

## Chapter 6

**To Insure Domestic Tranquility****§ 1. Domestic Tranquility in a Republic**

What is domestic tranquility? In most ways it is easier to say what it is not than what it is, to spy its certain absence rather than to ascertain its presence. A full scale riot, such as those in the 1960s, is a sign of the absence of domestic tranquility. An insurrection, such as Shays' rebellion in 1786 Massachusetts, signifies the absence of domestic tranquility. Sedition – defined as the stirring up of discontent, resistance, or rebellion against a sitting government – is usually a sign of the absence of domestic tranquility, although mere discontent falls short of being a sufficient mark of the absence of domestic tranquility and, in any event, discontent over at least one issue by at least some fraction of the civil population is by far the normal state of affairs in the United States. Edmund Burke, a member of the British House of Commons at the time of the outbreak of the American Revolution, once said of colonial Americans in a speech,

In other countries, the people, more simple and of a less mercurial cast, judge an ill principle in government only by an actual grievance; here [the Colonies] they anticipate the evil, and judge of the pressure of the grievance by the badness of the principle. They augur misgovernment at a distance, and snuff the approach of tyranny in every tainted breeze.<sup>1</sup>

Many people involved in government tend to think of domestic tranquility as the absence of overt violent actions against the government or established authorities. Those of more intellect and who take a wider view of matters extend this to include the absence of large scale organized protest movements and demonstrations. Some with still broader views and a habit of political introspection extend this even farther, regarding such things as local violent clashes between, say, a union and the management of a company – such as the deadly violence that broke out during the strike against the Carnegie Steel Company in Homestead, Pennsylvania, on July 6, 1892 – as a clear and certain indicator of the absence of domestic tranquility.

There is a problem and a danger attending adopting a viewpoint that equates domestic tranquility with the mere absence of active and overt signs of civil malcontent. It is that a strong enough civil authority can always suppress such signs by force, intimidation, and by enhancing the intimidation through demagoguery that rallies the unaffected portion of the population to the side of the oppressor by painting those expressing malcontent as enemies of "the American Way of Life." This, unfortunately, has tended to be most often the case in American history. We saw it in the opposition by the government and the courts to the nineteenth and early twentieth century labor movements, in

---

<sup>1</sup> from speech on Conciliation with the Colonies.

the anti-civil rights reactions of the 1960s, by the Nixon administration's placing of the blame for the Kent State murders (by the Ohio National Guard in 1970) on the murdered students, and in too many other instances in U.S. history. It is the unfortunate historical record that blame for acts that signal the disruption of domestic tranquility has been laid squarely upon those expressing their grievances and malcontent rather than upon the circumstances and conditions that caused it in the first place. Agents of government tend to claim they are "on the side of Law and Order," and those who have been duped into thinking this claim is valid tend to become abettors of despotism, even if they do so only by their silence and do not push an inquiry into the underlying causes and injustices that produced the violence and were responsible for it.

The danger of equating domestic tranquility with the absence of expressed domestic malcontent is that it tends to make people forget the intoxicating effect power so often has on those who hold it. John Adams, in his essays on *A Defense of the Constitutions of the United States of America* (1789), wrote,

We have all along contended, that the predominant passion of all men in power, whether kings, nobles, or plebeians, is the same; that tyranny will be the effect, whoever are the governors, whether the one, the few, or the many, if uncontrolled by equal laws, made by common consent, and supported, protected, and enforced by three different orders of men *in equilibrio*.

He goes on to write,

We have all along contended, that a simple government, in a single assembly, whether aristocratical or democratical, must still of necessity divide into two parties, each of which will be headed by some one illustrious family, and will proceed from debate and controversy to sedition and war. . . Having no third order to appeal to for decision, no contest could be decided but by the sword.

A government unchecked and sliding into despotism can silence the voices of dissent, often for long periods of time, through the threat of force and terror and by means of a divide-and-rule strategy. But this never means that domestic tranquility has been brought to the political community. It only means that those aggrieved by injustice have been driven underground to form a brooding faction in the form of a Toynbee proletariat awaiting only one last sufficient outrage to erupt in bloody violence. Suppression of dissent by force or the threat of force – or by marshalling the tyranny of a temporary majority duped into serving as the agents of suppression in proxy for direct oppression by agents of the government – never succeeds in the long run. The greater the appearance of success, the more sudden, violent, and deadly is its eventual failure. The experience of injustice produces long and bitter memories, incubates the feud, and leads inevitably to a dissolution of civic morality in the body politic that will be followed eventually by fall of the republic. In *On Liberty* Mill wrote,

The worth of a State, in the long run, is the worth of the individuals composing it; . . . a State which dwarfs its men, in order that they may be more docile instruments in its hands even for

beneficial purposes, will find that with small men no great thing can really be accomplished; and that the perfection of machinery to which it has sacrificed everything else will in the end avail it nothing, for want of the vital power which, in order that the machine might work more smoothly, it has preferred to banish.

If it is unwise and short-sighted to recognize domestic tranquility only by the absence of domestic violence, protest, and rebellion, then is there some better *practical* way to grasp this elusive quality of political life? If there is a simple formula or prescription for doing so, the sage who can enunciate it has not yet appeared. Those who would try to do so are prey to falling victim to the illusion of the efficacy of social machinery in the mistaken hope that some set of golden rules could be set down once and for all with such superhuman wisdom that it anticipates all possible seeds, past and future, of tranquil life. Inevitably the erection of such a social machine will sacrifice the very compact of civic morality essential to insuring domestic tranquility. The political community is a *living* community, and the hubris of thinking this community can be transformed into a social automaton will always be stalked by the Nemesis of violence and breakdown of the order it sought to insure.

But if there is no prescriptive set of rules and conditions by which the marks of domestic tranquility can be crisply defined, it is a different matter to identify its necessary condition. Kant judicially defined *happiness* as "contentment with the state of the world in which I find myself, in relationship to other things outside me." To be content is to be satisfied enough with what one has or is and to not desire something more or different. Psychological research carried out over the past seven decades has tended to confirm Kant's definition. Psychologists Elaine and Arthur Aron reported that happiness is the "neutral gear" of the human nervous system, the normal human condition.<sup>2</sup> Let us compare this 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.

It is easy enough to deduce from all this that: ***domestic tranquility is the mood of the general membership of the body politic that results from its membership at large being satisfied enough in their relationship to the general state of life in the political community and desiring nothing more or different in this relationship.*** Perfect domestic tranquility is then the *ideal* of every member of the body politic being happy in this sense. Like every ideal, perfect domestic tranquility must be seen as a goal the body politic as a whole strives towards, rather than an actual state of being, because it is impractical to suppose every member of this body can or would enjoy this state of satisfaction all at once and for all times.

From this we can now understand the mandate to government under the Social Contract stated by

---

<sup>2</sup> Aron, E.N., & Aron, A. (1987), "The influence of inner state on self-reported long term happiness," *Journal of Humanistic Psychology*, vol. 27, pp. 248-270.

the third general objective of government: to insure domestic tranquility. The mandate is not to actually achieve a permanent state of *absolute* domestic tranquility – for such a goal is impractical – but, rather, to achieve and perfect as much as possible *conditions* under which a maximum number of the members of the body politic enjoy this state of happiness in their relationships with the political community as a whole.

## § 2. Domestic Tranquility and the Sovereign Will

Outside of the Preamble of the Constitution, not a clause within it specifically uses the phrase "domestic tranquility" in defining the mechanisms and structure of the general government. It does not take much reflection to see why this is so. Insuring domestic tranquility is an objective of government, and the various mechanisms of the general government are to serve the achievement of the objective. In one form or another, every Article within the Constitution pertains to the objective, but only insofar as domestic tranquility is to be an outcome of good government.

The Preamble itself had a rather curious treatment during the Constitutional Convention. After first establishing some rules and procedures the Convention would follow in carrying out its task, the actual work on the Constitution began on May 29, 1787, with a set of fifteen resolutions proposed by Edmund Randolph of Virginia (Farrand, *Records*, vol. I). The first of these, destined to eventually develop into the Preamble, was

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

The objects named in this resolution are drawn directly from Article Three of the Articles of Confederation. When the delegates reconvened the next day, almost the first action they took was a motion to postpone discussion on Randolph's first resolution and move directly to discussion and debate concerning the other resolutions. The Convention did not return to this resolution until very nearly the end of its business.

While to many people it might seem strange that the delegates should choose to proceed directly to a discussion of implementations prior to debating and agreeing to the purposes of their work, this is not at all an uncommon human behavior. We should not overlook the fact that the delegates were men quite cognizant of the state of crisis faced by the fledgling United States under the Articles of Confederation, and that to redress the causes of that crisis was the purpose of their Convention in the first place. In a speech to the Maryland House of Delegates on November 29th, 1787, Convention delegate James McHenry said (Farrand, *Records*, vol. III),

It must be within the Knowledge of this House, Mr. Speaker, that the plan of a Convention originated in Virginia – accordingly when it met in Philadelphia the objects of the meeting were

first brought forward in an address from an Honorable Member of that State. He premised that our present Constitution [i.e., the Articles of Confederation] had not and on further experience would be found that it could not fulfill the objects of the Confederation. . .

It is incapable of producing certain blessings, the Objects of all good governments, Justice, Domestic Tranquility, Common Defense, Security to Liberty and general Welfare[.]

Among its earliest actions, the Convention established a Committee of Detail to handle the task of organizing and stating the details of the constitution the Convention was drafting. In the notes of this committee is found an explanation for why the delegates felt it was unnecessary to preface their debates with a debate on Randolph's first resolution. The specific document was written by Randolph himself with emendations by John Rutledge of South Carolina. It states (Farrand, *Records*, vol. II),

In the draught of a fundamental constitution, two things deserve attention:

1. To insert essential principles only, lest the operations of government should be clogged by rendering those provisions permanent and unalterable which ought to be accommodated to times and events, and
2. To use simple and precise language, and general propositions, according to the example of the constitutions of the several states.

1. A preamble seems proper not for the purpose of designating the ends of government and human politics – This display of theory, howsoever proper in the first formation of state governments, is unfit here; since we are not working on the natural rights of men not yet gathered into society, but upon those rights, modified by society, and interwoven with what we call the rights of states – Nor yet is it proper for the purpose of mutually pledging the faith of the parties for the observance of the articles – This may be done more solemnly at the close of the draught, as in the confederation – But the object of our preamble ought to be briefly to declare, that the present federal government is insufficient to the general happiness, that the conviction of this fact gave birth to this convention; and that the only effectual mode which they can devise, for curing this insufficiency, is the establishment of a supreme legislative, executive, and judiciary – Let it next be declared, that the following are the constitution and fundamentals of government for the United States.

The first general objective – to form a more perfect union – states the means by which the remaining five objectives are to be achieved by a general government.

Randolph's note concerning the use of "simple and precise language" hints at the common understanding of the delegates in regard to insuring domestic tranquility. It is fairly obvious from *The Federalist*, from various speeches and letters, and from the *Convention Records* that the foremost concerns of the Convention delegates in regard to domestic tranquility centered upon insurrections within the states and war between the states. The imminent dangers from both of these under the Articles of Confederation loomed large in the calling of the Convention in the first place, and so it is understandable that specific government mechanisms for insuring domestic tranquility, outside of those involving various powers of the general government for dealing with these exigencies, did not capture their deliberations. Insurrections and wars between states are not, after all, difficult to perceive once they begin. It is somewhat more curious, though, that the delegates did not do more for the aim of preventing these occurrences in the first place.

Part of this, no doubt, was due to their reliance upon the state governments to mind their own affairs. Equally without doubt, the phobia with which some of the delegates viewed the excesses of democracy tended to downplay the urgency of providing the people themselves with an obvious mechanism for expressing their discontent – other than by the electoral process – to the *general* government. It must also be remembered that the plan of the Constitution was one of a "confederated republic" and not of either a purely national or a purely federal government. In Madison's notes on the Convention debate of May 31st (Farrand, *Records*, vol. I) we find

Mr. Sherman [delegate from Connecticut] opposed the election [of members of the House of Representatives] by the people, insisting it ought to be by the State legislatures. The people, he said, immediately should have as little to do as may be about the Government. They want information<sup>3</sup> and are constantly liable to be misled.

Mr. Gerry [delegate from Massachusetts]: The evils we experience flow from the excess of democracy. The people do not want virtue<sup>4</sup>; but are the dupes of demagogues<sup>5</sup>. In Massachusetts it has been fully confirmed by experience that they are daily misled into the most baneful measures and opinions by the false reports circulated by designing men, and which no one on the spot can refute. . . He had been too republican heretofore: he was still however republican, but he had been taught by experience the danger of leveling spirit.

As unpleasant as these characterizations of the general public sound to our modern ears, it is still a fact – and a clearly evident one – that Sherman and Gerry were not incorrect to point out dangerous fundamental weaknesses in excessively direct democracy. Even so, in the agrarian culture of America in the days of the Revolution, the coming industrialization of the country was not foreseen, nor the need that would attend it for more direct means – means more immediate than elections – by which the people could express the will of the Sovereign. If, however, the delegates did not sufficiently appreciate this omission, the need was much more apparent elsewhere; this was a principal factor in the widespread opposition to a Constitution that did not include a Bill of Rights as an integral part. Indeed, we may conclude that the subsequent furor over that omission took many of the delegates by surprise. In a speech to the Pennsylvania Convention of November 28th, 1787, James Wilson said (Farrand, *Records*, vol. III),

Mr. President, we are repeatedly called upon to give some reason why a bill of rights has not been annexed to the proposed plan . . . But the truth is, Sir, that this circumstance, which has since occasioned so much clamor and debate, never struck the mind of any member of the late convention till, I believe, within three days of the dissolution of that body, and even then of so little account was the idea that it passed off in a short conversation, without introducing a formal debate or assuming the shape of a motion.

In fact the Convention did briefly consider a motion to prepare a Bill of Rights on 12 September, but there was little debate and the motion failed by a vote of none in favor, ten against, one absent.

<sup>3</sup> That is, the people lack information.

<sup>4</sup> That is, the people do not *lack* virtue.

<sup>5</sup> "demagogues" was later amended to read "pretended patriots."

The First Amendment (Article I of the Bill of Rights) provided the new Constitution, in an indirect fashion, with its only explicit provisions for means by which the will of the Sovereign could be expressed and communicated to the government:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

While the First Amendment guarantees the liberty of citizens to express their grievances, it unfortunately does not oblige the general government – or, for that matter, the state governments – to actually listen to these grievances. While one might like to think such a duty is implied by the guarantee of the civil liberty of expression, history has demonstrated that too often the agents of the people feel no obligation to listen to, consider, debate, or act upon these expressions. It is far too common for men, once entrusted with the public service, to reverse the role and mistake the power to govern for the power to rule. A few examples from U.S. history suffice to illustrate this.

America in 1789 was a country of farmers, small shopkeepers, and individual craftsmen plying their trades. The War of 1812 changed this by cutting the U.S. off from the supply of manufactured goods previously available from industrialized Great Britain and brought the industrial revolution to our shores. In 1812 the value of all our manufactured products was about \$200 million. By 1840 this had increased to about \$480 million, and to about \$1.9 billion by 1860. Household manufacturing was supplanted by factories, against which the individual craftsman could not compete. The result was a fundamental change in which previously independent businessmen were forced by economic necessity to become factory workers instead. Before the machine age began, almost all free Americans had enjoyed or had the chance of enjoying a reasonable degree of economic independence. That ended for most people when the industrial revolution took hold in America. In 1760, about 90% of all Americans were farmers. By 1860, nearly one third of all Americans were supported directly or indirectly by manufacturing.

One consequence this wrought was a change in economic life that, due to the character of the manufactory as this was transplanted from Britain, could be called economic servitude – even outright economic slavery. Historians Adams and Vannest wrote of the early nineteenth century,

There is little freedom in the New England mills. The Northern workman might be "free" politically and legally, but economically he was far from being free. In New England mills in the 1830's the hours of work ranged from twelve to fifteen. The manager of one mill at Holyoke found that his operatives could produce 3000 more yards of cloth a week if he worked them without breakfast. In Paterson, New Jersey, the women and children were worked from 4:30 in the morning. Rhode Island mills were working children under twelve from ten to fourteen hours a day, six days a week, one of the managers proudly saying that he allowed them to go to school on Sundays. Their wages were one dollar and a half a week. Another Massachusetts owner stated that he considered his workers precisely as he did his machines. When either got old or out of order, he threw them out. Employees who made trouble were blacklisted and often could

get no work elsewhere unless they carried a card of approval from the last mill in which they had worked. Under those conditions "freedom" was not freedom at all.

These kinds of conditions were not peculiar just to New England; they existed throughout the industrialized north. The agrarian south, of course, had its own institution of slavery right up through the end of the Civil War where, at least, the institution was called what it was. The Civil War brought this institution to an end, but did not bring industrialized economic slavery to an end. The backlash against this was, of course, the creation of labor unions.

The earliest American labor unions were treated with unremitting hostility by both the press and by the state and general governments. Labor disputes often degenerated to the point where violence erupted. In 1894 approximately 750,000 workmen were involved in civil disturbances of one kind or another. Companies often hired their own security forces – usually nothing else than paid thugs – and where that proved insufficient, state militia or even federal troops were brought in. Usually these were employed against the strikers. Adams and Vannest wrote,

For the most part the free white worker in colonial days was an artisan or a journeyman. When young he was an apprentice working at his master's side and usually living in his master's home as a member of the family. When older, he worked for himself. Even before machines came, however, some trades began to undergo a change. Men began to employ groups of workmen, whether they worked together in one building or not, and in such trades, notably shoemaking, quite a new social relation came to exist between the owner of the group business and his workmen. It was in such trades that dislike of the new conditions began first to result in strikes, chiefly with regard to hours and wages.

With the spread of the Industrial Revolution, however, large bodies of workmen were assembled in one place, and began to be more conscious of occupying a new position, and one by no means to their taste, in American society. As men do under such circumstances, they combined to protect their mutual interests. As unions were formed and strikes ensued, court after court invoked the law of conspiracy against them. A man, the courts ruled, might decline to work under certain conditions or for certain wages, but he had no right to prevent others from doing so or to form groups which would have such power. Both employers and the newspaper press were bitterly opposed to labor unions, and in one case, about 1835, merchants in Boston pledged themselves to drive striking workmen in that city into submission or starvation and subscribed a fund of \$20,000 for that purpose.

It has become common these days to hear commentators remark that our understanding of social science badly fails to keep pace with our expanding knowledge of material science and technology. This is true, but hardly a new or recent situation. We will revisit the implications of post-Industrial Revolution changes in the political community in more depth when we take up the issues involved with the general objective of promoting the general welfare. The disruption of domestic tranquility in the economic sphere is in no way the only important historical example. Another example is provided by the widespread, and sometimes violent, antiwar protests of the Vietnam era. Here, without a declaration of war, the general government committed America, without public support, to a foreign war. When this war was lost, the supposed evil consequences of the fall of South Vietnam to the

security of this nation never materialized, and the ideological presumptions that led officials of the government to commit this nation to armed conflict were proven to be fallacious.

In 1964 the Tonkin Gulf Resolution and the war in Vietnam were overwhelmingly supported by the Congress. The Resolution was opposed only in the Senate, and there only by Senators Wayne Morse of Oregon and Ernest Gruening of Arkansas. Senator Gruening objected to "sending our American boys into combat in a war in which we have no business, which is not our war, into which we have been misguidedly drawn, which is being steadily escalated." By 1967 a significant fraction of the American public was engaging in outright protests against the war in Vietnam and, again, the agents of the government refused to listen to or heed these protests, or to make any effort whatsoever to redress the grievances of the people. Not surprisingly, the antiwar movement found its grass roots in the young people who were being called upon, actually or potentially, to go fight this war. At the time these people did not have the grant of suffrage; they had no vote in the matter at all. Protest was the only means of expression open to them. Furthermore, the Congressional dereliction of its constitutional responsibility – the responsibility for declaring war – was an act of injustice, and so civil disobedience by these protestors was not a liberty *but a duty*.

Preceding and then concurrently with the antiwar movement was the civil rights movement of the 1950s and 1960s. Here the situation was less one of grievance against the actions of the general government but, rather, against its inaction. The active antagonists of civil liberty in this case were the state and local governments, not all of which were located in the deep South. But the issue involved was not, and never was, a state or a local issue; it was a national and a constitutional issue. In what was the most famous and probably the most moving speech of this era, Dr. Martin Luther King, Jr. said, in 1963,

Five score years ago, a great American, in whose symbolic shadow we stand today, signed the Emancipation Proclamation. This momentous decree came as a great beacon light of hope to millions of Negro slaves who had been seared in the flames of withering injustice. It came as a joyous daybreak to end the long night of their captivity.

But 100 years later, the Negro still is not free. One hundred years later, the life of the Negro is still sadly crippled by the manacles of poverty in the midst of a vast ocean of material prosperity. One hundred years later, the Negro is still languished in the corners of American society and finds himself an exile in his own land. And so we've come here today to dramatize a shameful condition.

In a sense we've come to our nation's capital to cash a check. When the architects of our republic wrote the magnificent words of the Constitution and the Declaration of Independence, they were signing a promissory note to which every American was to fall heir. This note was a promise that all men – yes, black men as well as white men – would be guaranteed the unalienable rights of life, liberty, and the pursuit of happiness.

It is obvious today that America has defaulted on this promissory note insofar as her citizens of color are concerned. Instead of honoring this sacred obligation, America has given the Negro people a bad check, a check that has come back marked "insufficient funds."

But we refuse to believe that the bank of justice is bankrupt. We refuse to believe that there are insufficient funds in the great vault of opportunity of this nation. And so we've come to cash this check, a check that will give us upon demand the riches of freedom and the security of justice. We have come to his hallowed spot to remind America of the fierce urgency of now. This is no time to engage in the luxury of cooling off or to take the tranquilizing drug of gradualism. Now is the time to make real the promises of democracy. Now is the time to rise from the dark and desolate valley of segregation to the sunlit path of racial justice. Now is the time to lift our nation from the quicksands of racial injustice to the solid rock of brotherhood. Now is the time to make justice a reality for all of God's children.

The examples just described serve to illustrate the following point. The arising of what is euphemistically called "labor unrest" in our country; the protests of the civil rights movement; the protests against the war in Vietnam: these were clear and present signals that a class system had been created within the political community in violation of the terms of the Social Contract. No person binds himself in the Social Contract so that he may be subjugated to the power of another person. No person binding himself in the Social Contract thereby acquires the right to subjugate another member *in any way or by any means*. The failure was one of government, both state and general: to recognize the meaning of the manifestations of unionism in industrial America; to recognize the meaning of the desegregation movement; and to recognize the meaning of the antiwar protests. The failure was failure to insure domestic tranquility. It was a dereliction of attentiveness to duty by agents of government. That the government actively took sides in the civil disputes that occurred, and favored one side over the other with no regard for the Social Contract or the true and only purpose of government, was a *criminal* transgression of duty by agents of government. Again,

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 abolish it, and to institute a new government, laying its foundations on such principles, and organizing its powers in such forms, as to them shall seem most likely to effect their safety and happiness.

It is not the contention of this treatise that the system of government in America should or ought to be abolished. It *is* the proposition of this treatise that the present institution of government has demonstrated repeated failures to accomplish its objective of insuring domestic tranquility, and that as a consequence an alteration of government is necessary for the preservation of the Social Contract. The government has been shown to suffer from periodic bouts of deafness, during which it does not hear the voice of the Sovereign speaking to it. We must give it a hearing aid and compel it to wear it.

### § 3. The Objectives of Reformation to Insure Domestic Tranquility

#### § 3.1 Purpose and Prime Objective of the Reform

There is probably no period in U.S. history that better illustrates the nature of the phenomenon of

cultural change within the political community than the history of the nineteenth century. Whether we speak of the Industrial Revolution, the Abolitionist movement, the vast reformation of the nation's system of public education, or nearly any other sphere touching upon the lives of every citizen, the first lesson of the nineteenth century is this: Domestic changes in the culture and economics of the political community require government to change with the changing times, to abandon old suppositions when the evolution of the political community renders them no longer valid, and to insure that ideas and policies of government do not calcify into unreasoning political dogma.

If we examine the view of political science held by the Founding Fathers and contrast it against the modern view, we see a great difference. To the Founders, political science was a practical, pragmatic, and applied science. It was the science of statesmanship. While many of these men were well educated, the doctrines of political science were living doctrines and much more than mere matters of academic concern. This view they inherited was by no means a novel invention of the eighteenth century. In the first century B.C. Cicero wrote,

I will not speak here of the men, countless in number, who have each been the salvation of this republic; . . . I will content myself with asserting that Nature has implanted in the human race so great a need of virtue and so great a desire to defend the common safety that the strength thereof has conquered all the allurements of pleasure and ease.

But it is not enough to possess virtue, as if it were an art of some sort, unless you make use of it. Though it is true that an art, even if you never use it, can still remain in your possession by the very fact of your knowledge of it, yet the existence of virtue depends entirely upon its use; and its noblest use is the government of the State, and the realization in fact, not in words, of those very things that the philosophers, in their corners, are continually dinning in our ears. For there is no principle enunciated by the philosophers – at least none that is just and honorable – that has not been discovered and established by those who have drawn up codes of law for States. For whence comes our sense of duty? From whom do we obtain the principles of religion? Whence comes the law of nations<sup>6</sup>, or even that law of ours which is called civil<sup>7</sup>? Whence justice, honor, fair-dealing? Whence decency, self-restraint, fear of disgrace, eagerness for praise and honor? Whence comes endurance amid toils and dangers? I say, from those men who, when these things had been inculcated by a system of training, either confirmed them by custom or else enforced them by statutes. . . Therefore the citizen who compels all men, by the authority of magistrates and the penalties imposed by law, to follow rules of whose validity philosophers find it hard to convince even a few by their admonitions, must be considered superior even to the teachers who enunciate these principles. For what speech of theirs is excellent enough to be preferred to a State well provided with law and custom?

Indeed, just as I think that "cities great and dominant," as Ennius calls them, are to be ranked above small villages and strongholds, so I believe that those who rule such cities by wise counsel and authority are to be deemed far superior, even in wisdom, to those who take no part at all in the business of government. And since we feel a mighty urge to increase the resources of mankind, since we desire to make human life safer and richer by our thought and effort, and are goaded on to the fulfillment of this desire by Nature herself, let us hold to the course which has ever been that of all excellent men, turning deaf ears to those who, in the hope of even recalling those who have already gone ahead, are sounding the retreat. [*De Re Publica*, I. 1-11.2]

---

<sup>6</sup> *ius gentium*, the Roman code of laws common to all people.

<sup>7</sup> *ius civile*, the Roman code of private law.

Let us contrast Cicero's words with those in a recent general catalog for the political science department at one of America's land grant universities:

Political science is the study of politics, the process of gaining, maintaining, and exercising government power in the United States, in other countries, and internationally. The political science major at [name of the university] provides students with a wide selection of courses in American and comparative politics, international relations, public law, public administration, and political theory. Students may choose either a Bachelor of Arts or a Bachelor of Science degree program.

If we take this university at its word, its view of political science centers upon how to become a ruler and how to rule within the existing structure of government through the means of political parties. Not one word hints the role of government in a republic is that of the servant. In its list of courses, the curriculum presents precisely one course dealing with "American political thought" as represented, in part, by the Founding Fathers. It offers one other course touching upon Rousseau and Locke. Neither is required for graduation. The name Mill does not appear in any of their course syllabi at all. No hint is given of that duty of *citizenship* fidelity expressed in the civic moral lesson of Matthew 25:40, "Inasmuch as you have done it to one of the least of my brethren, you have done it to me."

Cicero, too, speaks of the ruler but we can and must note that for Cicero rulership is not an end but merely a means "to make human life safer and richer by our thought and effort." He is less concerned with the question of "how to rule" and more with the question of "why rulers are needed" and with the character and virtues needed by the State in its rulers. The contributions of eighteenth century thinkers like Rousseau and Montesquieu cast this in a then-explicitly-revolutionary idea that "rulers" exist to serve the people, and not the other way around. With Mill and others, working with the benefit of knowing how the eighteenth century experiments in republicanism and democracy had fared so far, we see appended to this a superior understanding of the sociology of the interrelationships between government and the body politic. The metamorphosis of the idea of agents of government has, over time, shown the unmistakable evolution out of the ancient idea of the ruler towards the still-contested view that what the State needs and desires are *leaders*, not *rulers*. *The* ruler of the Republic is and can only be the Sovereign will; in this understanding of politics, there is no room for rulers in government.

The narrow present day discipline of political science can and does err in one or both of two different ways. It errs when its academics adopt a Platonic attitude and devote their reflections exclusively to mere analysis and criticism. This is a theoretic and, not to mince words, useless academic exercise divorced from the practice and perfection of government. The object of political science should not be politics; it should be government. But political science errs even more when it comes to regard its task as training and preparation for one to acquire political power for its own sake and ignores the *purpose* of government and the Contract by which the members of a political

community *entrust* power into the hands of their agents of government. Bloom wrote,

Political science has always been the least attractive and the least impressive of the social sciences, spanning as it does old and new views of man and the human sciences. It has a polyglot character. Part of it has joined joyfully in the effort to dismantle the political order seen as a comprehensive order and to understand it as a result of subpolitical causes. . . . But there are irrepressible, putatively unscientific parts of political science. The practitioners of these parts of the discipline are unable to overcome their unexplained and unexplainable political instincts – their awareness that politics is the authoritative arena of effective good and evil. They therefore engage in policy studies whose end, whether it is stated or not, is action. Defense of freedom, avoidance of war, the furthering of equality – various aspects of justice in action – are hot subjects of study. The good regime has to be the theme of such political scientists, if only under-*cover*, and they are informed by the question "What is to be done?" . . .

So political science resembles a rather haphazard bazaar with shops kept by a mixed population. . . . The reality with which it deals lends itself less to abstractions and makes more urgent demands than do any of the other social science disciplines, while the tension between objectivity and partisanship in it is much more extreme. Everything in modern natural and social science militates against the assertion that politics is qualitatively different from other kinds of human association, but its practice repeatedly affirms the contrary. . . . And as the new scientific persuasion has lost much of its élan and the field has fragmented in various directions dictated at least partly by fidelity to the political phenomena, many of those who were once fierce enemies of political philosophy have become its allies. Political philosophy is far from ruling [political science], but it provides at least a reminiscence of those old questions about good and evil and the resources for examining the hidden presuppositions of modern political science and political life.

*Is political science a science?* That question is debated today, sometimes hotly. That it should have gradually become fragmented and polyglot speaks in part to Eliot's failed experiment in higher education, through which *holism* in human enterprise was lost to reductionism by speciation of the disciplines. *Should* it be a science? If we wish it to be of practical and beneficial use to humankind, it not only should be; it *must* be. But in sharp contrast to the physical sciences – chemistry, biology, and physics – political science *is inherently a teleological science because we humans make the political world in which we live*. And this is the root qualitative difference between it and the other science disciplines of which Bloom wrote.

It is because of this teleological root character that in this treatise our reformative objectives of government in perfecting the Idea of the American Republic begin first with *purposes*. Returning now to our present topic, the general objective of insuring domestic tranquility, we can state the purpose of reform: ***to insure government heeds the grievances of the Sovereign and acts to redress those found legitimate with both swiftness and justice.***

If, as this treatise contends, the fundamental object of government is the preservation, maintenance, and perfection of life for its citizens under the Social Contract; and if, furthermore, a dynamic, living community changes and evolves: it clearly becomes necessary for the mechanisms and structures of government to be capable of changing and evolving along with the community it serves. Kant taught that there are three brands of perfection – transcendental, metaphysical, and physical.

Transcendental perfection is completeness of the whole and mutual harmony and connection of the whole. This, he taught, is the only brand of perfection that has objective usage in philosophy. Metaphysical perfection means completeness with regard to the highest degree of Reality. However, we possess no concept of such a highest degree and, therefore, there is no standard by which metaphysical perfection can be judged. Physical perfection means complete sufficiency of empirical understanding. However, empirical understanding is contingent upon real experience and so, from a theoretical standpoint, there is no ground for presuming knowledge of physical perfection is attainable.

The illusory nature of metaphysical perfection is what refutes the validity of Platonic concepts of government; this is as much as to say: *ideology is antagonistic to good government*. Progress towards the transcendental perfection of government can be *gauged* only through knowledge and recognition of its *imperfections*. But this type of knowledge is empirical knowledge gained from experience, hence is contingent and requires constant surveillance, assessment, and updating. The imperfections of government are made manifest by *any* growing loss of domestic tranquility within the body politic, and so *the prime objective of reform in meeting the general objective of insuring domestic tranquility is to provide mechanisms for constant surveillance, assessment, and updating of the effects of existing policies and laws, and for assessing and understanding evolving needs for new policies and laws*. Good government must be capable of *self*-improvement.

### § 3.2 The Objectives of Implementation for the Reform

Just as generals are only trained to re-fight the last war, so politicians are only prepared to govern the previous community. Recognition and understanding of evolving changes in the cultural, economic, international, and other social forces at work in the political community is one of the more difficult challenges government faces. By and large, no government has ever shown an excellent track record in rising to this challenge. There seems to be something deep rooted in the human psyche that resists change when this change involves relationships within the political community, and this tendency to conservatism appears to become more pronounced with age. In most periods of history, the youth of a nation have often been the most eager and impatient for change, the elders the most resistant to it. The youth most often lack the maturation of experience to wisely judge change, the elders most often lack the willingness to accept it. Yet change comes inevitably; it is the currency of improvement in the quality of life for a free people. Its inevitable character must be faced and wisely dealt with, and the opposing natures of youthful vs. aged perspectives on change augur for the wisdom of Caesar Augustus' maxim: *festina lente* – make haste slowly.

Fulfilling the purpose of the prime objective of reform for insuring domestic tranquility requires the objectives of implementation to deal with many factors. Among these are:

- insuring the removal of financial and educational barriers that impede or suppress civil petitioning for redress of grievances;
- removal of prejudicial or customary barriers to evaluation and judgment of grievances by judicial agents of government<sup>8</sup>;
- insuring the just resolution of legitimate grievances according to the ultimate standard of the purpose of the Social Contract<sup>9</sup>;
- distinguishing between clear and present issues of public health or safety, which require immediate actions, and those pertaining to the general objectives of government, which will more often require time for reflection and the refinement of ideas before a just redress is possible;
- distinguishing and treating between those grievances that arise from private interests, which are not necessarily pertinent to the general interests at large of the body politic even when they are just, and those which, despite initial appearances, generally impact the will of the Sovereign<sup>10</sup>;
- insuring that redress pertinent to any one of the six general objectives of government is not carried out in a manner contrary in any way to any of the remaining objectives, and that government at all times is a faithful steward of all six of the general objectives of the Constitution mandated by the American Social Contract;
- distinguishing between matters of legal ethics vs. matters of civil ethics<sup>11</sup>;
- accomplishing the insurance of domestic tranquility within a political community made up of many sub-communities, especially when these sub-communities exist within one and the same geographic community and have opposing special interests.

To these factors we must also add: the most serious matters concerning the insurance of domestic tranquility will often be precisely those arousing the greatest passions and conflicts between the opinions of citizens of the body politic. These are the situations when the democratic vice of tyranny of the majority, or of the most vocal and well-organized plurality, over the civil liberties of the minority is most dangerous to the general well-being of the civil Union.

It is not a pleasant point to raise, much less an uncontroversial point, that the evolving nature of the civil culture might produce such a fundamental division among members of the body politic so as to be irresolvable under the specific terms of an existing Social Contract. The present day abortion controversy threatens to be one of these cases. In eighteenth century America abortion was not a political issue at all; today not a week goes by when this issue does not somewhere in this country

---

<sup>8</sup> Here is an instance where the distinction between just laws and unjust laws is of paramount importance.

<sup>9</sup> It must be recognized that not every grievance a citizen or even a body of citizens might voice is necessarily a legitimate grievance when viewed in relationship to the Social Contract. For example, a law proposed by one group "for the good of a different group" has a high likelihood of becoming an unjust infringement of rights the Social Contract does not require that second group to alienate.

<sup>10</sup> As one specific example, we may consider the situation of the conscientious objector – the person whose religious views cannot permit him to bear arms and end another person's life even in combat during time of war.

<sup>11</sup> For example, obedience to a just law is a duty freely assumed by the citizen and is a matter of legal ethics; civil disobedience to an unjust law is likewise a citizen's duty, but a duty pertaining to civil ethics.

raise its head. Here the grievance goes not just to domestic tranquility but to the general objective of Union itself. The obvious and dangerous question such a situation raises is this: Can and should the political community at large recognize and accept *secessions* of parts of its membership from the ideal of *universal* civil liberties *and still maintain* a tranquil political union? To put it another way: when might it be necessary for the preservation of the general republic to amend the Social Contract and, in the event of such amendment, can a higher Contract be made and agreed to by *all* associates that still preserves the unity of the nation? Can there be a republic *tolerant* of a *confederation* of political communities *within one and the same geographic community* that can still remain united under common terms for union, justice, domestic tranquility, common defense, and general welfare if civil liberty contracts are diverse within it? If so, what form of political structure could make it possible?

If not, then it seems an inescapable conclusion – as Rousseau gloomily believed – that no enduring republic is possible in the long run. But we should be far from ready to concede that the Toynbee proletariat is inevitable within a nation and that all nations must one day fall from within. This is perhaps the most fundamental issue that tests, in Lincoln's words, our united resolve "that government of the people, by the people, for the people, shall not perish from the earth." For, as Lincoln also said,

If destruction be our lot we must ourselves be its author and finisher. As a nation of freemen we must live through all time, or die by suicide. – *Address to the Young Men's Lyceum*, 1838

Let us not misunderstand the root of all domestic malcontent. In all save perhaps the smallest and simplest primitive communities, there exists an on-going tension felt by the individual between his natural right and the conditions and constraints imposed upon his actions by the larger community. Conditions and constraints were, at the beginning of the community, set for the sake of the mutual benefit of all members joining in the association. In all political communities grown so large that familiarity among the members and customs in their associations are no longer universal, it is the nature of government over time to legislate additional laws, additional constraints, and to sanction by inaction or tacit approval the evolution of new social constraints arising non-legislatively from actions of some one part of the community. These usually attempt to homogenize the society. It is when these conditions press too hard, when individuals begin to feel compliance with them is through constraint of force and not through consent, that the will of the individual begins to set against the cultural, social, and political order of the community and he feels the Social Contract is breached.

Kant taught that *will* is that character of the power of choice in which the individual's self-determination of his power to act is apodictic (he is certain of his righteousness) and necessitated (made necessary) by fidelity to the manifold practical rules and maxims he has come to construct for himself in his own mind. As the individual comes more and more to feel others in the political community to which he belongs are *unjustly* imposing their will on him, the impulses of his natural

right clash with the new obligations he is being pressed to accept, and the civil bonds between the individual and the community begin to dissolve. In *Critique of Practical Reason* Kant wrote,

One need only dissect the judgment that men pass on the lawfulness of their acts: thus would one always find that, whatever inclination may say between times, their reason, incorruptible and though itself self-contained, always holds the maxim of the will in an act up to pure will; i.e., to itself inasmuch as it regards itself as practical *a priori*. Now this principle of morality, just because of the universality of the legislation that makes it the formal supreme ground of determination of will regardless of any subjective differences, reason accounts at the same time to a law for all rational beings so far as they generally have a will, i.e. a capacity to determine their own causality through the representation of rules, hence so far as they are capable of acts according to fundamental principles; consequently also according to practical principles *a priori* (for these alone have that necessity which reason demands for fundamental principles).

Kant's writings tend to be rather burdensome to penetrate. The point he is making is that a person, malcontented in his relationship with the community, *will judge himself to be in the right* and will judge the community to be guilty of an unjust and willful persecution. Furthermore, he will regard his position as morally justified by his innate natural right as a free and rational being. He will, therefore, determine his own actions according to no other standard than his own, and he will impute to all other men this same natural law of self-determination. Even that person clinical psychiatrists deem to have an antisocial personality disorder does this; this individual's self-made version of "the golden rule" is usually capable of being phrased, "Do unto others *before* they do unto you."

It is because this inward-felt conviction – devolving the individual's relationships with others in the community backward towards the state of nature – is self-regarded by him as a *moral* conviction, it is only a short step in coming to hold the actions of other people as evil, sinister, and oppressive. This is what fuels the violence of civil breakdown. His antagonists are no less prone to this sort of inward conviction of self-righteousness and, unchecked, the bloody course of their conflict is predictable and stable throughout human history. It is this devolution from civic morality to the law of the beast that the mechanisms of reform must prevent.

To do so, it is necessary to provide a civic means by which government can be petitioned for redress of grievances by any citizen. Here we stress the point of a *civic* means. Citizens of this country, or any country, can always avail themselves of public protests and demonstrations. However, history and contemporary events both teach us this means is inadequate for two reasons. First, there is nothing here that guarantees government will listen to such expressions of protest. Indeed, it is too often the case that protesters and demonstrators are treated as troublemakers. Especially in the beginning stages of protest, those protesting are likely to be in the minority, and the issue is likely to be one to which most of the members of the political community are initially indifferent. Second, *even a single voice of protest* must be heard because legitimate grievances are grievances pertaining to violation of the Social Contract and therefore the cause of the legitimate grievance is always a violation of a right not

alienated. It is therefore irrelevant how many aggrieved parties might be involved because the terms of the Social Contract require that the association "*will defend and protect with the whole common force the person and goods of each associate.*" An injustice done to one is therefore an injustice done to all.

The civil liberty of protest and demonstration is inadequate in and of itself, and too often is a spark likely to ignite precisely the flames of passion antagonistic to domestic tranquility. At root is the relation between a citizen and duties of civic morality within the community. Issues touching upon this relation involve three considerations in how any person *determines himself* to uphold duties, on the basis of his ideas of good versus evil, so far as these duties: (1) relate to his *moral personality*; (2) relate to his *situation*; and (3) reciprocally relate himself *to the situation of others*.

By the term "moral personality" is meant the categorical relation in which a person *respects himself as an individual*, rather than as a part of any body politic, and sets terms by which he can and is willing to oblige himself to become a part of that body *while not violating duties to himself he makes to himself for himself*. In *Die Metaphysik der Sitten* Kant described this in the following words:

Now, the human being as a reasonable *natural being* . . . can be determined by his reason, as a *cause*, to deeds in the sensible world, and hereby the idea of obligation does not come into consideration. But this very same human being, thought according to his *personality* – that is, as a being endowed with *inner freedom* . . . – is a being liable to obligation and, indeed, obligation for himself (to the humanity of his own person); so the human being (regarded in these two senses) can acknowledge a duty to himself without falling into contradiction[.]

We are, each of us, the agents of our own deeds. Of the countless things each of us do every day, the great majority of our actions bear no moral or ethical implications or relationships to any duty. It is a matter of complete moral indifference if a person eats cereal or eggs for breakfast. However, Kant taught, each one of us does take up certain duties we owe to ourselves by virtue of our own humanity and *all obligation is inner self-consent*. No one, for example, can *externally oblige* me to carry out an act I deem to be evil or unjust, or that requires me to injure my own self respect, or to place myself in a situation where I might come to physical harm or death. Duties to oneself are a principal root of acts of civil disobedience, and it is through this moral relation to one's own personality that civil disobedience of unjust laws, far from being either criminal or outlaw, can be a *personal* duty. In terms of the social compact, such issues come down to the question: *What are to be the natural rights one should consent to alienate in forming the association of the body politic?* Where alienation of some particular natural right would come into conflict with duties of personality, the association attempts to bind its members too tightly and to over-regulate the members beyond what is necessary to achieve the purposes of the compact. Although, with typical French élan, Rousseau wrote that each member totally alienates *all* his natural rights, it is evident that "all" was and could only be an exaggeration. We each must and do retain unalienated certain rights of liberty in the pursuit of happiness. When the

community presses too hard with too many constraints, *duties to self will always prevail*.

Although his political philosophy was not free of internal contradictions, Henry David Thoreau did lay his finger on this point when he wrote,

But, to speak practically and as a citizen, unlike those who call themselves no-government men, I ask for, not at once no government, but *at once* a better government. Let every man make known what kind of government would command his respect, and that will be one step toward obtaining it.

After all, the practical reason why, when the power is once in the hands of the people, a majority are permitted, and for a long period continue, to rule, is not because they are most likely to be in the right, nor because this seems fairest to the minority, but because they are physically the strongest. But a government in which the majority rule in all cases cannot be based on justice, even as far as men understand it. Can there not be a government in which majorities do not virtually decide right and wrong, but conscience? – in which majorities decide only those questions to which the rule of expediency is applicable? Must the citizen ever for a moment, or in the least degree, resign his conscience to the legislator? Why has every man a conscience, then? I think that we should be men first and subjects afterward. It is not desirable to cultivate a respect for the law, so much as for the right. The only obligation which I have a right to assume, is to do at any time what I think is right. It is truly enough said, that a corporation has no conscience; but a corporation of conscientious men is a corporation *with* a conscience. Law never made men a whit more just; and by means of their respect for it, even the well-disposed are daily made agents of injustice.

Here Thoreau spoke an important truth. The body politic with adequate insurance of domestic tranquility *is* a corporation with a conscience, which is as much as to say it is a *moral* community – not in any religious sense but in the *civic* sense, the only sense in which human beings as one People can make moral ideas *objectively universal*. As Thoreau said, the rules of law are just only insofar as they are rules of expediency for the common good.

Seen in this light, the current need and issue is brought squarely home to questions of *right*. This at once points out the direction in which we find our first objective of implementation: ***to set up the necessary mechanisms to effect a process for the Petition of Right***. This term, "Petition of Right," is borrowed from English law, under which a subject cannot sue the Crown but can petition for redress of a grievance. The order issued in grant of the petition by the English government contains in it a significant phrase: *let right be done*. Not *justice*; *right*. It is not enough that government be obliged to control itself; the civic corporation *en masse* must also learn to control *itself*, to counter the emergence, or also the over-long continuation, of folkways that have become injurious to the social compact.

We must, however, also recognize that not every grievance filed as a Petition of Right is legitimate under the social compact. To provide a clear example, let us consider the Letters to the Editor section found in most newspapers. Like talk radio, the Letters to the Editor section provides a forum where opinionated big mouths can publish whatever crackpot ideas or ignorance masquerading as wisdom the letter writer wishes to opine. There has never been a time in America when a competent liberal education has been provided to all citizens; presently such an education is provided to none, other

than, perhaps, in a few isolated places. The great majority of U.S. citizens have never heard of the idea of the Social Contract, and a great many are not even aware of how the U.S. Constitution came into being. Many who bother themselves to go to the library – or, these days, the Internet – to look at the text of the Constitution do no more than pull some piece of it out of context and then wave that tattered cloth as a flag to support prejudices already preformed. This brings us back to the point Mill raised concerning the readiness of a people for particular forms of government. In *Representative Government* he wrote,

When an institution, or a set of institutions, has the way prepared for it by the opinions, tastes, and habits of the people, they are not only more easily induced to accept it, but will more easily learn, and will be, from the beginning, better disposed, to do what is required of them both for the preservation of the institutions, and for bringing them into such action as enables them to produce their best results. It would be a great mistake in any legislator not to shape his measures so as to take advantage of such pre-existing habits and feelings when available. On the other hand, it is an exaggeration to elevate these mere aids and facilities into necessary conditions. People are more easily induced to do, and do more easily, what they are already used to; but people also learn to do things new to them. Familiarity is a great help; but much dwelling on an idea will make it familiar, even if strange at first. . . . The amount of capacity which a people possess for doing new things, and adapting themselves to new circumstances, is itself one of the elements of the question. It is a quality in which different nations, and different stages of civilization, differ much from one another. The capability of any given people for fulfilling the conditions of a given form of government cannot be pronounced on by any sweeping rule. Knowledge of the particular people, and general practical judgment and sagacity, must be the guides.

There is also another consideration not to be lost sight of. A people may be unprepared for good institutions; but to kindle a desire for them is a necessary part of the preparation. To recommend and advocate a particular institution or form of government, and set its advantages in the strongest light, is one of the modes, often the only mode within reach, of educating the mind of the nation not only for accepting or claiming, but also for working the institution. . . .

The result of what has been said is, that, within the limits set by the three conditions so often adverted to, institutions and forms of government are a matter of choice. To inquire into the best form of government in the abstract (as it is called) is not a chimerical, but a highly impractical employment of scientific intellect; and to introduce into any country the best institutions which, in the existing state of that country, are capable of, in any tolerable degree, fulfilling the conditions, is one of the most rational objects to which practical effort can address itself. . . . In politics, as in mechanics, the power which is to keep the engine going must be sought for outside the machinery; and if it is not forthcoming, or is insufficient to surmount the obstacles which may reasonably be expected, the contrivance will fail.

The three conditions to which Mill refers are: (1) that the people should be willing to receive that form of government; (2) that they should be willing and able to do what is necessary for its preservation; and (3) that they should be willing and able to fulfill the duties and discharge the functions which it imposes on them. In all three, the factor of human will is asserted consistently, and this aspect of the institution of government is what makes insuring domestic tranquility fundamentally belong to the idea and ideal of civic morality. It is an unpleasant fact, but a fact nevertheless, that the failure to establish and maintain an adequate general and public liberal education in America has left a

great many citizens unprepared for the sound practical judgment and sagacity requisite for making the institution of the Petition of Right work *righteously* and *consistently* with the fundamental convention of the Social Contract. This is a challenge to implementation not to be underestimated.

A Petition of Right is useless unless there is a qualified body to receive it and to judge of its merits in relationship to the general will of the Sovereign. This leads to our second and third objectives of implementation. The second objective is: ***to establish a system of Boards of Right to receive and judge the legitimacy and merit of Petitions of Right, and to insure such boards are empowered to render the best independent judgments of legitimacy and merit.*** It seems likely that only civic criminals, outlaws, and people with a developed fear of government in general would oppose the fundamental idea of a system of Boards of Right. One great weakness of social contract theory has always been the ambiguity attending what natural rights a Social Contract requires the citizen to alienate, and in one important way the institution of a system of Boards of Right aims to address this deficiency, but to do so practically rather than Platonically and with an eye to adaptability over time.

Still, it must also be noted that the very independence requisite to the moral authority of Boards of Right carries with it an accompanying risk of corruption that must somehow be checked. This brings us to the third objective of implementation. It is: ***to insure that the agents appointed to the system of Boards of Right are qualified, capable, and committed to act as civically moral judges of petitions.*** Here the ideas and arguments concerning the makeup of Boards of Right are similar to those discussed earlier in regard to members of the judiciary and of the Supreme Court. Among other considerations, this means Members of the Boards should receive their appointments for life or during good behavior. It is perhaps evident clearly enough that the institution of a system of Boards of Right comes under the wing of the judiciary branch of government. It must be stressed that these Boards are boards of *right*, not *law*, and for this reason the Supreme Court should be the appointing branch, not the Congress.

Finally, no system of Boards of Right can be effective for insuring domestic tranquility if its judgments are impotent. 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 that you are cheated, or with saying that you 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 the performance of right, – changes things and relations; it is essentially revolutionary, and does not consist wholly with any thing which was. It not only divides states and churches, it divides families; aye, it divides the *individual*, separating the diabolical in him from the divine.

At the same time, it is ill-advised to vest the power to enforce judgments in the same body holding the power to pass judgments. This is for precisely the same reason that the judiciary of the general government was not granted enforcement power to accompany its judicial function. Matters of right,

however, are, in the most important cases, not matters of constitutionality but, rather, matters of either *deficiency* of law, *excess* of law, or *imbalance* of law. This is because the institution of statements of specific civic duties in the particular is, when all is said and done, what any legal system is intended and purposed to accomplish. Cicero wrote (*De Re Publica* III. XXII),

True law is right reason in agreement with nature; it is of universal application, unchanging and everlasting; it summons to duty by its commands, and averts from wrongdoing by its prohibitions. And it does not lay its commands or prohibitions upon good men in vain, though neither have any effect on the wicked.

A judgment of legitimacy of grievance necessarily implies a clarification of civil liberty and civic duty in producing a redress of the grievance. However, this redress of grievance cannot be merely particular because the issue involved is one of social compact and, therefore, of the general will of the Sovereign itself. Thus, while the system of Boards of Right by its judgment *demand*s redressing action be taken (a writ of mandamus), the responsibility and duty of *legislating* the redress must fall to the legislative branch of government, with subsequent enforcement falling to the executive branch. The fourth objective of implementation is thusly: ***to implement a process of mandamus whereby judgments of right are made actual in civil law by legislative action.*** Because of the weighty nature of grievances affecting the domestic tranquility of the political community and the obvious need for the pertinent law or laws to be well refined and just, the character of this process seems to best implicate the Senate as the body best suited to originate this new legislation in the case of the general government. (It is an obvious corollary that the states must also provide an analogous local system).

At the same time, however, to insure action it must remain within the purview of the judiciary to insure that the legislative branch does not fail to carry out its duty under the general objective of insuring domestic tranquility. The judiciary must not be allowed to legislate, but it must be allowed to mandate legislative action in an effective and *timely* manner else this entire reform becomes toothless. Again, the intent of the reform on government is not to weaken government but to energize its self-improvement as the mirror of the community it governs. Thoreau wrote,

Unjust laws exist: shall we be content to obey them, or shall we endeavor to amend them, and obey them until we have succeeded, or shall we transgress them at once? Men generally, under such a government as this, think that they ought to wait until they have persuaded the majority to alter them. They think that, if they should resist, the remedy would be worse than the evil. But it is the fault of the government itself that the remedy is worse than the evil. *It* makes it worse. Why is it not more apt to anticipate and provide for reform? Why does it not cherish its wise minority? Why does it cry and resist before it is hurt? Why does it not encourage its citizens to be on the alert to point out its faults, and *do* better than it would have them?

This new mechanism for the institution of government must be available to every citizen without barrier of any kind, as stated earlier in the list of factors set out at the beginning of this section. Nor can the other factors be omitted from the crafting of this new institution of government because they

all pertain to the interplay between a person's duties to himself and his duties to the community. The machinery of government is run by people, and people will make honest mistakes from time to time. A person who is honest and self-respecting, once recognizing a mistake, is not being true to his own moral character while lacking courage to correct the mistake. Thoreau, although he fancied himself a genteel outlaw and was something of a political puritan, was nonetheless correct to write,

Is a democracy, such as we know it, the last improvement possible for government? Is it not possible to take a step further towards recognizing and organizing the rights of man? There will never be a really free and enlightened State, until the State comes to recognize the individual as a higher and independent power, from which all its own power and authority are derived, and treats him accordingly. I please myself with imagining a State at last which can afford to be just to all men, and to treat the individual with respect as a neighbor; which even would not think it inconsistent with its own repose, if a few were to live aloof from it, not meddling with it, nor embraced by it, who fulfilled all the duties of neighbors and fellow-men.

#### § 4. On the Idea of the General Will

Critics of social contract theory correctly point out that a general ambiguity in how the idea of the general will of the Sovereign is to be interpreted is contract theory's most vulnerable and problematic aspect. Some readers might think it odd that this idea, so central to this entire treatise, should have had its treatment put off until now. Should it not have been discussed as the first thing, that the rest of this treatise could follow in step-wise fashion like a geometry proof? In answer to this legitimate question, your author responds: No idea can be understood out of all context. Attempting to so understand an abstraction, stripped free of contextual examples, has been the centuries-long error of Platonic and Rationalist philosophers. Human beings understand *from* the particular *to* the general.

We have now come so far as to be able to grasp that the idea of the general will of the Sovereign is an idea intimately combined with ideas of natural and alienated rights, with civic morality, and with civil ethics of both agents of government and citizens. Centuries of controversy engulfing views and ideas of morality and ethics should be sufficient in itself to put us on our guard that the question of, and even the legitimacy of, the idea of the general will is not to be approached casually, much less prejudicially. We have come far enough now in this treatise to appreciate the difficulties of the definitional task and to set it in its proper objective context.

##### § 4.1 Systems of Ethical Theories

Ethics theorists have produced many different species of ethics systems, but these can be broadly divided up among three general classes: (1) consequentialism; (2) virtue ethics; and (3) deontological ethics. The first two are by far the most widely found so far as people's presuppositions are concerned regarding what constitutes "ethical" vs. "unethical" behavior. The third is less commonly encountered but, as will be argued here, is the philosophical foundation that suits the nature of politics. It can not be

within the limited scope of this treatise to give a full account of any of these *genera* of ethical theory, but an overview is nevertheless necessary to properly establish the context of the general will.

A view of ethics and morality falls under the genus of consequentialism if one assumes that the value of an action derives entirely from the value of its consequences. Mill's view of ethics, called utilitarianism, is a species of consequentialism and, as best as one can tell merely from observation, may be its most common form. Although there are those who would object to characterizing the premising grounds of consequentialism in the manner I am about to characterize it, the primordial roots of consequentialist viewpoints trace back to the Epicureans of ancient Greece. The Epicureans held that "pleasure" was the highest good and defined "pleasure" as "the absence of pain." The adjudged goodness or badness – i.e., the moral worth or value – of the outcome determined whether the action was virtuous (led to goodness) or vice (led to badness or evil). From this presupposition of "the nature of good and evil" it is only a short theoretical step to arrive at the common maxim, "the ends justify the means." If you hold with this maxim, you are most likely a consequentialist in your habitual subjective view of morality and ethics.

Opposed to this is virtue ethics. In this view, virtue – regarded as a trait of character that is to be admired and endows its possessor with a moral superiority – is primary. An outcome is "good" if it is the outcome of a virtuous act and "bad" or "evil" if it is the outcome of an act of vice. Plato and Aristotle both devoted much discussion to ideas of "virtues" and to the notion of a unity of virtues. In some ways, Aristotle can be viewed as the originator of virtue ethics (particularly in his *Nicomachean Ethics*), but in other ways he is properly regarded as the progenitor of a system of thought that only later would be called virtue ethics. In virtue ethics, ends can only be justified by the means used to achieve them. If you hold with this view, and reject the consequentialist maxim in its favor, you are most likely a virtue ethicist. The focus of virtue ethics is not the happiness one achieves through an end but, rather, *the worthiness to be happy* by the virtue of one's own good character.

The Stoics of ancient Greece devoted a great deal of effort to refining and developing virtue ethics. For the Stoics, to be conscious of one's own virtue was to be happy, and virtue itself was the highest good ("virtue is its own reward"). Indeed, the Stoics held that there could be no human will in regard to *ends* at all because all ends were predestined by "nature" (a term the Stoics used in a manner practically indistinguishable from how monotheist religions view an omnipotent, omnipresent, and omniscient god). The Stoics expressed this as a maxim: "The Fates guide the man who is willing to be guided; the man who is unwilling to be guided they drag along." Human will, in their view, was limited to willing acceptance or willful antagonism to one's fate.

The problem and fatal weakness with both viewpoints is this: if these ethical theories are to be objective and, therefore, applicable to general society, we must take an abstract idea – either "the

goodness" *in* an end or "the goodness" *in* a virtue – and *reify* it. This means we must regard the idea as if it were a *thing*, an existent in the world, a *summum bonum* or "highest good" in some palpably real sense. Only then can we regard the idea as a something capable of *necessarily* commanding the respect of every human being and thereby be the foundation for *universality* in morals and ethics. The problem that attends this accomplishment is only too evident when one takes the time to contemplate this goal in all its ramifications. For most Americans, and perhaps for most people in the world, the most commonly found repository of thinghood for this reified idea is provided by a person's view of God since mere temporal matters come up lacking in a list of characteristics one holds that a *summum bonum* must necessarily possess. The diversity and the often irresolvable conflicts presented in the spectrum of different religious views is a clear signpost of how difficult – one would better say, how impossible – any actual and objectively valid understanding of such a reified idea is.

Metaphysically, the reification of the idea of a highest or supreme good makes both virtue ethics and consequentialism *ontological* systems of ethics. If the pursuit of morality and virtue is not to be a baseless activity devoted to chasing a mere phantom of the mind, the *summum bonum* must be, or be a part of, some real thing in either physical nature or some reified and ungrounded hyperphysical nature; otherwise it does not really exist at all and its pursuit is destined to be in vain. Parmenides, the pre-Socratic Greek philosopher who founded metaphysics, called this mysterious existence the *ón*, and it is from this word that we get the modern term "ontology" (the theory of "things").

This ontological basis of moral theory was devastatingly attacked by David Hume, the third and last of Britain's triumvirate of renowned empiricist philosophers. Hume approached philosophy as a naturalist; indeed, in metaphysical matters he has become known as The Great Skeptic. It is not an exaggeration to say that Hume altered the course of philosophy ever after. Beginning in 1739 with a series of books and essays, Hume subjected the presuppositions of empiricist and rationalist philosophers to objections so piercing and fundamental that no ontology-centered system of philosophy has ever been able to overcome them (other than by pretending Hume never lived). Hume held that success in science lay in finding a few simple principles that would enable one to discern order amidst the apparent chaos of natural systems. He applied this likewise to social science spheres, including moral theory. He held that passions (which for him include any sort of pressures on practical choices, including ethical ones) are outside of the sway of cold reason and fall into naturally detectable patterns. Hume's ethics sees moral thought as the expression of sentiments that evolve because we must cooperate in societies if we are to satisfy our natural needs. We are, he held, creatures of instinct and habit whose beliefs are formed by associations and customs. Our moral lives, he said, are the product of feeling trained to convention and nothing more.

Among those deeply affected by Hume's criticism was Immanuel Kant. Kant credited Hume with

arousing him "from my dogmatic slumber" and setting him on a wholly different path to metaphysics and philosophy – a change of direction that has come to be called "Kant's Copernican turn." Kant's solution to the problems raised by Hume was to turn from ontology-centered metaphysics altogether and to replace it with epistemology-centered metaphysics. By doing so, he was able to overcome the fundamental metaphysical problems Hume had unveiled. One outcome of this was Kant's quite unique re-viewing of moral theory, a viewpoint that has since come to be called "de-ontological" ethics – ethics viewed from a theory of knowledge rather than from baseless ontological presuppositions. While there have been a few other ethical systems since called deontological, the leading – and some would say the only true – deontological system to this day is Kant's.

The fundamental weakness and fallacy of ontology-centered ethical systems is that they remove the fundamental objective basis for ethics and moral theory from the person and transport it outward into a metaphysical fogbank of impenetrable mists. But this ignores the agency of the individual human being, who is the only objective entity to whom moral or immoral behavior is or can be imputed. We do not say a toaster is evil if it burns the toast; we do not say a lion is evil when it kills a man. We each make these moral judgments only of one another. The great Swiss psychologist Jean Piaget wrote, "logic is the morality of thought, just as morality is the logic of actions." If it is baseless and in vain to move the object of moral theory outside the individual human being – as both consequentialism and virtue ethics require – then we must leave it where it is actually found and belongs, namely with each individual human being's self-determination of his own actions. All moral judgments then become individual judgments and then the possibility of an *objective* civic morality must hinge on whether there are *practical* maxims and tenets for deeds and actions that can be *consented to in common* by the citizens of a political community. If so, it will be in this common consent where we may find a valid *convention* for the otherwise vaporous and abstract idea of the general will of the Sovereign. If not, then this idea is itself a baseless phantom and, likewise, so is the idea of a Social Contract.

The foregoing discussion leads to the conclusion that if there is something to be called the general will, we cannot look to an ontology to identify it. We must rather seek it *formally* and in such forms of tenets and principles as are capable of winning the common consent of the body politic. By saying we must seek it formally, I mean we must seek it in terms of a fundamental *formula* sufficient to define the formal characteristics and marks needed to render any *specific* tenet or maxim acceptable *objectively* by every citizen. Such a formula was called a ***categorical imperative*** by Kant. He explained this term in *Grundlegung zur Metaphysik der Sitten* with the following words:

But if I think of my categorical imperative I know immediately what it contains. For here the imperative contains, besides the law, only the necessity of the maxim to be in conformity with this law; but the law contains no condition to which it would be limited, so that nothing remains with which the maxim of the act is to conform but the remaining universality of the law in

general, and that conformity alone the imperative properly represents as necessary.

Within the context of representative government, a statement of the formula, as proposed by Kant, is this: *Act so that you take humanity, both in your person and at the same time in the person of every other, always as an end, never merely as a means.* According to this formula, a tenet one makes for himself is entitled to be called "moral" only if it takes into account in its execution the requirement to treat every other human being as a person with ends, desires, and objectives of his own; and that one person can never, with morality, neglect this fact and utilize other people solely as means for achieving any goal or objective. This *tenet of means* is founded on the principle that *my* means must be capable of serving *both* my ends *and yours* at the same time, and in the same deeds, whenever we *both* have an interest involved. We need not share the same end objectives, but we must each be served by the means by which we obtain our individual but interacting ends. Here it should be noted that the formula synthesizes the viewpoints of *both* consequentialism and virtue ethics into a single common framework. Our respective ends are matters we separately seek to satisfy; I cannot, and must not try to, dictate to you what your ends should be, nor can you do so to me. But the means by which we seek our separate ends are what touch upon both of us objectively and in common, and so it is here that the idea of civic morality must make its home *objectively*.

All legal codes are prescriptions for various acts the members of the political community must regard as *duties* of one kind or another. This stems from the obligation *freely taken* by *all* members to alienate certain of their natural rights in exchange for the protection of the association as a whole and the guarantee of civil liberties exchanged for the alienated right to act as one pleases. If we now extend the principle of this formula into the context of government, the *tenet of moral legislation* becomes as Kant phrased it in *Critique of Practical Reason*: *Act so that the maxim of your will always can hold good at the same time as a principle of universal legislation.*

#### § 4.2 The Problem of Political Will

Let us now examine the idea of a general political will as it is to be seen in context with this tenet of moral legislation. It was stated in an earlier chapter that Rousseau's treatment of his idea suffered from a number of impracticalities. These were of sufficient seriousness as to render his own vision of republican government unworkable beyond the scale of a single township. Rousseau envisioned the expression of the general will of the Sovereign as being made through periodic assemblies of the people in a manner strikingly similar to the direct democracy of ancient Athens. He held that through such an assembly the people's expression of the general will would be infallible. The immediate lessons from the history of Athens refute this directly enough. To the objection that the citizenry assembled might legislate unwisely or unjustly, his unsatisfactory response was that such unwise or

unjust legislation is not produced by the general will but, rather, by "the will of all." He wrote,

It follows from what has gone before that 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 is; the people is never corrupted, but it is often deceived, and on such occasions only does it seem to will what is bad.

There is often 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.

We can see from this that Rousseau's idea of the general will is a sort of statistical phenomenon produced by averaging out the points upon which people disagree. He appeared to be vaguely aware that for this to work the number of voters would have to be large. He also appeared to have some vague awareness of the phenomenon of statistical variance since he recognized that the formation of factions works to defeat his simplistic notion of what we might call "the average will" by increasing the standard deviation about the mean resulting from voting. He wrote,

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 always 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 all 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.

Rousseau's answer to this was to somehow forbid "factions" but it is clear he had no idea how this might be done that would be in any way consistent with the idea of the Social Contract itself. His thinking, particularly his mathematical view of the idea of the general will, reflects the general aura of the Cartesian rationalism that held continental Europe under its sway in Rousseau's day. Furthermore, his first sentence in the quote given above is an entirely baseless supposition at the outset. What would constitute "adequate information"? Who is to provide it? When did any people, knowing in advance the day when the vote would be taken, never discuss the issues with one another? And why should one suppose that even the opinion of a vast majority would be either wise or just? When there are no witches, it is unjust to burn one old crone at the stake even if every other member of the village is in favor of the verdict. Rousseau evidences the childish naivety of one who has never administered or led any group of people nor met many people from backgrounds and circumstances different from his own. He was in many aspects a most impractical man.

No purely mathematical model can ever be sufficient to serve as a means of defining or even describing the general will. As Madison remarked in *The Federalist*, no. 55, "Nothing can be more

fallacious than to found our political calculations on arithmetical principles." Pure mathematics makes abstraction of all substantial matters and leaves nothing but a mere form; equations do not come with an owner's manual that directs, "Use me here and here, but not there." Nor, in fact, does voting "aye or nay" measure anything that can be called the general will. I, and perhaps you as well, have often come out on the minority side of a vote on a policy or decision and yet been willing to consent to it; in some cases I, and perhaps you as well, have even concluded later that that the policy or decision I had opposed turned out to be a good policy or a good decision. All that any vote ever does is capture the snapshot of an aggregate of opinions at a particular moment in time. This has nothing to do with the wisdom of a policy or a law in general, although there are some special cases – such as a decision to not wage a war – that turn up as exceptions to the rule on occasion. The voting process might be a closer approximation to a measure of the general will if the choices presented were "aye, nay, and don't care," but it would still only be an approximation and a snapshot of opinions at a specific moment in time. Thoreau, in the rapture of one of his outlaw moods, wrote,

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 that right should prevail. I am willing to leave it to the majority. Its obligation, therefore, never exceeds 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. There is but little virtue in the action of masses of men. When the majority shall at length vote for abolition of slavery, it will be because they are indifferent to slavery, or because there is little slavery left to be abolished by their vote.

By the end of the twentieth century and through the first decade of the twenty-first, more political special factions than ever before had become adept at misusing and misrepresenting scientific findings and statistical measures in order to provide propaganda in campaigning for whatever their particular opinion or desire might be. In almost every case the outcome is one more immoral act committed against the Social Contract. Whether we are speaking of the neglect of taking actions against man-made climate change, the pogrom waged against citizens who smoke tobacco, the relentless efforts to starve and dismantle public and higher education, or the progressive exportation of the wealth of this nation by "multinational" corporations, it all amounts to the same thing. Thoreau's contemptuous characterization of the rule of expediency becomes more and more the state of the union with each passing year. But he is wrong to pair "obligation" with "expediency." Expediency never carries or implies obligation; but it can seed an outlaw attitude which, unchecked, will in time flower into the Toynbee proletariat and eventually lead to the fall of the republic. It is no small matter, then, to properly understand and gauge this abstraction called "the general will."

Morris Ginsberg, who was Martin White Professor of Sociology in the London School of

Economics at the University of London in the 1950s, assessed the societal dimensions of this question in the following terms.

The central problem of social philosophy on its ethical side is the nature of political obligation and authority. In this, two essentially different questions are involved which it is important to distinguish. We have first of all to account for the concentration of coercive power in some determinate person or persons and for the growth of habits of obedience to those persons on the part of the other members of society. We have, secondly, to inquire into the ethical justification of social obedience or, looking at it from the point of view of the persons exercising political power, into the moral basis of their authority. Though the two problems have points of contact, they are at bottom quite different in nature, the one being a matter for history and psychology, the other for ethics and political philosophy.

This first breakdown is important in order that we may understand: that the *authority* for agents of government to govern is a different matter than the *civic morality* of acts of government. Inasmuch as acts of government can also be used to constrain societal pressures and limit what Mill called "social tyranny," the second problem has ramifications and extensions for the social compact beyond those immediately linked to government. In regard to the first problem, Ginsberg went on to point out that

in the long run, political power and habits of obedience and social co-operation rest upon a recognition, however vague or dim on the part of the members of society, that public authority maintains and furthers common interests and common goods. The psychological factors involved, however, are extremely inchoate and obscure. They cannot be described accurately in terms of a common or corporate will. They constitute, rather "an impalpable congeries of hopes and fears" resting upon feelings of discomfort and maladjustment experienced when an accepted rule is broken or a common requirement is not fulfilled, a dim recognition, perhaps, that somehow order must be maintained and that somebody must be entrusted with the duty of maintaining the social peace. Consent for the majority of people hardly rises above passive acquiescence, and in complex societies has not the character of voluntary decision. Power rests upon the will of the people in the sense that if stretched beyond a certain point, their acquiescence will not be secured, and social apathy and even disruption may result.

Representative government is robust government primarily because most people are apathetic to most issues and laws in most instances. People will acquiesce not because they agree with the policy, law, or regulation but because the particular policy, law, or regulation does not directly touch them. It is in the nature of most policies, laws, and regulations to be very specific; the more specific it is, the fewer citizens it affects and the fewer are the number of individuals who care or even know about it.

Only the second problem Ginsberg stated goes to the matter of the idea of a general will of the Sovereign. He wrote,

If by the term sovereignty is meant supreme or unlimited coercive power vested in determinate persons, then clearly the notion is no more than a convenient fiction of jurisprudence, since no determinate person ever had such power. The attempt to place sovereignty in the general will in the sense of the congeries of vague psychological elements underlying common or joint action must fail, since in this sense the general will is indeterminate and cannot therefore be vested in a person or persons.

In the discussion of the second problem psychology and history have been confused with ethics. It is true that psychologically obedience on the part of an individual may be influenced by

his recognition that the law which he accepts is in the common interest, but this recognition by him does not give the law its authority and it is arguable that the law might be right even if a given individual did not recognize its rightness. The problem here involved has given rise to the theory of a general will. It was thought that a moral imperative must be self-imposed and that obligation consists in this adoption by the self of its own law. Accordingly the problem of political obligation comes to be put as the question how self-government is possible, and the answer is found in the light of a distinction between our momentary or actual explicit consciousness at its ordinary level and our "real being" in which "we will our own nature as a rational being." This real being, it is then argued, is universal, is expressed in the State, and in obeying its injunctions the individual obeys his own real will and is therefore "self-governed."

Ginsberg goes on to disagree with this last thesis. One familiar with Kant's writings will recognize that he was referring to Kant's theory of right as well as taking a slap at Rousseau in the same breath<sup>12</sup>. Ginsberg's criticisms of the Kantian position reveal that he did not understand Kant very well, and his analysis is colored by Ginsberg's own adherence to the moral theory of consequentialism. He makes this quite clear in the very next paragraph of this cited work. It is true enough that if consequentialism were capable of grounding a system of civic morality, Ginsberg would make a strong case. However, consequentialism is utterly incapable of providing such a ground; so, hereafter in this treatise, we shall merely milk Ginsberg's theory for his accurate analysis of the nature of the problem.

Ginsberg does do an effective job of destroying the underpinnings of Rousseau's notion of the general will, thereby showing it to be groundless.<sup>13</sup> Skipping over Kant, he next does the same to the Hegelian conception<sup>14</sup> of an absolute will. However, this merely bulldozes the arguments of rationalist philosophers and fails to touch the deontological viewpoint at all.

He is equally correct in pointing out that social psychology, in the sense of some kind of empirical leveling or averaging, cannot provide an objective basis for defining the abstraction called the general will of the Sovereign in any way that connects it with the concept of civic morality. Kant would agree with him here, because any such methodology would amount to a mere description of verisimilitude and Kant himself stated that such a thing could never satisfy the requirements of necessity or universality needed to ground an objectively valid theory. In the end, Ginsberg argues that the abstract idea of the general political will is an empty idea and he retreats to a position that could more or less fairly be called pragmatic. On some points he draws close to the same conclusions Thoreau did. In the final analysis, however, he despairs of finding any true basis for civic morality in government. His last clearly stated conclusion is,

---

<sup>12</sup> In historical fact, Kant was inspired by Rousseau's writings, although his own work on moral theory rejected all the precepts of the rationalism prevalent in France and was by many orders of magnitude more critical, logical, and coherent than any work Rousseau was ever able to produce.

<sup>13</sup> Your author notes that the meat of Ginsberg's analysis is to be found in the works he cites at the end of his article rather than in this brief article itself.

<sup>14</sup> Many philosophers, even today, think that Hegel followed upon Kant's work and extended it, but this is not true. Hegel's philosophy was an obscure mix of Platonism and rationalism, and he abandoned the deontological perspective very early in his work. In many ways, Hegel's philosophy is more a religion than a philosophy.

The organized efforts of society should be directed at securing the minimum conditions requisite for the realization of the good. The duty of the social authority is accordingly: (1) to utilize the collective resources for the promotion of the good of the associated members in the sense of securing to each individual the minimum facilities for the fulfillment of his capacities for good; (2) to control such differences in power and possessions as arise in a society with the object of preventing those who have acquired excess of power from abusing it and forcing others into conditions incompatible with the requirements of the good life.

The obvious points left hanging here are: (1) what is "the good" for a member of the community? and (2) what is "the good life"? This does not, in fact, establish anything deserving to be called civic morality in government and upon close examination resorts to explaining darkness by an even greater darkness. Such, however, is the inevitable endpoint of consequentialism; virtue ethics as a basic presupposition likewise leads to an equally unsatisfactory and pragmatic endpoint, although in its case it might be said that it resorts to explaining light by a more blinding light. In either case, one is left unable to see. The problem of the general political will cannot be solved ontologically.

### § 4.3 The Deontological Definition of Political General Will

When a person freely enters into an association with other persons in which he obliges himself to alienate some of his natural rights in exchange for a convention of civil liberties, there is but one *essential* motivation and incentive, and this motivation is very pragmatic, rational, *and personal*. In this, and to this extent, Rousseau was correct. It is to acquire a stronger degree of defense and protection for his own person and goods, the latter being understood to include all his material possessions, the safety and welfare of those intimates about whom he cares most deeply, the means in his possession he uses to maintain himself and those intimates against antagonistic forces in the world – hunger, threats to life from animals, other people, or natural conditions, etc. – and to secure better chances at less risk and inconvenience for improving the conditions of life for himself and his intimates.

The motive and incentive is selfish at root, but it is not, because of this, either amoral or immoral because those natural pressures, leading to the incentive, he obliges himself to meet as *a duty owed to himself*. In a state of nature, this is the only sort of duty to which a person necessarily 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 duty to oneself* is either the categorical relation in moral judgment, insofar as it is in relation to his own personality, or it is the hypothetical relation insofar as it is in relation to his situation in nature.

What he takes on in addition by civil association is the reciprocal relation, namely the relation between himself and the situation of others. *This* relation can be amoral – as in the case of the outlaw who only feigns to make a compact without in the least taking unto himself any obligation to the

association – or it can be moral – as in the case of the citizen who actually does take upon himself an obligation to the association. The outlaw is driven only by expediency, as when an invading army conquers his town and he judges that his best interests lie in a pragmatic appearance of submission to the conqueror; the citizen of a republic is driven by obligation unless and until he chooses to make himself a criminal through intentional transgression of his obliged civic duty.

*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 a general will of the Sovereign and, if so, in what this validity subsists. Let us begin by noting that once the individual has chosen to be a citizen of the body politic, it is no longer morally possible for him to choose to unilaterally revert to outlaw status. This is because the statement of the problem, to which the social compact is the proposed solution, is explicit:*

"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."

The first part – indeed, the most essential property – of the association subsists in the highlighted clause above. A citizen, *ipso facto*, has taken on this obligation of unity as the first step. He cannot then subsequently withdraw his consent to this *unilaterally* without breaking the fundamental duty *to be an associate*; such an act is a deliberate transgression. He therefore cannot unilaterally *choose* to pass from citizen to outlaw; he can only unilaterally choose to pass from citizen to criminal. (This is why it was necessary early in this treatise to define the terms "outlaw" and "criminal" and draw the distinction between them). Again, 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 the individuals, and as a member of the State to the Sovereign. But the maxim of civil right, that no one is bound by undertakings made 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.

This also tells us how the idea of the Sovereign is defined. It is the entirety of *all* citizens. We can call this *the formula of the Sovereign*, and as it has a crisp definition it is objectively valid. It is, at the same time, nothing more than a *formal* definition and to *apply* it we must face the fact that there is an *empirical* ambiguity that poses a problem in its application. It is this: among the totality of people residing in the nation, there are an unknown and unidentified number of them who are either outlaws, through never having freely assumed the obligation, or criminals, through having deliberately transgressed the duties of obligation. Complicating this situation is another factor, namely that there may also be an unknown and unidentified number of individuals who, while remaining citizens, may

have acted in such a manner as to commit an *unintentional* transgression of duty – and hence who are guilty of a moral *fault* (a *civic* moral fault) but not of a *crime* (civic immorality).

It is this empirical element of the nature of human association that is the source of difficulty in coming to grips with the idea of the general will. Ginsberg was quite correct to identify the empirical factor – although he was mistaken to call it "psychology" – as the root problem in understanding the idea of general will. He was quite incorrect to conclude it is not possible to identify a *moral* basis for use in solving the problem. However, we must understand that such a moral basis can *only* be viewed in the context of *civic* morality, and *never* from any Platonic, Stoic, Epicurean, or religious basis. All of these latter are ontology-based, internally inconsistent, and contradict deontological civic morality.

Kant taught that we must understand our own individual humanity from two co-equal perspectives. The first perspective is that of the demonstrable capacity to be *our own agents of choice*. This capacity is at the root of the very idea of natural right, and it means one's capacity to self-determine one's own actions. This capacity of self-determination cannot be linked in any known way to notions of physical causality; it cannot be explained by the actions of atoms making up one's body, nor by the speculative assumption of a spiritual entity residing inside us, nor by a Cartesian homunculus, nor any other metaphorical analogy to anything in our *empirical* world. It is no more and no less than a fundamental property each of us discovers in ourselves, the most fundamental *fact* of each person's individual existence. Kant called this the *homo noumenon* aspect of being human and it is the core of personality.

The second, equally important, perspective is that of our empirical nature as living beings existing in a physical world. This aspect of our individuality is affected by influences in this physical world and responds to these influences according to empirical laws of physical causality. Our bodies are acted upon by physical forces, we sense hot and cold, suffer from diseases caused by microbes, experience pain and pleasure, and so on. All our objective knowledge of things-in-the-world, save only the knowledge "*I exist*," we obtain through experience; the world we come to know we know empirically. This is the perspective of oneself as a *phenomenon in nature*, and so it was fitting Kant should call this aspect of our individual humanity the *homo phaenomenon* aspect of being human. The totality of one's individual humanity is the union of these two quite different metaphysical aspects of being human.

Human choice, Kant taught, is a mixed choice. One can choose to follow rational tenets, the possibility of which can be laid nowhere else but to one's character as *homo noumenon*. However, the practical objective validity of such tenets is that of a mere formula, devoid of empirical *matter* that must always attend, like flesh on the bones, every action one takes as *homo phaenomenon*. The *formula* alone can command universality and necessity (necessitation), but its application in the physical world can never be undertaken without, in a manner of speaking, filling in the blanks in the

formula according to one's best knowledge of the *empirical* world. It is in this wherein the root subsists from which mistaken judgments, wrong conclusions, unexamined empirical premises, and emotional prejudices all spring.

Moral philosopher Onora Nell wrote,

It was assumed that it could be discovered when an agent's maxim 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 decisions, but not guarantee right acts.

This is the role that *individuality* plays in the problem of understanding the idea of the general will. An important fact that Kant failed to clearly enough bring out in his moral theory is this: All *cognitions* one forms and then applies to acting in the particular in any given circumstance are theoretical, depend upon one's own store of personal experiences and knowledge, and, by this dependency, *can never be more than merely hypothetical imperatives of action*. This is so even if one thinks there are no exceptions to one's maxim, i.e., even when one regards his *empirical* moral idea as *categorical*. This is the fundamental challenge and problem with applying the categorical imperative quoted earlier under the name *tenet of moral legislation*<sup>15</sup>.

There is the most profound consequence of this elemental fact of the nature of being human for the idea of the general political will. It is this: the infallible general will conceived by Rousseau is and can never be other than an *Ideal* – something to strive to understand more perfectly in full consciousness that we have no guarantee of ever completing this task, and with equal consciousness that through the medium of experience *we can do no better than to identify imperfections* in our sculpturing of this Ideal by means of legislation, policies, legal decisions, and, yes, even the accepted or tolerated mores and folkways of the political community itself. The body politic *will make mistakes*. It will on occasion *perpetrate injustices*. There is neither fault nor blame to register here because it is no more and no less than a fundamental property of being human and living in associations with other human beings. Nothing can be done about this; nothing will prevent it.

But there is a vast difference between perpetrating an injustice and *perpetuating* it. If *pure* general will is and can be nothing else than an Ideal, *practical* general will is another matter altogether. Its

---

<sup>15</sup> It is also the reason why Kant offered no fewer than five different statements of "the categorical imperative" in his works, to the bewilderment of scholars ever since. The different statements are contingent upon differing empirical circumstances, and this is enough to demonstrate they are theoretical, not pure, formulae.

objective validity is found, not in an unachievable ontological *thing*, ***but in the methods by which the association is made progressively more ethically and morally perfect over time***. This is to say: If we hold the totality of laws, policies, precedents, mores and folkways to be the formal instantiation of a snapshot encompassing a collective idea of civic morality at a particular moment in time, ***the general will is the unity in acting to improve this idea through an on-going process of review, evaluation, and refinement taking as its aliments precisely the same considerations and factors set down earlier in this chapter for the purpose of insuring domestic tranquility***. Insuring domestic tranquility is also and at once the *praxis* of *perfecting the collective expression* of the general will via laws. The idea of the general will subsists *in the practice* of perfecting systematic liberty with justice for all.

## § 5. Moral Secession from the Political Community

It was stated earlier that a citizen cannot morally withdraw unilaterally from his duties to the political community. *Neither can the rest of the political community morally withdraw unilaterally from its duties to him*. The citizen cannot withdraw unilaterally without making himself a criminal answerable to the community for his actions or inactions. However, the situation is quite different if the political community collectively disregards *its* obligation and violates the social compact.

All contracts are founded upon a prior understanding. Once made, the contract cannot be justly altered except by mutual consent of all the parties involved. It was said earlier that the individual holds certain duties to himself, the categorical relation of moral personality, and that it is in the context of these duties *by natural right* that the individual determines the conditions under which he is willing to assume reciprocal duties to the body politic and join the association. Now, it has already been pointed out that over the course of time it is to be expected that on occasion injustices will be perpetrated, either through government or through changes in the mores and folkways of the political community. At root, any injustice is an injustice *because* it violates the prior understanding of the terms of the Social Contract. When it is government, through its entrusted power to govern, or when it is the greater part of the political community through acquiescence to some new condition of mores or folkways, acting to violate the social compact, a technical state of *breach of contract* exists.

A contract breached is a contract made void. Such a breach, as was discussed earlier, is at the root of all legitimate domestic malcontent. The healing and consensual repair of such a breach is the aim of the reform proposed in this chapter. When a reformative mechanism for insuring domestic tranquility is in place, and understanding that such breaches will unintentionally be perpetrated from time to time, we must regard it as a duty of a citizen to first avail himself of the mechanisms for redress of grievances before he regards the association as morally culpable in the action creating the breach. This is implicit in the clause *puts himself and all his power in common under the supreme direction of the*

*general will*. As we have just seen, the general will itself subsists nowhere else in reality except in the practice of reforms. It is this deontological definition of the general will that specifies the specific civic duty of first acting in concert to attempt to heal the breach.

But suppose that either the government or a large fraction of the political community refuses to take actions leading to the consensual correction of the injustice. If a consensual, and therefore just, resolution is not achieved after due process, then the perpetrated injustice done to the individual is not merely perpetrated but *perpetuated*. Unwilling to consent to the injustice, and having been himself not its author, the individual is now ipso facto *released from his previous obligation*. He reverts now from citizen status to outlaw status *without moral culpability*. We will call this **moral secession** from the political community.

If the secessionist chooses to remain living within his *geographical* community, he will do so in one of two manners. In the first, he may *decline to declare his secession*. Because he is no longer a part of the association, this act of prudence is not morally culpable; he is an outlaw rather than a criminal and owes no duties of any kind to the association. It, likewise, owes no duties of any kind to him in return. In his reacquired situation in a state of nature the prudence of this course of action is no more and no less than his prudent exercise of natural right. If he declares himself outlaw, he becomes endangered by a more powerful association that commits no *crime* against him whatsoever regardless of how it acts towards his person, and which is now aware of his outlaw status. The undeclared moral secessionist finds himself in the status of Toynbee proletariat. Failure by the government to adequately insure domestic tranquility therefore leads inevitably to the creation and growth of a Toynbee proletariat in its midst. The State is now rotting from within and *the moral culpability for this rot lies in the State itself through its perpetuated violation of the social compact*.

The second course of action open to the moral secessionist is to openly declare his outlaw status. However, because it is unwise and imprudent for him to do this, recourse to this action can reasonably be expected to follow only as a consequence of an entire series of mounting injustices that eventually become intolerable, and which likewise can be reasonably expected to bring out not one but many previously covert secessionists. If the state of the geographical community is so far decayed to come to this point, the continued existence of the State itself is now in danger from civil war. It now almost goes without saying that if such a situation comes to pass, there can be no clearer signpost that the government has utterly failed in its duty to the body politic.

Civil war is one possible outcome. But it is not necessarily the only possible outcome because the geographical community has a second option available to it. It might be possible for the two (or more) relatively outlaw associations to mutually consent to a *treaty* of peaceful coexistence within the same geographical community. There is no longer, in this case, a political union, but there is the possibility

of a political coexistence. This would be little different from the political coexistence among nation states excepting only that geographic boundaries are not so crisply definable. The track record of humanity in achieving lasting peaceful coexistence of this sort is not encouraging, however, and so it is clear and obvious that a political community's widest best interest will always lie with doing everything morally possible to forestall the formation of the Toynbee proletariat in the first place.

## § 6. References

James Truslow Adams and Charles Garrett Vannest, *The Record of America*, NY: Charles Scribner's Sons, 1935.

John Adams, *A Defense of the Constitutions of the United States of America*, "Italian Republics of the Middle Ages," in *The Portable John Adams*, John Patrick Diggins (ed.), NY: Penguin Books, 2004.

Allan Bloom, *The Closing of the American Mind*, NY: Simon and Schuster, 1987.

Marcus Tullius Cicero, *De Re Publica* (c. 54 B.C.), published in English under the title *De Re Publica* (Cicero XVI, LCL 213), Clinton Walker Keyes (tr.), Cambridge, MA: Harvard University Press, 1928.

The Constitution of the United States of America, 1787.

Max Farrand, *The Records of the Federal Convention of 1787*, revised ed. in four volumes, New Haven, CN: The Yale University Press, 1937.

Morris Ginsberg, "Social Philosophy," *The Encyclopædia Britannica*, vol. 20, 1957.

David Hume, *An Enquiry Concerning Human Knowledge*, 1748.

David Hume, *An Enquiry Concerning the Principles of Morals*, 1751.

David Hume, *Essays Moral and Political*, 1742.

David Hume, *Treatise of Human Nature*, 1739.

Thomas Jefferson, Declaration of Independence, 1776.

Immanuel Kant, *Die Metaphysik der Sitten*, Berlin: Druck und Verlag von Georg Reimer, 1914. Various English translations under the title *Metaphysics of Morals* are available from a number of publishers. Kant quotes in this treatise were translated by the author.

Immanuel Kant, *Grundlegung zur Metaphysik der Sitten*, Berlin: Druck und Verlag von Georg Reimer, 1911. Various English translations are available from a number of publishers under the titles *Foundations of the Metaphysics of Morals* or *Groundwork of the Metaphysics of Morals*. Kant quotes in this treatise were translated by the author.

Immanuel Kant, *Kritik der praktischen Vernunft*, Berlin: Druck und Verlag von Georg Reimer, 1913. Various English translations under the title *Critique of Practical Reason* are available from a number of publishers. Kant quotes in this treatise were translated by the author.

Immanuel Kant, *Metaphysik K<sub>2</sub>*, in *Kant's gesammelte Schriften*, vol. 28(770), Berlin: Walter de Gruyter: 1970; for an English translation see Immanuel Kant, *Lectures on Metaphysics*, Cambridge, UK: Cambridge University Press, 1997. Kant quotes in this treatise were translated by the author.

Immanuel Kant, *Metaphysik L<sub>2</sub>*, in *Kant's gesammelte Schriften*, vol. 28(555+), Berlin: Walter de Gruyter: 1970; for an English translation see Immanuel Kant, *Lectures on Metaphysics*,

Cambridge, UK: Cambridge University Press, 1997. Kant quotes in this treatise were translated by the author.

Abraham Lincoln, *Address at the Young Men's Lyceum*, Springfield, Illinois, Jan. 27, 1838.

Abraham Lincoln, *Gettysburg Address*, 1863.

John Stuart Mill, *On Liberty*, 1859.

John Stuart Mill, *Representative Government*, 1861.

Onora Nell, *Acting on Principle: An Essay on Kantian Ethics*, NY: Columbia University Press, 1975.

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

Jean Jacques Rousseau, *The Social Contract*, 1762.

Henry David Thoreau, *Civil Disobedience*, 1849.