilantius*, 27: 558

The first important thing to note here is that merit is not a thing ascribed to a person but, rather, to a person's deed and the manner in which this deed is carried out in the performance of some action coupled to duty. We can call a person who habitually demonstrates meritorious action a *meritorious person*, but *merit* objectively belongs to the action and not the person. It follows that a meritorious legislator is a person whose actions in his capacity as a legislator are consistently and attentively meritorious actions. The second thing for us to note is that the standard for judging the action is tied to *laws of right*, and this phrase means nothing else than the common convention of expectations for authority figures in regard to the social contract. *No legislative action is meritorious if it does not serve the term and the condition of the Enterprise's social contract*. All legislative actions that do not serve the term and condition of the social contract – whether grounded in consequentialist or virtuous reasons – have not the least merit. If they are

contrary to the term or the condition of the social contract they are at best *moral faults* (if the legislator does not understand the legislation contradicts the term or the condition of the social contract); at the worst they are *crimes*. In either case the law so legislated is an *unjust law*. It is ***a civic duty of every republican to disobey an unjust law***. If the governors of the Enterprise act to enforce obedience to an unjust law, their actions are at the least moral faults and at worst criminal actions (if taken with understanding that the law is unjust). These actions constitute a breach of the social contract, and are destructive to the republic.

A moral fault can be and must be forgiven under the social contract, although the effects of the action must be negated. People will make mistakes and unintentionally transgress their duty on occasion. No one can oblige himself or set as an obligation to others that he will make no mistakes. No body politic can require the alienation of mistakes. It is different with criminal actions because these are actions committed with knowledge of dereliction of civic duty.

A person in the position of authority figure who commits a criminal action must be removed at once from this position, and if the community should decide to expel him from their midst as well such a communal action is just because the community does not owe the least duty or obligation whatsoever to a criminal. In these considerations, it must also be kept in mind that *only a citizen can commit a crime*. A mere outlaw cannot. His mutual relationship with the members of the community is relationship in the state of nature, and neither has any obligation of *any* kind to the other. An outlaw cannot commit a crime; *a crime cannot be committed against an outlaw*. This is a brutal truth, but the state of nature is a brutal condition. It is permissible for the community to forgive an outlaw *if it chooses to do so*;²³ the most common instance here is found when the outlaw is a child yet too immature to understand the social nature of mutual obligation and duty. The community cannot forgive a criminal because such an action breaches the condition of the social contract in regard to the *victims* of the criminal action.

The objective *unique* to the legislative branch of republican governance is ***to insure civil tranquility***. Deontologically, ***civil tranquility is the mood of the body of citizens at large that results from being satisfied enough in their relationships to the general state of life in the community so as to desire nothing more or different in this relationship***. The foundation of this is personal happiness, but what does this mean?

Psychologists and philosophers alike have struggled with the idea of what it means for people to be happy. Mental physics teaches that the *Realerklärung* of the idea of happiness calls upon all three Standpoints of Critical metaphysics. From the judicial Standpoint, happiness is a person's consciousness of pleasantness of life uninterruptedly accompanying his whole *Dasein*. From the

²³ At the same time, it is under no obligation or duty to do so unless it enacts a *just* law to the contrary.

practical Standpoint, it is the expedience of the mental disposition (inclination) of the person to act upon the basis of a matter of desire. These are the two primary Standpoints for developing an *understanding* of happiness as a psychological condition, the concepts of which comprise one's empirical representations of matters of happiness (the unity of which composes the individual's idea of happiness from the theoretical Standpoint). Concepts of happiness, in order to be accorded objective validity, must be based on epistemology-centered premises because, ontologically, happiness is an *Unsache*-thing (a "happening"). It is the non-objectivity of ontological happiness that has been the historical source of the problems psychology and philosophy have always found in their struggles to pin a definition on this *subjective* form of experience. As Kant put it, happiness is "contentment with the state of the world in which I find myself, in relationships to things outside me." Psychological studies have tended to affirm Kant's description, sometimes describing happiness as "the neutral gear of the nervous system and the normal human condition," sometimes as a "behavioral script." It is informative to compare these descriptions with the dictionary definition of tranquility:

tranquility [L. *tranquillitas* (-atis), quietness, stillness, from *tranquillus*, tranquil.]
quietness; a calm state; freedom from disturbance or agitation; the state or quality of being tranquil.

Perfect civil tranquility, that is to say *complete* tranquility, is the ideal that every citizen of the community is happy in this context. Like every ideal, perfect civil tranquility must be seen as a goal governance strives towards rather than an actual state of being because it is impractical to suppose, and hopeless to require, that every citizen can or would enjoy this state all at once and for all times. Indeed, leader's actions *all* intend to disturb such a state in the individual follower, by producing tension, because the purpose of any leader's action is to stimulate change in behavior. The mandate of governance with regard to civil tranquility is not to achieve an actual and permanent state of *absolute* civil tranquility – for this goal is impractical – but, rather, to achieve and perfect as much as is practically possible *conditions* under which as many citizens as possible enjoy this state of relationship with the community at most moments in time. Here the governance of leadership (in contrast to the actions of a leader) connects to the idea of *utility*.

While the legislative institution cannot legislate happiness, its actions *can* legislate to produce the affective opposite, i.e. to incite active or passive malcontent among some part of the citizenry. This is contrary to the legislative function, however, and so the deontological standard for meeting the objective of governance to insure civil tranquility can only be a *negative* standard of comparison. Social-natural political science and the social-natural science of leadership are inherently *teleological sciences* because *we make* the political and social world in which we live.

There is thus a prime purpose and a prime objective for the legislative function in governance. The **prime purpose** is *to insure legislation heeds the grievances of citizens and acts to redress those found to be legitimate*. The **prime objective** is then: *to provide mechanisms for the constant surveillance, assessment, and updating of the effects of existing policies and laws, and for assessing and understanding the evolving needs of the community for new policies and laws*.

This prime purpose and prime objective distinguish the legislative function from the other three functions of leadership governance (executive, judicial, and education). However, its other two general objectives, to form a more perfect union and to promote the general welfare of the Enterprise community, cannot be neglected in considering the constitution and organization of the legislative function of governance. The remote interests of the citizens and the immediate aims of the Enterprise are the same because the Enterprise must succeed for its citizens to satisfy their divers purposes. Thus the legislative function is not independent of the other functions and so the constitution of the legislative function can not be considered in isolation from that of the others. The division of labor in governance is not crisp.

It cannot be presumed that achievement of civil tranquility implies homogeneity of laws. There are very, very few laws imaginable that are suitably applicable to every citizen in any Enterprise where the population of enterprise providers is more than a small number. It is in recognition of this that modern Western nation-states usually make a division of labor in political government along population lines (e.g., city, county, state, national) as well as along functional lines (legislative, executive, judicial). The number of *universal* just laws is bound to be very limited because in order to be *just* such laws cannot contradict the *civic* special interests of the many different types of mini-communities that always characterize any large population of citizens. It was failure to recognize a simple division into states did not and does not adequately account for legitimate civic special interests that marked the principal oversight in the deliberations at the Constitutional Convention of 1787. In almost precisely the same way, the traditional commercial division between "labor" and "management" fails to adequately account for civic special interests of divers mini-communities within every large commercial company.

A chief source of civil unrest (loss of civil tranquility) is conflict between the special interests of differing mini-communities. Here two general types of conflict of interests can be identified. The first is comprised of special interests that are *contradictory*; satisfaction of the interest of one mini-community is antagonistic to the special interest of the other. The second is comprised of special interests that are *contrary*; in this case it is not necessarily true that satisfaction of the special interest of one mini-community is antagonistic to satisfaction of the special interest of the other *even if* the two factions initially present their *legal* preferences in contradictory forms at the

beginning of the conflict.

All civic special interests belong to the second class of conflicts. Conflicts of interest belonging to the contradictory class, by logical definition, are conflicts in which one side can prevail in seeing its interest satisfied only if the interest of the other side is thwarted. If either side is allowed to prevail *the condition of the social contract is breached for the other and the side that prevails violates the term of the social contract.* Such special interests are **uncivic** and **no just law is possible except to deny both claims of interest. Citizenship alienates uncivic interests.**

It is failure on the part of the citizens involved to recognize special interests as uncivic that breeds faction within the community. Factions are like cancer cells in the body politic of the Enterprise; in time the growth of factions destroys the union and brings the Enterprise to an end *as an Enterprise.* The individual's *inclination* to faction arises from his tenets of duties to himself and is *actualized* by his self-determination of reciprocal duties *limited in scope to only* those other members of the faction mini-community to which he commits himself. Left unchecked by the governance of leadership, the dynamic this commitment produces leads to secession from the body of the Enterprise community. But the inclination to faction is a part of human nature that civic leadership can counterbalance. Madison wrote,

The latent causes of faction are thus sown in the nature of man; and we see them everywhere brought into different degrees of activity according to the different circumstances of civil society. A zeal for different opinions concerning religion, concerning government, and many other points, as well as speculation as of practice; an attachment to different leaders, ambitiously contending for pre-eminence and power; or to persons of other descriptions, whose fortunes have been interesting to the human passions, have, in turn, divided mankind into parties, inflamed them with mutual animosity, and rendered them much more disposed to vex and oppress each other than to co-operate for their common good. So strong is this propensity of mankind, to fall into mutual animosities, that where no substantial occasion presents itself, the most frivolous and fanciful distinctions have been sufficient to kindle their unfriendly passions, and excite their most violent conflicts. . . . The regulation of these various and conflicting interests forms the principal task of modern legislation, and involves the spirit of party and faction in the necessary and ordinary operations of the government. – James Madison, *The Federalist*, no. 10

The institution of Enterprise government can do absolutely nothing to eliminate the *inclination* to faction because this inclination is part of human nature. But the governance of leadership can and must be made to do a great deal to prevent the *actualization* of faction. Leadership is a dynamic, not a person, and leadership is not the exclusive province of those who occupy the positions of authority as executive, legislator or judge. The proper republican governance of leadership is tasked with the channeling of inclinations into civic actions and away from uncivic ones by *guiding* the leadership dynamic into channels that promote the first general objective of government, namely *to form a more perfect union.* Prevention of faction and the channeling of its inclination into channels of *civic* interest is the conjoint task of *all four* divisions of governance in

republican Enterprise. It is because this channeling is not possible unless the citizens *understand and practice republican citizenship* that the education institution becomes a necessary part of republican governance of leadership. No republic can rely upon spontaneity to automatically produce either good citizenship or even adequate understanding of citizenship in its people. And without this *sine qua non* of good citizenship a free Enterprise of liberty with justice for all is not possible. More will be said on this in chapter 13.

To summarize the main points of this section:

- The ***legislative function*** of governance is uniquely distinguished from the other three functions of governance by having principal responsibility for the general objective of insuring civil tranquility assigned to it;
- The ***prime purpose*** of the legislative function is to insure governance heeds the grievances of the citizens and acts to redress those found to be legitimate;
- The ***prime objective of implementation*** in constituting the legislative function is to provide mechanisms for the constant surveillance, assessment, and updating of the effects of existing policies and laws, and for assessing and understanding the evolving needs of the community for new policies and laws;
- The legislative function of governance can never be made completely independent of the other functions because its two other general objectives (to form a more perfect union and to promote the general welfare) overlap them;
- The channeling of the inclination to faction into the actuality of citizenship, by means of establishing a *system* of just laws, is essential for meeting the general objective of insuring civil tranquility;
- Legislation of a system of just laws must recognize that very few laws can be universal in scope because within all but the very smallest republics there will arise divers mini-communities, each with legitimate *civic* special interests that must be satisfied if the condition of the social contract is to be met; the majority of just laws will be particular and will be limited in scope;
- The existence of mini-communities and the practical necessity that most laws be particular and limited in scope therefore requires an appropriate and well-designed division of labor in fulfilling the legislative function; this division of labor can never be made crisp because, to paraphrase James Wilson, the governance of leadership has the form of a pyramid of legislative scopes; faction must be prevented *within* this legislative pyramid as well as within the community;
- The prevention of faction within the pyramid of legislature and the prevention and abolition of uncivic and unjust laws calls for the process of selecting agents of government for the task of legislating to be constituted in such a way as to ensure that *only* meritorious citizens are entrusted with the *duty* of legislating.

§ 6. The Republican Executive Institution of Governance

An Enterprise is a coalescence of enterprises, formed for the purpose of mutual satisfactions of divers purposes of its citizens, and bound together by a social contract. To satisfy these divers

purposes the specific nature of its organization must have some overriding common and specific aim, the accomplishment of which is made a nucleus for every enterprise within it. In the original constitution of the American Republic during the days of the American Revolution this common aim was the political aim of *liberty with justice for all American citizens*. This aim is inherent in the words of the American Declaration of Independence:

We hold these truths to be self-evident, that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness. That, to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that, whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute a new government, laying its foundations on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness. – *The Declaration of Independence*, July 4, 1776

This aim, instituted in specific forms within any Enterprise, remains the common cause of mutual obligation and reciprocal duties. This must be consciously attended to in the manner of the institution of and in the actions of all agents of leadership governance in the Enterprise.

To succeed in satisfying the particular purposes of all citizens of the Enterprise, the Enterprise itself must succeed in acquiring that which is needed to satisfy its citizens through some form of process of exchange whereby the Enterprise exchanges some good it possesses or produces for some other good or goods it requires to carry out its operations and satisfy its citizens. An Enterprise that does nothing can satisfy no one. An Enterprise that receives nothing in exchange for what it does has no corporate revenue by which it profits the goods provided to the individual enterprises that compose its corporation and realize its actual *Existenz*.

These basic facts tell us that there is in every Enterprise some social-natural system of economics-in-general. By this phrase *economics-in-general* is meant *the production, distribution, and consumption of wealth-in-general*. This practical explanation calls for a crisper definition of what we are to mean by the phrase wealth-in-general than merely "the state of being relatively more prosperous than others" (the explanation of "wealth" introduced in chapter 11). We will take up this issue of definition in chapter 14 when we discuss the *Realerklärung* of the governance objective of promoting the general welfare. For our immediate purposes, let it suffice to say that the idea of wealth-in-general is related to the economic notion of *utility*, which *The Penguin Dictionary of Economics* describes as:

utility The pleasure or satisfaction derived by an individual from being in a particular situation or from consuming goods or services. Utility is defined as the ultimate goal of all economic activity, but it is not a label for any particular set of pursuits . . . Bentham²⁴

²⁴ Jeremy Bentham (1748-1832) was a philosopher of the theory of utilitarianism, a theory holding that self-interest is the sole stimulus of human endeavors and the pursuit of happiness is the prime concern.

described it as that which appears "to augment or diminish the happiness of the party whose interest is in question," but this barely illuminates the issue given that the notion of happiness used is a complex one. – *The Penguin Dictionary of Economics*, 7th ed.

The Enterprise known as Little League Baseball is a splendid example of the general social-natural context of the ideas of wealth and utility. This Enterprise is governed and managed by unpaid volunteers (most but not all of who are parents of the children participating in it), charges no admission to see the baseball games, uses tens of thousands of acres of real estate (the baseball fields), millions of dollars of equipment (bases, protective gear such as batting helmets, baseballs, baseball bats, etc.), and even employs the professional services of, e.g., research physicians, who study the causes and prevention of sports injuries, and investigative agencies who run criminal background checks on individuals seeking to become coaches and officials within the organization (in order to exclude convicted child molesters from its community). Its organization is world-wide and over a million boys between the ages of ten to twelve years from dozens of countries participate in it annually. It has its own World Series (held each year in Williamsport, Pennsylvania) that is attended by thousands of people from all over the world and is seen on television by millions more. Little League Baseball is one of the best examples of republican Enterprise currently found anywhere, and it is doubtful that anyone involved with it would say he or she is not wealthier for this involvement. It is an entirely non-commercial Enterprise to which the *social-natural* meaning of "economics" fully applies despite the difficulty the modern and Platonic science of mathematical economics has in setting "market values" or making objectively valid monetary determinations of its economic dynamic.²⁵

The point here is this: Every Enterprise has an economic dynamic at work on it. Most existing Enterprises exist and operate in a social-natural economic environment in which there are other entities competing for possession of goods needed by the Enterprise to sustain its *Existenz*. In most cases this environment is partially or entirely a state-of-nature environment in which predation is moderated – if at all – only by some larger political community or communities from which the Enterprise's members are drawn. In some cases Enterprises and entities operate in environments where there is no societal protection or civil rights guarantee for its operation.²⁶ Furthermore, no Enterprise can guarantee that no clandestine population of outlaws and criminals is present within its community.²⁷ All these factors constitute forces and threats to its social-

²⁵ a fact that evidences foundational flaws in the present day social science of economics produced by ontology-centered pseudo-metaphysics. The current science of economics is not a social-natural science.

²⁶ An example of this is the 1951 vote of the Iranian Parliament to nationalize the property of the Anglo-Iranian Oil Company, although in this case we are speaking of an entity rather than an Enterprise.

²⁷ For example, Little League Baseball's background checks cannot identify child molesters who have never been caught or convicted.

natural economic survival. Finally, it is possible for an Enterprise to be managed incompetently and to simply fail to achieve the economic success it requires in order to sustain itself.

It is instructive to note that the ancient Greek word for manager or administrator was *oikonomos*, which derived from *oikos*, house, and *nemein*, to distribute or manage. Our English word "economics" derives from the Greek *ta oikonomika*, which meant the science of household management. It is not misleading within this context to say that "economist" (*oikonomologos*) is the job description (or a part of the job description) of anyone whose enterprise falls into that division of labor we call management of an entity.²⁸ What most people usually do not associate with this idea of manager-as-economist is that *the most basic expectation of authority* bound to a management position by the citizens of an Enterprise is *protection* of the Enterprise from those factors and forces – both internal and external – that pose threats to its continued *Existenz*. This is the general objective of leadership governance that uniquely distinguishes the Executive institution of republican governance from the others in an Enterprise. The first duty of every agent and officer in the Executive institution of republican leadership governance is *to serve as a lifeguard of the republic*.

In most Enterprises (other than the armed forces of a nation or the executive branch of a political government) an executive (*any authority figure in the executive branch of governance*)²⁹ is called a foreman, a manager, an administrator, a director, a department head, or a chairman. In most entities, except for the very smallest (e.g. a small shop, a small contractor, a one-lawyer law office, etc.), the executive function will be organized in some hierarchical fashion and a typical executive will simultaneously be both the governor of some mini-community of specific laborers *and* a specific laborer in another mini-community for which he is not the governor (in other words, he will have a governor placed over him, usually called his "boss"). In this latter situation, there will be others placed under this same governor and constituting an executive team. These other members are frequently called his "peers," but this is a term that must be practically

²⁸ Despite the fact that he thinks he understands the principal social-natural factors at work in the phenomenon, your author admits to feeling a certain personal sense of marvel when he observes that most managers in the majority of medium to large American corporations are either entirely ignorant of the most fundamental precepts of college-freshman economics or else habitually practice ignorance of those precepts they have been taught. Economics might be, as some have labeled it, the Dismal Science, but these precepts are within the intellectual grasp of most high school students. Its lack of actual practice in commerce likely speaks loudly of poor pedagogy attending Platonic attitudes fostered by mathematical economic theory.

²⁹ It has become common practice in large commercial entities to reserve the label "executive" for those who occupy the highest-tier positions in the entity's ruling class, e.g., "executive vice president." This is nothing but plutocratic hubris; a "chief executive officer" might just as well be called "the Viceroy" (unless he is also the president of the company, in which case "your Majesty" would be the appropriate title). In a republic an *executive* is *anyone whose duty is the day-to-day governance of the leadership in one or more Enterprise mini-community in such a way that the Enterprise as a whole successfully executes the activities needed to realize the common purposes of its enterprises*. A republican executive is a *public servant*.

understood as implying nothing more or nothing less than an idea of how the executive function of the Enterprise is arranged. Any understanding going beyond this simple practical description is a step in the direction of plutocracy because it promotes creation of a caste system.

Even the idea of *egalitarianism*, which many people Platonically worship, lures an Enterprise onto the road to plutocracy because the mental physics of what Adams called Emulation promotes an inclination to those attitudes and behaviors that Orwell famously illuminated when he wrote,

ALL ANIMALS ARE EQUAL
BUT SOME ANIMALS ARE MORE EQUAL
THAN OTHERS

– George Orwell, *Animal Farm*

Egalitarianism, the tenet that all people should have equal political and social rights, logically implies that "all people" must include the outlaws and criminals whose activities are harmful to the preservation of the republic and the mutual obligations of the social contract. It is a tenet in contradiction to the *Existenz* of a social contract. All *citizens* of a republic are accorded equal civil liberties and equal civil rights by *just* laws, but the outlaw and the criminal are granted *no* civil rights because they either do not recognize or choose to ignore the limitations imposed by alienation of particular *natural* liberties and hence do not limit themselves to the exercise of only *civil* liberties. When groups of individuals in a community once begin to identify any particular *subset* of that community as their "peers" in any ontological sense, they take the first step towards actions that will eventually violate the civil rights of those they do not recognize as their "peers."

William Oncken, who was a popular management training consultant in the 1970s, had a more suitable metaphor. The people an individual entrepreneur interacts with on a more or less regular basis in the course of carrying out his enterprise, Oncken said, are atoms in a social molecule, in which the individual entrepreneur is also a constituent social atom. Just as molecules in chemistry largely account for the macroscopically observable phenomena exhibited by chemical substances, the social molecules in organized human cooperative enterprises largely account for the macroscopic behaviors of that organization. Oncken's metaphor helps remind us that it is the individual human being who is the social atom of any social-natural science.

Most of the day-to-day activities of an executive can be classified as one of the following: (1) evaluating the success the mini-community he governs is achieving in accomplishing its specific tactical objectives; (2) evaluating the behaviors of members of the mini-community and taking appropriate leader's action when alteration in behavior is needed to promote success in meeting the mini-community's objectives while simultaneously safe-guarding the Enterprise obligation to uphold the social contract; (3) administering the outlay of capital expenditures in carrying out the

activities of the mini-community in accordance with determined budget constraints that constitute one quantitative objective the mini-community's operations are expected to achieve; (4) taking leader's actions that publicly recognize and provide appropriate rewards for meritorious deeds accomplished by members of the mini-community³⁰; (5) planning for the future direction to be taken in the mini-communities activities and tactical objectives to meet the evolving needs of the Enterprise as a whole; (6) safe-guarding the mini-community from harmful effects of moral faults committed by citizens and all outlaw or criminal actions by any person (such actions breach the social contract, the *strict* observation of which is essential for the common success of the mini-community's endeavors³¹); (7) taking leader's actions to enforce the just laws of the Enterprise as a whole as well as any just local laws peculiar to the mini-community³²; (8) representing the mini-community's interests and opinions to other mini-communities that constitute part of the "macro-molecule" to which the mini-community is operationally bound; (9) taking prompt leader's actions to oppose and even to disobey any unjust law that might be legislated by the legislative branch of the Enterprise³³; and (10) taking appropriate leader's actions providing for the civil assimilation and civil education of new members in the ranks of the mini-community³⁴.

These specific activities are instantiations of labors peculiar to the division of labor this treatise calls executive labor (commonly called supervision, administration, or management). All arise from the peculiarities of the task of coordinating the activities and guiding the dynamic of leadership within the Enterprise. Each attaches to one or more of three fundamental types of corporate duties of the Enterprise as a whole in its *obligation to be the union of a body politic*:

1. Categorical: duties the Enterprise immediately owes to itself in regard to the persons of its citizens;

³⁰ this action is part of the executive's duty to provide for the on-going *civic education* of the citizens, which is a necessary task for strengthening and improving the society of the Enterprise community and is thus a necessary part of the *expectation of authority* vested in the executive's position by the community.

³¹ this duty may occasionally require the excommunication ("firing") of a resident of the mini-community who has committed a criminal action or displayed outlaw behavior; more often, it will require educational corrective action responding to the commission of a moral fault (that is, an unintentional transgression of duty). In both cases, all just laws of due process the Enterprise has erected must be scrupulously followed in both letter and spirit. Those entrusted with the *enforcement of justice* must not act unjustly.

³² this includes prompt leader's actions to comply with any writ of mandamus issued by the judiciary of the Enterprise.

³³ in a properly constituted Enterprise, the first action in fulfilling this duty will usually be an immediate appeal to the judiciary by means of a Petition of Right.

³⁴ this duty includes the appropriate administration of recruiting and hiring practices as well as the identification of particular new enterprises needed to realize the success of the mini-community mini-Enterprise. It also includes the evolution of current enterprises to meet evolving needs of the Enterprise. A part of this leader's action includes retention, training, and education of current citizens; the Enterprise must never favor recruitment of new members at the cost of *unilaterally* exiling current citizens because such an action is an egregious breach of the condition of the social contract. A community's first loyalty is to its own body-politic. A citizen who chooses to withdraw his enterprise, on the other hand, is a different matter.

2. Hypothetical: duties the Enterprise owes to itself immediately in regard to its external situation; and
3. Reciprocal: duties the Enterprise owes mediately in regard to reciprocity between itself and other entities (e.g., the political community from which its citizens are drawn, entities with which it has entered into contractual relationships, obligations it owes consumers of its products because of promises or warranties it has made to them, etc.).

None of these precepts of executive duty are new to this treatise. All can be found inherent in prior works by, e.g., Watson's *A Business and Its Beliefs*, Packard's *The HP Way*, and Townsend's *Up the Organization*. The principal contribution of this treatise is to cast these precepts into their proper deontological context with the social contract and to tie them to the mental physics of human nature.

Most Enterprises are confronted by external threats to their *Existenz*. In the commercial world the usual name for the threat is *competition*. Dealing with immediate external threats falls under the categorical duty, whereas dealing with chronic or developing threats falls under the hypothetical duty. In fulfilling these duties, the manner in which executive governance deals with them is bound by its reciprocal duties because a transgression of these raises new threats (e.g. civil or criminal lawsuits brought against it by the political community).

In a few ways competition might be likened to a state of bloodless warfare, although the simile is in many ways misleading. Actual war – the violent application of deadly force against a specific enemy as an instrument of political policy – is something far different in kind from mere economic competition. Its collective mass actions are savage beyond description and its course is utterly unpredictable. The real differences between war and business competition are the reasons why the armed forces of every nation are organized and administered differently from the way businesses are organized and administered. A commercial company takes it for granted that its salesmen will not be ambushed and killed on the way to their afternoon appointments, and that its office staff will not be panicked into flight by rocket rounds landing in the company parking lot; an army cannot. This is why it is egregious folly – and gross incompetence in the governance of leadership – to manage the armed forces as if they were no different from a shoe store or a shopping mall or a factory. Anyone who advocates doing so demonstrates by this advocacy his total unfitness to manage the armed forces. Clausewitz wrote,

If we pursue the demands that war makes on those who practice it, we come to the region dominated by the *powers of intellect*. War is the realm of uncertainty; three quarters of the factors on which action in war is based are wrapped in a fog of greater or lesser uncertainty. A sensitive and discriminating judgment is called for . . .

War is the realm of chance. No other human activity gives it greater scope; no other has such incessant and varied dealings with this intruder. Chance makes everything more

uncertain and interferes with the whole course of events.

Since all information and assumptions are open to doubt, and with chance at work everywhere, the commander continually finds that things are not as he expected. This is bound to influence his plans, or at least the assumptions underlying them. . . . During an operation decisions usually have to be made at once: there may be no time to review the situation or even to think it through. – Carl von Clausewitz, *On War*, I, 3

To this last point, that of having no time to review the situation or think it through before making a decision, it must be added: war forces this upon the military executive and then exacts a death penalty on those who make the wrong decision (and sometimes on those who make the right one).

Nonetheless, there are factors present in competition that are close enough similes to factors encountered in war to make a number of precepts of leadership governance developed out of military experience applicable to executive governance of leadership in non-military entities and situations. Uncertainty – Clausewitz' "fog" – is present in business operations as well. Making a decision in the absence of all the pertinent facts one would like to have is called *decision-making with risk*, although the risks run in commercial decision-making are far different in kind and far less deadly than those of decision-making in war. The level of risk an executive assumes in his decision-making can be called his *risk posture* and it is a source of tension – a feeling of *Unlust* – for the executive. Because risk is unavoidable, an executive's intellectual power (Quality in the power of a person) as it relates to his tolerance for risk-taking is an important mental factor in the individual's actual possession of the *Kraft* of authority.

Cowards are bad executives; fearless men are bad executives. A coward too often fails to take needed leader's actions required to deal with situations; a fearless man too often takes foolhardy leader's actions. The first leads his community to failure by omission, the second to failure by commission. British prime minister Neville Chamberlain provided history with an example of the first kind, George Armstrong Custer with an example of the second. Courage – which Aristotle called the mean of virtue between the vices of cowardice and fearlessness – is one of the intangibles of intellectual power that is necessary for an executive to possess real authority and to demonstrate merit in his leader's actions. Let us not mystify courage, however. Mental physics teaches us that courage is not an innate character trait. It is *a learned scheme of behavior* usually and most easily developed in a person's youth³⁵. The premier historical example of deliberately educating people to be courageous is ancient Sparta. The root foundation of both courage and cowardice is the structure of hypothetical imperatives a person constructs in the manifold of rules. Fearlessness, on the other hand, is primarily a product of ignorance and lack of appropriate

³⁵ It is possible for a person to learn courage later in life, but the learning task then is more difficult. It is much easier for a person to learn cowardice later in life than to learn courage. Courage is learned through experience by successfully dealing with circumstances the individual perceives as threatening in some way.

practical experience. It is an unregulated state of the impetuous process of reflective judgment.

A second important executive precept generalized from military experience was stated by Sun Tzu in the following way:

1. Sun Tzu said: We may distinguish six kinds of terrain, to wit: (1) Accessible ground; (2) entangling ground; (3) temporizing ground; (4) narrow passes; (5) precipitous heights; (6) positions at a great distance from the enemy.
2. Ground which can be freely traversed by both sides is called *accessible*.
3. With regard to ground of this nature, be before the enemy in occupying the raised and sunny spots, and carefully guard your line of supplies. Then you will be able to fight with advantage.
4. Ground which can be abandoned but is hard to re-occupy is called *entangling*.
5. From a position of this sort, if the enemy is unprepared, you may sally forth and defeat him. But if the enemy is prepared for your coming, and you fail to defeat him then, return being impossible, disaster will ensue.
6. When the position is such that neither side will gain by making the first move, it is called *temporizing* ground.
7. In a position of this sort, even though the enemy should offer us an attractive bait, it will be advisable not to stir forth, but rather to retreat, thus enticing the enemy in his turn; then, when part of his army has come out, we may deliver our attack with advantage.
12. If you are situated at a great distance from the enemy, and the strength of the two armies is equal, it is not easy to provoke a battle and fighting will be to your disadvantage.
13. These six³⁶ are the principles connected with Earth. The general who has attained a responsible post must be careful to study them. – Sun Tzu, *The Art of War*, X

In commerce the analog to Sun Tzu's terrain is called *the market*. Is the market for the produce of the Enterprise's intended activities primarily similar to what economists call perfect competition or monopolistic competition? If so, no one engaged in it will be able to sustain long term economic profit. Is the market primarily similar to what economists call the oligopoly or monopoly market? In this case, it is possible for the Enterprise to realize a maximum of profits. A decision to engage the Enterprise in a bad market is analogous to Sun Tzu's maxims about engaging in battle on bad ground. If the executive governance of leadership guides a commercial Enterprise to engage on a bad market ground, disaster to the community will be the typical end result – and sometimes an internecine result for all entities involved. For this reason it seems most peculiar that so many managers of U.S. companies choose to be so ignorant of very basic economic principles; so-called "business principles" are not a substitute for this.

A terrain simile also applies to institutions of public education. Here the source of revenue necessary for the survival of the institution is not gained by commercial competition but, rather, through the patronage of taxpayers, agents of the civil government in its legislative and executive

³⁶ this quote omits Sun Tzu's principles regarding narrow passes and precipitous heights.

branches, gifts from alumni or alumni organizations, and external funding by various foundations such as the National Science Foundation, the Ford Foundation, etc. These sources are not properly called a market (the analogy to a market for an education institution lies with the hopes and aspirations of its students), but it can be properly called *the support* – and a support can be regarded as a type of ground or terrain. Does the public consensus hold that the education institution is providing an important service to society, or is a significant fraction of the public dissatisfied? Do the politicians regard the education institution as making contributions to the general well-being of their constituents, or do they see its activities as publicly irrelevant? Do the external funding agencies regard their capital investments as producing an adequate return or not? Do the students believe their investment, of capital and stock-of-time, in their educational pursuit is helping them prepare for their future enterprises or do they think they are receiving nothing but meaningless drill at the hands of disinterested taskmasters? It seems at first encounter more than a little peculiar that education entities have not invested the same degree of scholarly effort to understand the social-natural character of their support that economic theorists have devoted to understanding and classifying various types of commercial markets.

There is a terrain simile applicable to Little League Baseball. Here the foundation of the Enterprise inheres in the participation of the boys. Boys play baseball to have fun, for companionship, and for pride of accomplishment and Emulation. A typical ten-to-twelve year old is not thinking about a future career in major league sports or even much of anything beyond the immediate affective returns provided by the game. If ever Little League Baseball comes to forget this and evolves into having a Spartan character, its self-destruction will be breathtakingly swift.

The reason a terrain simile is relevant for the executive is because he is tasked with planning for what John Stuart Mill called the *remote interests* of the community. Ignorance of this part of executive duty is a contributor to the aforementioned economic ignorance exhibited by most U.S. managers of commercial entities. To use another simile, an army sergeant might not know why his commanders have determined that this particular beach is to be invaded, but if he fails to study and plan for the tactical effects of the terrain on how to lead his men, he will probably lead them to their deaths. Similarly, an executive who fails to account for the "terrain" on which his Enterprise must carry on its activities is unprepared to properly plan the tactics and objectives for his mini-community and thereby will impede or even frustrate the success of his Enterprise. The individual entrepreneur engaged in his particular enterprise usually assigns responsibility for this tactical planning to his immediate governor; it is part of the *expectation of authority* the mini-community *vests* in the executive enterprise. Thus, "understanding the terrain" and how it affects the mini-community he governs is part of the executive's *duty*. "It's not my department" is a

precept for ignominious failure, through ignorance, in executive governance of leadership.

§ 7. The Call to Service

There is a rather long list of other considerations that pertain to republican governance of leadership – many enough in fact to fill the pages of a follow-on treatise (or two or two hundred) – but your author's point in raising this here is this: these go into the makeup of the key considerations in the *selection* of Enterprise authority figures. The distinction between an effective executive and a mere Pooh-Bah inheres in the power of that person – and especially in regard to his intellectual and persuasive powers – for understanding and fulfilling the deontological *duties* of executive enterprise. The same is true for the legislator, the judge, and the educator. Mere proficiency in a special enterprise craft is never a sufficient ground for placing a person in an authority position. The enterprise labor is quite different in kind from the more common craftsmen's enterprise labors in the division of labor. How, then, does an Enterprise best determine who is to take up the duties that go with acceptance of authority figure positions?

Here again, democracy is not a satisfactory answer. Are ten or ten thousand people who are ignorant of or misunderstand the social-natural factors that inhere in the *Kraft* of real authority likely to choose an executive more reliably than a person who is knowledgeable of these factors? To presume so is to commit the same genus of transcendent error as Rousseau committed in his statistical speculation about the efficacy of voting. Indeed, one satisficing and not uncommon group dynamic observable when a mini-community elects its own executive is what we might call the "he won't be a bother" effect. Tension is a feeling of *Unlust*, and it is human nature to try to avoid situations that stimulate tension. Tension is contrary to practical equilibrium. There is, therefore, an inclination found in some groups of people to prefer an authority figure who they think will *not* become a source of tension for them and will leave them alone in their pursuits.

But *all* leader's actions aim to stimulate and manipulate tension to purposively effect specific changes in behavior. In republican Enterprise, the fundamental purpose of this is *to beneficially stimulate the community's leadership*. Again, leadership is not a personality trait or an ontological thing; it is a dynamic – an *Unsache*-thing or "happening." An authority figure who fails to properly stimulate and guide this dynamic is merely a Pooh-Bah, fails to meet the expectation of authority vested in his position, and ultimately comes to transgress the above-noted duties of the Enterprise. Because transgression of any of these duties poses a threat of breaching the social contract – and, therefore, threatens the survival of the Enterprise as an Enterprise – it is an obvious conclusion to say that the general will of the citizens of a republican Enterprise is best served by having people of demonstrated merit in its functions of governance. Democracy cannot

and never does ensure this. John Adams wrote,

There is a voice within us which seems to intimate that real merit should govern the world; and that men ought to be respected only in proportion to their talents, virtues, and services. But the question has always been, how can this arrangement be accomplished? How shall the men of merit be discovered? How shall the proportions of merit be ascertained and graduated? Who shall be the judge? When the government of a great nation is in question, shall the whole nation choose? Will such a choice be better than chance? Shall the whole nation vote for senators? Thirty millions of votes, for example, for each senator in France! It is obvious that this would be a lottery of millions of blanks to one prize, and that the chance of having wisdom and integrity in a senator by hereditary descent would be far better. There is no individual personally known to an hundredth part of the nation. The voters, then, must be exposed to deception, from intrigues and maneuvers without number, that is to say, from all the chicanery, impostures, and falsehoods imaginable, with scarce a possibility of preferring real merit. . . . Real merit is so remote from the knowledge of whole nations that, were the magistrates to be chosen by that criterion alone and by universal suffrage, dissensions and venality would be endless. . . .

As no appetite in human nature is more universal than that for honor, and real merit is confined to a very few, the numbers who thirst for respect are out of all proportion to those who seek it only by merit. The great majority trouble themselves little about merit, but apply themselves to seek for honor, by means which they see will more easily and certainly obtain it, by displaying their taste and address, their wealth and magnificence, their ancient parchments, pictures, and statues, and the virtue of their ancestors; and if these fail, as they seldom have done, they have recourse to artifice, dissimulation, hypocrisy, flattery, imposture, empiricism, quackery, and bribery. What chance has humble, modest, obscure, and poor merit in such a scramble? – John Adams, *Discourses on Davila*

There are many people who hold themselves offended by Adams' harsh words here and like to hold as a tenet of faith that humankind is not such a collective hive of villainy as Adams might seem to intimate here. Yet there is no doubt at all from empirical experience that some people do behave in precisely the manner Adams denounces here. Encounters with them are not particularly rare. More commonly encountered is the case where satisficing behavior combines with the pursuit of personal interest to produce the chicanery Adams names. It should always be noted that democracy in ancient Athens was *not* fundamentally predicated on suffrage but rather *on duties of public service*, and that *every* citizen of Athens was expected *and required* to take his turn at serving in the administration of the state. Indeed, *his practical availability to serve was a factor in being made a citizen*. Again, Plato's words in the mouth of his "Socrates" character say to us,

Then, Thrasymachus, is not this immediately apparent, that no art or office provides what is beneficial for itself – but as we said long ago it provides and enjoins what is beneficial to its subject, considering the advantage of that, the weaker, and not the advantage of the stronger? That is why, friend Thrasymachus, I was just now saying that no one of his own will chooses to hold rule and office and take other people's troubles in hand to straighten them out, but everybody expects pay for that, because he who is to exercise the art rightly never does what is best for himself or enjoins it when he gives commands according to the art, but what is best for the subject. That is the reason, it seems, why pay must be provided for those who are to consent to rule, either in the form of money or honor or a penalty if they refuse.

[Socrates is then asked what he means by calling penalties a form of pay.]

Then, said I, you don't understand the wages of the best men for the sake of which the finest spirits hold office and rule when they consent to do so. Don't you know that to be covetous of honor and covetous of money is said to be and is a reproach? . . . Well, then, that is why the good are not willing to rule either for the sake of money or of honor. They do not wish to collect pay openly for their service and be styled hirelings, nor to take it by stealth and be called thieves, nor yet for the sake of honor, for they are not covetous of honor. So there must be imposed some compulsion and penalty to constrain them to rule if they are to consent to hold office. That is perhaps why to seek office oneself and not await compulsion is thought disgraceful. But the chief penalty is to be governed by someone worse if a man will not himself hold office and rule. It is from fear of this, as it appears to me, that the better sort hold office when they do, and then they go to it not in the expectation of enjoyment nor as to a good thing, but as a necessary evil and because they are unable to turn it over to better men than themselves or to their like. For we may venture to say that, if there should be a city of good men only, immunity from office holding would be as eagerly contended for as office is now, and there it would be made plain that in very truth the true ruler does not naturally seek his own advantage but that of the ruled, so that every man of understanding would rather choose to be benefited by another than to be bothered with benefiting him. – Plato, *Republic*, I (346e-347e)

This is a rather different perspective on being an executive, legislator, or judge than that to which we of this century are accustomed. The word Plato used that is translated here as "ruler" was *archon*, which in Athens meant a magistrate or governor and which was derived from a word that meant "to take the lead" or "to make a beginning." Those who idolize the idea of democracy would do well to understand that in democratic Athens most officeholders were selected by lot – literally by having their names drawn from a pot – and not by election in the modern sense. *Every* citizen was expected to take his turn, when it came around, at serving the public by acting in some administrative or other public capacity. Relatively few offices – for example, that of general of the army – were elected. Governance in Athens was mainly an amateur affair run by amateurs.

It is obvious enough, presumably, that leaving the selection of executives, legislators, judges, and educators to the whims of chance is a poor way to comprise their ranks and settle who is to occupy these peculiar divisions of labor. Except in the case of small groups, whose members know each other very well, election is hardly a better alternative and can be, as Adams intimated, merely another form of chance in which the dice can be loaded by all kinds of chicanery. This is why the Framers of the U.S. Constitution were so leery of democracy. But this consideration by itself moves us no further along in answering Adams' key questions, namely who shall choose the agents of governance, by what means, and according to what criteria?

There is probably no one single formula or prescription for this that fits all Enterprises of all kinds and sizes, or even necessarily one Enterprise as it evolves and changes over time. A great deal depends on the general *civic character* of the citizens themselves (as Mill pointed out) and what works adequately for one group of people may be, and often is, entirely inadequate for another. This, however, is where republican governance draws its advantages. *The individual is the*

best judge of those matters he knows well, and typically the worst judge of those matters he knows little or nothing about. It is because of this that representative governance is a sturdier scheme than monarchy, aristocracy, or democracy. It is also why the idea of electoral colleges – that is, a system of representation in which *small* groups select from among themselves those individuals in whom they most confidently invest *their expectation of authority* and delegate to them *the task of selecting authority figures* – deserves keen and thoughtful consideration. Depending on the size of the population of citizens, this might implicate a single congress-like structure (a College), or it might implicate a more complex pyramid of colleges, the electors at each level of which are appointed electors by those serving in the next-lowest level college, thereby effecting Madison's principle of "successive filtration."

It must also be recognized that a community of any considerable size will be composed of *an aggregate of mini-communities* whose members are bound by particular special interests. It must further be recognized that it is not only possible for one individual to belong *to more than one* such mini-community, but that this is in fact the most common circumstance. Nothing fundamental prevents an employee of a commercial firm from also being a capital investor (shareholder) in that same firm or another one. Nothing prevents a Little League umpire from also being the father or grandfather of one of the players.

The shortcomings of the Electoral College in American politics – and there are some serious shortcomings in its present institution – do not exist *substantially* or *because* it is an Electoral College; they exist because the Framers delegated the details of organizing it to the individual discretions of the divers state legislatures with only minimal Constitutional restrictions. This opened the door for the eventual *confiscation* of the power, by political parties, to decide who the electors would be and to *centralization* of the power to choose electors. In most American states, the voters do not even know the names of the electors they are voting for, and many do not even know that they are in fact voting for a slate of electors and not for a Presidential candidate. This centralization of power was and is the very antithesis of American republicanism. In analyzing the strength and durability of the American republic – which was both a marvel and a mystery to Europeans in the first half of the nineteenth century – Tocqueville wrote,

I have already observed that the principle of the sovereignty of the people governs the whole political system of the Anglo-Americans. . . . In nations by which the sovereignty of the people is recognized, every individual has an equal share of the power and participates equally in the government of the state. . . . He obeys society, not because he is inferior to those who conduct it or because he is less capable than any other of governing himself, but because he acknowledges the utility of an association with his fellow men and he knows that no such association can exist without a regulating force. . . . Hence arises the maxim, that everyone is the best and sole judge of his own private interest, and that society has no right to control a man's actions unless they are prejudicial to the common weal or unless

the common weal demands his help. This doctrine is universally admitted in the United States. . . .

The township, taken as a whole, and in relation to the central government, is only an individual, like any other to whom the theory I have just described is applicable. Municipal independence in the United States is therefore a natural consequence of this very principle of the sovereignty of the people. . . .

[In New England] political life had its origin in the townships; and it may almost be said that each of them originally formed an independent nation. When the kings of England afterwards asserted their supremacy, they were content to assume the central power of the state. They left the townships where they were before, and although they are now subject to the state, they were not at first, or were hardly so. They did not receive their powers from the central authority, but, on the contrary, they gave up a portion of their independence to the state. This is an important distinction . . . The townships are generally subordinate to the state only in those interests which I shall term *social*, as they are common to all the others. They are independent in all that concerns themselves alone; and among the inhabitants of New England I believe that not a man is to be found who would acknowledge that the state has any right to interfere in their town affairs. . . .

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

In America not only do municipal bodies exist, but they are kept alive and supported by town spirit. The township of New England possesses two advantages which strongly excite the interest of mankind: namely, independence and authority. Its sphere is limited, indeed, but within that sphere its action is unrestrained. This independence alone gives it a real importance, which its extent and population would not ensure.

It is to be remembered, too, that the affections of men generally turn towards power. Patriotism is not durable in a conquered nation. The New Englander is attached to his township not so much because he was born in it, but because it is a free and strong community, of which he is a member, and which deserves the care spent in managing it. In Europe the absence of local public spirit is a frequent subject of regret to those who are in power. . . . Yet without power and independence a town may contain good subjects but it can have no active citizens. Another important fact is that the township of New England is so constituted as to excite the warmest of human affections without arousing the ambitious passions of the heart of man. . . .

In the American townships power has been distributed with admirable skill, for the purpose of interesting the greatest possible number of persons in the common weal. Independently of the voters, who are from time to time called into action, the power is divided among innumerable functionaries and officers, who all, in their several spheres, represent the powerful community in whose name they act. The local administration thus affords an unfailling source of profit to a vast number of individuals. – Alexis de Tocqueville, *Democracy in America* (1835), I, iv

When the American Revolution came, Americans were already accustomed to governing themselves, in small interlocking groups such as in the municipal township, and it was this independence, more than anything else, that they fought the Revolution to preserve. Many, perhaps even most, historians have agreed with Tocqueville that this decentralization of power, coupled with civic obligations serving "the common weal," were the essence of liberty in

America and what Madison called "the genius of the people of America"³⁷. Centralization of power is destructive to what Tocqueville called town spirit and produces apathy and withdrawal from civil affairs. Tocqueville went on to write,

The Revolution of the United States was the result of a mature and reflecting preference for freedom, and not a vague or ill-defined craving for independence. It contracted no alliance with the turbulent passions of anarchy, but its course was marked, on the contrary, by a love of law and order.

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

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

If he had been speaking of commerce rather than politics, what Tocqueville describes here would be called an Enterprise of Enterprises of enterprises. Earlier in these pages we saw Watson describe something similar in the decentralization of IBM with his note that no burdensome bureaucracy of corporate regulators had proved necessary. Self-interest in the form of local-community-interested liberty is the most powerful of entrepreneurial forces. Plutocratic entities, on the other hand, are like the centralized power hierarchies of old Europe where the petty tyrants bemoaned the lack of a public spirit *they themselves had ruled to demise*. In the mechanisms an Enterprise institutes for the identification and appointment of its agents of governance, the crucial importance of *decentralization* and the vital role that *familiarity* has with judging the merit of persons to be accorded the expectation of authority must be recognized as the central load-bearing pillar of the structure of the republican governance of leadership. This also points to the vitality of selecting agents of governance *from within the Enterprise*. Townsend wrote,

How to do it wrong: go outside and get some expensive guy who looks like 110 per cent of what you want and a year later, after having raised salaries all around him, you'll still be

³⁷ *The Federalist*, no. 39

teaching him the business. The people around him will be frustrated and ineffective.

One of the keys is to pick someone within the company who has a well-deserved reputation as a winner. . . . The organization will rally around an accepted winner, even when he's temporarily over his head, because in their eyes he deserves the chance. The phony who conned you into giving him the job will go down for the third time and pull down everybody else he can reach. – Robert Townsend, *Up the Organization*, 138

The authority figures in an Enterprise are the "magistrates and officers" who *regulate* its cooperative activities for the public benefit. Selection of an individual to fill a slot in this peculiar division of labor should never be seen as a reward for past accomplishments but, rather, as *a call to service*. The prime objective of all *mechanisms* of selection is to enliven, as much as humanly possible, *civic virtue* and to stimulate the spread of civic virtue to the widest extent and degree among the citizens of the Enterprise. Deontologically,

The struggle of inclination with the moral law, and the constant disposition (constant attention) to carry out his duties, therefore constitutes what we call *virtue*. – Kant, *Metaphysik der Sitten Vigilantius*, 27: 492

In pursuit of this end, no idea superior to that of an electoral college system, appropriately organized and regulated with appropriately interlocking pyramids, has ever been proposed.

§ 8. Segue to Chapter 13

Yet matters are not so simple as the last paragraphs might appear to suggest. The old proverb that "the devil is in the details" was never more true than it is when it comes to the task of constituting a republican governance of leadership. Plutocracy is easily established by ignorant and satisficing men; republican governance is not. There are a number of important factors that must be taken into account, not the least of which is what we can call the quality of citizenship exhibited and demonstrated by the people joined together in an Enterprise. These considerations are those we next turn to examine in the final two chapters of this treatise.

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