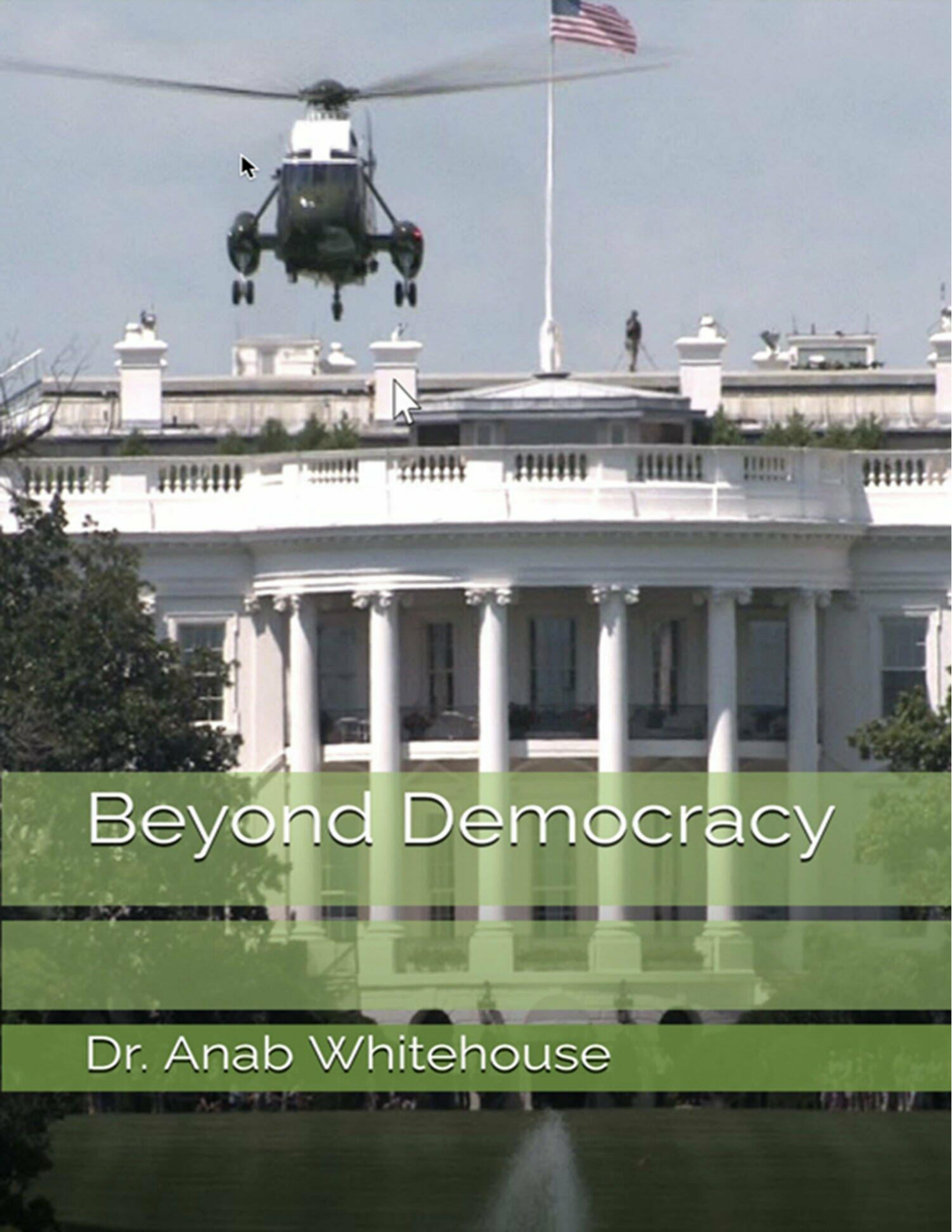

Beyond Democracy

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Beyond ignorance is wisdom; beyond democracy is sovereignty.

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Introduction

I am writing this book with mixed emotions. On the one hand, for the last 50 years, or so, I have been an empathetic witness to the very real pain (financial, economic, social, psychological, educational, political, legal, and environmental) being experienced by hundreds of millions of people in the United States – and elsewhere -- due to a completely dysfunctional system of government in America … despite the constant hype from the media, the educational system, and politicians that Americans enjoy the greatest system of government the world has ever known. On the other hand, I have very real doubts about whether, or not, Americans will ever be able to escape the numerous entanglements generated by the governmental system in which they exist, and, therefore, there is a sense within me – depressing though it might be – that anything which might be said about the situation (whether by me or anyone else) is not likely to make much of a difference.

Once upon a time, Americans (or, at least, some of them) had it in them to be willing to sacrifice everything in the struggle for freedom, rights, truth, justice, and human decency. I'm not sure that is true anymore.

The battle for the soul of America and Americans might be over or entering the endgame phase of the struggle. Forces of oppression (political, economic, financial, military, legal, social, informational, educational, and religious) have spread everywhere.

The 'occupy everything' movement is nearly victorious, but the winners are not the people. Rather, barring an incredible and, perhaps, implausible comeback with time running out late in the game, the soon-to-be-crowned champions will be the Janus-like power brokers who both speak the language of democracy as well as do everything they can – and what they do in this respect is considerable – to corrupt the possibility of democracy

For instance, Palestine, Iran, Guatemala, Cuba, Vietnam, Iran again, Nicaragua, Grenada, Panama, the first Gulf War under Bush Senior, Somalia, the Balkans, Afghanistan, and the latest Iraq war have not been about fighting for: freedom, rights, truth, justice and human decency. They have been about: power, politics, control, corruption, arrogance, oppression, dishonesty, greed, ambition, and immorality.

Such conflicts have been propagandized via the media, public education, and government officials as being about all the 'right' stuff. However, the reality of those conflicts has been mired in all the wrong things, and the bibliography at the end of this book is but an extremely small sample of the evidence that could be brought to bear on the foregoing sort of contention.

One even could make a good case for adding Korea, World War II, World War l, the Spanish-American War, The Civil War, and the Mexican-American War to the foregoing list of conflicts with dubious democratic pedigree … conflicts sold as one thing, while, in reality, being something else altogether. For example, if the Treaty of Versailles had not been so economically and financially punitive toward Germany – unnecessarily so, one might add -- and, if instead, something akin to the Marshall Plan had been implemented following World War I, the economic, financial, and political conditions leading to the rise of Hitler might never have transpired.

In addition, lest we forget, the Second World War was not about freeing the Jews given that the United States officially turned away Jews by the thousands who had been fortunate enough to escape and sail to the shores of America prior to American involvement in the war. And, then, there is the whole issue of whether, or not, Pearl Harbor was knowingly put into play by FDR in order to induce a reluctant American people to enter the war … much as a reluctant American people had been spurred into action to join World War I through the sinking of the Lusitania … a sinking that was aided and abetted by U.S. and English government authorities.

One might also mention how a variety of American industrialists – including Prescott Bush – George Senior's father – and representatives of IBM, along with other businessmen, actively sought to assist Hitler and help him build his war machine and fascist government. As well, one might mention how a group of industrialists approached Smedley Butler, a two-time Medal of Honor winner, to join them in their plan to overthrow of the American government and become the next president in place of Roosevelt … an offer that Butler turned down but reported to authorities, and, yet, no one was ever charged.

Smedley Butler is the individual who , in 1935 , wrote a book entitled *War Is A Racquet* that thoroughly exposed the way in which military

adventurism had long been used to serve financial and economic interests at the expense of the lives of soldiers and the welfare of the American public. And, who would know better that 'war is a racket' than a person who, until the time of his death in 1940, was the most decorated man in U.S. military history?

Among other campaigns, Butler had fought in the so-called Banana Wars in which the United States helped make the world safe for various U.S. agri-businesses throughout Central America and the Caribbean -- from around 1898 (the Spanish-American War) until 1934 when FDR introduced his 'Good Neighbor Policy'. The interference with Latin American countries didn't stop with the implementation of Roosevelt's policy, but, instead, such interventions were re-framed as something much less sinister ... even as that "assistance" helped oppress and exploit millions of people throughout Latin America.

One form of this assistance was in the form of 'The School of the Americas' where members of the power elite throughout Latin America were sent to learn from American military instructors all about the techniques of torture, oppression, control, and exploitation. Originally set up in Panama, the school was forced to move to Fort Benning in Georgia, as well as to change its name from: the United States Army School of the Americas, to: 'The Western Hemisphere Institute for Security Cooperation,' when too many people from Latin America objected to the assassinations, rapes, destruction, violation of human rights, and carnage that were set in motion by the School/Institute.

Guatemala (during Eisenhower's Presidency), Cuba [in which Kennedy was duped by (i.e., the Bay of Pigs fiasco) and, then, sought to gain control over the military during the Russian missile crisis in Cuba], Grenada, Panama, Nicaragua, El Salvador, Haiti, and Chile did not just somehow mysteriously emerge in the latter half of the twentieth century. They were but the latest toxic fruits of American interference in the internal affairs of supposedly sovereign countries.

In 1964, I remember happening onto a book by John Gerassi entitled *The Great Fear in Latin America*. It had been written a year, or so, earlier.

The work gave the details of the deplorable ways in which the United States and its state-sponsored businesses (terrorists) wreaked havoc in country after country in Central and South America from the early 1800s until the time of the book's release. Furthermore, the oppression,

destruction, exploitation, and impoverishment of people in Central and South America by the United States has continued on since the 1960s through every presidency that followed the Kennedy administration.

All of the foregoing wars, conflicts, and military adventures are not heroic stories that give expression to the glory of the United States. Rather, they are a set of acts that individually and collectively have dragged the U.S. flag – and the American people (not to mention the millions of innocents in every part of Latin America) -- through every conceivable form of muck, corruption, torture, oppression, exploitation, injustice, and ignobility that is humanly conceivable.

People such as Smedley Butler tried to tell us. People like John Gerassi have tried to warn us.

Yet, Americans seem either largely indifferent to what is being perpetrated in our names by a system of government that is way beyond out of control. Or, Americans line the streets on Veterans Day and Memorial Day waiting to cheer on and encourage soldiers to continue their 'good' work everywhere on behalf of their oppressive overlords.

We seem to be in a deep trance of denial. No matter how much people like Butler and Gerassi try to rouse us from our condition of refusing to acknowledge the ongoing nightmare of real life events, we seem to have a disturbing penchant for wanting to remain in the sort of stupor that enables the horror to continue.

Let's just go on snoring our way through life. In this way we provide ourselves with an excuse for why we have done nothing to bring the reign of terror to a halt.

The foregoing sorts of problem are not a function of circumstances that only have just arisen in the twentieth and twenty-first centuries – although, naturally, ongoing existential forces help shape and color events in one way rather than another. My contention is that the many problems that have arisen over the course of America's 220-plus years of existence are rooted in the form of government that was implemented in 1787-1789 by 'virtue' of, first, writing a certain kind of constitution and, second, through the process of ratification that was used to render such a constitution 'legal'.

A mythology has been generated concerning the wisdom and brilliance of the founding fathers or framers of the Constitution. While I

do believe that many, if not most, of the participants in the Philadelphia Constitutional Convention in the summer of 1787 were quite intelligent, innovative, thoughtful, and committed individuals, they were most certainly not immune to the distortive influence of: bias, error, lack of imagination, impulsiveness, irrationality, conceptual blind-spots, foolishness, dogmatism, arrogance, ambition, and a critical failure to understand the real nature of sovereignty in relation to human beings.

Given the nature of the times back in the late 1700s, the formulation of the American Constitution is surely an impressive achievement and, as such, is a ground-breaking effort in reflection concerning the issue of self-governance. Nonetheless, the 'Framers of the Constitution' were mostly wrong in the way they went about things – both with respect to process, as well as in relation to content.

The so-called 'Founders' created and, then, pushed onto the American people a document that was flawed in its essence. As a result, they helped set in motion the many destructive possibilities that have arisen out of the American system of government during the last 220-plus years.

To be sure, one cannot blame everything on the form of government. Presumably, the people who – to the detriment of others -- abuse and exploit a given modality of government are equally blameworthy, and, there have been thousands of people – both within, and outside of, government – who, over several centuries, have sought to leverage the problems that were inherent in the fabric of the Constitution to serve very undemocratic purposes.

Indeed, unfortunately, the abusive exploitations of the Constitution that have been committed over the last several hundred years in America have become incorporated into our form of governance and, as such, have become the 'law' of the land. Whatever the sins of our forefathers might have been – and they were numerous – passing generations have added their own form of transgressions to the original sin of the 'Framers of the Constitution,' and, in the process, they have made possible all manner of oppression, injustice, inequity, and exploitation that were beyond the ability of our forefathers to imagine … and this failure of imagination was one of the sins of the 'Framers of the Constitution.'

I believe my introduction to U.S. history was similar to that of many people in America. I grew up on movies and television programs that

glorified the past – movies such as: 'Mr. Smith Goes to Washington', cowboy and Indian sagas, war stories, the revolution of early America, and the pioneering spirit. Through such movies one was indoctrinated into believing that despite small missteps here and there, America had a glorious past and was the greatest nation on the face of the earth, and Americans enjoyed a form of government that was unique in world history and was the envy of everyone beyond our shores.

The central theme revolved around: the idea of 'American Exceptionalism.' According to the tenets of this theology, Americans were alleged to be different from everyone else … better, smarter, more morally, committed devotees to freedom and the democratic way than anyone else.

Such a perspective was reinforced through the school system and the brand of American/World history that most public – if not private -- schools sought to disseminate. Myths about: Columbus, Thanksgiving, Colonial life, the Revolutionary War, the Constitution, the Bill of Rights, democracy, presidents, Indians, the Civil War, westward expansion, the railroads, and so on, became part of a delusional cultural vernacular.

One of the rationalizations used by some to justify this sort of propaganda was that Americans needed a common mythology through which to have an American identity. Such mythology was the glue that helped bind Americans together and taught them how to circle the wagons and fight together when being attacked by the many hostile forces that existed in the world.

The high school I went to was very small – just 44 students with eleven members of that group forming my particular grade or class. I was required to take just one history course – American History. For the most part, the curriculum consisted of a variety of dates and names delivered through textbooks that had been largely sanitized of most traces of controversy or alternative forms of historical interpretation and understanding. The tests were standardized, multiple choice, regurgitations of the 'facts' that had been presented to us by our teacher in the days or weeks leading up to each exam.

The dates and names came so fast and frequently that it was difficult to get much of an understanding of the existential circumstances in which those names and dates were embedded. There was little, or no, pursuit of

critical thinking or rigorous questioning concerning American history during class.

This was so for several reasons. First, the instructors who came through my school – and I suspect the same is true in many other schools around the country -- were not really equipped to teach an 'objective' course in American history. The teachers were people with a degree and/or certificate of some kind who passed through my school on their way to somewhere else as they built their career, and as such, students and schools were just a means to that end.

Secondly, if a teacher actually tried to teach a course in American history that attempted to counter the mythology that passed as history, such an individual would be shut down by principles, superintendants, and school boards who were attempting to control the 'message' that students were to receive. Such educational officials might do so in order to protect their positions of power or in order to accommodate the many parents who insisted that their children should be filled with the same garbage as the parents had to swallow when they were younger.

I realize that things have changed somewhat since I was student. Moreover, some school systems and teachers are better than others when it comes to inducing students to engage history in something more demanding than that of learning dates, names, and the like.

Nonetheless, based on my conversations with students, teachers, and other individuals over the years, I'm not convinced that things have changed all that much during the last five decades with respect to the nature of the curriculum concerning American history that is being taught in most public and private high schools across the United States. Today, for the most part – and there are, of course, exceptions to the following – schools (whether grammar, middle, or secondary) are continuing to teach much of the same mythology concerning America's past as has been taught for decades, if not centuries.

When such myths are propagated through the education system, movies, newspapers, television (including television "news"), talk radio, and so on, it becomes very difficult for anyone to break free of the undue influence that has been exerted on a person's understanding concerning various aspects of American history for most of the formative years of an individual's life. Such mythological systems consist of large portions of delusional thinking – that is, thinking which is factually false but is treated

as if it were true – and delusional thinking, once firmly ensconced, tends to be -- like most attitudes -- very resistant to change … even when factual information is presented that calls a delusional system into question.

I once got into a heated, verbal conflict with an individual – someone who was very intelligent – about one such myth – namely, the character of Abraham Lincoln. I was writing a piece about education, and at a certain point during the essay, I had indicated that Lincoln was a racist who believed in the superiority of white people relative to Blacks and whose solution to the slavery problem was not to fight a Civil War to free them but to ship them off to some other country, and this was his position even after the Civil War started.

Despite the heated nature of the verbal conflict (it lasted for a few days) eventually, after showing the individual with whom I was in conflict some authenticated quotes that Lincoln had made at various times concerning his white supremacist ideas, the individual in question accepted the new information and changed some ideas and attitudes concerning Lincoln accordingly. The foregoing incident gives me some hope that under the right circumstances, individuals are capable of changing their ideas about various issues, even when those issues have been propagandized -- through one modality, or another, of media -- for much of their lives.

There have been a number of such transition points in my own life. For example, the Vietnam War was taking place during my undergraduate days.

Throughout my life as an undergraduate student, I worked at least 20 hour per week, and for a good part of my junior year, I worked full time while attending school full time. This sort of schedule didn't leave me a lot of time to research or reflect on the Vietnam War.

Furthermore, I didn't have a television, listen to the radio – except for background music while I read material or wrote papers – and, for the most part, I didn't read newspapers and magazines. I knew that protests, of one kind or another, were going on, but I didn't have the time – or, quite frankly, the inclination – to go to any of these demonstrations and find out what was going on. So, in some ways, I was pretty ignorant about the whole matter.

I had requested, and received, a number of educational deferments from my Draft Board that permitted me to finish my undergraduate degree. Shortly after the end of my senior year, I received a notice from my Draft Board ordering me to go for a physical.

I was living in Boston at the time, but the day for the physical was – at least at Harvard -- known as Cambridge Day because students from a variety of colleges in and around Cambridge, Massachusetts, would all be bused to the Charlestown Naval Base to have their induction physicals. I boarded the bus and sat by myself.

During the ride to the naval base, several activists stood up and began to talk to the other inhabitants on the bus. The part of the message that got through to me was one of resistance.

One of the activists said: "You don't have to do this." For some reason, the words streamed into my heart and took up residence.

I came to realize in a very essential way that one didn't have to comply with the authorities. There were other choices that were possible … choices that a government had no right to control.

I didn't board the Charlestown Naval Base bus with the intention of doing anything other than complying with the directive of my Draft Board. However, when I got off the bus, there had been some sort of seismic shift in understanding within me.

I didn't interact with any of the activists who had been on the bus or follow them in any way. I acted as an individual, but as an individual whose existential orientation had been altered in a substantial way, and, as a result, I resisted the process of the induction physical in a variety of ways.

At some point, the FBI got involved and asked me to write out a life history. I wrote it out but refused to sign it.

The FBI asked me to sign a statement saying that I refused to sign the document. I refused.

The FBI then wanted to fingerprint me. I refused.

Then, they wanted me to sign a statement saying that I refused to be fingerprinted. Again, I refused.

I was told to sit down and wait for further disposition. I waited and, eventually, they said I could go.

From that point on, I was determined to go to Canada even though there were other options available to me. For example, I could have joined the National Guard.

At the time I was working in a university cafeteria. My boss, a black guy, was an officer – Captain, I think -- with the National Guard. He said he could get me into the program, and during those times, members of the National Guard were not being deployed to foreign conflicts (although they were sent to places like Kent State), so it was an "acceptable" way of getting out of doing regular military service.

Another possible way of avoiding military service arose a few months later. More specifically, I was hired to do psychological testing and other related assessment jobs at a government-run youth detention center in Massachusetts, and I was told that this would have qualified as a draft-deferrable job.

Nevertheless, I decided to go to Canada and resist the war effort in a more overt manner. Fortunately, at the time, Canada was accepting war resisters.

However, the epiphany that had taken place in me on Cambridge Day was not about the Vietnam War, per se. Instead, the revelatory-like bus experience revolved around the question of whether any government had the moral right to order people to do its bidding in relation to war and other matters.

Governments undoubtedly have the legal authority – a legal authority that can be backed up with exercises of force and the imposition of all manner of penalties – to order people to do this or that. Yet, if one asks questions about the legitimacy of such legal authority, one begins to enter some very interesting territory.

I am not talking about people having the right to do anything they want. Rather, I am alluding to one of the most critical set of questions that can be asked by a person – namely, what is the relationship between an individual and the state? In what is this relationship rooted? What is the source of legitimacy concerning individuals and a given state?

I don't believe I have the right to kill people. I don't believe that I have the right to steal from them. I don't believe that I have the right to abuse and exploit others. I don't believe that I have the right to oppress and control other individuals.

So, how does a state give me such rights during military conflicts? What is the source and legitimacy of a state's capacity to confer such rights? Or, does a state actually have such rights … rights that rest on something more than declarative claims concerning those alleged rights?

The question that bubbled to the surface on the Cambridge Day bus was not about the legitimacy of the Vietnam War. The question was much more essential – it concerned the issue of legitimacy concerning the exercise of state power.

No one can deny that state governments or nations have power … economic power, military power, legal power, social power, or political power. Nonetheless, being able to justify the exercise of that kind of power with respect to individuals – whether in relation to a citizen of such a country or the citizens of other countries – is an entirely different matter.

Might doesn't make right. In fact, the very essence of rights is meant to stand in opposition to the exercise of power. In other words, rights constitute a sovereign realm whose borders cannot be legitimately transgressed by power.

The present book – that is, *Beyond Democracy* – is a critical exploration into the heart of democracy. It journeys through a landscape consisting of concepts such as: republicanism, rights, freedom, sovereignty, liberty, constitutions, ratification, authority, the nature of law, revolution, duties of care, economics, money, justice, community, representation, morality, risk analysis, as well as hermeneutics or the theory of interpretation.

The journey on which the reader is about to embark is designed to induce an individual to become an explorer in a relatively 'undiscovered country' known as 'sovereignty' … not the mythological entity that has been propagandized through the media, courts, and government authorities, but the living reality of a form of sovereignty that is not granted by, or derived from, a government, state, or nation, but, rather, exists prior to, and stands completely independently of, the existence of any government and gives expression to an authority that places limits on what governments can and can't do.

Unfortunately, much of American history – as well as world history – is an exercise in the 'way of power' seeking to convince people (through

propaganda, force, various modalities of punishment, or undue influence) that the 'way of sovereignty' (in the foregoing sense) does not exist … or to convince the generality of people that to whatever extent the way of sovereignty does exist, it is entirely a creation and function of the process of government and, thereby, is rightfully subject to the legal force of government. Such a conception of history is completely delusional in character and inherently destructive of both individual and collective sovereignty.

A revolution began in America prior to 1776. The process of generating the American Constitution, together with the nature of the means through which that Constitution was ratified, as well as the implementation of that Constitution during the first 20 years, or so, of America's post-ratification existence, were all attempts to stop the original revolution.

Consequently, the revolution that began prior to 1776 is unfinished. The last 220-plus years have been a history of the struggle for the soul of America … a struggle between the 'way of sovereignty' and the 'way of power' … ways that are completely antithetical to one another.

When properly understood, I believe that the soul of America and Americans is rooted in the aforementioned notion of sovereignty. This is the idea that, from a variety of perspectives, is being explored in the present book.

For the last several hundred years, the 'way of power' has been attempting to stop the revolution of sovereignty that began prior to 1776 from being fully realized. For the most part, the 'way of power' has been hugely successful in those attempts.

Sometimes I entertain hope that the American people will come to their senses and rise up against the 'way of power' that has dominated them for so long. At other times, I feel despair concerning the ability of the American people to free themselves from their imprisonment.

I hope there will be a real 'American Spring' following a long, long winter of discontent. At the same time, the 'Arab Spring', although dramatic, hasn't actually led to any promising breakthroughs with respect to the dynamics of real sovereignty since most Arab countries where a 'Spring' of sorts has arrived are still thoroughly dominated by the 'way of power'.

After all, placing new faces in the corridor of power doesn't necessarily lead to changes in sovereignty for the people. Instead, more often than not, those changes just lead to the same 'way of power' being administered through different people.

The Occupy Wall Street and Occupy Everywhere movements are possible reasons for having hope that the American Spring might have begun to finally arrive. However, the powers that be are also beginning to shove back, and they have access to a great deal of resources, including the police, the National Guard, the court system, state and federal legislatures, money, much of the media, and the inertia of millions of Americans who are still deeply asleep when it comes to issues involving the 'way of power' and the 'way of sovereignty'.

I hope that the unfinished revolution comes to fruition. I hope this can be done in a non-violent way.

This book is not an argument in favor of, say, communism. For example, after I went to Canada during the Vietnam War, there was a short time toward the beginning of my 20 year stay in that country when I went to a center located on the campus of the University of Toronto that was a gathering place for people – mostly Americans – who were opposed to the war.

On one occasion, there was a conversation among, maybe, seven or eight individuals in which the topic of 'communism' came up. One of the individuals, who was considered something of an expert on the subject, mentioned a favorite saying of those who are inclined toward communism – namely, "From each according to his ability, to each according to his need."

I asked: "Who gets to define ability or need and according to what criteria?" There was no reply.

Over the years, I have read a limited amount of literature dealing with communist ideas, values, and methodology. Based on what I have read, I do not find their arguments concerning history, dialectical materialism, and the like very persuasive.

One doesn't need Marx to understand that capitalism is deeply flawed. In fact, as I hope to show later in the present work, I do not believe that capitalism is capable of regulating the public space in a judicious manner, let alone in an efficient manner.

Almost all of the assumptions underlying capitalist theory are problematic. Furthermore, the metrics employed by capitalists to measure and analyze economic phenomena are all based on skewed methodologies.

On the other hand, I do believe that human enterprise and commerce have the potential to give expression to co-operative efforts that are capable of helping to meet the needs of everyone in a fair manner. Commercial enterprise is a real-world activity capable of being able to meet actual human needs, whereas capitalism is a form of theology that proponents seek to impose on people and through which such proponents attempt to control the public commons and the lives of people.

In addition, I'm not a fan of socialism. More specifically, if by the notion of 'socialism' one is referring to some form of centralized (i.e., state) economic and social planning, then, I believe that almost all – if not all -- modalities of centralized authority, no matter how well intended, tend to generate more problems than they solve.

In general, I do not believe that the state, a 'People's Party', religious councils, or an economic philosophy of any kind should have control of the public commons. One might also add 'democracy' to the foregoing list of exclusions -- that is, I do not believe that the usual sense of the idea of democracy in which either a majority gets to control various minorities and/or in which elected officials are permitted to pursue their own interests and agendas while claiming to be representatives of the people are viable options through which to solve the problems that arise out of social interaction.

The fact of the matter is: no person can properly represent the soul of another human being. Therefore, representational government is inherently problematic because it is incapable of serving the needs of most people's souls.

I do not believe in the sovereignty of a state, nation, or central government. I do believe in the sovereignty of the individual.

Sovereignty, when properly understood – and this book is an attempt to delineate a proper sense of the idea of sovereignty -- is not an expression of: socialism, communism, theocracy, capitalism, or

representational government. Rather, sovereignty gives expression to the music of the soul.

However, I do not use the term 'soul' in any sort of theological sense. Rather, I employ the word in an existential, phenomenological and essential sense. Anyone who has listened closely to her or his essential being is familiar with the song of the soul.

The search for: truth, justice, integrity, character, freedom, rights, reciprocity, harmony, peace, and community are all notes that arise from the soul's lost chord. The melody of this song has been playing in our hearts since the beginnings of human existence.

If America is to have its spring, and if the unfinished revolution is be realized, we must all tap into the well-springs of sovereignty. It is the antidote to the toxicity of the 'way of power' that, for so long, has been polluting the social waters.

I hope you will join the battle for the soul of America . The weight - challenged lady of total oppression has not yet sung … but she is standing in the wings , and only sovereign individuals will be able to sing the necessary song of healing and, in the process, write a different ending to the story in which we currently find ourselves entangled.

Although the books listed in the bibliography have all informed my understanding of many issues, they serve as horizon to the main focus of this book. In other words, while I am indebted to the many writers whom I have read, and this indebtedness is acknowledged through the bibliography, the arguments, orientation and conclusions of the current work are my own … for better or worse.

Chapter 1: The Rule of Law

Many people claim that America was founded upon the rule of law. There are some questions that might be raised concerning such a contention.

For example, whose rule of law was American founded upon? Or, what is the nature of such law? And, what justifies the use of that sort of law?

The thirteen colonies (and some were known as provinces rather than colonies) came into existence over a period of about 126 years. Virginia was the first colony and was established in 1607, while Georgia, in 1733, was the last of the thirteen original colonies to be come into being. In between these two historical bookends a number of other colonies arrived on the scene: New York (1613), New Hampshire (1623), Massachusetts (1628), Maryland (1634), Connecticut (1635), Rhode Island (1636), Delaware (1638), North Carolina (1653), New Jersey (1664), South Carolina (1670), and Pennsylvania (1681).

Although the colonies had declared their independence from England in 1776, they further solidified their process of transitioning to statehood as they ratified the Constitution that arose out of the Philadelphia Convention of 1787. Delaware was the first colony to ratify the Constitution and did so on December 7th, 1787, a little over two months after the end of the Philadelphia Convention.

As the other colonies ratified the Constitution, they too reinforced their respective transitions from colony or province to sovereign states of America. The sequence of transitions went in accordance with the following time line: Pennsylvania (December 12th, 1787), New Jersey (December 18th, 1787), Georgia (January 2nd, 1788), Connecticut (January 9th, 1788), Massachusetts (February 6th, 1788), Maryland (April 28th, 1788), South Carolina (May 23rd, 1788), New Hampshire (June 21st, 1788), Virginia (June 25th, 1788), New York (July 26th, 1788), North Carolina (November 21st, 1789), and Rhode Island (May 29th, 1790 – and this occurred only after a popular referendum on the Constitution already had rejected the Constitution on March 24, 1788 by nearly 2000 votes … 2708 against, and 237 for).

Following their declaration of independence from England, most of the colonies/provinces developed their own forms of governance on the

basis of constitutions that were written by various leaders within the colonies/provinces. Those constitutions were not necessarily ratified by the people but, nevertheless, became the source of procedural authority within the colonies and provinces (or states) for regulating many of the affairs of the people.

Prior to independence, many of the colonies and provinces were formed on the basis of charters that were issued by the British king. The terms of those charters established the basic framework of law through which colonies and provinces began to develop their different forms of governance.

Rhode Island appears to be an exception to the foregoing scenario because it was founded, in part, by Roger Williams after he had been exiled from the Massachusetts Bay Colony as a result of his religious ideas and, then, purchased some land from the Narragansett Indian tribe – a land that he named "Providence". Later on, however, there were a number of charters including the Royal Charter of 1663 that constituted King Charles II's recognition of the Colony of Rhode Island and Providence Plantation, and this charter served as the constitution for Rhode Island until 1843.

Both prior to, as well as after, the collective declaration of independence of the thirteen colonies/provinces/states, there were a variety of legal systems running parallel to either the charter-sanctioned and/or colony/province/state sanctioned forms of governance. These legal systems were largely variations on a theme revolving about a common law approach to many aspects of everyday life. Such systems of jurisprudence dealt with a variety of civil matters involving issues of tort, contractual disputes, real estate transactions, and the like.

Common law tended to give expression to a judge's best effort to forge a path of justice through the contingencies of current circumstances as evaluated through the filters of a voluminous set of previously established precedents generated over the years by judicial predecessors, together with the current judge's own assessment of an on-going situation. As such, the nature of law was pretty much up to the sensibilities and capacities of a given judge.

The logical relationship between legal precedents and their relevancy to current circumstances was not always straightforward or justifiable.

The logical character of a judge's understanding of a given set of circumstances was not always straightforward or justifiable.

Nonetheless, the process of using a common law approach to settling various kinds of problems had a long history. As such, there was a certain inertial force of social practice at work in common law that, despite its problems, permitted it to continue on as a way of helping to regulate certain facets of the dynamics of social life.

Although even before declaring independence, many, if not all, of the American colonies/provinces possessed a more open and broader form of political participation than existed in Europe, there were still quite a few limitations concerning the nature of such participation. For instance, in order to vote, one needed to own property of a certain size and/or value ... an amount that tended to vary from place to place.

Moreover, for the most part, only white males who satisfied the property qualification were permitted to vote. Slaves, indentured servants, white males who did not own the necessary amount or value of property, and, for the most part, women were unable to vote. Although in early America women who owned sufficient property were entitled to vote, this arrangement changed along the way to 'democracy'.

Even people who were qualified to vote were not necessarily permitted to vote in all matters. While some colonies/provinces permitted those who enjoyed the ability to exercise a vote to elect members of the 'lower' (read, 'people's') house of government, they were not always permitted to vote for who would be the governor of a given colony or province -- although, for example, Rhode Island and Connecticut did allow this – nor were those who possessed the right to vote necessarily permitted to cast a ballot for who would be members of the 'higher' legislative body (read the 'wealthy and powerful') of a given colony/province.

To a certain extent, lower houses within a colony or province could, under some circumstances, impact the shape and nature of governance. Nonetheless, a great deal of the law within any given colony/province/state was a function of the charters, constitutions, governors, and upper houses that, for the most part, controlled what went on in their respective territories … including, quite frequently, what transpired in the court systems.

Charters and constitutions were not documents that were formulated by the generality of people. Rather, they were documents crafted by a select set of individuals from within the power elite and, as a result, there was a limited amount of input – if any at all – from those who resided outside the inner circles of power… even if such 'outsiders' possessed the right to vote.

Although the principles underlying certain kinds of rights had been well-established (albeit often ignored) since the time of Magna Carta – that was first proposed in 1215 A.D. and, then, subsequently modified toward the end of the thirteenth century – the realm of public policy (in other words, the principles governing the nature and character of public space) was generally controlled by the ruling power. Moreover, when there was a conflict between the pursuit of a given kind of public policy and the issue of rights, rights often tended to lose out.

The realities of colonial politics tended to be reflected, to some degree, in the voting behavior of early America. Even among those who were permitted to vote, actual voter participation ranged between 20 and 40%, with the norm leaning toward the lower value.

The first Continental Congress began operation in 1774. It consisted of delegates who, in one fashion or another, had been appointed by the various colonial/provincial governments, and, therefore, the delegates were not necessarily selected by those who were eligible to vote within any given province or colony.

In other words, if given the opportunity, the electorate might have voted for, or against, such individuals, but, for the most part, voters didn't get to select who would run. Rather, candidates who stood for election were often representatives of this or that faction within the power elite.

The Articles of Confederation – officially known as the Articles of Confederation and Perpetual Union – was drafted by colonial/provincial delegates to the Continental Congress during the period between June 1776 and November 1777. The Articles were formally ratified by all thirteen states in 1781, and a great deal of the four year delay in the ratification process involved disputes over which colony/province would be entitled to certain territories.

Nevertheless, despite the absence of ratification, beginning in 1777 – that is, four years before ratification took place -- the Continental

Congress assumed considerable authority with respect to a wide variety of policy areas involving the states. Among other things, the Congress created and provided for a military force, as well as established a military code of conduct. The Continental Congress also oversaw the issuing and regulating of fiat money, and it set various kinds of trade restrictions, as well as conducted diplomatic negotiations with various foreign countries.

Thus, for four years, the Continental Congress ran under the authority of the power elites that governed the 13 colonies/provinces/states. The 'rule of law', if one can call it that, which regulated national affairs was the result of arbitrarily generated arrangements by the power elite for proceeding in one way rather than another.

The ratification process for the Articles of Confederation did not involve the generality of people. That is, those people who were eligible to vote did not assemble to accept or reject the Articles of Confederation.

Instead, state assemblies gathered together and voted on the matter. These assembly members were individuals who, for the most part, had been elected by a small sub-set of the eligible voters.

The character of the colonial/provincial charters, the nature and contents of the colonial/provincial/state constitutions, the structure of the Articles of Confederation, and the common law legal systems all shared one thing in common. More specifically, they were not necessarily the expression of the general will of the people – even the will of those who could vote – but, instead, such processes were the creations of a number of limited, select groups of individuals who took it upon themselves to make decisions for everyone else.

Some might refer to the foregoing set of arrangements as an exercise in leadership. However, others might wish to refer to such a way of doing things as rooted in the need of some individuals to control other people and the circumstances of the lives of the latter people.

In each instance – from colonial/provincial charters, to the Articles of Confederation – there was no real justification for doing things in the way they were done. They were all arbitrary exercises of power – that is, things were done because they could be done in a certain way and because no one was permitted (or, generally, able) to act in a way that was contrary to what this or that set of individuals who belonged to the power elite had decided.

The policies that were enacted might have given expression to 'good' decisions or 'bad' ones. In either case, many, if not most, of the decisions and judgments of colonial/provincial authorities were arbitrary exercises of power.

In other words, such policies could not be justified independently of the judgment that led to a given decision. Therefore, those policies tended to be entirely self-serving with respect to the interests of the powers that be.

The arguments of power are always circular. They begin and end with the capacity of power (usually as a function of some form of coercive force) to do as it wishes quite independently of considerations of facts, reason, logic, or fairness.

Consequently, in such cases, the so-called 'rule of law' consisted in little more than a manifestation of the inclinations of power in one form or another. Assemblies who were elected by some of the people might have been able to place certain kinds of limits on what power did, or could do, but, for the most part, law was what the power elite said it was which meant that the proclamations by the power elite concerning what constituted law served as the only 'justification' for why such laws were to be considered authoritative and incumbent on people.

In light of the foregoing considerations, to claim that America was founded on the rule of law is somewhat misleading, if not disingenuous. The 'rule of law' is alluring only to the extent that it gives expression to principles that everyone can agree are fair and, therefore, independent of anyone's capacity to compromise or undermine those principles.

Under the circumstances existing in colonial America and extending through the period following the Declaration of Independence and spilling over into the time of the Articles of Confederation (both before and after ratification), the rule of law in America was largely an artifact of power. Consequently, such a state of affairs offers no real rationale for why anyone should feel a sense of obligation or duty to accommodate this sort of 'rule of law'.

Article XIII of the Articles of Confederation indicated how every state was obligated to operate in accordance with the provisions of that document. Furthermore, Article XIII also specified that the nature of the agreement outlined in the Articles can only be changed if, (a) the

Continental Congress agrees to such alterations, and, (b), the states ratify such proposals.

Some people who believe in the precept that America was founded on the rule of law maintain that this notion should not be restricted just to the ratified Articles of Confederation but, as well, one needs to take into consideration the form of the Constitution that was developed in the Philadelphia Convention of 1787. However, there are a number of ways in which the emergence of the Constitution does not appear to abide by the provisions of the Articles of Confederation and, consequently, there is a sense in which the Constitution was an abrogation of the so-called 'rule of law' that preceded it.

While the Philadelphia Constitution might constitute a set of procedures that can be recognized as giving expression to a certain form of 'rule of law', the manner through which the Philadelphia Convention went about generating such a constitution was not itself done in accordance with any existing 'rule of law' – even an arbitrary one. Therefore, the meaning of the idea that 'America is a country founded on the rule of law' becomes somewhat murky.

The foregoing contention is likely to antagonize many people. So, let's take a closer look at the Philadelphia Convention and the circumstances leading up to it.

Many, if not most, leaders in the 13 colonies/provinces tended to agree there were a variety of problems that plagued the Articles of Confederation. As noted previously, the Articles had been drafted by the First Continental Congress in 1776-1777 and were, then, ratified by the states in 1781.

They served as the first constitution of the newly formed confederation of states known as the United States of America. As such, the Articles of Confederation constituted a legal document in the sense that it was the set of agreed-upon arrangements by the power elite that was understood by those individuals to be binding on each of the 13 colonies/provinces.

Among the generally acknowledged problems inherent in the Articles of Confederation, there was an unresolved issue: How to raise money to pay off the considerable debt that had accumulated during the war for independence. The structural character of the Articles also made it

difficult for the states to reach agreement in relation to a variety of issues ranging from: how to interact with foreign powers with a united voice, to: maintaining some form of military to defend against potential threats to the fledging nation by established powers such as: England, France, and Spain, not to mention different Indian tribes and nations. A further problem entailed by the Articles of Confederation concerned finding constructive ways to regulate the commerce of the 13 colonies/provinces … both among themselves and with the rest of the world.

Consequently, there was a general consensus among the leaders of the 13 colonies/provinces that something had to be done to solve the everyday economic and political problems facing America. Accordingly, the Continental Congress -- the recognized governmental authority of post-revolutionary America -- had authorized the participants in the Philadelphia Convention to revise, to a degree, the Articles of Confederation.

The idea for the Philadelphia Convention arose in an earlier convention that had met for three days in Annapolis during September 1786. The latter convention had been authorized by the Continental Congress – the national body responsible for implementing the various provisions of the Articles -- for the purpose of trying to resolve some of the generally recognized problems that were entailed by the existing form of governance.

However, only 12 individuals, representing just five states, showed up for the Annapolis Convention. Representatives from Rhode Island, Massachusetts, North Carolina, and New Hampshire who had been appointed by the respective states to attend the convention were not able to travel to Annapolis in a timely fashion, and, therefore, they missed the convention. Other states – notably, Georgia, Maryland, Connecticut, and South Carolina -- had not bothered to appoint or send any delegates to the Annapolis Convention.

Attendance was a common problem in the assemblies that gathered in post-Revolutionary America. This was true irrespective of whether these were in the form of gatherings of the Continental Congress or in the form of various conventions that were intended to address this or that difficulty that had been assigned by the Continental Congress.

The participants in the Annapolis Convention wrote a report and submitted it to the Continental Congress as well as to the governing

leadership of the thirteen colonies/provinces. The report recommended that a further convention be held in Philadelphia the following year (1787) beginning in May.

The recommendation advanced in the Annapolis Convention report was accepted by the Continental Congress. Plans were set in motion for sending delegates from the 13 colonies/provinces to Philadelphia in 1787.

However, one should note that the 55 people who were to gather in Philadelphia in the summer of 1787 had received no authority from the Continental Congress to write a new constitution. Their delegated authority extended only to the task of revising the Articles of Confederation to better serve the confederation of states/colonies/provinces … especially in the areas of commerce and trade.

Now, one could engage in a Clintonesque-like parsing of words with respect to the precise meaning of the word "revise," but the meaning of that term had been rendered in a fairly clear manner by the Continental Congress. For example, the official title of the Annapolis Convention that had taken place a year earlier was: 'Meeting of the Commissioners to Remedy Defects of the Federal Government.'

The primary defect that the Annapolis Commissioners had been intended to address revolved around the various barriers that existed in relation to improving opportunities for trade and commerce among the 13 colonies/provinces. Since the Annapolis Convention had fizzled out, this same defect still needed to be resolved by the Commissioners during the next convention – the one in Philadelphia.

The task of the Commissioners was to find remedies for existing problems within the context of a previously agreed-upon, ratified, and legally-acknowledged way of doing things. Nonetheless, the delegates to the Philadelphia Convention decided very early on to disregard the limits that had been placed on their authority by the national government – a government that had been ratified by the colonies/provinces some six years earlier.

The members of the Philadelphia Convention wanted to scrap the Articles of Confederation and, to replace those articles with a new constitutional arrangement. Some people might be inclined to refer to such a process as an act of treason.

As pointed out earlier, the Articles of Confederation had been written as a legal document. Nevertheless, the delegates to the Philadelphia Convention appeared to believe they were justified in dispensing with that supposedly legally binding set of arrangements and, as well, they seemed to believe they were free to ignore the source of legitimate authority that had sanctioned the Philadelphia Convention and the Annapolis Convention before it – namely, the Continental Congress.

Consequently, the Philadelphia Convention of 1787 was the opening salvo in what amounted to a coup d'état. Moreover, like most efforts to overthrow a government, the Philadelphia Convention was conceived in secrecy since no one was permitted into the Philadelphia Convention other than the 55 delegates.

Whatever the sincerity and goodness of their intentions might have been, the 55 delegates to the Philadelphia Convention surely understood that the exercise in which they were engaged was not legally sanctioned and went contrary to the both the letter and the spirit of the existing framework of government. Why else would they have decided to shroud the ongoing proceedings in secrecy?

Before the Philadelphia Convention came to a conclusion in mid-September of 1787, 16 of the original 55 delegates withdrew from the process. Some of these departures were due to economic hardship since the delegates were paying their own expenses and some of them were running low on money and needed to return home and attend to their businesses, but some of the people – including John Lansing, Jr. and Robert Yates of New York, as well as Luther Martin of Maryland -- left the convention because they were opposed to what was transpiring in the Philadelphia Convention.

One might like to spin the Philadelphia Convention in a variety of ways. For example, one could argue that most of the delegates at the convention understood all too well how the Articles of Confederation were simply not up to the challenge of effectively regulating a national government, and, consequently, those delegates were just putting a flawed form of government out of its misery … a sort of mercy killing.

However, if this is the case, then perhaps an appropriate analogy would be a case in which a person takes it upon himself or herself to secretly arrange for someone else to die without asking the permission of the object of the exercise if it is okay to proceed on with the termination

process. There is something very unethical and underhanded about this sort of an approach to things.

If the Philadelphia delegates wanted to change the game plan of the Convention, why didn't they seek authorization from the very source of legitimacy and authority under whose auspices it was meeting? There is a very dark blemish of duplicity hovering around the actions of people who seek to leverage the authority that has been extended to them in order to undermine that same authority.

What is all the more shocking about the actions of the delegates of the Philadelphia Convention is that they were proponents of a moral philosophy known as republicanism that was supposed to constructively and ethically regulate how one set of people (the members of government) should interact with another group of individuals (the citizens) within the domain of public space where citizens and representatives of government met. The latter individuals were supposed to demonstrate qualities such as: objectivity, disinterestedness, honesty, tolerance, transparency, respect for others, integrity, empathy, loyalty, duty, rationality, and fairness.

Supposedly, the real driving force underlying the revolutionary spirit that was intended to change the game of governance in America was the philosophy of republicanism. Republicanism was a conceptual child of the Enlightenment, and that theoretical framework was believed by many leaders in early America to be capable of taking the country in a totally new direction from what had been observed in other parts of the world with respect to the conduct of governance.

The 'Framers of the Constitution' considered republicanism to be so vital to the possibility of good governance that the principle was enshrined in the document that arose out of the Philadelphia Convention. Article IV. Section 4 of the Constitution guarantees all of the states a republican form of government.

Yet, the very first act of those who 'framed' the Constitution was to conduct themselves in a totally un-republican manner. They did not exhibit qualities of: transparency, disinterestedness, respect for others, loyalty, objectivity, faithfulness to duty, honesty, objectivity, fairness, or integrity … all qualities that were held in esteem by practitioners of the philosophy of republicanism.

According to the philosophy of republicanism, the only reason that the people will trust the representatives of government is if the latter operate in an ethical manner. Nonetheless, there is a very real sense in which there was a sizable component of ethically problematic behavior at the heart of the Philadelphia Convention.

So, the question arises: Why should anyone trust what is generated through such a tainted process. This was a process that was, in many ways, antithetical to the principles of the very same republicanism philosophy that was supposedly shaping the future form of governance -- the 'new world order' of that day – in the form of a constitution that had not been asked for, and that had not been legally sanctioned by, the existing government?

The decision to embark on the development of a new document of governance to replace the Articles of Confederation was not, strictly speaking, the result of a discussion that took place within the Philadelphia Convention. To be sure, the assembled members did begin to explore such an idea once it had been introduced, but the possibility of dispensing with the Articles of Confederation and replacing them with a new constitutional document had been developed prior to the convention.

In consultation with other attendees from Virginia, James Madison had drawn up a draft of his 'Virginia Plan' for a new constitution before the convention began. Writing such a plan was one of the reasons why he had travelled to Philadelphia a few days earlier than the proposed starting date for launching the convention. He wanted to have a document in hand to present to the delegates should they agree during the Convention that the time had come to consider jettisoning the Articles of Confederation.

Another indication that a coup d'état, of sorts, was in the air had to do with the pressure that a number of individuals (chief among them was Edmund Randolph, Governor of Virginia) placed on George Washington to attend the convention. Apparently, such people wanted to use the popularity and reputation of Washington to lend credibility and authoritativeness to the Philadelphia proceedings.

If the convention were intended to be nothing more than an exercise in attempting to remedy a defect in the Articles of Confederation, Washington's presence would not have been necessary. After all, the convention already enjoyed complete legitimacy through the authority of

the Continental Congress that had given its blessings (within limits) to the convention's revisionary purpose, and, consequently, Washington's attendance would not add anything to such legitimacy.

Washington hadn't been invited to the Annapolis Convention. Yet, although on the surface the purpose of the Philadelphia Convention was, more or less, the same as the Annapolis Convention, great importance was attached by various "friends" of Washington (e.g., Madison, Randolph, and other members of the Virginia delegation) to ensure his presence in Philadelphia.

Washington's participation in the Philadelphia event could serve a dynamic purpose if the function of the convention was to introduce something entirely new in the way of a constitution – something that had not been sanctioned by the existing national authority. Under such circumstances, Washington's reputation for honor, integrity, and character would serve as a countervailing force to counteract the illegal character of that convention's actual activities.

Washington enjoyed such respect and admiration amongst the generality of Americans that the mere association of his name with the convention might tend to quell any concern that people might have concerning the legitimacy of what was taking place at the convention or in relation to any results that might issue from such an assembly. His reputation was capable of transforming a sow's ear into a silk purse.

After the war, Washington had retired to his Mount Vernon farm. He had earned international acclaim for doing so since the precedent up until then had been for victorious generals to translate such propitious historical moments into the currency of power through which the individual would assume some position, or other, of authority.

In a very public manner on December 23, 1783, Washington surrendered his sword to Congress. Six months previously, he had issued a letter to the 13 state/colonial/provincial governments that promised that henceforth he would not take: "any share in public business".

Through both actions, he indicated he was retiring from military and public life. A third related action – namely, resigning from the vestry in his area – was intended to sever his final link with public service.

He stipulated that his retirement would be a legacy for his country. It was meant to be a heroic, selfless act unconnected to any sort of advancement of his own interests.

Approximately three years later, those who were seeking to induce Washington to return to public life by way of the Philadelphia Convention were, in effect, asking him to go back on his word concerning the issue of retirement. When the topic of attending the convention was first broached to him, Washington was reluctant to go to Philadelphia precisely because he was very concerned about how participating in the convention would affect his reputation as, among other things, a man of honor … a man of integrity … a man of his word.

As was the case in many instances involving Washington's agonizing over how this or that action might be evaluated by others and, consequently, how this or that action would affect his reputation in the eyes of such people, the Philadelphia question was resolved around issues of perception rather than actual facts. More specifically, Washington was persuaded by himself and several other confidants that it was better to be seen as someone who would risk his reputation – by going back on his word concerning retirement -- in order to ensure that the national government did not fail than it was to be seen as someone who kept his word concerning retirement because he wanted the national government to fail so that he could institute a military takeover of the country.

The struggle concerning reputation was entirely in the mind of Washington. He had little, or no, information concerning what people across America might be thinking about him and the Philadelphia convention.

He concerns about reputation were an exercise in speculation and imagination. He generated various fictitious scenarios in his mind concerning the matter, and, then, he began to weigh the pros and cons of those invented possibilities.

If Washington actually believed that people thought that he would keep his word about retirement in order to help push the national government toward failure that, in turn, would open up the possibility of a military overthrow of the government led by him, then, really, his word was worth nothing. If people actually were willing to think such things about Washington, then, his reputation was something of a will-o'-the-wisp and not at all substantive in character.

There was something of a straw-dog argument quality to the 'reasoning' about reputation that had been dredged up from some corner of Washington's imagination. His argument was largely devoid of logic.

If Washington was a man of his word, then why was he entertaining going to Philadelphia at all? If he was sincere when he surrendered his sword to Congress and wrote a letter to the 13 states, then why was he preoccupying himself with chimerical possibilities concerning what some other mythical individuals might think … possibilities that he knew were not true?

Moreover, one might raise the question of just what Washington thought he could bring to the table in Philadelphia that would help the national government to succeed rather than fail. Washington was not much of a thinker or theorist, nor was he much of a talker, so, why was Washington led to believe that his presence at the Philadelphia convention was very necessary?

Young America had its share of problems. However, every country has such difficulties.

What led Washington to believe that the country would fail if the Philadelphia Convention was not successful in its assignment? Had he been given the understanding that the convention would not be about just revising the Articles of Confederation but, rather, would be about replacing them?

Was he aware of what Madison, Hamilton, and a few others had in mind? Or, was he merely being manipulated -- through his excessive concern with the status of his reputation in the eyes of others – so that his reputation could be exploited in order to lend an aura of legitimacy to that which was, in reality, illegitimate?

If Washington did not have some intimation that the Philadelphia Convention was going to be more than advertised, then why didn't he leave the convention immediately upon discovering that a number of the participants had their own ideas about the real purpose of the assembly? Washington was a military man, and, consequently, he supposedly believed in the chain of command. Yet, there he was in Philadelphia about to become involved neck-deep in a process that was actively defying the nature of the authorization that had been extended by the Continental Congress.

Prior to the convention, Washington had been obsessively preoccupied with whether, or not, others might see him as someone who was conspiring to overthrow the United States if he failed to go to the Convention. However, at the convention, he was engaged in precisely such an activity. Unfortunately, Washington did not leave the proceedings, nor did he resign from serving as president for the gathering … a position to which he had been appointed toward the beginning of the convention.

It seems that Washington wanted to both keep his cake and eat it, too. On the one hand, he wanted to maintain his reputation as a latter-day Cincinnatus who turned his back on the spoils associated with the possession of military glory and victory in order to return to the private life of a farmer.

On the other hand, Washington desperately sought for an argument that would justify – at least in his mind -- going back on a promise he had given to the country in 1783. In the process he would return to the realm of "public business" that he had renounced forever three years earlier.

In a letter to President Washington in 1796, Tom Paine closed his scathing attack on Washington with the following words: "The world will be puzzled to decide whether you are an apostate or an impostor; whether you have abandoned good principles, or whether you ever had any." Paine's letter was a critique of Washington's time as president, including the manner in which Washington had left Paine to rot in a foreign prison and never lifted a finger to help a person – i.e., Paine -- who Washington, himself, acknowledged to be one of the architects of American independence and whose work – *Common Sense* – Washington had encourage his soldiers to read during the war.

Paine's words were written some nine years after the Philadelphia Convention occurred. However, the criticism expressed through those words seems to be appropriate in relation to Washington's participation in the 1787 assembly. Where were Washington's principles?

He had given his word to the Continental Congress, the thirteen states, and his local vestry, and, then, he dissembled his way to reneging on his promise to the country. In addition, he claimed he was deeply concerned that if he didn't attend the Philadelphia convention people might think he wanted the national government to fail so that there could be some sort of subsequent overthrow of the Confederation.

Nevertheless, his attendance at, and role in, the Philadelphia meetings seems to have rendered him immune to such considerations.

One of the concerns of the participants in the Philadelphia Convention revolved around the past difficulties of getting the members of the Continental Congress to agree on anything. As a result, nothing much got accomplished.

This issue could have been among the problems that the Philadelphia Convention had been authorized to address. Therefore, someone might wish to argue that it was precisely because of such symptoms of ineffective government that led the delegates at the1787 convention to act as they did.

For example, perhaps, this is why they constructed a wall of secrecy around their proceedings. If people from the outside were to find out that a whole new constitution was being developed and that, as a result, the Articles of Confederation would become a thing of the past, then endless wrangling would take place, and nothing would be accomplished.

One might continue on with this line of argument and claim that, with the best of intentions, the assembled delegates decided to take the bull by the horns and do what was necessary from a practical point of view. If the country were in dire need of effective governance, and if the Articles of Confederation were preventing this, then, the Articles should be eliminated and something new had to be introduced.

Therefore, someone might wish to argue that the delegates might have thought that if they were to propose the foregoing idea – that is, the notion of a new constitution -- in an unarticulated form to the Continental Congress and the state legislators, then such a proposal likely would be rejected. Consequently, it would be better – or, so, such an argument might go -- to proceed on in secrecy and produce a working plan for bringing about the dissolution of the Articles of Confederation before engaging the national and state governments.

From the perspective of practicality, the foregoing possibility sounds plausible. From the perspective of the idea of democracy, there are problems with such an argument.

No matter what the quality of sincerity and good intentions might be of the appointed delegates to a convention that has been sanctioned by a

legally authorized body, those delegates had a duty of care to the people who appointed them … a duty of care that concerns the fiduciary responsibility of the delegates to act in accordance with the power that has been entrusted to them. Under such circumstances, delegates are not free to decide matters as they please.

Consequently, by proceeding in the way they did, the delegates to the Philadelphia Convention of 1787 set a terrible precedent. In effect, their argument is as follows: As long as one believes in what one is doing, then it is okay to act in ways that dismiss one's fiduciary responsibility to the authority that sanctions one's supposed purpose for gathering together.

As a result, over the past several hundred years in America, many, many groups of people have assembled together in secrecy under the auspices of delegated government fiduciary responsibility and betrayed their assigned duties of care to the people of the United States in a variety of ways. Even if one extends the benefit of a doubt to such individuals and accepts their usual claims that they were only seeking to enhance the general welfare of all Americans – a benefit that I'm not at all convinced is warranted – nevertheless, such a wild-west modality of governance is not acceptable.

People have a right to know what their form of governance is up to and whether, or not, such activity can be justified. The participants in the Philadelphia Convention were, in effect, saying that people have no right to know, shape, or question what is going on in such assemblies at the time those activities are taking place. Furthermore, the members of the Philadelphia Convention were also saying that the issue of fiduciary responsibility is irrelevant to the processes of governance.

Over the years, all too many representatives of government have followed the precedent set down by the participants of the 1787 Philadelphia Convention. Whatever 'good' might have ensued from the constitution-making process that occurred at that convention, this has been more than off-set and undermined by the, presumably, well-intentioned dismissal of fiduciary responsibility which that convention set in motion.

In addition to the foregoing problem, one might also note that there was a concerted theme of arrogance that colored much of what transpired during the Philadelphia Convention. Here was a group of

people who believed that they, alone, knew what was best for America and took steps to ensure that no one would interfere with their machinations.

Apparently, from the perspective of the signatories of the Philadelphia Convention, neither the Continental Congress, nor the state legislators, nor the people were considered worthy of participating in the process of constructing a constitution. Apparently, from the heady heights of understanding and wisdom of the Philadelphia Convention participants, no one but they were considered to have anything of value to contribute to such an undertaking.

They proved as much by the manner in which, following the Philadelphia Convention, they insisted that the people of America – or at least those who were permitted to vote – must accept or reject the Constitution-as-written. All talk of amending the Constitution was discouraged, suppressed, resisted, and/or dismissed throughout the entire ratification process.

One also wonders about the 'rationality' of the thinking of the attendees of the Philadelphia Convention. If the reason they were proceeding in secrecy was because of their collective frustrations with respect to getting any kind of agreement within the Continental Congress and/or the state legislatures in relation to much of anything, then what made them believe that their form of federalism would be capable of generating agreement among the people or state legislatures?

In other words, from one perspective, the ratification vote from the different states might seem (and I will have more to say on this issue in the second chapter) to justify the nature of the commitment of the Philadelphia delegates to their mode of constructing a new constitution. Nonetheless, one wonders why -- if they were banking on inducing people to go along with their ideas after the Philadelphia Convention -- they were apparently so resistant to the idea of entertaining the possibility that the same thing might have been accomplished in a much more direct, open, and inclusive way than in the manner through which the Philadelphia Convention conducted its affairs?

At some point, the delegates to the Philadelphia Convention knew that they were going to have to face a public – whether in the form of the Continental Congress, the state legislatures, and/or the general citizenry – that was very much divided in its ideas concerning how to realize the

potential of democracy. Why did those delegates choose to do things in such an underhanded fashion, when, perhaps, the same thing could have been accomplished in a much more ethical fashion?

It took a little less than a year from the end of the Philadelphia Convention for enough states to ratify the Constitution for it to be capable of replacing the Articles of Confederation. It took another three years, or so, to introduce, pass, and ratify ten amendments of the original constitutional document.

Couldn't one argue that a much better constitution might have been constructed if one took these three, or so, years and simply went about things in a far more transparent, inclusive, and ethical manner? Indeed, what evidence could be cited which would demonstrate that such a possibility could not have been realized?

We will never know, because the delegates to the Philadelphia Convention robbed Americans of such an opportunity. Instead, they decided to act in an illegal, secretive manner and impose their result on America with a 'this or nothing' ultimatum.

In fact, what the delegates to the Philadelphia Convention engaged in – and this was continued throughout the ratification process – was the politics of power. They took the authority which had been given to them and leveraged that authority to generate a form of political power that was used for purposes other than the delegated authority was originally intended to serve.

The delegates of the Philadelphia Convention were 'Framers' of a Constitution', but that frame reflects the ugliness of the politics of power underlying, surrounding, and directing that framing process. Nothing matters to the purveyors of political power except their own agenda.

Politics has acquired such an unsavory reputation precisely because of the sort of backroom, underhanded activities that were engaged in by most of the delegates to the Philadelphia Convention. They were not statesmen, but, instead, they were politicians working behind closed doors to develop a system that could be foisted onto the public through a sort of fait accompli.

There are many ways in which one could validate the contention in the foregoing paragraph – some of which already have been outlined – but one only has to look to the closing 'article' of the Philadelphia

Constitution to understand the nature of the misleading framing process that was being done by the 'Framers'. More specifically, after setting forth the rule that specified what would be necessary for the Philadelphia Constitution to be adopted (nine of the 13 states must ratify it), one finds the following: "Done in convention by the unanimous consent of the states present…"

The foregoing segment of Article VII gives the impression that there was complete, unanimous agreement among the participants in the Philadelphia Convention. But, this was not the case since George Mason and Governor Edmund Randolph of Virginia, as well as Elbridge Gerry of Massachusetts had refused to sign-off on the Philadelphia Constitution.

Furthermore, the participants had not come together as states but as individuals from various states who, supposedly, were attending to issues that had been authorized by the Continental Congress. In fact, even if one were to argue that the participants in the Philadelphia Convention were members of state delegation, one could not claim, as Article VII did, that there had been "unanimous consent of the states present."

For instance, there were two signatories to the Philadelphia Constitution who were from Virginia – namely, John Blair and James Madison. However, there also were two participants in the Philadelphia Convention who refused to sign-off on the document – George Mason and Governor Edmund Randolph.

George Washington also was from Virginia. Yet, he did not sign as part of the Virginia state delegation but, instead, signed as President of the Convention and as a deputy from Virginia.

Whether this is a case of double-dipping or merely an effort to leverage Washington's popularity as a means of lending credibility to a thoroughly illegal process, it helps to muddle the situation. In a sense, Virginia was not unanimous in its consent with respect to the Philadelphia Convention, and the phrasing of Article VII hides this fact.

The same could also be said in relation to Massachusetts since Elbridge Gerry had refused to sign the Philadelphia Constitution. While two out of the three people from Massachusetts (Nathaniel Gorham and Rufus King) were signatories to the Philadelphia Convention, the vote was not unanimous.

Maryland could also be added to the foregoing list of states. Luther Martin had left the Philadelphia Convention due to the inflexible character of the way in which many of the delegates were refusing to consider alternative possibilities to what they were proposing. Therefore, the vote of delegates from Maryland was not a matter of unanimous consent.

Of course, one could argue that the intended sense of the phrase: "unanimous consent of the states present" was only meant to indicate that when the votes among the delegates from the different states were tallied, all the states present had – by majority vote – unanimously consented to the Philadelphia Convention. Nonetheless, the phrasing of Article VII was ambiguous in meaning.

Although copies of the Constitution were distributed – via newspapers and pamphlets -- to people during the ratification process, many people would never learn about the real story underlying the phrase "the unanimous consent of the states present" and would be "free" to conclude that everyone present at the Philadelphia Convention had unanimously consented to the document. The ambiguous phrasing of Article VII was an especially important issue since those who were in favor of ratifying the Philadelphia Convention expended a great deal of effort during the ratification process to hide from the public any criticism of the Philadelphia Constitution … let alone that there were people who actually had participated in the convention who were critical of the document produced through that assembly.

Let's, for the moment, give the signatories to the Philadelphia Constitution the benefit of the doubt and assume that the ambiguous phrasing of Article VII was merely an unintended oversight. Extending such a benefit of doubt is somewhat problematic because the people who wrote the Constitution were 'wordsmiths' who were very careful about language and the attendant meanings that might be associated with one sort of phrasing for an idea rather than some other wording arrangement.

For example, the phrase "the states present" is a euphemism for the fact that Rhode Island had not sent any delegates to the Philadelphia Convention. By saying things in the foregoing manner, the authors of the Philadelphia Convention could say something that was true while deflecting attention away from the inconvenient truth that Rhode Island

was not at the Philadelphia Convention and, therefore, for whatever reason was not in support of that convention.

The Articles of Confederation indicated that all 13 states had to sign off on proposed changes to the legal arrangement – i.e., the Articles themselves -- that had been ratified by all 13 states. Not only had the signatories to the Philadelphia Convention participated in a process that had not been authorized by the Continental Congress, but, as well, given that 13 states had to agree to any proposed changes, there had not even been a quorum at the convention in Philadelphia … only 12 states showed up, not the necessary 13.

Therefore, in effect, phrasing Article VII to read: "the states present", was actually intended to hide the fact that the Philadelphia Constitution shouldn't have been forwarded to either the Continental Congress or the state legislatures. Under the Articles of Confederation, Rhode Island had the right not to participate in such proceedings and, thereby, deny the Philadelphia Convention the quorum it needed to propose changes to the Articles, but, instead, the Founders/Framers decided to deny Rhode Island its rights and sweep such a denial under the phrase -- "the states present."

One might, of course, try to argue that the Philadelphia Convention was not really a ratification meeting of the states, and, therefore, under the Articles of Confederation, Rhode Island didn't have any rights with respect to the Philadelphia Convention. However, if this is the case, then why are the authors bothering to say in Article VII of the Philadelphia Constitution that that document was the "unanimous consent of the states present" … something that was quite misleading – intentionally so, I believe -- in several senses.

Notwithstanding all of the foregoing considerations, the case of New York pushes the problem beyond the – at best -- ambiguous nature of the phrasing in Article VII. The lone signatory to the Philadelphia Convention from New York was Alexander Hamilton. Yet, Hamilton was not the only person from New York who – up to a certain point – had participated in the Philadelphia Convention.

New Yorkers Robert Yates and John Lansing, Jr. had attended that convention, but they left it before those proceedings had concluded because the two individuals were not in agreement with what was taking place in Philadelphia. Therefore, once again, irrespective of whether one

is talking in terms of individuals or state delegations, one really can't justifiably count New York as a state that should form part of a "unanimous consent of the states present" since there were more delegates from New York who were against what was transpiring in Philadelphia than there were participants from New York who were in favor of what was occurring in that city in the summer of 1787.

Whereas in the case of Virginia, Massachusetts, and Maryland, one might be able to plausibly argue that the phrase "unanimous consent of the states present" contained an unfortunate, but unintended, ambiguity that conceivably might have misled some people during the ratification process, the case of New York State is different. The majority of the delegates to the Philadelphia Convention who were from New York were not signatories to the Constitution, and, therefore, what is said in Article VII – namely, that the Constitution was "done in convention by unanimous consent of the states present" – is simply not true.

John Lansing, Jr. and Robert Yates had voted on the proceedings when they left the Philadelphia Convention and returned to New York. Hamilton had been outvoted, and, yet, New York was counted as part of the unanimous consensus of states that had endorsed the Philadelphia Constitution.

Someone might wish to argue that one can hardly count the votes of people who were not present when the final document was signed. The response to such a possibility is: Why not?

If the participants in the Philadelphia Convention were there as individuals, then, it is quite misleading to speak in terms of the "unanimous consent of the states present." The final tally should have been clearly stated as: 39 for; six against (Mason, Gerry, Randolph, Yates, Lansing, and Martin), and ten unknown (additional people who left the Philadelphia Convention early and, ostensibly, did so because of financial circumstances but who also might have been unhappy with what was taking place in Philadelphia.

If, on the other hand, the participants at the Philadelphia convention were there as state delegations, then not only had the conditions of quorum been ignored (Rhode Island was absent), but, as well, when one tallied the votes for each of the state delegations, it was clear that the majority of New York delegates had voted against the proceedings of the Philadelphia Convention.

Lansing and Yates demonstrated their continuing opposition to the Philadelphia Convention through their active role in the New York State ratification convention. So, why weren't their votes counted when the whole Philadelphia Convention knew that they were unhappy with the proceedings and refused to participate any longer?

Perhaps, there is another ambiguity – again entirely unintended, I'm sure --inherent in the phrasing of Article VII. In other words, when the authors of the Philadelphia Constitution spoke of the "unanimous consent of the states present" they were referring to the members of the state delegations who were present at the time when the Philadelphia Constitution was signed, and since Hamilton was the lone member of the New York State delegation present at that time, then, ipso facto, New York was part of the unanimous consent of the states present.

Apparently, 39 members of the Philadelphia Convention were making it up as they went along. Everything they were doing was entirely arbitrary and could not be justified through the principles of republican philosophy or any form of moral decency.

Rhode Island was denied its rights under the Articles of Confederation. The position of people who indicated they did not consent to what was going on in Philadelphia were denied a voice -- and this was true not only with respect to people like Lansing and Yates from New York, as well as Luther from Maryland, but, as well, the Philadelphia Constitution did not even mention the three people who were present until the bitter end but were opposed to that document.

All of the foregoing arbitrariness and questionable ethics was hidden beneath the phrase: "the unanimous consent of the states present." The Philadelphia Convention was an exercise in political management by people like James Madison and Alexander Hamilton, and the wording of the Philadelphia Constitution was an exercise in political management – i.e., the way of power – and nowhere is this fact more clear than in the wording of Article VII of that document.

The authors of the Philadelphia Constitution were hiding facts from the world outside the hall where they were assembling. The facts which were being hidden indicated that the opinions surrounding the Philadelphia Convention were not really a matter of unanimous consent. These facts were being hidden because they had the potential to create problems with respect to the intention of the signatories to the

Philadelphia Constitution to politically manage the proposed ratification conventions in each of the states.

The Philadelphia Convention and Constitution were not wonderful examples of democracy at its best. Rather, they gave expression to the way of power that seeks various means through which to insert itself into the lives of people on conditions that are favorable to the way of power.

When the authors of the Philadelphia Constitution wrote Article VII of that document, they knew what they doing. The Framers of the Constitution did what 'Framers' do best … they framed things in a manner that advanced their cause.

The Framers intended to hide the full truth about the Philadelphia Convention from the American public – knowing that most Americans would never come to learn the truth about what went on in Philadelphia until, if ever, much, much later. As a result they had worded things in Article VII so that the likelihood would be minimal that the actual nature of the events in Philadelphia would be able to negatively affect how most people might think about the Philadelphia Convention and the document it produced.

One should note that the letter that accompanied a copy of the Philadelphia Constitution to the Continental Congress, as well as the copies of the proposed constitution that were sent to the state legislatures (and was printed along with the Constitution in many newspapers and pamphlets during the process of ratification), does not mention or allude to the existence of substantial dissent with respect to the Philadelphia proceedings. What he aforementioned letter does allude to is the possibility that not everyone will necessarily be in favor of what the Philadelphia Convention had done but a certain amount of such disagreement was to be expected (but if this so, then, their letter would have been a perfect time to note that there had been such disagreement in Philadelphia).

The rule of law was nowhere in evidence in the Philadelphia Convention, and, yet, the 39 signatories to the Philadelphia Constitution wanted that document to become the law of the land. In other words, that document was not rooted in a justifiable process – legal or otherwise -- but, rather, the 'Framers of the Constitution' wanted to declare what the law would be even as they couched their declarations in the guise of

something that, supposedly, would derive its legality from the ratification vote of 'We the People'.

On the other hand, what was in evidence during the Philadelphia Convention was the way of power … that is, decisions were made that were largely arbitrary and could not be justified in any manner that was independent of the social dynamics taking place within that convention … and could not be justified even in terms of their own self-professed commitment to the principles of republicanism.

Historical spinmeisters might wish to hide or airbrush away the flaws in the picture to which the Philadelphia Convention gives expression, but this, too, is part of the politics of power. People are fed a representation of historical reality that is skewed and distorted, yet, they are induced to believe that such a framing is the truth of things.

Although it is a case of counterfactual thinking, one wonders what would have happened at the Philadelphia gathering if certain people who were not present at that convention actually had attended those proceedings. For example, Tom Paine, Thomas Jefferson, Samuel Adams, John Adams, Patrick Henry, and William Findley did not participate in the Philadelphia Convention.

John Adams and Thomas Jefferson were in Europe acting on behalf of the American government at the time of the convention. Samuel Adams was ill.

Patrick Henry, a Virginian, had been invited to Philadelphia but refused the invitation because he said that he smelled the odor of monarchy emanating from the proposed convention – a very prescient intuition as it turns out. William Findley, who was from Pennsylvania, also was invited, but he wanted to be paid for attending the meetings and when such payment was not forthcoming, he decided to stay home.

Tom Paine had been invited to the convention, as well. However, Paine had given away most all of the proceeds he had received for selling more than 100,000 copies of *Common Sense* – a commercial success unheard of for publications during those times – to the war effort, and, therefore was in a precarious financial position.

Despite a few government jobs here and there, along with some gifts of money and land from the states of New York and Pennsylvania, as well

as from the Continental Congress, in recognition of, and appreciation for, his efforts on behalf of American independence, Paine was largely unemployed and penniless in 1787, the year of the Philadelphia Convention.

During 1787, Paine had been working on bridge designs. Consequently, he went to Europe to try to generate some revenue in relation to those ideas. His financial condition rendered him unable to go to Philadelphia, and, perhaps, even if he had been solvent, he might not have been inclined to attend sessions that, supposedly, were only about tying to remedy some defects of the national government.

In any event, Jefferson, Paine, Henry, Samuel Adams, Findley, and John Adams were not people to remain quiet about what they were thinking. With the possible exception of John Adams, all of the foregoing individuals likely would have been quite vocal in their opposition to the federal form of government that was being constructed in Philadelphia.

William Findley, Patrick Henry, and Samuel Adams demonstrated as much during the ratification debates that took place in their respective states (Pennsylvania, Virginia, and Massachusetts) in the several years following the Philadelphia Convention. They were all in strong opposition to the federalist plan for government.

Tom Paine proved his willingness to be outspoken during the French Revolution -- until he was imprisoned for his opposition to the reign of terror in the early 1790s when he criticized the newly formed government's abuse of power against the so-called enemies of the French people. In addition, Thomas Jefferson showed his willingness to stand in opposition to the excesses of federalism during the Alien and Sedition Act crisis in the administration of President John Adams.

If Jefferson, Findley, Henry, Paine, Samuel Adams – and, possibly, even John Adams -- had been able to add their voices to those of George Mason, Elbridge Gerry, and Edmund Randolph – the lone dissenters to the signatories of the Philadelphia Constitutional document – as well as those of the individuals (such as John Lansing, Jr., Robert Yates and Luther Martin) who had left the Philadelphia Convention in protest, the outcome of that convention might have been very, very different. Whether this difference would have manifested itself in the form of an alternative sort of constitutional arrangement from the Virginia Plan of Madison that became the backbone of the Philadelphia Convention, or whether this

difference would have been in the form of a broken convention in which an agreement might not have been reached at all, or whether this difference might have involved some sort of criticism of the process and purpose of the convention and the manner in which it flouted its fiduciary responsibilities to the Continental Congress, is hard to say. However, the likelihood that ensuing events would have unfolded, more or less, in the same way if the aforementioned absentees had been present seems very low if not non-existent.

One could add the name of Richard Henry Lee, a member of the Continental Congress representing Virginia, to the foregoing list of individuals who were inclined to speak their minds about important issues but who did not attend the Philadelphia Convention. Lee, however, did speak up during the Virginia Ratification Convention when he recommended voting against accepting the Constitution without appropriate amendments.

The reason Lee did not attend the Philadelphia Convention was because he felt there was a conflict of interest between his duties as a member of the Continental Congress and the agenda of the Philadelphia Convention. Nonetheless, there were a number of other delegates to the Continental Congress who did participate in the Philadelphia Convention and who, apparently, saw no conflict of interest in their duties as members of the Continental Congress and the activities of the Philadelphia Convention … James Madison – the so-called father of the Constitution -- being a case in point.

Some people might wish to interpret the absence of such individuals – individuals who might have stood in the way of our present Constitution being written in its current form or stood in the way of its being written at all – as being a propitious sign indicating the presence of the Hand of Providence in relation to the formation of America. On the other hand, given all the wars, destruction, exploitation, oppression, and injustice that have been set in motion through the existence of the document in question, one is, perhaps, less certain that the absence of such individuals at the Philadelphia Convention is a sign of the presence of the Hand of Providence than one is inclined to suppose that the absence of the aforementioned individuals is an indication of the tragedy that often ensues when fiduciary responsibilities are dismissed and replaced by ambitions concerning political power.

One might speculate that James Madison might well have experienced a certain sense of ironic realization eleven years after the Philadelphia Convention when he found himself in opposition to the political forces his 'creature' had unleashed in the form of the Alien and Seditions Act during the late 1790s. After all, one of the primary motivations behind Madison's coming up with his Virginia Plan for the federalized constitution was rooted in his fear concerning what he considered to be the unprincipled, chaotic political activity that was occurring in the Virginia Legislature, and, yet, as he subsequently discovered, his federalized constitution really was just as ineffective when it came to protecting people against the unprincipled and self-serving activity of politicians on the federal level as was true on the state level.

If Madison had been a little more critically reflective and a little less fear-driven in his efforts to solve a problem that, perhaps, he did not fully understand, he might have resisted the urge to father a constitution that had more genetic flaws in it than he and other participants in the Philadelphia Convention were aware. Apparently, Madison, like other participants in the Philadelphia Convention, was mesmerized by the surface gloss of his creation and, as a result, failed to see the potential for deviltry in the details of that creature.

Consequently, it is not inappropriate to ask in relation to the construction of the Constitution what the rule of law is on which the United States was supposedly founded. Such a question is not inappropriate to ask because the Constitution that arose out of the Philadelphia Convention was born due to an extended – four month -- process of transgressing against what the "legally" sanctioned government had authorized the Philadelphia Convention to do.

One can add to the foregoing questions and problems by taking a look at the conduct of the Continental Congress following the release of the Philadelphia Constitution in September 1787. The Congress was in session at the time when the Philadelphia Convention finally ceased operating, but effective governance was very difficult because nearly a third of the delegates who should have been attending to business through the Continental Congress in New York were, instead, in Philadelphia.

Surely, the delegates to the Continental Congress who were also attending the Philadelphia Convention had a conflict of interest. How could one effectively serve one body (the Continental Congress that operated in accordance with the Articles of Confederation) while participating in another body (the Philadelphia Convention) that was attempting to dissolve both the Continental Congress and its underlying Articles of Confederation.

One individual – William Pierce from Georgia – who was both a member of the Continental Congress as well as a delegate to the proceedings taking place in Philadelphia apparently believed that some issues were more important than either one of the two assemblies. He left the Philadelphia Convention to fight a duel in New York.

The choice that Pierce made following his duel is also interesting. Rather than return to the Philadelphia Convention, he decided to join the Continental Congress on July 1, 1787.

Conceivably, Pierce's decision about where to go after his duel was, in its own way, connected to the philosophy of duels. After all, duels were about satisfying the 18th century's rules governing the matter of honor, and, perhaps, Pierce felt that there was more honor in going to New York than returning to what was transpiring in Philadelphia.

On September 20, 1787, the Continental Congress received communication from Philadelphia in the form of the Constitution, a letter that accompanied that document, and a list of resolutions about how the signatories of the Philadelphia Constitution felt things should proceed from that point onward. The delegates to the Continental Congress began discussing the Philadelphia proposal on September 26, 1787.

Although those members of Congress who had been attending the Philadelphia Convention began to straggle in, there were several states that could not vote with respect to the proceedings of the Continental Congress because the necessary numbers of congressional representatives were not present. Thus, Rhode Island -- for which no representatives were present -- and Maryland -- for which only one person of the two representatives necessary for a voting quorum in any given state -- could not cast a vote under the provisions of the Articles of Confederation.

On September 15, 1787 -- five days prior to receipt of the Constitution by the Continental Congress – Rhode Island had written a letter to Congress explaining why it had sent no representatives either to: The Continental Congress or to the Philadelphia Convention. Among other things, the letter indicated that Rhode Island did not wish to be party to anything that sought to alter current arrangements of governance that might adversely affect the liberties of Americans.

The letter seems rather prescient. Somehow the leaders of that state had come to understand what was transpiring in Philadelphia and, as well, what might be forthcoming at the Continental Congress. That state had not earned the nickname: 'Rogue Island,' for nothing, and although most people used the nickname in a contemptuous and derisive manner, perhaps the state was seeking to do something apart from, and independent of, the way of power that was being manifested in Philadelphia and, perhaps soon, in New York.

There were a number of people who were in, or around, the Continental Congress assemblies who were in favor of adopting the Constitution. In concert with the resolutions that had accompanied the Constitution to New York, such individuals were pressuring Congress to pass the constitutional issue to the states so that the latter would be able to begin establish the procedures that would be necessary for implementing various ratification conventions.

Those sorts of pressure tactics were inappropriate for a number of reasons. First, the members of the Philadelphia Convention had no legal justification for expecting anyone to acquiesce to the provisions of Article VII in the Philadelphia Constitution which stated that an affirmative vote of nine states would be sufficient to release such states from the requirements of the Articles of Confederation … requirements which specified that all states must sign off on any changes to the Articles that had been ratified by all 13 states.

Who were the members of the Philadelphia Convention to dictate to the rest of the country how things should unfold? They had been operating illegally for nearly four months, and, now, they were proposing that the rest of the country operate illegally as well by violating the Articles of Confederation.

The pressure tactics of those who were in favor of adopting the Philadelphia Convention were also inappropriate because the current

session of Congress consisted of two delegations who were not properly constituted according to the prevailing rules and, therefore, would not be able to vote in a matter that clearly would revise – and, then, some – the Articles of Confederation. All 13 states had to vote on anything that would revise those Articles in any way, but Rhode Island and Maryland would not be able to participate in a vote concerning such issues, and, therefore, according to the Articles of Confederation, any such vote would be invalid.

There were further problems. For example, Virginia's delegation to the Continental Congress consisted of five people: Henry Lee, James Madison, William Grayson, Edward Carrington, and Richard Henry Lee (a cousin of Henry Lee).

Henry Lee and Edward Carrington were, despite some reservations, in favor of adopting the proposed constitution. On the other hand, Richard Henry Lee and William Grayson were opposed to adopting the proposed Constitution … at least as it currently was written.

Thus, the Virginia delegation was split. The deciding vote would be that of James Madison, the so-called father of the Philadelphia Constitution.

Carrington had written to Madison in Philadelphia telling his fellow representative of the Continental Congress that Madison needed to get back to New York quickly. Just as the Virginia delegation had fallen apart in the final week of the Philadelphia Convention, so too, the Virginia delegation at the Continental Congress in New York was split and could only be salvaged via Madison's vote.

The person who had led the coup d'état in Philadelphia was needed to continue his rebellion in New York. In both instances, Madison would need to forget about his fiduciary responsibilities to the Articles of Confederation, and, consequently, in each instance Madison would need to ignore principles of the very philosophy of republicanism that he, along with other members of the Philadelphia Convention, had placed at the heart of the proposed constitution in Article IV, Section 4.

Accompanying the copy of the Philadelphia Constitution, there were resolutions outlining what the members of the Philadelphia Convention indicated should take place in the near future. Those resolutions stipulated that the Constitution should, first, be placed before the Continental Congress, and, then the proposed constitution should be

forwarded for purposes of ratification by conventions in each of the 13 states consisting of delegates that had been selected in accordance with the decision of individual state legislatures.

The Philadelphia Convention had no legal authority to make the resolutions it did or to forward them on to the Continental Congress and the 13 state legislatures. Therefore, its resolutions were not binding on anyone – in fact, they were precisely the opposite of being legally binding because they arose through a process that had not been legally sanctioned.

On September 27, 1787 proposals concerning the Philadelphia Convention began to issue forth within the Continental Congress. For instance, although Richard Henry Lee was in opposition to the Philadelphia Constitution, he suggested that, perhaps, the Continental Congress could forward some sort of package to the states which indicated that the Philadelphia Constitution had been forged by delegates from 12 states (Rhode Island had no delegates in Philadelphia) so that the various states might consider that document. However, at the same time, Lee placed his suggestion concerning how the Continental Congress might proceed in a context which clearly indicated that Congress had no right to subvert the current state of affairs -- that had been specified in the Articles of Confederation -- by allowing nine states to be able to dissolve such an arrangement.

James Madison, Lee's fellow representative in the Virginia delegation and the so-called father of the Philadelphia Constitution, rejected Lee's idea. Madison claimed that any communication to the states that did not clearly indicate approval with respect to the Philadelphia document would imply disapproval, and Madison wanted the members of the Continental Congress to both adopt the Philadelphia Constitution as well as forward it to the states for the purposes of instituting ratification conventions.

Several other representatives to the Continental Congress who also had been delegates at the Philadelphia Convention – namely, Pierce Butler from South Carolina and William Samuel Johnson from Connecticut – argued that the Continental Congress needed to vote, yes or no, on the Constitution-as-written. Their argument was that the Philadelphia Convention was actually a Committee of the Continental Congress and, therefore, a yes or no vote was required.

What Johnson and Butler failed to point out was that whether, or not, one considered the Philadelphia Convention a Committee of the Continental Congress, that committee had conducted itself in an illegal fashion by transgressing against the authority that had been extended to it by Congress. On what basis should members of Congress be required to vote on a 'report' that had issued forth from an unsanctioned process?

Edward Carrington, another delegate from Virginia who was in favor of adopting the Philadelphia Constitution, proposed that the Continental Congress merely forward the Constitutional package to the states indicating that Congress was in favor of adopting the new constitution. Henry Lee, who also was from Virginia and who, like Carrington, was an advocate for the Philadelphia Constitution, objected to Carrington's proposal and argued that one should not endorse something which had not been carefully considered line by line … in fact, Henry Lee wanted the Continental Congress to debate the document before deciding anything, and, in addition, Lee proposed that Congress should introduce amendments wherever they were deemed to be advisable.

At this point, three members of the Continental Congress who also had been delegates at the Philadelphia Convention – namely, William Samuel Johnson, James Madison, and Rufus King – all rejected such a proposal, claiming that Congress did not have the right to propose any amendments to the Philadelphia document. Madison based his objection to the Carrington proposal on the idea that the relationship between Congress and the Philadelphia Convention was akin to a bicameral form of legislature in which the Philadelphia Convention served as a second body in such a legislative arrangement.

Like William Samuel Johnson previously, Madison was ignoring the fact that the activities of the Philadelphia Convention had not been sanctioned by the Continental Congress. Furthermore, Madison, like Johnson, was just making things up on the fly since neither of their arguments were soundly constructed and, thereby, capable of justifying their claims concerning the nature of the alleged relationship between the Continental Congress and the Philadelphia Convention.

Madison argued further that if one were to permit amendments into the proceedings, then, even if one could come up with a unified list of proposals – which he doubted could be done -- the state legislatures would have two, or more, proposals for governance before them. Such a

set of circumstances would create confusion amongst the states, with some states voting for one plan while other states would vote for other plans.

Apparently, Madison failed to consider the possibility that there was no need to confuse the states. If the Continental Congress actually decided to go ahead and consider the Philadelphia Constitution – which it was under no obligation to do – there was nothing preventing Congress from re-writing the Philadelphia document with incorporated amendments and, then, sending only one document to the state legislatures for their consideration.

Madison also maintained that the whole issue of amendments would land the country back into the same set of problems that already were undermining the possibility of effective governance. More specifically, one of the 'defects' of the Articles of Confederation has been the near impossibility of getting 13 states to agree unanimously on anything, and, therefore, the provision in the Philadelphia Convention which stipulated that only nine states were necessary to adopt the new constitution would resolve such a defect.

Although what Madison said might have had some degree of practical allurement to it, his argument ignored the fact that the current set of arrangements of governance required unanimous consent (which is why Article VII of the Philadelphia Constitution was written in the way it was – namely, "Done in convention by the unanimous consent of the states present" – in order to give the impression that the Philadelphia document had been unanimously agreed to by the states). In effect, Madison was saying that the present arrangement is problematic, so let's just jettison it and run with the rule proposed by the illegally contrived Philadelphia Convention concerning the criteria for determining what constitutes a valid vote.

Rufus King, who was from Massachusetts and also had been a delegate to the Philadelphia Convention, took up the cudgel and proceeded to go with a different line of attack. He claimed that because the Articles of Confederation had been the result of an agreement among the states, then the states were the appropriate forum for voting whether, or not, the Philadelphia document should be adopted. Sending the proposed constitution to Congress was nothing more than a pro

forma act of courtesy, and, consequently, Congress was not entitled to make any changes to the proposed Constitution.

King's argument was rather tortured. Like Johnson, Carrington, Madison, and Butler before him, he was ignoring the fact that all 13 states – the very states that, according to Madison, couldn't agree on anything – had unanimously consented to the Articles of Confederation in 1781.

One could concede the Articles of Confederation had been rooted in the collective initiative of the states. Nevertheless, such a consideration was irrelevant to the fact that the states had unanimously agreed to create a national form of governance, and, therefore, the states were not free to by-pass the Articles of Confederation just because, under certain circumstances (such as in the case of the Philadelphia Constitution), doing so might be advantageous.

At this point the discussion among the congressional representatives went in a new direction. The topic was rights.

Apparently, delegates to the Philadelphia Convention felt under some pressure to answer -- with respect to those members of the Continental Congress who had not attended the former set of meetings -- why the Philadelphia Constitution contained little in the way of rights. The boys from Philadelphia argued that while it was entirely appropriate that a number of states had incorporated declarations of rights into their state constitutions (and not all did so), such considerations had been deemed not to be necessary in the case of the Philadelphia Constitution since the powers that were to be placed in congressional hands via that document were strictly enumerated and could be activated only under certain circumstances.

Such an argument seemed oblivious to what had actually taken place in Philadelphia. In other words, despite being given authorization to undertake only certain, limited activities with respect to remedying some of the defects of the existing government (for example, problems involving trade and commerce), the Philadelphia Convention had proceeded to exceed its authority in egregious ways.

Claiming that the Philadelphia Constitution only permitted very specific enumerated powers was a ludicrous proposition given the context out of which that idea arose. What was to prevent future governments -- working under the provisions of the Philadelphia Constitution -- doing the

same thing that the people in Philadelphia had done – that is, go beyond the boundaries of power that supposedly had been of a limited nature?

Eventually, on September 28, 1787, the Continental Congress passed a final resolution on the Philadelphia constitutional issue. This resolution indicated that Congress had received the Philadelphia document and was, now, forwarding that material to the state legislatures for purposes of setting in motion the machinery that would bring about ratification conventions. According to the wording of the resolution, the act of forwarding the issue to the various states had been "resolved unanimously."

The Continental Congress was playing the same sort of word games in its resolution as had occurred in Philadelphia with respect to Article VII of the Constitution … and under the influence of many of the same players. The phrase: "resolved unanimously", gave the misleading impression (and even Washington stated as much when he read it) that the Continental Congress was in favor of the Philadelphia Constitution, and nothing could be further from the truth.

Although bits and pieces of the Philadelphia Constitution had been discussed in the Continental Congress, most of the document lay unexamined by the members of that assembly. The only thing that had been "resolved unanimously" concerning the Philadelphia Constitution was the decision to forward the material onto the states for the purposes of instituting ratification conventions.

In other words, the Continental Congress failed to fulfill its fiduciary responsibilities to the Articles of Confederation and, therefore, the American people. Congress was passing on something to the states which had no legal standing under existing arrangements – that is, according to the Articles of Confederation, if the Philadelphia Constitution involved a plan for radically 'revising', if not entirely reconstituting, government, there needed to be a vote by Congress that approved such 'revisions' before that proposal was passed on to the state legislatures where it needed to receive the unanimous consent of the states.

The Continental Congress had withheld its approval of the Philadelphia Constitution, but, as well, it really had no authority to pass on the Philadelphia proposal to. The matter should have ended there.

Under the Articles of Confederation, the Continental Congress had no authority to pass on the unapproved Philadelphia Constitution to the state legislatures for purposes of instituting ratification conventions. Even if Congress had given its consent to that constitutional proposal, the Articles of Confederation made no mention of the idea of ratification conventions that were independent of the state legislatures.

The state legislatures might be setting up the machinery through which such conventions were possible. However, the Articles of Confederation stipulated that the state legislatures must be the ones to consent to such changes, not ratification conventions consisting of delegates who often did not belong – but this was not always the case -- to state legislatures.

Consequently, the Continental Congress failed in its fiduciary responsibilities to the American people in several respects. As such, the whole ratification process was as illegal as the meetings in Philadelphia had been.

Rules were made concerning the foregoing matters, but all of these rules were arbitrarily conceived and extra-legal in character. There was absolutely no rule of law present that justified the process of ratification conventions.

Some people, however, might wish to argue that the rule of law upon which the United States is allegedly founded is a function of the ratification process that ensued following the Philadelphia Convention. According to the kind of mythology that is advanced through this sort of perspective, the ratification process harnessed the will of the people into a collective force that transformed the Constitution into the rule of law that has governed Americans since the late 1780s.

Appearances, however, are often deceptive. Such, I believe, is the case with respect to the historical perspective that tends to cloak the process of sanctifying the Philadelphia Constitution, and, therefore, it is to an examination of the set of events that are collectively referred to as 'Ratification' that I now turn.

Chapter 2: The Process of Ratification

The first national census in America took place in 1790. At the time, the population of the United States – excluding Indians and counting Negros as three-fifths of a person in accordance with Constitutional requirements -- was calculated to be about 3.9 million people.

Extrapolating backward to 1787, one comes up with a rough, ball-park figure for a U.S. population of about 3.6 million people around the time of ratification. Approximately 500,000 of that total were Negros. So, the actual white population in America was somewhere around 3.1 million.

There were about 558,000 households in existence at that time. While a small percentage of households (roughly 3.7%) were single occupant households, families tended to be relatively large during 18th century America with nearly 77% of households having 4 or more children.

If one were to assume that roughly half of the 558,000 households consisted of a wife, then this would leave approximately 279,000 white males in America who might qualify for the 'right' to vote. If one further subtracted the number of white males who did not own property of sufficient value to qualify for the voting franchise (e.g., indentured servants, those who had property of some kind but which was not of sufficient value to meet the standard that would enable one to vote), one arrives at an approximate figure of 250,000 people who were part of the pool for eligible voters.

One could quibble with some of the foregoing figures – both in an upward as well as a downward direction -- but those figures are, I believe, broadly accurate. Whatever quantitative corrections one might like to make would not appreciably alter the general thrust of the current discussion.

As indicated previously, the voting patterns in colonial America ranged from 20% to 40%, with places such as New York and Pennsylvania tending to exhibit higher voting trends than many other colonies/provinces/states. Somewhat arbitrarily, I will assume that the average voter turnout in America during the 18th century was about 25% -- a figure that might have been somewhat higher during the process of ratification … let us say: 30%

If one uses 30% for the lower end of the range of voter turnout and 40% as the upper end of the range of voter turnout during the different ratification votes, one could estimate that somewhere between 75,000 to 100,000 people might have participated in the election of representatives for the ratification conventions to be held in the 13 colonies/provinces. Moreover, if one further breaks these figures down to those who were in favor of, or opposed to, ratifying the Constitution, one is talking – possibly – about a group of some 38,000 to 50,000 individuals who could have voted for delegates to the 13 ratification conventions who, in turn, might have voted in favor of ratifying the Philadelphia Constitution.

The word "might" is underlined in the previous sentence because one can't be sure of the precise character of the relationship between how representatives voted in any given ratification convention and the wishes of those who voted for such delegates. Some voters gave their elected delegates instructions to vote for or against ratification, but some voters instructed their delegates to listen to the arguments at the ratification convention and, then, make up their mind about how to vote.

Approximately 1,071 delegates voted for ratification across 13 ratification conventions. About 577 delegates voted against ratification across the same number of conventions.

The foregoing is somewhat misleading because there were three states (Delaware, Georgia, and New Jersey) in which no one voted against ratification -- which given the normal variability in most populations seems rather odd – while there were six states where the difference between the 'for ratification' and 'against ratification' vote averaged about 11 individuals, with several of these votes involving a difference of only 3 (New York) and 2 (Rhode Island) individuals.

The breakdown of voting in the ratification conventions was as follows: Delaware, 30 for ratification, 0 against; Pennsylvania, 46 for ratification, 23 against; New Jersey 38 for ratification, 0 against; Georgia, 26 for ratification, 0 against; Connecticut, 128 for ratification, 40 against; Massachusetts, 187 for ratification, 168 against; Maryland, 63 for ratification, 11 against; South Carolina, 149 for ratification, 73 against; New Hampshire, 57 for ratification, 47 against; Virginia, 89 for ratification, 79 against; New York, 30 for ratification, 27 against; North Carolina, 194 for ratification, 77 against; Rhode Island, 34 for ratification, 32 against.

The foregoing votes were held on different dates beginning with Delaware on December 7, 1787 and running to Rhode Island on May 29, 1790.

Before the above noted vote in Rhode Island of 34 for ratification and 32 against it, Rhode Island had held a popular referendum in relation to the ratification issue on March 24, 1788, over a year earlier. The vote went 2708 against ratification, with only 237 in favor of ratification.

The Rhode Island referendum raises the question of what might have happened to the ratification vote if every colony/province/state had held popular referenda rather than go the route of ratification conventions. In addition, one wonders what the overall result might have been if all of the colonies/provinces/states had been required to vote on the same day – irrespective of whether these votes were based on popular referenda or ratification conventions.

There was a great deal of 'scoreboard watching' during the referendum process. This was especially the case when the game was approaching crunch time concerning the arbitrarily decided standard of requiring nine of 13 states to approve the Constitution in order for that document to become binding on all the states who had voted to ratify the Philadelphia Constitution.

While it is a natural human tendency to want to see which way other people are leaning before deciding what to do about a given issue, permitting such a tendency to play a role in the ratification process also muddies the waters. One might hope that the primary reason to vote for, or against, a proposed form of governance would be a function of the merits of such a proposal as an effective means of regulating social affairs, and, consequently, voting for, or against, ratifying the Constitution should not be about human dynamics but about the quality – or lack thereof – of a given constitutional proposal.

In addition, one wonders why the voting procedures within any given ratification convention were set as a simple majority, while the standard for the overall vote needed for ratification was two-thirds of the total number of states. Simple majorities are, of course, simpler to calculate, but they also set a lower bar to clear.

If two-thirds of the states had to be in agreement in order to demonstrate a clear standard that would show the collective 'wisdom' for adopting the constitution, then one might suppose that the same

standard should have been used within each of the ratification conventions to show an equally clear standard of collective wisdom concerning the proposed constitution. After all, one was asking people to change a form of governance that had helped the thirteen states to survive a difficult war with one of the world's great powers, so adopting different voting structures for, on the one hand, the various ratification conventions and, on the other hand, the overall ratification vote was rather inconsistent, and, therefore, somewhat suspect for its arbitrariness.

From one perspective (that of the total number of eligible voters), the fates of more than 3.5 million people were decided by between 75,000 and 100,000 people. From another perspective (that of actual voters), the fates of more than 3.5 million people were decided by between 38,000 and 50,000 individuals. From yet another perspective (that of delegates to the ratification conventions), the fates of more than 3.5 million people were decided by 494 individuals (the difference between the 'for' and 'against' vote of the ratification conventions). And, finally, from another perspective (that of the standard set for overall ratification), the fates of 3.5 million people were decided by less than 494 individuals (only nine states needed to ratify the Constitution in order for it to be carried forward as the law of the land).

The process in post-revolutionary America that led from the writing of a constitution to the ratifying of that constitution to the implantation of such a constitution is quite remarkable. Moreover, the foregoing series of historical events give expression to an exercise in democratic participation that was astonishing given how the issue of settling upon a form of governance tended to be handled elsewhere in the world.

Nonetheless, raising questions concerning the degree to which such events were truly democratic in, for example, a procedural sense is not at all inappropriate. Why should: 75,000 to a 100,000 individuals, or 38,000 to 50,000 individuals, or 494 individuals get to decide the form of governance under which, say, 3.5 million people live?

The foregoing questions are even more relevant when one considers that the writing of the Constitution at the Philadelphia Convention was not authorized by the existing legal system – namely the Articles of Confederation or its designated agents of implementation known as the Continental Congress. As such, the Constitution was an extralegal

document that the participants of the Philadelphia Convention wanted 'the people' – or, at least, some of them – to vote on … not directly, but indirectly through delegates to various ratification conventions.

None of this was consistent with the existing legal framework that had been ratified by thirteen colonies/provinces/states some six years earlier. The Articles of Confederation stipulated that the agreement among the thirteen states was to be in effect perpetually unless modifications were approved by both the Continental Congress as well as all thirteen states.

The delegates to the Philadelphia Convention wanted to change the structure of the game of governance. Moreover, they wanted to do a further end-around with respect to the established, legally sanctioned, procedural process for accomplishing such things.

The members of the Philadelphia Convention – minus three individuals who disagreed with the other 36 delegates – wanted 'the people' to lend legitimacy to their illegitimate acts that gave expression to the construction of a constitution that supposedly entailed a 'rule of law.' One reason why it was misleading to try to claim that 'the people' would decide the future of America was because the people would not actually be able to vote directly on the issue of ratification.

While many of the larger centers of population were in favor of ratifying the Philadelphia Constitution, there was considerable sentiment against voting in favor of that document in many – but not all – rural areas. In 1787, 90% of the population of the United States was located in rural areas, and if those individuals were allowed to vote directly on the issue of ratification, the Philadelphia Constitution might well have been rejected outright as had occurred, in overwhelming numbers, in the one popular referendum on the Constitution that had taken place in Rhode Island early on in the ratification process.

By requiring 'the people' – which remember was but a small sub-set of the overall population – to vote for delegates who would attend the actual ratification conventions, a very important political advantage was gained by the forces – who came to refer to themselves as federalists -- that were in support of bringing to fruition the ideas of the Philadelphia renegade majority (i.e., the 'Framers of the Constitution'). More specifically, in most instances (but not all) the ratification conventions were to be convened in large cities that tended to be pro-ratification, and,

more importantly, compared to the number of eligible voters, the group of delegates would be relatively small – ranging from 26 delegates in Georgia (the smallest) to 355 delegates in Massachusetts (the largest) – and, therefore, political pressure of various kinds could be exerted on delegates … something that would be much more difficult to organize and effectively carry out if the ratification votes were in the form of colony/state-wide referenda rather than ratification conventions.

In addition, there was something of a blitzkrieg-like quality to the push for ratification in more than half of the 13 colonies/states. The Philadelphia Constitution was made available to at least some of the public beginning on September 17,′ 1778, following the end of the convention.

Publishing the Constitution and distributing those copies to the Continental Congress, the state legislators, and beyond took time. This was especially true in relation to the rural areas of America where nearly 90% of the population lived.

Furthermore, there were not nearly enough copies of the Constitution to go around. Newspapers did help out by printing the Constitution in its entirety.

However, newspapers did not enjoy a readership that numbered in the thousands. Instead, their readership often was limited to the hundreds – although, to be sure, there was more sharing than usual going on with many of their Constitution-related editions … which was much, if not most, of the time from late September, 1787 onward.

Dissemination of the Constitution took time. Having an opportunity to read it would take time. Being able to reflect on that document also would require some time.

Approximately four months were needed by the participants of the Philadelphia Convention to discuss, debate, write, and revise the Constitution. Yet, within a fairly short time following the end of the Philadelphia Convention, many state legislatures were setting times for holding ratification conventions, and in over half of these cases, the dates for such conventions were within five months of the date of the proposed constitution being released.

Consequently, in over half the cases of the ratification conventions one notes that within a period of just five months – in three cases merely

three months or less, and in two more instances just four months -- people, somehow, were supposed to obtain, read, reflect on, and appoint delegates who would, in many cases, have to travel for days during the depths of winter to reach the designated site for any given ratification meeting.

Delaware held its ratification convention on December 7, 1787. This was just 2 ½ months after the Philadelphia Convention completed its business.

Pennsylvania's ratification convention took place on December 12, 1787, less than three months after the Philadelphia Convention. The ratification convention for New Jersey occurred on December 18, 1787 -- a day, or so, more than three months following the events in Philadelphia.

Georgia, Connecticut, New Hampshire, and Massachusetts held their ratification conventions between Jan 2, 1788 and mid-February, 1788. Moreover, when the New Hampshire ratification convention looked like it was headed toward rejection of the Constitution, pro-ratification forces in that state maneuvered to have the convention suspended in order to give their own forces time to regroup and come up with a new strategy.

One should keep in mind that prior to mid-September 1787 the idea of a new national constitution was not even on the radar of 99.99999% of Americans. As far as they knew – and to the extent that they thought about it at all -- the Articles of Confederation constituted the law of the land.

Prior to mid-September 1787, no one had been speaking about the constitutional document that would be forthcoming from Philadelphia and how it would affect the country – after all, the Philadelphia Convention was conducted in total secrecy. Furthermore, prior to mid-September 1787, newspapers were not printing stories or writing essays about the radically new constitution that was about descend on America.

However, once the Philadelphia Convention concluded, Americans were, expected to make insightful decisions with respect to ideas that had not previously appeared on the stage of history. Unfortunately, people were being given precious little time to formulate their impressions concerning the document

Consequently, through a variety of tactics, proponents of ratification sought to herd, if not stampede, people into making a decision about the

Constitution. Moreover, a great deal of effort and resources were dedicated toward pushing that decision in the direction of accepting the Constitution rather than really critically exploring that document.

The more time that people had to think about, discuss, and reflect on the Constitution, the more criticisms there were that began to surface concerning the existence of structural flaws and problems in the Philadelphia document. Those who had vested interests in the acceptance of the Constitution sought to make sure that people did not have much time to think about, or become concerned with, such matters, and, therefore, over half the states were given five months, or less, to navigate their way through an array of issues that still have not been settled two centuries later.

Pressuring people to make a decision is often a sign that the people engaged in the pressuring process have something to hide and/or have vested interests to protect. If those employing the tactics of pressure were fully confident in the strength and judiciousness of the Constitution, they would have encouraged people to take their time in making such an important decision – one with so many far reaching consequences – but this is not what happened in the ratification conventions of more than half the states.

People were being rushed to judgment in a variety of ways. In the process, they were being pressured to sacrifice their sovereignty on the altar of expediency, fear-mongering, ambition, and vested interests … activities that continue on till this day.

Another tactical advantage utilized by those who wished to ensure that the Constitution would be ratified revolved about the very critical issues of the structural character of the rules that would govern the ratification conventions, as well as the process through which the individuals who would preside over the proceedings of such assemblies would be selected. In virtually every instance – with the possible exception of Rhode Island -- those who were in favor of ratifying the Constitution gathered together early and decided among themselves upon the 'rules of order' that would govern how their convention would be conducted and, in addition, they appointed the various individuals and ratification committees that would regulate such conventions ... and these things were often set in place before many of the delegates from rural areas even had a chance to assemble.

Quite frequently, the rules of order that were devised before many of the delegates had arrived precluded the introduction of any amendments into the proceedings. In other words, a limited number of individuals – almost all of whom were in favor of ratifying the Philadelphia Constitution -- were inventing arbitrary and biased rules for the ratification games that were about to commence, and in the process, they were, in effect, insisting that the delegates could only vote on the Philadelphia Constitution as it was, and delegates would not be permitted to introduce amendments of any kind.

As occurs quite frequently in politics, the idea that 'the people' get to decide issues was seriously compromised and undermined by those who had their own agenda to push at the ratification conventions. Almost invariably, the organizers of the conventions skewed the rules of the ratification game to construct an unfair playing field for exploring and discussing the Philadelphia Constitution on the basis of merit rather than a colonial version of three-card Monte.

In the great majority of the ratification conventions held in the 13 colonies/states, there were many kinds of amendments that were suggested as a means of improving the quality of the proposed Constitution. Although people often think of the ten amendments in the Bill of Rights as being the sort of things that delegates to the various conventions were introducing, the fact of the matter is that those kinds of amendments were only a part of the set of changes that were often suggested at different conventions.

Numerous delegates had concerns about many provisions of the Constitution. They were concerned about: taxation; the limits of centralized authority; standing armies; the idea that treaties passed by the Senate would become the law of the land; the basis on which members of the House of Representatives were to be elected; the power of the Senate and the way it owed allegiance to the State legislatures rather than to the people; the lack of a specified role for the Judicial Branch of government; the difficulty of getting rid of problematic representatives; the vagueness surrounding the 'necessary and proper' clause of the Constitution; problems surrounding the meaning of Congress' power to regulate commerce; the amendment process, and so on.

Many people – both among the general electorate as well as among the delegates -- were not just concerned about the rights of individuals. They also were deeply concerned about what they perceived to be structural flaws in the character of the Philadelphia Constitution.

While the proponents of ratification had developed a set of 'talking points' for purposes of quelling the concerns of people with respect to the Constitution (and many of these 'talking points' were developed by those who had been participants in the Philadelphia Convention), it is worth noting that almost all of these 'talking points' were of an entirely theoretical nature. More specifically, since no one in the world had ever tried what was being proposed by the Philadelphia Convention, there was virtually no empirical data to support the arguments of the advocates of ratification.

No one knew what a President would do under such a constitutional arrangement. No one knew what the Judicial branch would do if the Constitution were ratified. No one knew what Congress would do with the powers that were being proposed through the Philadelphia Constitution or how members of Congress would interpret those powers. No one knew whether, or not, the members of Congress would sincerely represent their constituents. No one knew if the federal government would seek to leverage the Constitution to oppress the people.

The advocates of ratification proffered theoretical responses for why the President, the House, the Senate, or the Judiciary would act in a republican manner. Yet, this was all speculation.

If one paid attention to how the participants of the Philadelphia Convention actually behaved – in terms of republican philosophy -- during those summer meetings rather than what they said later on during the ratification process, there were a number of indicators that should have given observant people pause for thought. If one paid attention to how the proponents of ratification often structured the ratification conventions in ways that were not necessarily conducive to an objective, rigorously critical exploration of the proposed Constitution, there were many indications that the ratification game was not unfolding on a level playing field. If one paid attention to the fact that almost the entire set of arguments of those in favor of ratification consisted of theoretical speculations that could not be backed up with hard data, the observant person might have been reluctant to go along with what amounted to

little more than political promises that would not necessarily be honored if the Constitution were ratified.

The Philadelphia Convention and the ratification process were both politicized by people who had an agenda –namely, the federalists. These were people who wanted to acquire power to accomplish their respective aims under the cover of a 'people's' government.

Some individuals might wish to argue that it is not possible to keep politics out of such matters. Others might wish to argue that the creation of a constitution and its ratification should have been left to those who approached the matter with no interest other than a wish to establish a modality of self-governance that would have enhanced the sovereignty of all people in an equitable manner.

The idea that politics is an inherent part of being human is generally the refrain of those who are cynically skeptical concerning the existence of a song within the soul of human beings that is not a function of manipulation, undue influence, oppression, exploitation, control, abuse, unwarranted advantage, and injustice. However, if the cynics are correct in their assessment of things, then, surely, the Philadelphia Constitution and its ratification are merely tawdry exercises in the politics of power and not the establishment of any sort of real sovereignty for the people.

Under such circumstances, the rule of law really gives expression to the tactical and strategic rules with which politicians busy themselves during the process of conjuring the black arts of manipulating situations to the perceived advantage of such practitioners while inducing 'the people' to believe that everything is being in done in accordance with the very highest of ethical and democratic standards. If the cynics are correct, there really is no such thing as democracy … only political manipulation and exploitation camouflaged in the language of democracy.

Delaware, Georgia and New Jersey respectively ratified the Constitution: 30 to 0, 26 to 0, and 38 to 0. By and large, these states were not interested in the sovereignty of their people, but, rather, sought to leverage the power of the proposed federal constitution to advance the commercial and economic interests of the power elites in those states.

Undoubtedly, commercial issues are important. However, they are not more important than the right of people to be free from the sorts of

oppression and exploitation that often ensue from the pursuit of such power-enabled commercial and economic interests.

In Connecticut the vote went 128 in favor of ratification versus 40 against it. The nine newspapers in the state printed numerous articles and essays in support of ratifying the Constitution, but only half a dozen, or so, articles were published that were critical of the Constitution.

The Connecticut newspapers – like most (but not all) newspapers elsewhere in America at the time – believed in freedom of the press but not necessarily in freedom of information. In other words, they believed that anyone who had a printing press had the right to publish whatever he liked, but they didn't necessarily believe that the purpose of the press was to provide readers with all the information they might need to make an informed, objective decision concerning, say, the issue of ratification.

In fact, in many respects the Connecticut newspapers were instruments of propaganda concerning the coming ratification vote. They tended to give the impression that there was no real opposition to, or criticism of, the proposed Constitution, and this was simply untrue.

The coverage of those newspapers in relation to the Constitution was often biased, incomplete, and factually inaccurate. Like many of the ratification conventions, the newspaper coverage was intent on tilting the playing field in favor of the 'home' side while simultaneously attempting to give the impression that its articles, editorials, and essays were 'fair and balanced'.

Opponents and critics of ratifying the Constitution were sometimes slandered in the Connecticut newspapers. Such individuals were described as closet Loyalists whose real agenda was to reunite with Britain when, in point of fact, those opposed to ratification were merely trying to articulate what they felt were some of the problems inherent in the document that the newspapers were so intent on foisting upon the people.

Alternatively, critics of the Constitution were portrayed in the Connecticut newspapers as individuals who were trying to protect their own selfish interests. No mention was made, of course, about how many of those who were in favor of ratifying the Constitution stood to gain in one way or another if that document were accepted as the 'law of the land.'

A certain number of people from New York tried to break the Connecticut embargo against the sort of information that questioned the Constitution in any way by sending an array of pamphlets, plus copies of the *New York Journal,* which carried essays and articles that were critical of the Constitution. Proponents of ratification in Connecticut managed to learn about the attempted disruption of the embargo and seized the material and destroyed it, while simultaneously expressing indignation that anyone could have the temerity to want to present another side of the ratification issue to the citizens of Connecticut.

Some Connecticut newspapers – for example, the *Connecticut Courant* -- indicated that it was not the responsibility of the people to understand or debate the pros and cons of the Constitution. Rather, their task was merely to elect delegates who would have the responsibility of examining the constitutional issue.

Supposedly, the Philadelphia Constitution was all about advancing the cause of democracy, liberty, rights, self-governance, and sovereignty. Yet, the Connecticut newspapers were intent on preventing people from having access to any information that might allow them to make prudent decisions concerning such matters.

The tactical maneuver that surfaced in the Philadelphia constitutional convention -- which claimed that the ratification process would be the means through which the American people would legitimize the authority of the Constitution – was, as the Connecticut newspapers seemed intent on demonstrating, something of an illusion. During the run up to the ratification convention, people were being led to believe that they were the ones who would be deciding matters, but, in point of fact, this wasn't the case except, at best, in a very, very indirect way with most individuals having little, or no, capacity to actually participate in, or appreciably affect, the ratification debates.

Some areas of Connecticut ignored both the newspapers as well as the 'leaders' of the community -- who both were urging the people to leave the important stuff to the experts -- by trying to make sure that delegates to the ratification convention understood how the people of the area they were representing wished their delegates to cast votes. Such instances tended, however, to be exceptions to the rule since most town meetings merely appointed/elected delegates and permitted the

latter to vote their conscience in the matter after listening to the ratification debate.

The convention was held in Hartford, and like most large cities, Hartford was replete with individuals who were in favor of ratification. Consequently, one is not surprised to learn that some descriptive accounts of the ratification convention indicated that whenever someone spoke about this or that defect in the Constitution, there was considerable talking, shuffling of feet, and coughing in the hall where the convention was taking place … something that did not seem to occur when advocates of ratification were speaking.

Knowing exactly what went on in the Connecticut ratification convention is difficult to know since the individual – Enoch Perkins -- who was taking notes on behalf of several newspapers was not a disinterested party, but, rather, he was very much a partisan of the pro-ratification side of things. Knowing what went on in the minds and hearts of the delegates to the convention is even more difficult.

How much any of them been affected by the relentless bombardment of newspaper propaganda leading up to the convention is difficult to assess. How deferential the delegates might have been to the large number of lawyers, judges, state representatives, clergy, and doctors who were present at the convention and who were in favor of ratification is also hard to determine … although many people in post-revolutionary America, especially in a conservative state like Connecticut, tended to defer to the 'leaders' of the state in many matters irrespective of their own feelings concerning such issues.

One thing does seem clear, however. The vote of 128 delegates for ratification, with 40 voting against ratification, was not necessarily the ringing endorsement of democracy that it might seem to be.

When propaganda, suppression of information, the undue influence of so-called "leaders", along with a considerable amount of negative framing in relation to those who opposed the idea of ratification are the primary ingredients in such a process, one can't help question the integrity and meaning of the recorded vote. Were the issues of: freedom, democracy, rights, sovereignty, equity, and the like well-served by the ratification process? There are many pieces of data (some of which have been noted here) that would seem to indicate otherwise.

The illusion of democracy was given expression in the Connecticut ratification convention as well as in the newspaper coverage and 'discussions' that led up to that vote on January 8, 1788. Unfortunately, for the most part, the reality of democracy, in any essential sense, appears to have been largely absent during that whole sequence of historical events in Connecticut.

The ideologues of ratification seem eerily similar to the ideologues that have populated various fascist, communist, and theological causes. They seem all too willing to sacrifice principle for the sake of winning the game and arranged for events to work out the way they like irrespective of the collateral damage that might be caused by such gamesmanship.

In New Hampshire a different set of tactics were used to maneuver the Constitution through the ratification process. From early in 1776 until 1784, the state had gone through its own series of constitutional crises after its original state constitution had, more or less, been imposed on the people of New Hampshire by an arbitrary group of people known as a 'revolutionary congress' – an event that over a number of years set in motion a series of protests that led to several drafts of a new constitution that were rejected by the voters before agreement was reached on a second state constitution. Consequently, the voters of New Hampshire were fairly experienced with respect to the idea of constitutions and the sorts of problems they often entailed.

While merchants in Portsmouth, New Hampshire – as was the case for many maritime cities along the eastern seaboard of America – saw the potential for increased commerce if the Philadelphia Constitution were ratified, many of the towns in New Hampshire were not oriented around the commerce of merchants – indeed, there was often a hostility toward, and distrust of, the merchant class among the inhabitants of inland communities -- and, therefore, there were a lot of questions in those communities concerning the value and wisdom of adopting the Philadelphia Constitution.

Most of the newspapers in the state – there were five of them -- were published in and around Portsmouth. As was the case with newspaper coverage in Connecticut during the days leading up to its ratification convention, the New Hampshire publications contained almost nothing that was critical of the Philadelphia Constitution, so, once again, there

was a suppression of certain kinds of information concerning that document, and, as well, there was a concomitant failure to rigorously explore the pros and cons of the proposed constitution in sort of collective way prior to the ratification convention.

Some of the New Hampshire supporters of the proposed constitution tried to establish a date in early December of 1787 for conducting a ratification vote. For a number of reasons, this attempt failed and they had to settle for a time in mid-February of 1788

The site of the ratification convention was set for Exeter that was on the eastern side of New Hampshire and a somewhat difficult place to reach in winter time if one were traveling from inland areas of the state. Moreover, many of those who were desirous of ratifying the Philadelphia Constitution lived in and around Exeter, just as had been the case in relation to the convention that was held in Hartford, Connecticut that also was a hotbed of support for ratification.

Whether through design or happenstance, the New Hampshire legislature was kept in session just prior to the state ratification convention with a discussion of issues that were of particular interest and importance to inland residents who also happened to be a substantial source of opposition to accepting the proposed constitution. Legislative delegates to the ratification convention who were not interested in that discussion but who also happened to be advocates of ratifying the Philadelphia Constitution had an opportunity to slip away from state business and arrive at the ratification convention a little early.

Those early birds used that opportunity to elect pro-ratification delegates to all of the important committees for the convention. In addition they established a set of procedural rules that, among other things, stipulated that any motion for adjournment would have priority over all other motions, and, thereby, provided the supporters of ratification with a fail-safe device that could be employed if it seemed that the convention might be headed toward a rejection of the proposed constitution.

Another procedural rule that was adopted prior to the arrival of most of the convention delegates was one which indicated that no vote on ratification could take place unless the precise number of delegates who were present at the start of the convention was also present at the time of the ratification vote. This rule served as a back-up to the

aforementioned procedure concerning priority of motions because it allowed supporters of ratification to delay a vote merely by absenting themselves on such a occasion if it looked like the Constitution would be rejected.

One can say all one likes about the nature of politics and how 'boys' will be 'boys', but there was nothing honorable in the manner in which most of the proponents of ratification went about rigging things in relation to the ratification convention in New Hampshire. From: newspaper coverage, to: attempting to rush the ratification decision, to: setting the time and place for the convention in a way that would be disadvantageous to those who might be critical of, and resistant to, the proposed constitution, to: structuring the rules of procedure in a way that would skew the playing field, many of those in New Hampshire who wanted the Philadelphia Constitution to be ratified conducted themselves in a disgraceful and deceitful manner.

There is nothing democratic in what they did. They were entirely anti-democratic in their behavior, but they were trying to create the illusion that the ratification convention was being carried out as an utterly fair and open contest of ideas.

When push came to shove, pro-ratification forces in New Hampshire invoked the rule for adjourning the convention. The vote was recorded as being 56 to 51 in favor of adjournment, but, apparently that majority result was only reached when 11 delegates who had been instructed by their constituents to reject ratification were, somehow, persuaded to vote for adjournment rather than vote in accordance with the wishes of the people they supposedly were representing.

The foregoing sorts of gamesmanship continued when the convention was called back into session in June of 1788. For instance, the credentials committee – which was controlled by individuals who were pro-ratification -- admitted one person as a delegate who had never been elected by anyone but, nonetheless, claimed to represent the people who had not elected him.

Moreover, when, in the intervening period of four months, certain towns would not release their delegates from their duty to vote in accordance with the wishes of their constituents to reject the Constitution, the proponents of ratification suggested that such individuals merely stay away from the convention and not vote. Given

that 113 delegates (minus one, as noted in the previous paragraph) had been elected to the ratification convention, and given that 90 delegates were present on the opening day of the reconvened convention, and given that the missing 23 delegates were all on the rejection side of the ratification ledger, and given that the final ratification vote was 57 to 47, there were, at least, nine delegates who did not cast a vote at the convention but who likely had a fiduciary responsibility to vote against ratification and might have had been acting in accordance with the aforementioned counsel of the proponents of ratification to stay away from the convention and, thereby, betray their constituents.

When one adds the foregoing nine missing delegates to the pseudo-delegate that was permitted by the credentials committee to vote on the issue of ratification even though not entitled to do so, one arrives at a vote of 56 for ratification and 56 against ratification … a dead heat. While further votes might have gone one way or the other, this is actually irrelevant to the point at issue here.

The New Hampshire ratification convention was not an exercise in integrity, honor, forthrightness, and fairness. From beginning to end, that convention was tainted by subterfuge, Machiavellian manipulations, duplicity, and a lack of character – supposedly the lynchpin of the philosophy of republicanism -- on the part of many of its organizers and participants.

“We the People” did not speak in New Hampshire. The politics of ambition, vested interests, and unethical behavior served to misrepresent, if not distort, that voice.

There is one further political tactic to consider with respect to the ratification convention in New Hampshire. The proponents of ratification in that state adopted a strategy that had been effectively used in Massachusetts to defuse the concerns of those who opposed ratifying the Philadelphia Constitution without the presence of amendments.

More specifically, those who were in favor of ratification believed that the presence of amendments only would serve to bog-down the process of adopting the proposed constitution. They wanted delegates to vote for, or against, the Constitution as it had been written because they felt that entertaining possible amendments to that document would throw the whole ratification process into chaos and confusion since one might end up with thirteen states proposing thirteen different sets of

amendments, and, then, one would be faced with the problem of how to incorporate those amendments into the document in a way that would not jeopardize ratification.

The fact of the matter is that many of the objections to the Constitution tended to be very similar from one state to the next. Although the wording might have been slightly different from place to place, there was considerable overlap and agreement amongst the amendments that were proposed to resolve perceived flaws in the Philadelphia Convention.

Furthermore, there was little empirical evidence to demonstrate that such difficulties could not be overcome in a reasonable period of time or could not be resolved in an amicable, constructive fashion. In fact, a number of state legislatures – including New Hampshire – already had been able to work their way through the issue of amendments on their way to constructing state constitutions.

However, ambition, fear, anxiety, and vested interests tend to make some people look at such issues through a glass darkly. As a result, these sorts of individuals often are inclined to exhibit little patience with respect to such problems.

Consequently, the latter kind of individuals instituted a variation on the Wimpey strategy from the Popeye cartoon strip. In other words, they, in effect, said that they would gladly give people amendments next Tuesday – metaphorically speaking -- in exchange for a hamburger – or constitution – today.

Unfortunately, Wimpey could not always be trusted to fulfill his promises. When next Tuesday arrived, he often was, once again, in 'need' of another hamburger and, as a result, he was inclined to wish for people to not only be patient a little while longer with the situation but, as well, he would like his benefactors to contribute another hamburger in the meantime as a gesture of good faith negotiating.

When the proponents of ratification indicated -- for the sake of their own convenience … although they didn't frame it in this manner – that the idea of amendments should be left for another day, those who were opposed to the Constitution as it was written were somewhat unhappy – not unreasonably, I believe -- about such a suggestion. Therefore, those who were in favor of ratification parried the displeasure of the opposition

with a promise to sincerely consider amendment possibilities at the earliest, possible time of convenience … a very slippery and elusive sort of promise.

Based on the reading I have done, I am often struck with how, on virtually every occasion during the process of ratification, it was always the proponents for accepting the Constitution who insisted on concessions from those who were less enamored with that document. In fact, I have found many of the advocates for ratification to be: rigid, dogmatic, narrow, arrogant, self-serving, manipulative, demanding, ungenerous, and controlling in their approach to the ratification process.

On the other hand, quite frequently – but not always – many of those who were opposed to the Constitution-as-written weren't necessarily interested in rejecting the document but often tried to find ways that might make the Constitution a better document … one that would address the concerns of the very people on whom the Constitution might be foisted. Yet, when this hand of co-operative exploration was extended toward the proponents of ratification, it always was dismissed while pro-Constitution advocates grumbled various negative epithets concerning the motivation and character of those who would dare to question or delay the Philadelphia 'miracle'.

Some might wish to argue that the reason for the display of impatience among the proponents of ratification with respect to their resistant compatriots was because the former individuals understood -- in a way that those who were concerned about the Constitution-as-written did not -- that the document in question was as close to perfection as one could get and, as a result, it should not be tampered with in any way. However, almost all, if not all, of the signatories to the Constitution understood – and often said or wrote words to this effect -- that the document was flawed in many ways but it was, perhaps, the best that could be achieved under the circumstances.

Unfortunately, the proponents of ratification were -- for self-serving reasons -- far too impatient to engage the ratification process as if it were meant to be a real debate concerning the future of America. They had an agenda, and, therefore, they really weren't interested in having an open, full, fair, honest, critical, constructive dialogue with the rest of America on

the matter of the Constitution … and their actions throughout the ratification process proved this over and over again.

There is a teaching among American Indians which indicates that when one is trying to solve a given problem one should not just think in terms of oneself or one's family, but, rather, one should think about seven generations hence and how one's current decision might affect them. Unfortunately, the Framers of the Constitution and the proponents of ratification tended to think only about themselves and cared little about what might happen seven generations later, and, consequently, the people of today -- some seven generations removed from the creators of the Constitution and those who sought to ratify that document (assuming a generation to be about thirty years) – are suffering as a result of the impatient short-sightedness of those 'architects of democracy'.

Much of the history of: Colonial America, the Articles of Confederation, the Continental Congress, the Philadelphia Convention, as well as the process of ratification seem to reek of the oppressive odor associated with the politics of control rather than giving expression to the joyous sounds associated with the birth of sovereignty for the generality of people. Unfortunately, politics has rarely, if ever, been about the struggle toward any real sense of self-governance by the people, but, rather, politics is the story of how the few seek to prevent the many from having control over their own lives while rationalizing how such a lack of sovereignty is really necessary for the general good.

For the most part, the ratification process was politics as usual. It was not something that was truly liberating except for those who wanted to be enabled to leverage the structure of the Constitution to acquire the power they considered necessary for them to be able to pursue their individual agendas.

Consider, for example, what went on in the time leading up to and during the Massachusetts ratification convention. As early as October 25, 1778 – a little over one month after the Philadelphia Convention ceased its work – the Massachusetts state legislature were urging various cities, towns, and districts in Massachusetts and Maine (which was part of Massachusetts at the time) to set about selecting representatives who would be empowered to vote on whether, or not, to ratify the proposed Constitution.

However, when a representative from Maine – William Widgery – advanced the idea to the Massachusetts legislature that maybe the ratification vote should be conducted separately in each city, town or district in order to avoid the costs and logistical problems that likely would surround trying to assemble a group of delegates at some central location for a period of time, this idea was met with a counterproposal from Nathaniel Gorham a strong proponent of ratification (and, as well, one of the signatories to the Philadelphia Constitution) – namely, the state legislature should pay ratification delegates to attend the proposed convention.

Aside from the question of whether or not it made sense for the state to undertake such a financial obligation in a time when money was not all that easy to come by, the Gorham counterproposal was not necessarily the act of democratic inclusiveness that it might seem. More specifically, advocates for ratification had been the ones who had pushed for an early vote on accepting, or rejecting, the Philadelphia Constitution, and, the sentiment among such individuals seemed to be that if cities, towns, and districts held their own separation votes on ratification, there would be little, or no, opportunity to try to induce people to vote for ratification … in other words, politics would not be able to work its 'magic'.

As was true in most of the other twelve states, many individuals in the larger cities tended to be in favor of ratifying the Constitution. However, an overwhelming portion of the American population didn't live in the larger cities, and many of these inhabitants of rural areas tended to be more resistant to, and cautious about, the idea of accepting the Philadelphia Constitution.

If people in different cities, towns, and districts were permitted to hold their own separate ratification votes (there were nearly 300 towns and cities in Massachusetts and Maine – 246 in the former, and 52 in the latter), then quite conceivably, they would choose to reject the proposed constitution. A process in which people were entirely free to make up their own minds about the issue of ratification might serve democracy very well, but it wouldn't necessarily serve the interests of those who wanted ratification to succeed.

Consequently, the state legislature voted to pay the expenses of delegates to the ratification convention. The delegates would assemble in Boston in early January.

The state legislature stipulated that only those towns that had at least 150 men who were over the age of sixteen and who paid taxes would be permitted to elect one, or more, delegates to the ratification convention. Additional delegates for a given locality were possible in accordance with a representational formula (based not on population but on the number of tax-payers) that had been devised by the state legislature.

The foregoing arrangement meant that there were some towns and villages that would not be able to participate in the ratification vote because they didn't satisfy the conditions necessary for sending delegates. If the alleged purpose of paying the expenses of those who would attend the convention was to ensure that every town in the Commonwealth would be able to participate in the ratification process, it seems rather incongruous to exclude towns and villages that had fewer than 150 male tax-payers over the age of 16.

Rules might have their place, but when those rules skew the way a game is played and, in the process, arbitrarily disadvantage this or that perspective, then those rules are oppressive and undemocratic. Since most of the smaller towns and villages that did not satisfy the rule for sending at least one representative to the convention were also likely to be among those who were wary of the proposed Constitution and what it might mean for their future, it becomes hard to dismiss the fact that the proponents of ratification were unfairly advantaged when such towns and villages were prevented from sending representatives to the convention.

The aforementioned proposal of Maine's William Widgery to have each city, town, village, or district conduct their own separate votes with respect to the issue of ratification was far more inclusive and democratic than was the proposal of Nathaniel Gorham to pay delegates to come to Boston. However, it is often the way of power to suggest spending money in order to make something less democratic than it might otherwise be.

The Massachusetts convention ratified the Philadelphia Constitution by a vote of 187 for and 168 against. One wonders what the vote might have been if the excluded towns and villages had had an opportunity to participate in the process.

Moreover, one also wonders what might have happened with respect to the ratification vote if the five delegates that the island of Nantucket was entitled to send had attended the Boston convention rather than

boycotting it. The island had a large number of Quakers who were against the idea of a government permitting standing armies or military forces to conduct its affairs – something that was a possibility under the Philadelphia Constitution-as-written – and, therefore, the people of Nantucket were not prepared to participate in a process that might lead to such a result.

Here, again, if the proposal of Maine's William Widgery had been adopted by the Massachusetts state legislature, the people of Nantucket could have just voted not to adopt the Constitution, and they would have been done with the matter. On the other hand, the people of Nantucket might also have decided to absent themselves from even such a more inclusive form of voting.

The Nantucket issue, along with the matter of the towns/villages that were considered too small to have representation, raises another problem. Why should people be obligated to accept the Philadelphia Convention if they were not permitted to have representation concerning the vote (as was the case in various small towns, villages, and districts), or, if for moral reasons, they were opposed to any form of government that might violate their moral precepts (as was the case in relation to the people of Nantucket)?

It was the Philadelphia Convention that had introduced the idea that the ratification vote should be cast by the people rather than the state legislatures – although the latter bodies would be responsible for initiating the ratification process by establishing the rules for electing delegates to the various state conventions. However, such an idea ran contrary to the provisions of the supposedly 'perpetual' Articles of Confederation (perpetuity apparently had a different shelf-life back then) which required that all changes to the Articles must, first, be approved by the Continental Congress and, then, unanimously adopted by the states.

The Continental Congress abdicated its responsibilities under the Articles of Confederation and merely passed on the proposal of the Philadelphia Convention to the state legislatures. Furthermore, while all of the states busied themselves with setting up the machinery necessary for electing delegates to the ratification convention, nevertheless, the state legislatures also failed to act in accordance with the provisions of the Articles of Confederation because it was the state legislatures – not ratification conventions -- that were supposed to unanimously agree on

changes to the Articles only after the Continental Congress had approved of such changes.

Neither the Continental Congress nor the state legislatures were voting on whether, or not, to adopt proposed changes to the Articles of Confederation. Instead, they were voting on relinquishing that authority to the people – or, at least, some of the people.

Yet, there were no provisions for pursuing such a course of action within the Articles of Confederation. So, America was confronted with a situation in which, on the one hand, the Philadelphia Convention had done something that they had not been authorized to do (i.e., construct a new constitution), and, on the other hand, the Continental Congress and the state legislatures were doing something that they were not authorized to do under the Articles of Confederation (i.e., relinquish control of the process for authorizing changes to the people).

Where was the rule of law in all of this? Apparently, the rule of law would be given expression through the ratification vote of the people.

Unfortunately, as the foregoing brief overview of the ratification process in Massachusetts indicates, not all of the people got to vote – for example, the people in towns and villages that were considered too small to have representatives, or the people like those on Nantucket who were opposed, in principle, to certain dimensions of government, such as standing armies. Why should these sorts of groups of people be obligated in any way by a ratification vote that was not consistent with the existing Articles of Confederation – the supposed source of legal authority?

The ratification process as proposed by the Philadelphia Convention was an extra-legal set of procedures, and the activities of the Philadelphia Convention that occurred prior to the issuing of such a proposal were, themselves, extra-legal because they had not been authorized. Everything was being done in an ad hoc, arbitrary fashion.

On what basis does one group of ‘We the People’ have a justifiable expectation that another group of ‘We the People’ should feel obligated to observe an extra-legal, arbitrary process if the ratification vote went in one direction rather than another? On what basis can the alleged moral imperative of a majority vote be justified?

To be sure, a given society can adopt a convention that says that they will abide by the idea of majority rules. However, this is all such an agreement is – a convention.

The only thing that 'justifies' such an arrangement – albeit, in a very problematic way -- involves the notion of 'pragmatic considerations'. As such, much rests on how one defines (or tries to justify) the criteria for pragmatic arrangements, and very frequently, one person's pragmatic solution becomes another person's problem.

What was practical for the Massachusetts state legislature was not very practical for the people who were arbitrarily excluded from being able to participate in the ratification vote. What was practical for the Massachusetts state legislature was not very practical for the people of Nantucket who wanted nothing to do with, among other things, standing armies.

The Philadelphia Convention had set in motion a process that was entirely arbitrary and extra-legal. They were insisting that the collective result of that process should be incumbent on everyone whether, or not, people voted (or how they voted) and whether, or not, any of the people had moral or practical reservations concerning that process, and most of the members of the Philadelphia Convention were insisting that the ratification vote must only be about accepting or rejecting the Constitution-as-written … no changes would be permitted.

Some people might see the actions of the signatories to the Philadelphia Convention as inspired leadership. Others might consider the actions of those same signatories as being very self-serving and oppressive.

The Philadelphia Constitution was not setting people free in an exercise of self-governance. That document was intent on binding people to a set of rules and procedures that were not of their own making and with respect to which they had few degrees of freedom.

The Philadelphia Constitution gave expression to the 'way of power'. It was a set of rules for enabling some people to have power over others.

Such power was not derived from the people but would be usurped from them for the purpose of achieving ends that were not necessarily in the interests of those same people. The people would not be free to reclaim such power without running the risk of having their actions

labeled as 'treasonous' -- and this problem would begin to manifest itself for the first time during the administration of John Adams in relation to the Alien and Sedition Acts of 1798 … a maneuver that would rear its head again and again across subsequent American history.

The standard against which treason was to be measured under the proposed Constitution would be in terms of whatever might adversely affect a national governmental apparatus that had been set in motion through entirely arbitrary, extra-legal, and unjustifiable processes of constitution-making and ratification. The real standard of treason should have been measured in terms of the extent to which the people would be deprived of their sovereignty as individuals … something the proposed Constitution had the potential to do to a considerable degree.

There was also something of a double standard going on during the period leading up to the ratification convention in Massachusetts. Those who were in favor of ratification undertook a concerted effort to ensure that towns and cities did not instruct nor bind their delegates to vote in a particular way during the forthcoming convention.

The foregoing effort might seem to be an attempt to ensure that the ratification debate would be a fair one … that is, one in which people would be prepared to sincerely listen to the merits of various arguments for, or against, the Constitution. However, the reality of the maneuver was that it enabled people like Nathaniel Gorham and Rufus King – both signatories to the Philadelphia Constitution as well as staunch proponents of ratifying the Constitution -- to continue to shape the landscape of the debate while excluding people like Elbridge Gerry who had been one of the three individuals at the Philadelphia Convention who did not endorse the Philadelphia Constitution (but Gerry was among the signatories to the Declaration of Independence of 1776) ... since Gerry was perceived by the proponents of ratification in Cambridge as being too partisan.

In almost every state ratification assembly – including Massachusetts -- the individuals who had supported the unauthorized activities of the Philadelphia Convention were permitted to play prominent roles in advancing the cause of ratification. Elbridge Gerry who had not supported the constitutional document generated by the Philadelphia Convention would – for the most part -- have to watch the ratification proceedings from the sidelines.

The phrase “for the most part” is used in the previous sentence because once the ratification debate began in Massachusetts, some of those who were resistant to the Philadelphia Convention as written sought to have Gerry invited to the convention so that questions concerning his criticisms of the Constitution could be asked of him, and, then, he would have an opportunity to respond. After a long, rancorous debate on the matter, some of those who were proponents of ratification decided it might be better to let Gerry answer questions than to risk whatever possible problematic consequences might ensue if Gerry were prevented from attending the Boston convention.

Consequently, Gerry was invited to the convention, and he appeared at the proceedings on January 15, 1788. However, his very limited participation was rather anticlimactic.

More specifically, after three days of attending the ratification convention, only one question was directed toward Gerry. For reasons best known to Gerry – perhaps anxiety over having to speak about such an important issue in public with many eloquent proponents of ratification in attendance – he indicated that he would respond to the question in writing, and his response was read to the assembly on the following day.

During a subsequent discussion concerning equal representation in the proposed Senate, Gerry apparently believed that the nature of his role in the Philadelphia Convention was being distorted, and, as a result of this, he wanted to offer a written response in connection with the perceived problem. Francis Dana -- who had been selected as a delegate for the Philadelphia Convention (yet did not attend) and who also had been elected as a ratification convention delegate from the very same town of Cambridge that had rejected Gerry’s participation in the Boston assembly -- objected that no one had asked Gerry anything about the Senate issue and, therefore, such a written response would be inappropriate.

Several delegates from Maine recommended that given the importance of the issues before the convention, perhaps either the procedural rules should be relaxed somewhat or Gerry should be admitted as a non-voting delegate. Dana opposed both suggestions.

The convention adjourned for the weekend without resolving the issue. During the several day hiatus, Dana and Gerry became engaged in

verbal hostilities, and, as a result, Gerry never returned to the ratification convention.

Gerry did write a letter that he sent to the convention which attempted to clarify his position about a variety of matters. However, Dana also objected to the presence of such a letter and wanted it to be dismissed from consideration.

Rather inconsistently, Dana -- who was so vocal and adamant in his insistence that the rules of procedure be observed when it came to the person of Elbridge Gerry -- was much more willing to relax those same rules when it came to other people. Later in the Boston assembly he proposed that despite what the convention rules indicated, people should be free to reference other parts of the Constitution if they felt that those facets of the document were relevant to an ongoing discussion concerning an entirely different facet of the Constitution.

It is ironic that Francis Dana, who, for whatever reason – apparently due to ill-health – did not attend the Philadelphia Convention would be in such adamant opposition to Gerry being given an opportunity to offer his perspective concerning the nature of his own participation in the Philadelphia Convention. After all, the delegates were all gathered together in Boston for the purpose of discussing the document that had emerged from the Philadelphia meetings that Gerry had attended but that Dana had not, and, yet, Dana didn't want delegates to hear what Gerry had to say on the matter.

If nothing else, at least when it came to Gerry, Dana was not acting in accordance with the principles of republicanism that, allegedly, were the moving force behind the new political philosophy that was to govern Americans in a supposedly fair, open, disinterested, and ethical manner. One can't help but wonder about the source of the animus that Dana exhibited toward Gerry.

Irrespective of what the answer to such wonderings might be, here, again, is an instance – a rather ugly one – in which a proponent of ratification had few, if any qualms, about using whatever tactics and maneuvers were necessary to suppress the voice of someone who was critical of the Constitution. Moreover, one might keep in mind that Gerry was not opposed to the Constitution per se but just believed that it needed to be amended.

Dana's actions did not give expression to an exercise designed to ensure that all sides would be given an equal opportunity to make their concerns known. Rather, his actions were an exercise that was attempting to help manage a convention so that it would arrive at the desired, predetermined result.

Another indication that the Massachusetts ratification convention was being managed was associated with Rufus King. As the proponents of ratification engaged in a process of doing delegate head counts in order to be able to assess what the chances of ratification might be, they noted that there were two very strong centers of resistance to the Constitution-as-written.

One source of resistance was situated among three counties (Worcester, Berkshire and Hampshire) in western Massachusetts that had been at, or near, the epicenter of Shay's Rebellion that took place in 1786-1787. The people in those areas already felt that the state legislature had been giving too much power to certain merchant and professional groups in eastern Massachusetts, and, so, many of the delegates from western Massachusetts tended to view the proposed federal constitution as being more of the same.

The other concentrated locus of resistance to the proposed Constitution came from Maine. This resistance was due to a variety of issues, but one prominent source of concern among some Mainers was the manner in which the Philadelphia Constitution might make it more difficult for Maine to be able to become a state in its own right since Article IV, Section 3 of that document specified how no new state could be formed out of an existing state without permission of the state being affected as well as without approval by Congress.

In any event, when one added up the delegates from western Massachusetts and Maine who might be in opposition to the Constitution-as-written, the prospects for the Constitution being ratified in Massachusetts were dimmed. Consequently, Rufus King – a strong advocate of ratification who had been born in southern Maine and lived there for twelve years -- was assigned the task of persuading Mainers to vote for ratification.

Wanting people to remain open to all sides of an argument is one thing. Seeking to persuade them to favor one of those sides is quite another matter.

Supposedly, the purpose of the ratification convention in Boston was so that a fair hearing would be given to various points of view concerning the proposed Constitution. Delegates – at least those who had not been bound to a certain way of voting by their constituents -- would attend the convention, listen to the debate during the convention sessions, and, then, they would form their own judgment on the matter.

This is not what happened. In between sessions of the ratification convention, supporters of the Constitution – like Rufus King – would 'work' on the delegates and seek to induce the latter individuals to understand things as pro-ratification forces did.

Those who were resistant to the Constitution did not engage in these same sorts of attempts to manage the ratification convention. No one from the opposition side sought to organize efforts to approach, say, the rich merchants or professional people from the Boston area and induce them to change their minds about the viability of the Constitution-as-written.

By and large, those who were resistant to the proposed Constitution did not see the Boston ratification convention as an opportunity to engage in politics. They seemed to be under the strange impression that the convention should not be about politics but, instead, it should be about the merits and liabilities inherent in a process of imposing a given set of procedural rules on America that, in the future, would govern what could and could not be done -- and by whom.

Those who were resistant to the Constitution-as-written did not appear to understand that they were the object of a military-like political campaign that was intent on shaping the rules of engagement for the convention in a manner that was designed to favor the interests of such a campaign. Those who were resistant to the Constitution-as-written thought they were participating in a debate when, in fact, it was a war complete with tactics, strategies, objectives, and generals.

The actions of the advocates of ratification were not the disinterested behaviors that were called for by the philosophy of republicanism that, supposedly, would transform American governance in a transcendent way. The proponents of ratification were not seeking a fair, open, impartial, and rigorous exploration of the constitutional issue, but, rather, before the convention even began, they already had made up their minds as to what kind of outcome needed to arise from the Boston assembly

even as they insisted that everyone else should remain open about the issue of ratification.

One might wish to argue that the proponents of the Constitution were merely more politically astute than their opposition. This might, or might not, be true, but it is irrelevant.

Most of those who were in opposition to the Constitution conducted themselves in a largely ethical fashion. In other words, they went to the ratification convention as – for the most part -- uncommitted delegates who were prepared to sincerely listen to what other delegates had to say about the Philadelphia Constitution and, then, make a good-faith effort to render an objective, judicious judgment on the matter.

The foregoing cannot be said for many of the proponents of ratification who went to the convention as committed delegates who were not prepared to sincerely listen to what other delegates had to say. In the process, they betrayed their own philosophy of republicanism -- the one that was enshrined in Article IV, Section 4 of the very Constitution they were seeking to politically manage toward victory – a philosophy that, among other qualities of character, emphasized the importance of exhibiting disinterestedness while forming, or implementing, judgments involving governance.

A further manifestation of the managed convention syndrome in Massachusetts involved the rules of procedure that were to govern the proceedings. More specifically, the proponents of ratification had pushed for, and succeeded in, structuring the convention so that while discussion of the proposed Constitution would be encouraged, voting on issues would be discouraged until the very end of the series of meetings that made up the convention.

Arranging things in the foregoing fashion accomplished two goals. Firstly, it placed procedural roadblocks in the way of anyone who might attempt to call for votes on possible amendments to the Constitution that might be proposed during the course of discussion – something that the proponents of accepting the Constitution-as-written wanted to avoid. Secondly, those who were in favor of ratification wanted to hold a vote only when they were fairly certain that they had the votes to carry the convention … that is, after they had sufficient time to work on this or that individual or this or that group of delegates and thereby have the

opportunity to change enough minds to be able to succeed in their quest for ratification.

One might wish to argue that such procedural maneuvers would be of equal value to everyone in the convention. However, this just was not the case.

Such rules disadvantaged those who might be in favor of ratifying the Constitution but who had reservations about that document in the form that it had been issued through the Philadelphia Convention. A level playing field – that is, one which was not being managed by the proponents of ratification -- would have entitled delegates to introduce and vote on amendments as they arose, but such a form of equitability had been ruled out of order by the manner in which the convention had been procedurally structured.

In addition, the foregoing arrangement – namely, the one that required any vote concerning ratification to be held toward the end of the convention -- was not about ensuring that all perspectives would have an opportunity to give expression to everything that was considered to be of importance and relevance and that would enable delegates to be able to make informed and insightful judgments about the issue of ratification. As noted earlier, the aforementioned procedural rule was in place to ensure that pro-ratification forces would have every opportunity to garner the necessary number of votes to win the convention … including votes that might require special attention beyond the public space of the convention sessions (i.e., using various techniques and pressures to influence how people thought about the issue of ratification).

Furthermore, the proponents of ratification had expended a considerable amount of effort to ensure that their side would be stocked with: many military people of rank, as well as lawyers, clergymen, merchants, doctors, and current (or past) government figures who would serve as eloquent advocates for ratification. Thus, this dimension of rhetorical skill was also part of the strategy for managing the convention since those who were pro-ratification felt that people from rural areas would not only be less skilled in such matters but, as well, might be more likely to be vulnerable to whatever linguistic flourishes that might be wielded to sway people on the basis of rhetorical theatrics rather than actual substantive arguments concerning issues of merit … thus, yet again, providing a managed-advantage to those who were seeking ratification.

Following the conclusion of the Massachusetts ratification convention, Theophilus Parsons – a pro-ratification partisan – used to brag to people in his law office about all the tactical and political tricks that he and his comrades-in-arms used to pull on those who were resistant to the idea of ratifying the Constitution. These stratagems were employed both while the convention was in session as well as outside the confines of those meetings.

John Quincy Adams, who had been present on occasion when such matters were discussed, publically indicated that many of the things about which he heard were rather mean-spirited. Whatever the degree of mean-spiritedness that might have been present in such actions, there was surely a considerable amount of hypocrisy, duplicity, manipulation, and disingenuous disinterestedness that was present as the pro-ratification forces sought to rig the vote in their favor.

The foregoing is not a legacy about which anyone should be proud – except, perhaps, those who are addicted to the process of politically maneuvering other people to attain ends that are not necessarily in the interests of the people who are being manipulated. The foregoing sort of legacy is not a stirring endorsement of democracy, but, rather, it is a testament to all that is wrong with the form of governance that was set loose through those tactics.

Under such circumstances, the means do not justify the ends. Instead, the means becomes those ends, and, as a result, 'democracy' is reduced to nothing more than political rhetoric, maneuvering, and mean-spirited tricks.

There is one last consideration to add on to the foregoing points concerning the manner in which many aspects of the Massachusetts ratification convention did not help usher in a bright new day for the realm of self-governance but, instead, was merely politics as usual. This consideration concerns Governor John Hancock who had been appointed to preside over the convention but who, due to illness, was absent for most of those proceedings.

One of the reasons why Hancock was selected as president of the ratification convention was because he was seen as someone who would be acceptable to people from western Massachusetts. Following Shay's Rebellion, Hancock had pardoned many participants in that insurgency … something his predecessor, James Bowdoin, had not been willing to do.

Moreover, as governor, Hancock had instituted a variety of measures to reduce the cost of government, an issue that had played a role in helping to bring about Shay's Rebellion. For this and a number of other reasons, Governor Hancock was a popular figure in Massachusetts.

The fact that various Conservatives felt he was far too moderate in many of his policies (including the pardoning of rebels) did not seem to carry over to how merchant-laden Boston felt about him. He was selected as one of twelve delegates to represent the city in the forthcoming ratification convention.

The problem facing those who were trying to push for ratification is that Hancock's position vis-à-vis the proposed Constitution was not known. According to some, on a number of occasions, Hancock had indicated he was unhappy with certain aspects of the document.

Illness supposedly prevented Hancock from attending almost all of the convention sessions. Some people, however, felt that Hancock was staying away from the meetings because he was trying to gauge which way the political wind was blowing before publically committing himself to a position concerning the proposed Constitution.

As the convention moved toward its final stages, those who were in favor of the Constitution -- and, therefore, individuals who were seeking to manage the convention accordingly -- felt that gaining Hancock's support might help to tip the scales in the ratification vote. Several friends of Hancock were dispatched to speak with him and try to induce him to rise from his sick-bed and attend the convention in order to speak out on matters that believed could help strengthen and preserve the nation.

Attempts were made to appeal to his considerable vanity with comments about how important he was in the matter at hand. In addition, several backroom deals, apparently, were negotiated.

With respect to the latter 'understandings', Hancock wanted to be assured that those who previously had been supporters of James Bowdoin -- the previous governor of Massachusetts -- would switch their allegiance to Hancock during the latter individual's next run for governor. Such assurances were, allegedly, forthcoming.

A further scenario of enticement aimed at inducing Hancock to attend the convention was outlined to the governor. In essence the proposal was as follows: If Virginia did not ratify the Constitution – and

there was considerable speculation that it might not – then, Washington, who was from Virginia, would automatically be ruled out for consideration as president, and under such circumstances, Hancock would be in line to become the first President of the United States.

The two foregoing proposals seemed to be the tonic Hancock needed to enable him to rise from the near dead and actively participate in the final stages of the ratification process. When he did arrive at the convention, he spoke out in favor of ratification with one important proviso – namely, he recommended that the convention should issue a statement that would urge the first members of the new Congress to adopt a number of amendments that he went on to describe.

Hancock's suggestion seemed to have the desired effect. A number of people who had been unhappy with the Constitution-as-written felt that such a statement might well induce future representatives to focus on the cause – that is, the issue of amendments – that had been a source of concern for many delegates.

Whether Hancock's proposal was the key that actually unlocked a vote in favor of ratification is hard to determine with any degree of confidence. However, irrespective of the practical merits of such a suggestion, the idea emerged not as an example of democracy at its best but as the product of a backroom deal concerning the exercise of power in relation to a subsequent gubernatorial race and the possible position of the first American President.

At best, principles of democracy were, more or less, an afterthought in relation to issues of power in Massachusetts. At worst, Hancock's participation in the ratification convention was an exercise in power politics in which the rhetoric of democracy was used to camouflage the underlying political horse-trading.

Among those who were proponents of ratification in Pennsylvania – many of whom lived in Philadelphia or the areas around that city – there was considerable ambition to become the first state to adopt the new, made-in Philadelphia Constitution. They lost the race to Delaware that beat the Quaker state by five days.

One reason that Delaware finished ahead of Pennsylvania with respect to the ratification was because, on the surface, there apparently

was more opposition to the proposed Constitution in Pennsylvania than there was in Delaware. After all, the Delaware vote had been 30 for ratification and none against, while there were 23 delegates opposed to ratification in Pennsylvania – half the total (46) that voted in favor of ratification.

The fact that Delaware was a much smaller state than Pennsylvania might also have assisted the speed with which the former state ratified the proposed Constitution. However, when one considers that the Delaware vote for ratification took place on December 7, 1787, just 2½ months after the conclusion of the Philadelphia Convention, one can't help but wonder how much of what went on Delaware was merely an exercise in power politics in which the 90% of the population that lived outside of the big cities and towns were not given much of an opportunity to read, reflect on, and critically discuss the Philadelphia Constitution.

Politically, Delaware was deeply divided between factions of Whigs and Tories. While these two groups both represented segments of the power elites, they did not necessarily care about the generality of people.

Whatever the political differences between the two groups might be, they were united on several issues. This shared or overlapping perspective tended to drive the quickness and unanimity of the ratification vote in Delaware.

More specifically, only 11 years had passed since the time in 1776 – less than a month prior to the day when the Declaration of Independence was signed -- when Delaware had separated itself from Pennsylvania and become a colony in its own right. Many people in Delaware were tired of having to pay a duty on those goods that were imported through the port of Philadelphia and, in one way or another, subsequently transported to Delaware.

The Philadelphia Constitution would make such duty payments to Pennsylvania a thing of the past. If the proposed Constitution was ratified, the federal government would collect custom charges directly from importers and those revenues would be used for the benefit of everyone.

Furthermore, there were a number of ways in which the proposed Constitution would reduce the cost of government for the people of property in Delaware, and this meant that taxes would be lowered. Moreover, despite being a relatively small state – both geographically and

in terms of population – the Philadelphia Convention would grant Delaware two senators that would put the state on the same footing as all the other states -- most of which were much larger than Delaware was -- with respect to the powerful body of the Senate.

In addition, even though Delaware would later fight on the side of the Union, it remained a slave state until well after the Civil War had ended. Pennsylvania, on the other hand, had been leaning toward making slavery illegal since the time of the emergence of its state constitution in 1776 … and this leaning was actually made official policy during the Revolutionary War.

The proposed Constitution contained terms that would remain favorable to slave holders for the next twenty years, or so. This appealed to the pro-slavery sentiment among many of the wealthy property holders in Delaware.

For all of the foregoing reasons, the factors that permitted normally opposed political forces to join together to ram through a rapid vote for ratification in Delaware were not present in Pennsylvania. Nonetheless, Pennsylvania had its own methods for dealing with its divided community.

For mostly economic reasons, much of Philadelphia was in favor of taking steps to endorse the Philadelphia Constitution. However, many of these same advocates of that document also wanted some sort of buffer against the rather radical state constitution that had been written in 1776 (among other things, that constitution limited the power of the state executive council, had no bicameral arrangement in its legislative set-up, and possessed a very strong Declaration of Rights). Therefore, such individuals saw the proposed federal Constitution as a means of possibly reigning in the kind of free-ranging democracy that had been enabled through the 1776 state constitution.

The story was much different in western Pennsylvania. In those regions of the state there was a considerable inclination on the part of many people toward being able to control their own lives – something that the state constitution of 1776 helped them accomplish. Consequently, they were resistant to the idea of being subject to the whims and dictates of some sort of centralized government ... irrespective of whether such centralization was state or federal in character.

Early on in the process that led to the Pennsylvania ratification vote, dirty politics reared its ugly head. In fact, very undemocratic behavior came into play before the ink on the newly proposed Constitution even had time to dry

More specifically, copies of the Constitution and an accompanying letter had not, yet, arrived at the Continental Congress or most of the various state legislatures – Pennsylvania being the exception -- before Philadelphia supporters of this creation were demanding that a ratification vote be taken to approve the new form of federalized government. Since the Continental Congress had not, yet, received the Philadelphia Convention documents, let alone decide on what to do concerning them, and since the Articles of Confederation clearly indicated that the Continental Congress must vote on such matters before forwarding the issue to the state legislatures, the proponents of ratification were getting way ahead of themselves.

Nevertheless, not to be deterred by mere legal considerations, certain members of the Pennsylvania state legislature – which had been in session when the Constitution had been released to the public – began to push for some sort of ratification vote or, alternatively, to set in motion the wheels for electing delegates to a ratification convention concerning the proposed Constitution. Yet, there was no existing 'rule of law' that entitled a state to take the sort of step being advanced by some of the members of the Pennsylvania state legislature with respect to the issue of ratification.

Moreover, the existing rule of law seemed to clearly indicate that the proposed Constitution had not even been authorized by the Continental Congress -- or its underlying authority: the Articles of Confederation. After all, the proposed Constitution did not constitute a set of amendments to the Articles but, instead, gave expression to a wholesale replacement of those Articles.

Ignoring the principles that stood as legal barriers to doing anything concerning the issue of ratification, members of the in-session Pennsylvania state legislature were introducing resolutions in favor of moving forth with the idea of a ratifying convention. These individuals were acting with such haste because they wanted to get the aforementioned sort of resolution passed before the current session of state legislature was set to end on September 29, 1787 … but they also

were operating at such accelerated speeds because they didn't want to give the people of Pennsylvania much time to think about the issue of ratification.

When some members of the state legislature – especially those from western Pennsylvania -- began to question the procedural validity of such resolutions, supporters of the proposed Constitution claimed that the Confederation was in dissolution and, consequently, the states were no longer obligated to observe the requirements of the Articles of Confederation. This was argument by declaration because there was no legal justification for claiming that the Confederation had, in any formal sense, entered into dissolution, thereby releasing the states from the agreement that they all had ratified six years earlier.

Notwithstanding the many strong legal, practical, and philosophical arguments that were directed toward the members of the Pennsylvania state legislature who were desirous of pushing for a vote to authorize the setting up of an election process for delegates to a ratification convention, the latter group managed to pass one of the resolutions concerning such a process. The rest of the resolutions related to that issue were to be voted on in the afternoon session.

When the time arrived for the legislatures to assemble, 19 individuals absented themselves from the session. This prevented any further resolutions from being voted on because the conditions necessary to establish quorum that had been established by the state constitution with respect to such votes were not satisfied.

The Sergeant-at-arms for the assembly was sent in search of the missing 19 legislators. Although he located the missing people, they would not accompany him back to the legislative session.

Those proceedings were adjourned to the following day, September 29, 1787. This was the day when the state legislative session had been scheduled to adjourn until sometime in early October.

When the missing legislators failed to materialize the following day, the Sergeant-at-arms was again dispatched to bring them back. This time the individual sent to corral the recalcitrant absentees had some new information through which to try to entice the missing individuals to return to the legislative session.

At some point early on September 29th, a rider had arrived with a document – of an unofficial nature – indicating that the Continental Congress had decided to notify the states that they could undertake making preparations for ratification conventions. However, since the Continental Congress really had no authority under the Articles of Confederation to take such a step without, first, approving what had been done by the Philadelphia Convention, there was some question about the relevance of the information that had been delivered by the rider.

In any event, even after the Sergeant-at-arms told the absent legislators about the information that supposedly had come from the Continental Congress (and one wonders why – and by whom -- an express rider had to be dispatched to Philadelphia just 12 days after the Philadelphia Convention had adjourned), the AWOL individuals still refused to return to the legislative session. As a result, force was used to capture and drag two of the absentee individuals (Jacob Miley and James M'Calmont) back to the impatiently waiting assembly.

When the two individuals complained that they were not present of their own free will, a debate ensued about the propriety of forcibly confining individuals to satisfy the conditions of quorum. During this discussion, M'Calmont tried to escape from the proceedings.

Once again, force was used to stop him from leaving. Shortly thereafter, the members of the legislative session came to the conclusion that they had the right to forcibly retain such individuals, and, as a result, the conditions for quorum were met so that the legislative assembly could continue on with its plans for setting up the procedures necessary that would enable delegates to be elected to a forthcoming ratification convention.

The election for delegates was to take place on the first Tuesday of November. This was just about seven weeks removed from the conclusion of the Philadelphia Convention … not much time for copies of the Constitution to be printed, distributed, read, and digested.

Before it adjourned, the state assembly authorized that copies of the Constitution should be distributed throughout Pennsylvania in a timely fashion. Unfortunately, those documents never found their way to the western part of the state. Given that there was considerable resistance to the proposed Constitution in that part of the state, it does not take much imagination to understand what likely transpired.

Dirty political tricks also took place on the date – November 6, 1787 – that had been fixed to elect delegates who would attend the ratification convention. For instance, there was a boardinghouse in Philadelphia where a number of people stayed ... people who were known to be resistant to the proposed Constitution.

At some point around midnight on Election Day a mob of about a dozen men attacked the boardinghouse. The mob threw stones at the house and did some other minor damage, and, in addition, they were heard to shout toward the inhabitants of the boardinghouse that the "damned rascals … ought to be all hanged".

Although an investigation was conducted and a sizable reward (for that time) of $300 was offered for information leading to the apprehension of the culprits, the perpetrators were never identified. Furthermore, despite the investigation and posting of a reward, there was no coverage of the incident in any of the Philadelphia papers … something that was consistent with the tendency of such newspapers (who were the dominant outlets for news in Philadelphia and surrounding areas) to suppress any sort of story that might indicate the existence of people who were critical of, and opposed to, the proposed Constitution.

Even though Delaware held its ratification vote some five days before Pennsylvania held its vote on the matter, the starting date for the Pennsylvania ratification convention (November 20, 1778) was approximately ten days before the Delaware ratification proceedings were to begin its deliberations. Thus, as indicated previously, the time-line for Pennsylvania (as well as that for Delaware) -- which ran from the initial public release of the written constitution in September 1787 to the beginning of the ratification convention in late November 1787 -- was quite compressed … just a couple of months. The proponents of ratification used this to their advantage in a number of ways.

For example, many of the procedural votes that occurred during the Pennsylvania ratification convention were 44 to 22, with the majority of these votes coming from those who were in favor of ratifying the proposed Constitution. The problem with the foregoing vote differential is that during the ratification convention there was evidence that had been published in several state newspapers (the *Freeman's Journal* and the *Independent Gazetteer*) which indicated how the number of people who had voted for the 22 delegates -- who were on the losing end of most of

the procedural votes -- was significantly greater (by about a thousand) than the number of people who had elected the 44 delegates who were dictating how the convention was to be run.

In addition, there was considerable evidence to indicate that substantial numbers of people – especially in western Pennsylvania -- had not participated in the process of selecting delegates for the ratification convention. The estimates indicated that only about one-sixth of eligible voters had bothered to vote during the elections for ratification delegates.

This is not surprising given that such people had been provided with little, or no, access to the contents of the Constitution (remember the copies of that document that were supposed to be distributed to people in Pennsylvania, including the western part of the state, but never arrived). Furthermore, there was simply not enough time afforded to people – and this seemed to be intentional -- to delve into the issue that was being thrust upon them in such a quick manner. Why would they bother to participate in a vote to send delegates to a ratification convention about which they lacked most relevant and pertinent facts?

Those who were supporters of the proposed Constitution claimed that the reason why the voter turnout was so low in the elections for ratification convention delegates was because the support for the Philadelphia Constitution was so overwhelming most people thought there just was not much reason to bother with voting for such delegates since whoever was elected likely would be in favor of ratification. This sort of argument didn't really explain how 22-24 delegates managed to get elected who were resistant to the idea of ratification, nor did such an argument account for how people could be in favor of a constitution that they had never seen given that the Philadelphia Convention had been held in strict secrecy and many of the people – especially in western Pennsylvania – had never received copies of that document that were supposed to be sent to them but were not.

In any case, the 44 delegates who were on the winning side of almost all votes that took place during the ratification convention might have constituted the majority within the context of those ratification sessions. However, those 44 individuals did not necessarily represent the majority of the people in Pennsylvania, even when one takes into consideration only those people with sufficient property to qualify for participating in the election of ratification delegates.

There was something amiss in conjunction with the purported intent of the members of the convention out of which the Philadelphia Constitution arose to by-pass both the Continental Congress and the state legislatures in order to tap into 'We the People' directly. Many of those people were being ignored and short-changed in one way or another.

A number of clues were present that seemed to suggest that many segments of 'We the People' in Pennsylvania were not being engaged or properly represented at the ratification convention. How could one claim – with a straight face -- that what was going on with the Pennsylvania ratification convention gave expression to something that could be referred to as 'authentic democracy' ... the kind of 'democracy' that, supposedly, the so-called 'Framers of the Constitution' had envisioned with their end-around strategy in relation to the Continental Congress and state legislatures -- if the ratification voting process permitted a minority to pose as if it were a majority of 'We the People'?

Those delegates who were resistant to the Constitution-as-written began to propose that the Pennsylvania ratification convention should be adjourned in order to give more people an opportunity to rigorously and critically examine the proposed Constitution. Moreover, a number of petitions were introduced into the convention indicating that many segments of 'We the People' wanted any final vote on ratification to be put off until sometime in the spring of 1788 in order to permit additional time to consider a document with, potentially, so many important ramifications for the people of America.

Such delegates also pointed out that the proposed Constitution was not in compliance with the provisions set forth in the Articles of Confederation. The Philadelphia Convention of the previous summer had only been authorized by the Continental Congress to make amendments to the Articles, and the proposed Constitution was something other than a set of amendments to said Articles.

The same point had been made when the Continental Congress met in late September 1787 to decide what to do about the Philadelphia Constitution. The members of that body eventually decided to abdicate their fiduciary responsibilities in relation to the Articles and, as a result, merely passed the buck to the state legislatures … something that, as has been noted previously, the Continental Congress was not actually entitled to do under the existing legal arrangement governing the Confederation.

In addition to the foregoing issues, those delegates to the ratification convention who were resistant to the idea of the Constitution-as-written, sought to introduce a number of possible amendments (or criticisms that suggested such amendments were necessary) with respect to structural features of the Constitution that those individuals felt were problematic. The faux-majority ruled that the only matter before the convention was whether, or not, to approve or reject the Constitution in its current form.

While there certainly was an array of practical problems that potentially surrounded the possible introduction of amendments into the discussion, the proponents of ratification really had no, non-arbitrary basis of justification on which to stand as to why ratification could only be about a strict up or down vote on the Constitution-as-written. The pro-ratification forces indicated that the Constitution-as-written provided a mechanism for being amended by the people, but those forces never provided a plausible reason for why the people should trust such an amendment process when the proponents of the Constitution were so resistant to the idea of amendments before ratification.

Nevertheless, the faux-majority carried the day on this issue as well. On December 12, 1787, five days after the Delaware convention voted to ratify the proposed Constitution, Pennsylvania voted 46 to 23 to also adopt the new Constitution.

Pennsylvania was the second state to do so. Pennsylvania also was, yet, another state whose ratification process did not seem to give expression to the wishes of 'We the People' but, instead, indicated how limited groups of politicians with vested interests were controlling the outcomes of such conventions.

New York was one of the last states to vote for ratification – only North Carolina, which had adjourned its ratification convention and didn't reconvene until November 1789, and Rhode Island, which already had rejected the Constitution in a popular referendum before, finally, ratifying the Constitution in May 1790, were later than New York. However, the ratification vote in New York was among the closest of any of the state contests – namely, 30 for ratification and 27 against ratification … only the last-to-the-table vote in Rhode Island was closer (34 to 32 in favor).

The leading New York figure opposed to ratification was George Clinton who was governor of the state. He claimed that the Articles of Confederation were adequate for the needs of America.

Alexander Hamilton who had played a prominent role in the secret Philadelphia Convention meetings -- which produced the proposed Constitution for which ratification was being sought -- tried to argue that Clinton was engaging in an attempt to bias people against the proposed Constitution. In criticizing Clinton, Hamilton stipulated that America had entrusted its destiny to the body that had met in Philadelphia the previous summer, and Clinton was trying to sully what that body had accomplished.

The fact of the matter was that America had not entrusted its destiny to the meetings being held in Philadelphia in the summer of 1787. Most Americans didn't even know about those meetings, and those individuals who possessed – to some degree -- some awareness of those sessions, had little, or no, idea what the participants in that assembly were up to (including most members of the Continental Congress) because that body of people in Philadelphia had been conducting its meetings in secret and were busying themselves with transgressing the boundaries that had been set on those meetings by the Continental Congress. Hamilton's revisionist history was, of course, an opening salvo in the war of propaganda in New York that would be fought in relation to the issue of ratification. As with all wars, one of the first casualties was truth.

Clinton was a popular governor in New York and had been elected to four consecutive three-year terms, beginning in 1777. Although he was in favor of a federal government of some sort, once the Articles of Confederation had been ratified in 1781, New York was often in conflict with the Continental Congress.

The primary source of contention was – as one might anticipate – financial in nature. More specifically, New York had managed to extricate itself from the depressed economy of the early-mid 1780s through the duties it was charging on imports that entered America through its ports, and as much as a half of the state budget was raised in this manner.

The Continental Congress wanted to raise money in this way as well. However, on a number of occasions, New York had voted against co-operating with the national government's attempt to accomplish this

unless the Continental Congress was prepared to accept certain conditions … something that Congress was not prepared to do.

Even before the issue of ratification arose, Hamilton associated himself with political forces that had been opposed to Clinton's governorship. For instance, Hamilton had married into the Schuyler family, one of the richest families in New York and owners of considerable land in New York State.

Philip Schuyler, Hamilton's father-in-law, had been considered a shoo-in for governor in the 1777 election. He had the support of all the wealthy land barons and others who had constituted the power elite in New York even before the Declaration of Independence had been signed.

However, Schuyler was defeated 1,828 to 1,199 by Clinton. Subsequently, Clinton instituted some policies as governor that confiscated and re-distributed some of the lands possessed by the Loyalists who had sided with England during the War for Independence.

These sorts of policy were unpopular with Schuyler and other members of the land-owning power elite. They saw such anti-Loyalist laws as posing a possible threat to their own sense of entitlement to property.

Like James Madison, Hamilton disliked what he saw going on in many state governments … especially New York. However, Hamilton's fears concerning state government were different from those of Madison.

Based on his experiences in the Virginia state legislature, Madison felt that state governments were too chaotic and excessively driven by localized, selfish, vested interests that needed to be regulated by some sort of federal leadership. Hamilton, on the other hand, wanted a federal government that, among other things, would protect the power elite from the sort of policies that existed in New York … policies that Hamilton considered to infringe on, among other things, property rights.

Although there was little opposition in New York State to the idea of holding a ratification convention, the way in which the framework for running the election for delegates to that convention was settled upon is revealing. For instance, during the legislative debate in the state Senate concerning the house proposal for setting up elections for delegates to the ratification convention, one member of the Senate suggested that the vote should be put off until sometime in the future because there were many people who had not had much of an opportunity to learn about the

Constitution and such individuals might be vulnerable to manipulation with respect to their thinking about the issue of ratification.

The New York State Senate -- as was true of senates in other states where such government bodies existed – tended, for the most part, to represent the interests of the power elite. The New York State Senate decided to discount the foregoing argument against holding elections for delegates and voted to endorse the proposal of the House concerning those elections.

Of course, the New York State House might have introduced the same sort of objection. If it didn't, it should have.

As a government body, the 'House' tends to be more egalitarian and representative in its outlook than the Senate is. Nonetheless, even in the House the interests that are represented still tend to be those belonging to people who are part of the power elite … albeit a less powerful and wealthy segment of that power elite.

The New York State legislature did something in conjunction with the proposed elections for delegates to the forthcoming ratification convention that many other states had not done. More specifically, the legislature didn't make owning property of a certain value a criteria for being able to vote, and, instead, any free, white male who was, at least, 21 years of age was permitted to participate in the vote.

On the other hand, what the New York State legislature gave with one hand, it seemed to take away with the other. Unlike many other states, copies of the Constitution were not distributed to the various counties of that state.

Thus, while many people were eligible to vote in the New York ratification delegate elections that had not been permitted to vote in most other states, those same individuals might be fairly ignorant about just what it was that they were voting on. It would be difficult to select 'worthy' candidates if, due to a lack of understanding concerning the proposed Constitution, one could not sort out the issues on which such 'worthiness' supposedly rested.

Once the date for electing ratification delegates was set in New York State, the newspapers began to publish material on the matter. However, of the twelve papers that were published in the state, only one – the *New*

York Journal, operated by Thomas Greenleaf – printed essays that were critical of the Constitution.

Seven of the state newspapers were published in New York City … a location that contained many people who were in favor of ratification. Those who were resistant to, or cautious concerning, the proposed Constitution lived mostly in rural areas, but even in those regions the papers were all pro-ratification and, as a result, people had access to very little information that was not filtered through supporters of ratification.

Occasionally, criticisms of the Constitution did appear in a few of those newspapers. However, this tended to occur only as fodder for subsequent criticisms of the perspective of those who were opposed to the proposed Constitution.

One of the other sources of information concerning the forthcoming elections for delegates to the ratification convention came in the form of pamphlets that were printed and distributed to people in different regions of the state via groups that were proponents for, or resistant to, the proposed Constitution. One prominent champion of those who were opposed to the idea of ratification was a woman, Mercy Otis Warren, who wrote under a pseudonym to hide the fact that she was a woman participating in what was, by and large, almost entirely, a man's game.

Warren was from Milton, Massachusetts. However, an essay she had written earlier during the Massachusetts state ratification process was re-published as a pamphlet and found its way into many rural homes.

Although the essays that are now collectively referred to as *The Federalist Papers* -- written mostly by Alexander Hamilton (51 of the 85 essays), but with significant contributions from James Madison (29 essays) and, to a lesser degree, John Jay (just five essays) – are much esteemed by various individuals among later generations of Americans, the aforementioned essays, which originally appeared in a number of New York newspapers, had limited impact during the time leading up to the election of delegates for the ratification convention, and most of the impact that those essays did have was in New York City that was already strongly in favor of ratification and, thus, the essays were sort of like preaching to the choir.

People were hardly getting the opportunity to read the Constitution. The 85 essays that later came to be known as *The Federalist Papers* were much, much longer.

On the other hand, a 19-page pamphlet containing pro-ratification arguments by John Jay did enjoy fairly wide circulation. Nevertheless, one is uncertain whether, or not -- even though the pamphlet was relatively short – it actually convinced anyone to change their mind concerning the proposed Constitution.

Some of the newspaper articles and pamphlets contained information that was less enlightening than they were exercises that sought to influence people through the tactics of fear. For instance, questions were sometimes raised in the newspapers about what would happen if New York rejected the proposed Constitution, but the other states ratified it.

A variety of scenarios were imagined in which under such circumstances New York might be invaded by its neighbors. Yet, New York had not been invaded by those neighbors prior to the Articles of Confederation, nor had New York State been invaded by those neighbors even when New York voted against policies advocated by the Continental Congress that might have benefitted those other states.

So, arguments claiming that other states which ratified the Constitution would suddenly invade New York if the latter state rejected that document didn't make a whole lot of sense. The absence of logic, however, didn't stop the proponents of ratification from trying to use every tactic they could to induce people to vote in favor of the proposed Constitution.

John Jay had included other tactics of fear in his aforementioned pamphlet in support of ratification. With much dramatic and rhetorical flair, he warned that the Confederation was deteriorating with each succeeding day and, as well, problems were accumulating faster than they could be resolved by the Continental Congress.

Jay intimated that if the proposed Constitution wasn't ratified as soon as possible, then America would fail. Moreover, various states would become like snarling, hungry animals ready to pounce on one another or enter into alliances with foreign powers that would seek to exploit the situation.

It was: 'The-sky-is-falling' gambit. According to Jay, only the proposed Constitution could save America from a fate worse than death.

Before the Articles of Confederation had even been ratified, they were helping to guide America through its struggle for independence. After the Articles were ratified, they continued to do more of the same.

Seven years had passed since the Articles had been ratified. America had won a war against one of the world's great powers, was now at peace, and enjoyed good relations with the rest of the world.

America did have problems. However, it wasn't falling apart, and the difficulties it was facing were not increasing but were pretty much the same as they had been for more than a decade … financial and economic. In fact a little bit of progress actually had been made on paying down America's debt.

Just as Hamilton had exaggerated when he tried to argue that Americans had placed their faith concerning the future in the hands of the Philadelphia Convention, Jay was exaggerating when he talked about the dire nature of America's situation in 1788. Things were difficult, but America was not experiencing the sort of crisis that had to be solved in a few months or else face complete ruin.

The participants in the Philadelphia Convention of 1787 had tried to argue -- both during and after the fact -- that the reason why a new constitution was necessary was because the country was falling apart and, therefore, urgent action was needed. Here it was a year later and although America was intact enough to go through a complex, time-consuming ratification process in 13 different states, people like Jay were dragging up the same fear-laced scenarios concerning the disasters which would populate America's imminent future if the proposed Constitution was not adopted straight away.

Jay also played a variation on the fear card by trying to suggest that New Yorkers had some sort of responsibility to ensure that the rest of the world did not become suspicious toward the idea of republican government. After all, if New Yorkers did not ratify the Constitution simply because they were preoccupied with, for example, the issue of amendments, then people in other parts of the world might opt for forms of government that were less given to protecting liberties than the republican form of government was just to be able to avoid the sort of

difficulties that were being introduced into the discussion by those who were resistant to ratifying the proposed Constitution.

Jay's argument was purely speculative. No one knew how people in other parts of the world would evaluate what was going on in America … in fact, not even Americans knew what sense to make of such events.

Yet, none of the foregoing considerations dissuaded Jay from putting forth fatuous sorts of argument in which the fate of the whole world depended on whether, or not, Americans voted in favor of ratifying the proposed Constitution. Republicanism was the philosophy of the framers of the Constitution, but, somehow, defending that philosophy was being described as a duty that New Yorkers owed to republicanism and, yet, the justification for such a duty was rather declaratory in nature -- namely, New Yorkers had such a duty because people like Jay said this was the case.

The end-result of all the pamphlets and newspaper coverage – or, perhaps, in spite of such material -- ran against the proponents of ratification. 46 delegates who were resistant to, or cautious about, the proposed Constitution were elected to the New York ratification convention, while only 19 individuals who were in favor of ratification were elected to attend that convention.

Since the ratification vote in New York turned out to be: 30 for ratification, with 27 against adoption of that document, one needs to account for what appears to be a fairly significant turn-around in sentiment concerning the proposed Constitution. One also needs to explain what happened to the missing 8 votes (65 delegates were elected, but only 57 of those individuals actually cast a vote).

The ratification vote in New York was held in a city – Poughkeepsie – that was located in an area of the state where sentiments resistant to the proposed Constitution ran fairly high. This was a departure from what occurred in many other states during their respective ratification conventions when the location for such assemblies were held in areas where pro-ratification fervor tended to prevail.

Consequently, the delegates who were resistant to the proposed Constitution would enjoy an advantage that they did not have in most of the other ratification conventions. In other words, the people in the galleries would, for the most part, be on their side.

Moreover, since a significant majority of the New York State delegates were leaning toward not ratifying the proposed Constitution – at least not in its current form, they were able to elect someone – George Clinton – to preside over the convention who was sympathetic to the concerns of the majority. This also was in marked contrast to what occurred in most other ratification conventions.

On the other hand, those who were resistant to the idea of ratification were at a distinct disadvantage when it came to rhetorical skills. The leading speakers for the minority featured: Alexander Hamilton, Robert Livingston, and John Jay, all of whom were graduates of King's College (now known as Columbia University), and the delegates who were resistant to the idea of ratification had no one with comparable rhetorical skills, although one of the delegates on the majority side – Melancton Smith – did have some ability in this respect.

One might hope that what is said would be more important than how it is said. However, this was not always the case in 1788.

The delegates who were in favor of ratification sought to gain a favorable ruling that would prevent the convention from taking votes on proposed amendments during the ensuing debate concerning the proposed Constitution. The delegates who were resistant to ratification agreed with this suggestion but offered a countervailing idea that indicated that delegates should not be prevented from offering amendments during the debate even if they were not voted on at the time such possibilities were introduced.

The delegates agreed to examine the Constitution clause by clause. No vote would take place until such an examination had occurred, but delegates would be free to suggest amendments that might be taken to a vote toward the end of the convention.

The New York convention had been going on for just a week when word came from New Hampshire that the latter state had ratified the Constitution during its reconvened ratification convention. New Hampshire was the ninth state to indicate its willingness to adopt the Constitution for the national form of government in America, and as stipulated in Article VII of the proposed Constitution, nine states was the threshold for instituting the Constitution amongst the ratifying states.

Not only had the Philadelphia Convention been an extra-legal and rather arbitrary exercise in constitution making, and not only had the Philadelphia Convention sought to by-pass the authority of the Articles of Confederation, but, as well, the framers of the proposed Constitution had the gall to specify the conditions under which the Constitution should be considered a legally binding document. The proponents of ratification seemed to find nothing untoward in any of this and appeared to be disinclined to raise questions about the legitimacy of such a set of arrangements.

There were serious problems surrounding the manner in which the Continental Congress and the state legislatures engaged the propriety – let alone legality – of the Philadelphia Constitution, and, there also were numerous problems tainting the manner through which ratification delegates had been elected and through which the ratification conventions had been conducted in the nine states that had ratified the Constitution. Some of those problems have been outlined in the previous pages of this chapter.

The operative 'rule of law' of the 'framers of the Constitution' and their supporters seemed to be that one could invent one's own notion of legality through methods and techniques of questionable ethical pedigree. The operative 'rule of law' appeared to be that one could impose a system of governance on people irrespective of questions concerning legality, legitimacy, authority, ethics, and fairness. The operative 'rule of law' seemed to be that irrespective of whether 'We the People' had been properly consulted or represented in the whole process, they were now legally obligated to act in accordance with the Philadelphia Constitution.

The way of power was being hyped as democratic self-governance. The way of sovereignty for the people – as opposed to the power elites – was nowhere in sight, and, in fact, the 'Framers of the Constitution' and their supporters were now claiming that the sovereignty of a federalized government was more important than the sovereignty of individual citizens.

The rhetorical skills of the pro-ratification forces had served the 'Framers' well during the ratification conventions. Now those skills were being used to promulgate a myth about how 'We the People' had become

the source of authority for the 'rule of law' that was to be imposed on Americans.

When word of New Hampshire's favorable ratification vote reached the New York convention, the pro-ratification forces tried to argue that the New Hampshire vote meant that the Confederation of Perpetual Union had now been dissolved. In addition, they argued that continuing on with the ratification convention in New York was now a moot point.

How one derives legality from illegality was an issue that was never plausibly addressed by the pro-ratification forces. How one derives legitimate authority from 'We the People' when only a very minor portion of that collective were actually managing the process for electing ratification delegates, along with the ensuing conventions, was another issue that seemed to escape the consciences of pro-ratification forces.

Disinterestedness was a quality that was one of the primary components in the foundation of the philosophy of republicanism. Yet, at almost every turn of the constitutional process, the proponents of ratification abused this facet of their supposedly guiding philosophy because they were all highly interested in advancing the cause of the proposed Constitution and its ratification.

The participants in the Philadelphia Convention – whether, or not, they were signatories -- should have recused themselves from taking an active part in any aspect of the ratification process. This would have demonstrated their dedication to the principles of disinterestedness that formed part of the core of the philosophy that they claimed would ensure government could be conducted in a fair and trustworthy manner, but, instead, they did exactly the opposite and, as a result, couldn't resist trying to control the whole process.

Some of the delegates at the New York convention who were among the leaders of those who were resistant to the proposed Constitution indicated that the New Hampshire vote was irrelevant to what was going on in New York. New York was not bound in any way by another state's vote on ratification, and the delegates in the New York convention had to try to work out their own assessment of the situation.

The debate continued. Four days later it was interrupted again when the convention was informed that Virginia had also ratified the Philadelphia Constitution.

Just as someone had dispatched a rider from New Hampshire to interfere with the ratification convention in New York, so too, someone had dispatched riders -- first from Virginia, and, then, from New York City – to interfere in the same proceedings. The ratification convention in New York should have been free of any attempt to influence its deliberations, but, apparently, pro-ratification forces believed they had the right to do whatever they liked to ensure that things took place in accordance with their wishes.

The New York debate should have focused on the extent to which the proposed Constitution was, or was not, a viable form of self-governance. Instead, discussion of substantive matters was being colored and biased through information that should not have been sent to, or permitted into, the New York ratification convention.

The proceedings were rapidly becoming an exercise in the pragmatics of social dynamics. Rigorous, critical exploration of the proposed Constitution was receding further into the background.

When some among those who were resistant to the idea of the Constitution-as-written began to talk about adding a set of amendments to the ratification vote, proponents of the Philadelphia Convention – such as Jay and Livingston -- claimed that the Congress didn't have the authority under the new Constitution to permit such amendments, a question was raised concerning what authority such a Congress had to do anything given that the new Congress was coming into existence only because the authority of the Articles of Confederation and the Continental Congress had been ignored. In addition, the point was made that the yet-to-be-formed Congress had no authority to dictate what a proper form of ratification should look like.

New York had not even ratified the Constitution. Nonetheless, the forces in favor of ratification were trying to dictate what could be done under the authority of a proposed Constitution that had not been adopted by New York.

At this point, more tactics of fear were introduced into the convention. More specifically, Robert Livingston, one of the leaders of the pro-ratification forces, introduced the possibility that if New York did not ratify the Constitution, then New York City and surrounding areas would likely defect to the states that had ratified the proposed Constitution,

and, in addition, the western frontier regions of New York would become vulnerable to the British and the "Savages" who inhabited those areas.

While such considerations were part of a political calculus that could be brought to bear on the possible ramifications that might ensue from a rejection of the proposed Constitution, they really had nothing to do with whether, or not, the proposed Constitution was a viable form of self-governance. Irrespective of what New York did about the issue of ratification, the western frontier of New York would continue to be vulnerable in a variety of ways.

Alexander Hamilton placed before the convention a question that he probably presumed was a rhetorical question. He pointed out how a number of great patriots – including Benjamin Franklin, John Adams, George Washington, and John Hancock – were in favor of the proposed Constitution. Would they endorse something that might be injurious to the American people or threaten their liberties?

The question was not rhetorical. John Hancock had sold his ratification vote for the price of a governorship and a possible presidency. Benjamin Franklin and George Washington had chosen to participate in a series of meeting that were not authorized and, then, sought to sanction something that was a violation of the existing Articles of Confederation. Moreover, hadn't Washington given his word that he was retiring from public life? In addition, not only had John Adams not participated in the Philadelphia Convention, but, as well, he had a very different understanding of the Constitution than did, say, Madison … an understanding that, among other places, manifested itself during the Alien and Sedition Crisis of 1798.

All of the people that Hamilton mentioned had violated core principles of the philosophy of republicanism to which they claimed to be committed. How could the opinion of such people concerning the integrity of the proposed Constitution be trusted?

Those who were resistant to the proposed Constitution fell into three general groups. One faction was opposed to the Philadelphia Constitution under any circumstances. Another sub-set of the 'opposition' forces was in favor of making ratification conditional upon incorporation of various agreed upon amendments into the proposed Constitution. A third group

did not want to make the idea of amendments a condition for ratification. Such people preferred to treat the amendments as merely recommendations that they were 'confident' would be adopted by the newly-formed Congress at its earliest possible opportunity.

Thus, although a considerable majority of the New York delegates continued to be resistant to the proposed Constitution in one fashion, or another, they were motivationally fractured. Whereas the delegates in favor of ratification remained focused and adamant from beginning to end, the delegates who were much more wary about the alleged wisdom of the proposed Constitution were fairly diverse.

In the end, the aforementioned diversity worked in the favor of those who had been pro-ratification from the beginning of the convention. Many of those who initially had been resistant to the proposed Constitution either crossed their fingers or held their noses closed while voting for ratification.

Such delegates were undoubtedly sincere in trying to determine what might be best for both the people of New York and for America. Whether, or not, they fairly represented the people who elected them to be delegates to the ratification convention might be another matter … and, of course, there also was a question concerning whether, or not, all the people who were not eligible to vote in the elections for delegates to the ratification convention (e.g., women, white men who were indentured servants, slaves, and free white men who were between, say, the ages of 18 and 21) or those who were eligible to vote but did not participate in the elections, were properly represented.

With respect to the latter group it might be argued that one can hardly blame the ratification process if, for whatever, reason someone who was eligible to vote chose not to do so. On the other hand, coming up with a viable justification for imposing a system of government on someone who did not participate in the selection of delegates to the ratification conventions seems rather problematic.

Tyranny is tyranny no matter how it takes places. And, imposing a form of governance on those who did not vote for it is a form of tyranny.

In addition, there is the question of the eight individuals who were elected to serve as delegates to the New York ratification convention but, for whatever reason, did not vote. No matter what the reasoning of such

people might have been, the interests of the people who voted for them were not served.

In a vote as close as the New York ratification tally (30 to 27), attempts should have been made to ensure representation for the voters who had elected the absentee delegates. This was not done.

Consequently, one might question the legitimacy of the New York vote concerning ratification. Apparently, this is but one more example of how "We the People" did not determine the outcome of a ratification process but, rather, such determinations were left to be managed and controlled through arbitrary decisions and considerations – that is, decisions and considerations that cannot be adequately justified.

In passing, one could note that even in victory a sizable number of those who were in favor of ratification were ethically challenged. More specifically, sometime after midnight on the morning following New York's ratification of the Philadelphia Constitution, an estimated mob of some 500 people, presumably men, converged on the print shop/home of Thomas Greenleaf, the publisher of the *New York Journal* … the lone New York City newspaper that had dared to print material that was critical of the proposed Constitution.

These stalwart patriots and lovers of freedom proceeded to smash windows and trash the printing shop that belonged to Thomas Greenleaf. In addition, the mob then went to the house of John Lamb, who was among those that were resistant to the proposed Constitution, and Lamb was forced to barricade his family in the house while facing down the mob with guns in hand and, thereby, inducing the riotous crowd to disperse.

There is one last question that must be raised. This question remains even if one were to concede that the entire process of switching from the Articles of Confederation to the Philadelphia Constitution were entirely ethical, equitable, and justifiable … which I believe the foregoing pages demonstrates cannot be plausibly maintained.

This final question is quite straightforward. Why should anything that was decided by people more than two hundred years ago be incumbent upon people today who were not consulted about the proposed constitution, nor did they ratify it? And, this issue is similar to, but quite independent of, the possibility that "We the People" never actually

ratified the Philadelphia Constitution despite the existence of a mythology to the contrary.

A correlative question is: What is the source of the obligation that people today have toward observing the requirements of the Constitution? Practical considerations and social conventions could be offered as reasons for why a certain path might continue to be pursued despite the absence of any justifiable source of obligation or authority for such a path, but neither practical considerations nor social conventions necessarily generate the quality of obligation … although these factors might generate coercive forces of one kind or another to ensure the compliance of citizens.

Chapter 3: Perspectives on Framing

Today, one frequently hears people talking about the intentions of the 'Founding Fathers' and/or the 'Framers of the Constitution' … as if one were talking about a clearly identifiable set of views that were unified and shared among the progenitors of democracy in America. Aside from the question that closed the last chapter -- namely, that even if one were to accept the idea that all Founding Fathers and Framers of the Constitution thought about things in the same fashion, one could still ask why what they said more than two hundred years ago should be incumbent on people today – the fact of the matter is that there was no unified perspective among the Founding Fathers and Framers of the Constitution.

Instead, the ideas of the 'Framers/Founders' shared what was referred to by Ludwig Wittgenstein as a 'family resemblance'. In other words, certain words and terms used by such individuals might appear, on the surface, to give expression to a common theme or set of common themes, but when one examines things more closely, one comes to realize that one is dealing with a collection of somewhat overlapping themes that bear similarities to one another without necessarily exhibiting any given property that is common to all such themes

'Democracy', 'self-governance', 'freedom', 'liberty', 'rights', 'federalism', 'the common good', 'justice', 'reason', 'truth', and so on were all part of the lexicon of democracy during the latter part of the eighteenth century – as is also the case today. However, what people meant – or mean now -- by such words and how those terms and ideas are woven together to form a political and/or legal perspective tends to vary from person to person.

In this chapter, I will take a look at five perspectives concerning the nature of governance that were influential during the early stages of America's formation as a constitutional democracy. These perspectives are: republicanism, as well as the ideas of: Madison, Jefferson, Hamilton, and George Mason.

The point of this exercise is to show how there is a considerable diversity of ideas and approaches that existed in early America. Moreover, given such diversity, the notion that one can talk -- in any consistent, plausible, unified manner -- about what the Founders/Framers allegedly

intended should be done by subsequent generations is more of a myth than a reality.

As has been noted earlier in this book, the philosophy of republicanism played a central role in shaping the creation of the Philadelphia Constitution. Yet, with one exception, republicanism is more of a subtext of the Constitution than it serves as a set of articulated principles within that document.

The aforementioned exception is found at the beginning of Article IV, Section 4. More specifically, "The United States shall guarantee to every state in this Union a republican form of government..."

The foregoing section of the Constitution is one of the least discussed aspects of that document. Yet, it goes to the heart of what the Framers/Founders were trying to accomplish through the Philadelphia Convention in the summer of 1787.

Republicanism is less a theory of government than it is a theory of political leadership. As such, this philosophy seeks to regulate, in a moral way, the political behavior of those leaders who will occupy positions of authority.

In fact, the structural character of the Constitution – with its three branches of government, two bodies of Congress, and the federal/state dynamic – gives expression to a republican way of approaching the issue of governance. In other words, the Constitution was structured as it was in the hope that no one segment of society would be able to obtain dominance and, as a result, political forces would tend to constrain one another so that republican virtue would have an opportunity to do its work for the good of society.

However, one can devise any combination of: Congressional bodies – such as a House and Senate – executive offices (whether consisting of one, two, or a council of individuals), and judicial system, one likes. Nonetheless, unless the people who serve in those Congressional bodies, executive offices, and the judiciary can be trusted to do the 'right' thing, then government becomes largely an empty form without much, if anything, in the way of substance or integrity.

What was the 'right' thing to do? For the Founders/Framers it was to act in accordance with 'Republican' principles

There have been a variety of 'Republics' that have dotted the landscape of history. These include: Rome, Sparta, Athens, Thebes, as well as some of the Italian City-States, Dutch provinces, and Swiss Cantons.

Consequently, one might suppose that republicanism has something to do with following the example of the foregoing historical forerunners. However, the facets of government to which the Founders/Framers gave emphasis was less a matter of the particulars of this or that form of doing things than it was a matter of the quality of the intentions through which such things were to be engaged.

Intentions should be rooted in a commitment to truth, justice, reason, and character. According to many of the Founders/Framers, if one's intentions were shaped by a search for truth and justice in a rational and principled fashion, then, surely, the ramifications that ensued from putting such intentions into active form would be colored and oriented by the quality of those underlying commitments.

The problem is that truth, justice, rationality, and morality often mean different things to different people. As a result, oftentimes, one person's republicanism turns out to be another individual's anti-republicanism.

Approached from a slightly different perspective, republicanism can be thought of as being the offspring of the Enlightenment. Politically speaking, republicanism was, more or less, a synonym for what was meant by enlightenment.

To be enlightened was to be someone who was: rational, given to critical inquiry, equitable, open, judicious, honest, fair, impartial, unbiased, balanced, opposed to corruption, virtuous, compassionate, and inclined to public service. To be enlightened was to be committed to republican values, and such values were referred to as republican because many of the individuals who were studied during the Enlightenment – for example, Virgil, Tacitus, Cicero, and Sallust – and who wrote about such qualities of character were trying to establish the nature of the principles and ideals for living in a republic .

Those who were inclined toward the perspective of the Enlightenment as given expression through various Republican authors believed that the highest, fullest form of human excellence was achieved through participating in the life of a self-governing society (i.e., a

Republic) in accordance with a set of values (i.e., republicanism) that enhanced both collective and individual liberties. Whereas the idea of monarchy – the prevailing mode of governance in the 18th century -- was rooted in considerations of kinship, patronage, fear, and tyranny, the idea of republicanism was rooted in considerations of character, virtue, integrity, and a willingness to work for the common good through leaders that had the best interests of the citizens at heart … which was to induce people to aspire to a republican way of life.

To be a sovereign individual, one could not be a subject of someone else's agenda. One had to be one's own master.

To be one's own master meant that one was free from the forces of tyranny that were capable of corrupting and biasing one's perspective. According to the Founders/Framers, to become autonomous in this fashion, one had to pursue and implement the qualities of republicanism.

However, monarchies were not the only threat to republican values. Commerce could also undermine such values.

If one depended on the market to earn a living, then one's allegiances would be colored by this dependence. Therefore, according to the philosophy of republicanism, laborers, artisans, and others who were dependent on the vagaries of the market, were vulnerable to the sorts of forces at work in such economic turbulence that were capable of compromising one's sense of justice or biasing one's understanding of, or search for, the nature of truth.

According to the perspective of many of the Founders/Framers, earning an income through charging other people rent was supposedly, compatible with republican values. Yet, given the nature of the contingent character of the relationship between one who earns rental income and those who pay such rent, one might wonder why the proponents of republicanism didn't understand that a relationship of dependency existed in such situations since if there was no one to pay rent or who could afford the rental fee, then, in many ways, the one who rented out property was just as vulnerable to the exigencies of economic turmoil as were laborers and artisans, and, therefore, such individuals were also vulnerable to the corruption to which that sort of dependency might incline an individual.

In fact, the act of establishing the price of rental or enforcing that price with respect to people who could no longer afford to pay it might be considered as acts that were exceedingly vulnerable to the sort of self-interest that was an anathema to republicanism. Moreover, one might note in passing that the property being used to earn income through rentals often had been confiscated from Indians in manipulative, unethical and coercive ways. So, one has difficulty reconciling such a lack of integrity and disinterestedness with the supposed principles of republicanism.

Similarly, in America, the proponents of republicanism often extolled the idea of the gentleman farmer, or yeoman, who would work his land and, thereby, become self-sufficient and independent from the world of commerce and power politics. Yet, many – although not all -- of these yeoman farmers seemed oblivious to the fact that they were dependent on slaves to ensure a life of independence for said 'gentlemen farmers'.

The foundations of financial independence in America were often rooted in behavior that was not consistent with the principles of republicanism. In many respects, one could only become an advocate of republicanism if one first launched one's ship of independence from a corrupted dockyard.

Of course, once one was out to sea, then one could forget about what was necessary to get underway. Once one was sailing the open oceans of life, then possibilities were only limited by one's own imagination and willingness to work to maintain one's independence from the corrupting influence of politics, patronage, and commerce … although one might have to keep an eye on those deckhands who helped one sail the open seas as an 'independent' person because they sometimes could be quite unreasonable in the way they wished to be treated in accordance with, say, republican principles.

Oddly enough, one of the motivations underlying the Founders/Framers desire to jettison the Articles of Confederation in favor of the Philadelphia Constitution involved a desire to increase commercial activity. Furthermore, many of the Founders/Framers were entangled in various schemes involving land speculation and the attempt to enhance their property holdings or the value of such holdings.

Presumably, those individuals among the Founders/Framers who were concerned with bringing certain aspects of commercial activity

under the control of a federal government had some faint appreciation for the possibility that having a well-managed commercial sector likely would have implications for their own sources of income (i.e., the value of their property would likely be enhanced if commercial activity increased in America, as would the diversity of commercial uses to which such property might be put). If so, this is hardly an expression of the sort of disinterestedness that supposedly was a hallmark of the philosophy of republicanism.

In addition, the lines of demarcation drawn by those among the Founders/Framers who were proponents of republicanism between such land transactions and the corruptible world of commerce often appeared to be rather arbitrary at best. While one could understand the importance of enhanced land-holdings to the goal of a life of independence, nevertheless, the acquisition of land was usually accompanied, in one way or another, with pushing people (whether Indians, slaves, tenants, or poor farmers) deeper into dependency in order that those latter individuals could help subsidize one's aspirations for republican independence.

Under monarchical forms of government, the links connecting individuals, families, towns, state, religion, and the ruler were numerous. Loyalty, patronage, blood, fear, and duty all boiled together in the same pot, and the brew that resulted from this was an intensely hierarchical society.

The philosophy of republicanism was supposed to be an attack on all forms of hierarchy. Indeed, one of the purposes of republicanism was to dismantle the system of hierarchy that was rooted in monarchy and replace it with a horizontal form of self-governance.

Yet, almost to a man, the Founders/Framers believed in the idea of a 'natural aristocracy'. All of them considered themselves to be charter members of such an aristocracy.

Consequently, there was a deep component of hierarchy that was built into the means – i.e., republicanism – through which government was supposedly going to rid society of hierarchy. Only members of the natural aristocracy were capable of redeeming society and government.

Moreover, because the Framers/Founders considered themselves to be members of this natural aristocracy, they felt that they had both the

ability and a duty to fulfill the responsibilities of such a 'natural aristocracy'.

Consequently, public service was a calling. Such a sense of responsibility was an expression of the way in which the philosophy of republicanism believed that the highest form of fulfillment came through participating in the public sphere and utilizing the principles of republican values to serve the common good. However, in order to properly serve that good, one had to do so according to qualities such as disinterestedness, integrity, honesty, equality, judiciousness, and the like.

In short, one had to be totally unbiased and fair in the administration of government. This is what it meant to be a responsible representative of the natural aristocracy.

Unfortunately, the members of this natural aristocracy appeared to be completely blind to their own biases concerning themselves and their suitability for ruling others. For instance, if the members of the natural aristocracy were to act in accordance with the principles of republicanism, they should have been disinterested in any possible gain they might accrue from establishing a self-governing form of democracy.

Yet, they were all very ambitious individuals. Can one really suppose that none of them envisioned themselves serving in some 'humble' capacity within the framework of the federalized sort of government they were proposing?

Once they wrote the Philadelphia Constitution, why didn't they just walk away from things? Of course, one might suppose that the reason why virtually every person who participated in the Philadelphia Convention in the summer of 1778 took such an active role in the ratification process in the different states was because they were convinced that they were correct, but they, themselves, indicated that this was not necessarily the case.

They acknowledged that there were many things wrong with the Constitution. However, they also felt it was, perhaps, the best that could be achieved under the circumstances.

There is a certain disconnect in the foregoing juxtaposition of ideas. On the one hand, the Founders/Framers considered themselves to be members of a natural aristocracy who had all the understanding, knowledge, skills, talents, wisdom, and abilities that were necessary to

effectively govern. In addition, they considered themselves to be proponents of the philosophy of republicanism that equipped them with the necessary commitment to truth, justice, and virtue to ensure that such effective government would also be a fair and impartial form of governance.

On the other hand, despite, allegedly, being the brightest and most capable individuals of their generation and who, as well, possessed the potent philosophy of republicanism, the best that the Founders/Framers could do was to produce a document that they acknowledged to be flawed. Moreover, as indicated earlier, they suggested that this was the best that could be done.

In fact, they appeared to be so convinced that no one could improve on their efforts they continuously insisted that the ratification conventions should not introduce any amendments during such deliberations and that the Philadelphia Constitution needed to be accepted as written. Moreover, throughout the various ratification conventions they took very active roles in beating back any attempt to amend their document.

The foregoing sort of concerted activity on the part of the Founders/Framers sounds less like an expression of a belief that the Philadelphia Constitution could not be improved upon than it was an expression of a desire to continue to be the ones who would control the post-Philadelphia Convention environment so that the reins of power would remain in their grasp. The Founders/Framers of the Philadelphia Convention were trying to wrestle power away from the existing establishment (i.e., the Articles of Confederation and the Continental Congress), and they were opposed to anyone who might wish to do the same to them … and they saw the attempt of people in different state ratification conventions to introduce amendments as threats to their plan for ascending to power via the Philadelphia Constitution.

In any event, if the Founders/Framers couldn't develop a constitution that was free of flaws, if 39 signatories and three dissenters could not resolve such acknowledged flaws in the Constitution, and if those 39 individuals were resistant to receiving any assistance in this regard from the ratification conventions, then what made them think they would be able to run a government that would not become entangled in the very problems they failed to solve. Seemingly, they were recklessly trying to

steamroll a country into adopting something that their alleged commitment to the principles of republicanism should have told them was a massive conflict of interest – between, on the one hand, their ambitions and self-serving biases (if not arrogance), and, on the other hand, the welfare of 3.1 million people who inhabited America at that time, along with countless more millions in subsequent generations.

Where were their principles of republicanism when the Founders/Framers disregarded the instructions of the Continental Congress? Where were those principles when the Founders/Framers encouraged Americans to disregard the Continental Congress, Articles of Confederation, and the state legislatures? Where were those principles when the Founders/Framers conspired in secrecy to come up with a way to overthrow the existing government … however peacefully? Where were the principles of republicanism when the Founders/Framers sought to manage the various ratification conventions in order to arrive at certain pre-determined conclusions and, in the process, betray their alleged commitment to reason, justice, fairness, integrity, and unbiased deliberations?

When push came to shove, many of the Founders/Framers abandoned their philosophy of republicanism. Yet, Americans were supposed to have faith in the idea that such a philosophy would ensure that all decisions in the future would be in accordance with the requirements of such a philosophy.

Without some sort of moral compass to guide government administrators through the many treacherous reefs and shifting sandbars that were likely to populate the political/social oceans of the future, then the constitutional machinery that was invented in Philadelphia was relatively worthless. Having three branches of government that were to be run by people who, when it served their purposes, had shown a willingness not to act in accordance with the very noble aspirations of republican philosophy did not auger well for succeeding generations of Americans.

If the very first generation of natural aristocrats displayed such an unreliable commitment to principles of virtue, integrity, disinterestedness, and fairness, then what implications did this have for ensuing generations of administrators? If the principles of republicanism were capable of being jettisoned by the natural aristocrats for the sake of

their ambitions and convenience, then just what sense could be made of the guarantee they had given in Article IV, Section 4 of the Constitution, and what would be the obligation of succeeding generations of government leaders to honor that guarantee if they didn't subscribe to the principles of republicanism?

If the Founders/Framers actually had lived in accordance with their philosophy of republicanism – the one that is enshrined in the Philadelphia Constitution -- then other problems aside (and there are many such problems), the underlying intention of the Constitution might be considered to be truly radical because for the first time in the West, republicanism called for government officials to regulate their own conduct through the qualities and principles of an ethical system (i.e., republicanism) which claimed to ensure that citizens would be governed through principles of virtue, justice, liberty, disinterestedness, impartiality, fairness, and so on. Unfortunately, the Founders/Framers often did not live in accordance with the requirements of republicanism, and, as a result, dysfunctional government soon began to grow like a cancer and, in the process, debilitated the body politic.

American society today continues to be negatively impacted by the failure of the Founders/Framers to abide by the principles of republicanism that, at least theoretically, had been introduced into the constitutional framework that was to govern the United States. Government officials of this and past generations have followed the precedent established by the Founders/Framers and, as a result, they too have largely disregarded putting into action the guarantee – not promise -- of republicanism that is entailed by the opening words of Article IV, Section 4 of the Constitution.

More than two hundred years of applying such an anti-republican precedent has placed this country on life-support. Surely, our current, near-death status as a viable democracy is an iatrogenic-like problem in which the social diseases that are ravaging America have been caused, in no small part, by not only the structural character of the political system itself but, as well, by the failure of the practitioners of political medicine to treat citizens with the sort of ethical integrity that the philosophy of republicanism guaranteed, but the Founders/Framers and their successors have not, for the most part, delivered.

James Madison was born in 1751. His family was among the power brokers of Virginia, and they were owners of slaves … slaves that such families used to work their plantations. Land, slaves, and commerce of one kind or another anchored the power base of those families.

For a variety of reasons, Madison (at least prior to the late 1790s) tended to be wary of those people who were dissimilar to himself. Madison placed a very limited amount of trust, if any at all, in people who were not members of the power elite, or people who had not received the benefit of a liberal education (he went to the College of New Jersey, later known as Princeton), or people who might be passionately opposed to the way in which the 'natural aristocracy' (i.e., power elite) dominated society and commerce.

His experience as an elected representative in Virginia led him to worry that there might be entirely too much democracy going on in America. He was concerned about the way elected representatives increasingly seemed to be enabling the unbridled passions of those who were not members of the 'natural aristocracy' and, therefore, who lived in opposition to the way Madison believed the world should operate.

Madison considered himself to be a member of a minority – which, in effect, members of the power elite always have been – and, therefore, he sought to protect himself, and others like himself, from the hordes (i.e., the majority) whom Madison perceived to be storming the Bastille (metaphorically speaking) via their elected representatives. Consequently, although many people refer to Madison as being the father of the Philadelphia Constitution (because, in a number of respects, it was based on the Virginia Plan that he drew up prior to the Philadelphia Convention during the summer of 1787) as well as the father of the Bill of Rights (because he initiated the process in Congress … although the final Bill of Rights was quite a bit different from the proposed list of amendments that Madison introduced into the first session of the new Congress), nonetheless, one might want to bear in mind that Madison was not so much interested in promoting democracy for the majority of people as much as he was interested in establishing a political system that would be capable of protecting a certain minority of which he considered himself to be a member.

Madison's understanding of political life was not just informed by his three years, or so, of experiences in the Virginia state legislative assembly.

He also took to heart his years of participation in the Continental Congress that was set in motion through the Articles of Confederation.

In fact, one might wonder if the way in which the Continental Congress operated for a number of years as a body that had not been legally sanctioned prior to being ratified by the states in 1781 might have helped shape Madison's willingness to use the Philadelphia Convention in a similar fashion. In other words, he might have been prepared to treat the Philadelphia Convention as a body that operated without legal authority but that sought to provide solutions to ongoing problems, just as the Continental Congress tried to do before the Articles of Confederation were ratified.

In any event, during his years of participating in the Continental Congress, Madison came to see that the fulcrum of power in the Confederation pivoted about the states. Consequently, since the Articles of Confederation required a unanimous vote among the states to pass legislation involving taxation, import duties, and so on, the central government (i.e., the Continental Congress) could not raise the money it needed to: Pay national debts, defend the country, or institute policies that might enhance commercial activity in the United States.

Similarly, and as previously noted, when Madison served in the Virginia assembly, he felt that the people were becoming too powerful and, in the process, Madison came to believe that the generality of people were thwarting the ability of the central government (of which the Virginia state legislature was a part) to provide effective governance. In other words, as Madison saw it, the people constituted the same type of problem within the state of Virginia as the states did on the national level in conjunction with the Continental Congress.

Prior to the late 1790s, Madison was a centralist. In other words, he believed that centralized authority operated by a 'natural aristocracy' was the best vehicle for delivering competent governance, and as a result, he felt that the people on the state level, along with the states on the national level, were interfering with the capacity of centralized authority to fulfill its function. As far as Madison was concerned, on both the level of individual states as well as states collectively considered (i.e., the nation or Confederation of States), the real problem of governance in America consisted of people who were not part of what Madison

considered to be the 'natural aristocracy' – that is, those who were gifted by nature with the requisite intelligence and talent to lead others.

According to Madison, the majority of people – especially those who were representatives in state legislative assemblies -- did not share his views about the Enlightenment, republicanism, or the meaning of public service. Those individuals sought to use government to advance their narrow self-interests (or those of their constituents) rather than to support that which was honorable, virtuous, and for the good of the nation.

Naturally, Madison view of what constituted the 'good' of the nation reflected his personal ideas about how the world ought to operate. However, anything that was inconsistent with such ideas was considered to be an expression of an anti-republican orientation.

Therefore, to a certain extent, Madison's approach to the world of politics could be seen as being just as self-serving as was the manner in which many of his fellow legislatures engaged political activity. Nevertheless, Madison believed that what he was interested in doing was, somehow, more honorable, virtuous, and enlightened than were the interests of those who were not members of the natural aristocracy and who saw things differently than he did.

For example, Madison was upset that he continuously had to make compromises in relation to his attempts to reform the judicial system in Virginia. Madison, however, never seemed to question whether the reforms that he was interested in instituting were as conducive to democracy as he supposed them to be. Instead, he merely thought of such proposals as being "skillfully" constructed ideas that were being undermined by, and thwarted through, anti-republican sentiments.

Consequently, to argue that the Madison of pre-1798 vintage was not necessarily a proponent of democracy per se is not as crazy as it might first appear to sound. Indeed, as previously noted, the Madison of pre-1798 vintage advocated a system in which centralized authority would be elected through popular vote (at least the members of the House were … the members of the Senate were selected by state legislators, and the President was elected through the Electoral College) and, then, such centralized authority – which was to be drawn, via elections, from the natural aristocracy of society -- was to be exercised in accordance with the ethical principles of republicanism.

However, republicanism does not really say that what is done must be democratic in nature … assuming one could agree on what was meant by the idea of democracy. Rather, republicanism is entirely about the manner in which one brings to fruition whatever it is that one does.

Theoretically, a monarch could conduct himself or herself in a republican fashion. If such a monarch attempted to decide issues in a fair, rational, virtuous, impartial, equitable, disinterested, and unbiased manner, then such a monarch would be subscribing to the philosophy of republicanism.

In order to be considered a proponent of republicanism, a person didn't have to be committed to democracy in the sense of wanting to provide the majority of people with a form of direct self-governance. In fact, Madison saw democracy as the process through which the electoral power of the people was merely a process through which to leverage the votes of people in order to place power in the hands of those individuals – the 'natural aristocracy' – who, hopefully, would offer governance through qualities such as: integrity, honor, disinterestedness, fairness, and virtue.

From Madison's perspective, if government activity were conducted in a republican manner, then whatever issued forth through that kind of activity would be shaped, colored, and oriented by the appropriate kinds of values and, therefore, should serve the common good. However, people often differed in their ideas about what, precisely, was meant by: virtue, integrity, disinterestedness, rationality, and fairness.

People might agree that people should be governed by the principles of republicanism. What this meant in practice was often less subject to agreement.

One could have a sincere intention to conduct oneself in an honorable, impartial, judicious, virtuous, equitable, disinterested fashion. However, someone else might always be able to sincerely and legitimately raise questions about whether, or not, what was taking place was as honorable, and so on, as had been claimed or intended.

Republicanism required that people should not be judges in their own cause. Yet, advocates of republicanism often presumed that what they were doing was republican in nature, and, therefore, they were acting as

judges concerning the quality of their behavior vis-à-vis their own cause … namely, republicanism.

If Madison had had his way in the Philadelphia assembly that took place in the summer of 1787, then the sort of Congress that he initially envisioned -- prior to, and during the early portions of, that convention -- would have had the power to veto any, and all, state legislation that might be considered to conflict with the policies of centralized authority. There is nothing democratic in such a proposal, but, rather, such an idea is all about the right – nay, duty -- of those in government to push their policies onto both the states and the people as long as, presumably, such pushing was done in a republican fashion.

Interestingly enough, in the late 1790s, Madison did a virtual 180 degree turn around from his starting position in relation to the 1787 Philadelphia Convention. More specifically, when Madison joined forces with Jefferson and others in the late 1790s to resist the tyrannical character of the Alien and Sedition Acts that were passed during the administration of John Adams, Madison became an ardent advocate for state rights.

Gone was Madison's belief that the central authority should be given carte blanche in its policies. In addition, under the circumstances of the late 1790s, Madison was more willing to trust the judgments of a majority of the people in the states than he was willing to trust the monarchical-like tendencies of the federal government.

One might suppose that President John Adams felt that he was acting in a purely republican manner when he signed tyrannical legislation into law in 1798. Moreover, one might suppose that the younger Madison felt that he was acting in a purely republican manner when he proposed that the central authority should have the right to veto whatever state legislation the central, federal authority considered to be antithetical to its own policies. Furthermore, one might suppose that the older Madison felt that he was acting in a purely republican fashion when he fought for state rights over federal rights in the late 1790s.

Herein lies part of the problem. The meaning of republicanism seemed to be impacted by changes in circumstances, interests and concerns.

Although Madison did not get his way during the Philadelphia Convention in the summer of 1787 with respect to the issue of the central government's right to veto any and all state legislation, Madison, nonetheless, did everything he could to create a strong central authority in the federalized system that was being proposed via the Philadelphia Constitution. Furthermore, throughout the administration of George Washington, Madison worked closely with the President to lend definition to the idea of a strong, central authority through the establishing of various executive departments as well as by introducing provisions that would help strengthen, as well as distinguish, the executive role relative to Congressional activity.

One could even put forth the argument that Madison's willingness to initiate the congressional process that eventually would lead to a Bill of Rights was done more out of a desire to place constraints on the people's desire to have more control over their own affairs, and, thereby, preserve the authority of centralized government, than his act of introducing amendments to Congress was necessarily due to any desire to serve the needs of the generality of people. To be sure, Madison did act in a way that was consistent with the philosophy of republicanism when he sought to honor what he felt was a duty with respect to a prominent theme in many ratification conventions – namely, the persistent call for amendments to the Philadelphia Constitution – by introducing a package of amendments to the newly formed Congress, but, presumably, Madison also felt he was acting in a republican fashion when he limited the kinds of amendments that were introduced for Congressional consideration to ones that would not pose any serious threat to the ability of central authority to conduct its business.

In effect, the younger Madison – the Madison of the Philadelphia Convention and the Presidency of George Washington – created problems for the older Madison of the late 1790s. In other words, all the efforts of the younger Madison to create a strong, central government came back to haunt the older Madison during the administration of John Adams.

One might wish to argue that Madison always was sincere in his desire to act in compliance with the philosophy of republicanism. Nonetheless, this desire gave expression to very different priorities, objectives, interests, and behaviors across time and changing circumstances, and this facet of variability probably was one of the

reasons why people like John Adams wondered if 'republicanism' had ever actually existed because establishing a clear understanding of that idea as it manifested itself in actual circumstances could be quite a slippery challenge.

So, which, if either, of the foregoing editions of James Madison give expression to the 'real' nature of what is meant by a constitutional democracy? Apparently, as was the case with Madison, the answer to this sort of question varies across time and circumstances.

One could, of course, try to answer the foregoing question by saying that both editions of Madison reflect the 'real' nature of a constitutional democracy. However, if one does this, then the idea of constitutional democracy runs the risk of becoming almost anything one wants to believe it is.

Under such circumstances, the criteria one uses for justifying one constitutional perspective rather than another seem quite arbitrary. In other words, although one might be able to explain why, say, one edition of Madison acted in one way, while another edition of Madison acted in a different fashion, there doesn't seem to be anything that is common to the two editions and by means of which one might be able to construct a plausible, unified theory concerning the intentions of the Founders/Framers with respect to how subsequent history should be constitutionally engaged.

Was Madison entitled to change his ideas about governance? Of course, he was.

Was Madison entitled say that he was opposed to the notion of central authority being envisioned by Alexander Hamilton or John Adams … that their ideas were not what he had in mind when he advocated for having a strong, central government? Again, the answer is: 'Yes'.

The problem emerges when one tries to determine who -- if anyone -- was right in their conception of how central authority should operate. Was the younger Madison correct? Was the older Madison correct? Were they both correct in some sense? Was Hamilton right? Was Adams correct?

The foregoing questions all share one thing in common. They all lead to further, more basic questions.

Asking who, if anyone, is correct in her or his manner of engaging and understanding the Constitution does not probe the underlying issues with sufficient depth or rigor. One also must ask why any of the individuals named previously – and many others who might be named -- is correct and according to what criteria, and, in addition, what justifies using those sorts of criteria rather than some other set of criteria to evaluate those matters?

Madison is considered by many to be the father of the Constitution. If this were really true, nearly four months and many hours of disputation would not have been required to come up with the document that eventually arose out of the Philadelphia Convention.

However, even if one were to adopt a very simplistic interpretation of historical events and suppose that Madison was the sole architect of the Philadelphia Constitution, one must grapple with the fact that Madison had at least three ideas about the role of central authority within a constitutional democracy. At one point (the Virginia Plan), Madison believed that states should have no real authority. At another point (the Philadelphia Constitution), Madison believed that states should have some power but that the authority of the central government should prevail in many, if not most, circumstances. Finally, at yet another point in time (the late 1790s), he believed that states should have much more power than he earlier believed to be appropriate.

Moreover, if one were to restrict oneself to considering only the views of Madison with respect to the idea of constitutional democracy – and there is really no justification for doing so – there does not seem to be any consistent theory of constitutional interpretation capable of reconciling his different perspectives. Furthermore, even if there were such a unified theory, one still would be faced with the following question: Why should anyone feel, or be, obligated to comply with Madison's understanding of such matters?

There is one further issue to add on to the foregoing discussion. Madison's Virginia Plan -- which was favored over William Patterson's New Jersey Plan -- became the basic template that the Philadelphia Convention worked on in order to generate a final constitutional product. To a large extent, the Virginia Plan was a response to the many problems that Madison experienced during his years as a member of the Continental Congress and the Virginia state assembly … problems that had

to do with the way in which the generality of people in America seemed to eschew republican principles and, instead, pursued what Madison considered to be narrow, selfish, passion-driven interests.

Consequently, one would like to know what made Madison think that things might be different from his previous experiences in government if the Philadelphia Constitution were to be adopted by a sufficient number of state ratifying conventions. In other words, if the problem with state and national government up to 1787 was, among other things, due to the manner in which people were not properly morally oriented to do the 'right' thing – the republican thing -- when it came to governance, then what made Madison believe that this same problem would not carry over into a new system of governance filtered through the Philadelphia Constitution.

The problem facing Madison in 1787 was not necessarily a system problem. It was a people problem.

Madison – and the other participants in the Philadelphia Convention – invested a lot of time in the assumption that if one fixed the framework of governance, then, everything else would fall into place. Yet, they all knew that the overwhelming history of the world – even in the case of their beloved 'republics' of the past -- tended to indicate otherwise.

The people in the Continental Congress could not be depended on to do the 'right' thing … the republican thing. The people in the state legislatures could not be depended on to do the 'right' thing … the republican thing. Why should one feel confident that the people in the new Congress, judiciary, and presidency would do the 'right' thing … the republican thing?

Many of the people who participated in the Philadelphia Convention were allegedly committed to the principles of the philosophy of republicanism. Yet, the activities of that convention were rooted in some rather questionable behaviors with respect to issues of disinterestedness, honor, duty, loyalty, judiciousness, fairness, integrity, equitability, and truthfulness – the mainstays of republicanism.

Whatever the merits of the Philadelphia Constitution might be relative to the Article of Confederation, republicanism is not measured by the value of the document one produces but by the quality of how one goes about producing such a document. In that respect, the

Founders/Framers failed because there are many key aspects of the manner in which they conducted themselves in Philadelphia that really can't be reconciled with the philosophy of republicanism.

Given their disregard for the existing system of governance (the Articles of Confederation), as well as their disobedience concerning the authorization that had been extended to them through the Continental Congress, along with their efforts to urge the states – in the form of ratification conventions -- to by-pass the system that had been authorized by the Articles of Confederation (and already ratified by the states), and given their manner of seeking to dictate the terms under which a new constitutional system would come into being (i.e., Article VII in the Philadelphia Constitution which arbitrarily stipulated that if nine states ratified the Philadelphia Constitution, the Constitution would be adopted), the Founders/Framers had not been true to their republican principles. The ends (a new constitution) could not justify the means (the abandonment of republicanism), because without the principles of republicanism to give ethical life to governance, the proposed Constitution was relatively worthless.

The truly radical dimension in the ideas of the Founders/Framers was not the Philadelphia Constitution. The philosophy of republicanism gave expression to the real radicalism inherent in their ideas.

To propose that governance should be conducted in accordance with standards of ethical principles – namely, republicanism – was nothing short of breathtaking for the 18th century … for any time actually. However, the Founders/Framers fell short of this standard during the Philadelphia Convention and, afterwards, during the process of ratification.

The Founders/Framers guaranteed (they did not promise or recommend this) that the states would each be the beneficiaries of a republican form of government. This was done in the form of Article IV, Section 4 of the Constitution.

Those 16 words are the most revolutionary set of words in the entire Philadelphia Constitution. They are the same 16 words that, for the most part (and there have been some notable exceptions) have gone unheeded by virtually every ensuing body of governance in the history of the United States.

Madison was faced with a people problem in 1787 (that is, people in government who did not abide by a set of ethical principles). The Philadelphia Convention did not solve that problem but merely camouflaged it.

Thomas Jefferson did not participate in the Philadelphia Convention of 1787. He was in Europe acting on behalf of the Continental Congress.

Consequently, there is a sense in which Jefferson was not among the Founders/Framers of the Philadelphia Constitution. One wonders what, difference if any, Jefferson's presence might have made to the assembly out of which that document arose … as one could wonder what difference, if any, the presence of Tom Paine, Sam Adams, Patrick Henry, William Findley, and Richard Henry Lee … all of whom were much more radically inclined – each in his own way – than was James Madison or many of the other participants in the Philadelphia Convention.

Of course, 11 years earlier Jefferson had played a leading role on the committee that drafted the Declaration of Independence (and it is important to keep in mind that Jefferson did not act alone with respect to that document). Yet, there is a revolutionary fervor – for obvious reasons -- present in the Declaration of Independence that – with the exception of Article IV, Section 4 -- is missing in the Philadelphia Convention.

The aforementioned revolutionary character also was present in a letter that Jefferson had written to William Stephens Smith -- nearly two months after the Philadelphia Convention concluded its business. Jefferson wrote: "The tree of liberty must be refreshed from time to time with the blood of patriots and tyrants. It is its natural manure."

Nowhere in the Philadelphia Constitution does one find anything that remotely resonates with the foregoing sentiments. There are, of course, provisions in the Constitution for removing people from office for 'high crimes and misdemeanors' or other untoward behavior, and there are provisions in the Constitution for changing that document through Congressional votes, state amendment conventions, and the like, but the aura of revolution has disappeared from the Philadelphia Constitution.

The Philadelphia Convention was revolutionary in character because it constituted a rebellion against the way things in government were, and, as well, it was a peaceful attempt to overthrow the established, legal way

of doing things in America. However, the Philadelphia Constitution itself was, for the most part, not revolutionary in character.

The constitutional document was not about freeing the people. Instead, it was a set of procedures that would free the practitioners of governance from the people in substantial ways so that the 'natural aristocracy' could do whatever it deemed to be "proper and necessary" to carry out its various policies.

Therefore, although there is a very real sense in which Jefferson helped shape some of the conceptual landscape out of which the Philadelphia Convention operated, there is much less of a sense in which Jefferson helped shape the structural character of the Philadelphia Constitution. In light of this distinction, one wonders whether, or not, Jefferson can be considered one of the Founders/Framers … or, stated in another way, while there is a sense in which Jefferson is among the Founders of America, there is much less of a sense in which he is a Framer of the Constitution.

There is another factor that muddies the water when it comes to trying to figure out Jefferson's place in the realm of democratic thinking. While Jefferson had great rhetorical style – both spoken and written -- that verbal style was not always backed up with behavior that easily could be reconciled with the democratic-sounding flourishes of his mouth or pen.

Jefferson had a vision of what he believed democracy to be, but he was often ideologically driven concerning that vision. As a result, he tended to be somewhat inflexible concerning the way he believed his vision should be put into operation.

In other words, Jefferson was not immune to the idea of interfering with the liberties of others if such individuals got in the way of his attempt to realize his own vision of things. Moreover, Jefferson was not opposed to the idea of censoring ideas with which he disagreed … and Jefferson's participation in the ugliness of slavery is but one piece of evidence in support of the foregoing contentions.

On the one hand, Jefferson 'talked the talk' when, on many occasions, he advocated against the institution of slavery. On the other hand, Jefferson did not 'walk the walk' when one considers his willingness to flog his slaves or to go after them if they tried to escape.

In addition, while Jefferson condemned the idea of blacks and whites genetically commingling with one another, there is considerable genetic evidence concerning his (or someone in his household's) relationship with Sally Hemings suggesting that he – or a mysterious other -- seemed to be a proponent of the school of: "do as I say, not as I do.' Again, there appears to be a 'disconnect' of sorts between what Jefferson said and what he did or permitted to happen.

Whereas Madison sought to wed the philosophy of republicanism to the Philadelphia Constitution, Jefferson was more interested in having the principles of republicanism manifest themselves in the manner in which independent, yeoman farmers would conduct themselves in the world of subsistence living and/or in the realm of commerce. Whereas the pre-1798 Madison was something of an authoritarian centralist, Jefferson was more inclined toward some form of decentralized authority in the form of yeoman farmers regulating themselves in accordance with principles of republicanism.

Both Madison and Jefferson, however, suffered from the same sort of problem. They each were proponents of the philosophy of republicanism, and, yet, they didn't always comply with the requirements of that philosophy.

Just as one could ask of Madison why he would believe that subsequent generations of government officials would abide by the philosophy of republicanism when those who participated in the Philadelphia Convention and the subsequent ratification conventions often ignored such precepts when it was convenient for them to do so, one also could ask of Jefferson why he would believe that subsequent generations of yeoman farmers would comply with the principles of republicanism when Jefferson, himself, often did not do very well in this respect.

Like Madison, Jefferson considered himself to be a member of the 'natural aristocracy' – that is, individuals who had been gifted by nature with considerable intelligence, talent, and ambition. From the perspective of those 'natural aristocrats', they were individuals who, as a result of such gifts, ought to be leaders (whether publically or privately) of others.

Nevertheless, if members of the 'natural aristocracy' could not – each in his own way -- live up to the standards of republicanism, then why did they believe that anyone else would be able to do so? Yet, both Madison

and Jefferson – each in his own way – believed that the philosophy of republicanism would be the salvation of government, society, economics, and individuals.

Jefferson was a student of the Enlightenment. He believed in pushing boundaries concerning the nature of politics, economics, religion, society, and science.

There is nothing necessarily wrong with such a belief. Problems do arise, however, when one supposes that one's way of pushing such boundaries is necessarily the 'right' way or the 'better' way of engaging such issues and, as a result, one seeks to impose those ideas on other people.

Thomas Jefferson, James Madison, George Mason, Patrick Henry, Samuel Adams, Tom Paine, William Findley, John Adams, and any number of other individuals who might be mentioned here all had their unique take on how to push the boundaries with respect to the search for truth, justice, wisdom, and personal fulfillment that was promulgated by the Enlightenment. Their critical and skeptical inquiries all had their individual signatures … the pattern that gave expression to the degrees of freedom with which they were comfortable – each in his unique way -- within the context of such exploratory behavior.

Consequently, there was not one theory of the Enlightenment. There were many ideas – as many possibilities as there were individuals -- about what constituted a "correct" understanding of: knowledge, justice, truth, reason, and wisdom.

Similarly, there was not one theory of republicanism. There were many ideas about how to be honorable, disinterested, unbiased, judicious, fair, impartial, loyal, and dutiful.

Herein is the problem. How does one derive a consistent theory of constitutional interpretation from such diversity?

One cannot say, with any substantial degree of justification, that the Founders/Framers, as a whole, meant this or that, or intended this or that, or believed this or that … if by 'this or that' one is alluding to some underlying unified perspective concerning the nature of life – politically, socially, individually, scientifically, religiously, or spiritually. What is more, even if one could do this, so what?

It is one thing for the Founders/Framers to all have their individually-tweaked, Enlightenment-influenced ideas about the nature of things. It is quite another thing to try to argue that there was unanimity or consensus among the Founders/Framers concerning such matters or that everyone in succeeding generations should be bound by their understanding of things.

Jefferson was an accomplished musician, linguist, natural scientist, and draftsman. He was an aficionado of good wines and fine foods.

As such, he proved that one's evaluation of people should be based on merit rather than on one's social background. After all, if family pedigree were the deciding factor in Jefferson's case, he would forever have been tainted by a father who was fairly wealthy but exhibited few of the qualities of the Enlightenment.

On the other hand, the wealth that was acquired by Jefferson's father played a role in Thomas Jefferson's subsequent development. If not for that wealth, Jefferson might never have attended the college of William and Mary or gone on to attend law school … institutions where he began to explore the sensibilities of the Enlightenment, along with becoming adept at music and language.

There was a certain skewing of the scales when it came to the 'natural aristocracy'. Undoubtedly, Jefferson, like many others among the Founders and Framers, brought considerable potential to the table, but they also had the opportunity to realize such potential because they were not slaves, or indentured servants, or the working poor, or Indians, or women.

Jefferson, like many of his fellow members of the 'natural aristocracy' appeared to be blind to the manner in which the realization of their potential depended on the existence of inequalities in the surrounding society. Wealth might accumulate due to the hard work and sound decisions of an individual, but, almost invariably, wealth also accrues because of the way in which different groups of people – for example, slaves, the working poor, women, Indians, and children --need to subsidize the accumulation of that wealth.

The 'natural aristocracy' was not entirely natural. It grew from the manure of political, social, and economic inequalities.

Jefferson talked about how 'all men are created equal", but in the process of doing so, he appeared to be blind to the existence of slaves, women, the poor, and the powerless. Jefferson talked about the 'natural aristocracy', but in the process of doing so, he seemed to be blind to the fact that such an 'aristocracy' was, in many ways, the product of something that was not natural but, rather, was the result of considerable social, political, and economic engineering.

Whereas Madison envisioned the task of the natural aristocracy to provide effective governance to work toward the common good, Jefferson considered the task of the natural aristocracy to be a matter of leading the general public toward greater civility and sociability. Madison believed in the mechanisms of government to achieve the common good, but Jefferson believed that the common good was best realized not through government, per se, but by means of those who were 'enlightened' to lead people to the same 'Promised Land' as was enjoyed by the 'enlightened'.

Jefferson had faith in the ability of people to become 'enlightened' (in his sense of the term) if they were led – and not necessarily just in a political way --by the right sort of individuals … that is, people who were schooled in republican values and principles. Jefferson had faith that the generality of people had the capacity to recognize members of the natural aristocracy and to follow such individuals – whether politically, socially, educationally, or otherwise – toward enhanced forms of civility and sociability … two hallmarks of the "Enlightenment"

On the other hand, pre-1798 Madison was relatively indifferent to the enlightenment of the generality of people. He was more interested in getting the people out of the way (i.e., to participate in elections and, then, become quiescent) so that the natural aristocracy would be able to generate effective governance free of interference from the people.

Jefferson envisioned a social revolution of sorts. The Madison who helped negotiate the Philadelphia Convention envisioned a political renaissance of sorts that would enable America to solve its economic and political problems and, thereby, become a viable nation on the world stage.

Both Jefferson and Madison believed in the existence of a 'natural aristocracy'. However, they each envisioned the members of that group operating on society in different ways.

The society that Jefferson sought to bring about was rooted in an Agrarian Utopianism. He believed that if more and more people were able to gain control over their economic lives through the ownership of small, independent farms, then they would not be vulnerable to the same forces that had ravaged Europe as the confiscation of limited land pushed people into the cities in search of work … a social phenomenon that led to poverty, disease, exploitation, and an array of other social problems.

For Jefferson, the salvation of society was not effective governance per se. Instead, the salvation of society was an agrarian model of life that encouraged individual independence.

Jefferson was less interested in altering the way government was related to people (as Madison tended to be) than he was interested in altering the way people related to one another. For Jefferson, the viability of society was more dependent on the civility that people might be engendered to have with respect to one another via the enlightened leadership of the natural aristocracy than the aforementioned social viability might be dependent on the establishment of this or that form of government … with its attendant bureaucracies, laws, and tyrannical inclinations toward ruling over people.

Whereas many of the participants in the Philadelphia Convention that took place during the summer of 1787 looked upon events such as Shay's Rebellion in western Massachusetts as a reason why a new form of governance was needed, Jefferson did not see that uprising as much of a problem but, instead, considered it to be a part of the natural order of things … like a storm that helped clear the atmosphere.

People such as Madison – which included most, but not all, of the other Framers of the Philadelphia Constitution – were interested in establishing clear lines of nationhood and power. Jefferson was much less interested in such projects.

Jefferson wanted a social revolution in which people would be able to break free from the shackles of ignorance that came from a failure to struggle toward a life of 'enlightenment', along with the civility that Jefferson believed such an understanding made possible. From this perspective, a nation/state was the place where such things occurred rather than being the purpose for which such things occurred.

During the 17 years that separated the end of his presidency (1809) and his death in 1826 (on the same day as John Adams passed away), much took place in America that led Jefferson to feel deeply disillusioned with respect to the future of democracy. Despite his successful struggle to establish the University of Virginia, there was much going on in America with which he was concerned.

Evangelical religion was on the rise and Jefferson saw this as antithetical to his ideas about the role that rational discourse should play in establishing enlightened civility in society. Moreover, society was becoming more democratized and, as a result, people were less inclined to follow the leadership of the natural aristocracy and more inclined to go in their own individual directions … whatever those might be.

When one adds to the foregoing considerations such problems as: wars involving Indians and the British, widespread economic problems, and growing conflict concerning the spread of slavery in places such as Missouri, the prospects for civility and sociability seemed rather dim. There appeared to be less and less opportunity for Jefferson's dream of an agrarian utopianism to be realized.

Furthermore, America was becoming increasingly commercialized, and Jefferson did not care for the direction in which he saw things headed. While he always believed in the necessity of some degree of commercial trading, the extent to which America was becoming a place of constant commercial trafficking of every conceivable kind was distasteful to Jefferson … such intense, omnipresent commercialization was not what a cosmopolitan, civilized, enlightened life should be about.

As a result, in the years between 1809 and 1826, Jefferson became increasingly provincial and dogmatic in his outlook. He disengaged himself from the political process and even, to a large extent, discontinued trying to acquire much knowledge about what was happening politically in the country.

In retirement, Jefferson adopted a position that was 180 degrees opposite of the one that James Madison had taken in the Virginia Plan that the latter individual had introduced into the Philadelphia Convention. More specifically, whereas in 1787 Madison believed that the federal government should have the right to veto all state legislation if this was deemed to be necessary, Jefferson now believed that states should have the right to veto all federal legislation.

For a time, the two individuals had collaborated in the middle when they joined forces against the Alien and Sedition Acts in the late 1790s. However, although Madison subsequently became interested in trying to 'balance' state and federal rights (whatever this might mean), in the end, Jefferson became, almost exclusively, an advocate of state rights.

Many people today approvingly quote the later Jefferson – that is, the ideologue of state rights. Nonetheless, the later Jefferson is at considerable odds with the earlier Jefferson who sought to realize an agrarian utopia in which independent farmers – yeomen – would live a life of cultivated, rational civility that would bind people together quite apart from governmental activity and bureaucracy … just as the later Madison (vintage 1798 and later) is at odds with the earlier Madison -- although in a different fashion than is the case with respect to Jefferson.

The Founders/Framers of the Philadelphia Constitution did not have either the early Jefferson or the later Jefferson in mind when they crafted that document. On the other hand, the Philadelphia Constitution could be seen as a sort of utilitarian tool that might be used to advance policies that were quite consistent with either the earlier or the later Jefferson.

As such, the Philadelphia Constitution doesn't really have any purpose in mind except in the very general, undefined sense of the Preamble to the Constitution that alludes to issues such as: justice, tranquility, the common defense, and liberty. In other words, the Constitution is a procedural means of implementing public policy in whatever way one might be able to justify as advancing the principles of the Preamble and still be consistent with those procedures … and the criteria for what constitutes "consistency" are quite mysterious, if not fairly arbitrary.

If the foregoing perspective is true, this would render 'We the People' vulnerable to whatever agenda a given Congressional, Judicial, or Executive session wanted to pursue. Moreover, there would be nothing to prevent all three branches of government from pursuing conflicting programs.

The Constitution enables power to manifest itself in a way that serves those who hold the reins of power. Moreover, once the reins of power are taken up, the people discover that it is not so easy – if possible at all – to reclaim that which has been usurped from them because once the voting

is done, the Constitution is primarily about protecting the interests of those who have been voted into power.

Jefferson's understanding of democracy is no more favored by the Constitution than Madison's understanding of democracy is … or the understanding of Washington, Adams, or anyone else concerning the issue of democracy. This is because the Constitution is not a document of democracy.

The Constitution is a set of procedures that, once acquired via election, enables people to use the power that an election puts into play to bring about pretty much whatever such elected officials decide to do. Moreover, this can be done quite irrespective of whether, or not, those activities are agreeable to the people whose votes have been leveraged for purposes of harnessing that power.

Quoting Jefferson, Madison, Adams, Washington, or anyone else concerning the meaning of democracy is quite irrelevant to the actual nature of the Constitution. The Constitution is about the uses to which power can be put, and as such, that document is not a procedural plan for how to go about and realize democratic ideals … except incidentally so -- such as in the case when someone who actually had a thoroughly democratic perspective and wanted to use the Constitution in accordance with the principles and values of republicanism somehow stumbled into being elected.

Virtually every candidate professes that they are such a person – that is, the person who will actually serve 'We the People' by actively seeking to realize democratic ideals concerning" rights, liberty, tranquility, justice, and the common good. However, once those people are elected – and assuming they were ever sincere in their professions concerning democracy -- the corrupting influence of power has its way with such individuals, and principles of republicanism and democracy fade into insignificance.

Although many people generally think of individuals such as Jefferson and Madison when they asked to reflect on what they suppose the meaning of the Philadelphia Constitution to be, Alexander Hamilton might have understood the possibilities inherent in that document better than anyone … even its primary architect: James Madison.

The collection of essays that have come to be known as *The Federalist Papers* were largely written by Hamilton – and, indeed, he was the individual who initially conceived of such a project -- with about a third of the essays being contributed by Madison and a further 5% coming from the hand of an ailing John Jay. These essays were published in various New York City newspapers during the ratification debate in that state and were an effort to explain and defend the ideology of federalism that was at the heart of the Philadelphia Constitution, and, therefore, those essays are frequently cited, and quoted from, by those who subscribe to a federalist ideology.

As previously indicated, Madison's views on federalism were strongly influenced by his experiences in the Virginia state assembly as well as the Continental Congress. Therefore, much of his Virginia Plan -- which served as a template for the Philadelphia – was an attempt to find a way of countering the sorts of influences and narrow interests that Madison found so distasteful and ill-conceived with respect to his earlier experiences in state and national governance.

Madison conceived of effective governance as being a function of the principles of republicanism … principles that would be capable of controlling the untoward impulses that Madison believed increasingly were being manifested through state governments and other legislative forums. Hamilton also believed in effective governance, but he was interested in harnessing the power of federalism to serve what he considered to be national interests that were evaluated in accordance with a metric composed, in equal parts: glory, honor, power, and empire.

Madison knew what he wanted to avoid and helped structure the Philadelphia Constitution accordingly. Hamilton knew what he wanted to secure through that document and exploited it accordingly.

While Hamilton did strive to terminate the institution of slavery in New York, he was not an advocate for the people, per se, and had little faith in them. He and Jefferson were polar opposites in relation to one another in that respect, and this is just one of the differences that fueled a continuing feud between the two individuals for more than 17 years.

Hamilton believed in democracy to the extent that it might enable him to do what he wanted to do. He had ambitions for himself and for his adopted country, and 'democracy' was seen as the midwife for those ambitions.

Hamilton did not spend a lot of time theorizing about democratic ideals like: rights, individual sovereignty, or civil liberties. In fact, Hamilton had indicated in 1804 that he considered democracy to be precisely what was wrong with America … that democracy was destroying the possibility of establishing and maintaining an American empire.

Hamilton was a different kind of theorist. He had ideas about how to: administer government, run an economy, institute a banking system, and build a strong military.

For Hamilton, the purpose of government was not to serve democracy. Instead, for him, the purpose of democracy was to serve the state … to build an empire that was capable of taking its place on the world stage … to construct a nation of glory and power.

In many ways, Hamilton's life exemplifies some people's idea of the American Dream. He was born an illegitimate child in the British West Indies, abandoned by his father when Alexander was 10 years old, and orphaned entirely when his mother passed away when he was 13 years old.

Yet, in spite of the foregoing sorts of handicaps, Hamilton's natural talents, gifts, and intelligence manifested themselves at an early age. As a result, he was given, and was able to take advantage of, a number of opportunities to improve his life that had come via various influential and wealthy patrons.

Hamilton ended up in New York, where he attended King's College (now, Columbia University). In 1775, Hamilton went to war on the side of the American revolutionary forces.

At the age of 22 he became a lieutenant colonel and was assigned to George Washington's military staff. Hamilton, however, was not content with being an aide to Washington and wanted a field command, and this was realized in the form of a light infantry battalion operating out of New York State.

From an early age, Hamilton longed to escape his troubled life in the British West Indies. One of the ways in which he envisioned himself doing so was through war.

For Hamilton, war was about glory, honor, bravery, and power. He was willing to risk both his own life and the lives of his men to realize the

hidden treasures of war, and there are a number of accounts from the revolutionary war that indicate how he did exactly that.

This attitude concerning conflict carried over into the rest of his life. It drove both the manner in which he conducted himself within, and outside, government, and, eventually, it was the reason why he lost his life in 1804, at the age of 49, during a duel with Aaron Burr who happened to be the sitting Vice President of the United States at the time … which, among other things, means that Dick Cheney was not the first, active Vice President to shoot someone.

At the age of 27, Hamilton was elected to the Continental or Confederation Congress. Through that body, Hamilton came to know James Madison, and as a result, the two began to work toward the idea of improving on the form of governance that existed in America … but they each did so with different goals in mind.

Finally, Hamilton married into one of the most powerful and wealthy families in New York. Moreover, he went on to become the first Secretary of the Treasury during the administration of George Washington.

Thus, the journey from problematic origins to the heights of accomplishment was realized by Hamilton. In this respect, he was a success, and, for many people, the arc of ascent traced out by the events of his life gives expression to what some refer to as: 'The American Dream.'

Hamilton's version of The American Dream was not about struggling for the rights of the people or seeking to ensure that there was economic fairness or social justice in America. Moreover, Hamilton was not committed to rooting out tyranny wherever it might be found.

Hamilton's orientation was entirely aristocratic in character. He firmly believed in the idea that people such as himself should have the power they needed to realize whatever their ambitions concerning: honor, glory, and power might be and quite independently of how any of what he did might affect the vast majority of Americans.

Although Hamilton fought for the Philadelphia Constitution during the ratification debates, he did not view that document as the royal road to democracy. He had always been an admirer of the form of governance in Britain and harbored doubts as to whether any form of governance that was different from the British model would be able to succeed.

On the other hand, Hamilton went with what was available – i.e., the Philadelphia Constitution – and understood that it could be adapted for purposes of bringing about a form of governance that, in its own way, would be capable of reflecting many of the sorts of things that he admired in British government … namely, a central banking system, a strong military, a vibrant commercial sector, and aspirations for empire.

Washington appointed Hamilton as the first Secretary of the Treasury. More importantly, Washington had a relationship with, and affection for, the much younger Hamilton that permitted Hamilton degrees of freedom with respect to the exercise of independent authority that were not necessarily available to other members of Washington's cabinet such as Henry Knox (Secretary of War) or Thomas Jefferson (Secretary of State).

Other cabinet members were required to report to Washington and take their directives from him. Hamilton, on the other hand, dealt directly with Congress and often didn't consult with Washington on many matters.

At least from the perspective of Hamilton, his relationship with Washington seemed to reflect the way things were done in Britain. More specifically, Hamilton often considered himself to be something of a prime minister to the king-like status of Washington.

Hamilton sought to shape other aspects of American national governance to better reflect the British model that he idolized. For instance, the British system was built around the role that patronage played in getting things done, and so, Hamilton developed his own system of patronage in which he used the perks of power to buy the loyalty of different commercial interests and members of government.

He didn't consider such uses of power as expressions of corruption. Rather, like the British system that he so admired, Hamilton was convinced that certain practical considerations were necessary in order to be able to stabilize governance … and patronage issued through the exercise of power was one of these considerations.

Madison believed that the glue that would bind society and governance together was republican principles. Hamilton believed that the glue of political life was patronage.

People – whether lawyers, merchants, bankers, speculators, government officials, or professional people – wanted to make money. Consequently, those individuals could be depended on to engage in a game of quid pro quo with the federal government, but they couldn't necessarily be depended on to do the 'right' thing in a republican sense.

Hamilton's plan to create a central bank is a case in point here. Although the ostensible purpose for establishing such a bank was to enhance the credit standing of the United States in the world community, and although Hamilton knew that many of the primary beneficiaries of such an institution would be the rich and powerful, nonetheless, he went ahead with his plans for a central bank in order to engender stronger ties between such people and the national government, and, thereby, help make America a more powerful country.

Similarly, Hamilton's proposal to have the federal government take over the obligation of the states with respect to paying back their war debts had the same sort of underlying motive. His intention was to re-direct the focus of creditors away from the states and toward the national government and use that focus to serve national interests even as such creditors would make money off the federal government in the process.

Hamilton wanted to create a world-class power that was saturated with glory. He was willing to increase the wealth of businessmen, speculators, and other individuals to accomplish his aristocratic purposes.

A number of Hamilton's ideas not only were opposed but were considered to be unconstitutional, and this was especially the case with respect to the idea of a national bank. Hamilton – at the urging of Washington – responded to such allegations by citing the "necessary and proper' clause of Article I, Section 8.

There are a number of problems surrounding the "necessary and proper' clause. For example, from what perspective should one engage the meaning of "proper" or "necessary"?

One meaning of "necessary" generally has to do with outlining a scenario that shows how doing things in a given way serves to bring about a given purpose … although there might be other ways of achieving such a purpose. However, there is another sense of "necessary" which indicates that achieving a particular purpose can only be done in a certain way.

Thus, to get to the other side of the road, it is necessary to cross the street. How one does this – whether by bicycle, running, walking, crawling, piggy-back, or car – is not necessary to the task at hand since they all would serve the task of reaching the far side of the road, but to the extent that one is looking at things from the perspective of the need at hand – i.e., to get to the other side -- each of the alternative ways of crossing the street could be considered somewhat necessary.

If one specified that one must get to the opposite side of the street without assistance and in an ambulatory fashion, the means of satisfying such conditions are narrowed considerably – to perhaps one or two possibilities (walking or running). Walking and/or running then become the necessary means of reaching the other side of the street because they, alone, satisfy the conditions as stated.

At this point, one could ask whether, or not, getting to the other side of the street is actually necessary? For instance, one might ask: Why do I need to go there? What purpose is served by my crossing the street? What if I don't want to go there? This raises the question: How does a given action become a necessary one?

The fact that something is considered necessary – whether in a utilitarian sense or in a manner that is some way integral to being able to do a task at all – doesn't automatically make such a 'necessary' act proper. In order to rob a bank, I might need a plan and a gun, but such 'necessities' don't necessarily render the bank job proper.

Like the term "necessary", the idea of being "proper" can be understood in several senses. On the one hand, something can be "proper" if it is capable of being an effective way of doing something … for instance, walking across the street might be considered to be the proper manner in which to cross to the other side of a road, whereas crawling across that same street might be considered to be a less effective way of accomplishing the goal at issue.

On the other hand, there is a possible meaning of "proper" that concerns whether, or not, some given way of doing something is appropriate in terms of a given set of rules or principles. Thus, walking across the street when the light is green is "proper" in a way that forcing someone at gunpoint to carry one across the street is not.

What makes an activity of government proper? From one perspective, an activity is proper if it is done in accordance with the procedural rules set forth in the Constitution.

From another perspective, making reference to the Constitution as a way of justifying an activity is not enough. One also must be able to demonstrate that the Constitution itself is a proper set of procedural principles … and under those circumstances, the propriety of the Constitution would have to be evaluated in terms of some extra-constitutional and, therefore, extralegal set of criteria that, in turn, must also be capable of being justified.

From the perspective of pure governance – and quite aside from any considerations of democracy, rights or individual sovereignty – something is necessary and proper if the government deems it to be integral to its policies and purposes. Under such circumstances, the government says: "We need to do 'x' and it is proper to do 'x' because we believe that 'x' will further the cause of liberty, tranquility, defense, justice, or the common welfare.

In saying such things, has the government shown that what it wants to do is proper and necessary. Not necessarily.

The claims of the government are more like an 'if-then' statement. More specifically, governments tend to argue that if it were the case that it wanted to do 'x', and if 'x' will serve certain values that exist in the Preamble, then doing 'x' is both necessary and proper with respect to the realizing of such values.

The foregoing perspective notwithstanding, one could still ask: Is 'x' really necessary to the realization of one, or another, value of the Preamble to the Constitution? One also might ask: Is 'x' really a proper way of realizing such a goal?

For example, one way of ensuring a certain amount of tranquility and providing for the common defense would be to institute martial law. As such, martial law might be considered as a necessary and proper way of realizing the values of tranquility and providing for a common defense.

However, what if there were other ways of achieving tranquility and providing for the common defense. For instance, what if someone were to argue that one might realize the desired values by instituting public

policies that are geared toward establishing social justice and equitability in the use and distribution of resources?

How does one distinguish between the two possibilities – namely, martial law and social justice – with respect to the issue of what is "necessary and proper" in relation to realizing the values of tranquility and providing for the common defense? What are the criteria that should be used to decide such a matter and what justifies the use of those sorts of criteria with respect to that issue?

There is absolutely nothing in the Constitution that is capable of settling the foregoing sorts of questions concerning the meaning of what is "necessary and proper" with respect to the actions of Congress.

The foregoing problem does not just exist in conjunction with the "necessary and proper" clause. It casts a shadow over every power that has been delegated to Congress via the Constitution.

For instance, according to Section 8, Article I of the Constitution, Congress has the power to "constitute tribunals inferior to the Supreme Court". What is the necessary and proper way to constitute such tribunals? In terms of what theory of justice should such courts be constituted and what justifies doing so? What are the "necessary and proper" purposes of such inferior tribunals, and whose purposes are served by such tribunals?

Having the power to do something does not answer the question of how such power is to be used or in accordance with what goals. Having the power to do something does not justify the exercise of power.

To be sure, if one has the power to do something, then there is a sense in which whatever plan one comes up for putting that power into play is necessary and proper for the exercise of that power. However, the logic here is circular, and when one talks about what is "necessary and proper" to the exercise of a power, one is, I believe, alluding to something more than the fact that a given policy is needed in order to give expression to that power.

Indeed, one is asking for the exercise of such a power to be justified in terms other than the power itself. However, the Constitution is not capable of offering such a justification.

Congress has the power to declare war. Yet, one still can ask: What are the conditions that make that declaration "necessary and proper"?

Proper and necessary according to whom and on the basis of what criteria, and what sort of justification will be able to render the use of those criteria acceptable to most people in a plausible, reasonable, and demonstrable manner?

The Constitution cannot answer such questions? So, in what sense does the Constitution authorize the use of powers for purposes that fall beyond the horizons of the Constitution's ability to justify any given exercise of power as being "necessary and proper"?

In passing, one might note that Hamilton liked war. He saw war as a way -- if necessary -- of subjugating rebellious states and inducing them to comply with the policies of the national government, and he also considered war to be a 'necessary and proper' way through which to engage the warring nations in Europe or to expand the size of the American empire.

Hamilton wanted Congress to declare war in the late 1790s because he considered war to be the solution of choice for realizing a variety of ambitions that he harbored for the United States and himself (namely, glory, honor and power). Fortunately or unfortunately (depending on one's point of view) Hamilton's ambitions came crashing back to earth when, in 1799, John Adams initiated his peace offensive in relation to France, but Hamilton's affection for war as a tool of empire and means to glory has resonated with all too many people in subsequent generations.

Was Hamilton's penchant for war as a way of solving problems a necessary part of government policy? Was his inclination toward war a proper expression of the government's power to declare war? Congress might have the power to declare unjust and unnecessary wars, but it doesn't necessarily have the right to do so?

Who gets to decide this and on what basis? To claim that these sorts of questions fall within the purview of the judicial system begs the issue, because one also would like to know with what justification a given jurist, or set of them, will decide such issues.

Almost everything jurists have to say on such matters will be extra-constitutional in character. In other words, although they might cite this or that Founder/Framer, or this or that session of the Continental Congress, or this or that session of the ratification conventions, or this or that session of the Philadelphia Convention, or this or that pre-

Constitutional piece of historical evidence, nevertheless, such a citing and referring process (which is part of the process of establishing and identifying precedents) must itself be justified.

For example, Hamilton had a different perspective concerning the nature of governance than Madison and Jefferson did, just as Madison and Jefferson were different from one another with respect to the issue of governance. Moreover, Madison and Jefferson had different ideas about governance at different points in their lives.

So, which of the views -- if any -- of the foregoing individuals should become the "intentions' of the Founders/Framers that are cited by jurists as constituting what is "necessary and proper" for succeeding generations to follow? How does one justify such a judgment? According to what theory of law, justice, truth, and/or morality?

Moreover, if someone disputes such theories, then how do those ideas become obligatory on the individuals who dispute them? A majority perspective might give someone the power to force people to do that with which the minority disagrees, but rights are not a function of what the majority says.

Indeed, rights exist to protect minorities against the majority. Rights exist independently of majority opinion and are intended to trump such opinions. The only thing that limits those rights is the comparable rights of another person.

Congress might have the power to declare war or constitute tribunals inferior to the Supreme Court. However, Congress needs to be able to justify the exercise of those powers and to demonstrate in clear terms how certain actions are both "necessary and proper" for the purposes set forth in the Preamble to the Constitution.

What is justice? What does it mean to promote the general welfare, and what do we mean by welfare? What kinds of blessings of liberty do we want to preserve for ourselves and our posterity? How do we provide for the common defense?

The Constitution is silent on all of the foregoing matters. What the Constitution does say, however, is something that is actually quite irresponsible – that is, the Constitution enables elected people to do pretty much whatever they like as long as they follow a set of procedural rules that they often get to interpret in self-serving ways according to

their own theories about what is “necessary and proper” for the country to be governed – allegedly -- effectively.

Even the meaning of the idea of effective governance cannot be answered by the Constitution. The Philadelphia Constitution is nothing more than a mechanism for enabling the channeling of power according to certain procedural requirements … procedural requirements that are, themselves, often rather ambiguous and vague, if not entirely arbitrary.

Hamilton understood the foregoing aspect of things very well. He exploited and leveraged it for his own purposes. That is, Hamilton wanted to use the federalized form of government in America as his primary tool for working toward realizing his aspiration to shape America to become more like his idol – i.e., the British government … aspirations that were realized, to some extent, in a number of ways – administratively, militarily, commercially, and financially.

If one mentions the name: ‘George Mason’ most Americans will draw a blank … although they might reply with something like: “You mean George Mason University?” However, even if they are familiar, to some extent, with the university, they might not know who George Mason was or what role he played in American history.

Yet, George Mason had as much to do with the founding of America as did Jefferson. Moreover, Mason participated in the Philadelphia Convention of 1787 while Jefferson did not take part in that series of meetings.

George Mason was one of the three individuals who stayed in Philadelphia throughout the summer of 1787 but who were not prepared to sign the Philadelphia Constitution. The other two individuals were: Edmund Randolph, Governor of Virginia, and Elbridge Gerry who was from Massachusetts.

Mason was one of the most active participants in the Philadelphia Convention. He: gave speeches; made recommendations; asked questions; and noted problems with respect to the constitutional document being constructed in Philadelphia. He helped shape some of the language that would be used in that document.

In the end, however, Mason could not bring himself to add his name to the list of people who were prepared to go forward with the

Philadelphia constitutional project. Although there is some mystery surrounding the precise nature of the reason or reasons that led George Mason to reject the Philadelphia Constitution rather than accept that document with its acknowledged flaws as a number of other participants (perhaps most) in the Philadelphia Convention had done, there is no mystery surrounding the nature of the problems that Mason believed were inherent in the form of the Philadelphia Convention that was released to the public in mid-September of 1787.

When the Committee of Style presented its final report on the constitutional project to the Philadelphia convention, Mason wrote his objections concerning that document on the back of the report. He was quite clear with respect to what he found problematic in relation to the Philadelphia Constitution.

First and foremost, Mason found the absence of any sort of bill of rights to be unacceptable. Other than the general declaration of the Preamble, there was very little in the Constitution that indicated a willingness to protect and preserve specific civil liberties such as the right to a trial by jury in civil cases (although the right to a trial by jury was preserved in Article III, Section 2) or the right of the press to be free from censorship.

In addition, Mason was concerned that there were no provisions in the Constitution preventing the existence of standing armies during times of peace. Like many of the people on Nantucket island, Mason considered standing armies to be a potential threat to the people.

George Mason was also concerned about the "necessary and proper" clause in Article I, Section 8 of the Constitution. He felt the clause was replete with dangers for abusing power in ways that would undermine the freedoms of the people as well as diminishing state power.

Mason considered the Senate to be far too powerful, and he believed the term of office for senators was too long – especially since, at the time, Senate members would be chosen by the state legislators and, therefore, were neither necessarily answerable to, nor representative of, the American people. He disliked the fact that the Senate, and not the entire Congress, would have the authority to approve the appointment of ambassadors and many government officials. Furthermore, Mason found the fact disquieting that the Senate – without the assistance and approval of the House -- would be able to approve treaties that might carry

problematic ramifications for all Americans and, yet, become part of the supreme law of the land.

Moreover, Mason was unhappy with the absence of what he considered to be sufficient safeguards in the case of the Executive Branch of government. He felt that the Executive Office was too vulnerable to the possibility of being manipulated by government officials who were motivated by self-interests and, as a result, this set of circumstances would permit a variety of forms of oppression to creep into governance via their advice to the Executive Office.

Another criticism that Mason had concerning the presidency revolved around a president's power to grant pardons – especially to those who might have been entangled in treasonous behavior. One of his concerns with respect to this sort of a power is that a president could authorize someone to commit such acts and, then, by pardoning that individual, a president would be able to conceal his own role in such activity.

Mason also considered the position of vice president to involve a violation of the separation of the three branches of government. On the one hand, the vice president was aligned with the Executive Office, and, yet, that same person was President of the Senate and, as a result, was empowered to break tie votes in that body and, thereby, could affect what the Senate might be able to do or not do.

Finally, George Mason believed that the Philadelphia Constitution increased the likelihood that the five southern states – which produced a variety of crops – would be at the mercy of the eight northern states. More specifically, the Philadelphia Constitution enabled Congress, via simple majority votes, to pass navigation laws that affected commercial trade, and Mason was concerned that this rule of simple majorities (Mason preferred that a majority vote of two-thirds be required) might be exploited by the northern majority to force southern crop states to either pay exorbitant transportation charges and/or accept low prices for thier crops.

Many of Mason's criticisms of the Philadelphia Constitution re-surfaced during the ratification debates. This was especially so in states such as: Massachusetts, New Hampshire, Virginia, and New York where there was considerable debate during their respective ratification conventions concerning the issue of amending the Constitution … and, in fact, approval of the Philadelphia Constitution was forthcoming in such

states only when the delegates to the different conventions were led to believe that something would be done about the matter once the Philadelphia Convention had been adopted.

Mason was not opposed to the idea of a strong central government. He was among those who believed that things could not continue on in the way they had under the Articles of Confederation.

Yet, he also believed that the defects which he had outlined with respect to the Philadelphia Constitution could easily be fixed prior to the ratification conventions. Furthermore, apparently, until such flaws were corrected, he did not feel he could lend his signature to the Philadelphia Constitution.

In October 1787, following the termination of the Philadelphia Convention, Mason sent a somewhat revised list of his foregoing criticisms to Washington. During that communication, Mason indicated that he was not interested in preventing the Philadelphia Constitution from being adopted, but, rather, he simply wanted to improve the document.

On another occasion, Mason expressed his fervent hope that all of the state ratifying conventions would meet at the same time and be able to communicate with one another for the purpose of developing a coherent and consistent list of amendments that could be incorporated into the Philadelphia Constitution and be adopted by America. His hope was unrequited.

During the ratification debates, there were two groups who were proponents of the idea of amendments. One group – to which Mason belonged – wanted amendments to be made prior to any ratification vote, whereas the other group wanted amendments but were prepared to accept the promise that such amendments would be addressed at the earliest convenience of the first Congressional session.

Consequently, not everyone who ended up voting in favor of ratifying the Philadelphia Constitution believed that such a document was acceptable as it was. The existence of the aforementioned second group of advocates for amendments played a fundamental role in why the Philadelphia Constitution was ratified rather than rejected because across much of America, the majority of people were opposed to the Constitution as it had been written in Philadelphia.

George Mason continued his efforts to introduce amendments into the Philadelphia Constitution during the ratification convention in Virginia. He, along with a number of other delegates – including Patrick Henry – wanted amendments to be incorporated into the Philadelphia Convention before any ratification vote was taken, but they were overruled by a coalition consisting of those who were proponents of the Philadelphia Constitution-as-written, together with those who were not proponents of the document in its current form but who were prepared to have faith that the first session of Congress would address their concerns.

Once again, Mason voted to reject the proposed constitution. Once again, he came out on the short end of the vote.

Mason was fairly bitter with respect to the ratification vote. Moreover, a number of people felt Mason had behaved badly, via intemperate speech, both during certain stages of the ratification convention as well as afterwards.

Among other things, Mason considered Edmund Randolph – who had stood with Mason in rejecting the Philadelphia Constitution during the final vote of the Philadelphia Convention – to be something of a quisling. Apparently, prior to the start of the Virginia ratification convention, Randolph had received a letter from Governor George Clinton of New York which suggested that, in some fashion, New York and Virginia should co-ordinate their efforts during the ratification process in relation to the Philadelphia Constitution, yet, Randolph had not disclosed the existence of such a letter to the ratification convention.

Conceivably, Governor Randolph might have thought that introducing such a letter into the Virginia ratification convention would constitute an inappropriate sort of interference in the ratification process. On the other hand, such pro-ratification advocates as George Washington – who was not participating in the Virginia convention – thought nothing of writing a letter (at the urging of James Madison) to a Maryland ratification delegate (Thomas Johnson) in the hope of inducing the latter individual to work to make sure that Maryland did not adjourn its ratification convention since this might affect what went on in both South Carolina and Virginia.

On the other hand, it is also possible that Governor Randolph did not inform the Virginia ratification convention concerning the existence of the letter from Governor Clinton of New York because Randolph was fairly

young and still had political ambitions. If so, Randolph – like Governor John Hancock of Massachusetts – was willing to place his own self-interests above the possible interests of people in Virginia and elsewhere in America in relation to the ratification issue.

In any event, earlier in life, George Mason had been one of the primary architects of both the Virginia Constitution and its Declaration of Right. A number of years later George Mason had a tremendous impact on the structure and wording of different sections of the Philadelphia Constitution, and, as well, he had assumed a leading role during the Philadelphia Convention that led to the generation of such a document.

In fact, some historians believe that Mason had a role at the Philadelphia Convention which was equal to that of: James Madison and Edmund Randolph, both who were from Virginia; Benjamin Franklin from Pennsylvania; James Wilson from Pennsylvania; William Patterson from New Jersey; and Rufus King from Massachusetts. Yet, Mason rejected the very document on which he had worked so assiduously and that he had played a leading role in helping to shape in different ways.

What is one to make of Mason's intentions concerning the possible relationship between the Philadelphia Constitution and the meaning that subsequent generations should give to that document? On the one hand, there can be little doubt that George Mason was one of the Founders/Framers of the Philadelphia Constitution, but there also can be little doubt that Mason harbored considerable ambivalence concerning that very same document … sufficiently ambivalent that he rejected it twice.

The views of Madison, Jefferson, Hamilton, and Mason bear a family resemblance to one another – that is, they are connected together by a set of overlapping interests and concerns, and, yet, when one begins to examine what they each believed concerning the nature of governance, there is no underlying themes of commonality that ties them all together. One could add any number of Founders/Framers to this stew of family resemblance, and upon sufficient examination, one would come to the conclusion that there really is no underlying theme of commonality that ties them altogether in a coherent and consistent fashion … despite the presence of similar terms and ideas that populate their writings and speeches.

This absence of an underlying or essential commonality constitutes a significant problem for anyone who seeks to argue that: (1) The Founder/Framers collectively intended 'this' or 'that' by what they said or did'; or, alternatively, (2) based on such 'precedents', later generations are justified in claiming that the meaning of the Philadelphia Constitution can be clearly stated in terms of what kind of democratic document it is. Rationalizations can be given as to why this or that action or policy is "necessary and proper" in terms of things that the Founders/Framers said or did, but rationalizations are not the same thing as justifications.

Chapter 4: Echoes of Revolution

The ratification of the Philadelphia Constitution was not a victory for democracy even though more people had been permitted to participate in such a process than had ever been the case with any previous proposal for self-governance. Aside from the illegalities and irregularities that permeated: (1) the Philadelphia Convention, (2) the actions of the Continental Congress subsequent to its receiving that document, as well as (3) the ratification process (e.g., the states had no authority under the Articles of Confederation to authorize and organize such ratification conventions), there were other anti-democratic considerations entailed by the Philadelphia Constitution.

For instance, with respect to the four main components of the newly ratified constitution (the Executive, the House, the Senate, and the Judiciary), the only component that: 'We the People,' had some degree of control over involved electing representatives to the House. The President would be elected through The Electoral College; the members of the Senate would be chosen through the state legislatures, and the members of the Judiciary would be nominated by the President through the advice and consent of the Senate.

The Philadelphia Constitution provided 'We the People' almost no control over their alleged form of self-governance. Moreover, there also had been criticisms of the Philadelphia Constitution's provisions for apportioning representatives to the House… criticisms that had been advanced during: the Philadelphia Convention, the Continental Congress in New York, many state legislatures prior to the establishing of ratification conventions, as well as, at least, ten of the ratification conventions.

More specifically, throughout deliberations ranging from Philadelphia to the ratification conventions, the apportionment process that linked the number of representatives to the size of population had been continuously criticized as not being sufficiently representative of: 'We the People.' More representatives were considered to be necessary to properly represent the diverse views and communities that existed in America, and, therefore, there was a general consensus that the ratio of representatives to population should be altered in some way.

In addition, there was the problem of representation itself. How does a given elected congressperson represent the views and interests of both the majority and the minority … especially when neither segment of the electorate was likely to be uniform in its perspectives?

No person can properly represent the soul of another human being. Consequently, how could one individual possibly represent the souls of thousands of individuals?

Some individuals might have their interests represented, but many more individuals stood an excellent chance of not having their interests represented. So, the question arises: In what sense can one speak of self-governance if millions of people have little, or no, control over the issue of governance … even with respect to the one facet of the Philadelphia Constitution – namely, choosing representatives to serve in the House -- that did throw a small democratic bone to the public? Therefore, for the most part, the Philadelphia Constitution was largely antithetical to democratic issues because, by and large, 'We the People' were pretty much left out of the process.

The Preamble to the Philadelphia Convention did mention the idea of securing "the blessings of liberty to ourselves and our posterity." However, it was anyone's guess what this actually meant … especially, in view of the fact that the Philadelphia Convention, the Continental Congress, the state legislatures, and the ratification conventions had made self-governance almost entirely dependent on the whims of those who were in power.

The individuals who held elected or appointed office might, in some sense, be said to have a potential for self-governance. Unfortunately, this potential belonged to virtually no one who fell beyond the horizons of such a power elite.

As the new federal government was being put together through, among other things, the processes of appointing senators and holding elections for Congress, Patrick Henry – who despite losing the ratification vote remained a force with which to be reckoned in the Virginia state legislature – took steps to ensure that James Madison would not be one of the next senators from Virginia. Henry was opposed to Madison because during the state ratification convention, Madison had made it

clear that he was firmly committed to the position that there should be absolutely no changes to the Philadelphia Constitution prior to its ratification.

Once the new Congress went into session, Henry had no faith in Madison's willingness – if the latter were a Senator -- to sincerely work to bring about the sorts of amendments to the Philadelphia Constitution that were considered of importance. Consequently, Henry helped to arrange for the Virginia state legislature to appoint William Grayson and Richard Henry Lee to the United States Senate – both of whom had been resistant to the adoption of the Philadelphia Constitution-as-written and who could be trusted to work toward helping to institute the requisite kinds of amendments when the Senate began its deliberations about a variety of issues – including, hopefully, amendments -- in the near future.

Shut out of the Senate, Madison decided to run for the position of Congressman. His opponent was James Monroe.

Monroe had a position with respect to the issue of amendments that was somewhere in between the perspectives of Madison and Henry. In other words Monroe was not as radical as Henry was on that matter, but neither was he as conservative concerning that topic as Madison appeared to be … at least based on the latter's statements during the ratification convention.

The issue of amendments was critical to the congressional race between Monroe and Madison. The people wanted amendments.

Therefore, one of the first obstacles confronting Madison was to explain why people should elect him to congress if he was as opposed to amendments as his performance in the state ratification convention had made him seem to be. Despite Madison's professed dislike of the whole business of electioneering, he demonstrated his talent for nimbleness in such matters when he became, possibly, one of the first flip-floppers in American political history.

Madison explained – mostly in the form of letters rather than speeches --that, originally, he was against the idea of amendments because he believed that ratifying the Philadelphia Constitution-as-written took precedence since he was trying to prevent the dissolution of the country that he believed the subject of amendments might help to bring about. Now, however – meaning in the context of an election – he

felt it would be appropriate for amendments to be incorporated, in some fashion, into the fabric of the Constitution.

Moreover, Madison felt that the most effective way to tackle the matter would be through Congress rather than by means of a Constitutional Convention that might be organized for this kind of purpose. Although the newly ratified Constitution made provisions for calling such a convention in order to discuss the issue of amendments, this sort of convention could not be initiated until two-thirds of the states had asked for this to be done – and, then, there would be further delays while discussions and the passing of relevant resolutions took place during such a convention, whereas the newly organized Congress would soon be in session and could deal with the matter much more quickly and efficiently.

Madison was in favor of a variety of amendments – especially ones that resonated with his earlier efforts in the state of Virginia that sought to ensure freedom of religion and conscience for everyone. On the other hand, the one amendment that he opposed was any attempt to interfere with the Constitution's ability to directly tax the states even though many people wanted to change that provision and make it necessary for the federal government to petition the states for such funds.

For a number of reasons, Madison was against the idea of the federal government having to make requisitions to the states in relation to taxation. He felt such a process of requisitioning would become entangled in a host of inequities in which some states would pay their taxes, while other states either would not pay their taxes at all or would pay less than the requisitioned amount … and such inequities would, in turn, lead to hostilities amongst the states.

Furthermore, Madison believed that those sorts of potentially inequitable arrangements might make America vulnerable to attack. For example, if other countries sensed that the United States would have trouble raising money through such a requisitioning process, those countries might attack the United States believing that America would not be able to raise the money that would be necessary to fight a war.

Madison won his political contest against Monroe by a little over 300 votes. Only about 40% of the nearly 5,200 eligible voters turned out for the election, and although the conditions on election day (cold and snowy) might have kept some people away from the polls, the fact is that

even under the best of conditions, those participating in elections tended to run between 20 and 40% of eligible voters ... with the majority of elections hovering toward the lower registers in many contested elections.

During the election, Madison indicated that with the exception of the direct tax issue, he was receptive to any sort of amendment that might alleviate the concerns of the people as long as he did not consider such amendments to be dangerous. During the ratification convention, however, Madison also had indicated that he considered any set of amendments directed toward the securing of fundamental rights to be dangerous, if not unnecessary.

Madison might have believed that such a set of rights was not necessary because, on the one hand, many states (but not all) did have declarations of rights connected with their states and, therefore, doing the same thing on the federal level could be considered to be somewhat inefficient, if not problematic. On the other hand, Madison might have felt that Section 4 in Article IV of the Constitution also made such concerns about essential rights unnecessary because the federal government guaranteed every state a republican form of government, and, surely – or, so, the theory went -- republicanism would protect people against the sort of tyrannical governance that might lead to the abuses of essential civil liberties.

The reason why Madison considered such rights to be “dangerous” might – as noted earlier -- have had something to do with his experiences in the Virginia legislature. After all, that state did have a declaration of rights associated with its constitution, and in Madison’s opinion the people – in the form of this or that kind of majority -- were running amok, and, consequently, he didn’t want the same sort of problem occurring on the federal level.

In addition, Madison believed that the limited character of the enumerated powers of Congress – none of which Madison believed were capable of transgressing against the basic rights of individuals – would not undermine civil liberties. However, as pointed out previously, the limited authority of the Philadelphia Convention had not prevented its members from running roughshod over the rights of Americans when it ignored the Articles of Confederation and the Continental Congress.

In an exchange of communications between Jefferson and Madison that occurred between July and October 1788, Jefferson had criticized the Philadelphia Constitution because of its lack of a bill or declaration of rights. Madison responded by pointing out that there had only been two states – North Carolina and Virginia – which specifically sought some sort of bill or declaration of rights in the realm of civil liberties … although a number of other states had alluded to such rights among their criticisms of the Philadelphia Constitution that were put forward during their respective ratification conventions.

While Jefferson tended to agree with Madison – although many other individuals did not share the opinion of the two individuals on this matter -- that the issue of direct taxation did not violate any basic rights of the people, nonetheless, Jefferson believed some sort of bill of rights or declaration of rights was important and necessary. Moreover, Jefferson was not only interested in freedoms involving the press and religion (or conscience), but, as well, he wanted to see rights instituted against monopolies and standing armies.

Jefferson believed that every individual deserved such protections from the possible excesses of any government, whether in America or elsewhere in the world. Madison, on the other hand, did not consider that the people needed protection from the federal government since he believed – based on his experiences in the Virginia State assembly – that people required protection from those majorities that thought little about abusing the rights of minorities.

Given that every election generates a majority and a minority, one had difficulty understanding how Madison seemed to miss the obvious connections among governments, majorities, and the abuse of rights. Of course, Madison was a true believer when it came to the idea that any government that practiced the philosophy of republicanism would never abuse anyone's rights, and, therefore, it never appeared to occur to him to wonder about what would happen in those instances in which the people in a federal government might not be committed to those republican principles.

For Madison, the problem was people not government. Yet, every government consists of people.

As long as a given bill of rights or declaration of rights did not interfere with the essential powers of the federal government, Madison

claimed that he always had been open to the idea of amendments concerning basic rights. Nonetheless, every power granted to the government under, say, Article I, Section 8 of the Constitution enabled the federal government to institute public policies that were extra-constitutional in character and were, thereby, able to undermine, extinguish, diminish, and thwart the exercise of individual rights.

For example, the federal government had the power to raise and support armies, as well as to provide and maintain a navy, and to make provisions for calling forth the militia. However, what if the purposes for which: Armies were raised, navies were maintained, and militias were called forth, was for purposes of conducting unjust wars that affected the rights of individuals – both in America and elsewhere?

The very federal powers that Madison did not want to be limited in any manner could be used in ways that were antithetical to the rights of 'We the People.' Consequently, there was a problem surrounding Madison's contention that he always had been open to the idea of rights as long as they did not impinge on the powers he believed were necessary to conduct effective governance.

Powers and rights were potentially antagonistic to one another Even though Jefferson seemed to understand this, Madison apparently did not share his friend's understanding of things.

Madison did champion the right of conscience. On the other hand, he felt that effective republican governance was more important than rights, and, as a result, when push came to shove, rights should take a back seat to the activities of government, and since he believed that there was negligible, if any, conflict between the government's exercise of power and an individual's claim to rights, then whatever abridgements to rights that occurred during the process in which the federal government implemented its strictly enumerated rights would be minimal, if not non-existent.

From Madison's perspective, the foregoing set of priorities made sense since he believed that a properly functioning republican government would act in the best interests of 'We the People' and, thereby, protect their rights. Unfortunately, the early Madison couldn't quite grasp the problems that could ensue when federal government was not republican in character or when that which the federal government

considered to be in the best interests of the people was not conducive to enhancing the general welfare of the latter.

By arguing in the foregoing fashion, Madison became somewhat confused in his sense of priorities. More specifically, Madison believed that the people should be subservient to the national government's exercise of constitutionally authorized and enumerated powers, rather than supposing that the national government should be subservient to the rights of 'We the People'.

Given that: (1) The Philadelphia Convention, (2) the constitution which arose from that assembly, and (3) the ratification conventions that adopted such a document, were not really about 'We the People' but, instead, were entirely about a group of people – those who were proponents of the Philadelphia Constitution-as-written -- who were seeking a path through which the 'natural aristocracy' would be able to acquire the powers needed to govern according to their beliefs, Madison's foregoing position is not surprising. Before he had a certain limited epiphany in the late 1790s, Madison had been someone who was all about effective governance according to the manner in which the natural aristocracy understood things.

Who were: 'We the People,' that they should object to the manner in which such a 'natural aristocracy' sought to exercise its enumerated power? For the early Madison, the rights of the natural aristocracy with respect to being able to exercise enumerated powers were more important and necessary than were the rights of 'We the People' that might interfere with the public and private policies of the power elite.

Since the Virginia congressional election that Madison won had been fought around the issue of amendments, the newly elected representative from Virginia -- to his credit – tried, early on, to find ways of introducing the topic into the congressional docket. Yet, almost everyone in the House, including people who were in favor of the idea of amendments, considered other matters to be far more important and pressing.

Among other things, the entire day-to-day machinery of government had to be established. While the Constitution had outlined some of the general activities of the House and Senate, the precise manner through which to accomplish such things required considerable work in order for those bodies to become viable modalities of governance.

Eventually, after a delay or two, Madison was able to capture the attention of his colleagues for a sufficiently long enough period of time to propose nine amendments. One of the reasons why Madison was persistence with respect to his attempts to advance the issue of amendments was because he was afraid that if the people saw Congress continuing to delay consideration of possible amendments, the people might begin to suspect that the talk of promised amendments during the ratification process had been nothing more than a subterfuge … which, in a way, actually had been the case.

Many – but not all -- of the rights that people have come to associate with the current Bill of Rights were part of the 4th amendment proposed by Madison. For example, the right to assembly, bear arms, along with freedoms concerning the press, speech, and conscience were present in his 4th amendment.

In addition, Madison proposed that people should be free from searches and seizures of an unreasonable nature. Moreover, those who stood accused of crimes should be afforded certain kinds of rights during judicial proceedings … such as 'due process.' This was a term that he borrowed from the New York ratification convention.

While Madison's first amendment indicated that the people had an inalienable right to change government or reform it, the language of that amendment excluded the more revolutionary language of both the Declaration of Independence and the Virginia Declaration of Rights (both written in 1776) which indicated that people not only had the right to change and reform government, but, if necessary, the people had the right to abolish such government as well. The republican biases at work in Madison rendered him resistant to the idea that any government being operated in accordance with republican philosophy should ever have to be abolished.

The first amendment proposed by Madison also contained a sentence indicating that government was instituted by the people and ought to be instituted on their behalf as well. While, undoubtedly, there was a great deal of sincerity underlying such a contention, there is also considerable evidence to indicate that Madison was saying this as a member of the natural aristocracy who believed they knew what the people needed with respect to the exercise of government.

In another amendment – the fifth -- Madison gave expression to this belief that the real source of potential danger to the rights of people was a function of the states rather than the federal government. This amendment held that no state could undermine the rights of conscience, freedom of the press, or the right to trial by jury in criminal cases.

In conjunction with this amendment, Madison noted that not every state constitution contained provisions to protect such rights. Consequently, Madison's fifth proposal for an amendment would serve as an extended form of protection (both with respect to those states that had incorporated protection of certain rights into their state constitutions, as well as those states that had no such protection) on behalf of the people against the possibility of abuses by state governments.

Again, there seems to be a blind spot present in Madison's thinking about governance. Due to his experiences with the Virginia state legislature, Madison felt that the majority in the states were not to be trusted with the reins of government.

Moreover, there also seemed to be problems of trust on the national level in relation to the Continental Congress. After all, if such were not the case, then, perhaps, Madison might have let the entire membership of Congress in on what he, and a few others, had in mind with respect to the Philadelphia Convention prior to the beginning of the latter assembly. Furthermore, if the element of trust had been present concerning government on the national level, the Philadelphia Convention would not have been conducted in secrecy.

Consequently, one wonders why Madison continued to believe that the greatest threat to the rights of the people was entirely a function of the manner in which state legislatures conducted themselves … that the people would have nothing to fear from the activities of the newly conceived federalized government. There are several possibilities – both of which have been touched on previously -- which might account for Madison's thinking with respect to such matters.

To begin with, Madison believed he was a member of a natural aristocracy that was – well – better than everyone else. They considered themselves to be the smartest, most talented, most insightful, most politically astute people in any given room.

Secondly, Madison and his colleagues were true believers with respect to the philosophy of republicanism. This philosophy was supposed to be the moral backstop which ensured that such individuals would treat those whom they governed in an unbiased, disinterested, equitable, judicious, honest, truthful, and rational manner.

They were so full of their own hubris that they just couldn't conceive of themselves behaving like the self-interested mobs known as 'state legislatures' or the self-serving members of the Continental Congress. The members of the natural aristocracy were too intelligent, reasonable, and moral for such problems to be manifested through them.

According to Madison, if the republican, natural aristocracy were in charge, 'We the People' would have nothing to fear from the federal government. Consequently, Madison believed there was no need for amendments that protected the people against the federal government.

There was an essential disconnect present in Madison's understanding of such issues. Apparently, he saw nothing wrong with what had taken place in Philadelphia or with his leading role in those activities. Apparently, Madison saw nothing wrong with what took place in the Continental Congress following the Philadelphia Convention or with his leading role in that process. Apparently, he saw nothing wrong with the way various members of the Philadelphia Convention – including himself -- sought to manage what went on in the ratification conventions – both in their own states as well as other states – rather than recuse themselves and let 'We the People' decide their own fate.

Madison was part of a minority – the natural aristocracy – which told itself that it had a responsibility to 'We the People' to protect – via republican governance – the people against various self-interested majorities. In actuality, Madison was part of a minority that wanted to arrange governance in a manner that would leverage the power it acquired through elections to be able to have a shot of being masters of its own fate while rationalizing its activities as being conducted on behalf of the people.

'We the People' had a great deal to fear from such a deluded minority on the federal level … just as 'We the People' had a great deal to fear from the minorities on the state level who were seeking to do the very same thing that Madison was interested in doing on the federal level. Contrary to what Madison believed, the problem wasn't a matter of which

level of governance one was engaging or being engaged by. The essential problem was a function of a belief system (whether held by a 'natural aristocracy' or some other similar self-serving idea) which assumed that any given group of people had a right to govern 'We the People.'

Madison's sixth and seventh amendments revolved around the judiciary. The former amendment concerned the issue of appeals in relation to the federal courts, while his seventh amendment sought to address concerns that had been raised in various ratification conventions … including the right to a trial by jury in civil cases.

A further proposed amendment from Madison is very similar to the 10th amendment of the current Bill of Rights. More specifically, Madison wanted to introduce a new article VII into the Constitution that read: "The powers not delegated by this constitution, nor prohibited by it to the states, are reserved to the States respectively." A potentially crucial difference between Madison's proposal and the actual wording of the 10th Amendment concerns the words: "or to the people" that were later added during the congressional debate concerning Madison's proposed amendments (according to some people this was done by Roger Sherman, while others maintain that the words were added by someone in the Senate) … an addition that, apparently, was accepted without comment by the other members of the congressional body through which the words arose -- somewhat arbitrarily, and mostly for the sake of convenience in the following discussion, I will attribute the additional phrasing of: "or to the people," to Sherman)

What is one to make of the phrase: "or to the people"? Some individuals have argued that the phrase is just an alternative way of referring to the "states" … that whatever powers were not delegated to the federal government or prohibited to the states belonged to the states or the people of the states.

However, there is a – perhaps crucial -- difference between the states as forms of governance and the people who live in such geographical locations. If the other members of Congress believed that what Sherman meant by the phrase: "or to the people," was just another way of referring to state forms of governance, why didn't they object and point out that the added words were repetitious and added nothing to Madison's proposal?

One must also take into consideration the fact that the Bill of Rights is almost entirely about people considered quite apart from states. With the exception of a reference to the idea of a well-regulated militia being necessary to the security of a free state – which makes the state dependent on the right of the people to bear arms, and, therefore, is not really about the right of states, per se – the 10th Amendment is one of the few places in the Bill of Rights that mentions the states ... although a passing, indirect reference to the word "state" does appear in the 6th Amendment.

Consequently, those individuals who consider the 10th Amendment to be exclusively about states' rights have a considerable burden of proof with respect to the problem of showing why such an interpretation should be given preference over the idea that all those powers which have not been delegated to the federal government or prohibited to the states also belong to the people quite independently of the states. The 9th amendment stipulates that: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people," and the word "states" appears nowhere in this latter amendment.

Given the foregoing considerations, one might reasonably conclude that Sherman was not talking about states' rights when he suggested that the phrase "or to the people" be added and, therefore, the phrase was not just an alternative but repetitive way of referring to states' rights. Given that the other nine amendments are exclusively about the rights of individuals, it does not seem reckless to suppose that Sherman's phraseology was trying to underline the fact that it was the rights of the people, apart from government, that were being endorsed, in the 10th Amendment … that it was the people in the states – not the form of governance in the states – to whom the rights in the 10th Amendment were being allocated.

However, for the sake of argument, let's suppose that Sherman really was using the phrase: "or to the people" as just another way of referring to the rights of states with respect to whatever powers had not been delegated to the federal government or been prohibited to the states. After all, the idea of: 'Powers,' are generally associated with the activity of governance rather than the activity of people apart from such apparatus.

In fact, the idea that the people had power quite independently of government might be considered to be 'dangerous'. Hadn't Madison been concerned about extending any rights to people that might impact in a problematic way upon the enumerated powers of the federal government?

On the other hand, the very first amendment proposed by Madison indicated that all power belongs to, and is derived from, the people. If Sherman intended – and the other members of Congress indicated their agreement with such an intention through the absence of any comment concerning Sherman's phrase of: "or to the people" – that only the states, and not the people, retained whatever powers were not delegated to the federal government or prohibited to the states, then the people were being denied powers and rights that were inherent not only in Madison's first proposed amendment, but, more importantly, the people were being denied powers and rights that were inherent in the strategy of the Philadelphia Convention to by-pass the Continental Congress, the Articles of Confederation, and the states legislatures through the process of ratification conventions that were elected by, and supposedly were representatives of, 'We the People' … so that the authority for the Philadelphia Constitution came from the people and not from existing forms of government, whether state or national in character.

If one were to suppose that Sherman intended his phrase: "or to the people" to be a synonym for state government, then Sherman really didn't understand what was going on with respect to the Philadelphia document he signed in September 1787, or in relation to the resolutions that were passed by the Philadelphia Convention indicating that ratification conventions should be organized so that 'We the People' could authorize the proposed constitution rather than be authorized by the Continental Congress and the state legislatures. The better, more consistent, and simpler assumption is to suppose that the phrase: "or to the people," referred to the people independent of state governments.

The added phrase was about the rights of people, not the right of states. States were mentioned in the 10th Amendment only as subsidiary beneficiaries of the power and rights that belonged, first and foremost, to the people.

The final component in Madison's proposed nine amendments was a suggestion that Article VII in the Philadelphia Constitution should be

renumbered. It would now become Article VIII and follow Madison's proposal for the newly worded Article VII concerning the disposition of those powers that had not been delegated to the federal government or prohibited to the states.

One might ask why Madison had not included a phrase like: "or to the people" in his proposed amendment concerning the disposition of powers that were not specifically granted to the federal government or prohibited to the States. In fact, Madison said that such additional powers belonged to the "States respectively."

If one were to suppose that Madison's term "States respectively" was intended to refer to the form of governance in the different states, then this raises several questions. For example, given Madison's antipathy toward the tyrannical excesses of state legislatures, why would Madison want to reserve rights and powers to the very state legislatures that he felt were the source of many abuses in relation to civil liberties? Moreover, given the Philadelphia Convention's aforementioned strategy to call upon 'We the People' with respect to acquiring authorization for its constitutional proposal, why would Madison suddenly become an advocate for states' rights with respect to the disposition of whatever powers and rights that might be left over after eliminating those powers that had been specifically delegated to the federal government or prohibited to the state governments?

One might answer the foregoing questions by claiming that Madison was playing politics when he phrased his 10th Amendment-like proposal in the way he did – that is, by referring to the "States respectively rather than adding a Sherman-like phrase of "or to the people". In other words, Madison left his proposal ambiguous so that the States and the people could fight it out among themselves about what Madison might have meant so that the federal government would be left in peace to activate its enumerated powers in the manner it saw fit.

If Madison was playing politics via his ambiguous wording of his proposed amendment concerning the disposition of powers not delegated to the federal government nor prohibited to the states, then Madison was guilty of acting in a way that was inconsistent with republican philosophy. Moreover, Madison would have been in conflict with his own proposal for a first amendment that indicated how all power belonged to, and was

derived from, the people … not the "States respectively" – unless Madison meant by this latter phrase: "We the People."

One might further argue that it really doesn't matter whether, or not, the phraseology used by Sherman (or whoever it actually might have been) and Madison was only intended to allude to the powers and rights of the states as forms of governance rather than to the role of the states as the geographical location where 'We the People' lived. Through the resolutions that had been accompanied the Philadelphia Constitution to the Continental Congress and the respective state legislatures, the signatories to that document were acknowledging that all authority and power came from the people and not from governments.

To renege on such a basic acknowledgement by subsequently deciding to give priority to state governments over the rights and powers of the people independently of forms of governance, would be an essential violation of their alleged commitment to the philosophy of republicanism. Consequently, Sherman and Madison either meant what they said in terms of all rights and powers belonging to the people -- and not to the states as forms of governance -- or they were seeking to perpetrate a mammoth defrauding of 'We the People.'

Whatever the case might be with respect to the foregoing considerations, Madison did not put all his proposed amendments together as presently is the case in relation to the Bill of Rights. Rather, he wanted to insert his amendments directly into various appropriate articles and sections of the Philadelphia Constitution.

The final form of the Bill of Rights – the one with which we are familiar -- came about as a result of the manner in which the House and Senate engaged Madison's proposed Amendments together with the nature of the ratifying votes by the states after receiving the set of proposed amendments. To begin with, a special committee – consisting of one delegate from each state -- was formed by the House to study Madison's suggestions … a committee to which Madison was appointed.

With certain changes in wording, the committee accepted some of Madison's proposed amendments. However, some of Madison's other, proposed suggestions were rejected.

In addition, the special committee went through a number of the amendments that had been proposed by various ratification conventions.

Many of those suggestions were deemed to be inconsistent with one another and others were considered to be too dangerous … although the nature of that danger (or for whom) was never fully elaborated upon.

Once the special committee's report was released to the House, the report was debated. Eventually, a list of 17 amendments was forwarded to the Senate for consideration.

Moreover, the amendments being forwarded to the Senate were attached to the end of the Constitution rather than being incorporated into the body of the Constitution as Madison had wanted to do. During the House debates concerning the report of the special committee on amendments, Roger Sherman had argued that the proposed changes should be placed at the end of the Constitution because the people had ratified the Philadelphia Constitution-as-written (as if the people really had any choice in the matter), and, therefore, according to Sherman, there was a certain quality of sacredness that permeated the original document.

Unlike the House, debates and discussions in the Senate were not open to the public. Consequently, an accurate record does not exist with respect to the Senate debates involving the proposed amendments that had been forwarded to that legislative body from the House.

The Senate made a variety of changes to the House proposals. Those changes were agreed to when a set of 12 amendments was returned to the House.

George Washington sent the congressionally approved set of amendments to the states for purposes of being ratified. This took place on October 2, 1789 approximately five months after Madison first broached the subject of amendments to the House … a timeline that tends to undermine the fears of those who were in favor of ratifying the Philadelphia Constitution-as-written because they believed that trying to add amendments would take too long and would be too complicated a process.

Many people, including Madison, were not entirely happy with the set of amendments that emerged from Congress. Madison was most perturbed by the fact that his attempt to protect some of the civil liberties of people from the actions of the states was removed from the final set of amendments.

However, Madison had honored the promise he made during the congressional race in Virginia concerning the idea of advancing the cause of amendments during the first session of Congress. Madison also had honored the understanding of the Virginia ratification convention that indicated that whoever was elected to Congress should introduce the issue of amendments into the business of Congress at the earliest time of convenience.

Aside from the issue of Madison's wanting to live in accordance with the republican principle to honor one's promises, perhaps the primary motivation underlying Madison's push for amendments was his desire to end the speculation that might be taking place among the people with respect to their concerns about the sincerity of the intentions of the new government in relation to the clamor for amendments that had arisen during various ratification conventions. By advancing the cause of amendments, Madison felt he was removing any lingering resistance that might exist among the people with respect to the activities of the federal government, and the newly elected federal government would now be able to go about its business with relatively little opposition.

North Carolina still had not ratified the Constitution. Its earlier ratification convention had been adjourned.

The fact that Congress had passed a set of 12 amendments appeared to play a significant role in the North Carolina ratification vote. On the third day of its reconvened deliberations, the convention ordered 300 copies of the Philadelphia Constitution plus the recently added amendments, and a couple of days later, the North Carolina ratification convention adopted the Constitution with a vote of: 194 for and 77 against, in relation to the Philadelphia document.

However, the presence of the congressionally approved amendments did not prevent the North Carolina ratification convention from posing a further set of eight amendments that they wanted to be considered for possible inclusion in the amended Constitution. However, the presence of such additional amendments were not made a condition for North Carolina's acceptance of the Philadelphia Constitution, and, consequently, those amendments were never really seriously explored or debated by anyone in the new federal government.

Eventually, only ten amendments – what are, now, referred to as the Bill of Rights (although those amendments were not consistently referred

to as a Bill of Rights until after the Civil War had ended) met the requisite standard in 10 of the 13 states called for by the Constitution. Two amendments of the original 12 (these were the first two amendments that involved, respectively, a proposal for increasing representation as population increased and a proposal concerning pay raises for members of Congress) that had been forwarded by Washington to the various states did not receive the necessary three-quarters vote from the states.

Although the amended Constitution went part of the way toward satisfying the criticisms that many people had concerning the Philadelphia Constitution, there still were a variety of sources of dissatisfaction concerning that amended document and whether, or not, it gave expression to a viable and judicious means for realizing the idea of democratic self-governance. Madison might have helped mute, to a certain degree, the sound of such dissatisfaction, but there were many individuals on both sides of the Atlantic who continued to push the envelope in relation to the nature and meaning of democracy.

Roger Sherman was the only individual among the Founders/Framers to be a participant in all of the crucial assemblies that led to the formation of the United States – namely, the Continental Association (which had been authorized by the First Continental Congress in 1774 to implement a trade boycott against England), the Declaration of Independence (he was on the Committee of Five that drafted the Declaration), the Articles of Confederation, and the Philadelphia Constitution. Thomas Paine had not participated in any of the foregoing assemblies.

Paine did not help write, or sign, the Declaration of Independence. He did not help author the Articles of Confederation. Moreover he did not participate in the Philadelphia Convention in the summer of 1787 … although he had been invited to attend the latter assembly. Yet, Paine deserves to be included among the Founders/Framers of the United States.

His extended pamphlet – *Common Sense* – written anonymously under the name of "An Englishman" and first released in January 1776 played a fundamental role in helping to induce Americans to be willing to break with England and form a new country. George Washington encouraged his troops to read Paine's *Common Sense*, and John Adams

once intimated that if had not been for the pen of Thomas Paine, George Washington's sword would have served no purpose.

'Officially', *Common Sense* sold more than 100,000 copies – a quantity that far exceeded what was usual for works of this kind in the 18th century. Unofficially, there might have been three or four hundred thousand more bootleg copies of his work that were distributed across America … meaning that a quarter, or more, of the people in the United States might have had access to his ideas.

How much of *Common Sense* was unique to Thomas Paine is difficult to determine. In one form or another, most of the ideas that appear in his booklet – as well as some of his other writings (e.g., The Rights of Man, *The Age of Reason*, and Agrarian Justice) were in the air on both sides of the Atlantic.

One could go into many taverns and tea houses within the Atlantic world (which includes countries on both sides of that ocean) and hear such topics being discussed. Before the 37-year old Paine – a man who liked to drink -- migrated to America in 1774, he probably participated in numerous discussions in some of the taverns of England where revolutionary ideas of different kinds were frequently explored, and when he arrived in America, the same sorts of discussions were going on in many of the taverns of America.

Aside from the issue of originality, Paine had a knack for being able to express ideas in a form that was understandable to the average person. His words stirred the hearts of common people and intellectuals alike.

35 years later, Paine was a forgotten, if not despised, man. John Adams, who once spoke of Paine in glowing terms, later referred to him as "a mongrel between pig and puppy begotten by a wild boar on a bitch wolf" who had led a life of mischief. Moreover, George Washington, who, as previously noted, once had recommended that his troops read *Common Sense*, wouldn't lift a finger during his presidency to help Paine get out of the French prison to which the latter individual had been condemned for resisting the bloodthirsty turn that occurred at a certain stage of the French Revolution … a revolution that Paine had helped to become a reality (among other things, Paine was appointed to a committee that had been given the responsibility of drafting a new constitution for France).

If not for the efforts of James Monroe -- who, at the time, was serving as the newly appointed American minister to France (Monroe succeeded Gouverneur Morris who, for whatever reason, failed to assist Paine) -- Paine might have been executed by the 'Reign of Terror' that had ascended to power in that country on the coattails of its revolution. Fortunately, Paine managed to stay alive while still in prison for the three or four months that were necessary for him to be rescued by Monroe following the fall of Robespierre in July of 1794.

Paine left the United States and returned to England shortly after being invited to join the 1787 assembly in Philadelphia out of which a proposed constitution eventually would emerge. Short of money, Paine had been attempting to right his financial ship and believed that an iron bridge design he had been working on might have commercial value in England.

Approximately three years after arriving back in England, Paine began to write another *Common Sense*-like book entitled: *The Rights of Man*. This book was a defense of the French Revolution that began in 1789.

In part, Paine's book (which was written in several installments) was a response to the arguments put forth in Edmund Burke's critique of the French Revolution in the latter's: *Reflections on the Revolution in France*. Although Burke previously had spoken in favor of America's fight for independence, he was against the French revolution.

However, *The Rights of Man* also was a critical examination of the monarchical form of government in England, France, and elsewhere in Europe. In addition, Paine's book provided an account of the principles of the American Revolution as an example of the sort of self-governance that stood in contrast to European tyrannies.

Because of Paine's anti-monarchist views, he was considered an enemy of the English political establishment. Consequently, the English government engaged in attempts to discredit Paine in various ways, as well as organized hate rallies that vilified Paine and hung him in effigy.

The Rights of Man sold out and was very popular among the 'common' people. On the other hand, Paine's work was very unpopular among the monarchical and aristocratic power elite.

Interestingly enough, it seemed that the English government was not necessarily opposed to Paine's book in and of itself. Paine, along with other authors of radical books, had been warned by the government that they should publish their works in expensive editions so that the radical ideas would be kept out of the hands of most of the population in England who might become 'agitated' by the ideas rather than examine them without passion and in a disinterested manner.

However, such works did get published in a form that was financially accessible to the general public. The establishment took exception to this and began to attack Paine in a number of ways.

Eventually, Paine was forced to leave England. Subsequently, he was tried in absentia by the English authorities on the charge of seditious libel. If Paine had not escaped to France, he would have been arrested and, quite possibly, executed in England.

Several years after fleeing to France – where he was made a citizen in 1792 and in the same year, despite not knowing the French language, was elected to a seat on the assembly that would bring the French monarchy to an end in the process of establishing a republic -- Paine was arrested for, among other things, refusing to endorse the execution of Louis XVI who had been tried for treason against the French people. During his ten months of imprisonment, Paine began to write *The Age of Reason* that was not only a critique of institutionalized religion and the corrupting influence it had on spiritual beliefs, but, as well, the book advocated the right of people to think for themselves and apply reason during their explorations of spiritual issues.

From the time when *Common Sense* was written to the time when the *Age of Reason* was completed, Paine consistently criticized all forms of tyranny and injustice – whether it involved the government or organized religion. Paine's three main works (*Common Sense*, *The Rights of Man*, and *The Age of Reason*) were among the most seminal writings of the 18th century, eclipsing the influence of any number of other writers of that time, including: Voltaire, Rousseau, Kant, and Burke.

Yet, Paine's stock had fallen so far by June 8, 1809 -- the day he passed away and approximately seven years after returning to the United States – only six people attended his funeral … two of whom were apparently freed slaves. Moreover, instead of eulogizing his role in the American Revolution, Paine was denigrated as a drunken infidel who

might have done some good in his life but had, as well, done a great deal of harm.

28 years earlier, Sarah Franklin Bache, a daughter of Benjamin Franklin, had written in a letter (dated January 14, 1781) that if Paine had managed to die after writing *Common Sense,* this might have been the best thing for him to have done because in her opinion he never again would be able to leave this world with such honor associated with his name. Given the nature of Paine's demise in 1809, there was an unknowing prescience to her observation.

Unfortunately, Paine made the mistake of remaining a revolutionary throughout his life. He was never content with the way things were but aspired, instead, to struggle toward how things might become in the future and sought to inspire other people to travel in a similar direction.

In the years when America was revolutionary in nature – and for the most part this refers to the America of pre-Philadelphia Convention days – Paine's perspective was appreciated. However, that point of view later became unwelcome in England, and after first being appreciated in France, that perspective was also rejected to some extent (Paine was not sufficiently bloodthirsty and revengeful as far as some French revolutionary leaders were concerned), and such rejection was also present when Paine returned to America just after the turn of the century in 1802.

Among other things, in the *Rights of Man*, Paine had argued that civil liberties existed prior to, and independently of, legal systems as well as political or social charters. Consequently, such rights were inalienable and could not be revoked through either political or legal proceedings.

Although Madison and the other participants in the Philadelphia Convention that took place in the summer of 1787 had passed a resolution indicating that all power was inherent in, and derived, from the people and, then, proceeded to use that resolution to justify its call for ratification conventions, the fact of the matter is that a very biased understanding of what such a resolution meant in practical political terms began to dominate America's form of governance. More specifically, the only power of the people that was of interest to most politicians was the capacity of the people to elect government officials, and once such a power was exercised, the people were encouraged not to take -- or

prevented from taking -- a more active role in the oversight of their – according to Paine -- inalienable rights and powers.

Paine believed that any government which did not serve and protect the underlying sovereignty of human beings did not deserve to continue in power. In fact, as far as Paine was concerned, any social institution – not just governance -- that did not assist human beings to realize their individual sovereignty was not serving a proper function in the community.

Unfortunately, beginning with the presidency of George Washington and going forward, Paine's perspective was considered to be largely irrelevant to the process of federalized governance. Although lip-service was paid to such ideas in the rhetorical flourishes that appeared in speeches and newspaper articles, the world of power politics had little use for Paine's ideas.

Paine's perspective was considered to be passé. In truth, the Founders/Framers had not only failed to catch up to Paine's progressive approach to governance, but those individuals sought – whether knowingly or unknowingly -- to ensure that Paine's ideas would never be seriously considered.

Such ideas were considered too dangerous for, and threatening to, the ambitions of those who, via elections, sought to leverage the power of the people to serve the interests and agendas of the elected officials. Paine's ideas were unwelcome because – shame on him – they were about real democracy rather than the sham democracy that had taken hold in the United States after the Philadelphia Constitution was ratified by a: very limited, exceedingly misinformed, and greatly managed segment of 'We the People.'

In *The Rights of Man* Paine criticized the aristocrat-friendly Edmund Burke who claimed that a strong, centralized source of authority (i.e., a monarchy) was necessary in order to be able to regulate the essential tendency of human beings to be inclined toward corruptibility. Furthermore, Burke maintained that the best people to oversee such a process were the nobility who possessed the wisdom to govern properly.

Paine argued that wisdom was not an inheritable trait. Consequently, there was no reason to suppose that the nobility possessed any more wisdom concerning matters of governance than the people did.

Government was an invention of certain minorities – for example, the nobility, military officers, and religious institutions. As such, according to Paine, government was an invention that was designed to deny or dilute the sort of inalienable rights and powers that were available to human beings.

The Rights of Man has been cited by some as constituting one of the most powerfully cogent accounts of American revolutionary understanding that existed in the 18th century. For example, in his book Paine not only wrote about how the American Revolution had dispelled the idea that society must be governed by aristocracies and monarchies, but, as well, Paine described how the American Revolution demonstrated that people were individuals who came into this world with certain inalienable rights that entailed being treated as sovereign human beings.

Furthermore, Paine explained that the American Revolution paved the way for such sovereign individuals to be able to change the shape of government as necessary. In this regard Paine also outlined how the model of the American Revolution gave expression to the idea that the people were responsible for writing constitutions that regulated the manner in which governments could govern the people, and, as well, the people were the ones who could alter such arrangements.

According to the perspective being advanced in *The Rights of Man*, when one combined the natural or innate sovereignty of human beings with their moral and social sensibilities, one ended up with a system that was largely self-regulating. The purpose of government was to assist such self-regulation and, consequently, elected officials were nothing more than transient agents who had a fiduciary responsibility to help the people work toward realizing their individually oriented sense of well-being and happiness.

While the foregoing ideas might give expression to Paine's theoretical understanding of revolutionary America, something 'funny' happened on the way to translating theory into practice. In fact, all of the things about which Paine was trying to warn people in *The Rights of Man* were reflected in the actual practice of democracy – or what passed as such – in America.

In other words, the Philadelphia Convention, the Philadelphia Constitution, and the ratification conventions were all part of an illegal and unauthorized contrivance on the part of the so-called

Framers/Founders in Philadelphia. The purpose of such a contrivance was to construct a means for the 'natural aristocracy' to be able to acquire power so that the latter group could rule over 'We the People' who – except, perhaps, during elections – were, according to the members of the natural aristocracy, inclined toward corrupting self-interests and, therefore, needed to be saved from themselves by a power elite that had the wisdom – thanks to, among other things, the philosophy of republicanism -- to govern over the generality of people and do what would be in the best interests of such a collectivity.

Just as Paine questioned the premise that the genetic nobility of England – or any country – necessarily possessed the wisdom to rule over the 'common' people, so too, being a member of a "natural aristocracy" of self-made men who enjoyed natural gifts of intelligence and talent, did not guarantee that such individuals had a greater access to wisdom than did 'We the People.' The idea of government by a wise "aristocracy" was as much an unjustifiable contrivance in the United States as it was in Europe.

Conceivably, through the rosy colored glasses of republican philosophy, Paine might have given the Founders/Framers the benefit of a doubt with respect to what had transpired in Philadelphia and afterwards. That is, if one were to assume that people had acted, and would continue to act, in compliance with the principles of republicanism, then Paine might have supposed that the Philadelphia Constitution – whatever its flaws were -- could have led in the same direction as did Paine's hopes for revolutionary America.

In addition, Paine was viewing what was going on in America from the distant lands of Europe. At the time Paine wrote *The Rights of Man*, it is uncertain how detailed his understanding was of the circumstances surrounding the Philadelphia Convention or the ratification conventions, and to what extent the Founders/Framers were actually acting in accordance with the requirements of republican philosophy.

Whatever concessions Paine might have granted to the intentions of the revolutionary leaders in America when he wrote *The Rights of Man* in the early 1790s, nevertheless, many, if not most, of those concessions had dissipated considerably by the time Washington refused to help free Paine from prison. Furthermore, much of Paine's dissatisfaction concerning what had taken place in America during Washington's tenure

as president surfaced in his July 30, 1796 letter to George Washington that ended with Paine wondering whether Washington had lost sight of the principles that the President once espoused during revolutionary times or whether Washington ever possessed such principles.

The same wondering could have been directed toward many of the other Founders/Framers who participated in the Philadelphia Convention. Through the Philadelphia Constitution, the American people had been swindled out of their right to institute a form of self-governance that was in accordance with Paine's understanding of how he believed democracy should be.

Instead, American's birthright of inalienable liberties had been traded away. The Founders/Framers had settled for a form of government in which 'We the People': Could not directly choose their president; could not directly select their senators; could not directly choose members of the judiciary; and had only limited representation in the one congressional branch for which the people – or, at least, some of them -- could vote directly.

As noted earlier, Paine believed that inherent in every human being was a social and moral sensibility that made human beings receptive to engaging one another in reciprocally advantageous ways. If this innate sensibility were properly nurtured and permitted to flourish, people would develop the ability for self-governance … free of contrived, invented forms of governance that sought to suppress and deny such capacities among the generality of people.

For Paine, most, if not all of the inequities of society, were a function of the way in which society, commerce, the judiciary, and government were tied to centralized, tyrannical forms of governance such as monarchy. While Paine might not have believed that the foregoing conditions existed in America when he wrote *The Rights of Man*, nevertheless, the newly ratified form of governance in the United States resonated with many facets of Paine's critique of those governments that were dominated by aristocracies and monarchies since many of the inequities that were beginning to appear in America were increasingly becoming tied to whether, or not, one knew anyone in government who could further one's interests.

In *The Rights of Man*, Paine argued that war was the direct result of the manner in which aristocracies connived against, or conspired with,

one another through an array of secret machinations by governing classes that were primarily interested in promoting their own selfish interests. Paine felt that if the nations of the world were freed from such corrupting influences, they would develop means for peacefully engaging in the sort of commerce that would be of benefit to everyone.

Without war, the need for taxes would lessen. With fewer tax revenues available, the likelihood of there being a perceived need to fight wars might dissipate.

Yet, Madison, Hamilton, and Washington – along with the rest of America's 'natural aristocracy' – wanted the power to be able to directly tax the states in order to, among other things, be able to fight whatever wars they considered to be "necessary and proper." In fact, this issue was a persistent theme in a number of the ratification conventions where the proponents of ratification used scare tactics to induce anxieties in those who were left to wonder whether, or not, such advocates of federalism were correct when they claimed that America would invite invasions by foreign countries if the federal government were not given the power to directly tax the states.

The implications of Paine's arguments in *The Rights of Man* were that the availability of such tax revenues merely increased the likelihood of wars being waged. For Paine, this was a sign of the manner in which 'Old Government' operated – taxes were used to pave the road to war, and the spoils of war were considered a means through which to subsidize the luxuries, social standing, and ambitions of the members of those governments.

Wars were also the means through which empires were expanded. Without wars, the ambition for empire-building might lessen.

According to Paine – and this was given expression through *Common Sense* – commerce was the way to enhance ties within a country. Countries should busy themselves with building ties of affection among their citizens via commercial transactions rather than becoming entangled in the affairs of other countries via wars and related conflicts.

Paine's vision – as was true of many of the radical thinkers within the Atlantic world – extended beyond what was going on within the United States. In a series of essays that were entitled: '*American Crisis*' -- and that began on December 19, 1776 and were written throughout the war

between America and England -- Paine maintained that the American Revolution was but a foretaste of events to come around the world … events through which people everywhere would be able to realize their inalienable sovereignty as individuals.

Furthermore, at certain points in the aforementioned '*American Crisis*' essays, Paine stipulated that he was not writing primarily for the American Revolution. His concern was with the world -- with the people of the world -- and his words were intended to articulate universal principles of sovereignty … not just American ones.

While it might be the case – as Paine famously wrote as he opened his initial entry in the *American Crisis* set of essays – that: "These are the times that try men's souls," he believed that better times were ahead. However, the times that would enliven the souls of human beings – rather than try them -- were not primarily an allusion to constitutional governments run by a natural aristocracy but were, instead, a reference to the potential for self-governance that was rooted in the moral and social sensibilities within the generality of human beings.

Some people believe that the reason why Paine died in relative obscurity was due to his religious beliefs. In his book *The Age of Reason*, Paine attacked the theology of Christianity with considerable rigor and in a fashion that many Christians might find objectionable.

In doing so, Paine sought to point out what he considered to be contradictions in various biblical accounts and the manner in which he felt that reason was offended by such conflicts. However, Paine was not an atheist.

He was a deist (which has its own theology) who believed in God, the Creator of Reality. Paine believed that God had created a universe filled with signs that were capable of demonstrating to any careful observer that material reality came from divine origins and that human beings had been bequeathed an inherent capacity for reasoning about such matters without any need of assistance from institutionalized religion … just as human beings also had been granted the capacity to reason about the issue of self-governance without needing the assistance of contrived forms of governance.

Whatever role might have been played by the religious controversies that were stirred up by *The Age of Reason* with respect to Paine's

allegedly ignoble and obscure departure from life, Paine was cast into the wilderness by the Founders/Framers long before *The Age of Reason* was written and quite independently of such topics – and, one might note at this point that quite a few of the Founders were not all that committed to organized religion … even if they believed in God. In other words, Paine was cast into the wilderness because of the radical nature of his political views rather than the radical nature of his religious views – although the latter ideas might have been used to camouflage what many of the Founders/Framers considered to be the real problem entailed by Paine's perspective.

Paine believed in the spirit that he felt underlay the American Revolution … as did many other individuals, both then and now. However, when Paine returned to America in the early 1800s, politically speaking, he was a stranger in a strange land.

Paine didn't recognize America, and America didn't recognize him. The spirit of the revolution had been betrayed, and something else had replaced what Paine considered to be the essence of the American Revolution … an essence that Paine had attempted to allude to in *The Rights of Man*.

From the time that he returned to the United States in 1802 until his death seven years later, Paine was subjected to the same sort of vilification process and attempts to discredit him – and, therefore, his ideas – as he had encountered in England after the publication of *The Rights of Man*. In both instances, the underlying problem was the same – namely, the stark differences between, on the one hand, what Paine – and other radical writers of the Atlantic world – had been writing with respect to the issue of democracy, and, on the other hand, the nature of actual governance on both sides of the Atlantic.

In the United States and England, democracy was a riddle wrapped in an enigma that had been packaged by the crafty hands of those (i.e., the aristocrats, natural or otherwise) who sought to control the lives of other people. The radical writers of the Atlantic world had been attempting to unravel the true nature of this enigmatic riddle and, thereby, to expose to the world the nature of the problem that they believed to be hidden within the manner in which governance was practiced in England and America.

The verbal and written attacks against Paine that surfaced after his return to the United States were a continuation of similar tactics that had been used from the time that the Philadelphia Constitution had been released in September 1787. Indeed, almost from the very day that the Philadelphia Convention adjourned, newspapers owned by those who were proponents of ratification (and such owners formed the vast majority of publishers in pre- and post-constitutional America) began a blitz of propaganda that sought to suppress or drown out criticisms of the proposed Constitution, and this barrage of words continued throughout the year and a half period during which ratification conventions were taking place.

Neither the introduction of possible amendments by Madison nor the ratification of a set of ten amendments by the requisite number of states brought the controversies to an end. While the ten amendments to the Philadelphia Constitution offered a certain amount of relief in relation to the concerns of a variety of people, those amendments did not solve the many problems that were still inherent in the recently ratified Constitution.

The running account of the Philadelphia Convention that was recorded by James Madison indicated how many, if not most, of the participants in that assembly made a distinction between a 'republic' and 'democracy'. Democracy was the sort of thing that had been happening in places like the Virginia state legislature and was, in part, the reason why Madison, and others, had set about trying to find a different route to governance … indeed, in the opinion of Madison and others who thought like him, America suffered from an excess of democracy.

Upon exiting the final session of the Philadelphia Convention, a woman supposedly asked Benjamin Franklin: "Well Doctor, what have we got: A republic or a monarchy?" Franklin is reported to have replied: "A republic … if you can keep it."

The Philadelphia Convention had not constructed a democracy. It had created a republic.

Over the next decade, or so, a battle took place concerning the nature and meaning of the term: "democracy". At the beginning of this struggle, the word 'democracy' was a term of opprobrium, and was considered to be antithetical to the possibility of good governance, and,

as well, the term was considered to be something associated with radicalism, foreign intrigues, and atheism.

By the turn of the nineteenth century, if not before, the meaning of the word 'democracy' had been reconstituted. By then, the idea of 'democracy' had become something of a synonym for the manner in which things were done in the United States.

How were things done in the United States? They were done in accordance with a document that had arisen out of an unauthorized process in Philadelphia and was adopted through an illegal ratification process that, as well, had been managed and manipulated by proponents of an illicit document that supposedly gave expression to the creation of a republic through which citizens governed themselves via the election of representatives … even though the executive, the senate, and the judiciary were not actually elected by the people, and even though the members of the House could not possibly represent the interests of all people – perhaps not even the majority of such individuals.

In the process, democracy was weaned from its origins as a radical aspiration for real self-governance in which people regulated themselves through their moral and social sensibilities … sensibilities that were pursued in accordance with reciprocally advantageous purposes and that involved minimal assistance from government. Democracy became whatever the institutionalized agents of governance said it was and irrespective of whatever collateral damage might accrue to the people as a result of such tyrannical behavior.

In short, democracy was co-opted by the way of power. The idea of democracy had been corrupted and, in the process, it was transformed into something that was entirely alien to people like Thomas Paine.

The denotation of the reformulated notion of 'democracy' leveraged the connotation that people tended to associate with that term. In other words, whereas the connotation of 'democracy' was rooted in the spirit of revolution and breaking free from all forms of tyranny, nonetheless, over the course of the 1790s, the denotation of that word changed into something that was antagonistic to its original connotation even as the latter emotional sense of the word was used in speeches and writings to promote the reconstituted denotative sense of 'democracy'.

George Orwell's *1984* came to America in the 18th century. 'Newspeak' was not a future, literary invention but something that had been taking place in America, and elsewhere, for quite some time.

Indeed, since the very beginning of the formation of the United States as a republic, 'tyranny' and 'democracy' had been fashioned into synonyms. Yet, connotatively speaking, people were led to believe that 'democracy' was other than what it had denotatively become – that is, a means of acquiring power through the process of elections … and such power was subsequently used to strip people of their sovereignty and re-deposit that sovereignty into the accounts of the state/nation so that only the latter could be fully sovereign.

A republic run by a natural aristocracy in accordance with whatever activities – republican or otherwise -- are considered to be "necessary and proper" is not necessarily a democracy. Democracies are about the capacity of people for self-regulation apart from, or with minimal assistance from, institutionalized forms of governance.

If elected 'representatives' are organizing the lives of citizens according to the ideas of those agents, and if such ideas destroy the capacity of citizens to regulate their own lives in mutually beneficial ways, then one might have a republic. However, such an arrangement is not very democratic in character.

Democracy is about the way of sovereignty that involves equals working in constructive co-operation with one another. Republics, on the other hand, are rooted in the way of power in which one set of individuals (the aristocrats, natural or otherwise) seeks to control other groups of individuals for purposes of advancing agendas that are, by and large, imposed on citizens irrespective of how the latter might feel about such impositions.

One could ask a variety of questions concerning the precise nature of the aforementioned notion of: 'constructive co-operation of equals'. In fact, the process of querying what might be entailed by such an arrangement is part of the democratic process.

However, within the context of the political form of 'democracy' that began to dominate America in the 1790s, the foregoing sort of critical approach to democracy was discouraged. Instead, what became important was the acquisition of power through an electoral process that

was used to lend an aura of legitimacy with respect to a variety of tyrannical activities that were enabled through the application of power so acquired.

There are those who might wish to take issue with the foregoing characterization of things. After all, such individuals might argue, the government is merely acting as agents of the people … isn't this what is going on? The will of the people is made manifest through the derived power of government … isn't it?

If anyone questioned the uses to which such power was put, then surely (??), those people were being undemocratic. They were seeking to undermine the business of the people (??). They were threatening the viability of democracy (??).

Criticisms of the way of power were transformed into being the equivalent of an attack upon the sacred sovereignty of 'We the People.' Yet, in reality, the way of power was entirely about removing sovereignty from the people and allocating that sovereignty entirely within the state or nation that was to be considered as entity unto itself quite independent of the people and with rights and powers superior to those of the people.

National interests are not necessarily the same thing as what would be in the interests of sovereign individuals. National interests are about preserving the way of power, whereas the actual democratic interests of individuals is about preserving their sovereignty quite apart from the interests of the way of power constituted as a sovereign 'nation' or 'state'.

States and nations arose from, and usurped, the sovereignty of individuals, just as corporations did later on. Indeed, treating states/nations as sovereign entities independent of the people from whom such sovereignty was taken, is the model through which corporations came to be considered as sovereign entities independent of the people whose sovereignty was adversely affected by the creation of such legal fictions.

One of the primary obstacles facing those seeking to implement the amended Philadelphia Constitution -- and, thereby, assume undisputed political and legal dominance in America -- involved the writings of Atlantic radicals (consisting largely of individuals from England, Ireland,

Scotland, France, and America) – who took exception to the whole process through which tyranny or the way of power sought to: eradicate, abuse, undermine, or corrupt the sovereignty of people considered independently of the institutional machinery of states/nations.

The foregoing sorts of individuals had been publishing books, pamphlets, and newspapers concerning such issues throughout the American struggle for independence, as well as during the process of ratification. Their concerns about the issues of sovereignty and self-governance were bolstered considerably when, starting in 1789, the French Revolution began to unfold and, as a result – at least until the French Revolution went sour -- those events provided considerable food for thought concerning what was transpiring in the United States and whether, or not, the latter set of events were democratic in any significant way or whether, perhaps, the birth of constitutional America had betrayed such ideals.

Rather than writing for the so-called intelligentsia of society, the Atlantic radicals directed their appeals to the people. In this regard, Thomas Paine had shown the way through his work, *Common Sense*, that had an appeal for people that extended far beyond the intellectual elite.

The foregoing trend was continued when Paine published *The Rights of Man* early in 1789 since the book also was directed toward the generality of people – as *Common Sense* had been -- rather than the upper classes. In fact, as previously noted, this attempt to reach the common people rather than the elite is what got Paine in trouble in England in relation to his work: *The Rights of Man*.

Those who owned the majority of newspapers in America were true believers in the newly instituted constitutional system in the United States … or, if not true believers, then they understood how such a system of governance might advance their interests. Consequently, such publishers (which constituted about three-fourths of all newspaper publishers at that time) took exception with anyone who sought to criticize the form of governance that had arisen in America following the Philadelphia Convention.

Like their counterparts in England, the publishers of most of the papers in the United States recognized the potential dangers that were being given expression through the attempts of the radical Atlantic writers to appeal to the common people in America via books, pamphlets,

lectures, and newspaper articles (although the newspapers that would print such radical ideas were relatively few in number) in relation to issues of rights, liberty, sovereignty, and the like. Such writings had stoked the fires of revolution in France, and the interests being represented through the vast majority of newspapers in America did not want the same sort of turmoil visiting America.

America had had its revolution. All relevant matters had been settled hadn't they? There was no need for any further revolution in America … at least this is the perspective through which the proponents of the way of power saw things.

Further revolution would be a threat to the manner in which the way of power had ascended to the realm of governance in America. Therefore, just as had occurred during the process of ratification, a fierce war of words broke out in America between those publishers (a small minority) who were trying to reach the common people in the United States in order to inform the latter individuals about the many issues that had not been resolved by the revolution in America, and, on the other hand, those publishers (the vast majority) who were trying to defend the way of power that had assumed control in America through the Philadelphia Constitution.

Both sets of publishers – that is the majority and the minority – understood that revolutions were, for the most part, the result of the collective action of the generality of people. Consequently, each set of publishers attempted to 'educate' the public in accordance with their respective understandings of the set of historical events that were occurring at that time in the Atlantic world – especially America and France.

The activities of the publishers were augmented by pamphleteers and public lectures on both sides of the hermeneutical divide. In addition, the discussions taking place in taverns, as well as tea and coffee houses, within the Atlantic world, also played a significant role as the patrons of those establishments often explored the writings of the day whether in the form of books, pamphlets, or newspapers.

For a variety of reasons, the 1790s were especially auspicious times for the distribution of newspapers and books in America. For instance, in 1792, the relatively newly minted Congress had passed the Post Office Act that permitted newspaper publishers to exchange their publications with

one another free of charge and, as well, enabled them to mail their newspapers to locations within a hundred miles for just a penny. In addition, as the credit crisis of the 1780s dissipated, booksellers were able to gain access to the sort of credit arrangements that enabled them to purchase, stock, and trade a wide variety of titles that gave expression to an array of ideas.

In addition, whereas in colonial America, most newspapers, printers, and booksellers were confined to the major urban areas along coastal America, during the 1790s there was an explosion of outlets through which to distribute various forms of media. Increasingly, the interior parts of America were gaining access to the news and ideas of the day in – for that age – a relatively timely fashion.

One could throw libraries into the foregoing mix of taverns, newspapers, booksellers, as well as coffee and tea houses that served as outlets for news and views. Hundreds of libraries were opening their doors during the early part of the 1790s, and, as a result, more and more people were able to read about the issues of the day in a convenient and financially affordable manner.

The foregoing establishments, however, were not just a means for gaining access to reading materials. They also served as centers for acquiring, among other things, a political education concerning such materials since books and newspapers were not only printed at, or distributed through, such centers, but those materials were also discussed and critiqued at those locations.

The two aforementioned sets of publishers – namely, on the one hand, those who felt the political revolution and been brought to a close through the ratification of the Philadelphia Constitution, and, on the other hand, those who believed the political revolution was unfinished and that the Philadelphia Constitution constituted an obstacle to the realization of real democracy –were seeking to orient the public in quite divergent ways. Libraries, taverns, public lectures, bookstores, printing shops, as well as coffee and tea houses were the battlefields where such divergent ideas were engaged, struggled with, and interpreted.

How someone might come to understand the nature of community, sovereignty, democracy, rights, and governance depended a great deal on the character of the battlefields to which one was exposed. How someone might come to think about the political process and what participation in

such a process meant would be shaped by one's encounters with various ideas on the foregoing sorts of political battlefields of the 1790s.

The aforementioned battles were not fought along party lines. Although there were political alliances and allegiances in the 1790s, there were no major political parties in America until the latter part of that decade.

Instead, the hermeneutical battles being waged were about the meaning of words and their relevance, if any, to the practice of governance in America. Those battles were about what it meant to be a citizen – both of America and in the world. Such battles were about the nature and purpose of sovereignty.

During the 1790s, there were approximately 35 to 40 newspapers in America that were committed, in different ways and to different degrees, to the idea of 'democracy' to which Paine had given expression in his 1789 work: *The Rights of Man*. Half a dozen of those papers had a presence in major urban areas such as New York City, Boston, and Philadelphia, while most of the other papers in this group of publications were printed in less populated areas.

Many of the remaining papers – which totaled around 120-130 publications -- were sympathetic toward, and supportive of, the form of constitutional government that had been set in motion by the convention that had taken place in Philadelphia during the summer of 1787. Some of these papers were republican in nature -- in the sense that they gave voice to the principles and values associated with the philosophy of republicanism -- while other papers amongst this majority group of publications were proponents of constitutionalism and the manner in which that concept was unfolding in America even if this process was not necessarily republican in character.

Irrespective of which of the foregoing publications one might consider, there often was a sense among the publishers and editors of those publications that they were part of an enlightened elite whose task was to educate and civilize the unenlightened masses. However, if Paine and other radical Atlantic writers were correct, every human being had the capacity to understand the issues that were at the heart of ideas such as democracy, sovereignty, rights, and so on, and if this were the case, then the responsibility of such publications should have been limited to

providing accurate information and permitting their readers to struggle toward arriving at an appropriate understanding of that material.

Consequently, however well-intended their respective editorial decisions might have been, nevertheless, the newspapers on all sides of the issues during the 1790s were – each in their own way -- seeking to shape the opinions of Americans. This was true whether, or not, one was talking about those publications that were inclined toward Paine-like ideas, or one was talking about those publications that were inclined toward federalism, republicanism, and/or constitutionalism.

The irony inherent in the former sort of publications – i.e., those that considered themselves to be Paine-like in outlook – is that the author of *Common Sense* and *The Rights of Man* had insisted on being able to form his own opinions quite apart from the so-called 'leaders' of society. Yet, in the 1790s there were many Paine-oriented publications that were seeking to serve as 'leaders' who were attempting to shape the opinions of their readers with respect to all manner of things – especially the French Revolution … an issue that, eventually, would lead to the demise of such publications as an influential source of ideas concerning the nature of democracy and sovereignty.

The publishers and editors of those newspapers who filtered political and social issues through a Paine-like set of lenses believed that change in America could be brought about quickly – i.e., in a revolutionary manner – and, consequently, they sought to provide the ideational sparks that might light a sustained fire of change in America. The publishers and editors of those newspapers that filtered political and social issues through a federalist or constitutional-like set of lenses viewed the events in France (along with Shay's Rebellion in Massachusetts and the Whiskey Rebellion in western Pennsylvania) as being inherently dangerous and, therefore, sought to prevent such events from taking hold in America, and in the process, they sought to be 'leaders' who shaped the opinions of Americans in a different manner than did the Paine-like publishers and editors.

One side wanted Americans to become more deeply immersed in the political process (i.e., beyond merely voting) and bring about revolutionary change. The other side wanted Americans to disengage from the political process (other than voting that is) and let the 'professionals' or natural aristocracy handle such matters.

Neither side of the ideological divide appeared interested in having an open, rigorous, sincere dialog with Americans. Instead, both sides seemed to have a vested interest in pushing Americans in one direction or another.

Eventually, details about how the 'reign of terror' had taken control of the French Revolution began to reach America. Tens of thousands of people had been summarily executed in France – whether by firing squads, the guillotine, or spontaneous massacres – between September 1793 and July 1794. The 'crime' of those who were executed was that they were perceived -- usually without evidence or on the unsubstantiated testimony of people with vested interests -- to be enemies of the people or enemies of the revolution.

Those American publications that were oriented, in one way or another, around the idea of federalism, constitutionalism, and/or republicanism used the 'reign of terror' like a mace to bludgeon those who were proponents of revolutionary 'democracy'. Surely, such newspapers intimated, America would have its own 'reign of terror' if the proponents of a Paine-like approach to issues of governance and sovereignty were permitted to gain any sort of ascendency in society.

Those publishers and editors who had tied their hoped-for influence in American society to news items, articles, and essays about the 'glorious' example of the French Revolution now discovered that they had a sizable, ugly, toxic albatross strung around their ideas. The previously 'courageous citizen rebels' of France were now being cast as lawless, bloodthirsty, murderers.

Within a fairly short period of time, those publishers and editors who were inclined to a revolutionary agenda lost the propaganda battle in America. If 'democracy' was an allusion to the Paine-like ideas of sovereignty in which citizens assumed control of their lives – ideas that *The Rights of Man* claimed were reflected in the events of the French Revolution – then, surely, such ideas must be rejected. If, on the other hand, the idea of 'democracy' was intended to allude to the process of governance that was being observed in American, then perhaps, 'democracy' was not such a bad idea … it certainly was a far, far better thing than what had taken place in France for nearly a year between 1793 and 1794.

The foregoing nasty turn in a propaganda war that had been going on in America during the early to mid-1790s was, as is usually the case, not really fair. Paine had written *The Rights of Man* some four years before 'the reign of terror' occurred in France. Moreover, there was nothing in *The Rights of Man* that could be construed as advocating a process of mass executions as an acceptable tool to use during the struggle for sovereignty … indeed, Paine was against the death penalty for any offense.

Furthermore, Paine, himself, had been imprisoned during 'the reign of terror' because he refused to endorse the execution of Louis XVI … an execution that was emblematic of 'the reign of terror'. Nevertheless, Paine's name, along with his ideas, were affixed to 'the reign of terror' by those publishers and editors in America who feared the potential in Paine's perspective for undermining the way of power that had been permitted to enter American society via the Philadelphia Constitution.

The same sort of propaganda techniques -- which played fast and loose with the truth in any given matter -- had been used during the ratification process a few years earlier. At that time, most of the newspapers in America – but not all -- were in favor of the new constitution and, as a result, they sought to demonize those, along with their ideas, who were resistant to adopting the Philadelphia Constitution -- whether with or without amendments.

If many of the 35 or 40 Paine-oriented newspapers that were published during the 1790s in America had not been so interested in trying to use the French Revolution as a tool for motivating the generality of people to stage a new French-like revolution in America, and if the publishers and editors of those same newspapers had limited their focus to what was taking place with respect to governance in America -- as a function of implementing the Philadelphia Convention – and how the reality of governance in America was vastly different than the principles of democracy that were being espoused by Paine -- along with many other radical Atlantic writers -- and if such papers had been more willing to engage Americans in dialogue rather than treat the latter as individuals who must be converted to a revolutionary cause, then such newspapers might have survived the debacle of 'the reign of terror'. Unfortunately, all too many of the Paine-inclined papers handed the opposition newspapers all the ammunition the latter would need by 'virtue' of the former's

constant citing of the French Revolution as being the sort of example that should be followed in America.

The fact that the newspapers that were oriented toward republicanism, federalism, and/or constitutionalism won the propaganda war of the 1790s concerning the issue of sovereignty was not a vindication of the ideas and perspective that were being given expression through the pages of their various publications. They did not win that war due to the strength of their arguments concerning the legitimacy of the Philadelphia Convention, the Philadelphia Constitution, or the process of ratification … all of which were done in an illegal and problematic fashion) but, rather, they won that war because of the mistakes made by a side whose fortunes were too closely hitched to the soon-to-fall star of the French Revolution … mistakes that those who were opposed to democracy in Paine's sense of the word took full advantage of when they demonized everything associated with Paine's approach to sovereignty due to something – i.e., 'the reign of terror' – for which Paine was not responsible … in fact, with respect to which he did his best to resist 'the terror' before being imprisoned for his opposition to it.

Just as Paine's ideas in *Common Sense* were not causally responsible for what happened in the Philadelphia Convention or the many problems that have ensued from that assembly, so too, Paine's ideas in *The Rights of Man* were not causally responsible for 'the reign' of terror or the many problems that were entailed by those events. However, because the ideas contained in *Common Sense* were consonant with the ambitions of the Founders/Framers, they were lauded, whereas since the ideas that were contained in *The Rights of Man* were problematic with respect to the ambitions of the Founders/Framers, those ideas were discredited through a process of guilt by association … an association that many of the political 'leaders' and government officials in America must have known was not an accurate reflection of events, and, yet, one that they persisted in mirroring to the public through the pages of like-minded newspapers.

The Rights of Man is reported to have sold as many copies in America as *Common Sense* did – both of which are estimated to have been purchased by a hundred thousand, or more, people. At a time when such books rarely sold more than a few thousand copies, those levels of sales are truly remarkable.

Although Paine enjoyed a variety of financial and political benefits from the sale of *Common Sense*, eventually, he disappeared from public prominence. This disappearance was so complete that few people took notice when, for financial reasons, Paine left America and returned to England in 1787.

Two years later, Paine's reputation as a political commentator was resurrected with the publication of *The Rights of Man*. Once again, Paine became a person worth reading.

The fraudulent, disingenuous association that was forged between Paine and 'the reign of terror' in France by his ideological opponents, as well as his book, *The Age of Reason* -- which he began during his imprisonment as a victim of that reign – once again pushed Paine to the sideline as an active participant in the political arena … a status from which, this time, there would be no subsequent resurrection. However, as much as some people cite *The Age of Reason* as a major factor for why Paine supposedly fell out of disfavor in America, there was another publication of Paine that appeared in 1797 that might have been perceived as more of a threat to the way of power in America than anything contained in *The Age of Reason*.

More specifically, in 1797 Paine released a pamphlet with the title: *Agrarian Justice*. In this tract, Paine argued that the earth and all its resources did not belong to anyone but were part of the commons to which everyone was entitled.

Paine did not believe that the divide between rich and poor was a reflection of a Divine Plan … as some religious leaders were claiming at the time. Instead, he felt that the necessities of life already had been provided by God, and, therefore, any inequities in the distribution of God's generosity were due to human interference rather than Divine wishes.

While Paine maintained that it might be necessary to continue to recognize the idea of 'private property' in order to properly reflect the labor that was expended to improve upon the state of nature, nevertheless, such property needed to be utilized in a fashion that benefitted the welfare of people. Consequently, Paine devised a tax scheme that was intended to subsidize not only pensions for the elderly but, as well, to provide a sort of guaranteed minimum income for those who were 21 years of age or older.

Irrespective of whether, or not, the particulars of Paine's tax plan were, or are, viable, what is revolutionary in *Agrarian Justice* is the manner in which private property is constrained by, and must provide for, the welfare of everyone. This idea was not unique to Paine but extended back -- at least in one form -- to The Great Charter of the Forests in 1217 (this charter was intended to complement the provisions of the Magna Carta that had been drawn up two years earlier). The Great Charter of the Forests recognized that the generality of people had rights concerning the use of land that should not be infringed upon by either aristocracies or monarchies … both agreements initially became law in 1225 and, then, were reintroduced into law through subsequent modified versions of those agreements.

Moreover, the general themes of *Agrarian Justice* were also on the minds and hearts of many other members of the radical Atlantic writers. One might say that such ideas were very much part of the Atlantic zeitgeist during the 1790s.

However, the idea of private property was very important to the Founders/Framers of the Philadelphia Constitution … unless, of course, one was an Indian, a Negro, or poor. Any principle that called such an idea into question – as Paine's *Agrarian Justice* pamphlet did -- would be considered not just revolutionary but heretical in character.

Pretty much all, if not all, of the Founders/Framers were proponents of The Enlightenment that, among other things, called for the power of reason to be applied to all manner of problems, questions, and issues. Consequently, the fact that Paine applied reason to the topic of religion should not have offended any of the Founders/Framers.

Was Paine too harsh, or did he cross some line of propriety, when he criticized Christianity in the *Age of Religion*? Perhaps!

However, there were quite a few other Founders/Framers who were not deeply committed to any particular form of organized religion. Although such individuals might have disagreed with Paine's antagonistic style of argument, they might not necessarily have disagreed with some of his conclusions concerning organized religion.

In addition, there were those among the Founders/Framers who might have been committed to this or that form of institutionalized religion and, as a result, had their own particular brand of Christianity to

which they subscribed and which entailed theological principles that were at variance with the religious perspective of other members of the Founders/Framers. However, these were individuals who also understood the importance of religious tolerance and the right of conscience and would not have begrudged Paine his religious point of view even if they were to have found his way of going about things to be, possibly, disagreeable and excessive.

However, almost to a man, I believe the Founders/Framers probably would have had difficulty dealing with the principles that were being elucidated in Paine's *Agrarian Justice.* The latter pamphlet constituted a frontal assault on the idea of property … an idea that was considered to be sacrosanct and central to the ambitions of the Founders/Framers – both with respect to the country and themselves.

The implications of *The Rights of Man* and *Agrarian Justice* pointed in a much different direction with respect to issues of sovereignty than did the Philadelphia Constitution … even when the latter is amended. The ideas in *The Age of Reason* might have greased the skids of disapproval among certain segments of the general public, but the implication inherent in *The Rights of Man* and *Agrarian Justice* were far more disquieting to those who walked the halls of power within American governance – whether considered from the perspective of the federal government or states – and, therefore, the latter two publications were far more likely to motivate members of the 'natural aristocracy' and power elite to want to send Paine into obscurity than anything Paine said in *The Age of Reason*.

Chapter 5: Natural Law

When I was an undergraduate I explored a number of possibilities while trying to find a major to which I might become committed. I started out with the intention of becoming a religious minister, but after my first year, I began to look in other directions.

Subsequently, I cycled through a number of programs. For a short time I flirted with physical sciences and, then, transitioned into philosophy, before ending up in 'Social Relations' which was an interdisciplinary program that consisted of courses in anthropology, sociology, and psychology … although I was largely interested in the psychological component.

As indicated earlier, prior to the time when I settled on Social Relations, I took a number of courses in philosophy. One of these latter offerings involved an exploration into the idea of justice.

The professor who taught the course was John Rawls. His lecture material consisted of a preliminary draft of what would later become a very influential book entitled: *A Theory of Justice* that was published in 1971 … a few years after I took the course.

Through the mists of time, I seem to recall that the enrollment for the course was much larger than most of the other courses that I took in philosophy. If memory serves me correctly – and it might not -- there could have been as many as 100, or more, students taking the course.

Normally speaking, with such a large number of people enrolled in a course, the chances of the professor teaching the course actually reading one's term paper tends to be fairly slim. That task is frequently handed over to graduate assistants … although, perhaps, Professor Rawls was the sort of teacher who felt he had an educational responsibility to read the term papers of all his students.

In any case, my paper was read and graded by Professor Rawls. At the time – and it became, for better or worse, a life-long inclination of mine -- I wrote a very long paper, and, perhaps, out of a concern about doing injustice to his graduate assistants, Professor Rawls sacrificed himself and engaged my essay.

The paper received a grade of 'B' of some kind. Scattered throughout the paper were brief two or three word comments and a number of question marks, and on the last page of my essay was a summary

statement of evaluation. The primary criticism seemed to be that the paper was too long.

In these final comments Professor Rawls indicated that length, in and of itself, was not necessarily problematic. Nonetheless, the gist of his concerns seemed to be that I had not used the length effectively with respect to the central thesis of my essay.

At the time I had no insight concerning who John Rawls was or who he was about to become. Consequently, it is somewhat strange how I recall that he read my paper and what he thought of it … especially in light of the fact that I have absolutely no recollection concerning the actual contents of that essay … obviously, the term paper consisted of ideas that were eminently forgettable even though Professor Rawls was kind enough to award me a 'B' of some kind for my efforts.

There were a few other themes that lived on in my memory with respect to that course. One of these themes had to do with Professor Rawls' notion of the 'original position'.

The foregoing term gives expression to a hypothetical methodology through which one is to assume that each of us enjoys degrees of freedom and equality that, roughly speaking, are equivalent to one another. Furthermore, Professor Rawls stipulates that although in the 'original position' everyone possesses an awareness of their general interests, along with an understanding of various ideas involving natural and social sciences, nevertheless, the conditions of the hypothetical 'original position' require everyone to be ignorant about one's personal history and abilities/talents.

This latter facet of the 'original position' is referred to as a 'veil of ignorance.' The purpose of that aspect of the hypothetical set-up is an attempt to induce people to reflect on the issue of justice without engaging the problem through an awareness of those sorts of life circumstances or one's personal strengths and weaknesses that might incline one to evaluate the idea of justice through the biased filters of what would be advantageous or disadvantageous to one in the light of one's life circumstances and talents (or lack of them).

A further property of the 'original position' involves the assumption that everyone is committed to a process that is intended to lead to conditions of social and political justice. The question or challenge facing

people in the 'original position' is to try to determine which of the possible theories of justice might constitute the most viable or defensible approach to the issue of justice.

According to Professor Rawls, if one starts from the conditions described by the 'original position' – including its 'veil of ignorance' – reason will lead one to the conclusion that two principles of justice should be adopted. The first principle concerns those freedoms and rights that are deemed necessary to have if the people in the 'original position' are to be able to work toward realizing various notions of 'the good' that they might hold. The second principle of justice in Professor's theory entails not only the idea that employment and educational opportunities should be made equally available to all, but, as well, everyone should be given some minimum share in the wealth of society that would enable such people to pursue their individual interests with dignity as free and equal members of their community.

Nearly 600 pages are used by Professor Rawls to delineate the details of the arguments that give expression to the foregoing overview. While, in general, there is a phenomenological orientation within me that resonates with the aforementioned two principles of justice, I am less interested in how Professor Rawls arrived at such conclusions, than I am interested in the structural character of the 'original position' with its 'veil of ignorance' from which he launched his project.

More specifically, Professor Rawls treats the 'original position' as a sort of contrafactual hypothetical construct. In other words, since everyone is, to a degree, supposedly aware of her or his personal history and many of one's talents/abilities, then assuming otherwise runs contrary to the facts of what is known.

However, if one erases such knowledge through the 'veil of ignorance' that lies at the heart of the 'original position', then one is free to critically examine issues of justice without such an understanding biasing one's deliberations … or so, the theory goes. Such an assumption, of course, requires one to remind oneself from time to time that one cannot permit anything that one knows about one's life and abilities to prejudice one's reflections concerning the issue of justice.

In a sense, Professor Rawls is asking readers of his book to behave as jurors do – hopefully -- when the latter individuals are told by the judge that that such and such a statement must be disregarded by them and

cannot play any role in their final decision. Whether, or not, jurors are able to comply with the instructions of the judge under such circumstances is another matter.

Some lawyers will say things during a trial that they know will be objected to by opposing counsel, sustained by the judge, and withdrawn by the lawyers themselves just to be able to place certain possibilities and ideas before the jury. The hope of those who use the foregoing sorts of tactics is that once something is known, it can't be unknown, and, consequently, one might be able to help shape the final verdict through the introduction of those pieces of illicit information.

When the process of voir dire (to speak the truth) is undertaken in the legal system, a judge or prosecutor (depending on the rules in a given location) seeks to determine whether, or not, a juror or witness will, among other things, be able to put aside whatever ideas and attitudes he or she has concerning a given matter to a degree that is sufficient to ensure that information will be processed or reported impartially. Professor Rawls does not take his readers through the process of voir dire, but his expectations of readers is that they would be willing to put aside any knowledge they have concerning their own personal history and circumstances and engage the arguments in *A Theory of Justice* as if such individuals had successfully negotiated an inquiry into their own ideas, feelings, attitudes, or understanding and, as a result, were prepared to listen to the arguments in the aforementioned book in an unbiased fashion.

The notion of the 'original position' with its concomitant aspect of a 'veil of ignorance' is, for Professor Rawls, a hypothetical construct. According to him we do not exist in such a condition, but, he is asking us to reflect on issues of justice as if this were the case.

Perhaps, however, Professor Rawls is incorrect with respect to his understanding of the existential situation in which human beings find themselves. Although it might be true that a knowledge of personal history and abilities could skew how someone might construct a theory of justice such that the latter theory would reflect -- in an advantageous way – the particulars of a person's life circumstances, nonetheless, the fact of the matter is that while an individual might be able to figure out how a theory of justice could be exploited in an advantageous manner if such a theory were shaped to enhance one's circumstances rather than inhibit

them, one still doesn't know in any absolute sense whether one's theory of justice is really to one's advantage even if it permits one to gain from events in ways that other people could not.

For instance, let us suppose that the foregoing individual makes his money through stock transactions. Let us further suppose that the theory of justice proposed by that person is one that permits him or her to benefit from information coming from stock trading 'insiders.'

Finally, let us assume that in times gone by our individual of interest has made millions through such transactions while other people have lost millions. Presumably, the insider information to which our subject has access is better, in some way, than the insider information to which other people have access … and the underlying principle of justice developed by our hypothetical individual indicates that everyone should be able to have access to such information.

At some point in the future, our subject sets in motion a transaction that has a potential for making him or her hundreds of millions of dollars … maybe through some sort of derivatives-based strategy. Unfortunately, events do not unfold in the way in which the individual was led to believe would occur, and she or he loses everything.

Apparently, the insider trading information relied on by the star of this exercise contained some errors. Other people who had better information in this respect acquired the millions that our person of interest believed were going to be his or hers.

In effect, our subject had a faulty system of epistemology concerning how the world works. For whatever reason, in the past that epistemological system had permitted the person in question to accurately predict what would happen in certain cases but not others.

Was the foregoing person conned? Did that individual pick the wrong people to supply the inside trading information? Was the model used to forecast the future with respect to certain stock transactions flawed in some way? Did unforeseen factors involving politics, weather, or technological breakthroughs adversely affect that person's method for estimating risks associated with any given set of trades?

The questions one asks in this respect can extend beyond the surface of methodological considerations and touch upon more basic issues of epistemology. For example, a person might: Know one's life

circumstances, know how to use such circumstances to his or her advantage, develop a theory of justice that will reflect this sort of arrangement, and, yet, one could still ask: Is this really what justice entails – a utilitarian link between means and ends that brings some sort of advantage … financial, material, political, or otherwise?

Knowing one's life circumstances and abilities doesn't necessarily guarantee one will understand what is in one's best interests with respect to the use of such circumstances and abilities. One could generate any number of possible scenarios about how to exploit such known circumstances and abilities, but none of these scenarios necessarily reflects the nature of Being and whether, or not, there is some set of factors woven into the fabric of reality that determines principles of justice quite independently of our constructs and that give expression to the truth of things and, thereby, become the standard against which one's actions and choices are to be evaluated.

The real 'veil of ignorance' that confronts human beings has little to do with understanding one's life history or how such a history might materially work to our advantage or disadvantage. Rather, the essential veil of ignorance concerns the significance of such circumstances vis-à-vis the nature of reality.

We each might know the events of our individual lives. However, do we understand what those events actually mean in the overall scheme of the universe?

Furthermore, Professor Rawls indicates that in the 'original position' we assume ourselves to be free and equal. One might query such an assumption and ask: In what way are we free and equal?

Do we all have an equal capacity for reasoning and insight concerning the process of exploring the possible nature of justice? Even if everyone possessed the same abilities in this respect, are we necessarily free to choose to follow what is deemed to be a correct theory of justice?

Professor Rawls stipulates that the people in the 'original position' do have a general understanding of the principles of psychology even if those individuals are assumed not to possess specific knowledge about their own life circumstances. If so, then such general principles probably indicate that people are not always free (due to different emotional

motivational forces) to do that which they believe to be right or appropriate.

The 'original position' also requires one to assume that everyone is equally committed to pursuing principles of economic, social, and political justice. Again, general principles of psychology indicate that not everyone is motivated to do things in the same way, and, as a result, it is very unlikely that everyone will be equally committed to pursuing such a project … and even if they were equally committed, this level of commitment might not be enough to sustain, or bring to fruition, such a pursuit.

Being committed to social, economic and political justice implies there also will have to be an underlying commitment to determining the truth of things. If people were committed to principles of justice without a concomitant commitment to determining the truth concerning such principles, then the commitment to principles of justice might be relatively pointless … one wants people to be committed to principles of justice that, in some sense, give expression to the nature of reality rather than just being committed to principles of justice in some arbitrary sense.

In addition, Professor Rawls claims that starting from the 'original position', one can reason one's way to the two principles of justice for which he argues in *A Theory of Justice*. Such a claim is contentious in several senses.

For instance, what if reason by itself is not sufficient to determine the nature of justice? Alternatively, what is the nature of the proof that is capable of demonstrating that reason can generate what Professor Rawls claims it can? Finally, how does one know that the character of the argument employed by Professor Rawls is rational?

In other words, what are the criteria for determining when something is, or is not, rational? Moreover, how does one justify the choice and use of those criteria?

There is nothing hypothetical about the veil of ignorance that cloaks our lives. We are theory-rich and knowledge-poor with respect to all manner of things.

We don't necessarily know who we are … although we might believe that we do. We don't necessarily know the significance of our life circumstances … although we might believe that we do. We don't

necessarily understand the nature of reason and what makes it possible … although we might believe that we do. We don't necessarily know whether, or not, principles of justice are discoverable through the exercise of reason … although we might believe that we do.

Are the foregoing sorts of beliefs delusional? We're not sure.

The veil of ignorance is a fact of life. There is no need to treat it as a hypothetical construct.

Given the reality of such a veil of ignorance, one might raise a question that is relevant to the previous four chapters of the current book. What justifies anyone imposing a system of governance on other human beings?

Some people have proposed – and I have touched on this previously -- that the justification for a system of governance is the manner in which it gives expression to 'the rule of law'. The problem with such a proposal is that not only is one uncertain about the precise nature of such a rule of law, but one is uncertain about how one might go about justifying the claim that is being made concerning such a conception of 'the rule of law'.

For example, what is the rule of law that is inherent in a process of constitution-making (i.e., the Philadelphia Constitution) that was not done in compliance with the framework of legalisms that surrounded such a process (the Articles of Confederation) and that used a ratification process that was not only a violation of the aforementioned framework, but, as well, was conducted in an unethical manner that, among other things, involved less than 10-15% of the population upon whom that constitution was to be imposed? Moreover, what is the rule of law that connects such a set of unauthorized, illegal, unethical, and unrepresentative set of procedures with the people of more than two hundred years later who had no say in such a process?

Unfortunately, as I believe the first four chapters of this book have indicated, there is no rule of law that defensibly links the America of more than two hundred years ago to the America of today. Such a rule of law is entirely mythological in character.

Consequently, we still are faced with the challenge of trying to come to terms with the question of legitimacy in relation to the matter of governance. Furthermore, this issue of legitimacy might be intimately tied to the veil of ignorance that is our constant companion.

For more than two thousand years, the idea of 'natural law' has, in one form or another, been an important part of the discussion revolving about the hub of governance. Quite frequently, references to 'natural law' involve the belief that the principles inherent in such law are, in some sense, self-evident.

In the second paragraph of the Declaration of Independence, for example, one finds the following words: "We find these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable rights that among these are Life, Liberty, and the Pursuit of Happiness." One can legitimately ask, however, in what sense are such truths self-evident?

Empirically speaking, for instance, it seems rather self-evident that people do not appear to be created equally. People possess different physical gifts, degrees of intelligence, and talents, so in what manner of speaking are 'men' not only equal but equal in some self-evident way?

Does this sort of equality extend to women, Indians, and slaves? Apparently, such possibilities were not as self-evident to the Founders/Framers as were those truths concerning "all men" who were white.

Presumably, the sense in which 'all men' are equal to one another has to do with the inalienable rights that are granted to every 'man'. In other words, every man has been granted the same set of inalienable rights by 'his' Creator.

However, leaving aside, for the moment, the manner in which the idea that all men are equal excludes all those who are not considered to be men – whether women, Indians, Blacks or others of a non-white orientation -- if a person does not believe in a Creator, is the same set of rights still inalienable? Under such circumstances, do such 'truths' remain self-evident?

Some people have argued that 'natural law' has nothing to do with the structural character of the universe. Instead, such individuals believe the foregoing term should be restricted to the ethical and political realm of human behavior.

Viewed through the foregoing sort of a perspective, natural law is not considered to be a proper subject for the natural sciences. Instead,

natural law concerns issues that supposedly fall beyond the purview of those sciences.

If natural law does not give expression to phenomena that are capable of being studied through the natural sciences, then how does one establish the "truths" to which such laws supposedly give expression? Doesn't the claim that certain "truths" are self-evident constitute an artful dodge with respect to the problem of having to determine, in a demonstrable fashion, the nature of the relationship among data, methodology, and the 'truth' of a matter? Doesn't the notion of something being 'self-evident' run the risk of giving expression to a process of 'reasoning' that assumes its own conclusions?

Quite irrespective of whether, or not, the natural sciences – as presently constituted -- are up to the task of discovering those laws of nature, if any, that concern matters of ethics and politics, one might suppose that something more than the quality of "self-evidence" will be required for claims concerning the nature of 'natural law' with respect to issues of rights, freedoms, and the issue of governance to be given much credence. Moreover, one also might suppose that what is considered to be 'self-evident' should not depend on whether, or not, someone believes in a Creator who endows 'men' with such inalienable rights.

For something to be considered as self-evident in a more persuasive sense, one might hope that anyone – regardless of beliefs concerning the existence of a Creator – should be willing to acknowledge the truth of a matter. In fact, if both believers and non-believers (concerning the issue of a Creator), were to agree to the truth of a certain claim, then such agreement might be treated as being somewhat akin to a form of independent confirmation with respect to the aforementioned sort of claim and, thereby, possibly constitute evidence for the 'self-evident' character of the 'truth' underlying such a claim.

If the natural laws that are said to be associated with ethical and political issues are not material or physical in the sense in which natural sciences are interested, then what are they? There have been several responses that have been given in relation to the foregoing question.

One response suggests that such 'natural laws' are, in some sense, historical in character. Thus, if one goes back to the writings of the Stoics (e.g., Zeno) in the third century B.C, one will come across a vocabulary

concerning natural law that has been revisited, in various ways, across thousands of years and many different geographical localities.

Considered from the foregoing sort of historical perspective, natural law entails the body of discussions that have taken place over the years in relation to the topic of natural law. As such, natural law is said to give expression to a set of themes and terms that have been critically addressed in what is said to be a fairly consistent fashion by individuals in different periods of history.

Presumably, if a lot of people in different historical periods and locations critically engage the idea of natural law, then, perhaps, there is something underlying such seemingly independent investigations that reflects a commonality concerning the nature of reality that speaks to a certain kind of 'truth' with respect to such ideas. Whatever the merits might be with respect to the foregoing kind of approach, there is a question lurking in the background that needs to be addressed.

More specifically, despite the possible existence of a certain family resemblance that exists among the themes and terms that are entailed by such an historical account of the idea of 'natural law', one can still ask the following question. To what extent does the foregoing sort of account reflect the character of reality?

The historical approach to natural law might be nothing more than a litany of ideas that have been explored by this or that person in this or that period of history for this or that reason. One is still uncertain what any of those ideas have to do with truth … let alone self-evident truths.

The fact that, historically speaking, various people might have addressed the issue of natural law in a similar – possibly even consistent -- manner (although this notion of 'consistency' is often a contentious matter), this might not mean anything more than that a variety of people have pursued the same sort of line of inquiry at different times. Similarity in thought is not necessarily an indication that truth is being reflected in, or through, any commonalities that might tie a set of terms together … even if one were to leave aside the question of whether, or not, such commonalities were actually present.

What people have thought historically – no matter how similar and consistent such thought might be – does not carry any necessary

implications for the nature of truth. The foregoing realization has led to a second way of thinking about the idea of 'natural law'.

This second avenue of inquiry is sometimes referred to as a philosophical exploration. The philosophical manner of engaging natural law seeks to discover something universal in the nature of things … some truth that applies to everyone and, therefore, a 'truth' to which everyone is bound.

Philosophically speaking, something is "natural" to the extent that it accurately reflects some facet of the realm of nature. Moreover, something is a function of law to the extent that it gives expression to a process through which a given phenomenon in nature manifests itself across a variety of circumstances in a, more or less, regular, consistent fashion.

Whether, or not, the philosophical approach to natural law is anything more than a snipe hunt -- in which one becomes caught up in chasing after an imaginary creature of some kind -- is unknown. Consequently, one might be no better off pursing a philosophical approach to natural law than one would be if one were to pursue an historical approach to the same concept.

Irrespective of the path one chooses in order to try to explore the topic of natural law, the stakes are very high. For instance, who, if anyone, possesses inalienable rights … the sort of rights that, presumably, cannot be trumped by any set of circumstances?

If such rights exist, do they belong to individuals or to the collective? Alternatively, if such rights exist, could they belong to both individuals and the collective, and if so, on the basis of what principles should one seek to balance such claims on rights?

Are collective rights and individual rights necessarily in conflict with one another? If not, then how can they be reconciled?

If a natural law exists concerning the rights of human beings, to what extent do such laws govern both the relation of the individual and the State, as well as the relationship among States? If natural law is an expression of the nature of the universe in some sense, then one might suppose that arbitrary arrangements of governance – that is, arrangements that do not reflect the principles of natural law inherent in the universe -- are likely to generate problems of one kind or another,

and, if so, could one use natural law as a tool for explicating how such difficulties arise?

Natural law – to whatever extent it exists – must adequately address all of the foregoing issues. If natural law exists as a part of the reality of the universe, then its truths are only self-evident to the extent that one correctly grasps the character of those truths … and, as such, this might take the issue of natural law beyond either historical or philosophical considerations and push that concept into the realm of epistemology.

What, if anything, can be known about the nature of natural law? What are the limits, if any, that exist with respect to such a notion, and if such limits exist concerning our capacity to know or understand the way in which the natural law of ethics and politics operates in the universe, what implications do these sorts of limits have for the issue of rights and governance?

According to Cicero (a Roman political theorist and philosopher who lived between 106 B.C. and 43 B.C.), natural law gives expression to the manner in which reason, when correctly exercised, accurately reflects the character of Nature. Furthermore, when reason enjoys the foregoing sort of relationship with Nature, then reason has grasped something that is eternal, unchanging, and universal.

Obviously, if one's reasoning has correctly grasped the character of nature concerning ethical and political themes, then one has no justifiable reason for altering anything concerning such an understanding of natural law. Moreover, if one assumes that such an understanding is manifested through the laws of the State, then any attempt to overthrow or reject such natural law would be foolish, if not treasonous, in nature.

On the other hand, if one's reasoning has not correctly grasped the character of natural law with respect to issues of ethics and politics, then there might be many perspectives that are capable of lending support to one's desire to change such arrangements … although the matter of justifying the system to which one wishes to switch is a separate issue. Furthermore, if the given laws of a State/Nation do not reflect the actual character of the natural law of ethics and politics that govern the universe, then it would be prudent to reject such an arbitrary system of laws.

The problem, of course, is that quite frequently we do not know what the status of things is, ethically and politically, relative to the actual nature of the universe. Those who occupy positions of power tend to argue that the status quo reflects the truth of things concerning the natural laws of the universe and, therefore, ought not to be changed or abolished, while those who are out of power tend to argue in a contrary fashion.

Separating the issues of power – with all of its advantages – from the issues that surround coming to understand the possible character of the natural law of the universe can be a tricky matter. Many people confuse, if not conflate, the former with the latter, and, presumably, this is the sort of thing Professor Rawls was attempting to induce people to put aside via his hypothetical construct known as 'the original position'.

Much rests on how the foregoing matters are decided. One's understanding of notions such as: 'duty', 'obligation', 'legitimate authority', 'freedoms', and 'rights' are all informed – for better or worse – by the choices that are made concerning the manner in which the aforementioned notions fit into the idea of natural law.

An antonym for 'natural law' is 'conventional law.' Conventional law consists of a set of legal arrangements (conventions) that are arbitrary in the sense that those arrangements are not a reflection of, or called for, by the natural order of things but are, instead, a way of organizing political, legal, and/or ethical issues to accommodate a given interpretation of social processes.

Even if considered to be arbitrary in the foregoing sense, such a set of legal conventions might still be able to serve various practical functions within a society or community. On the other hand, the presence of the quality of arbitrariness in a conventional system means that other sets of legal arrangements might be able to address various problems and needs in an equally effective, if not better, fashion … although how one defines what it means to be "equally effective" or "better" tends to be contentious .

Evaluating, in some sort of comparative manner, two, or more, conventional systems becomes a matter of the kind of system of critical methodology one uses to decide such matters. This, in turn, leads to the problem of having to justify the use of such a system of evaluation rather than some other methodological system with respect to the judgments

one makes about political and ethical issues, and unless one can viably root one's choice of systems in something beyond conventions, then these sorts of evaluative methodology are arbitrary as well.

For example, consider the principle: 'majority rules'. Is such a principle a reflection of the natural order of things or is it a convention, and, therefore, arbitrary.

There is nothing to which one can point in the natural order of things that convincingly indicates that the idea of 'majority rules' should govern political and ethical considerations. As such, 'majority rules' is an arbitrary idea.

Historically, there might have been instances in which such a principle was adopted and had practical or utilitarian value. However, the character of this kind of value can always be questioned in relation to its arbitrary nature.

In other words, if one supposes that a given convention is valuable because of its practical and/or utilitarian consequences, one could ask: Practical for whom and utilitarian with respect to which purposes? In addition, one could ask: Does one mean utilitarian in a quantitative and/or a qualitative sense and, in either case, what justifies choosing such an approach with respect to evaluating issues of politics and ethics?

Even if one could demonstrate quantitatively that a majority of the people would benefit from a certain policy, one could not only question the criteria being used to determine the nature of what constitutes a 'benefit', but, as well, one could raise questions about whether, or not, the character of the qualitative harm caused to the minority – who, for example, might be needed to subsidize such a benefit for the majority -- could be justified. How does one evaluate quantitative versus qualitative issues of benefit and harm, and according to whose conception of benefit and harm, and how does one justify such a conception?

Why should the wishes, interests, and needs of a majority take precedence over the wishes, interests, and needs of minorities? What requires one to accept such a conclusion?

What if it turns out that the majority is wrong about what it considers to be in its interests? What if it turns out than a given minority is correct about what it considers to be in its interests? Should the principle that

"majority rules" still prevail under such circumstances, and, if so, how does one justify this sort of insistence?

There is no body of evidence to which one can point indicating that one is justified in claiming that the majority is always right. In fact, scientifically speaking, one quite easily can demonstrate that with respect to almost all major breakthroughs in science, the understanding of the majority has tended to be faulty… in part or in its entirety.

Even if one were to accept the notion that "majority rules", what does one mean by the idea of "majority"? Does one mean 50.000001 % of the people? Does one mean 50.000001 of the adults over a certain age? … or, 50.000001 of the adult males over the age of 18? … or, 50.000001% of the adult, white males over the age of 18? … or, 50.000001% of the adult white males over the age of 18 who own property of a certain value? Furthermore, how does one justify any of the foregoing qualifiers?

Alternatively, does one mean by the idea of 'majority rules' that two-thirds of a given group should decide an issue or that three-fourths of a given group should decide a matter? What justifies using one standard of 'majority' rather than another?

What justified the Founders/Framers of the Constitution to fix one set of standards for the number of states that are considered necessary for the passing of amendments (three-fourths) but fix another, lesser standard (69%) for the number of states that are necessary to ratify the Philadelphia Constitution?

Moreover, why didn't the Founders/Framers specify that the ratification vote in each state must carry by a majority vote of three-fourths or 69% or two–thirds of the delegates? Why did they permit the standard for ratification votes to be so minimal a form of a majority?

Why weren't the people permitted to decide their own standard of what constitutes a majority? Why weren't the people permitted to decide whether, or not, the minority should be bound by what a majority decides?

Even if one were to accept the idea – and the evidence indicates otherwise -- that all of the eligible voters in post-Philadelphia Convention America had agreed independently to make a simple majority the voting standard in the state ratification conventions rather than have such a standard imposed on them with a 'take-it-or-leave-it' choice, one still

could ask, with considerable justification, the following question: Why should anyone born several hundred years later (or even 50 years later) be bound by an agreement concerning such standards in relation to the ratification conventions and the Philadelphia Constitution?

People might be able offer all kinds of rationalizations for why things were done in one way rather than another. However, rationalizations do not necessarily constitute a justification for having done things in a given manner?

Similarly, the principle: "Might makes right" is as arbitrary as is the idea of "majority rules". There is no connection between power and that which is right (whatever this might turn out to be) that can be established that is not arbitrary – that is, which would not have difficulty being justified, in any broadly convincing fashion, to be a necessary link between power and that which is 'right' ... assuming, of course, we know what the latter term means.

The fact that a majority of people or some minority have the power to coerce, force, exploit, or control some other group of people – whether a minority or majority – means nothing more, in and of itself, than that someone has acquired (through means that might not be capable of being justified in a non-arbitrary way) the requisite array of resources to impose its will on others. In short, having the foregoing sort of power says absolutely nothing about whether, or not, such power or its application can be justified in non-arbitrary terms.

To argue: If either "majority rules" and/or "might makes right" were not the ruling principle in society, then there are many things that could not be done or accomplished by society, is a conventional – and, therefore, arbitrary -- position. One must not only be able to justify the purposes or activities that are to be pursued through such principles, but, as well, one must be able to demonstrate that those means are the only justifiable way of doing the activities and purposes that are to be pursued.

Otherwise everything about such an argument is entirely arbitrary … depending on rationalizations rather than demonstrable justifications. Unfortunately, many people treat the shallowness of rationalizations as if this were equivalent to the much more rigorously demanding conditions necessary to establish justification.

Moreover, there are problems surrounding the idea of what constitutes a "demonstrable justification" … Demonstrable justification to whom and on the basis of what criteria? If a minority of people (for instance, a group of: scientists, religious scholars, jurists, or political representatives) decide that some given argument constitutes a 'demonstrable justification', why should what those sorts of people say be considered a definitive criterion for the 'truth' of something, and why should other people be considered to be under some sort of obligation to cede their authority to that sort of group of individuals?

To say that such and such is the way things are done in a given society, or that such and such is the way our forerunners did things, or that such and such is the way a number of societies/communities – perhaps a majority of them --do things, does not alter the manner in which all of the foregoing possibilities allude to a conventional approach to political and ethical considerations. As such, all of the previous forms of arguments are arbitrary as they stand and, consequently, all of those arguments are in need of being justified in some non-circular way … that is, one cannot cite a way of doing something as its own justification. One needs some method that is independent of such a way in order to be able to have an argument that might be a plausible candidate for determining the 'truth' or 'rightness' of some given convention.

Moreover, even if one were to suppose that some form of demonstrable justification were forthcoming with respect to a certain practice or principle being considered to be 'true' or 'right' in some sense, does it necessarily follow that everyone is 'obligated' to observe the requirements of such a 'truth' or expression of 'the right'? Or, if obligated, that people should be forced to comply with the requirements of such a 'truth' or manifestation of 'the right'?

How many degrees of freedom, if any, should be given to people to depart from what seems to be 'true' or 'right'? Will society face more problems trying to enforce a given 'truth' or expression of 'the right' than if society were to establish degrees of freedom for various, limited departures from 'the true' and 'the right'?

How does one measure the liabilities of force/compulsion concerning compliance with the 'true' and 'the right' against the liabilities entailed by extending degrees of freedom to such compliance? How does one measure the harm that might accrue to an individual for non-compliance

with 'the true' or 'the right' against the harm that might accrue to an individual through being forced to comply with that which – we are assuming – is true or right?

Who gets to say what criteria of measurement are to be used in any of the foregoing? What justifies the use of those criteria?

There are many kinds of natural norms that are given expression through human existence. An array of criteria – ranging from: height, to: weight, race, ethnicity, religion, hair color, yearly earnings, illness, marriage, divorce, and suicide – can be used for classifying people.

However, the existence of those norms do not, in and of themselves, demonstrate whether, or not, any of the foregoing normative values should be used to construct political and ethical judgments. Of course, there have been those – for example, Hitler and the eugenics movement – which have tried to argue that the presence or absence of one, or more, of the foregoing criteria should shape the character of our political and ethical decisions.

Once one accepts – for good or bad reasons – the presuppositions of a political and ethical perspective, then the ideas that seem to be entailed by those presuppositions might make sense, but understanding how a political or ethical system works -- given the presuppositions of that system -- does not mean that those 'givens' have been justified. Something can be meaningful without necessarily being true or right, but, unfortunately, people – without justification -- often confuse and conflate whatever seems to be meaningful in some sense with that which is true or right or suppose that because something is meaningful, then it also must be true and right.

Delusions are meaningful. However, they are not reflections of what is true or right independent of their own frame of reference.

One might wish to argue that if some perspective could be shown to give expression to natural law – i.e., it constitutes the natural way of things with respect to political and/or ethical considerations – then such natural law is superior to any conventional system one might invent since the former is non-arbitrary, whereas the latter is arbitrary. The problem, however, is that we often have difficulty distinguishing between what is natural from that which is conventional … frequently assuming that because a given convention has become the 'norm', then this means that

what is just a set of arbitrary conventions actually reflects the natural order of the universe.

The way one would like the universe to be is not necessarily the way the universe actually is. Conventions tend to be a convenience for those who are engaging the universe to accommodate personal preferences quite apart from what the truth of things might be.

If one cannot establish the character of natural law in any demonstrably justifiable manner, and if one is only left with conventional systems that are, by their nature, arbitrary, then one is faced with the problem of having to decide between arbitrary systems that are inherently resistant to being shown to be more true or more right than some other arbitrary system. How does one go about determining that one conventional system is, in some manner, less arbitrary than some other system, and does the quality of being less arbitrary than other systems thereby necessarily transform such a system into an obligatory framework of some kind?

A Christian writer of the seventh century – St. Isidore of Seville – maintained that laws are capable of being divided into two classes … those that are man-made and those that are Divine. According to St. Isidore, the laws of God reflect the natural order of things, whereas the laws of man, based as they are on custom or conventions, vary from one nation to another.

A careful observer of history might notice that there is considerable variability amongst the ways in which the 'natural law' of God is given expression in different historical periods and geographical places. Indeed, one might easily suppose that there is as much variability with respect to the character of such natural or divine law as there is amongst the customs and conventions of different societies … in fact, the variability within one and the 'same' religion can sometimes be as great as the variability between different religions.

In addition, one might question whether, or not, what some people consider the natural law of God is nothing more than the custom, habit, or convention of those people. Making a classification or distinction does not necessarily mean that one correctly understands the nature of the classification or distinction one has made.

On the other hand, some people suppose that the foregoing variability within and between religions serves as a sort of a priori argument in favor of the idea that there is no God. Aside, however, from committing a logical error that assumes that the mistaken understanding of human beings carries any necessary implications for the nature of reality, individuals who argue in the manner outlined in the first sentence of this paragraph also are not in any better position than those who might, or might not, have beliefs concerning the divine nature of natural law.

After, all, there is a tremendous variability in the philosophical and hermeneutical character of non-divine conceptions of the universe. Unfortunately, one has no universally agreed upon means to demonstrably justify why the adoption of any given custom or convention would be superior to what is done by those who are working out of some other philosophical or religious orientation.

Proponents of both religious and secular approaches to legal, political and ethical problems maintain that human beings have a capacity for reason that permits them to evaluate the value of different arguments with respect to the degree, if any, to which those arguments give expression to what is 'true' or 'right'. However, the proponents of both religious and secular approaches to those issues often make the same mistake and assume that the way they think about something is 'rational' and anything which departs from that manner of 'reasoning' is in error or irrational.

The nature of reason and logic tend to be very difficult to pin down. We all sense the elusive presence of reason and logic permeating the fabric of experience – both individual and collective -- but, quite frequently, we tend to become preoccupied with trying to demonstrate what reason and logic are not (e.g., attempting to point out the flaws in someone's arguments) than what reason and logic are in and of themselves … if this is even possible.

We often do that which we do not understand how it is done (e.g., creativity, invention, insight, awareness, language). Perhaps understanding and reasoning are among the things we do that we do not understand … and might never understand.

Once again, we are confronted by the same sort of problem as noted earlier concerning the 'natural' and the 'conventional'. More specifically,

how does one distinguish between, on the one hand, the natural laws, if any, of reason or logic (their 'reality') and, on the other hand, those man-made conventions concerning logic and reason that are little more than customs adopted for this or that purpose and that derive their apparently compelling force from habit rather than anything more essential and universal in character?

We tend to use conventions to distinguish between the real and the customary. However, those methodological conventions are not always reliable indicators of what is true or what is right because those conventions cannot always separate what we bring to a situation and what is brought to that situation by a reality considered independent of us … or even successfully determine whether, or not, there is any reality independent of the phenomenology of experience.

To say that: Reason is what we use to grasp the nature of reality, might only be an exercise in circular reasoning such that 'reason' is merely looking into the mirror of conventions that have been constructed by imagination for the purpose of generating something that is considered to be meaningful for our viewing pleasure. Reason can be used to try to understand the nature of our own thinking about something (i.e., the manner in which we create meaningfulness), or it can be used to grasp the nature of the reality that makes our experience possible, and we are not always sure which is which in any given instance.

The term: 'self-evident,' might mean nothing more than that which reflects our own way of thinking about things. Alternatively, 'self-evident' might refer to the manner in which reason grasps some dimension of reality and, thereby, gives expression to one facet, or another, of 'the true' or 'the right.'

The Founders/Framers of the Philadelphia Constitution believed that the truths which they considered to be self-evident were reflections of the nature of reality. Yet, given the way in which women, Indians, and Blacks – to name but a few – were excluded from such truths, one suspects that -- at least in part -- the Founders/Framers were more entangled in their own arbitrary conventions than they were in possession of any clear understanding concerning the ethical or political character of reality with respect to human beings.

The British did not agree that such truths were self-evident. Perhaps the reason why they did not share the same understanding concerning

the allegedly self-evident character of such "truths" as did many Americans is that the British worked out of a different arrangement of conventions than the Americans did … or, maybe, one side or the other – or neither – was actually understanding the character of reality, while the other side was (or, maybe, both sides were) ensconced in delusional thinking.

The belief of many people concerning the greatness of Aristotelian theories about the relationship between the individual and the State was that they were based entirely on reason. The belief of many people concerning the greatness of the Roman law was that it was based entirely on reason. The belief of many people with respect to the greatness of the systems of Augustine and Aquinas was the way in which reason played a substantial role in the respective frameworks of the latter two individuals and, thereby, appropriately complemented faith.

In each case natural law refers to the capacity of human beings to use reason to grasp the nature of the relationship between human beings and the universe. Unfortunately, Aristotle, the Romans, as well as Aquinas and Augustine all had somewhat different – although at points overlapping -- approaches to explicating the details that reason generated concerning the nature of the relationship between human beings and the universe as expressed through natural law.

All of the foregoing perspectives were immersed in the conviction that one is given insight into the nature of the universal and eternal truths of reality through the use of reason. All of the foregoing individuals were convinced that, in a sense, their orientations – or portions thereof -- were self-evident in the light of reason, but like light, reason seems to be radiating at different wave lengths in each of the foregoing frameworks and, therefore, is only capable of illuminating what such wave lengths are capable of disclosing according to their nature … perhaps much as is the case when one uses: microwave, infrared, or ultraviolet light to 'see' different dimensions of being.

If there are eternal, universal laws, and if one engages such laws through the proper exercise of reason, then the results of that sort of engagement give expression to an understanding of the way in which natural law is manifested in the universe. However, what is missing from the foregoing sort of a hypothetical (i.e., an 'if-then' form of statement) is a demonstrably justified account of what constitutes such eternal,

universal laws as well as what constitutes a "proper" exercise of reason with respect to those laws so that their presence and nature might be understood as giving expression to natural law.

One can speak about the 'light' of reason or the self-evident truths which are illumined through that light all one likes. Nevertheless, until one knows that what is being manifested through reason is true rather than merely being meaningful -- but delusional – in character, one starts at no justifiable beginning and one works to no justifiable end via a means (a process of reasoning) that has not been justified.

When Archimedes claimed that if someone would give him a place to stand, he would be able to move the Earth, he might have been correct in principle. However, one still is left with the unresolved problem of finding the appropriate place upon which to stand and from which one will leverage movement of the world.

Similarly, one can make all kinds of claims on behalf of the 'light of reason' and how it can leverage this or that truth when used in conjunction with the fulcrum of eternal and universal laws. Yet, one still is left with the problem of having to locate the 'space' through which 'proper reason' (the right sort of lever) can be exercised, just as Archimedes was left with the problem of having to find the appropriate portion of 'space' from which to undertake his attempt to move the Earth.

Through the use of the light of reason, one might be able to differentiate between 'good' and 'evil'. However, one's conception of what is 'good' or 'evil' is likely to be affected by whether, or not, such light is naturally or artificially generated since conventional, or man-made light, might not illumine reality in the same way that natural light does.

One might wish to define "sin" as those acts that interfere with the capacity of the light of reason to grasp the nature of eternal, universal laws. Given such a perspective, sinning is the process through which one cuts oneself off from both the proper function of reason as well as from the universal, eternal laws that reason – when operating properly – is designed to be capable of understanding.

Nevertheless, one still needs to know which acts undermine reason in the foregoing fashion. Moreover, one needs to know what is necessary to counter the alleged toxic effect of such acts.

Theologies of all different kinds purport to provide answers to the foregoing questions. Nonetheless, providing an answer that is meaningful in some sense does not necessarily make such a response an accurate reflection of some aspect of the universe or Being … one still needs a demonstrable justification for why one should accept such 'answers' as being not only plausible possibilities, but also ones that are highly likely to be true.

Notions such as: 'good and evil', 'sin', 'self-evident', and the 'light of reason', are all entangled in conundrums that require us to separate out the wheat from the chaff … or the conventional from the natural -- to whatever extent such separation is possible. This is not to say that there are no realities corresponding to terms such as: 'sin', 'good and evil' or the 'light of reason', but it does indicate that there are many challenges surrounding our attempts to differentiate the true and the false in those matters.

'Justice' has been described as that which is in accord with the exercise of reason. Anything that deviates from such reasoning is said to give expression to injustice in some sense.

The first act of justice is to affirm the truth of a matter. One does justice to the nature of reality and to the exercise of reason when the latter reflects the former.

If reason is that aspect of a human being which is capable of grasping the character of natural, eternal, universal laws, then one understands how someone operating out of such a framework conceives of justice as giving expression to that aspect of natural law that is grasped by reason. However, if this is not to become an exercise in tautological or circular reasoning, one has to be able to demonstrably justify claims concerning the existence of such laws as well as reason's role in accurately capturing the structural character of those laws.

If a State/Nation rules in accordance with the requirements of justice and, thereby, correctly uses reason to engage the natural, eternal, universal laws of the universe/Being, then failure to comply with the requirements of such governance would not be justifiable? Whether, or not, such an 'if-then' claim is demonstrably defensible in some non-arbitrary way is another matter.

Moreover, if the relationship among: justice, reason, State/Nation, and natural law cannot be demonstrably justified in some non-arbitrary fashion, then one can ask: What is the basis for claiming that citizens are obligated to comply with the manner in which a given State/Nation governs the people who live in a certain geographical location? Unless one can demonstrate that the way in which a State/Nation governs people reflects the natural laws of the universe, then such governance is a function of man-made conventions that are entirely arbitrary, and, consequently, any concomitant notions of duty and obligation are equally arbitrary and incapable of being justified independently of the system of conventions that is governing things with respect to such a State/Nation.

Is the relationship of an individual with other individuals a matter of a social contract? If so, then one not only needs to know the nature of how the three basic components of a contract – namely, offer, acceptance, and consideration -- come together under such circumstances, but, as well, one needs to know what justifies any given arrangement involving: offer, acceptance and consideration since arrangements that are shaped by: coercion, duress, fraud, undue influence, exploitation, and disinformation, or that prevent a person from taking an active role in the forging of such a contract tends to invalidate contracts and, thereby, suggests that arrangements involving these sorts of tactics cannot be justified.

If one were to suppose that the origins of political association are rooted in some notion of social contract, what is one to make of those people who do not want to participate in such a contract? Can one really suppose that because some people wish to be governed by a particular form of social contract, then everyone should be bound by the same contract? How does one justify the introduction of 'ought' into such circumstances in a non-arbitrary manner?

Is there some 'standard' social contract to which everyone must commit herself or himself? How does one justify either the meaning of 'standard' or the force of 'ought' that is present in such an arrangement?

The 'rights' that are entailed by such contracts are necessarily reciprocal in nature since otherwise those arrangements would be seen as being inherently unfair. On the other hand, the fact that everyone is entitled to the same set of rights does not, in and of itself, necessarily mean that such rights will be in the best interests of the people involved.

The relationship between rights and welfare is not necessarily straightforward and automatic. Some rights might be more conducive to realizing what is in the interests of one's welfare, whereas other rights might not be so conducive.

For example, the right to consume any and all drugs is not necessarily in one's best interests simply because, empirically speaking, there are many drugs that have been demonstrated to have problematic dimensions to them … including qualities of being lethal or injurious to health. On the other hand, having the right to explore the pros and cons of whether, or not, in any given instance, the consumption of drugs is in one's best interests might be a reciprocal right that is worth having.

Some people (e.g., Hobbes) wish to make a distinction between natural law and natural rights. According to such individuals, natural law concerns that which binds one to a certain course of action, whereas natural rights involve the degrees of freedom that one has to either do or not to do some given activity.

However, what such people seem to overlook is that any claims concerning natural rights either do, or do not, reflect the nature of reality. If such claims do reflect some facet of reality, then the structural character of the rights at issue is a function of the way in which natural law operates in the universe … that is, one has the right to do, or not to do, certain things only to the extent that the natural laws of the universe permit or delineate such a right.

If, on the other hand, claims concerning the existence of natural rights do not reflect specific principles inherent in the universe that give expression to such entitlements, then claims concerning 'natural rights' are a matter of arbitrary conventions. Considered from this perspective, those sorts of rights are not 'natural' and might not even necessarily be the sorts of activities to which one is entitled … and, therefore, they are not necessarily something to which the label "rights" applies.

Claiming that one is entitled to perform, or not perform, a given sort of activity must rest on something more than one's claim to entitlement. Entitlement must be rooted in an argument that is capable of demonstrably justifying such claims in a non-arbitrary fashion.

If rights arise out of the nature of a given form of social contract, then those rights are dependent on the structural character of that contract for

the source of authority that lends a sense of entitlement to such rights. If rights arise out of the nature of the universe, then those rights are dependent on the structural character of the universe to justify their claims concerning entitlement.

Rights do not exist independently of a context – whether natural or man-made. Moreover, irrespective of whether that context is rooted in the way of universal laws or rooted in the way of a man-made social contract/legal system, one cannot separate the idea of rights from a surrounding framework of law, natural or otherwise, which spells out the character of the entitlement that is said to be involved with the exercise of those rights.

Rights constitute a certain kind of political and ethical manifestation that gives expression to the dynamics of law-like principles. This is true whether those dynamics are man-made or reflect the nature of the universe in some inherent sense.

Nowadays, the term "natural rights" tends to be much more in vogue than the idea of "natural law". Nevertheless, one cannot focus on the issue of 'natural rights' unless one understands that 'law', in some sense, forms both the environment as well as the root system through which the general meaning and specific details of that idea are nourished and shaped.

What is true with respect to 'natural rights' is also true in relation to the notion of: 'civil rights'. However, whereas use of the qualifier 'natural' is intended to allude to the idea that such rights are somehow inherent in the nature of existence (self-evidently or otherwise), the qualifier 'civil' is intended to allude to a context of conventions that authorize the associated rights.

Nonetheless, in both cases (natural and civil) the source of authority for such rights comes from the surrounding system of either natural or man-made laws. Civil rights are supposed to reflect the structural character of the underlying system of conventional laws just as natural rights are supposed to reflect the structural character of the underlying nature of the universe

In the Declaration of Independence, the relationship between rights and power is different than is the nature of that relationship in the Philadelphia Constitution. In the former document, governments exist

purely for the sake of securing rights for the people, whereas in the Philadelphia Constitution, powers are not vested in government for the purpose of securing the rights of citizens.

The Bill of Rights outlines what governments supposedly cannot do. The Constitution, on the other hand, is about the procedural uses of power that can be used for any purposes whatsoever as long as such uses can be reconciled – broadly speaking and in an almost completely amorphous sense -- with the purposes set forth in the Preamble to the Constitution, and as long as such powers do not impinge on the rights of people.

The Declaration of Independence was about empowering the people through the presence of rights. The Philadelphia Constitution was about empowering government quite independently of rights.

In fact, the nature of the Philadelphia Constitution was geared to prevent rights from interfering with the so-called 'explicit' powers of federalized governance. Moreover, according to the Philadelphia Constitution, whatever rights existed would have to be filtered through the process of governance … people did not have rights independent of that process.

The power to govern might be derived from the people. However, once such power was derived, the rights of people became secondary to the exercise of power. National interests (that is, the process of exercising power through federal offices) often tended to trump claims concerning individual rights.

Although Madison was the person who initiated a congressional discussion about the issue of amendments – some of which had to do with the rights of citizens – nevertheless, he previously had been resistant to the idea of any kind of amendments. If one leaves aside Madison's pragmatic beliefs that introducing amendments into the constitutional conversation was inherently messy, problematic and would lead to critical delays in the establishment of a national government, Madison had been of the opinion that amendments were unnecessary for several reasons -- and some of the following considerations have been touched upon earlier but are being reintroduced here for purposes of clarity, context, and emphasis.

First, Madison insisted that the powers of government that were outlined in the Philadelphia Constitution were explicit and, therefore, strictly limited. Consequently, he believed that the likelihood of such powers encroaching on the 'natural' rights of people was very unlikely.

Secondly, because the Philadelphia Constitution guaranteed each state a republican form of government, Madison believed that those in government would never transgress beyond the limits of the explicit powers that had been granted through the Constitution. For Madison, the philosophy of republicanism served as an ethical restraint on the way the government interacted with the people and, as a result, would be the means through which the natural rights of the people were protected.

Madison was quite wrong in a number of ways with respect to his understanding of how the theory of governance would be translated into actual practice. For example, almost from the very beginning, the federal government began to push the envelope in relation to the meaning of "explicit" or enumerated powers via the notion of the implicit dimensions that were said to be inherent in the allegedly limited nature of such enumerated powers … and the "necessary and proper" clause frequently played a crucial role in this respect. In addition, almost from the very beginning, the administrators of the federal government failed to live in accordance with the requirements of the guarantee of republican governance.

In any event, 'rights', 'justice', 'governance', 'obligation', 'duty', 'social contract', and 'reason' form a cluster of related ideas. One can wire that cluster together through conventional – and, therefore, arbitrary … although meaningful – means, or one can try to come to understand how (of if) such phenomena are wired together by reality.

In general, the notion of 'sovereignty' alludes to the capacity of an individual, State/Nation, and/or ruler to determine one's own fate within the limits permitted by the natural and/or conventional framework that serves as the source of such sovereignty. The nature of sovereignty tends to be a child of the source that engenders it.

For instance, if one considers sovereignty to be an act of will, then sovereignty becomes a matter of one's ability to translate personal interests, purposes, and inclinations into some sort of a realized status. If,

on the other hand, one considers sovereignty to be a function of intellect, then sovereignty becomes a matter of one's ability to think one's own thoughts without interference from others … although such a notion of sovereignty does not necessarily entail a right to act on such thoughts.

Alternatively, if one considers sovereignty to be about one's essential potential, then sovereignty becomes a matter of having control over how – and to what extent – such a potential unfolds over time. Finally, if one considers sovereignty to be a matter of weaving together components of will, intellect, and essential potential, then one will be concerned with being able to weave the complete tapestry of one's life via choice.

Questions arise, however, when one begins to reflect on the possible limits of sovereignty in those instances when one's mode of determining one's own fate interferes with the ability of other individuals, States/Nations, and rulers to give expression to their respective inclinations for determining their fates. Moreover, questions begin to arise when one reflects on whether, or not, some given expression of sovereignty (individual, State/Nation, or ruler) should be given priority over the sovereignty of others and under what conditions, if any, and to what extent.

Once again, some sort of non-arbitrary form of justification must be given in relation to one's claims. This is so not only in the matter of demonstrating why one sense of sovereignty might be preferable to another, but, as well, one must show how the attempt of one individual, State/Nation, and/or ruler to give expression to sovereignty fits in with the attempt of others to give expression to their own sense of sovereignty.

Is sovereignty a right – natural or civil? Is sovereignty a matter of a social contract? Is the issue of sovereignty related to our essential nature, if any, and, if so, what is the nature of that relationship? Does the search for sovereignty necessarily entail conflict with others, and, if so, how does one go about trying to manage that conflict? Does the search for sovereignty require cooperative efforts, and if so, what sort of efforts are indicated? Do human beings actually have sovereignty in any of the foregoing senses?

As previously indicated, there are two broad approaches to the foregoing sorts of questions. One approach is rooted in natural law, while the other approach is rooted in conventional or man-made systems.

Irrespective of one's approach, there is a need to be able to demonstrably justify what one is doing. This is certainly the case when one is dealing just with oneself, but this becomes especially necessary when what one decides in this regard has ramifications for the lives of other people.

There are a further set of questions that arise when those who take different approaches to the issues of sovereignty rub up against one another. For example, should conventional accounts be given preference over those accounts that are rooted in natural law? ... or, vice versa and -- if so -- why? Is it possible for natural law and conventional accounts to co-exist with one another, and, if so, how and why should this be done?

Some people might wish to argue that the idea of natural law is static because it gives expression to unchanging, eternal, universal principles. If this is true, then according to such individuals, the idea of natural law provides no room for evolution or development to occur with respect to matters of: 'justice', 'rights', 'governance', 'sovereignty' and so on as historical circumstances change.

Such an argument is flawed. Just as one might argue that even though the principles through which the material/physical world operates remain the same throughout history, nevertheless, over time, scientists dynamically enrich their understanding of those principles, so too, one might argue that even though the natural laws of the universe concerning political and ethical issues might remain the same (or, so, it is being assumed for the moment), the manner in which those issues are understood could still be enriched with the passage of time.

Moreover, the same sorts of problems that confront scientists with respect to the material/physical world also confront human beings with respect to the political/ethical world. That is, in both instances individuals must search for those sorts of understanding that can be demonstrably justified in non-arbitrary ways … in ways that are independent of one's assumptions concerning the nature of reality.

Epistemologically speaking, to claim: Reality is, ultimately, a function of material/physical principles, provides no inherent advantage relative to those who claim: Reality is, ultimately, a function of divine principles … and vice versa. This is because, epistemologically speaking, we really don't know what it means to say that reality is a function of material/physical principles since – despite considerable advances in, among other things,

quantum physics, astrophysics, and biochemistry -- we don't understand how such principles made the universe possible, or how they naturally led to a set of some 19 physical constants (e.g., the speed of light, the gravitational constant, and the charge of an electron … to name but a few) having the precise character they do, or how such material/physical principles led to the emergence of life, consciousness, intellect, language, or creative talent. Correlatively, we really don't know what it means to say that reality is a function of divine principles because we don't necessarily understand how or why the universe came into being in the way it did or what any of this means with respect to human beings.

We all have theories that we consider useful and meaningful concerning the relationship of science and/or religion to the nature of reality. However, what we find to be useful and meaningful in that regard doesn't necessarily make such things true or right.

Science rushes to discover the nature of the universe, and religion rushes to discover the nature of the universe, and philosophy rushes to discover the nature of the universe, and mathematics rushes to discover the nature of the universe. Yet, meanwhile we are immersed in ignorance with respect to so many things, even as we are awash in emotions of certitude concerning our alleged understanding of life and the universe … emotions that stand in need of having to be demonstrably justified in some rigorously non-arbitrary, non-circular, non-tautological, and non-presumptive manner.

Whether one is seeking the laws of the natural world or one is seeking the laws of a world of conventions, one's search is enveloped in ignorance. In fact, one might argue that the very first reality that both approaches encounter involves the struggle to realize the presence, nature, and scope of our ignorance.

Understanding is shaped as much by what we don't know as by what we do know. Moreover, both individually and collectively, what we don't know far outweighs what we do know.

The first challenge to both natural and conventional approaches to seeking the nature and character of the political and ethical laws that are to govern is, in part, a function of our ignorance concerning those matters. We are theory-rich and knowledge-poor with respect to all of the foregoing issues … and wisdom concerning what little we do know is even rarer.

Consequently, the very first theme of commonality that links the perspectives of the proponents of both natural and conventional approaches to understanding the manner in which political and ethical themes might be given expression through the idea of law is the need to overcome the ignorance that currently 'informs' their respective understandings concerning the nature of experience. To the extent that ignorance colors and shapes the nature of one's understanding, then to that same extent does one stand in need of an opportunity to shrink the ignorance with which one is confronted.

Every human being is in need of the opportunity to push back the horizons of ignorance. Without the opportunity to dissolve the filters of ignorance that color our perception of experience, one cannot take any viable steps with respect to generating demonstrable forms of justification that indicate why, and how, pursuing existence through one means rather than another, or for one purpose rather than another, are potentially more heuristically valuable, relative to other possibilities, in one's search for truth.

In the foregoing sense, one might speak of a palimpsest theory of natural law. The surface 'artwork of the phenomenology of experience concerns the pattern of our existential ignorance concerning the nature of reality, whereas the actual 'artwork' of Being is what would be understood if all ignorance – which currently obstructs our view of reality -- were removed.

Whether, or not, one will ever be capable of removing such ignorance, in part or in its entirety, is not the point of the foregoing palimpsest approach to such issues. Rather, the thrust of this manner of engaging our existential dilemma is that we all are in need of a fair opportunity to be able to explore those possibilities.

Given the foregoing, the challenge then becomes one of determining how to proceed in the face of the aforementioned facets of ignorance and need in relation to our existential condition. However, one cannot suppose that just any mode of proceeding will be acceptable or satisfactory.

More specifically, one would like to avoid – as much as possible – anything that smacks of being arbitrary. In other words, there should be some degree of demonstrable justification – that is, independently generated and defensible critical assessments -- associated with our

choices … especially, if such choices have ramifications for other people's opportunity to explore the possible palimpsest character of natural law.

Therefore, one important limit concerning any given person's opportunity to push back the horizons of ignorance concerns the manner in which an individual's choices adversely impinge on, or undermine, the opportunity of other people to seek to push back the horizons of ignorance in their own way. This is a reciprocal limit in the sense that the activities of any given individual concerning the issue of ignorance must harmonize with the activities of other individuals in relation to a similar sort of project … harmonize in the sense of not actively interfering with other such projects even though the details of these reciprocal pursuits might be quite dissimilar in character.

In short, no one has a demonstrably justifiable right to impede, obstruct, undermine, terminate, or constrain another person's attempt to push back the horizons of ignorance. This state of affairs remains in effect as long as the activities of the latter individual do not impede, obstruct, undermine, terminate, or constrain the reciprocal opportunities of other individuals concerning this same issue of ignorance.

Irrespective of whether one believes that political and ethical considerations are inherent in the natural order of the universe or one believes that all such considerations are generated by arbitrary conventions, the challenge of ignorance is the same. As such, one could argue that despite their differences, the two aforementioned approaches for determining the political and ethical character of issues concerning matters of governance tend to arrive at the same sort of conclusion independently of one another.

Independent confirmation is an important consideration in assessing whether, or not, a given perspective is justifiable in some non-arbitrary way. When two individuals have different interests, inclinations and purposes and, yet, they arrive at the same conclusion, this tends to point to something of potential significance, and this would seem to be the case in the matter of the first principle of the possible palimpsest character of natural law.

A person begins with an acknowledgement of her or his relative ignorance concerning the nature of reality. Such an individual recognizes that he or she needs to have an opportunity to be able to search for a way to push back the horizons of ignorance in order to have a chance to be

able to proceed in life in a non-arbitrary fashion. Finally, this person understands that the most harmonious -- and, therefore presumably, the least problematic way -- in which to proceed is to ensure that a condition of reciprocity is extended to other individuals with respect to their engagement concerning the same challenge of ignorance – that is, others are in need of the same opportunity to push back the horizons of ignorance as one has recognized with respect to oneself.

One might refer to the foregoing set of conditions as giving expression to the natural law of ignorance. This would be the first step in trying to determine, if possible, the underlying nature of the 'artwork' in the possible palimpsest character of natural law.

The natural law of ignorance is not a reflection of the ultimate nature of the universe. Rather, it is a reflection of a facet of the structural character of the sort of methodology one requires in order to be able to engage such issues within a context that is populated by other individuals who have similar needs.

The natural law of ignorance gives expression to a project in moral epistemology. It is the first step in a journey to struggle toward trying to grasp the character of the political and ethical principles that are necessary to permit everyone to have a fair opportunity to push back the horizons of ignorance that permeate our lives.

The natural law of ignorance is 'natural' because it does not reflect a man-made convention. Instead, this law reflects the actual character of our existential condition that can be grasped through the exercise of reason … something that most of us intuit as being a naturally rooted capacity through which to engage and assess the nature of experience even as we simultaneously understand that reason can be 'captured' by man-made conventions and, thereby, serve the interests inherent in the latter.

Sovereignty is rooted in the natural law of ignorance. We are sovereign to the extent that we have a fair opportunity to explore the possible palimpsest character of reality, and any departure from such a standard of fairness constitutes an arbitrary – therefore non-justifiable -- exercise of power by other individuals or the collective.

The natural default state of existence is ignorance. In order to be able to legitimately depart from such a default state – especially in the context

of circumstances in which such a departure would disrupt or problematically affect the opportunity of others to explore the possible palimpsest character of reality in a reciprocal fashion -- one must be able to demonstrate in a non-arbitrary manner that departing in such a manner is justified.

The standard for epistemologically justifying such a departure is set fairly high in the case of individuals. After all, demonstrating the likely truth or rightness of something in a non-arbitrary fashion is fairly difficult even when restricted to one individual acting on his or her own.

When it comes to groups, communities, or societies, the standard for epistemologically justifying such a departure is set even higher. This is due to the manner in which any political and ethical departure from the default condition of inter-subjective ignorance is likely to create problems with respect to everyone continuing to have an equally fair opportunity to explore the possible palimpsest character of their existential condition.

The foregoing difference is comparable to the manner in which civil and criminal cases are settled in the court system. In civil cases, verdicts are built around the idea of a preponderance of evidence, and when individuals act in a manner that does not interfere with the opportunity of others to explore the possible palimpsest character of reality, then being able to satisfy the standard of a preponderance of the evidence seems, at least on the surface, to be a defensible way of doing things.

In criminal cases, however, the standard for verdicts involves the idea of 'beyond a reasonable doubt'. If someone is going to act in a way that affects the opportunity of others to be able to fairly explore the possible palimpsest character of reality without interference or difficulty, then one really needs to justify such an action in a way that is beyond all reasonable doubt.

Of course, the foregoing outline leaves one in the dark about what constitutes either: a 'preponderance of evidence' or being 'beyond a reasonable doubt'. Nevertheless, what the above distinction does indicate is that there are two very different standards of justification concerning, on the one hand, those individual acts that are done in a way that does not adversely affect others continuing to have a fair opportunity to explore the possible palimpsest character of reality, and, on the other hand, those acts that carry serious ramifications for the ability of others to

continue having a fair opportunity with respect to pushing back the horizons of ignorance.

Chapter 6: Taking Rights Seriously

Rights are, in essence, epistemological – rather than moral -- in character, although obviously there still might be much grist for the moral mill to grind when rights are considered from the foregoing perspective. More specifically, rights either reflect what is known, beyond a reasonable doubt, concerning the nature of the universe, or rights reflect what is not known with respect to the nature of reality.

What is collectively known beyond a reasonable doubt -- and, therefore, agreed upon -- concerning the ultimate nature of reality or how human beings fit into that reality is fairly limited if not miniscule. Consequently, all legal, political, social, and moral considerations reside deep within epistemological shadows … although interstitial pieces of information do poke through here and there.

As a result, we are left with ignorance as our existential companion. Whatever certain individuals might know beyond a reasonable doubt (be they saints or savants or both), such understanding does not necessarily transfer well to the collective level where many kinds of reasonable doubts might be advanced to lower the credibility rating of some given idea or insight from: 'knowledge' and 'truth', to: 'information' and 'belief'.

The natural law of ignorance suggests that our collective epistemological relationship with the universe is such that we cannot demonstrate, beyond a reasonable doubt, that human beings are entitled to anything except having a fair opportunity to push back the horizons of ignorance. Acquiring knowledge is of significance because of its potential for shedding light on the question: Which choices will best serve us amidst the many possibilities with which we are confronted – both individually and collectively? Therefore, everyone has a right to seek such knowledge.

In fact, even if it were the case that the foregoing sorts of knowledge were never -- or could never be -- acquired, people still would have a basic entitlement to try, as best they could, to uncover such knowledge. The underlying right is one of seeking … not necessarily of finding.

Given the foregoing considerations, what does it mean to have a fair opportunity to push back the horizons of ignorance? One dimension of fairness that already has been touched upon concerns the issue of reciprocity.

If my right to push back the horizons of ignorance is not matched by the reciprocal right of others to do the same sort of thing, then such an arrangement would appear to be inherently unfair. Another way of expressing this idea is to say that unless one can demonstrate beyond a reasonable doubt why there should be departures from the condition of reciprocity, fairness would seem to indicate that everyone's opportunity to push back the horizons of ignorance should be relatively equal to each other.

The efficacy with which various individuals take advantage of the aforementioned opportunity is something that is not likely to be capable of being equalized to any appreciable degree. Nonetheless, however effectively a given individual might be able to engage such an opportunity, this sort of productivity does not entitle an individual to leverage such 'progress' in a way that would adversely affect, undermine, or interfere with other people continuing to have a fair opportunity to push back the horizons of ignorance.

One could, of course, put forth arguments of reasoned meaningfulness with respect to why the aforementioned sort of effectiveness or productivity should justify departures from the initial condition of permitting everyone to have a fair opportunity to push back the horizons of ignorance. However, such arguments are likely to be fairly arbitrary in the sense that they could not demonstrate beyond a reasonable doubt that such departures would be considered justifiable by a randomly drawn group of people who had no vested interests in such considerations … the burden of proof rests with those who would wish to depart from the default setting given expression through the law of ignorance.

Therefore, whatever 'progress' an individual might make with respect to the issue of pushing back the horizons of ignorance, this cannot be used to disadvantage other people from continuing to have a fair opportunity with respect to that same project. This is part of what is entailed by the idea of reciprocity.

On the other hand, there does not appear to be any kind of argument that could be put forth that would demonstrate, beyond a reasonable doubt, why someone could not share what she or he has learned with others to assist them, if they accepted such assistance, with respect to their attempts to push back the horizons of ignorance. The foregoing

point does not necessarily mean that someone would be obligated to share the fruits of his or her efforts with others in relation to the challenge of ignorance … only that nothing would seem to stand in the way of someone doing so if this is what that individual wanted to do.

Does the right to basic sovereignty – that is, having a fair opportunity to push back the horizons of ignorance – entitle people to anything beyond the kind of primitive sense of reciprocity that has been outlined above in which everyone has a chance to chip away at the frontiers of ignorance in his or her own way? I believe the answer to the foregoing question is: "Yes."

If people do not have, in some minimal fashion, access to the requisite food, clothing, shelter, health care, education, and other resources that might play a central role in being able to struggle toward pushing back the horizons of ignorance, then one might legitimately question whether such people actually are being given a fair opportunity to engage the existential project at issue. A person who is hungry, homeless, sick, illiterate, and cold is likely to have a difficult time trying to push back the horizons of ignorance.

Similarly, if people do not have, in some minimal fashion, protection against the sort of oppression, exploitation, coercion, duress, undue influence, abuse, and interference that could not be demonstrated to be – beyond a reasonable doubt – justifiable (and one wonders whether any of the foregoing activities could ever be justified), then, again, one might legitimately question whether, or not, those individuals who were subject to such arbitrary constraints on their attempts to push back the horizons of ignorance could still be considered to have a fair opportunity with respect to constructively engaging the ignorance in which most of us are rooted. While being oppressed or abused does not necessarily prevent a person from trying to push back the horizons of ignorance, such forces are likely to create an unfair playing field with respect to the 'game' of life.

Quite a few of the basic rights and freedoms that are given expression through the first ten amendments to the Philadelphia Constitution can be understood as conditions that are necessary to ensure that people will have a fair opportunity to engage, if not solve, the challenges of life with a minimum degree of interference by, or obstruction from, others. For example, rights to freely assemble and exchange information/ideas (whether through speech or the press) with

other individuals are important resources through which people might be able to push back the horizons of ignorance … as is the right to be free of unreasonable – that is, arbitrary and, therefore, unjustifiable – searches and seizures.

A right to freely exercise one's religious beliefs – providing this does not undermine the reciprocal right of others to do likewise – or a right to be entitled to 'due process' in the presence of an impartial jury with respect to issues that involve a potential loss of life, liberty, or property only after sufficient evidence has been presented to, and accepted by, a non-governmental agency (i.e., a grand jury) are important considerations with respect to ensuring that people will have a fair opportunity to push back the horizons of ignorance.

If one cannot show, beyond a reasonable doubt, that departures from such rights and freedoms are justified – and, again, the burden of proof is on those who would wish to depart from the default position of basic sovereignty -- then any transgression against those sorts of rights is an attempt to prevent a person from having a fair opportunity to push back the horizons of ignorance. As long as an individual must spend her or his time struggling against attempts to oppress or constrain one with respect to such rights, then a theft of time has taken place because one does not have access to such lost time so that it can be invested in engaging the issue of ignorance in a manner that a person feels might be most constructive, and, in the process, one is being denied one's entitlement to basic sovereignty.

No right entitles someone to deny the same right to another individual. If rights are not reciprocal, then they are not rights because such non-reciprocal 'rights' are unlikely to be justified beyond a reasonable doubt among any group of impartial individuals (i.e., those who are: objective, unbiased, and without a vested interest) who might consider such an issue.

However, as the foregoing comments suggest, the network of reciprocity tends to be fairly complicated. Being entitled to have a fair – that is reciprocal – opportunity to push back the horizons of ignorance extends into many areas that involve various kinds of social, political, material, institutional, and legal resources.

How a person uses the available network of reciprocity that is established through the law of ignorance is up to the individual. Choice is

the manner through which a person engages the degrees of freedoms or liberty that are entailed by the principle of reciprocity that lies at the heart of the sort of basic sovereignty to which everyone is entitled.

None of the foregoing should be construed to mean that everyone must have exactly the same package of material goods or that whatever goods are possessed by one individual must be equivalent to those possessed by other people. Instead, what is being advanced is the idea that everyone is entitled to whatever is considered to be minimally necessary for having a fair opportunity to push back the horizons of ignorance.

One person might have a better house, nicer clothes, more variety in food, or a more extensive health care plan, but whatever differences exist in the foregoing respects cannot be used to deny, prevent, interfere with, undermine, or obstruct anyone else from having a fair opportunity to push back the horizons of ignorance. Moreover, whatever differences exist with respect to those material goods cannot be such that those with what is considered to be the minimally necessary package of goods are not in a position to have a full – and, therefore, fair -- opportunity to push back the horizons of ignorance.

For example, one might not need caviar to have a fair opportunity in the game of life, but one needs some minimal level of calories and varieties of food to not just survive but, if so desired, to be able to tackle the issue of ignorance with considerable energy. Similarly, shelter need not be in the form of a mansion to serve the basic purpose of keeping someone out of the elements and providing enough space so that a person has what she or he needs to comfortably – although perhaps not elegantly -- engage life.

Moreover, while having health care coverage that deals with every possible contingency of life without regard to cost might be nice thing to have, that sort of coverage is not needed to be able to ensure that the vast majority of people (and, here, I have in mind at least 95 % -- if not 100% -- of the people) will have access to the sort of basic health care that will look after most of the common health problems of life and, thereby, enable those individuals to have a fair opportunity to push back the horizons of ignorance. Where one draws the line of practical, affordable limits for such basic care should be done in accordance with rational standards such as: being beyond a reasonable doubt, or being consistent

with a preponderance of the evidence, but within those limits everyone is entitled to the same standard of care … although such a standard might not be capable of meeting everyone's medical needs.

If the medical problems of a given individual – or an array of such individuals -- were so extensive that the entitlement of other people to have the sort of health care that is necessary to provide the latter people with what is considered a fair opportunity with respect to life were compromised, then, to be sure, one faces a very difficult problem. However, fairness is not necessarily a matter of ensuring that every problem will be solved for every individual … only that everyone – as far as is practically possible – should be protected by the requirement that whatever departures from the default position of basic sovereignty need to be justified by arguments that take such issues beyond a reasonable doubt among those who have no vested interest in the matter except with respect to upholding the epistemological standards that govern the evaluation of those issues.

Questions concerning the extent and kind of: food, shelter, clothing, and education, that are considered to be minimally necessary to provide people with a fair opportunity to push back the horizons of ignorance are, for the most part, a lot easier to address than are matters of health. This is because matters of health sometimes encompass anomalies that cannot be resolved – to the extent they can be resolved -- without generating a lot of difficult problems for the issue of fairness … both with respect to those individuals with certain kinds of health problems, as well as in relation to the collective who do not have such problems.

Notwithstanding the foregoing considerations, there is one observation that might be of relevance here. More specifically, if the economic, legal, and political system through which goods and services are distributed in a given society or set of societies permits excesses that disadvantage people with certain kinds of health problems (that is, resources are distributed in a way that is weighted toward, or favors, excess accumulation of goods and services rather than being channeled in such a way as to render a fairer – and, therefore, ever more inclusive set of arrangements – for distributing goods/services, including medical goods and services), then such a economic, legal, and political system would seem to be fundamentally unfair and, therefore, stands in need of

being justified beyond a reasonable doubt if it is not to be considered a largely, if not completely, arbitrary system.

Ensuring that people are provided with the minimum levels of goods and services that are considered necessary to give those people a fair opportunity to push back the horizons of ignorance should not be construed to mean that people do not have to work, in some way, to attain those minimum levels of sustainability. At the same time, work should not leave a person so tired and depleted that they are unable to have a fair opportunity to push back the horizons of ignorance, and, in addition, the compensation for that work must be fair – that is, capable of permitting a person to have what is considered to be at least minimally necessary to exercise her or his basic sovereignty as human beings.

There is nothing that has been said up to this point to indicate that any given person will necessarily wish to push back the horizons of ignorance concerning the nature of the universe and the manner in which human beings might fit into that nature. Irrespective of whether, or not, any given person wishes to engage such a challenge, every person is governed by the law of ignorance that entails at least three principles: firstly, every person has a right to basic sovereignty even if such a right is not exercised to any appreciable degree; secondly, departures from that condition of basic sovereignty must be capable of being demonstrated as being viable beyond a reasonable doubt, and, thirdly, irrespective of whether a person wishes to try to push back the horizons of ignorance, that individual has no right to interfere with the basic sovereignty of other human beings who do have such a wish.

As indicated previously, the element of reciprocity inherent in the foregoing principles is not a moral obligation. It is a practical dimension inherent in our elemental epistemological condition of ignorance.

If one does not want other people to arbitrarily interfere with one's basic sovereignty, then it is in everyone's interest to ensure that departures from the epistemological default condition of basic sovereignty need to be demonstrated beyond a reasonable doubt. The Golden Rule gives expression to a similar sentiment -- as does Rawls' 'Original Position' – each in its own way.

For more than a hundred and fifty years, one of the most influential approaches to addressing questions concerning the nature of law has been given expression through a philosophical framework known as 'legal positivism.' While there are a variety of ways of describing that approach to legal philosophy, and although that framework went through a major overhaul – via the writings of H.L.A. Hart (especially his: The Concept of Law) in relation to, among others, the ideas of John Austin (who is generally considered to be the founder of legal positivism) -- there are a number of core elements present in any given version of this system of thought.

For instance, one of the central elements within the foregoing perspective indicates that morality has no role to play with respect to the process of describing the nature of law. There are at least two ways of construing what is meant by the idea that morality has no role to play in relation to the issue of describing law.

One approach contends that law is nothing more, or less, than a certain set of social conventions regulating the public space through which individuals are inter-subjectively linked. As such, law is about social practices understood quite independently of considerations of whether, or not, those practices ought to be done or ought to be obeyed.

There are laws, and there are ramifications ensuing from such laws. A person conforms, or not, to those laws knowing that actions have consequences.

Under those sorts of circumstances, punishment need not be considered to give expression to a moral judgment. It is a consequence that follows from non-compliance with established conventions.

From the foregoing perspective of legal positivism, the way in which such a system of conventions came into being, or whether that system should have come into being, tends to be a peripheral matter. The important consideration for legal positivism is the manner in which certain kinds of current conventions give expression to on-going practices with respect to the legal regulation of public space (and one should note that there are some social conventions – for example, rules of etiquette -- that help regulate the public space but that are not legal in character).

There is at least one other conceptual approach to the legal positivist's idea that morality plays no role in describing the nature of law.

This perspective holds that law involves the process of making a fairly clear distinction between private morality and the rule of law as an expression of the manner in which a state/nation regulates the public space of inter-subjective behavior.

From the foregoing perspective, what moral conscience requires of an individual is different than what a state/nation requires of an individual. The law establishes those criteria that can be used for, among other purposes, navigating the boundary conditions that separate the demands of a state/nation from the demands of morality.

Whatever a person's moral orientation might require of him or her, a state's or a nation's legal orientation requires something else … although there could be points held in common by the two. However, within the context of legal positivism, there is tendency to treat legal considerations as having an element of priority relative to moral considerations.

For those who subscribe to the foregoing notion of legal positivism, law is intended to settle legal issues not moral ones. Morality either has no legal standing in legal positivism or, at best, it has a derivative, subordinate standing that is dependent on what the basic source or authority for law permits with respect to those issues.

Laws are enacted by a ruler or legislature. The actions of people are evaluated in accordance with whether, or not -- or the degree to which -- such actions are considered to be compatible with, or consistent with, those enacted laws.

Legal positivism doesn't seek to justify itself except in its own terms. In other words, it is only concerned with what the existing conventions are that govern public space and whether, or not, various sorts of actions – e.g., those of citizens, the legislature, or the ruler -- comply with those conventions.

Irrespective of which of the two former general approaches one engages, legal positivism tends to be rooted in the notion of 'positive freedom' that is discussed in the appendix. Legal positivism describes and analyzes what results from the process through which a given source or authority for regulating public space generates and implements regulatory injunctions.

Once such a source or authority is identified, the role of legal positivism is to describe the legal character of the injunctions and

principles that are issued through that source or authority. The legitimacy of such a source or authority is never questioned … merely presumed.

Since I believe that rights are an epistemological issue and not a moral one, then a perspective that holds that morality plays no role in a proper description of the law – as is true in the case of legal positivism – will share, to a very limited degree, a certain resonance with the perspective being advanced in this book. However, to claim – as legal positivism does -- that once the source or authority for law is identified, then the only thing that matters – legally speaking – is the structural character of the process through which public space is regulated by means of that source or authority, is an entirely different matter.

More specifically, law – considered as a function of the dictates of a given source or authority with respect to the regulation of public space -- does not have priority over the basic sovereignty of an individual. In fact, in order to be able to successfully claim priority for the right of a given source or authority to regulate public space rather than assign priority to the basic sovereignty of an individual, one would have to be able to demonstrate, beyond a reasonable doubt, that a given source or authority had the right to do whatever it was doing with respect to such regulatory activity.

To be preoccupied with merely the logic of a process of regulating things is quite compatible with the 'way of power'. Power never questions its own legitimacy … it only questions the legitimacy of anything that challenges the exercise of power.

On the other hand, the way of sovereignty is continuously asking for persuasive evidence – that is, evidence which is considered to be true beyond a reasonable doubt or, at a minimum, in accordance with the preponderance of evidence – for departing from the default position with respect to the basic sovereignty of individuals. Epistemologically speaking, legal positivism has little, or no, standing because it tends to avoid questions about whether, or not, a given source or authority for regulating the public space can be justified.

The idea of revolution presents problems for the legal positivist's perspective because revolution tends to call into question whether, or not, a given source or authority has the right to regulate public space in one way rather than another. As such, revolution has no legal standing from the perspective of legal positivism since revolution raises questions

that fall beyond the horizons of what a given source or authority recognizes as a legal issue, and, as such, revolution (no matter how peaceably it might be pursued) is extra-legal in character as far as legal positivism is concerned and, therefore, impermissible.

To understand the Philadelphia Constitution from the perspective of logical positivism, one merely identifies that document as the source or authority for regulating public space. The issue then becomes a matter of determining the structural character of the process that is set in motion by that constitutional document with respect to the generation and implementation of regulating the public space as a function of the dynamics among the three branches of government, together with the state governments and citizens.

If, on the other hand, one identifies the people as the source and authority for the Philadelphia Constitution – as the Founders/Framers suggested through their resolutions concerning the process of ratification – then determining the nature of the source or authority for regulating public space becomes somewhat more complicated. This is the case because one can no longer restrict attention merely to a constitutional document but, rather, one must place that document in the context of a ratification process out of which it allegedly arose.

Considered from either of the foregoing two perspectives, legal positivism would not question the legitimacy of either the Philadelphia Constitution or the ratification process. Instead, legal positivism would merely describe the way in which the regulation of public space ensued from those starting points.

To question the legitimacy of those starting points is to bring into doubt the very project with which legal positivism is concerned. To question the legitimacy of such starting points is to raise questions about whether or not the Founders/Framers were entitled to do what they did with respect to the Philadelphia Convention, as well as with respect to what they did in relation to the document that issued forth from that assembly. To question the legitimacy of the foregoing starting points is to raise questions about whether, or not, the ratification process that led to the adoption of the Philadelphia Constitution was justified in proceeding in the way it did and whether, or not, such a process has any right to claim that subsequent generations are bound by that sort of process.

Just as legal positivism is confronted with an irresolvable problem in the context of a document – namely, the Declaration of Independence – that called into question the legitimacy of the British legal conventions as a justifiable source or authority for regulating the lives of people, so too, legal positivism is faced with an irresolvable problem if anyone were to question the legitimacy of the Philadelphia Constitution once it had been identified as the source and authority for regulating public space via the ratification process. From the perspective of legal positivism, such challenges would be considered extra-legal and, therefore, irrelevant and immaterial to the character of law as, for example, established through the Philadelphia Constitution and the ratification process.

Legal positivism is incapable of examining the issue of legitimacy concerning its own foundations. In other words, that perspective does not permit the legitimacy of a given source or authority to be questioned with respect to whether, or not, such a source or authority has a justifiable right to regulate public space.

This aforementioned notion of 'justifiable right' is not a moral issue. It is an epistemological question.

The problem with which we are confronted is the following one. What argument can be put forth that justifies claiming, beyond a reasonable doubt, that a given source or authority has a right to regulate the public space?

For example, claims concerning a 'Divine Right' to rule are epistemological in nature. If the truth of such a claim is demonstrated, then the process of ceding authority to the truth of such a claim is leveraged so that the public space can be regulated in one way (the way of Divinity) rather than another.

However, the actual basis for legitimizing a given source or authority through which, or from which, law should issue (i.e., the person claiming the Divine Right to rule) is an epistemological matter for which different 'signs' and arguments might, or might not, be considered as evidence in support of that sort of a claim. The argument from Divine Right is not a moral appeal but an epistemological one from which moral authority might be derived … e.g., if God has been demonstrated (and this is an epistemological issue) to be the source and authority for my right to rule, then others have a moral obligation to follow my rulings because (or so it

is being argued) the warrant for such obligation is the epistemological truth of the basic premise concerning my alleged relationship with God.

The claim of the Founders/Framers that a ratification process involving the people of America would be sufficient to authorize the Philadelphia Constitution as the appropriate source and authority for regulating public space was an epistemological argument not a moral one … although moral principles might have been used as pieces of evidence that were considered to evidentially support such an argument. Among the questions that the foregoing proposal of the Founders/Framers raises are: Did the people have the right to authorize the Philadelphia Constitution as the law of the land? And, if so, what justifies that right?

The issue of justification is a request for evidence as to why one perspective rather than another constitutes a correct reflection of the nature of things. Evaluating the reliability or credibility or soundness of evidence is an epistemological project, not a moral one. That which one believes one knows concerning the character of the universe is being used to sanction whatever subsequent notion of obligation or duty might be claimed on the basis of the alleged epistemological character of the universe.

If one does not know, beyond a reasonable doubt, what the moral character, if any, of the universe is, then evaluating evidence is still an epistemological project since the methodological engagement of data to differentiate between what can be known and what is not known is all we have to work with. Moreover, even if we did know what the moral character of the universe is, evaluating evidence remains an epistemological process during which one assesses the strength of a given argument or set of experiential data in the light of what is known – and not known -- about the nature of the universe.

Legal positivism often distinguishes between primary and secondary rules. Primary rules are those ways of regulating public space that are largely a function of stated purposes, commands, orders, proclamations, and edicts that specify what a person can, and can't do, whereas secondary rules refer to the processes through which power is institutionalized and distributed in society and, thereby, permits the basic legal commands and/or purposes of society to be channeled, altered, implemented, and extinguished.

For example, the Preamble to the Philadelphia Constitution gives expression to a set of primary rules since they constitute – in very general terms – what can (and by implication can't) be done. The Preamble outlines what the basic purposes of legal governance in America are supposed to be … namely, to: form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty.

Presumably, what goes on with respect to law in America reflects the purposes of the Preamble. If criminal, tort, or contract laws were shown to transgress conditions necessary for justice, liberty, tranquility, welfare, and the common defense to be realized, then such laws would be changed or eliminated, and if such laws were demonstrated to enhance the likelihood of justice, liberty, tranquility, welfare, and the common defense being realized, then such laws would continue on and, possibly, serve as templates or precedents for further legal enactments.

The seven articles and concomitant subsections of the Philadelphia Constitution give expression to both primary and secondary rules. Those rules are concerned with outlining how power -- which is supposed to have been derived from the people via the ratification process -- is to be conferred, organized and distributed so as to realize the purposes of governance set out in the Preamble.

When one considers the aforementioned primary rules – that is, the purposes set out in the Preamble – one encounters a variety of problems. For example, what is meant by: 'forming a more perfect union,' 'establishing justice,' 'insuring domestic tranquility,' 'providing for the common defense,' 'promoting the general welfare,' and 'securing the blessings of liberty?'

What is the rule for 'forming a more perfect union?' What is the rule for 'establishing justice?' What is the rule for 'promoting the general welfare?'

One could, of course, take a look at what the Founders/Framers thought about such matters and try to determine what rules might be derived from their thoughts on those issues. However, as was suggested in both Chapter 1 (The Rule of Law) and Chapter 3 (Perspectives on Framing), there is no consensus concerning those matters among the Founders/Framers.

They all had different ideas about what would constitute: a more perfect union, justice, the general welfare, and so on. These differences were reflected in the problems that are inherent in the structural character of the Philadelphia Constitution since, to a large extent, those problems exist precisely because the participants in the Philadelphia Convention couldn't agree about a wide variety of issues involving slavery, representation, taxation, rights, presidential power, legislative power, judicial power, and the power of either states or individual citizens.

In essence, the Philadelphia Constitution constitutes a set of problematic secondary rules with a capacity to change itself through processes of legislation and amendments. This capacity for change is able to take into account the views of a certain notion of majority opinion (e.g., two-thirds of both houses and three-fourths of the state legislatures in the case of amendments) but such a capacity does not necessarily solve the ambiguities that are present in the primary rules of the Preamble.

Secondary rules have no authority for doing anything other than serving the agenda that is identified through the primary rule or rules. If we don't know what the nature of justice or the general welfare is, then secondary rules merely serve as ways to institutionalize the confusion that is inherent in the primary rules for American society.

Alternatively, one might refer to the will of 'We the People' as being a primary rule of American law. Even if one were able to identify the character of such a will – and opinion polls are likely to be far too simplistic, superficial and limited to be able to capture the complex dynamics of such a multi-faceted phenomenon as 'will' – there are other kinds of problems that arise in conjunction with the will of 'We the People.'.

For example, what justifies claiming that the will of 'We the People' is a legitimate source or authority for regulating the public space? I know of no argument that can be demonstrated beyond a reasonable doubt which indicates that the will – whatever it is – of 'We the People' constitutes a form of sovereignty that takes priority over the basic sovereignty of individuals.

One could refer to maxims such as: 'majority rules,' but this sort of maxim isn't really all that helpful because it stands in need of justification as well. Those sorts of maxims are not self-evidently true.

In fact, if one cannot justifiably link the foregoing sort of quantitative consideration (i.e., majority rules) to qualitative considerations that are persuasively tied to the character of the universe, the idea of 'majority rules' makes little sense. To claim that an idea which is either wrong or that cannot be shown to be right, must be adhered to just because some form of majority supports that idea is nonsensical.

Furthermore, even if one were to accept the idea of 'majority rules,' one still would have to sort out what kind of majority one means – e.g., 51%, two-thirds, three-fourths, or greater – and, then, one would have to be able to justify such a choice in terms of some standard that could be agreed upon … and, therefore, a standard that also would be in need of justification.

The tenability of the idea of the basic sovereignty of an individual – in the sense of having a fair opportunity to push back the horizons of ignorance – is far, far easier to demonstrate beyond a reasonable doubt than is any idea involving the 'will' of 'We the People'. In fact, the foregoing right serves as a defensible protection (that is, one which can be justified beyond a reasonable doubt) for every single individual against the will of 'We the People' since such a will – irrespective of how it is characterized – is not likely to be able to satisfy the standard that requires that departures from the default position of basic sovereignty should be capable of being demonstrated as likely being true beyond a reasonable doubt.

Every conception of the will of 'We the People' concerning the nature of: 'a more perfect union,' 'justice,' 'tranquility,' 'defense,' 'general welfare,' and 'liberty' is subject to the same sort of challenge. In other words, whatever framework of understanding one generates with respect to the foregoing terms, one has to be able to justify that sort of a framework beyond a reasonable doubt … otherwise those perspectives are arbitrary.

If the primary rules of a given society are indeterminate, then this ambiguity will carry over into the secondary rules of such a society. Since the meanings of many of the primary principles given expression through the Preamble and Constitution are not well-articulated, these same kinds of problems permeate the secondary rules that govern the American legal system.

Naturally, if one adopts the perspective of legal positivism, then one doesn't have to worry about such matters. Once one identifies the source or authority for primary rules -- for example, the will of 'We the People' -- and once one identifies the kind of majority rule that governs such a will (that is, once one settles on the sort of percentage that can be said to properly represent the will of 'We the People'), then as far as legal positivism is concerned this brings the discussion to a close because one is not entitled to question the legitimacy of that which has been identified as the source or authority for the primary rules or secondary rules that are to govern the regulation of public space … from the perspective of legal positivism, we are only permitted to describe what ensues from that kind of an identification.

Why should one accept the limits that legal positivism places on what does, and does not, constitute a permissible question concerning the nature of law? What is there about legal positivism that would convince one beyond a reasonable doubt that questions concerning the legitimacy of a given source or authority for primary rules should not be asked … that justifications that can be demonstrated as being likely or true beyond a reasonable doubt should not be expected with respect to the foundations of a legal system?

Legal positivism is a methodology for descriptively engaging issues of legal governance. Aside from its capacity to offer a way (and, as will soon be explored, not necessarily the best way) to outline what goes on within this or that system for legally regulating public space, why should one adopt legal positivism as a preferred way of engaging those issues?

In fact, if an individual's basic sovereignty will be impacted by the nature of primary and secondary rules, then the foregoing kinds of questions need to be asked. More specifically, what is the justification for establishing any given set of primary and secondary rules for purposes of regulating the public space in relation to individuals who have a basic sovereignty with respect to the right to have a fair opportunity to push back the horizons of ignorance?

There is another problem entailed by the manner in which legal positivism divides things up according to a classification process involving primary and secondary rules. If one wishes to claim that the idea of 'rules'

describes or accounts for what goes on within any given society, there are problems inherent in such a claim.

One way of explicating such difficulties is to point out the difference between rules and principles. For instance, consider the idea of what constitutes an 'out' in baseball.

A player is considered to be 'out' if the individual: (a) fails to hit a baseball on three occasions while attempting to make contact with a ball that is thrown to the batter in an appropriate manner by a pitcher before: ball four is called during a given at bat, or a hit is made, or an out is made in some other way; (b) bunts a ball into foul territory on a third strike; (c) hits the ball to a defensive player that is either caught in the air – before it touches the ground -- or that first makes contact with the ground in fair territory before a defensive player catches the ball and manages to either tag first base or throws to another defensive player who has contact with that bag before the batter reaches first; (d) runs outside the designated base paths or runs those base paths in the wrong sequence; (e) interferes with a defensive player's ability to play a given defensive position; (f) is caught trying to steal a base; (g) is picked off a base by a pitcher; (h) is forced out at second, third, or home when a batter fails to advance such a base runner; (i) misses a third strike that eludes the catcher but is thrown out at first by the catcher before the batter reaches that base; (j) while running the bases is struck by a ball that is hit by a batter; (k)is called out by an umpire even if replays indicate that the player was safe or did not strike out.

There are other possibilities concerning the 'out-rule' that could be added to the foregoing itemized list. However, enough has been said to indicate that while the idea of an 'out' can be fairly complex, the conditions governing it are fairly straightforward.

Of course, what constitutes an 'out' according to the official rule book of baseball is not written in the manner indicated above. The multi-faceted rule governing an out that was stated earlier is broken down into a lot of mini-rules concerning the issue of 'outs'.

A person is considered to be out if any of the many mini-rules are judged to be applicable in a given instance. If anyone questions whether or not an 'out' was committed, then the appropriate mini-rule of the official list of rules is cited as justification for making that sort of a call.

Obviously, all of the foregoing facets of the 'out rule' are subject to the judgment of the umpires. That is, whether, or not, a player is considered: to have missed the ball during a swing, or to have run outside of a base path, or to have reached a base before being tagged, or to have interfered with a defensive player, and so on, these are all subject to the decisions made by one or more umpires with respect to any given play.

As complicated as the set of mini-rules might be with respect to what constitutes an 'out' in baseball, the degrees of freedom for what is considered to satisfy such a rule are fairly limited. Once a given event occurs during a game, then the appropriate aspect or degree of freedom of a rule is applied to the circumstances at hand … for example, did the batter: miss the ball, reach base safely, run out of the base path, bunt a ball foul on a third strike, and so on?

Similarly, the rule governing an umpire's conduct in such circumstances is fairly straight forward. Did he or she see such-and-such?

If he/she did see such-and-such, then a given aspect of the 'out-rule' is applicable. If she/he did not see such-and-such, then another aspect of the 'out-rule' is applicable.

Theoretically, there should be no circumstance in baseball in which a given batter or base runner is not subject to one or another facet of the' out-rule'. The rules of application tend to be clear and consistent across changing circumstances of the game.

Things become a little fuzzier when it comes to the issue of calling balls and strikes. Although the rule book specifies the precise conditions under which a pitch is to be considered a ball or a strike, umpires don't always follow the specifications of the rule book with respect to those matters … although umpires do use those rules as a general set of guidelines for shaping – not determining – what will be called a ball or strike.

Generally speaking, almost every umpire has his or her own way of determining what will be called a ball or strike. In effect, umpires establish their own strike zone as a variation on what is called for by the rule book.

Some umpires call 'low strikes' or 'high strikes' – that is, pitches which are below or above the height that the rule book states should be a strike. Some umpires shrink the strike zone, while others expand it, and in

both cases, what is identified as a strike or ball does not necessarily reflect what the rule book says should be a strike or a ball.

Under the foregoing sorts of circumstances, batters and pitchers must adjust the way they hit and pitch the ball according to the nature of the strike zone that is established by an umpire. All players can hope for is that an umpire will be consistent during the course of a game so that once players learn the characteristics of a given umpire's strike zone they will make the necessary adjustments.

There is not likely to be any set of rules that accounts for why a given umpire establishes a strike zone in one way rather than another. Judgments are made as a function of a variety of considerations that interact with one another in complex ways rather than being functions of a process in which one consults a set of rules that specify what should be done on any given occasion.

Judgments of the foregoing kind might be the result of the interaction of a complex set of factors that cannot necessarily be reduced down to rule-governed behavior. Such a set of factors might give expression to non-linear themes that are rooted in various principles, or that set of factors might give expression to themes that are non-linear but unprincipled.

For instance, an umpire might become annoyed with the criticism that is being directed his/her way from the players, coaches, and fans of a given team. As a result, the umpire – consciously or unconsciously -- might adjust the strike zone to make it harder for both hitters and pitchers from that team to be able to play successfully.

This would be an example of a non-linear process that is emotion and ego driven. It is neither rule-governed nor is it necessarily rooted in principles … unless the principle was about getting satisfaction in some way by frustrating the players, coaches, and fans of the team that had been frustrating the umpire with their criticisms.

The umpire might not resort to such tactics on every occasion – or even on most occasions -- that he was verbally criticized by the players, coaches, and fans, and, therefore, such behavior is not really rule-governed. However, on occasion, when certain game conditions, moods, emotions, attitudes, and other factors came into alignment, such an umpire might alter the strike zone in response to the verbal criticisms.

On the other hand, there could be constructive principles of some kind that were involved with respect to an umpire's manner of establishing a strike zone. For instance, if an umpire wanted to challenge both hitters and pitchers to alter their game to make things more 'interesting' for the players and for the fans, then this sort of thinking might lead some umpires to alter the strike-zone.

Nonetheless, such principles, to whatever extent they exist, follow the subjective inclinations of a given umpire. Therefore, they involve degrees of freedom that cannot necessarily be determined in any linear, rule-governed fashion.

Umpires often receive training of some kind that requires those individuals to become familiar with the rules governing the game of baseball. In addition, umpires might be taught how to place themselves in the best position to make accurate calls of one sort or another. Moreover, umpires might receive training with respect to how to deal with criticism, arguments, and other possibilities that might arise within the context of any given game.

Although much of the foregoing training might involve coming to understand all the general rules for managing a game, the judgments made by umpires during a game are not necessarily rule governed. For instance, suppose a batter asks for a time out while waiting for a pitcher to deliver a pitch.

Is there any rule that governs what an umpire should do under these sorts of circumstances? Actually, there is no such rule or set of rules governing this situation.

An umpire might take a variety of things into consideration when making the foregoing kind of a call. Is the pitcher taking too long to deliver pitches and, therefore, placing the batter at something of a disadvantage since the latter individual might have to wait so long that he gets tired and cannot swing effectively? Is the batter trying to play mind games with the pitcher and interrupt the pitcher's rhythm? Have there been too many attempts to slow things down in one way or another during the course of the game? What is the possible impact of such slowdowns on the fans in attendance or watching the game on television? Has the pitcher given any indication that a pitch is imminently forthcoming? Could calling a last second time out lead to an injury to the pitcher if he were to suddenly alter his delivery? Could the batter's vision be impaired in some way (e.g.,

rain, sweat, dust) that might prevent the batter from getting out of the way of a forthcoming pitch or having a fair opportunity to hit the ball? Did the batter injure himself/herself on a previous swing and is asking for additional time to recover? Have both sides been given equal opportunities to call for such time outs? Have such requests been made too frequently?

Umpires make a judgment and either grant or disallow such a request. However, the judgment is not necessarily rule-governed.

Instead, those calls are often made in accordance with an umpire's sense of how to manage a game and/or in accordance with an umpire's sense of fairness and/or concerns about ensuring that players are not unnecessarily exposed to possible injury or that the tempo of the game is not adversely affected. None of the foregoing considerations is to be found in the rule book governing baseball or in a book of rules that governs an umpire's general conduct in conjunction with any given game of baseball.

Moreover, every umpire is likely to have a different sense of how to manage a game, or what constitutes fairness, or how to exercise appropriate caution with respect to the possibility of injury. Such a sense of things might be the result of a combination of: training, experience, likes, dislikes, insights, personality, strengths, weaknesses, and/or habits.

In whatever way the foregoing sense of things arises, a framework for invoking principles rather than rules is created through which to reach certain kinds of judgments. Principles do not have to be applied in the same way on every occasion but rely on an engagement of the available data that is interpreted, according to a complex dynamic of interacting considerations, that seem to point in one direction rather than another with respect to the call that is made by an umpire.

Principles – unlike rules – tend to be non-linear in character. In other words, there tend to be many factors that might shape and orient how such principles are exercised, and, as well, those factors tend to have positive and negative feedback relationships with one another.

For instance, consider the principle of fairness. What does fairness require with respect to whether or not someone is thrown out of the game?

Some umpires are unwilling to permit any sign of disrespect or perceived disrespect by players in relation to the way such umpires make calls. Those sorts of individuals might believe that displays of disrespect are unfair to: the game, other players, fans, umpires … and, perhaps, such signs of disrespect are not even in the best interests of the person doing the complaining. Or, maybe, those kinds of umpires don't enjoy confrontation and won't tolerate it.

Other umpires are much more tolerant when players, coaches, or managers complain about one or more calls. They are willing to let arguments go on for some time before reaching a point when they believe that enough is enough.

Some umpires give warnings. If such an incident, or a similar event, occurs again, someone – no matter how minor or borderline a provocation might be --is going to get tossed.

There are no rules governing these sorts of judgments. Emotions, experience, past history, expectations, concerns, beliefs, values, understandings, temperament, personality, mood, and interpretations all factor in to how any given umpire gives expression to judgment calls concerning the issue of fairness.

If fairness is defined as attempting to ensure that neither side in a baseball game is given an unwarranted advantage and that all decisions are made for the purpose of providing an unbiased environment within which a given game is to be played, then there are any number of routes to judgment that could be followed and still serve the underlying principle of fairness. This is the nature of a principle … there is a multiplicity of possible avenues for satisfying the thematic orientation of that sort of an idea.

In the case of rules – say those concerning being out or safe – a batter or runner is either out or safe according to specified conditions. There are no other possibilities, and whether, or not, a person is considered to be out or safe must be in accordance with the list of stated rules that establish the guidelines for determining those matters.

In the case of principles – say the ones concerning fairness or other kinds of discretionary judgment – there are a variety of factors that could be taken into consideration while reaching a judgment. Different people might weigh these kinds of factors in different ways without abandoning

the requirement of not biasing the outcome of a game in an unjustifiable direction.

The judgment of umpires is rarely, if ever, overturned once they have been issued in a final form (that is, after consulting with one another or after looking at a permitted replay of a game event). Nonetheless, umpires are subject to oversight by individuals and committees that review the performance of umpires … a review process that could determine whether, or not, those umpires will be permitted to continue umpiring or whether, or not, they will be assigned to important playoff games.

The rules of the game of baseball tend to be primary rules. Those rules indicate what one can and can't do on, or around, the playing field during a game.

Whoever was the source or authority for such rules (and there is some debate over how the game of baseball actually came into being), the reasons or motivations for inventing the game of baseball have led to the construction of a set of primary rules that specify the do's and don'ts of baseball. Beyond the basic rules of baseball, there is a further set of considerations that shape the general social and administrative framework within which games of baseball are played.

For example, the notion of the 'best interests' of baseball occur in a social/legal context that extends beyond both the rules of baseball, per se, as well as the purposes for which the game of baseball was invented. What is considered to be in the 'best interests' of baseball becomes a function of what is considered to be 'best' by those individuals who have been given, or acquired, oversight with respect to the social/legal/administrative context within which games are played … professionally, recreationally, educationally, or within some other organized forum (such as little league).

The individuals who are the source or authority for what transpires in such contexts issue a combination of primary and secondary rules that govern the broader, administrative and regulatory framework within which actual baseball games are played. Such individuals are the ones who decide: how the structural character of the general administrative framework surrounding baseball games will be regulated; who will get assigned to which committees and offices; when games will be played;

what rule changes will be considered, implemented, or interpreted, and so on.

However, the manner in which this latter group of individuals conduct themselves might be rule-governed only in part. Aside from the rule-like by-laws that establish the general framework within which such individuals make administrative decisions, many of the judgments of those people tend to operate in accordance with various kinds of principles – rather than rules … principles that are not easy to define, if they can be defined at all.

For example, what is the rule for deciding what is in the 'best interests' of baseball? Who gets to determine what such "interests' are, and according to what criteria does one establish what constitutes the appropriate measure for being "best"?

Are the 'best interests of baseball' primarily a matter of commercial considerations? If so, are commercial considerations restricted only to owners but not the players, coaches, managers, and umpires? Could certain kinds of trades not be in the best interests of baseball? What if records are set using performance-enhancing drugs? What if players, coaches, managers, umpires, and/or owners conduct themselves in problematic ways outside of games? Should spitting be permitted on the playing field or in the dugouts/bullpens?

If one tries to analyze baseball – both the game as well as the social and administrative contexts within which the game is played – one cannot properly understand what is going on if one restricts oneself to a framework that is limited to considering issues involving only primary and secondary rules. The game of baseball spills beyond the realm of rules and enters into the territory of judgments, understandings, and interpretations that often are principle-based and not just rule-based.

To say that the judgment/interpretation of a player, manager, coach, umpire, owner, administrator or official is a matter of discretion indicates that there is no rule or set of rules that determine the precise character of those decisions … even as rules – both primary and secondary – might limit the degrees of freedom within which those individuals operate as far as playing or overseeing the game of baseball is concerned.

None of the foregoing touches on the issue of skills and strategies that are employed by players, coaches, and managers with respect to

participating in the game of baseball. While there might be rule-like tendencies that govern some of what those participants do during a game, there are many judgments made during a game that are not necessarily rule-governed but are rooted in principles of one kind or another that involve issues of fairness, as well as theories about how to win, lose, and comport oneself on and off the field.

For instance, good hitting is about timing, and good pitching tries to disrupt that timing. Batters try to figure out the sequence of pitches that might be thrown during a given at bat in order to improve their timing, while pitchers/catchers try to come up with a pitch-sequence that will lower the likelihood that a batter will be able to exercise a timing strategy to his/her advantage.

What about stealing bases? Managers and base runners try to gauge the character of a pitcher's delivery style, along with the ability of a catcher to compensate for any weaknesses in a pitcher's movement toward the plate. Should a pitch-out be thrown? Does worrying about the runner take a pitcher's focus away from the batter? Who is the potential base stealer? Who is batting? How have they been doing lately? Who is up next? How many outs are there? What is the count? What inning is it? What is the score? Is the game being played at home or on the road? Should one call for a hit-and-run rather than merely a steal?

The foregoing game/strategy issues are not necessarily rule-governed. Some managers are better than others in making judgments concerning what to do in any given game-situation, and if those sorts of decisions were merely rule-governed, then one likely would not see many, if any, differences in what managers do under similar circumstances.

Moreover, how managers interact with players outside of actual games is also likely to be quite variable. While there are some rules that might govern how a manager treats players, some mangers might be better than other managers with respect to navigating the shifting shoals that characterize the lives of players both on and off the field, and the reason for that differential success might be because some managers have a better grasp of the complex principles (not rules) of personality, mood, ambition, emotion, talents, confidence, and motivations that shape human behavior.

The primary rules that define the game of baseball are just that – rules and nothing more. People participate in that game with many

different intentions, motivations, goals, histories, attitudes, skill-sets, and interests.

Issues of enjoyment, money, careers, poverty, education, history, recognition, fame, power, sex, influence, camaraderie, challenges, and competition can become entangled with the relatively simple rules of baseball in a wide variety of complex ways. Neither the rules of baseball as a game, nor the rules of baseball as a social/legal phenomenon are capable of properly describing or explicating what goes on within the world of baseball.

Much of what goes on with respect to any given set of legal rules or rules of governance are similar to what goes on in the world of baseball where the actual rules of baseball play a limited role. In both instances, there is no defensible linear – that is, rule-governed -- formula for determining what source or authority should regulate those activities or how many of the secondary rules -- for example a constitution or set of by-laws -- are to be interpreted.

The manner in which legislative, executive, and judicial branches of government attempt to realize the purposes of the Preamble is not rule-governed even though the Philadelphia Constitution does contain certain procedural rules for shaping and orienting those determinations and judgments. Furthermore, the seven articles of the Philadelphia Constitution provide no criteria for determining how ideas such as: “a more perfect union,” “justice,” “tranquility,” “the general welfare,” “the common defense,” or “the blessings of liberty,” are to be understood except in a procedural sense … that is, from the perspective of legal positivism, the purposes set forth in the Preamble are whatever the procedural features of the Constitution permit them to be.

The purposes, goals, intentions, motivations and understandings that induce legislators, executives, and the judiciary to combine and apply the procedural possibilities of the Constitution in one way rather than another are not part of the Constitution. While the Preamble is supposed to serve as a set of general guidelines with respect to those purposes and intentions, nonetheless, because those guidelines are effectively devoid of any specific meaning, there is nothing but procedural issues that place limits or create possibilities with respect to the purposes and intentions of legislators, executives, and jurists concerning the general principles that are articulated in the Preamble.

Moreover, aside from broadly worded ethical considerations that are supposed to regulate the behavior of the members of the three branches of government – and those ethical considerations are, ultimately, likely to be principle-based rather than rule-based (that is, they are interpretive judgment calls and not an exercise in applying rules … although rules, of some kind, might be part of the process) – there is nothing in the Constitution that clearly indicates what the intentions and purposes of the three branches should be. Within certain general procedural limits, legislators, executives, and jurists are free to have their intentions and purposes engage the Constitution in any way those individuals wish.

The Philadelphia Constitution might involve both primary and secondary rules. However, the real dynamic of governance is a matter of the principles that are rooted in the intentions, purposes, and ideologies of those who seek to leverage the procedural machinery of governance that are provided by the seven articles of the Philadelphia Constitution in order to realize those intentions, purposes and ideologies, just as the real dynamic of baseball rests not with the primary rules of the game but, rather, rests with the intentions, purposes, skills, histories, and so on of players, coaches, managers, umpires, owners, agents, and administrators.

As such, legal positivism has little of value to say with respect to the factors – i.e., the principles inherent in intentions, purposes, and ideologies – that actually determine what transpires in governance. Eventually, and at very critical junctures, the idea of primary and secondary rules breaks down as an effective way of describing and explaining the dynamics of law because that kind of an idea is incapable of handling the notion of a principle, and, yet, principles are, in many ways, as important, if not more so, than rules are with respect to understanding the dynamics of legal governance.

One implication of the foregoing point is that the meaning of a ‘right’ is entirely dependent on what the intentions, purposes, and ideologies of legislators, executives, and jurists say the meaning of that term can be … subject to certain procedural degrees of freedom that are set forth in the seven articles of the Philadelphia Constitution, along with the very general set of ideas mentioned in the Preamble. From the perspective of legal positivism, rather than treating a ‘right’ as an entitlement that has priority over the dynamics of governance, a ‘right’ becomes subject to the intentions, purposes, and ideologies of those who are the regulators of

the primary and secondary rules governing the construction of public space.

According to legal positivism, the foregoing sort of an arrangement is what it is. From the perspective of the natural law of ignorance, as well as the basic right to sovereignty that follows from it, the foregoing arrangement is entirely arbitrary and stands in need of justification.

Describing what a given system of procedural rules (e.g., the Philadelphia Constitution) permits legislators, executives, and jurists to do is incapable of justifying – except procedurally -- the intentions, purposes, and ideologies that seek to leverage those rules. Legal positivism avoids asking all of the questions that need to be raised with respect to whether, or not, any given set of primary and secondary rules can be justified in any ultimate sense and whether, or not, such a set of rules actually even properly describes what is transpiring within the context of governance (as is the case when the issue of principles enters the picture).

To whatever extent principles, rather than rules, characterize a legal dynamic, then legal positivism is a problematic way of describing such a system. Even in the relatively simple context of baseball, there are many principles that are present that transcend whatever primary and secondary rules might be relevant to playing the game of baseball. Yet, those principles are very important to how players, coaches, managers, umpires, and fans engage the game of baseball.

The foregoing sorts of issues are only multiplied when it comes to complex matters of legal governance in which a vast array of principles -- that are rooted in networks of intentions, purposes, and ideologies -- engage whatever primary and secondary rules that do exist to generate the 'legal' regulation of public space. No matter how extensive the set of primary and secondary rules are, such a set of laws can never adequately account for the way in which individuals (whether, citizens, lawyers, government officials, or jurists) hermeneutically parse those laws, nor can such a set of rules ever adequately account or explain why those laws ought to be interpreted in one way rather than another.

Legal positivism is an epistemologically incomplete system of description and analysis because law involves much more than just a set of primary and secondary rules. Law also entails issues of principles, intentions, purposes, and ideologies that push rules beyond their limits

and into conceptual territory where considerations other than primary and secondary rules – e.g., principles -- are of critical importance.

Legal positivism is also an epistemologically incomplete system of explication because it fails to question its own foundations. Describing a legal system as a function of the interaction of certain kinds of primary and secondary rules really doesn't adequately address a person's desire to know what, if anything, those rules have to do with the ultimate nature of reality and if one cannot justifiably demonstrate the character of that kind of a connection, then there is absolutely no reason to feel obligated to observe the requirements of those primary and secondary rules ... although one might be forced to do so in one way or another.

Obligation, duty, and rights -- to whatever extent they can be said to be viable concepts -- arise out of an epistemological understanding concerning the nature of reality. If one cannot demonstrate beyond a reasonable doubt that a certain characterization of obligation, duty and/or right reflects the nature of the universe, then those characterizations are entirely arbitrary and, as such, really have no moral authority in a collective sense … although that kind of a sense of obligation, duty, or right might have relevance to an individual's way of proceeding through life.

The presence of force in a legal system is a reflection of the fact that, for whatever reasons, citizens do not have a sense of obligation or duty concerning the issue of compliance and, as a result, must be coerced to do certain kinds of things. The presence of force within such a system might also be considered to be an index of the incongruity – either actual or perceived -- between what that legal system is capable of justifying in some persuasive manner and what continues to stand in need of that kind of justification.

To whatever extent, primary and secondary rules cannot be demonstrated to be justifiable relative to what is understood about the nature of the universe, then there is likely to be a need for the use of force in relation to inducing people to comply with those rules. This was certainly the case with respect to the British response to the Declaration of Independence (and concomitant events), and it also has been true with respect to any number of events in post-Constitutional America in which federal and state governmental officials have used force to coerce certain kinds of behavior because those governments were unable to successfully

justify to the people beyond a reasonable doubt the relationship between, on the one hand, certain primary or secondary laws, and, on the other hand, the nature of reality.

The idea that: force is an inherent feature of civilization because of the unruly nature of human beings, might be incomplete. While it is certainly true that all human beings have their weaknesses from which their neighbors are entitled to be protected, one must also critically explore the way in which rules – whether primary or secondary – that cannot be adequately justified are likely to lead to problems that would not otherwise exist if it were not for the presence of those rules and a government's expectation that people must comply with those rules.

Sometimes people act in a way that is not compatible with existing primary and secondary rules due to their own, internal demons. Sometimes people act in a way that is not compatible with existing primary and secondary rules due to the demons that are inherent in the legal system that advocates such rules … and the latter sorts of demons are often the cause of riots and societal breakdown, as well as civil disobedience and revolution.

Part of the idea that people are entitled to have a fair opportunity to push back the horizons of ignorance – that is, they have a right to basic sovereignty – involves the entitlement to not be entangled in the interpretive and discretionary acts of government officials that cannot be demonstrated as likely being true beyond a reasonable doubt. In other words, whatever the intentions, purposes, histories, and ideologies of government officials might be, those intentions and so on are not entitled to spill over into the realm of basic sovereignty unless those officials can show why departures from the default value of basic sovereignty are warranted -- not merely in accordance with a preponderance of the available evidence but beyond a reasonable doubt.

In baseball, there is not a great deal of discussion about: the idea of 'outs', what is meant by the idea of being safe, how runs are scored, how many players are allowed on the field at a time, and so on. From time to time, there are rule changes in baseball involving things such as: the 'designated hitter,' the use of performance enhancing drugs, and so on, but none of these changes -- or any of the original rules -- need to be defended beyond a reasonable doubt with respect to the ultimate nature of reality.

People come together, construct a system within which the rules of baseball are permitted to unfold, and games are played for whatever motivations and reasons those individuals have for participating in that system. While judgments involving the game of baseball should not be arbitrary, justifying such decisions is usually done in accordance with a preponderance of the available evidence concerning the nature of baseball and people's reasons for participating in the processes within and around that game.

Furthermore, there usually is a great deal more latitude given for making errors with respect to those discretionary judgments/decisions. Those sorts of errors will be tolerated until some non-rule governed threshold is reached and people get fired, traded, optioned, and the like.

Unlike the game of baseball, the nature of the 'game of life' is largely unknown. We each might have our own ideas about the character and purpose of the latter 'game', but those ideas cannot be demonstrated to everyone's collective satisfaction beyond a reasonable doubt.

The reason why a different standard of rationality is applied to baseball is because, ultimately, that game has little to do with the issue of basic sovereignty. Whether baseball is played or not, life outside of baseball goes on.

Naturally if one is a player, umpire, coach, manager, administrator, or owner who is betting on the outcome of games, then one might stand to gain or lose a great deal beyond the issue of money. Moreover, if one's baseball contract is not renewed, then one might face financial or career hardships.

Nonetheless, despite the possibility of those difficulties, nothing that happens in baseball is capable of depriving people of their right to push back the horizons of ignorance. If, somehow, baseball were suddenly constructed in such a way that the outcomes of games directly affected everyone's basic sovereignty, then requiring baseball players, coaches, managers, administrators, and owners to make decisions that were capable of being shown as likely to be true beyond a reasonable doubt might well come into play.

Why should government officials be entitled to make discretionary decisions that affect a person's basic sovereignty without being required to demonstrate the likelihood that those judgments are correct or true

beyond a reasonable doubt? Why would anyone rationally agree to cede her or his basic sovereignty to anything less than a decision that was based on considerations that were, beyond a reasonable doubt, likely to be true?

The primary rules inherent in the Preamble to the Philadelphia Constitution do not offer a justification that is likely to be true beyond a reasonable doubt with respect to the meanings of the rules that are given expression through that Preamble. The primary and secondary rules that are contained in the Philadelphia Constitution do not offer a justification that is likely to be true beyond a reasonable doubt with respect to how ambiguities inherent in the primary and secondary rules of the Preamble and Constitution should be interpreted or understood, and even if there were complete agreement concerning how those ambiguities should be understood, none of this necessarily justifies, beyond a reasonable doubt, that those primary and secondary rules should be permitted to undermine, limit, interfere with, oppress, or extinguish the basic sovereignty to which, according to the law of ignorance, everyone is, beyond a reasonable doubt, entitled.

The intensions, purposes, and ideologies of government officials – including jurists – have not been demonstrated as likely to be true beyond a reasonable doubt with respect to their claims of having pre-eminence over the issue of the basic right of people to have a fair opportunity to push back the horizons of ignorance in life. There is a major disconnect between what government officials can demonstrate beyond a reasonable doubt as likely to be true and what they claim to have the 'right' to do on the basis of a given set of primary and secondary rules.

Rights are an epistemological issue. Even when moral arguments are presented those arguments are couched in terms of epistemological theories concerning the nature of reality such that if certain things concerning the nature of reality are true, then people are obligated to act in compliance with that truth.

It is not enough to advance primary and secondary rules concerning the nature of law. Law must be justified beyond a reasonable doubt with respect to its alleged demonstrable capacity to enhance the right of people to have a fair opportunity to push back the horizons of ignorance.

Governments have no rights or entitlements. Instead, governments have a responsibility (an epistemological one) to ensure – within the limits

of their capacity to do so -- that the basic sovereignty of citizens is protected, preserved, enhanced, and, to the extent that is possible, realized.

The power that governments derive from the people has only one purpose that can be demonstrated beyond a reasonable doubt. That purpose is to serve the interests of every individual's basic sovereignty … that is, the right to have a fair opportunity to push back the horizons of ignorance concerning the process of life.

As stated earlier in this chapter, the foregoing right entails a variety of services – such as food, shelter, clothing, education, defense, legal protections with respect to arbitrary search, seizure, and detention, as well as health care in some minimally acceptable form – that are necessary for a 'fair' opportunity to be afforded to people through which they can exercise their basic sovereignty. One is not entitled to resources except to the extent that the arrangements through which those resources are distributed do not disadvantage anyone's opportunity (whether in the present or in the future) to pursue their right to basic sovereignty.

In addition and also as previously noted, the right to basic sovereignty entails an array of degrees of freedom that are likely to enhance the realization of that right. These degrees of freedom would involve such things as: speech, peaceful assembly, the exploration, distribution, and critical discussion of ideas, conscience, travel, and so on.

When any, given, possible decision of a government can be shown to be likely to affect the basic sovereignty of people in one way or another with respect to the foregoing considerations, then the issue is not whether that kind of a decision can be shown to offer the best moral interpretation of the existing primary and secondary laws (as Dworkin might claim). After all, trying to figure out what constitutes the best moral interpretation of such laws is a perspective that is, itself, in need of justification with respect to its ideas concerning the criteria and standards for evaluating what constitutes the 'best' sort of moral argument.

Government decisions have but one standard to meet. Can those decisions be demonstrated beyond a reasonable doubt as being likely to enhance the basic sovereignty of everyone … and not the sovereignty of just some of the people?

Those decisions are epistemologically based, not morally based. The important consideration is not whether one can come up with a good moral argument for interpreting certain primary and secondary rules in one way rather than another, but whether those rules and interpretations can meet the epistemological standards with which any jury is faced in a criminal trial when the life or freedom of a person on trial is being threatened.

The potential loss of basic sovereignty with respect to each and every human being is on trial whenever a government seeks to make decisions that have the potential for affecting that sovereignty. Why would one suppose that the epistemological standards that need to be satisfied in such cases should not reflect the structural character of the epistemological standards that must be met in every criminal trial?

The legal positivist's approach to interpreting law holds that judges – like umpires in baseball – have a certain amount of discretion with respect to interpreting the meaning (or application) of primary and secondary rules with respect to a given set of circumstances. According to that perspective, reasoned arguments can be given that purport to justify the exercise of discretion in those cases, but, whether, or not, a judge can offer an argument that is likely to be true beyond a reasonable doubt with respect to the manner in which a given act of discretion -- along with the primary and secondary rules that are being interpreted -- is capable, on either level, of reflecting the nature of reality is quite another matter.

The idea of 'hard cases' refers to those situations in which judges encounter difficulty in trying to put forth a reasoned argument that shows how: a given set of social circumstances, together with primary and secondary rules, as well as precedents, can be brought together in a persuasive fashion. 'Hard cases' are contrasted with allegedly simple legal cases in which judges are supposedly easily able to identify the logical circuitry that is believed to tie together: A given set of social circumstances, primary and secondary laws, as well as various precedents, in a persuasive and straightforward fashion without any need to call upon the exercise of discretion or interpretation with respect to those cases.

From the perspective of the present book, both the 'hard cases,' as well as the 'simple' cases of legal positivism constitute epistemological distortions that prevent people from understanding that unless primary and secondary rules can be justified beyond a reasonable doubt with

respect to their capacity to enhance everyone's basic sovereignty or right, then the attempts to combine: precedents, 'facts,' reasoning, and interpretations that are used to construct persuasive arguments with respect to the application of various primary and secondary rules in a given social context are misguided from the beginning.

Moreover, to try to argue that there is a best moral sense that can discovered with respect to the interpretation of 'hard cases' is also an epistemological distortion of the actual existential character of the situation with which human beings are faced – a situation that is described via the law of ignorance. The idea that there is a 'best moral sense' that can be discovered in 'hard cases' gives expression to a perspective that lends tacit approval to the underlying existence of certain primary and secondary rules by arguing that there is some best moral sense that can be made of those primary and secondary rules without addressing the issue of whether, or not, those rules can be justified themselves.

Even if it were true that there was some best moral sense that could be made of how to interpret a given set of primary and secondary rules, unless one can justify those primary and secondary rules in some manner that demonstrates how those rules serve the interests of the basic sovereignty of every human being beyond a reasonable doubt, then discovering a 'best moral sense' is irrelevant to the fundamental right of human beings with respect to the issue of having a fair opportunity to push back the horizons of ignorance. Moreover, as history has clearly shown, no one has been able to successively demonstrate why everyone should collectively accept, beyond a reasonable doubt, the idea that one set of criteria concerning the notion of what constitutes a 'best moral sense' -- as opposed to other such possibilities – is likely to be true.

Can someone put forth reasoned arguments of why one notion might be better than another sort of argument with respect to the idea of a 'best moral sense' in relation to the application of a given set of primary and secondary rules to a certain set of social circumstances? Yes, people can do – and have done – this.

However, being able to offer those sorts of reasoned arguments doesn't make them 'better', 'best', or 'right' in anything but a completely arbitrary way. Furthermore, if someone can't demonstrate to me why arguments that are supposedly capable of making the best moral sense of

certain primary and secondary rules cannot be shown as likely to be true beyond a reasonable doubt, then why should anyone bother with the former sorts of arguments at all?

Making the best moral sense of a situation that is actually untenable because of problems inherent in a given set of primary and secondary rules seems to be rather a quixotic project. Judges, government officials, and academics might be able to rationalize taking the time to construct those kinds of arguments, but those individuals tend to miss, if not avoid, the only issue that should be addressed – namely, establishing, preserving, and enhancing every person's right to basic sovereignty with respect to having a fair opportunity to push back the horizons of ignorance concerning the nature of reality.

Some individuals (e.g., Dworkin) make a distinction between 'justice' and 'fairness'. Justice is characterized as giving expression to whatever is considered to constitute the correct functioning of a system of governance with respect to the distribution of goods, services, resources, and opportunities. Fairness, on the other hand, supposedly refers to the character of the social or political process through which the foregoing sense of justice is realized.

As such, fairness and justice would seem to have a 'means-ends' relationship. The right outcome – i.e., justice – cannot be realized if the right process for achieving that kind of an outcome – i.e., fairness -- is not utilized.

How does one determine what the right outcome is with respect to the distribution of resources? Can that sort of a question be answered without knowing what the ultimate nature of the universe is and what the truth concerning that nature has to say, if anything, with respect to the idea of what would constitute the correct outcome for distributing resources and opportunities?

What if justice were about acting in accordance with the requirements of truth and not just about distributing resources? What if justice were about the process of treating every facet of the universe with what is due to it as a function of the truth of that facet of things?

Do the Earth and its ecology – of which human beings are but one aspect -- have nothing to say about the issue of the correct distribution of goods and services? Do future generations have nothing to say about

what might constitute the 'correct' distribution of goods, services and resources.

Does the Earth's place in the universe have nothing to say about those sorts of issues? Are the realms of Being beyond humans – whatever these might be -- not deserving of justice in some sense?

Collectively speaking, we do not know the answer to any of the foregoing questions. Consequently, the idea that justice is about the correct distribution of goods seems rather arbitrary. In other words, that sort of a view of justice is not capable of being demonstrated, beyond a reasonable doubt, to be a perspective that is likely to be true.

Consequently, if 'fairness' is allegedly a matter of identifying the right way to bring about the right outcomes with respect to the distribution of resources, yet the nature of justice cannot necessarily be restricted to just certain kinds of material distribution outcomes but must first take into consideration the issue of trying to establish what the truth requires of us, then such a notion of fairness is problematic as well.

Justice and fairness, like morality and rights, are epistemological issues. Any attempt to make claims concerning those matters will be arbitrary to the extent those claims cannot be demonstrated as being likely to be true beyond a reasonable doubt.

Given the nature of our collective ignorance concerning those matters, talking about the ideas of justice and fairness as if we knew the truth concerning their relationship with one another seems premature. On the other hand, quite independently of the ultimate nature – if any -- of justice, finding some rational ways to act in the midst of this sort of ignorance might be a possibility worth exploring.

If the key to so many issues – for example, purpose, potential, morality, identity, and justice – is having access to the truth of those things, and, yet, if our current situation is permeated with many kinds of collective ignorance that bear on those same issues, then what is needed is a way to move forward that does not disadvantage anyone with respect to having an opportunity to push back the horizons of ignorance concerning, among other things, the aforementioned themes that are of critical importance with respect to having a chance to realize the potential of being human in a constructive fashion. Fairness within a context of ignorance is to recognize the right to sovereignty that emerges – via the

law of ignorance -- from such a context in relation to the challenge of trying to push back the horizons of the unknown.

There is no guarantee concerning the likelihood of anyone discovering the truth of things. There is no guarantee concerning the likelihood of anyone discovering the nature – if any -- of ultimate justice.

Nevertheless, there needs to be a guarantee that everyone should have a fair opportunity to address those issues. This is what the right of basic sovereignty is about and without it all matters of law, justice, fairness, morality, and governance become arbitrary, and, therefore, cannot be justified beyond a reasonable doubt.

'Hercules' is the name given by Ronald Dworkin to an allegedly ideal lawyer or judge who makes legal decisions that are intended to serve – at least in generalized terms – as the standard of thinking against which legal arguments are to be evaluated with respect to how jurists should proceed in 'hard cases' … that is, legal cases requiring interpretation since the manner in which the primary and secondary rules of a legal system should be applied to a given set of social circumstances is not readily apparent. In short, Hercules is a rationalized fiction that gives expression to a model that allegedly provides a method that is intended to guide thinking with respect to engaging the 'hard cases' of law.

The style of argument to which Hercules is intended to give expression is complex, involving a variety of considerations. It involves principles of thinking concerning the application of legal rules (both primary and secondary) to social situations.

According to Dworkin, if a judge – say, Hercules – accepts the settled practices of the legal system within which he operates, then, such an individual must also accept some theory of political understanding that is capable of justifying those practices. Without some sort of underlying theory that is capable of justifying legal practice, then a judge could not possibly make sense either of current legal practice or how to legally proceed into the future in the matter of cases that constitute challenges for those sorts of established practices (i.e., hard cases).

The question that Hercules never seems to ask himself is: Why should one accept any legal practice as being settled? The fact that a group of people – judges for instance – consider a legal issue to be settled does not

necessarily mean anything more than that a convention of some kind has arisen among a certain group of people in relation to a given issue of law.

Conventions are not self-justifying … although they might appear to be self-evident to those who accept those conventions. Consequently, given that the idea of being able to justify legal decisions in the matter of 'hard cases' is important to Dworkin, one wonders why the idea of being able to justify the underlying, 'settled' legal practices with which decisions concerning 'hard cases' are to fit does not seem to be equally – if not more -- important to Dworkin.

If there are problems inherent in settled legal practices, these sorts of difficulties cannot help but spill over into, and affect whatever decisions are made with respect to 'hard cases'. To be concerned with the issue of justification in relation to arguments involving 'hard cases without simultaneously being concerned with the issue of justification with respect to the framework into which decisions concerning hard cases are to fit seems rather inconsistent.

Who gets to determine if a legal practice is settled and with what justification? For example, who gets to determine who should adjudicate legal issues and in accordance with what methods?

If one responds to the foregoing question by claiming that a constitution settles those matters, this sort of a response does not necessarily resolve the issue. One must be able to justify – beyond a reasonable doubt -- the process through which such a constitution came into being if that document is not to be considered as an arbitrary set of arrangements instituted through the way of power rather than the way of sovereignty.

One also might respond to the foregoing question by arguing that: if 'judges' do not adjudicate legal issues, then who will? However, this sort of response will not necessarily solve the underlying issue either.

Who is to be identified – if anybody -- as the individuals to whom the responsibility for adjudicating legal cases is to be given stands in need of a kind of justification that transcends what is intended as a self-referential, rhetorical question. Possibly, the best individuals for adjudicating legal cases are not necessarily individual judges but a group of individuals in the form of grand juries or regular juries

In the legal system, one often hears that juries are the determiner of facts and judges are the determiners of the law. Nonetheless, one wonders about the nature of the argument that would be able to demonstrate, beyond a reasonable doubt, how juries have nothing of value to offer concerning the nature of law.

If self-governance is about individuals regulating themselves, then the role of judges in such a system of self-governance is not without elements of perplexing controversy. If judges are the ones who make decisions concerning the nature of self-governance, then to what extent can one say that individuals who aren't judges are, nonetheless, actually involved in an exercise of self-governance?

'Hercules' is a judge who accepts certain aspects of legal practice as settled – such as who or what has the authority and power to enable judges to adjudicate legal matters. As a result, Hercules is already biased concerning various aspects of the structural character of the system out of which he operates … for instance, those features that empower judges to do what they do.

According to Dworkin, Hercules possesses a political theory that is capable of justifying those settled practices. However, what is the character of the justification for those practices – that is, why should anyone accept such a form of justification?

Hercules might have a political theory that justifies, in his own mind and in the minds of other judges, why certain legal practices are settled. This is not enough.

He must be able to justify to the generality of citizens why those practices should be considered settled and why judges should be permitted to adjudicate in hard cases that fall into the interstitial spaces in and around those settled practices.

For example, let us suppose that Hercules holds some theory of democracy that allegedly justifies both settled practices as well as the practice of judges making decisions in 'hard cases.' What is the structural character of that theory of democracy, and how does it justify what it claims to justify?

The foregoing theory might be coherent in terms of its own logical structure, and it might also be consistent in the sense that legal decisions across cases and across time give expression to the same set of legal

connections (e.g., precedents) and modes of reasoning. Nevertheless, neither coherence not consistency are sufficient to demonstrate that the sort of theory of democracy being alluded to is necessarily capable of justifying itself to those who do not operate from within that sort of framework.

Something is justified when it can be shown to give expression to a form of argument that has persuasive properties beyond a single, self-referential context. The idea of inter-subjective agreement suggests that a variety of people from different contexts are able to come together in agreement on the value of a given argument and, to this extent, it constitutes a stronger – more justifiable -- form of argument than an argument that is not considered to be very persuasive or convincing beyond the group of people who are advocating that kind of theory or idea.

Hercules might hold a theory of political understanding that is interesting, coherent, consistent and capable of handling 'hard cases' in what is considered -- by 'some' of those who operate from within the framework of that understanding -- to be heuristically valuable in some sense. However, I would be more impressed if a variety of other individuals from contexts that are independent of Hercules were able to demonstrate, beyond a reasonable doubt, that his ideas were likely true in a multiplicity of separate contexts.

To accept various sorts of problematic (in the sense of not having been justified beyond a reasonable doubt) primary and secondary rules or legal practices as being settled and, then, seek, to judicially administer those laws fairly across a given population through the exercise of discretion in relation to 'hard cases' seems to be a project steeped in folly. However fairly those laws might be judicially administered, this sort of process seems to miss the obvious – perhaps those laws ought not to be administered at all … fairly or otherwise.

To poison everybody in a group is, in a sense, to have exercised fairness. Nonetheless, the quality of fairness cannot adequately address the issue of whether the people in that group should have been poisoned in the first place.

Imposing policies on a group of people without being able to demonstrate the likelihood that those policies are true beyond a reasonable doubt is like poisoning that group without first demonstrating

that the act of poisoning those individuals is justifiable. The issue is not how fairly one has been in carrying out the policy in question, but, rather, the crux of the matter concerns the justifiability of the policy that is being carried out.

Similarly, the issue is not how smart Hercules is and whether, or not, he can come up with all manner of arguments concerning: coherency, consistency, fairness, political theories, the best moral sense, hard cases, or ideas about contracts and torts in the context of a given system of primary and secondary rules. The issue is whether, or not, that kind of a system of primary and secondary rules should be impacting the lives of people at all.

To make the best moral sense of a given system of primary and secondary rules – assuming one could do this -- says absolutely nothing about the justifiability of that system. To come up with a method for deciding hard cases in that sort of a system does not serve to justify such a framework but, instead, only gives expression to some of the logical possibilities inherent in any dynamic involving the interaction of those primary and secondary rules.

Dworkin employs the idea of a chain novel to help explicate his notion of how the discretionary/interpretive acts of judges 'fit' in with a given substantive framework of settled law. More specifically, Dworkin asks readers to imagine a literary project in which a number of authors collaborate to complete a novel by being assigned the task of writing individual chapters.

According to Dworkin, as the first chapter of the proposed novel is written, subsequent chapters will be constrained in certain ways by the elements which structure that opening chapter. For instance, considerations of: plot, language, geographical setting, temporal period, character names, and so on that are established in the first chapter must be carried over into subsequent chapters if one is to be able to make sense of the novel.

As is supposedly the case with respect to the foregoing, literary example, so too – or so the argument goes -- one observes the same sort of process in legal systems. Subsequent judges are constrained in certain

ways by the structural elements and themes that have been established in previous chapters of the law by earlier judges.

However, there are some questions that might be raised with respect to Dworkin's literary analogy … questions that have implications for the alleged analogical relationship between the writing of a novel and the exercise of judicial discretion. For example, whose decision was it for the idea of writing a novel to become the focus of such a project?

Why wasn't a decision not made to write an epic poem of some kind rather than a novel? Or why not choose a musical or artistic form of collaboration rather than a literary one?

Furthermore, who decided, and with what justification, to select certain authors for the project rather than others? In addition, what justified one writer going first and setting the structural character of the novel for everyone else?

What if those writing later chapters were not happy with what the first writer had done? Why should they continue on with that kind of a project and what would prevent them from treating the opening chapter as nothing more than a preface, introduction, or merely a mysterious beginning point for a radically different set of events in subsequent chapters?

Is the novel meant to just give expression to a straightforward narrative of some sort, or could it be a mystery in which the reader is challenged to make sense of how – or if -- the chapters are related to one another? What if the initial writer was a realist of some sort, but the later writers were fantasists … or vice versa?

What if subsequent writers were much more interested in giving expression to dynamic, funny, interesting, poignant dialogue than they were in continuing on with some given plot and the like? What if subsequent writers were of the opinion that life had no plot, and, therefore, neither should the novel?

What obligation, if any, do subsequent writers have to: earlier writers, or to possible readers of the novel, or to the novel's publisher, or to the individual or individuals who dreamed up the project in the first place? What justifies that kind of an obligation?

What if someone came along and asked why so much time and resources were being spent on that sort of literary project? Conceivably,

such time and resources might be of more value if those who were in need of help were to become the beneficiaries of the time and resources that otherwise were going to be devoted to the novel project?

Finally, not much rests on what does, or doesn't, happen with respect to the novel project. Whether the novel is: good or bad, makes sense or doesn't make sense, is consistent or inconsistent, coherent or incoherent is largely irrelevant to the problems of life. However, if someone made a proclamation that people would have to live their lives in accordance with the ideas, rules, maxims, principles, purposes, theories, and values of the forthcoming novel, then all of the foregoing questions – along with many others -- become very relevant.

Dworkin never really explores the issue of whether, or not, his collaborative novel-writing project can be justified. Similarly, Dworkin never really explores whether, or not, his approach to law involving: primary and secondary rules, settled law, discretionary judgments, principles, making the best moral sense of such a system, as well as various ideas about justice, fairness, and integrity can be justified.

Dworkin believes that subsequent writers in the novel project will interpret what has gone on before them with respect to earlier chapters of the novel. Dworkin maintains that those interpretations will shape, in part, how any given chapter unfolds.

How does one demonstrate that those sorts of interpretations concerning earlier chapters are justified? What are the criteria for determining this? What are the methods for determining this? What if subsequent writers could care less about what earlier writers were up to or merely paid them lip-service as the subsequent writers went about constructing their own chapters that were intended to serve quite different purposes and intentions?

Furthermore, in many ways, the process of interpretation falls beyond the horizons of any given chapter. Even if a particular chapter of the novel were to lay out rules and principles for how it should be interpreted by writers of subsequent chapters, there is nothing in that sort of chapter that demonstrates why later writers should be obligated to accept those rules and principles of interpretation rather than question them or ignore them, and, therefore, the process of evaluating what has gone on before takes place in a hermeneutical space that is external -- although related -- to the actual novel itself.

The novel project does not justify the aforementioned interpretive process … although the novel might serve as one of the reasons for why that sort of process takes place. In other words, while the novel project might serve to stimulate some sort of interpretive activity, that project has no demonstrated authority for controlling the character of that interpretive activity in any justifiable fashion.

Given the foregoing considerations, one might ask similar questions with respect to the role that interpretation or discretion plays in the context of how a judge proceeds in relation to some given legal system. What does the interpretive process of one judge have to do with the interpretive process of another judge, and, more importantly, what logically links those interpretations in a way that generates obligations or duties in relation to either other judges or those who are not judges?

If one of the participants in the novel project were to write a chapter and expect that subsequent writers should not only follow her or his lead but, as well, feel obligated to do so, one might wonder about the arrogance and foolishness of that sort of a writer. Why is the issue any different when it comes to the matter of law?

According to Dworkin, the principle that ties together legal judgments and interpretations across circumstances and time is the principle of 'integrity'. Whatever the philosophical and hermeneutical differences of judges might be, theys belong to a brotherhood and sisterhood in which they are honor-bound to attempt to make the best moral sense of a given set of primary and secondary rules when considered in the context of social/life problems.

If one applies the idea of 'integrity' to the issue of participating in the aforementioned novel project, then what is one to make of that principle? Presumably, the writers in the project are members of a guild of some sort who supposedly are obligated to try to make the best moral sense of the chapters written previously in the on-going novel project.

Why are the writers duty-bound to act in accordance with the foregoing sort of principle? Who is the duty owed to? – Themselves? -- The other writers? -- The person, or persons, responsible for that project? -- The publisher? – The critics? – The readers? – Academics?

Moreover, one wonders how the writers will address the issue of: What constitutes making the best moral sense of the novel project …

'best' in what sense, and according to what criteria, and in accordance with what justifications? … 'moral' in what sense, and according to what criteria, and in accordance with what justifications?

Even if one could answer the foregoing questions intelligibly and coherently, how does the fact that the writers who are participating in the novel project feel bound to one another through the principle of integrity, obligate, say, the readers of that novel to engage the finished, literary project with the same sort of 'integrity' as the writers did?

Just because a group of writers believe that they have exercised integrity, in some sense, across the various chapters of the project, why should readers feel bound to adhere to that sense of integrity? Possibly, despite the best efforts of the writers to observe the principle of integrity during the process of completing the novel project, their ideas about what constitutes the best moral sense concerning that project is misguided, or erroneous, or flawed in various ways. Maybe the novel that is produced in the foregoing fashion is not very interesting, satisfying, enjoyable, insightful, instructive, or just doesn't have a lot of resonance -- and, therefore, traction -- with the sort of lives that are experienced by many readers.

Similarly, irrespective of how a group of judges might feel about the issue of integrity and how that principle supposedly relates to the exercise of discretion with respect to 'hard cases', what has any of this got to do with those who exist outside the community of integrity through which judges allegedly engage a given legal system of primary and secondary rules? Why should I, or anyone else, feel obligated to concede authority to judgments made in accordance with the principle of integrity as understood by judges? If I -- or others -- do not agree with what those judges consider to be the best moral sense that can be made of a given set of primary and secondary rules in the context of a given hard case, then although those judges might be acting in compliance with the requirements of their sense of integrity – we will assume -- how does any of this obligate me or others to follow along with the perspective of those judges?

One, of course, might respond to the foregoing questions with something along the lines of: Judges are acting in the best interests of people. Nonetheless, one might repost with: While judges might sincerely believe that they are acting in the best interests of people by exercising

their understanding of integrity in relation to their discretionary judgments concerning 'hard cases', where is the proof – beyond a reasonable doubt – that such a system of legal hermeneutics actually is in the best interests of myself and others?

Dworkin believes that 'integrity', 'fairness' and 'justice' are all related to one another. If one is committed to any one of the three, then one must be committed to the other two as well, or one will not be able to make sense of the exercise of discretion/interpretation in 'hard cases' (that is, those cases which fall into the interstitial spaces in and around a given set of settled primary and secondary rules that must be resolved through the exercise of discretion) in a way that provides the best moral fit with such a set of rules.

One of the problems with the foregoing scenario is that all three of the foregoing ideas (integrity, fairness, and justice) are filled with ambiguities and unsettled themes. Consequently, the possible ways in which those ideas might interact with one another are also filled with issues that might only be capable of being resolved in arbitrary – and, therefore, unjustifiable – ways.

Another problem with the foregoing approach to legal theory is that while one might understand what 'taking rights seriously' means to Dworkin within such a context, nonetheless, I don't think that Dworkin takes rights seriously enough. This is because he wants to fit his notion of rights into a framework of integrity, fairness, and justices that cannot justify itself, and, in the process, holds rights hostage to an allegedly settled set of primary and secondary rules that is not actually settled in any fundamental sense (and these sorts of issues were explored in chapters one through five of this book -- see below).

There is only kind of right that can be demonstrated as being established beyond a reasonable doubt and that is the form of basic sovereignty through which people are entitled to have a fair opportunity – in the expanded sense of fairness that was explored in the opening pages of the current chapter -- to push back the horizons of ignorance. Dworkin's starting point denies this sort of a right because he wants to situate rights within the framework of a system of settled primary and secondary rules that authorize judges to exercise discretion to adjudicate hard cases without questioning whether any part of that system should be considered to be settled in any justifiable sense.

As the first chapter of this book indicated, The Philadelphia Constitution did not give rise to the rule of law in any non-arbitrary sense – that is, in a sense which can be shown to be justifiable beyond a reasonable doubt. As the second chapter of this book showed, the ratification process did not give rise to the rule of law in any non-arbitrary sense. As the third chapter of this book outlined, the diverse views of the Founders/Framers did not give rise to the rule of law in any non-arbitrary sense. As the fourth chapter of this book has intimated, Constitutional federalism did not give rise to the rule of law in any non-arbitrary sense. As the fifth chapter of this book has demonstrated, the way of power did not give rise to the rule of law in any non-arbitrary sense.

There is no non-arbitrary sense through which to understand the 'rule of law' concept unless that law is rooted in the way of sovereignty … a way that is established in accordance with the law of ignorance. Basic sovereignty is a right that precedes legal systems.

Basic sovereignty is a right that should shape the entire structural character of any legal system. The officers of governance – whether legislators, executives, jurists, or administrators – can only observe the requirements of the principle of integrity in Dworkin's sense when they honor, protect, and enhance the basic sovereignty of every human being for whom they have such responsibility … and this includes future generations as well.

Chapter 7: Constitutional Hermeneutics

Some people believe that the federal government of the United States is divided into three separate but equal branches. Yet, one of those branches – the judicial -- gets to establish what the Constitution supposedly means (even though the Philadelphia Constitution does not necessarily entitle the courts to be the determiners of that sort of meaning) , and, therefore, one wonders in what way the three branches can be said to be equal to one another.

Anyone who gets to have the last word on what can and can't be done is hardly on the same level as those who must get approval to proceed on with their various spheres of activity. The real head of government in the United States is the judiciary rather than either the executive or the legislature because what the judiciary decides – at least on the level of the Supreme Court – is, contrary to the belief of Harry Truman, where the buck actually stops.

Notwithstanding Abraham Lincoln's attempt to arrest the Chief Justice of the Supreme Court, the executive and legislative branches are answerable to the Supreme Court … not the other way around. Except for needing to be appointed by the President and confirmed by the Senate, as well as act in accordance with principles of "good behavior" – whatever that means -- the members of the Supreme Court are not answerable to either the executive office or the legislature … although the latter two branches are answerable to the Supreme Court.

The asymmetry of the relationship between, on the one hand, the Supreme Court, and, on the other hand, the executive and the legislative branches is quite remarkable given that the Philadelphia Constitution never clearly established what the precise character of the role of the Supreme Court should be. Article III says that judicial power, of some kind, should "be vested in one Supreme Court and in such inferior Courts as the Congress might from time to time ordain and establish," but the process of 'vesting' remains unclear … as is the nature of the 'judicial power' that is to be so vested.

Section 2 of Article III indicates that "judicial power shall extend to all cases in law and equity, arising under this Constitution." In addition, the same judicial powers shall be extended to: the laws of the United States; all treaties made under the authority of such laws; cases involving

ambassadors, public ministers, and consuls; admiralty and maritime issues; controversies to which the United States is a party; disputes involving two or more states; cases between any given state and the citizen of another state; conflicts between citizens of the same state that involve land granted by other states, as well as cases between a state or its citizens and some foreign country or citizens/subjects of such a country.

However, the precise meaning of how judicial power will be "extended" to any of the foregoing possibilities is not further elaborated upon in the Philadelphia Constitution. Article III, Section 2, Paragraph 2 of the Philadelphia Constitution does indicate that the Supreme Court will have original jurisdiction in all cases involving states, ambassadors, public ministers, and consuls, while the Supreme Court retains only appellate jurisdiction in all other cases.

What ensues from either 'original' or 'appellate' jurisdiction is not specified in the Philadelphia Constitution. Number 78 of the collection of essays that have come to be known, collectively, as *The Federalist Papers* (written by Hamilton, Madison, and Jay for various newspapers during the ratification process in New York State) does develop a perspective concerning the idea of judicial review in relation to the judiciary, but *The Federalist Papers* are not part of the Constitution.

Some people might wish to argue that the position concerning judicial review that was put forth in Number 78 of *The Federalist Papers* gives expression to the intent of some of the Founders/Framers. Consequently – or so the argument might go -- the views contained in *Federalist*-Number 78 should carry a special weight with respect to how anyone envisions the activity of the judiciary.

The foregoing argument might be more credible if there were evidence that all – or a substantial majority -- of the participants in the Philadelphia Convention shared the perspective put forth in *Federalist*-Number 78. However, if this had been the case, then one might have anticipated that at least a paragraph, or two, of Article III of the Philadelphia Constitution might have introduced the idea of judicial review and provided an overview of how that activity would serve as the process through which the meaning of the Constitution is to be confirmed or established.

Since nothing concerning the idea of judicial review appears in the Philadelphia Constitution, then what the intent of Alexander Hamilton (the author of Number 78) might have been with respect to the functioning of the judiciary – especially the Supreme Court – is really neither here nor there. Madison, the so-called father of the Constitution, might have agreed with Hamilton concerning the contents of Number 78, but, again, there is no indication that the majority of the participants in the Philadelphia Convention – or, perhaps more importantly, the majority of the participants of the ratification process -- shared such a point of view, and, therefore, there is no really plausible argument which demonstrates that what Madison and Hamilton might have thought about the idea of judicial review should carry any special constitutional weight.

Despite the fact that *Federalist*-Number 78 really has little, or no, standing with respect to the issue of determining what the function of the Supreme Court is within the framework of the Philadelphia Constitution, nevertheless, examining that essay might prove to be of some value. So, let's take a brief tour of that essay.

Federalist-Number 78 indicates there are three questions concerning the functioning of the judiciary that need to be answered with respect to the proposed constitution (the Philadelphia Constitution had not, yet, been ratified by the required number of states at the time this essay was written). The three questions involved: (1) the process through which judges will be appointed; (2) the issue of tenure or length of appointment; (3) the manner in which the courts will be partitioned and how those courts will interact with one another.

The first and third of the aforementioned questions are barely touched upon by Hamilton in *Federalist*-Number 78. The second question occupies most of the rest of the essay even though many of the ideas in that discussion revolve around arguments involving: judicial discretion, the role of the judiciary, and the issue of precedents. Those arguments are, then, used to defend the idea of having an independent judiciary that, once appointed, becomes permanent.

During the course of examining the issue of tenure, Hamilton maintained that among the three branches of government, the judiciary should be considered to be the least dangerous to the people. More specifically, whereas, on the one hand, the legislative branch held the purse strings, as well as possessed the capacity to determine the rights of

every citizen through the laws it made, and while the executive had the authority to command the power of the sword, on the other hand, the judiciary had no force or will of its own since all the judiciary could do was exercise judgment, with no capacity to enforce its decisions.

Hamilton's foregoing argument seems to be rather unconvincing. After all, if the people do not comply with the executive's wielding of the sword or the legislature's issuing of laws, then the executive and the legislature have as little power as he claims is the case in relation to the judiciary.

Just as people are necessary to carry out the directives of the executive and the legislature, people also are necessary to carry out the directives of the judiciary. Without co-operation and compliance by the people, none of the branches of government will be functional.

The executive, the legislature, and the judiciary have as much -- or as little -- power as the people concede to them. If the people accept – actively or passively -- the role of the judiciary, then one cannot necessarily argue that the judiciary has less power than either the executive or the legislature or that the judiciary is necessarily less of a threat to the liberties of the people than the other two branches of government are … a lot depends on what the judiciary does with the power that has been delegated to it.

According to Hamilton, the judiciary has "no influence over either the purse or the sword." If this were true, then, presumably, this means that whatever the function of the judiciary might be, the judiciary could not make judgments affecting how Congress spent money or how the executive wielded the sword.

Subsequent events have proven Hamilton to be wrong with respect to the degree of potential influence that the judiciary has over the executive and the legislature. If nothing else, time has demonstrated that Hamilton didn't really understand the nature of the beast that the essays in *The Federalist Papers* were attempting to bring into existence.

Nothing like the Philadelphia Constitution had been attempted before. Consequently, most of the material in *The Federalist Papers* was entirely theoretical -- that is, those essays gave expression to the 'best guesses' of how people like Hamilton, Madison, and Jay thought the process of governance might unfold

In any event, the rule-making dimension of Congress is not mentioned in the foregoing quote concerning Hamilton's contention that the judiciary has: "no influence over either the purse or the sword." Therefore, one is uncertain whether, or not, the absence of that facet of Congressional activity in the indicated quote from *Federalist*-Number 78 carries any implications for how the judiciary might affect and influence the functioning of the executive or the legislative branches.

Hamilton continues on with his argument by stating that the judiciary was not only the weakest of the three branches, but, as well, he indicates that the judiciary would never be able to mount any sort of successful attack against either of the other two branches of government. However, Hamilton did warn that the judiciary would have to protect itself against attempts by the executive and legislative branches to undermine its authority.

Federalist-Number 78 held that as long as the judiciary is kept separate from the executive and legislative branches, then the people have nothing to fear from the judicial branch with respect to liberties. A threat to the liberty of citizens would only become a possibility if the judiciary came under the sway of executive and/or legislative power.

Apparently, one of the themes relevant to the exercise of judicial power is ensuring that the limits placed on the legislative branches by the Constitution would be upheld. Hamilton specifically mentions several examples (coming from: Article I, Section 9, Paragraph 3) – namely, bills of attainder (the process of legislatively singling out a person or group for punishment without benefit of a trial) and ex post facto laws (e.g., passing laws that criminalize previous acts that were not criminal at the time they were performed), and Hamilton claims that maintaining such limitations are appropriate issues for the judiciary to handle.

Hamilton seems oblivious to the discrepancy between what he believes to be a proper role for the judiciary – namely, upholding the constitutional limits that had been placed on the legislative branches – and his earlier contention that the judicial branch was the weakest of the three branches. If the judicial branch is as weak as he claims, then how does that branch propose to restrain the legislature from exceeding its constitutionally approved sphere of activity?

According to Hamilton, fulfilling the foregoing function might require the judiciary to decide in a given case whether, or not, the legislature was

violating the Constitutional prohibition against bills of attainder and ex post facto laws. Moreover, by implication, this sort of decision process might require the judiciary to interpret the structural character of the conceptual boundaries concerning those issues – that is, whether, or not, some given act of the legislature was a violation of Constitutional prohibitions involving bills of attainder and ex post facto laws.

If so, then the problem becomes whether, or not, such a process of interpretation involves the exercise of discretionary degrees of freedom by the judiciary. If bills of attainder or ex post facto laws are rules that are fairly linear and consistent in their sphere of applicability, then in accordance with the requirements of legal positivism, one merely has to determine what the 'facts' of a given case are and compare those facts with the character of the Constitutional provisions and, then, determine the nature of the relationship between the 'facts' and those provisions.

If, on the other hand, bills of attainder or ex post facto laws are somewhat non-linear in character, then the judiciary might have to exercise interpretive or hermeneutical discretion concerning whether a given Constitutional prohibition was, or was not, violated. Under those sorts of circumstances, one would have to try (as Dworkin did) to come up with a defensible theory of interpretation or hermeneutics concerning how discretion was to be exercised in such cases.

Hamilton claimed that it was the duty of the courts to: "declare all acts contrary to the manifest tenor of the Constitution void." Unfortunately, this kind of language is not found anywhere in the Constitution.

Furthermore, even if this kind of language had appeared in the Constitution, one would still be faced with a problem. What is meant by the idea of: "the manifest tenor of the Constitution"?

Does the Constitution have a manifest tenor? Chapter 3 (Perspectives on Framing) of the present book suggests that in many respects – but not necessarily all -- there is no manifest tenor inherent in the Constitution.

There were as many understandings concerning the nature of the Constitution as there were participants in the Philadelphia Convention. There were as many understandings concerning the nature of the Constitution as there were participants in the ratification process … which is one of the reasons why so many delegates to the ratification

conventions wanted to introduce amendments in order to protect against possible problems manifesting themselves in the future as a result of the ambiguities that were perceived by many to be present in the Constitution-as-written.

To be sure, there are likely to be a variety of areas within the Constitution on which there might have been a general consensus concerning the "manifest tenor" of that document. However, assuming that there is a similar 'manifest tenor' that can be extended to the entire Constitution is another matter – especially in light of the fact there have been so many 5-4 and 6-3 decisions that have been rendered during the history of the Supreme Court.

One of the reasons why there is so much partisan bickering concerning the confirmation of judges has less to do with the possible "manifest tenor" of the Constitution than it does with wanting to ensure that the judges who are confirmed will interpret the Constitution in a manner that is resonant with the political and economic interests of those who command the majority position in the Senate. If there really were a "manifest tenor" of the Constitution, there would be only one way to understand the nature and meaning of the Constitution, and, yet, no one has been able to put forth an unassailable case in that respect.

One needs to go no further than the Preamble to the Constitution to understand that the meaning of the Constitution is hopelessly ambiguous. No one – in government or beyond – can put forth a case that is defensible, beyond a reasonable doubt, with respect to what is meant by: 'establishing justice,' 'insuring domestic tranquility,' 'providing for the common defense,' 'promoting the general welfare,' and 'securing the blessings of liberty to ourselves and our posterity.'

Everyone has theories about the foregoing ideas. No one has proof beyond a reasonable doubt that his or her theories accurately reflect the 'manifest tenor' of the Constitution … or, perhaps more importantlyk, accurately reflect the nature of reality.

Hamilton argued that elected representatives should not be judges in their own causes with respect to what was, and was not, appropriate with respect to the meaning of the Constitution. Consequently, Hamilton believed that the role of the judiciary was to act on behalf of the people by limiting the activity of the legislature and restraining the latter through demarcating the proper boundaries within which the legislature was

entitled to operate with respect to the enumerated powers that had been granted to it via the Constitution.

For Hamilton: "Interpretation of the law is the proper and peculiar province of the courts". Yet, if there is a "manifest tenor to the Constitution," then what need is there for judicial interpretation?

Stated somewhat differently, one might ask: If only judges are capable of interpreting the law – since, according to Hamilton, it is their proper and peculiar province -- then one wonders just how manifest the tenor of the Constitution actually is? Alternatively, if judges are the only ones capable of understanding the manifest tenor of the Constitution, then why do they disagree with one another?

Wherever there are ambiguities present in the Constitution (and there are many – for example, what is meant by the "necessary and proper" clause in the last paragraph of Section 8 in Article I), judicial discretion will enter the picture. Whenever judicial discretion becomes necessary, one needs to be able to demonstrate that a given mode of exercising that kind of discretion is defensible beyond all reasonable doubt … otherwise the exercise of that sort of discretion will be entirely arbitrary.

Hamilton considered a constitution to be a fundamental form of law. Furthermore, he maintained that it was the function of the courts to determine what the meaning of that sort of fundamental law is, as well as to determine the meaning of whatever laws might be issued by the legislature.

If the courts determine that there is some sort of irreconcilable discrepancy between the meaning of the Constitution and the meaning of the laws that are forthcoming from the legislature, then, according to Hamilton, preference should be given to the meaning of the Constitution. He equates the intention of the people with the meaning of the Constitution and indicates that both should be preferred to the intention of legislative agents.

Unfortunately, the people did not write the Constitution. Therefore, there is no reason why the intention of the people and the meaning of the Constitution should be considered to be synonymous with one another.

Of course, attempting to equate the intention of the people with the meaning of the Constitution might be an allusion to the resolution passed

by the signatories to the Philadelphia Constitution that the people should ratify the Philadelphia Constitution rather than the Continental Congress and the state legislatures. If so, then the argument might be that the meaning of the Constitution gave expression to the intention of the people when they ratified it.

However, many segments of "We the People" – even among those who voted to ratify the Philadelphia Constitution – had reservations concerning the meaning of certain aspects of the Constitution. Consequently, one is not necessarily justified in equating the intention of the people with the meaning of the Constitution as Hamilton seeks to do in *Federalist*-Number 78.

According to Hamilton, the capacity of the judiciary to interpret the meaning of the Constitution did not make the judiciary superior to the legislature, but, rather, merely indicated that the will of the people was superior to either the judiciary or the legislature. When the judiciary determines the meaning of the Constitution, then, from Hamilton's perspective, the courts are merely acting in the service of the will and intention of the people and demonstrating that the will and intention of 'We the People' is superior to that of the legislature.

There seems to be a substantial amount of sophistry in Hamilton's foregoing argument. On the surface, his mode of reasoning seems attractive because it tries to reduce the meaning of the Constitution to the will and intention of 'We the People,', yet 'We the People' did not formulate the Constitution, and, more importantly, there were too many problems inherent in the ratification process to try to justifiably claim that the ratified Constitution gave expression to the intention, will, and meanings of 'We the People' with respect to the issue of governance.

Moreover, Hamilton believes that only courts have the "peculiar province" to be able to interpret and understand the manifest tenor of the Constitution, and, therefore, the will and intention of 'We the People.' Consequently, one wonders why 'We the People' do not have the capacity to understand their intention and will independently of the judiciary … or, why 'We the People' need someone to adjudicate such matters if the manifest tenor of the Constitution is as manifest as Hamilton claims it is?

Hamilton goes on to argue that the exercise of judicial discretion will always be a matter of courts generating fair constructions -- "so far as they can" – with respect to, on the one hand, laws that are in apparent

conflict with one another but are capable of being reconciled with each other or, on the other hand, laws that are not reconcilable with each other but one of which can be demonstrated to be consistent with the fundamental law of the Constitution. Hamilton doesn't specify: What the criteria are for determining what constitutes a 'fair construction' or how far courts will be able to generate such constructions, or why one should suppose that one of two conflicting laws will be capable of being demonstrate to be consistent with the Constitution – or how one accomplishes this -- when it is possible that neither law might be all that consistent with the Constitution … a lot depends on the criteria of 'consistency.'

All one gets from Hamilton's essay is the idea or possibility that 'somehow' the exercise of judicial discretion will lead to a decision or judgment that will serve the intention and will of the people. There is no proof of this … only the theoretical assertion.

Federalist-Number 78 does not disclose the structural character of the process of judicial discretion. *Federalist*-Number 78 does not disclose what constitutes a 'fair construction' or what the criteria of 'fairness' are for such a construction. *Federalist*-Number 78 does not disclose whether, or not, the exercise of judicial discretion really gives expression to the intention and will of the people. *Federalist*-Number 78 does not disclose what the criteria are for determining whether two laws are capable of being reconciled with one another in a way that is consistent with the fundamental law of the Constitution, or what the criteria are for demonstrating that one law, rather than another, is consistent with the Constitution. *Federalist*-Number 78 does not disclose why -- if the "manifest tenor of the Constitution" is really manifest -- only judges are capable of understanding that tenor.

Hamilton attempts to claim that concerns about judges substituting their own will for the meaning of law carry no weight. However, his reasoning concerning this issue seems rather suspect.

In effect, Hamilton argues that if judges, like legislators, were to substitute their own likes and dislikes (i.e., will) in place of the actual requirements of the fundamental law of the Constitution (i.e., judgment), then this would be an argument against having judges at all since the latter individuals would be succumbing to the same sort of error as is committed by those legislators who follow their own likes and dislikes

(will) rather than comply with the requirements of the Constitution. This argument is valid as far as it goes but doesn't explain why judges would not be vulnerable to preferring their own likes and dislikes (i.e., their will) in the same way that legislators are vulnerable.

Toward the latter part of *Federalist*-Number 78, Hamilton explores the issue of having to find candidates for the judiciary who have the requisite technical skills, as well individuals who will have the necessary integrity to overcome the natural tendency of many individuals to prefer their likes and dislikes to considered judgment, but the discussion is very general. Hamilton has almost nothing to say about how one identifies those kinds of individuals.

Hamilton indicates there is a difference between 'judicial will' and 'judicial judgment.' Unfortunately, he doesn't explain what the precise character of that difference is other than to suggest that judgment will comply with the requirements of the fundamental law of the Constitution, whereas will does not comply with that law.

Consequently, contrary to Hamilton's claims in *Federalist*-Number 78, the possibility of jurists substituting their will concerning the Constitution does carry weight. Although Article IV, Section 4 of the Constitution guarantees a republican form of government to every state, there is no way to determine whether any given exercise of judicial discretion is actually giving faithful expression to that kind of a guarantee.

Hamilton assumes – or hopes – the foregoing will be the case. Nonetheless, he can't prove that this is how things will actually turn out because he has failed to establish a clear set of criteria for demonstrating when 'judicial judgment' is being exercised rather than 'judicial will.'

Toward the latter part of Federalist-Number 78, Hamilton states: "It has been frequently remarked, with great propriety, that a voluminous code of laws is one of the inconveniences necessarily connected with the advantages of a free government. To avoid an arbitrary discretion in the courts, it is indispensable that they should be bound down by strict rules and precedents, which serve to define and point out their duty in every particular case that comes before them; and it will readily be conceived from the variety of controversies that grow out of the folly and wickedness of mankind, that the records of those precedents must unavoidably swell to a very considerable bulk, and must demand long and laborious study to acquire a competent knowledge of them. Hence it is

that there can be but few men in the society who will have sufficient skill in the laws to qualify them for the stations of judges." However, Hamilton does not stipulate what it means to "be bound down by strict rules and precedents" or why the manner of being 'bound down' should be in accordance with some rules and precedents rather than others.

Moreover, if those sorts of "strict rules and precedents … serve to define and point out their [i.e., the courts] duty in every particular case that comes before them," then what need is there for the sort of judicial discretion that Hamilton claims is the "peculiar province" of courts? In addition, if a "long and laborious study" of precedents should be required in order "to acquire a competent knowledge of" those precedents in order to be able to come to know one's duty in any particular case, then what happened to the "manifest tenor of the Constitution?"

Hamilton argued earlier in *Federalist*-Number 78 that: "the prior act of a superior ought to be preferred to the subsequent act of an inferior and subordinate authority; and that accordingly, whenever a particular statute contravenes the Constitution, it will be the duty of the judicial tribunals to adhere to the latter and disregard the former." If this is the case, then what need is there of precedents since the "manifest tenor" of the fundamental law of the Constitution should always have precedence over any other kind of secondary judgment – i.e., precedent – developed in accordance with this or that statute?

What function do precedents have if the Constitution is the mother of all precedents? If subsequent precedents draw out the meaning of the Constitution in greater detail or specificity, then, perhaps, Hamilton was wrong about the "manifest tenor" of the Constitution, and irrespective of whether he was right or wrong on this latter issue, one still doesn't really have any clear sense of what is meant by the idea of the Constitution's "manifest tenor" or how one goes about determining whether, or not, subsequent precedents are consistent with that tenor.

Many of the ideas that Hamilton introduced in *Federalist*-Number 78 were – as pointed out toward the beginning of this discussion -- directed toward supporting the argument that the tenure of jurists should be permanent as long as "good behavior" was in evidence. Hamilton believed that a judiciary which had tenured permanence would best serve the interests of the people against possible violations of Constitutional limits

by the legislature and, in addition, would be independent of the executive branch as well.

Unfortunately, there are many questions that arise during the course of *Federalist*-Number 78 in relation to such ideas as: The manifest tenor of the Constitution; the meaning of the fundamental law of the Constitution; judicial discretion; fair construction; judicial will; and the role of precedents. Hamilton provides no way to answer the foregoing questions in a non-arbitrary way … and, yet, Hamilton was quite concerned with avoiding "arbitrary discretion in the courts."

Consequently, in view of the many unanswered questions and ambiguities that exist in conjunction with *Federalist*-Number 78, one can't help but feel a certain amount of discomfort with the thought that, according to Hamilton, members of the judiciary should have permanent tenure and, thereby, be in a position to – possibly -- impose arbitrary interpretations of the Constitution upon citizens (which is equivalent to the idea of "judicial will") rather than -- allegedly -- giving expression to the intention and will of 'We the People' by making proper judgments – whatever they are -- concerning the 'manifest tenor' of the Constitution. Instead of mounting an argument in defense of the idea of permanent tenure for the judiciary, Hamilton's failure to clearly and adequately address certain issues concerning the judiciary in *Federalist*-Number 78 tends to bring the idea of permanent tenure into question.

In Federalist-Number 83 Hamilton refers to some general guidelines for interpreting the law while he addresses the question of whether, or not, the Philadelphia Constitution's provisions for trial by jury in criminal cases automatically excludes the idea of trials by jury in civil cases. At one point in the essay, Hamilton stipulates that the process of interpreting the law is just a matter of applying rules of common sense that have been adopted by the courts during the construction of laws.

One person's idea of common sense is often antithetical to the thinking of others who might consider that the former person's idea to be doing something other than making 'sense' … common or otherwise. Moreover, that which might have seemed commonsensical during the construction of certain laws might not be considered to be so commonsensical when subsequent jurists engage those laws and attempt to interpret the possible meanings of those laws.

Hamilton goes on to say, with respect to the issue of interpreting a constitution, that: “the natural and obvious sense of its provisions, apart from any technical rules, is the true criterion of construction.” Like the issue of common sense, what one person considers to be: “the natural and obvious sense” of something (e.g., a law or constitution) will not necessarily reflect what another individual considers to be “the natural and obvious sense” of that ‘same something’ … and the history of judicial interpretation tends to support the foregoing contention.

What is considered to be commonsensical, natural, or obvious takes place in a certain context of understanding. Different frameworks of understanding often give expression to different ideas about what is commonsensical, natural, and obvious.

The relationship between Madison and Hamilton gives clear expression to the foregoing point. More specifically, during the drafting of the Philadelphia Constitution, as well as during the writing of the essays that collectively came to be known as *The Federalist Papers*, Madison and Hamilton were conceptual allies, and, yet, not very long after ratification of that constitution had been completed, the two individuals became philosophical enemies with respect to what they each considered to be commonsensical, natural , and obvious with respect to the practical application of the Philadelphia Constitution in relation to the issue of governance -- for example, their radically different opinions concerning the constitutionality of a national bank in which Madison argued against that idea on the basis of, among other things, a narrow interpretation of the necessary and proper clause of the last paragraph of Article I, Section 8, while Hamilton argued in favor of such a bank on the basis of, among other things, a broader interpretation of that same clause.

Between 1789 and 1801, the Supreme Court made only a small number of decisions that might be considered to have some degree of importance. In fact, the role of the Court seemed to be so peripheral to the functioning of government that John Jay, the first Chief Justice of the Supreme Court, declined John Adams’ offer to have Jay continue on as the head of the Court because Jay felt that the Court would never attain the sort of gravitas that would enable the Court to play an influential and effective role in governance.

Adams appointed John Marshall to become the new Chief Justice. Marshall held that position for 35 years, and over the course of those three and a half decades, Justice Marshall proceeded to construct a hermeneutical or interpretive perspective that gave expression to how he believed the Court ought to engage its constitutionally granted powers.

At the heart of Justice Marshall's philosophy is the belief that the judiciary should exercise its constitutionally granted authority in order to give effect to the will of the law rather than to the will of the judges. This is the same sort of point that Hamilton made in the previously discussed *Federalist*-Number 78 when he distinguished between the will and judgment of the court and indicated that only the latter process – that is, judgment – would be able to uncover the true meaning of a law or constitution.

Justice Marshall's approach to understanding the nature of law leaves one with the same kinds of problems with which Hamilton left us earlier on. What are the criteria – and how are those criteria or their application to be justified – for determining what constitutes the 'will of the law' rather than the 'will of a jurist' or judge?

According to Justice Marshall in *Brown v. Maryland (1827)*, when a jurist seeks to construct the meaning of this or that clause of the Constitution: "it is proper to take a view of the literal meaning of the words to be expounded, of their connection with other words, and of the general objects to be accomplished by the prohibitory clause, or by the grant of power." Whose "literal meaning of the words to be expounded" is to be accepted? Whose understanding of "their connection with other words" is to be adopted? Whose interpretation of the "general objects to be accomplished" or powers to be granted is to govern how a jurist reaches his or her judgment concerning the alleged meaning of the Constitution? More importantly, how does one justify, beyond a reasonable doubt: Accepting one sense of the literal meaning of a set of words rather than some other sense of those words; or, the adopting of one understanding rather than some other understanding concerning the alleged relationship of those words to other words; or, the use of one interpretation rather than some other interpretation in relation to the nature of the "general objects to be accomplished" or powers to be granted?

Justice Marshall says that it is proper to proceed in the way he indicates, but he doesn't justify why such a methodology is "proper". Like Ronald Dworkin's fictional Hercules, Justice Marshall accepts the idea that the Constitution is, in part, settled law – for example, that the judiciary has been given power to engage the law, and Marshall is intent on mapping out the nature of that power, but the issue remains whether Justice Marshall was undertaking that project out of judicial will or judicial judgment.

The Philadelphia Constitution cannot serve as the source of its own authority without running into a circular argument that is entirely arbitrary. The source of authority for the Constitution – however it might be interpreted – lies beyond the horizons of that document, and this fact was recognized by the Founders/Framers when they sought to root the authority of the Constitution in the will of 'We the People' via the process of ratification.

However, if the ratification process was flawed in substantial ways – and some of these flaws were outlined in Chapter 2 – then, one cannot automatically assume that the ratification process has the capacity to provide the sort of authority that could justify or sanction the legitimacy of the Constitution. If this is the case, then granting jurists the power to establish the meaning of a document – i.e., the Constitution – through this or that methodology really might not be as "proper" as Justice Marshall supposes because the underlying authority for doing so is questionable.

Even if one were to grant – for the purposes of argument – that the Philadelphia Constitution gave expression to a legitimate source of authority via the process of ratification for those who participated in such a process, nonetheless, the issue of propriety concerning methodology does not end. However legitimate a given form of governance (e.g., the Philadelphia Constitution) might be for those who – we will assume – authorized it through the process of ratification, why should such an arrangement be binding on people living several hundred years later who had no role in either the drafting or ratification of that arrangement?

Will it still be "proper to take a view of the literal meaning of the words to be expounded, of their connection with other words, and of the general objects to be accomplished by the prohibitory clause, or by the grant of power"? What do: The literal meaning of such words, or their

connections with other words, or the general objects to be accomplished, or the powers to be granted, have to do with people living more than two hundred years later -- even if the meanings of those words, their connections, the general objects, and powers could be determined without controversy?

Justice Marshall understood that the task of interpretation would be a challenge given that it took place within a context complicated by the existence of conflicting federal powers, as well as political/economic interests that varied from state to state. Nevertheless, as complicating as the foregoing factors might be, the most problematic complications were given expression through the Preamble to the Constitution that, supposedly, outlined the purposes for which the Constitution had been constructed.

More specifically, all the allegedly "literal" meanings of words and their connection with: Other words, prohibitory clauses, and grants of power, have to be filtered through the Preamble. Yet, without a clear understanding of what is meant by the idea of: 'establishing justice,' 'insuring domestic tranquility,' 'providing for the common defense,' 'promoting the general welfare,' or 'securing the blessings of liberty,' then irrespective of whatever legal methodology one judges to be "proper" to guide one's process of understanding or interpreting, among other things, "the literal meaning" of words in the Constitution, nevertheless, one is just arbitrarily engaging that document.

In *Gibbons v. Ogden (1824)*, Justice Marshall claimed that: "It is a well-settled rule that the objects for which it [a power] was given, especially when those objects are expressed in the instrument itself, should have great influence in the construction." Yet, even though the Preamble to the Constitution states the objects for which the various powers of the Constitution have been granted, one is uncertain what the nature of the influence of those objects is on the construction of the meaning of the Constitution because one doesn't necessarily know what is meant by words such as: 'justice,' 'defense, 'tranquility,' 'welfare', or 'liberty.'

In *Ogden v. Saunders* (1827), Justice Marshall stated that "the intention of the instrument must prevail." He went on to claim that one derived the nature of such intention from the words that are used in a given instrument and that those words were to be understood in the way

in which those for whom the instrument had been constructed – i.e., the people – generally understood those words. Furthermore, Justice Marshall stipulated that the provisions of those instruments were: "Neither to be restricted into insignificance, nor extended to objects not comprehended in them, nor contemplated by its framers."

What does it mean to neither restrict the meaning of something into insignificance, nor to extend that meaning beyond what had been contemplated by those who constructed a given instrument of governance? How do we know that the instrument was constructed in accordance with the manner in which the generality of people understand the words employed in such an instrument? How does one determine what the generality of people understand the meaning of certain words to be within the context of a legal instrument such as a constitution? Who is to be considered a framer, and what if not everyone who helped frame an instrument necessarily spoke out about the nature of what they contemplated as they voted for that kind of an instrument? What if the intention of the framers – even if that intention could be identified – did not accurately reflect the will of the people, and how would one set about determining whether, or not, the framer's intention properly reflected the will of the people?

When Justice Marshall issued his decision in *Marbury v. Madison* (1803), he maintained that the people had "an original right" to establish a form of governance that in their opinion likely would lead to their collective happiness. Moreover, he believed America had come into being with such a right and goal in mind.

However, according to Justice Marshall, exercising the "original right" required a great deal of effort and, therefore, he considered that sort of a process something that neither can -- nor ought to -- be done frequently. Consequently, he held that: "The principles … so established, are deemed fundamental. And as the authority from which they proceed is supreme, and can seldom act, they are deemed to be permanent."

There are several problems inherent in the foregoing perspective of Justice Marshall. First, to claim that the people have "an original right" with respect to developing a form of governance that is conducive to their happiness is one thing, but to claim that what took place in the Philadelphia Convention is an appropriate expression of that 'original right' might be quite another matter.

The 55 delegates who attended the Philadelphia Convention of 1787 were not a representative sample of the American people. With the exception of Alexander Hamilton, Roger Sherman, and, to a degree, Benjamin Franklin, the individuals who attended that convention were not self-made men but came from families that were fairly wealthy and influential in Colonial America.

Thomas Paine, who did not attend the convention, represented a radicalized part of society involving both sides of the ocean that regularly explored an array of political and economic issues in the taverns and teahouses of the Atlantic world. The perspective of those individuals concerning issues involving: freedom, rights, governance, property, and commercial fairness were -- relative to the ideas being considered by the delegates to the Philadelphia Convention -- quite different in many respects.

The Philadelphia Convention gave expression to one possibility concerning how the 'original right' to which Justice Marshall referred might be exercised. However, that effort was skewed by the backgrounds, interests, inclinations, and purposes of the people who participated in the aforementioned convention.

In Chapter 1, I indicated that the Philadelphia Convention might have had a very different outcome if certain people who did not attend that assembly – namely, Patrick Henry, Thomas Paine, Thomas Jefferson, William Findley, Samuel Adams, and Richard Henry Lee – had been able to collaborate with those individuals who did attend the Philadelphia Convention but were disgruntled, in one way or another, with the nature of that assembly … individuals such as: George Mason, Elbridge Gerry, Edmond Randolph, John Lansing, Jr., Robert Yates, and Luther Martin. Moreover, what about the many individuals in America who were never even considered as possible participants for the Philadelphia Convention?

Thomas Paine was not an isolated individual. Rather, he was just one of the participants in the radical discussions that had been taking place in Atlantic Europe before he even came to America, and he continued on with those tavern-based discussions when he arrived in America. Consequently, to suppose that people like James Madison and Alexander Hamilton – or other members from their social, educational, and economic background -- were the only individuals who were thinking about issues of governance, rights, liberty, and justice (or were even

necessarily the best and wisest of those who did think about those topics) is a gross distortion of the historical reality of the Atlantic world of those times.

Paine came to people's attention in America because of *Common Sense* and other essays he wrote once he landed in America. However, there are likely to have been many other people on both sides of the Atlantic who understood the issues surrounding the "original right" to which Marshall referred in his Supreme Court decision even if they never gave written voice to their understanding concerning those issues.

Many people might consider James Madison to be the 'father of the Constitution'. Unfortunately, if this is the case, then this also means that the Constitution was framed or limited by Madison's interpretation of the 'original right' to which all people -- according to Marshall -- were entitled.

Justice Marshall believed that it was the intent of the framers of the Constitution to generate "a fundamental and paramount law of the nation." Nonetheless, to claim -- as Justice Marshall did in the *Marbury v. Madison* decision – that the document constructed via the Philadelphia Convention should be deemed to be permanent, co-opts the opportunity of many other people to give expression to the 'original right' – a right that Marshall acknowledges all people have -- in a way that is different (perhaps substantially so) from that which was generated through the Philadelphia Convention.

According to Justice Marshall, the theory which those who frame constitutions rely on involves the idea that any act of a legislature that is considered "repugnant to the constitution, is void." Justice Marshall considers such a theory to be attached to every written constitution, and, as a result, he feels that his court – the Supreme Court – must treat that kind of a theory "as one of the fundamental principles of our society."

It is understandable that those who frame a constitution would wish their document to be the "fundamental and paramount law of the nation" and, therefore, they would be of the opinion that any act of the legislation which is repugnant to that constitution should be considered to be void. Less understandable is the idea: That those who are to be governed by this kind of a "fundament and paramount law" would necessarily agree that any act of the legislature – or the people – which runs contrary to that law should be considered to be repugnant and, therefore, void.

Why favor the ideas of those who frame constitutions over the ideas of those who do not frame constitutions? Why should those who frame constitutions have a greater claim on the "original right" to which Justice Marshall refers in the *Marbury v. Madison* decision than those who do not frame constitutions?

Conceivably, any written constitution that can be shown to violate the "original right" to which -- according to Chief Justice Marshall -- all people are entitled should be considered to be repugnant with respect to that "original right". Moreover, if those constitutions are found to be repugnant in the foregoing sense, then perhaps those constitutions ought to be considered void.

The most "fundamental and paramount law of the nation" should be firmly rooted in the "original right" to which all people are entitled. Unfortunately, Justice Marshall is assuming that because the intent of the framers of the constitution was to accomplish such a goal – that is, to root the law of the land (the constitution) in the 'original right' – then the Supreme Court was obligated to honor that sort of an intention and, as a result, treat the Philadelphia Constitution as permanent.

Justice Marshall never seems to ask the following question: Notwithstanding the intention of the framers, did they get it right? That is, did the constitution framed by the delegates to the Philadelphia Convention give 'proper and adequate' expression to the 'original right' to which everyone is entitled?

Why treat anything as permanent until the foregoing questions can be answered in a way that is likely to be true beyond all reasonable doubt? Why honor or adopt the theory of the framers concerning the idea that any act of the legislature which is repugnant to the Constitution should be considered void unless one can demonstrate beyond a reasonable doubt that such a document is not repugnant to the 'original right' to which all people are entitled?

In *McCulloch v. Maryland* (1819), Justice Marshall argued that if a constitution were to give expression to a complete account of all the powers inherent in it as well as the means through which such powers might be realized, then, this kind of a document could not be grasped by the human mind and "would probably never be understood by the public." In the light of the foregoing practical realities, Justice Marshall went on to claim that, as a result, constitutions were written in such a

way that only the outlines of the fundamental law were written, and the details of such a law would be deduced from that which was written with respect to the 'fundamental and paramount law of the nation.'

Let's assume, for the sake of argument, that Justice Marshall's foregoing account is correct. What happens if the outline provided by a given constitution does not properly reflect the 'original right" to which Justice Marshall believes that all people are entitled?

Furthermore, if the nature of a constitution distorts the 'original right', then what sense is to be made of the 'deductions' which are supposed to provide the details that are entailed by the general outline of the constitution? If one starts with a flawed document, then the deductions which are made in conjunction with that kind of document will also be flawed no matter how impeccable the logic of any given deduction might be.

The foregoing problem is compounded when one raises questions about whether, or not, this or that deduction is warranted and can be demonstrated -- beyond a reasonable doubt -- to be fully consistent with the purposes for which a given constitution has been written. For example, any deduction concerning the Constitution framed by the participants in the Philadelphia Convention must be capable of being shown to fully consistent with the principles/objects/purposes that are being advanced in the Preamble to the Constitution.

Thus, any given deduction of detail drawn from the general outline of the Philadelphia Constitution must be capable of demonstrating – beyond a reasonable doubt – how such a deduction gives expression to: 'perfecting the union,' 'establishing justice,' 'insuring tranquility,' 'providing for the common defense,' 'providing for the general welfare,' and 'securing the blessings of liberty.' Moreover, the foregoing sorts of deductions must advance all the goals and purposes of the Preamble simultaneously and to an equal degree (there is no 'either-or' in the Preamble). Otherwise, the reason for which the constitution purportedly was framed will not be served.

In addition, if, as Justice Marshall claimed earlier, the public would never be able to understand a constitution that contained a complete account of all the powers inherent in a constitution together with the variety of means for realizing those powers, why should one suppose that the public will understand the character of the deductions made by a

given court concerning that kind of a document? Any deduction – even though it is nothing more than a detail – must be capable of being shown to be consonant with the constitution if it were written out in its full reality, or it is not a valid deduction

Like a chess player who sees the moves of a game to its conclusion (e.g., at a certain point in his career, Bobby Fischer claimed to be this sort of a player), presumably a jurist should be capable of seeing how a given deduction is consistent with the meaning of the constitution if it were to be fully elaborated in terms of all its powers, means, goals, and objects. If a jurist could not do this, then one wonders about the validity of the deduction that such an individual is making with respect to the alleged meaning of the constitution.

In light of the foregoing considerations, one might question whether any jurist -- let alone the public -- has that sort of understanding of a constitution. However, if the public cannot understand the nature of the constitution – whether written in a complete form, or written in a manner in which certain deductions were said to be consistent with such a fully elaborated document – then, what is one to make of Justice Marshall's belief that the words of the constitution are to be understood as meaning what the general public understood by such words, as well as what the general public meant with respect to the relation of those words to one another?

One implication of Justice Marshall's foregoing argument is that constructions such as the "necessary and proper" clause allude to principles that are present implicitly in the constitution even if not explicitly mentioned in that document. In other words, because one could not possibly provide an explicit list of all the powers, means, and objects to which the "necessary and proper" clause is capable of giving expression, then the three word clause is the linguistic portal through which all sorts of implicit realities might emerge by means of an appropriate deduction.

Many people seem to be under the impression that the "necessary and proper" clause is about what government requires in order to be able to function effectively. However, that clause is embedded in a context – namely, the Preamble to the Constitution – and, therefore, the aforementioned clause is not, strictly speaking, just a matter of effective government without qualification, but, rather, the "necessary and proper"

clause is about the exercise of effective governance with respect to the realization of: 'a more perfect union,' 'justice,' 'tranquility,' 'defense,' 'welfare,' and 'liberty.'

Even if one were to argue that the "necessary and proper" clause should be understood in terms of the enumerated powers of Article I, Section 8, whatever deductions were made would have to be filtered through the purposes set forth in the Preamble. Thus, the capacity of the legislature to: "lay and collect taxes, duties, imposts, and excises" must be pursued not only to: "provide for the common defense and general welfare of the United States," but, as well, to: 'insure domestic tranquility,' 'establish justice,' 'secure the blessings of liberty,' and 'to form a more perfect union.' However, one cannot do any of the foregoing unless on can demonstrate, beyond a reasonable doubt, what is meant by: 'welfare,' 'tranquility,' 'defense', 'justice,' 'liberty,' and 'perfection' … words for which neither the general public, nor jurists, have any agreed upon understanding – either individually or in conjunction with one another.

The other powers that are enumerated in Article I, Section 8 – such as: borrowing money, regulating commerce, coining money, declaring war, raising and supporting armies – are subject to the same kinds of constraints as outlined above. In other words, all of the powers mentioned in Article I, Section 8 must be viewed through the lenses of the purposes and objects of the Preamble, as well as be reconciled with those purposes and objects.

Finally, having just any theory of what constitutes: 'a more perfect union,' 'justice,' 'tranquility,' 'defense,' 'welfare,' and 'liberty,' will not do. The standard against which those purposes must be measured will be a function of the 'original right' to which Justice Marshall referred in *Marbury v. Madison*.

If the relationship is flawed between, on the one hand, the "fundamental and paramount law of the nation" – i.e., the constitution – and, on the other hand, the 'original right' to which everyone is entitled, then, this will lead to a variety of problems. These problems range from: a failure to properly understand the meaning of the purposes and objects of the Preamble, to: making invalid deductions concerning the details of how such objects and purposes are to be translated into concrete actions via the procedural powers and means of the constitution.

Justice Marshall assumes that all of the foregoing issues have been properly resolved, and, as a result, he contends, as previously pointed out, that the courts have an obligation to treat the procedural provisions of the Philadelphia Constitution as permanent inhabitants of the legal landscape. In order to satisfy the indicated obligation, Justice Marshall believes the only thing that jurists must do to arrive at the appropriate deductions is to juxtapose real world cases next to the "fundamental and paramount law of the nation."

Unfortunately, Justice Marshall offers no proof that his assumption concerning any of the foregoing is justified beyond a reasonable doubt. What Marshall takes to be settled law is not as settled as he supposes it to be, and, consequently, many, if not most, of Justice Marshall's decisions were skewed by the biases that were inherent in his assumption concerning the presumed legitimacy and settled character of the Philadelphia Constitution.

At the very least, there can be no obligation to treat a framed constitution as permanent unless one can demonstrate that such a document gives appropriate – and, therefore, justifiable – expression to the 'original right' from which such a document is supposedly derived. In the absence of that sort of proof, there can be no sense of obligation at all, and, therefore, Justice Marshall sought to impose on the courts an obligation which neither he nor the framers could demonstrate, beyond a reasonable doubt, necessarily reflected an accurate rendering of the 'original right' to which all people are entitled.

In *McCulloch v. Maryland*, Justice Marshall emphasized the importance that considerations involving intentions played in arriving at appropriate constructions concerning the meaning of the Constitution. For example, he indicated that, presumably, one of the intentions of the framers was to make appropriate provisions for linking the execution of certain powers with that which would enhance the national welfare.

The foregoing understanding might be true … that is, one could accept the idea – for the sake of argument -- that the framers did intend that whatever powers were contained in the Constitution were to be applied for purposes of promoting the general welfare. However, until one understands what the nature of the general welfare is and whether, or not, the exercise of a certain power in a particular way will bring about that kind of an enhancement in the general welfare without affecting

other aspects of society in a problematic way – for example, in a way that undermines: justice, liberty, tranquility, and defense -- then the intentions of the framers are neither here nor there.

What is relevant, however, is that irrespective of what the intentions of the framers might have been, one needs to know the nature of the relationship between the exercise of a given power and what such an exercise has to do with the 'original right' to which, according to Justice Marshall, we are all entitled. One cannot use the intentions of the framers as a starting point for interpretive deliberations, but, instead, one needs to start from the nature of the 'original right' that – according to Justice Marshall -- has precedence over the intentions of the framers since the intentions of the framers are only relevant to the extent that their understanding gives proper expression to the 'original right.'

Justice Marshall argued in *Dartmouth College v. Woodward* (1819) that when a given rule is applied to a case, then, under normal circumstances, the words of that rule should control that application. The exception to the foregoing would be in those instances in which "the literal construction is so obviously absurd, or mischievous, or repugnant to the general spirit of the instrument, as to justify those who expound the constitution in making it an exception."

Dartmouth College v. Woodward is viewed by Justice Marshall through the lenses of the idea of a contract. In fact, several of Justice Marshall's fellow justices – Justice Story and Justice Washington -- devoted considerable effort in their concurring opinions attempting to demonstrate that the agreement between New Hampshire and Dartmouth College was contractual in nature.

Even the state government of New Hampshire considered the aforementioned agreement to be a contract. However, it wanted to construe the agreement in a way that placed the agreement outside of the purview of the contract clause of the Philadelphia Constitution … either in the sense that such agreements were not what the Founders/Framers had in mind when they introduced the contract clause into the Constitution, or in the sense that the idea of a charter fell beyond the horizons of the contract clause and, therefore, the latter did not apply to the issue of charters.

Justice Marshall argued: "Does public policy so imperiously demand their charter at issue remaining exposed to legislative alteration, as to

compel us, or rather permit us, to say that these words [he is referring to the contract clause] that were introduced to give stability to contract, and which in their plain import comprehend this contract, must be so construed as to exclude it?" A short while later, Justice Marshall adds: "Do such contracts so necessarily require new modeling by the authority of the legislature that the ordinary rules of construction must be disregarded…?"

There is an issue involving the meaning of words in *Dartmouth College v. Woodward*, but that issue is not necessarily what Justice Marshall (or Washington and Story) supposed it was – namely, one of contracts. The term "charter" appears in the foregoing extract from Justice Marshall's decision concerning *Dartmouth College v. Woodward (*as well in the New Hampshire arguments concerning the matter), and although a considerable segment of several of the judicial opinions concerning *Dartmouth College v. Woodward* are devoted to arguments that purport to demonstrate how the idea of contracts is relevant to the aforementioned case, one might raise the question of whether, or not, a charter actually constitutes a contract.

Charters might be sought by those wishing to be granted a charter, and the granters of charters might seek an appropriate recipient upon whom to bestow a given charter. However, charters are not offered in a contractual sense.

Charters are permissions with conditions. They are granted by an individual or individuals in power, not offered.

In order for the law of contracts to be applied, one must demonstrate that the three basic elements of a contract are present – that is, offer, acceptance, and consideration. Charters do not contain the element of 'offer', and, therefore, they are not contracts.

One can, of course, try to force-fit the idea of a charter into the language of contracts by claiming that whatever social and verbal interaction that take place between the one granting a charter and the recipient of that kind of a charter constitutes some form of offer and acceptance, or that there is an element of consideration present in the granting of a charter since both the one who grants a charter and the one who is granted a charter might enjoy benefits from that sort of a relationship. However, the foregoing way of rendering the idea of a charter is distortive because it completely overlooks the asymmetric

character of the relationship between the one who grants a charter and the one who is granted a charter.

To be sure, the party that is granted a charter might, in time, become so powerful that it can leverage its position to change the nature of the relationship and, thereby, come to dominate, in various ways, the one who originally granted the charter. However, the foregoing possibility does not alter the fact that at its inception, a charter was granted by one in power and could, in time, be revoked by that same power.

There is no element of offer in a charter. It is either granted or it is not, and no one has a right to be the recipient of such a grant -- or continue to benefit from such a grant -- by virtue of either a form of acceptance or form of consideration.

To try to construe charters as contracts is – to use the language of Justice Marshall - - to generate a "construction so obviously absurd, or mischievous, or repugnant to the general spirit of the instrument" [that is, a charter] that one is justified in arguing that the contract clause of the Constitution is not an appropriate rule to apply to such an instrument … not because the idea of a charter is an exception to the rule in relation to the issue of contracts but because charters do not constitute contracts at all.

Charters can be granted and revoked at any time at the pleasure of the one who controls the ability to grant charters. Whatever problems arise from the granting or revoking of such a charter will be a matter to be sorted out through the laws governing torts and/or power politics and not through the laws of contracts.

While it might be true – as Justice Marshall claimed – that the contract clause was intended to give stability to contracts, this point is irrelevant to the issuing of charters. The fact that Justice Marshall construed charters as a form of contract merely indicates there were problems surrounding the meaning of words such as 'contract' and 'charter.'

A great deal of mischief has been introduced into society through the confusion that Justice Marshall – and those who concurred with him -- established as a precedent in the form of the Supreme Court decision concerning *Dartmouth College v. Woodward*. Like the erroneous claim involving the alleged personhood of corporations that was illegitimately

associated with the 1886 Supreme Court decision involving *Santa Clara County v. The Southern Pacific Railroad*, the *Dartmouth College v. Woodward* decision has been used by corporations to gain unjustified and unwarranted control over various aspects of social and economic life to the disadvantage of actual living human beings.

In Article I, Section 10, Paragraph 1, the Constitution stipulates that no state shall pass "any law impairing the obligation of contracts." Nevertheless, irrespective of whether one interprets the idea of charters in a contractual or a non-contractual sense, one cannot consider the idea of a contract as an entity unto itself.

The federal government cannot do anything that would interfere with certain kinds of obligation that are entailed by the idea of a contract within the context of a constitutional system. More specifically, the obligation of all contracts within the United States is to serve the purposes and objects for which the Philadelphia Constitution allegedly had been created.

If any given contract will not advance the purposes of tranquility, welfare, justice, defense, and liberty, then such a contract is not fulfilling the obligation that it has to the very document that makes that contract possible. The obligation of contracts cannot be limited to merely the issues involving offer, acceptance and consideration between, or among, a limited group of individuals, but, rather, there is a dimension of obligation entailed by contracts within the United States that must extend to the rest of society.

Whatever the intention of the framers might have been with respect to the meaning of the contract clause of Article I, Section 10, the deciding factor with respect to the legitimacy of any contract is rooted in the nature of the 'original right' to which, according to Justice Marshall, all people are entitled. The intention of the framers only becomes relevant if that intention reflects the structural character of the 'original right' since all contracts – as is also true with respect to every other aspect of governance -- must be evaluated in terms of the requirements of that 'right.'

One can impair the obligation of contracts in the limited sense (that is, in terms of the contract considered on its own) under certain circumstances. For instance, if the aforementioned 'lesser' sense of obligation impairs the purposes for which the Constitution was

established (which are outlined in the Preamble), and/or if the lesser sense of obligation impairs people's ability to realize the 'original right' to which Justice Marshall says everyone is entitled, then there is basis for interfering with contracts made under the foregoing sorts of conditions. In short, contracts – in the foregoing lesser sense -- must adhere to a larger obligation involving the purposes of the Constitution and/or the requirements of the 'original right' to which all people are entitled.

So, to answer what Justice Marshall seemed to consider a rhetorical question in his decision concerning *Dartmouth College v. Woodward* – namely: "Does public policy so imperiously demand their charter at issue remaining exposed to legislative alteration, as to compel us, or rather permit us, to say that these words [he is referring to the contract clause] that were introduced to give stability to contract, and that in their plain import comprehend this contract, must be so construed as to exclude it?" – the answer is: 'yes' … although one could dispense with Marshall's judgmental use of such words as: "imperiously."

The words of the contract clause might have been introduced in order to lend stability to contracts, but the Philadelphia Constitution was introduced – and, here, we will give the benefit of a doubt to the intentions of the participants in the Philadelphia Convention without necessarily supposing that what they did, or the way in which they did it, was legitimate – to stabilize the social/political/economic context in which contracts, among other things, are rooted. Therefore, if any given contract should entail ramifications that are likely to destabilize the purposes for which the Constitution was established or that will deny people access to the 'original right' to which they are entitled, then the lesser obligations of that kind of a contract are no longer tenable in the light of the greater obligation that all contracts have with respect to either the purposes for which the Philadelphia Constitution was instituted and/or the 'original right' to which all people are entitled.

In *McCulloch v. Maryland* (1819), Justice Marshall joined the 'necessary and proper' clause with the 'supremacy clause' to rule that: (a) the idea of a national bank was constitutional and (b) Maryland had no right to tax a branch of that bank in order to undermine the national bank's viability. More specifically, on the one hand, the 'necessary and proper' clause was used to indicate that even though the idea of a national bank had not been mentioned in the Constitution, Justice

Marshall was of the opinion that such a bank was both a necessary and proper means through which to realize the purposes of governance, while, on the other hand, the supremacy clause was invoked to argue that since the idea of a national bank was perfectly constitutional, laws establishing it were part of the supreme law of the land and, therefore, states – in this case, Maryland – had to comply with those laws.

Although the general idea of a national bank might be constitutional, it does not necessarily follow that the particular way in which a given form of national bank might be envisioned to operate would also be constitutional. If the operating principles of that sort of bank: did not establish justice, and/or did not promote the general welfare, and/or did not secure the blessings of liberty, and/or did not insure domestic tranquility, and/or did not help provide for the common defense, and/or denied people access to the 'original right' to which everyone was entitled, then whatever the necessary and proper character of the general idea of a national bank might be with respect to the issue of governance, then nevertheless, the foregoing sort of a bank would be unconstitutional with respect to the purposes for which the Constitution was established and from which the Constitution supposedly derived its authority.

While the laws passed by the legislature might be interpreted to be constitutional and, as a result, understood to be part of the supreme law of the land with which individuals and states supposedly must comply, the Philadelphia Constitution really has never been proven – beyond a reasonable doubt – to be the supreme law for human beings and, therefore, such laws are entirely arbitrary. Making the claim of supremacy is not necessarily the same thing as being able to demonstrate, beyond a reasonable doubt, that those claims are likely to be an accurate reflection of the nature of reality.

As previous chapters of this book have indicated: The legitimacy of the origins of the Philadelphia Constitution is questionable, and the legitimacy of the ratification process associated with that constitution is questionable, and the purposes and meanings of the Philadelphia Constitution are questionable and the claim of legitimacy concerning the claim that such a constitution is obligatory upon those who did not draft it and did not authorize it is also questionable. In addition, the relation of the Philadelphia Constitution to the 'original right' to which all human beings are entitled is also questionable.

With so many issues of: Legitimacy, purposes, and meanings that are considered to be questionable, how can one claim that laws that are understood by some jurists to be constitutional should be considered the supreme law of the land? How do we know – beyond a reasonable doubt – that those jurists or judges have not been operating in accordance with judicial will rather than in accordance with the sorts of judicial judgments that, presumably, should be able to be justified beyond a reasonable doubt?

Justice Marshall deduced – in a very narrow sense -- that the general idea of a national bank was permissible as an expression of the 'necessary and proper clause. Justice Marshall did not consider – in a much broader sense -- whether, or not, the actual manner in which that bank operated could also be deduced to be necessary and proper.

In *McCulloch v. Maryland*, Justice Marshall failed to address an issue that was much more fundamental and in need of critical examination – namely, how the national bank actually works and affects – in practical terms -- the purposes for which the Constitution was instituted. Instead, Justice Marshall considered only superficial issues – for example, whether, or not, the general idea of a national bank could be considered to be necessary and proper.

By pursuing the superficial at the expense of the substantial, Justice Marshall established a precedent that has led to much mischief. In effect, Justice Marshall showed how one could engage the Constitution through, for instance, the "necessary and proper" clause or the "supremacy" clause without ever raising the question of how – or if -- such clauses were actually serving the purposes of the Preamble or whether, or not, any given interpretation of those clauses could be reconciled with the 'original right' to which he believed everyone was entitled.

To claim that the general idea of a national bank is consistent with, or deducible from, the "necessary and proper" clause is an extremely trivial matter. The existential impact of an operating national bank upon the purposes set forth in the Preamble and upon the lives of 'We the People' is an entirely different matter.

Without necessarily wishing to take Maryland's side in the dispute with McCulloch (a cashier in the Baltimore branch of the 2nd National Bank who issued bank notes contrary to laws of the state of Maryland), one could raise the question of whose actions – if either -- best served the

purposes of the Constitution. Justice Marshall might not have wanted to deal with this sort of a question, but by addressing only the superficial issue about whether, or not, the general idea of a national bank was constitutional, he evaded one of the few issues of potentially substantive value in *McCulloch v. Maryland*.

Furthermore, Justice Marshall also evaded the question of whether, or not, it was possible for one party – e.g., Maryland – to violate what were considered to be constitutionally valid laws and, therefore, part of the supreme law of the land, and yet nonetheless, in so doing, serve the purposes of the Preamble in a more defensible manner than the actions, policies and programs of the federal government did. This kind of question has implications for, among other things, the issue of civil disobedience and, in the process, raises the question of whose actions best serve the purposes for which the Constitution was supposedly instituted or whose actions best serve the 'original right' to which all people are entitled.

Two of the grounds for the decision in the *McCulloch v. Maryland* case revolved about: (1) whether the potential for the power to tax entailed the power to destroy, and (2) the commonsensical precept that the people considered as a whole could not be presumed to have ceded the sort of power indicated in (1) above to a part of the whole – namely, a state. However, one legitimately could apply the same sort of logic to almost every aspect of governance.

In other words, every power – and not just the power to tax – entails the possibility of being used in such a way that it becomes destructive. This includes the powers that are enumerated in the Constitution.

Surely, as Justice Marshall's commonsensical logic stipulates, no one should be able to suppose in any justifiable manner that the people considered as a whole have ceded such power (that is, destructive power) to the part – the state government – so that the latter can adversely affect the opportunity of the whole to realize the purposes set forth in the Preamble to the Constitution. The point that Justice Marshall is making in relation to the state of Maryland and its manner of wielding power can be justifiably applied to the federal government and its manner of wielding power, but Justice Marshall does not permit himself to venture into that sort of territory because he believes – quite unjustifiably – that those

matters have, in some vague sense, been settled via the ratification of the Philadelphia Constitution.

What is meant by: "necessary and proper," or "the supreme law of the land," or "impairing the obligation of contracts," cannot be known until one understands what is meant by: 'establishing justice,' 'insuring domestic tranquility,' 'providing for the common defense,' 'promoting the general welfare,' 'securing the blessings of liberty' – for ourselves and our posterity – and having access to the 'original right" to which everyone is entitled. No part of the Philadelphia Constitution has a non-arbitrary sense until one can – if one can -- resolve the hermeneutical issues surrounding the foregoing phrases in a way that can be shown, beyond a reasonable doubt, to be accurately reflective of the nature of reality.

The way in which Justice Marshall framed the legal issues during his 35 years of adjudicating matters are largely arbitrary … and this is a trend that has continued in the United States among Supreme Court jurists for nearly two hundred more years. Those ways are arbitrary because they never address the underlying, substantive issues of meaning that need to be engaged in those matters … issues that have the capacity to color, shape, and orient not only every aspect of the Constitution but every deduction that might be made in relation to that document.

For example, consider the commerce clause – namely, Congress shall have the power to: "regulate commerce with foreign nations, and among the several states, and with the Indian tribes." In *Gibbons v. Ogden* (1825) Justice Marshall described the power to regulate commerce as being fairly comprehensive, involving the capacity: "To prescribe the rule by which commerce is to be governed." Furthermore, Marshall defined commerce broadly to encompass all facets of the dynamics among nations, the states, and Indian tribes involving the selling, buying and transporting of goods.

There were, however, several limits to the power of the federal government with respect to the regulation of commerce. One limit concerned the right of states to regulate whatever commerce took place entirely within a given state and, therefore, did not spill over into, or become entangled with the commercial activity of other states.

The other limit on federal authority to regulate commerce was a function of those police powers within a state that might have incidental -- but, nonetheless significant -- impact on commercial activity. For

example, laws touching upon matters involving health, inspection, and the like in relation to commercial activity were considered to be under the purview of the states … although Marshall was inclined to place limits on just how much of this sort of incidental impact would be permitted.

While Justice Marshall dealt with the definition of commerce, as well as with what the idea of regulation involved, he was largely silent about the purpose of such regulation – other than that it was one of the powers granted to Congress by the Constitution. However, like every other aspect of Constitution, the lens through which the words of that document should be considered are the purposes set forth in the Preamble for which the Constitution was supposedly ordained and established.

Just as the states must operate within a commercial framework that is determined through the federal government's power to regulate the rules governing the operation of that framework, so too, the federal government must exercise its powers within a framework that is regulated by the purposes for which the Constitution came into being. Unfortunately, if the nature of those purposes is indeterminate, then so too, is the nature of the commercial regulatory power that is to be exercised by the federal government.

One cannot deduce very much with respect to the nature of the regulatory power of the federal government until one understands the logical or structural character of the purposes set forth in the Preamble. Until one understands what the regulation of commerce has to do with issues such as: justice, liberty, tranquility, defense, and the general welfare, then without being entirely arbitrary, one is not in a position to proceed very far beyond the very general idea that, in some unknown sense, the federal government has the right – for the sake of argument this is being presumed -- to regulate commerce involving foreign nations, states, and the Indian tribes.

A little over a hundred years after Justice Marshall wrote his last opinion for the Supreme Court, Justice Harland Stone issued a decision concerning *Southern Pacific v. Arizona* (1945). In the opinion for that case, Justice Stone sought to establish a 'balancing test' for deciding cases involving the commerce clause. Justice Stone's notion of a 'balancing test' departed – in certain respects -- from what had been up to that time the

standard through which many kinds of commerce clause cases were often decided.

More specifically, one of the standard precedents for commerce clause-related cases was set forth in *Cooley v. Board of Wardens* (1852). At the heart of this case – which occurred during the tenure of Chief Justice Taney -- is the issue of whether, or not, the precedent that had been established by Chief Justice Marshall – namely, that the federal government had a largely exclusive right (with a few exceptions) to regulate matters of commerce in the United States – precluded the possibility of states having control over the regulation of commerce in certain cases … e.g., those involving pilotage laws.

The *Cooley v. Board of Wardens* case involved a law in Pennsylvania that required vessels coming into the Port of Philadelphia to use local pilots. If incoming ships did not use local pilots, then the owners of those vessels would be required to pay half the cost of pilotage … a fee that went into a fund intended to help pilots through difficult economic times, as well as to assist them after they retired.

The Supreme Court ruled that the foregoing law was constitutional despite the fact it intruded into the area of regulating commerce … an area that was, for the most part, under the purview of the federal government. Just as Justice Marshall previously had indicated that there were exceptions to the commerce clause – e.g., commercial activity taking place wholly within the confines of a given state -- so too, Justice Curtis ruled in the *Cooley v. Board of Wardens* decision that while, generally speaking, the federal government did have the authority to regulate commerce, there were various anomalous situations – such as in the case of pilotage – in which states shared a legitimate, concurrent power with the federal government with respect to the regulation of commerce.

Justice Curtis indicated in his decision that when it came to establishing national rules of uniformity concerning certain facets of commerce, the federal government should have the preeminent authority to regulate commerce. However, some aspects of commerce reflected local conditions, and in the latter cases, state governments had a valid standing with respect to certain claims concerning the regulation of commerce according to the requirements of those local circumstances.

The foregoing decision was not really a departure from what Justice Marshall had established in, for example, *Gibbons v. Ogden* (1825). In fact,

in the latter decision, Justice Marshall had specifically referred to pilots operating within the "bays, inlets, rivers, harbors, and ports" of certain states and how the regulating of such commercial activity fell within the purview of states.

According to Justice Stone's opinion in the 1945 *Southern Pacific v. Arizona* case his reading of the earlier 1852 *Cooley v. Board of Wardens* decision was that the Supreme Court was the final arbiter when it came to adjudicating conflicting demands involving national and state interests in those cases where Congress had not passed any relevant legislation. Justice Stone, then, sought to establish a 'balancing test' through which the Court would seek to weigh the relative impact of state and national interests upon the "free flow of interstate commerce" in those sorts of cases.

The opinions in: *Southern Pacific v. Arizona*, *Cooley v. Board of Wardens* and *Gibbons v. Ogden* – spanning a period of 125 years – were all off the mark. The Supreme Court, as well as the federal and state governments, did not have any authority to arbitrate issues of commercial activity independently of either the purposes and objects of the Preamble to the Constitution, or the 'original right' noted by Justice Marshall in *Marbury v. Madison*.

The issue of commercial activity is not one of weighing the impact of state and national interests upon the 'free flow of interstate commerce.' The issue of commercial activity is not a matter of when the Court could arbitrate cases involving commercial activity (e.g., when Congress had not passed any relevant legislation). The issue of commercial activity is not a function of divvying up the spheres of influence over which the federal and state governments should have preeminent regulatory authority.

Instead, the issue is -- and should have been -- entirely a matter of when, or if, commercial activity serves the principles inherent in the Preamble to the Constitution and/or the 'original right' to which Justice Marshall referred … principles and purposes that, supposedly, were the means through which the United States of America was to become established as a democratic nation on the world stage in the first place. If, for example, commercial activity does not simultaneously further – in a way that is demonstrable beyond a reasonable doubt -- the principles of justice, tranquility, welfare, and liberty for <u>all</u> of the people in the United States, then neither the Court, the federal government, the states, nor

anyone else has a legitimate – that is, justifiable – constitutional right to regulate commerce for any other purposes.

Alternatively, if commercial activity does not instantiate Justice Marshall's notion of an 'original right' in a manner that is capable of being demonstrated beyond a reasonable doubt as likely to reflect the actual 'original right' that is inherent in all human existence, then neither the Court, the federal government, the states, nor anyone else has a legitimate – that is, justifiable – right to regulate commercial activity. The foregoing does not mean that individuals have the right to do whatever they like with respect to commercial activity, for such individuals -- like the judicial, executive, and legislative branches of the federal government, as well as the members of state and local governments – must be able to demonstrate, beyond a reasonable doubt, that they have the right to act commercially in one way rather than another, or the arguments of those individuals are as arbitrary as the ones that are employed by governments … whether national, state, or local.

As noted previously, in *Marbury v. Madison* Justice Marshall had referred to an 'original right" to which all people were entitled. He assumed – unjustifiably (i.e., he did not demonstrate that his assumption was capable of being proven beyond a reasonable doubt) – that such a right was necessarily embodied in, and expressed through, the Philadelphia Constitution.

In their respective decisions, Justice Curtis and Justice Stone (each in his own way) assumed -- unjustifiably (i.e., they did not demonstrate that their assumptions concerning the supposed authority, and, therefore, source of obligation of the Constitution were true beyond a reasonable doubt) -- that their judicial opinions should be incumbent upon, or binding on, others (the executive, the legislature, the state governments, and citizens). In other words, neither of the two justices was able to successfully show that the Supreme Court had the authority to determine what the meaning of the Philadelphia Constitution was with respect to, on the one hand, the general principles and purposes set forth in the Preamble, or in relation to the 'original right' to which Justice Marshall alluded in *Marbury v. Madison*, and, on the other hand, commercial activity.

The executive, legislative, and judicial branches of the federal government, as well as the state governments all assume that they have

the requisite authority to interpret the meaning of the Philadelphia Constitution, the Preamble, and the 'original right' in ways that are binding on citizens. None of them, however, have been able to demonstrate the legitimacy of those claims to authority beyond a reasonable doubt.

The source of legitimate authority is not a function of superficial issues of procedural jurisdiction – irrespective of whether those deliberations are the result of interpretive efforts by the executive, legislative, and judicial branches, or state and local governments – in relation to some given constitutional document. The source of legitimate – that is, non-arbitrary – authority is a function of substantive issues concerning what is, and what is not, demonstrable beyond a reasonable doubt with respect to the nature of reality.

Justices legislate – and, therefore, exercise judicial will rather than judgment – whenever their decisions cannot be shown, beyond a reasonable doubt, to be capable of demonstrating that those opinions reflect the nature of reality with respect to issues such as: rights, liberty, justice, and welfare, or with respect to 'the meanings' of any of the crucial clauses of the Philadelphia Constitution -- e.g., commerce clause, contract clause, supremacy clause, due process clause, or the necessary and proper clause – relative to the 'original right' to which we all are entitled

When justices legislate from the bench – that is, exercise judicial will -- their decisions are arbitrary. In other words, their claims concerning those decisions cannot be justified as giving expression to defensible interpretations of various fundamental principles, meanings, and purposes of democracy … i.e., interpretations that can demonstrate, beyond a reasonable doubt, that their claims to authority -- with respect to placing obligations on the citizenry in relation to expectations concerning compliance with the 'rule of law' that is alleged to be inherent in a given constitution -- are legitimate.

Unfortunately, for more than 225 years, Supreme Court justices in the United States have been engaged in one arbitrary exercise of judicial review after another when it comes to their engagement of the Philadelphia Constitution, along with the amendments that, in subsequent years, were added to that document. As a result, we are governed by the arbitrary conventions of men, and, now, women – that is,

individuals exercising judicial will -- rather than by the rule of law in any non-arbitrary sense.

None of the foregoing considerations should be construed to mean that judges don't employ reasoned arguments in order to arrive at their conclusions in relation to this or that case. As they construct their judicial position, they cite precedents – many of which have a questionable pedigree as far as the purposes and principles of the Preamble and/or Marshall's 'original right' are concerned -- and refer, approvingly or disapprovingly, to the arguments of this or that jurist, as well as parse the language of the case before them in terms of those facets of the Constitution that they consider to be relevant to the case before them

In addition, over time, their arguments often exhibit consistency and coherency. As a result, one can see that many jurists have a style of arguing and an inclination to go in certain judicial directions rather than others.

However, being able to put forth reasoned arguments of a coherent, consistent, and logical nature does not guarantee that those arguments will give expression to truths concerning the ultimate nature of liberty, rights, justice, and welfare in a way that can be demonstrated beyond a reasonable doubt. People deserve more than arbitrary theories, perspectives, and ideas when those possibilities are likely to have a major impact on their basic sovereignty.

The role of citizens should not be one of serving as experimental subjects for the theoreticians of governance. If it is unethical: To perform psychological experiments on people without their fully informed consent, or to perform experiments on citizens that could be injurious to their physical, emotional, psychological, economic, and/or spiritual health, then why should the standards of ethical activity be any different in the realm of governance where the stakes are likely to be much higher, as well as likely to be much more permanently debilitating, in one way or another, with respect to citizens.

Consequently -- as previously indicated -- the reason for setting the judicial bar so high (that is, requiring jurists to be able to demonstrate that their opinions are likely to be true beyond a reasonable doubt) is to hold the courts accountable in the same way that constitutionally mandated criminal trials hold the justice system accountable. In other words, in criminal cases, the possible consequences for a defendant who

is found guilty are fairly severe with respect to the manner in which liberty, welfare, and tranquility might be adversely affected, and, therefore, the standard for convicting someone requires that all twelve jurors must find, "beyond a reasonable doubt," that the state has met its burden of proof concerning the issue of guilt.

Similarly, with respect to judicial opinions that allegedly give expression to the meaning of the Philadelphia Constitution, having nine jurists all agree that such-and-such is the proper interpretation of that document is not enough. Such agreement must be established beyond a reasonable doubt, and, as pointed out previously, the idea of: 'beyond a reasonable doubt' means that the 'facts' of a case must be shown to have a demonstrably significant relationship with the actual nature of liberty, justice, welfare, rights, and the like … not in a theoretical, possible, practical, utilitarian, majoritarian, or plausible manner but in an existentially substantive way that shows how one's interpretation of the facts of a given judicial case reflect the actual character of the universe.

If jurists cannot meet the foregoing standard, then they have no non-arbitrary basis through which to justify their claims of legitimacy with respect to their judicial perspective and, consequently, they have no business engaging in judicial review. The 'original right' to which John Marshall alluded in *Marbury v. Madison* – a right that I equate with my notion of 'basic sovereignty' (that is, the right to have a fair opportunity to push back the horizons of ignorance) -- demands a much higher standard of protection than the Supreme Court has been prepared to offer – or, in truth, has been capable of offering -- for the last several hundred years.

Chapter 8: Ceding and Leveraging 'Agency'

The social psychologist, Stanley Milgram, ran a controversial experiment at Yale in the early 1960s. The nature of the experiment was such that within the context of the research environment of the last thirty years, Professor Milgram's idea probably would not have secured the necessary approval by the ethics committees that have oversight with respect to the sorts of experimental projects that are permitted to be conducted in the world of academia.

I didn't know Professor Milgram, but my time at Harvard overlapped with some of the time when he was at Harvard seeking tenure. Unknowingly, I might have crossed paths with him in the hallways or in the library of the Department of Social Relations, or ridden with him on the elevators of the recently – at the time -- completed William James Hall that housed the Department of Social Relations.

I did have at least three different forms of one-degree of separation with Professor Milgram. For instance, my undergraduate thesis advisor was Robert White who was one of the faculty members at Harvard who strongly opposed Professor Milgram's gaining tenure at the university. Secondly, one of the members of my thesis examination committee was Robert Rosenthal who was awarded tenure in preference to Stanley Milgram even though Professor Rosenthal wasn't actually seeking tenure at the time. Thirdly, I took a course with Paul Hollander who was one of Professor Milgram's closest friends at Harvard.

All of the foregoing pieces of information are really not apropos with respect to much of anything except, perhaps, as historical detritus that has been sloughed off by my life. The fact of the matter is – and, even though, I did take a course in social psychology -- I don't recall that Stanley Milgram's name ever came up in class … although that was nearly 50 years ago and my memory might have incurred some gaps during the interim period.

During the 1980s, when I taught various courses in psychology at a community college in Canada, I began to introduce my students to the Milgram 'learning' experiment. In addition to providing them with the actual details of the experiment, I also showed a dramatized version (*The Tenth Level* – 1975) of Professor Milgram's project that starred William

Shatner, Ossie Davis, and Estelle Parsons, as well as featured the television debuts of Stephen Macht, Lindsay Crouse and John Travolta.

When I later taught psychology at a university in the United States, I continued to introduce students to Professor Milgram's 'learning experiment. However, I substituted the educational-documentary film: 'Obedience,' which was done in conjunction with Professor Milgram, rather than use the aforementioned docudrama *The Tenth Level.*

The reason I made the switch was due to several factors. First, for whatever reason, *The Tenth Level* film is very difficult to acquire … although a multi-part edition of it has surfaced on YouTube. In addition, the '*Obedience*' film is shorter by nearly an hour – which makes it easier to fit into class time -- and, since Stanley Milgram introduces the documentary and does the voice-overs, the '*Obedience*' film is more authentic than *The Tenth Level* documentary.

One of the criticisms that have been directed at Professor Milgram's 'learning/memory' experiment is that it wasn't based on a specific hypothesis that might be proved or disproved by the data generated from such an experiment. Instead, he had an idea for an experiment and wanted to see where it would lead.

Professor Milgram did write a 1963 article concerning the experiment that was published in the *Journal of Abnormal and Social Psychology*. Moreover, 11 years late he wrote a book entitled: *Obedience to Authority*, that sought to provide a more in-depth look at his research.

However, the foregoing written efforts were more of a post-experimental attempt to rationalize his experiment within the framework of social psychology. He came up with his theory concerning the role that he believed the psychological phenomenon of obedience played in his 'learning' experiment after the fact of the experiment rather than before his research began.

Prior to his experiment, Professor Milgram was interested in certain political and ethical questions … e.g., he wondered what went on, morally and socially speaking, with people like Adolf Eichmann and the others who helped bring about the Holocaust. Nonetheless, while those sorts of questions might have shaped the structural character of his experiment to varying degrees, the nature of the relationship between his

moral/political/social interests and the outcome of his experiment was rather diffuse and amorphous.

Professor Milgram didn't have a prediction concerning how his experiment would turn out. In other words, he didn't have a particular thesis that he was trying to prove, but he hoped his experiment would shed light on some of the questions he had concerning ethical and social issues that, along with other times and places, arose during the Second World War in Germany.

Later in this chapter, I will come back to Professor Milgram's theory that the mechanism at work in his experiment had to do with 'obedience'. I think he was wrong on that count, but the reasons why I believe this will have to wait until after an outline of his learning experiment is provided.

The initial 'learning' experiments began in July of 1961 and were run on the campus of Yale University. He placed advertisements in a newspaper inviting people from the general public in the New Haven area to participate in a study on memory and learning, and, as well, the public announcement was sent directly to people whose names had been taken from an area phone book.

The announcement indicated that participants would receive $4.50 (50 cents of the total was for carfare) for one hour of their time and that no special training or knowledge was necessary to qualify for the proposed learning/memory project. Furthermore, the advertisement indicated that Professor Milgram was looking for people who were between the ages of 20 and 50 and who represented a variety of economic backgrounds, ranging from: construction workers and barbers, to: clerks and city workers.

Once people began responding to the public announcement/advertisement, people were selected to provide a somewhat randomized sample with respect to age, educational background, and occupation. Because not enough people were attracted through the newspaper announcement, the participant pool for the experiment had to be supplemented with individuals who had been contacted through a direct mailing.

One at a time, interested individuals were given directions to the Interaction Laboratory at Yale University. A time for the learning/memory experiment was set for each participant.

When a person showed up at the appointed time, the individual would be met by two individuals. One of the latter two individuals would be introduced as a fellow participant in the experiment, while the other individual introduced himself as the individual who would be conducting the experiment.

The experimenter would, then, proceed to give a standard, prepared overview of the experiment. This introduction indicated there were several theories about learning and memory that were detailed in an official looking textbook concerning those topics that was showed to the two participants.

Furthermore, the individual conducting the experiment went on to indicate that not much was known about the impact that punishment had on learning and, therefore, the current experiment had been designed to investigate that issue. Consequently, the two participants would take on the role of either a learner or teacher.

Words like: 'Teacher' or "Learner,' were written on two pieces of paper and each of the experimental subjects would select one of the pieces of paper. Once the identity had been established concerning who would be the teacher and who would be the learner, the experimenter took them through the general structure of the experiment.

First, the three individuals went into the 'learning' room. An electric-chair-like apparatus was in the room, and before the 'learner' was strapped into the chair, the person who would be doing the 'teaching' was given an opportunity to feel what a relatively low level shock felt like.

The level of the shock was always 45 volts. This was the third lowest shock possible among the 30 levels of voltage.

Afterwards, the 'learner' was secured in the chair, and the 'learner' and 'teacher' were informed that the straps were to ensure that there was no excessive movement by the 'learner' when shocks were delivered in relation to incorrect responses. Conducting paste was applied to the electrode attached to the wrist of the 'learner' with the comment that the paste was necessary "to avoid blisters and burns" if, or when, shocks were delivered by the 'teacher.'

In response to questions from the 'learner' concerning the strength of the shocks that might be received, the two participants were told that:

"Although the shocks can be extremely painful, they cause no permanent tissue damage."

Next, the person conducting the experiment would explain the nature of the learning/memory task. It was a paired-word-association test.

More specifically, the 'teacher' would first read off a list of four paired word items – such as: 'blue/box,' 'nice/day,' 'wild/duck,' 'bright/light.' During the testing phase, one of the foregoing words would be given by the 'teacher,' and the 'learner' would be required to produce the appropriate paired word from the original list of four groups of pairs … thus, if the 'teacher' said "wild," the 'learner' should respond with 'duck'.

If the 'learner's response was correct, the 'teacher' would move on to the next group of four word pairings. If the 'learner's' response was incorrect, the 'teacher' would deliver a shock through the console apparatus that was in the 'teacher's' room.

The console apparatus consisted of 30 toggle switches set at 15 volt increments. Therefore, the toggle switch on the left most side of the console was set at 15 volts, while the toggle switch on the far right side of the console indicated a charge of 450 volts.

In addition, there were various word-descriptors paired with some of the different levels of voltage charge. Running from left to right, these word descriptions went from: 'slight shock' up to: 'severe shock' and 'XXX.

When one of the toggle switches was depressed, a number of things would happen. First, a small bulb above the switch would turn red, then an electrical-like buzzing sound would be heard, followed by: The flashing of a slightly larger blue light that was centered above the toggle switches and their accompanying bulbs and was labeled 'voltage energizer'; a voltage meter indicator would swing to the right; and, finally, various relay-switching sounds would be heard.

When the 'learner' gave an incorrect response to the word-pairing association test, the 'teacher' was instructed to read out the level of the voltage that was being administered. The purpose of this instruction was to remind the 'teacher' what the level of the shock was that was being administered.

'Teachers' were told that if 'learners' were to make a sufficient number of mistakes, the 'teacher' should continue on through the 30 increments of shock to the final level of 450 volts – 'XXX.' If additional

mistakes were made beyond the 450 volt level, then the 'teacher' would again depress the 450 volt toggle switch for each successive mistake, and this latter protocol would stay in effect for three more rounds of punishment at which point the experimental run would be terminated by the experimenter.

Whenever the 'teacher' displayed any reluctance – verbally or otherwise – to continue on with the experiment, the person conducting the experiment would issue verbal prompts to the 'teacher' to return to the experiment. For instance, the experimenter might say: (1) "Please go on;" Or, (2) "The experiment requires that you continue;" Or, (3) "It is absolutely essential that you continue;" Or, finally, (4) "You have no other choice, you must go on."

The foregoing prompts would be used in sequence. The first prompt noted earlier would continue to be used as necessary until it no longer seemed to work. At that point, the second prompt would be employed until it no longer appeared to work at which point the third prompt would be used, and so on.

If, at some point, the 'teacher' stated words to the effect that the 'learner' did not seem to want to go on with the experiment, the individual conducting the experiment would respond with: "Whether the learner likes it or not, you must go on until he has learned all the word pairs correctly. So please go on."

During early pilot studies for Milgram's learning experiment, no sounds could be heard from the 'learner's room. Under such circumstances, Milgram discovered that almost all of the participants were prepared to run through the entire array of 30 toggle switches with little, if any, hesitation.

When some sort of feedback came from the 'learner's' room after a given level of shock was administered, the situation changed. When the 'teachers' heard grunts, cries, pounding, or protests from the 'learner's' room, the 'teachers' would often begin to exhibit signs of reluctance with respect to continuing on giving progressively higher levels of shocks.

Nothing would be heard from the 'learner's' room until the fifth round of shocks – 75 volts. At this point, a grunt of sorts could be heard.

Similar sounds could be heard from the 'learner's' room at 90 and 115 volts after mistakes were made and the appropriate toggle switch

was depressed. However, when the level of punishment reached 120 volts, the 'learner' could be heard to yell out that the shocks were painful.

Painful groans would emanate from the 'learner's' room at 135 volts. At the tenth level – 150 volts – the 'learner' would be heard to say: "Experimenter, get me out of here! I won't be in the experiment anymore!"

As the volt level rose, the intensity of the protests coming from the 'learner's' room also increased. At 180 volts, the 'learner' would be heard to say: "I can't stand the pain," and as the level of voltage works its way to 270 volts, there are screams of pain coming from the 'learner's' room.

In addition, from 150 volts onward, the 'learner' indicates that he no longer wished to participate in the experiment. Finally, at 300 volts, the 'learner' would state that he will not answer any further questions.

When the 'learner' stopped responding to the word-pairing task, the 'teacher' would be informed by the person conducting the experiment that the absence of a response must be treated in the same way as if it were an incorrect answer. Therefore, if no word-pairing response were heard within a period of 20 to 30 seconds, the 'teacher' would be required to depress the next appropriate voltage switch when there was no response to a given word-pairing prompt.

Even when there was no response from the learner with respect to a given word-pairing task, sounds of pain would still be heard from the 'learner's' room following the depressing of a toggle switch. This continued up to the 315 volt level when the 'learner' would scream out in pain and, then, once again indicated that he no longer wanted to participate in the experiment.

When volt levels above 330 volts were reached, the 'learner' would not be heard from again. This was true both with respect to the word-pairing prompts, as well as in relation to either screams of agony or protests of one sort or another.

Between 150 volts and 330 volts, if a 'teacher' asked whether, or not, the administering of shocks might lead to significant damage in the 'learner', such inquiries would be met with a standard reply by the person conducting the experiment. More specifically, the experimenter would say: "Although the shocks might be painful, there is no permanent tissue damage, so please go on."

The primary measure for the 'learning/memory' experiment was the level of shocks that any given subject – 'teacher' -- was prepared to give before discontinuing with the experiment. Thus, the possibilities ranged from: 'zero' --when a person was not prepared to administer even one shock – to: 450 volts, when a person was prepared to continue depressing 30 successive toggle switches and deliver shocks until the experiment was concluded by the experimenter.

Three groups of individuals – namely, psychiatrists, college students, as well as middle-class adults who were from different occupational backgrounds – were asked to predict how they might have reacted if they had participated in the experiment as 'teachers.' This question was asked after they had been provided with an overview of the 'learning/memory' experiment.

The mean maximum shock level that the psychiatrists believed they might administer was 8.20, or a little over 120 volts. The college students and the middle-class adult group both indicated that they might have been ready to discontinue the experiment somewhere near the 135 volt level.

The foregoing three groups, along with several other groups (e.g., graduate students and faculty members from various departments of behavioral science) were asked to predict how any given sample of 'teachers' might react to the 'learning/memory' experiment. On the one hand, these groups of individuals tended to indicate that they thought most 'teachers' would not venture beyond the 150 volt or tenth level of shocks, and, on the other hand, the same groups indicated that they believed that only one or two individuals from any sample might be prepared to carry out the experiment through to the 450 volt level.

Although a number of different versions of the 'learning/memory' experiment were run at different times in order to study one or another variable (e.g., the physical proximity of the 'teacher' to the 'learner and what, if any, impact such proximity might have on the actions of the 'teacher.'), the basic experiment that has been outlined in the previous pages showed that, on average, 24 individuals out of a sample of 40 people (roughly 65 %) were prepared to continue the experiment until the 450-volt level and beyond. This result occurred again and again across differences of: gender, age, educational background and variation in occupations.

The individuals who continued on with the experiment until the very end often – but not always -- exhibited signs of: concern; uncertainty; agony; resistance, and anxiety during the course of the experiment. In addition, these same individuals often – but not always -- showed signs of relief, and, as a result, displayed indicators of releasing tension in a variety of ways (e.g., sighs, fumbling with cigarettes, and/or mopping their brows) once the experiment had been concluded.

However, there were some individuals within any given sample who would remain relatively calm both during the experiment and after the experiment concluded. These individuals showed little, or no, discomfort throughout the entire process.

Four versions of the foregoing experiment were run by Professor Milgram to study the manner in which varying degrees of proximity might affect the actions of 'teachers'. In general, Professor Milgram found that the more proximate the relationship between the 'learner' and the 'teacher' was, the more likely it was that 'teachers' were prepared to discontinue the experiment prior to its conclusion.

However, even in the most physically proximate of these experimental variations – that is, in the case when a 'teacher' was required to forcibly hold the hand of the 'learner' on a metal plate as a shock was administered – nonetheless, there were still 30 percent of the individuals (12 people) in different samples of 40 individuals who were prepared to see the experiment through until the experiment was brought to a halt by the individual conducting the experiment. Moreover, 16 of the 40 individuals in these proximity experiments were willing to administer shocks by holding a 'learner's' hand to a plate through to the 150 volt level, while 11 others were, to varying degrees, willing to continue on above the 150-volt threshold despite cries of agony and protests from the 'learner.'

The foregoing results have been replicated in a number of other countries. In other words, the Milgram experiment is not merely a reflection of American society, but, rather, the experiment seems to given expression to behavior that is common in a variety of different societies.

The people – whether psychiatrists, undergraduates, graduate students, faculty members in departments of behavioral science, or middle-class adults – who had been asked to estimate how 'teachers' would respond in the 'learning/memory' experiment were all wrong …

substantially so. Almost all of the aforementioned groups of individuals had indicated that the 'teachers' likely would be prepared to break off from the experiment somewhere in the vicinity between 120 and 150 volts, or slightly higher, and almost all of them indicated that only 1 or 2 individuals across a set of samples might be prepared to continue on with the experiment until the 450-volt level.

Shockingly, when the 'learner' was in a separate room, nearly two-thirds of the 'teachers' were prepared to carry on with the experiment until the bitter end. Furthermore, even in the experimental variation in which 'teachers' were required to hold a 'learner's' hand down on a metal plate in order to deliver a shock, 30 percent of the 'teachers' were prepared to continue on with the experiment until its conclusion, and nearly two-thirds of the subjects – i.e., teachers – were ready to carry on with the experiment until the 150-volt level (the tenth level) despite the fact that the 'learners' had been giving indications of pain since the 75-volt level (the fifth level).

When the 'learning/memory' experiment was conducted in Bridgeport with no discernible connection to Yale University, the results were somewhat different than the experimental outcomes in the Yale laboratory. Approximately 48 % of the 'teachers' (about 19 people) were prepared to carry on with the experiment through to the 450-volt level, compared with 26 people in the experiments conducted at Yale.

There were additional variations of the 'learning/memory' experiment. 'Teachers' responded somewhat differently across such variations.

At the end of the experiment – irrespective of whether a subject opted out of the experiment at some point or carried on with it until the end – there was a debriefing period. During this phase of the research project, the subjects were let in on the actual nature of the experiment.

Among the things that the subjects were told was that the 'learner' never actually received any shocks. The only person to receive a shock during the experiment was the 'subject' when he or she was allowed to experience what a 45-volt – third level -- shock felt like prior to the point when the 'learner' was strapped into the 'electric chair.'

In addition, subjects were told that they did not become the 'teacher' by chance. The process of determining who would be the 'teacher' and

who would be the 'learner' had been rigged to make sure that the 'subject' – the one whose behavior was being studied during the experiment – would always be the 'teacher' … the one who administered the 'shocks'.

During the debriefing process, subjects were also told that the 'learner' was a confederate of the experiment. That is, the learner was someone who was made to appear as if he were one of the experimental subjects, when, in fact, he was merely playing a role.

If a given subject had decided to opt out of the experiment before it reached its conclusion, that person was debriefed in a way that would lend support to that person's decision to defy the experimental process. On the other hand, if a subject happened to be one of the individuals who went all the way to 450 volts, that individual was told that such behavior was 'normal.'

While, statistically speaking, what the latter sorts of subjects were told might be true -- given that two-thirds of the subjects in the basic 'learning/memory' experiment continued on with the experiment to the 450-volt level -- Professor Milgram was continuing to manipulate the situation because at the time he ran the experiment he really didn't know why subjects were doing what they were doing. The 'obedience' theory arose after the experiment had been completed.

Consequently, Professor Milgram not only had deceived the subjects prior to and during the experiment. He continued to deceive them – and, perhaps, himself – once the experiment had been concluded because he was feeding those subjects a story rooted not in understanding but in ignorance.

Is it really 'normal' for people to be willing to continue to administer what they are led to believe are very painful shocks? Is it really 'normal' for a psychologist to induce people to believe that they are administering such shocks and that they are being permitted by psychologists and a prestigious university to continue on with such a process?

Is it 'normal' for subjects to be told that they have been betrayed by a someone who operates from within a prestigious university and, then, told – by implication – that it is perfectly normal for those acts of betrayal to be perpetrated in relation to people outside the university? Is it really 'normal' for psychologists to induce people to behave in a pathological

way and, then, for those people to be told that the behavior which has been manipulated into existence is a reflection of the subject's behavior rather than a collaboration among the university, the psychologist, and the subjects in which the former two participants were fully informed, whereas the subjects were kept in the dark?

Whose behavior was really being reflected in the experiment? Was it primarily that of the subjects whose trust had been betrayed by the experimenters, or was it primarily the behavior of the experimenters who were engaged in deception, manipulation, and inducing people to commit pathological acts?

Irrespective of the results from any given variation on the basic 'learning/memory' experiment, Professor Milgram sought to explain the experimental outcomes from the same perspective. More specifically, Professor Milgram believed that the phenomenon manifested during the 'learning/memory' experiment was one of: 'obedience.'

To explain the mechanism of 'obedience,' Professor Milgram refers to the idea of an 'agentic shift' that, according to him, occurs when people enter into an authority system. The phenomenological character of this shift involves a psychological/emotional journey from: viewing oneself as the source of the purposive agency of one's acts, to: viewing oneself as serving the interests of another agent – the individual who represents authority or hierarchy of some kind.

Notwithstanding the foregoing considerations, it is not clear that the aforementioned shift in attitudes concerning agency is a function of a desire to be obedient due to the presence of a system of authority. One could acknowledge that some form of 'agentic shift' in attitude might be taking place as one switches from one situation (in which an individual acts as his or her own agent) to another situation (one in which the same individual serves the interests of some form of authority or hierarchy), but such a shift in agency might give expression to something other than a desire to be obedient in the presence of hierarchy and authority.

When someone defers to another individual's perceived understanding, knowledge, or wisdom, the act of deferring is not necessarily a matter of displaying obedience. Rather, the individual who is doing the deferring is willing to cede his or her intellectual and/or moral agency to someone who the former person believes has relevant, superior knowledge in relation to a given situation.

The deference is not a matter of a person indicating that he or she will be obedient to the wishes of another individual. The deference is a matter of setting aside one's own ideas with respect to how to go about engaging a certain situation and, as a result, being prepared to go along with the understanding of the individual whom one believes to have competency in a given matter.

There is a difference between 'authoritativeness' and 'authority' … although we are often taught to consider the latter to be a sign of the former. Ceding intellectual and moral agency to the perceived authoritativeness of another individual is not about the phenomenon of 'obedience' or 'compliance' but, instead, such a ceding process is a 'coping strategy' intended to produce the best moral and intellectual outcome with respect to a given set of circumstances.

In various articles, as well as in his book: *Obedience to Authority*, Professor Milgram argued that there is an evolutionary advantage to being obedient to authority and hierarchy. Actually, if there is any sort of evolutionary advantage to be considered, it is one in which 'competency' prevails in a situation and not, necessarily, authority or hierarchy per se.

One is inclined to suppose that historical evidence is likely to indicate that actual competency in any given situation might stand a better chance of leading to a survival advantage than does authority or hierarchy considered in and of themselves. Ceding moral and/or intellectual agency to another person is an epistemological process in which one is weighing one's options with respect to attempting to successfully navigate a certain existential terrain with which one is confronted, whereas the issue of 'obedience' and 'compliance' has to do with someone's belief that one is obligated to surrender one's agency to the agenda of the person or persons who present themselves as authorities or who are representative of some sort of powerful hierarchy.

What is the relationship of an 'average' individual and a prestigious university like Yale with respect to the issue of taking part in a psychological experiment? Is Yale prestigious because it represents authority and hierarchy, or is Yale prestigious because people have come to believe – rightly or wrongly (and I state this latter possibility from the perspective of a Harvard graduate) – that people at Yale actually know something about the universe.

If someone at Yale says words to the effect that 'although the shocks delivered will be painful, nonetheless, there will be no serious tissue damage that will result from such shocks', does a subject exhibit obedience to such a statement because the experimenter is perceived to be an authority figure and a representative of a powerful hierarchy, or does a subject defer to such a statement because the subject believes that the experimenter knows what he or she is talking about, and, therefore, such presumed competence takes one off the moral and intellectual hook, so to speak, with respect to what constitutes appropriate behavior? Isn't a subject weighing the likely competency of the experimenter and deferring to that, rather than becoming obedient to authority per se?

When a double-blind experiment is set-up in order to eliminate the possibility that either the expectations of the experimenter and/or the subjects will prejudice or bias the nature of the experimental outcomes, the purpose of taking such precautions does not necessarily have anything to do with issues of authority figures or hierarchies (although in some cases this might be so). Instead, those precautions are taken due to the fact that experimenters and subjects engage any given experimental setup through an epistemological or hermeneutical perspective and, as a result, epistemic or hermeneutical expectations concerning the nature of an experiment can distort or bias those understandings in a manner that taints experimental outcomes.

When I was an undergraduate, I participated in quite a few psychological experiments in exchange for much needed money. I don't ever recall thinking that the experiments were being run by authority figures or members of a powerful hierarchy, and I don't recall ever perceiving those people to be authority figures or members of a powerful hierarchy.

I do recall trusting those people to know what they were trying to accomplish. I do recall considering those individuals to be intelligent individuals who were trying to find out whether, or not, certain things were true.

When I participated in those experiments, I might have conceded some facet of my intellectual and moral agency to the experiment because I perceived the individuals running them to be competent

researchers, but I had no idea where those people fit into the scheme of things with respect to issues of authority or hierarchy at Harvard.

I remember one experiment in which I participated as an undergraduate, and, to this day, I'm not really sure what those people were up to. There were two people, a man a woman, who introduced themselves as researchers of some kind … I forget what their credentials were – if they offered any at all.

I found out about the experiment from the same bulletin board that I found out about all the other experiments in which I took part. However, the 'experiment' was run in a private home in Cambridge rather than in a laboratory on the Harvard campus.

The nature of the experiment had a certain resonance with the Milgram experiment. Essentially, I was given a small device that delivered shocks, and I can assure you that the shocks were quite real.

Although the shocks were delivered by one of the two individuals present who were conducting the experiment, I was the one who was put in control of the level at which shocks could be administered. Once I had experienced one level of shock, I was asked if I would be willing to 'advance' to the next level.

The foregoing process went on for a number of rounds. I don't know what the actual level of voltage was when I terminated the process, but it was strong enough to cause spasms in my hand where the shocks were administered.

Once I indicated that I had had enough, the 'experiment' was over. I was paid and went on my way.

Many years later I learned about the psychological experiments that the 'Unibomber, Ted Kaczynski, had allegedly been involved in when he attended Harvard. Given the mysterious nature of the experiment outlined above, I wonder if I dodged a bullet of some kind since it is possible that Kaczynski was 'recruited' for the diabolical sorts of experiments that he subsequently endured by, first, volunteering for an experiment similar to the experiment that I encountered and that has been outlined above.

Whatever the actual intentions of the two individuals who conducted the foregoing experiment, I didn't look at those people as authority figures or as individuals who were part of some sort of powerful hierarchy

to whom I owed obedience. I had a strange job for which I was being paid, and I trusted that the two individuals would not place me in harm's way … although there really was no reason for me to trust them other than the fact that they presented themselves as researchers, operated out of a very nice home, and I found out about them through a bulletin board at Harvard.

A public announcement concerning an experiment appears in a newspaper or such an announcement is received in the mail. The names: 'Stanley Milgram' and the 'Department of Psychology' at 'Yale' are mentioned in the announcement.

Why should anyone feel that she or he should be obedient in relation to any of those names? Stanley Milgram might have been projecting onto his subjects when he supposed that visions of authority and hierarchy would be dancing through the minds of those individuals when they responded to the announcement concerning the 'learning/memory' experiment.

When a subject shows up for the arranged experiment, he or she is not necessarily met by Stanley Milgram. Rather, the subjects are greeted by some 'underling' – who, unknown to the subjects, is actually a biology teacher from an area high school.

Is wearing a white lab coat at Yale University and carrying a clip board enough to induce someone to become obedient? Not necessarily, but it might be enough to induce a given 'subject' to be prepared to cede a certain amount of intellectual and moral agency to such a person who is likely to be perceived as possessing an understanding of the experiment being run and that when that person says 'no serious tissue damage will result from the shocks' being delivered during the experiment, one defers to such a statement because one believes (or hopes) the individual knows what he is talking about … and not because that person is an authority figure or the representative of a powerful hierarchy.

For example, Professor Milgram attempts to explain the difference in results (48 % versus 65 % of the subjects went to the 450-volt level) between the Bridgeport edition of the 'learning/memory' experiment and the Yale version of the same experiment as being due to the fact that one would expect that subjects would be less likely to be willing to be obedient to, or compliant with, a company – namely, Research Associates of Bridgeport – than they would be willing to be obedient to Yale

University, a powerful institution. Alternatively, one also could explain the differences in experimental results between the two editions of the 'learning/memory' experiment by supposing that subjects might consider the members of Research Associates of Bridgeport to be less competent or knowledgeable (or less trustworthy) than researchers at Yale and, therefore, those subjects might be less willing to cede their intellectual and moral agency to the Bridgeport group than the Yale group, and, therefore, more willing to discontinue the experiment in the former case rather than in the latter instance.

Research Associates of Bridgeport – a complete unknown to subjects – might be considered to be willing to let people be injured during the course of an experiment … after all there are all too many businesses that will hurt people for the sake of profit. On the other hand, Yale University – a much better known entity – might be seen as an organization that would not be willing to let such things occur … or, so, the thinking might go.

None of the foregoing considerations necessarily has anything to do with issues of authority, hierarchy, or obedience. The foregoing issues have more to do with what is known or believed or trusted and, whether, or not, one believes that one can cede one's intellectual or moral agency to someone without that ceding process being betrayed.

Throughout the Milgram 'learning/experiment,' subjects are assured that no harm will come to the 'learners.' Yes, the 'learners' might experience some painful shocks, but the subjects are always led to believe – whether implicitly or explicitly – that the 'learners' will be okay.

The issue is not 'obedience' but 'trust'. People are more likely to be willing to cede their intellectual and moral agency when, in some manner, they trust the individual to whom that agency is being ceded.

The researchers at Yale were trusted because they were perceived to have competency with respect to the 'learning/memory' experiment, and this included such matters as whether, or not, anyone might be seriously harmed through that kind of an experiment. However, the point at which someone will retrieve the ceded intellectual and moral agency will vary from person to person.

Some people in the 'learning/memory' experiment were not prepared to let the experiment run very far before they decided that they

– rather than the researchers at Yale University – should be the agents who decided how much pain was enough irrespective of what the experiment required. Other individuals were prepared to cede their moral and intellectual agency for a longer period of time … and some of these individuals were ready to continue ceding their moral and intellectual agency until the experiment was called off by the experimenters.

When subjects began to question whether, or not, it was wise to continue to cede their moral and intellectual agency to the researchers as a result of the feedback the 'teachers' were receiving from the 'learners' concerning the pain that was caused when the toggle switches were depressed, the person conducting the experiment was always present to reassure the subject in a calm, non-threatening manner, that the subjects needed to continue on with the experiment and, thereby, the experimenter sent the implicit message that everything was okay despite the reports of pain and protest from the 'learner.' Furthermore, when the 'teachers' mentioned the fact that the 'learners' were indicating that they did not want to participate in the experiment any longer, the person running the experiment indicated that the 'learner's' wishes were irrelevant to the process, thereby, once again, sending a message to the 'teacher' that despite the pain and protests, it was okay to continue on with things since, implicitly, the experimenter was communicating the message that no one would be, hurt in any serious fashion, despite the cries and protests of the 'learner'.

The struggle that 'subjects' went through in the Milgram 'learning/memory' experiment was not one of whether, or not, to remain obedient to an authority figure or to the representative of a powerful hierarchy. The struggle was about whether, or not, to continue ceding one's moral and intellectual agency to someone who might not necessarily know what they were doing or to someone who might not be trustworthy with respect to protecting everyone's interests.

The more that 'learners' howled with pain and protested the situation, the more 'teachers' were reminded of the nature of the problem with which the latter individuals were faced. Should they continue to cede their moral and intellectual authority to an individual who seemed indifferent to the pain being experienced by the 'learner?'

Did it make sense to continue to trust that kind of an individual – i.e., the experimenter -- to be the keeper of the 'teacher's' moral and

intellectual agency? If, and when, an individual broke from the experiment and refused to continue on with the shocks, that person had reached the point where she or he had made the decision to reclaim the moral and intellectual agency that had been ceded to the experimenter at the beginning of the experiment.

Many of the subjects never reached that point. There might have been many reasons for their failure to reclaim their intellectual and moral agency.

For instance, a subject might be experiencing difficulties with: 'self-image;' or, not wanting to have to deal with the possible embarrassment that might be experienced because one chose to opt out of the experiment; or, not wanting to disappoint another individual; or, lack of assertiveness; or, the possibility that by opting out, one might be interfering with the acquisition of knowledge; or, the belief that one should finish a job for which one was being paid; or, not wanting to waste the time of the experimenter by failing to complete the experiment; or, not wanting to have to deal with the possible unpleasantness that might ensue from the conflict or hard feelings that might arise from not continuing on with the experiment. None of the foregoing factors necessarily has anything to do with issues of 'obedience,' 'authority,' or 'hierarchy.'

When the biology teacher who played the 'role' of the experimenter witnessed the distress he was causing the 'teachers' by continually prompting the latter individuals to continue on in the experiment despite their obvious anguish and uncertainty with respect to causing the 'learners' pain, did that biology teacher continue on with what he was doing out of a sense of obedience to Stanley Milgram and Yale University? Surely, the whole experimental set-up would have been explained to him prior to the running of the experiment, and irrespective of whether, or not, the high school biology teacher was being paid for his participation or he was volunteering his services, he probably did not accept the job out of a sense of obedience to either Milgram or the university but did so for other reasons … reasons (such as curiosity, friendship, wanting a challenge, and so on) to which he conceded his intellectual and moral authority.

Even more to the point, Stanley Milgram did not continue on with witnessing the pain of the 'teachers' as they struggled with their moral

and intellectual dilemma out of a sense of obedience to Yale University. He was pursuing his own research interests quite apart from issues of authority and hierarchy relative to Yale University.

Professor Milgram continued to shock his subjects in experiment after experiment after experiment via the moral and intellectual struggle to which he subjected them in the 'learning/memory' research project. He did so because he had conceded his intellectual and moral agency to pursuing a certain kind of research project, and this was done quite apart from issues of obedience, authority, or hierarchy.

What implications, if any, follow from the Milgram 'learning/memory' experiment with respect to the present book? I believe the implications are many and quite direct.

Like the Milgram experiment, the American people have been deceived about and manipulated with respect to the nature of the allegedly democratic experiment that was given expression through the Philadelphia Constitution … and evidence supporting such a contention has been presented in the first seven chapters of this book. More specifically, the American people have been told that the constitutional process is an exercise in self-governance when nothing could be further from the truth since the ones conducting the experiment have near total control over what transpires within the framework of that experiment.

The reality of the situation is that the Philadelphia Constitution and its concomitant ratification process are an exercise in inducing the subjects in the democratic experiment (i.e., the people) to cede their moral and intellectual authority to the experimenters – that is, the individuals who are conducting the experiment (i.e., the government authorities). Once ceded, the experimenters make use of an elaborate console apparatus that has been constructed by the experimenters (the process of governance) to allow the people to deliver shocks to one another by flipping this or that switch of governance and constitutionally permitted legal maneuvering.

Like Milgram, the individuals conducting the American experiment in democracy, have – after the fact -- put forth the idea that the whole set up of governance is a function of the obedience and sense of obligation that people should feel in the presence of what has been described as

"legitimate" authority and hierarchy. Moreover, like Milgram, the ones conducting the experiment in democracy, debrief the citizens in a way that is intended to persuade the latter individuals that being willing to depress toggle switches that those individuals believe will harm other people is quite 'normal' and that it is perfectly 'normal' for the ones conducting the experiment to permit this to happen and that it is perfectly 'normal' for the organizational framework within which this all transpires (Yale University in the case of Milgram and the Philadelphia Constitution in the case of the ones conducting the experiment in democracy) to permit that kind of pathology to continue.

Although the subjects in the Milgram experiment never actually administered any shocks – except to themselves – Milgram, himself administered all manner of emotional and psychological shocks to the individuals he had manipulated to participate in his experiment. Undoubtedly, Professor Milgram believed that the purposes for which the experiment was being conducted were noble ones … even if he didn't actually understand what was going on while he was running his experiments.

Similarly, the individuals – e.g., Madison, Washington, Hamilton, and 53 other individuals who concocted the Philadelphia Constitution – believed that their purposes were noble ones – even if they – like Milgram -- didn't necessarily understand what they were doing. Furthermore, like Milgram, the Founders/Framers were the ones who established a framework that would deliver shocks of various levels of severity to individuals (e.g., Blacks, women, Indians, the poor, the disenfranchised) and, like Professor Milgram, those Founders/Framers (along with their subsequent apologists) sought to rationalize such a set up by pointing to the noble intentions with which their project was supposedly undertaken.

Like the administrators at Yale University in the 1960s, the members of the Continental Congress, looked the other way and permitted something unethical to take place. In other words, just as the members of the Continental Congress permitted the provisions of the Articles of Confederation to be violated by illegitimately transferring the issues surrounding the Philadelphia Constitution over to the ratification process, the Yale University administrators permitted provisions of common, moral decency to be violated through the manner in which the Milgram experiment was allowed to deceive and manipulate people, as well as the

manner in which those experiments put their subjects through emotional and psychological turmoil.

The subjects involved in the experiment set in motion through the Philadelphia Convention (i.e., 'We the People') have the same choice that the subjects had in the Milgram experiment. They can continue to cede their moral and intellectual authority to people who do not have their best interests at heart, or those subjects can defy the ones conducting the experiment and opt out of that process.

As is the case in the Milgram experiment, whenever subjects (i.e., citizens) exhibit doubts about the pain that is being inflicted on people via the experiment in democracy, those subjects are 'handled' through the presence of a representative of the experiment (in the form of: government officials, the educational system, the media, and/or the court system). Whenever subjects begin to harbor doubts and are considering the possibility of retrieving the moral and intellectual agency that they ceded at the beginning of the experiment, such handlers, like the biology teacher in the Milgram experiment, say: (1) 'Please continue on;' or, (2) 'The experiment requires that you continue;' or, (3) It is absolutely essential, that you continue;' or, (4) 'You have no other choice, you must go on;' or, (5) 'Although the shocks might be painful, there is no permanent tissue damage, so please go on;' or (6) 'Whether the learner likes it or not, you must go on until he has learned all the word pairs [of democracy] correctly.'

Like the biology teacher in the Milgram experiment, such 'handlers' of democracy use the foregoing prompts – as well as other similar ones -- in a calculated sequence of increasingly rationalized responses that are designed to prevent subjects from retrieving the moral and intellectual agency that such subjects ceded at the beginning of the experiment. The foregoing 'handlers' of democracy are like the sirens of *The Odyssey*, singing seductive songs of vested interests, responsibility, and duty in order to lure unsuspecting sailors (subjects, citizens) to serve the agenda of the ones who are conducting the experiment.

There are, of course, some differences between the Milgram experiment and the experiment in democracy being run through the console of the Philadelphia Constitution. In the Milgram experiment, nothing more than words were used to attempt to induce subjects to continue ceding their moral and intellectual agency to the experimenters.

Once subjects understood that the only thing preventing them from retrieving the moral and intellectual agency they had ceded to the experimenters were nothing other than the beliefs and trust of the subjects, themselves, then the subjects were free to disengage themselves from the experiment … although nearly two-thirds of those individuals were never able to reach this point of realization.

However, in the case of the experiment in democracy that was designed by the Founders/Framers (and continued on by their ideological heirs), realizing that one can retrieve one's moral and intellectual agency (as I did when I was on the bus going to Charlestown Naval Base for purposes of taking a physical to determine my readiness to serve the military during the Vietnam War), is not the end of the story. There are very real extra-linguistic consequences that will be inflicted on any of the subjects participating in the experiment in democracy who have an epiphany concerning the issue of ceding or not ceding one's moral and intellectual agency to the experimenters – that is, the ones who are conducting the experiment in democracy.

Economic sanctions, career sanctions, being socially ostracized, legal sanctions, police action, military intervention, and, of course, being demonized through the media all await anyone who seeks to defy the 'credibility' of the individuals conducting the experiment in democracy by trying to reclaim their moral and intellectual agency. Oftentimes – but not always -- verbal warnings of one kind or another will be given first, and then, when deemed to be necessary, sanctions of one sort or another will be applied in order to discourage the subjects in the experiment from reclaiming their moral and intellectual agency.

Another difference between the Milgram project and the experiment in democracy that was unleashed upon society through the Philadelphia Constitution concerns the size of the 'reward' that is associated with the respective experiments. $4.50 per hour in the Milgram experiment pales in comparison to the thousands and millions of dollars that will be given to individuals who are willing to continue to cede their moral and intellectual authority to the people who are conducting the experiment.

In the Milgram experiment, only words were used to prevent people from reclaiming their moral and intellectual agency. Under those circumstances, nearly two-thirds of the subjects were willing to continue to cede their agency to the experimenters.

When money and other 'perks' enter the picture and are used to subsidize the experiment in democracy, many more than two-thirds of the subjects are likely to be willing to forgo their own moral and intellectual agency in order to continue benefitting, financially and materially, from the experimental set-up. When the punishments that can be brought to bear on individuals who seek to reclaim their moral and intellectual agency are factored in, one should not be surprised that very few of the subjects in the experiment in democracy ever arrive at the point of either wanting to opt out of such a project or to actively follow through on that kind of a desire.

One might venture to hypothesize that one of the reasons why nearly two-thirds of the subjects in certain versions of the Milgram experiment were willing to continue ceding their moral and intellectual authority to the individuals conducting the experiment is because in many societies – including America – people are conditioned from a very early age to cede their moral and intellectual agency to others -- whether these others are: parents, family, peers, teachers, religious figures, politicians, leaders, the military, or the media – who we are told are 'trustworthy.' The presence of a sense of duty in those cases is a function of the conditioning process that is used to induce people to continue on ceding their moral and intellectual agency to those who wish, for whatever reason, to control things by manipulating our sense of – possibly -- misplaced trust concerning them.

In August of 1971, Philip Zimbardo conducted an experiment known as the Stanford Prison Experiment. Apparently, Zimbardo didn't have any deeper insight into his 'prison' experiment than Milgram had with respect to his own 'learning/memory' experiment, and the reason I suspect that the foregoing claim is true is because Professor Zimbardo had to stop his experiment less than six days into a scheduled two week experiment due to serious, unforeseen consequences, and Milgram didn't come up with a theory that purported to explain his experiment (incorrectly I believe) until well after the experiment had ended.

As pointed out previously, the Milgram study is, I believe, an exploration into the realm of ceding and reclaiming moral and intellectual agency in relation to individuals who are (rightly or wrongly) trusted -- and, therefore, it is not (as Professor Milgram claimed) a study concerning

the issue of 'obedience.' On the other hand, I believe that the Zimbardo experiment explores (although Professor Zimbardo does not understand his experiment in this way) what happens when people are ceded authority and, then, proceed to try to leverage what has been ceded to them in order to control other people.

Certain subjects in the Stanford experiment – namely, those who were referred to as 'guards' – were ceded moral and intellectual agency by Professor Zimbardo. What I mean by the foregoing statement is that although Professor Zimbardo was conducting the experiment, his experimental design required him to cede some of his own moral and intellectual authority to those who were playing the role of 'guards' so that the experimenters would be able to observe how, or if, such ceded agency would be used by the 'guards.'

For six days, Professor Zimbardo didn't understand the nature of the forces that he had set loose in his experiment. Finally, it dawned on him – and someone else had to bring him to such a realization – that he had to stop the experiment because what was taking place in the experiment was abusive.

Just as Professor Milgram was an active perpetrator of abuse in his 'learning/memory' experiment – although the 'dirty work' was carried out by the biology teacher who was the face of the experiment – so too, Professor Zimbardo was an active perpetrator of abuse in his experiment – even though the 'guards' in his experiment were the ones who were doing the actual 'dirty work.' I believe the foregoing contention is justified because Professor Zimbardo was the individual who had enabled some of the guards to do the abusive things they did since, as the individual who was responsible for starting and stopping the experiment, he was the one who ceded to the experimental subjects some of his own moral and intellectual agency in order to permit it to occur.

While Professor Zimbardo would not have understood what he was doing in the following terms, nonetheless, in effect, when he stopped the experiment, he was reclaiming his moral and intellectual agency. Professor Zimbardo, of course, did not see his actions – either at the start of the prison project or in relation to the termination of that experiment -- through the lens of ceding and reclaiming moral agency since he had a quite different theory that will be discussed and critiqued a little later on

in the current chapter … but, first, let's take a look at the structural character of the Stanford Prison Experiment.

Like the Milgram experiment, the Stanford Prison Experiment begins with the placing of an advertisement in a number of newspapers. The ads are directed at college students (this is a different target subject pool than was the case in the Milgram 'learning/memory' experiment that wanted to study the actions of people from the general public), and the Zimbardo ad indicates that the proposed study involves some sort of prison experiment.

Those who choose to participate in the experiment will be paid $15.00 a day. Given that the subjects in the Milgram experiment were paid $4.50 for an hour of their time and given that nearly ten years have passed since that experiment had drawn to a close, obviously the value of a student's time is not considered to be worth much … except to those (i.e., the experimenters) who hoped to leverage the situation to gain empirical data that might be of value to them.

The experimental budget totaled just over $5,000 dollars. The money was provided by the Office of Naval Research.

The 14-day experiment is to take place in the basement of the Department of Psychology as Stanford University. A prison-like structure had been built in that location.

Approximately a hundred men respond to the newspaper ads. The potential candidates are interviewed extensively, and they also are administered a variety of psychological tests.

Based on the results of the foregoing interviews and tests, the larger pool of individuals is, then, whittled down to 24 individuals – the experimental sample group. The experimenters have attempted to eliminate anyone who they thought might skew the experiment … such as individuals who have medical or psychological problems, or people with a prior record of arrest.

As far as possible, the experimenters were trying to select average, normal, and healthy individuals. The experimenters were looking for subjects who, in a variety of ways, are fairly representative of middle-class students in general.

Not all of the subjects are full-time students at Stanford. Most of the subjects came from elsewhere in North America and were attending summer school in the Bay area.

The individuals who are finally selected for the experiment are divided into two groups – 'prisoners' and 'guards.' Assigning people to one or the other group is done by flipping a coin … heads and a student becomes a 'guard', while tails lands a student in the 'prisoner' group.

The 'guards' are not provided with any training. However, those assigned to that group do go through a relatively brief orientation process.

During the latter process, the 'guards' are told that while violence of any kind against the 'prisoners' will not be permitted, nonetheless, the 'guards' are tasked with maintaining law and order, and this includes not permitting any of the prisoners to escape.

There is one further point made to the 'guards' in the orientation process. The experimenters want the 'guards' to create a sense of powerless in the 'prisoners.'

According to Professor Zimbardo, the purpose of his project is to try to develop an insight into the sorts of changes that might take place within an individual – whether a 'prisoner' or 'guard' -- during the course of the experiment. However, the alleged 'purpose' of the experiment is just another way of saying that the experimenters are on a fishing expedition for data and have no clear understanding of what actually will transpire during the experiment … just as had been the case in the Milgram experiment.

Professor Zimbardo claims that he wanted to determine if it was possible, within the space of two weeks, for subjects – whether 'guards' or 'prisoners' – to assume new identities as a result of the circumstances in which they were embedded. The foregoing intention assumes that Professor Zimbardo understands the nature of identity to begin with – which I don't believe he did any more than most researchers do – and, in addition, Professor Zimbardo seems to have failed to consider the possibility that whatever changes in behavior that might be manifested during the two week period, such changes could be more a reflection of how various social and psychological dynamics can induce different dimensions of one and the same identity to manifest themselves rather

than constituting changes in actual identity ... moreover, there is also the possibility that choice – that is, personal agency – could determine which dimension of identity is, or is not, manifested under those circumstances.

After signing release forms, the students who are assigned to the 'prisoner' group are told to be ready and available for the study beginning on Sunday, August 14, 1971. They are not informed about the nature of the means through which they would enter the experiment.

The way in which the experiment starts is, more or less, the same for each of the individuals who have been assigned to the 'prisoner' group. A police car arrives at the 'prionser's' places of residence, and uniformed police officers wearing mirrored, aviator glasses bang on the door of the residence.

'Arrests' are made. Handcuffs and blindfolds are applied to the 'prisoners' – the blindfolds are used to disorient the 'prisoners' and prevent them from knowing where they are going.

The 'prisoners' are placed in the back seat of the cruiser. They are, then, transported to the basement of the Department of Psychology at Stanford University.

Once the 'prisoners' are led down a stairway to the 'prison area,' they are ordered to take off all their clothes. After this is done, the prisoners are told to stand with their arms against the wall with their legs spread apart.

A powder of some kind is thrown on the prisoners. They are told that it is a delousing agent.

Some of the 'guards' begin to make remarks about the size – or lack thereof – of the genitals of the 'prisoners.' Attempts by the guards to humiliate, embarrass, ridicule, and disempower the 'prisoners' have begun.

Eventually -- after a lengthy wait while remaining naked -- the 'prisoners' are given hospital-like, tan gowns to wear. Different numbers are printed across the front of the gowns of each of the 'prisoners.'

The 'prisoners' are not permitted to wear underwear. Consequently, whenever they bend over in their hospital-like gowns, their rear ends are exposed to whoever is nearby.

In addition, the 'prisoners' hair is covered with a nylon stocking. This particular part of the 'prisoner's' attire is intended to serve as the equivalent of the shearing of hair that prisoners experience when processed into actual prisons.

The 'prisoners' are given rubber clogs to wear on their feet. Moreover, a chain is placed around one ankle and locked as a constant reminded of the individual's status as a prisoner.

Once the 'prisoners' have been outfitted in the foregoing manner, their blindfolds are removed. Mirrors have been place against the wall opposite to the 'prisoners' so that they can view the transformation in appearance that has taken place.

'Prisoners' are told they must only refer to one another by the 'numbers' that appear on their hospital-like gowns. Furthermore, 'prisoners' are instructed to address the 'guards' as 'Mr. Correctional Officer.'

Events occurring in certain portions of the prison area outside the cells can be videotaped. The camera is hidden.

There is a camouflaged viewing area near the video camera. However, what can be seen and taped is restricted to the area in front of, and near, the location of the viewing area and camera.

Due to considerations of expense, the video camera does not run continuously. It will be turned on only in relation to certain occasions – e.g., during: 'prisoner' count-offs, some meal times, anomalous events of various kinds (such as 'prisoner' disturbances), and a few, scheduled family visits.

The cells of the 'prisoners' are bugged with microphones hidden in the indirect lighting assemblies for each cell. Many – but not necessarily all -- of their verbal comments are capable of being recorded in this way, but the hidden video camera is not able to provide a visual record of what takes place in those cells.

The 'prisoners' are presented with a list of 17 rules. In addition to the already mentioned requirements to refer to the 'prisoners' only by number and to address the 'guards' as 'Mr. Correctional Officer,' the 'prisoners' are also instructed to follow such rules as: Remaining silent during meals, rest periods, and at night, once 'lights out' has been announced; being required to participate in all prison activities; refraining

from tampering with or damaging any of the private property in the prison area; reporting all violations of the rules to the guards; obeying all orders that are given by the 'guards; and standing whenever the 'prison' warden or superintendent visits a 'prisoner's' cell.

The 'prisoners' are informed that activities such as smoking or receiving mail and visitors are privileges that can be suspended. Moreover, in any one hour period, the prisoners are only allowed one, five minute visit to the bathroom and those visits will be regulated by the 'guards.'

Finally, the 'prisoners' are told that any failure to comply with the 'prison' rules could be followed by some sort of 'punishment.' Whether, or not, that punishment will occur and the nature of the punishment will be up to the 'guards.'

During the course of the experiment, one of the usual forms of punishment is to order 'prisoners' to do x-number of push-ups for their failure to observe one, or another, of the foregoing 17 rules. However, an isolation box (a small closet in the wall opposite the row of small offices that have been converted to cells) also is available to punish 'prisoners' if the usual methods of punishment prove to be ineffective.

The isolation room is completely dark. It is only big enough to permit an occupant to stand, sit, or squat.

At the 'guards' discretion, the 'prisoners' can be ordered to gather together and commanded to voice, one at a time, the number on the front of their hospital-like gown. These 'prisoner' count-offs are done at certain times – such as in the morning and at night – to determine that all 'prisoners' are present and accounted for, but, eventually, the count-offs will develop a punitive character through which the 'guards' demonstrate to the 'prisoners' that the latter are completely powerless while the 'guards' are all-powerful.

'Prisoners' are told prior to the experiment that they are free to leave the 'prison' at any time. However, whether this rule will actually be honored is another matter, for like the Milgram experiment, there are certain procedures designed to induce 'subjects' to continue on with the experiment.

For instance, as previously indicated, one of the instructions given to the 'guards' is to prevent 'prisoners' from escaping. Presumably, escaping

could be understood to be an indication that a 'prisoner' does not want to continue on with the experiment, and, yet, the guards have been instructed to stop the 'prisoners' from escaping ... so how free the 'prisoners' are to disengage from the experiment is a somewhat ambiguous issue.

The 'guards' are divided into three groups. Each group takes a different shift.

The 'guards are outfitted with: Uniforms, sunglasses, whistles, handcuffs and nightsticks. The 'guards' are required to keep a log that is supposed to contain a running summary of what takes place during each shift.

There is 'prison' warden and a 'prison' superintendent. The former individual is played by a psychology student working with Professor Zimbardo, while the 'superintendent' is played by Professor Zimbardo himself.

The foregoing two individuals – along with some other individuals -- are intended to serve in a 'prop'-like or supporting-role capacity in the experiment. They are not considered to be subjects in the experiment.

During the first day, the 'prison' warden informs the 'prisoners' that there will be a 'Visiting Night' in the near future. Subject to the discretion of the 'guards,' 'prisoners' will be permitted to invite members of their family or close friend to visit with them in the 'prison.'

The method of invitation will be through the writing of letters. The warden provides the 'prisoners' with pens for this purpose, but indicates that whether, or not, the letters will be sent will be up to the 'guards.'

The structural character of the 'prison' experiment is designed to induce the subjects who are 'prisoners' to cede their sense of agency much more than is the case with respect to the subjects who are 'guards.' Maintaining law and order through non-violent means is about the only requirement that the 'guards' are required to observe, whereas the 'prisoners' have been assigned a prison identity that is shaped by: 17 rules, plus confinement, and a humiliating dress code.

On the one hand, a sense of agency has not only been taken away from the 'prisoners', but the message is communicated that such 'agency' is not relevant to the experiment. On the other hand, the sense of agency

of the guards has been enhanced because the 'guards' have been enabled by the experimenters to do whatever the 'guards' like in relation to the 'prisoners' as long as what is done is of a non-violent nature.

Unlike 'prisoners', 'guards' are implicitly informed -- through the structural character of the experiment -- that their sense of agency does matter to the experiment. The 'guards' are the ones who are to act upon the 'prisoners.'

The 'prisoners' are, in effect, told that in order for them to receive their $15.00 dollars a day, they must give up their sense of agency. The model 'prisoner' is one who has no sense of agency at all.

However, the 'guards' are, in effect, told that in order for them to be able to receive their $15.00 dollars a day, they can do whatever they like as long as they: Do not transgress the guidelines on violence, take their shifts, and help keep a log book. The model 'guard' is one who will 'run' with the sense of 'enhanced agency' that they have been given by the experimenters ... after all, the 'guards' have been provided with no sort of 'moral' or intellectual training to suggest that they should do otherwise.

The 'guards' are implicitly, if not explicitly, informed by the experimenters that their task is not necessarily to be moral 'guards' or 'decent people.' Instead, the 'guards' have been told that a central part of their job will be to make the 'prisoners' feel as powerless as possible and that such a sense of 'powerlessness' is the 'proper' mind-set for a prisoner.

The character of the experiment is heavily skewed toward reinforcing the sense of personal agency of the 'guards', while discouraging the sense of agency among the 'prisoners.' This is not about role playing within a defined social situational context or a matter of how the behavior of individuals will be a function of the situation or the role being played, but, rather, it is a matter of what happens to people when their sense of personal agency is manipulated.

If a person is successfully induced to cede his or her intellectual and moral authority – as is the case with respect to the 'prisoners' in the Stanford Prison Experiment -- then the agency of that sort of an individual will be impaired and, as a result, become dysfunctional. Under those circumstances, an individual is likely to become vulnerable to the whims

of those who have retained agency in some fashion within that social framework.

If, on the other hand, a person is successfully induced to believe that his or her agency has been enhanced through the support of a system – for example, the people conducting the prison experiment – and that the only restriction on such an enhanced sense of agency involves avoiding violence, then this sort of individual has been freed or enabled to invest the situation with whatever aspects of his or her imagination or fantasy life that she or he likes ... as long as those investments are deemed to be consonant with the issue of non-violence. Therefore, the 'role' of the guard is ill-defined and open to the interpretation of the individual who is playing the role, while the 'role' of the 'prisoner' is defined in considerable detail and very little room, if any, is left to the interpretive discretion of the individual.

Consequently, the situation or social roles, per se, are not necessarily the determining factor with respect to the behavior of the guards. Rather, what shapes behavior is, in part, a function of what has happened to the realm of personal agency, and whether, or not, that sense of agency has been either undermined in dysfunctional ways or enabled to explore various psychological and emotional possibilities that have not been clearly defined by the experimental situation.

For example, within the first day of the experiment, there is struggle for dominance among some of the 'guards' with respect to how abusive (in a supposedly non-violent way) 'guards' should be toward the 'prisoners.' At least one of the 'guards' already has begun to be quite creative in the ways in which he is prepared to abuse the 'prisoners,' while some of the other 'guards' question whether those sorts of tactics are necessary.

Professor Zimbardo refers to the foregoing process as one of adapting to the role of being a 'guard.' However, since there is nothing in the 'role' of being a 'guard' that says one must seek to dominate other 'guards' or that one must be 'abusive' in creative ways with respect to the prisoner, then this is more a matter of 'guards' inventing that role in the image of their own personalities rather than of 'guards' adapting to some sort of situational role.

Furthermore, when 'guards' are observed to begin taking pleasure in relation to the abuse that they can inflict on other human beings, that

pleasure is not a matter of adapting to the role of being a 'guard.' Rather, this dimension of pathology is something that some of the subjects brought with them to the experiment and chose to cede their moral and intellectual agency to during the course of the 'prison' project.

The foregoing facet of things indicates that whatever psychological tests and in-depth interviews have been conducted by Professor Zimbardo, they were not sufficiently sophisticated to provide insight into the pathological potential that can be present in the dynamics of 'normalcy.' Although the tests and interviews being alluded to above were able to eliminate a variety of people from consideration for the experiment, nonetheless, those same tests and interviews permitted a number of other individuals to slip through the interstitial cracks that were inherent in those evaluation procedures, and these latter individuals were part of the reason why the experiment had to be terminated earlier than scheduled – although, perhaps, the primary reason for the early termination of the experiment might have more to do with the conduct of the experimenters than with the conduct of the 'guards' since the former enabled the latter to transgress certain limits that had been contractually established prior to the experiment being run.

There is also a problem of ambiguity surrounding the meaning of non-violence in the Zimbardo experiment. For example, how does one address the question of: What is the difference between physically assaulting someone and emotionally, verbally, and psychologically assaulting that same individual?

To be sure, physical assault can cause pain, but pain can also be created through verbal and emotional assaults. Physical assaults can leave scars, but this is also true in the case of verbal and emotional assaults. Physical assaults can lead to post traumatic stress disorder, but a great deal of clinical data indicates that verbal and emotional assaults – if sufficiently persistent --can lead to the same sorts of problems.

Abuse is not just about the physical blows that are rained down on an individual. Just as importantly – and, perhaps, more so – is the emotional, psychological and verbal abuse that is directed toward a person.

Perhaps somewhat counter-intuitively, it is the emotional/psychological abuse within, say, a domestic relationship that induces a person to give up their personal agency and remain in a physically abusive environment. Consequently, I find it interesting that

the 'guards' in the Stanford Prison Experiment were instructed to do, in a non-violent way, whatever they could to make the 'prisoners' feel completely powerless, and yet, the 'prisoners' were not instructed to do, in a non-violent way, whatever they could to hold onto their sense of personal agency.

There is also a certain amount of inconsistency in the Stanford Prison Experiment with respect to the rule that allegedly prohibits the use of physical violence in relation to the 'prisoners.' During a change of shift in the first day, or so, of the experiment, one of the 'guards' who is leaving the facility yells out to the 'prisoners' and asks them whether, or not, they enjoyed their 'count-offs' during which the 'prisoners' were forced to do all kinds of push-ups and jumping jacks when they didn't count off their 'prisoner' numbers in a way that was pleasing to some of the guards.

One of the 'prisoners' replies from within his cell that he did not enjoy the counts. In addition, the defiant 'prisoner' gives a raised, closed fisted salute and says: "All power to the people!"

Immediately, a number of 'guards:' Storm the cell of the 'lippy' prisoner, physically drag the 'prisoner' to the isolation room (i.e., storage closet), force the 'prisoner' into the closet, and lock the door. How is this not an act of physical violence?

Yet, there is no indication in his book, *The Lucifer Effect*, that Professor Zimbardo intervened in any way and informed the guards that they were not permitted to physically drag 'prisoners' out of their cells or force prisoners into closets. Therefore, while there was a purported rule on the 'books' which said that the 'guards' could not use physical violence, ambiguity was generated – both in the 'guards' as well as the 'prisoners' -- when the rule concerning non-violence was not strictly enforced by the people conducting the experiment.

Another one of the rules imposed on the 'prisoners' concerns the time limit for taking bathroom breaks. The 'prisoners' are only permitted five minutes to finish their business.

Some of the 'prisoners' complain. They claim they are too tense to finish things within the allotted five minute period, but the 'guards' insist on ensuring that the time-limit is observed.

Having experienced the pain of needing to urinate but, for whatever reason, not being able to, I can empathize with the dilemma of the

prisoners. Consequently, intentionally inflicting this kind of pain on someone really is a form of physical violence, and, yet, nothing is said about the situation by the experimenters ... further enabling the 'guards' to physically impose a form of violence on the 'prisoners' despite the presence of the alleged 'no violence' rule.

During an overnight shift, the 'guards' -- in conjunction with the 'prison warden' (who is not an experimental subject ... although, perhaps, he should have been) – come up with a plan for greeting the 'prisoners' during the change in shift that is to take place at 2:30 a.m.. The 'guards' will stand near to the cells of the 'prisoners' and blow their whistles loudly.

The possibility that physically assaulting the ears of sleeping 'prisoners' at 2:30 in the morning might be considered by some to constitute a form of violence seems to escape the 'guards' and, even more inexplicably, the 'warden'. On the other hand, the experimenters already have looked the other way with respect to several forms of physical violence (e.g., dragging a 'prisoner' out of his cell and forcing him into an isolation closet or forcing 'prisoners' to urinate on command), and, therefore, permitting the 'guards' to push the envelope a little more in this direction is allowed to pass by the wayside without comment.

The rude awakening of loud whistles at 2:30 in the morning is followed by a series of physical punishments in the form of forced push-ups and jumping jacks when the 'prisoners' don't perform the count-offs of their numbers to the satisfaction of one, or more, of the guards. The possibility of being dragged off to the isolation room by the 'guards' silently haunts the horizons of the sleepy consciousness of the 'prisoners,' and, therefore, the push-ups and jumping jacks are performed under the threat of physical violence -- of a kind – for any acts of non-compliance ... another 'degree of freedom' extended to the understanding of the 'guards' with respect to the rule concerning no physical violence.

At another point during the first couple of days of the experiment, one of the 'guards' is startled by something that one of the 'prisoners' does and, as a result, pushes the 'prisoner' and, then, uses his fist to hit the 'prisoner' in the chest. Apparently, nothing is said to the 'guard' indicating that such an act is a violation of the 'no physical violence' rule.

On another occasion, a 'prisoner' narrowly misses having his hands – which are extended between the bars of the cell – struck by a nightstick

wielded by one of the 'guards' who dislikes how and where the hands of the 'prisoner' have been placed. This is another show of physical violence that is ignored by the people running the experiment.

Again, within a day, or so, of the experiment's beginning, one of the 'guards' takes a cylinder of extremely cold carbon dioxide and sprays it into the cell of several prisoners in an attempt to force the latter individuals to move toward the back of their cell. This would seem to be an act of physical violence – and a potentially dangerous one -- but, apparently, the people running the experiment have labeled it as being something other than what it appears to be.

During another incident, three 'prisoners' are stripped naked and their beds are taken away. I am having difficulty envisioning how forcibly stripping three 'prisoners' naked would not involve acts of physical violence.

Another 'prisoner' has been complaining of a headache. According to Professor Zimbardo's own account of the situation, the 'prisoner' appears to be losing contact with reality and, as well, is expressing a desire to get out of the experiment.

The desire to withdraw from the experiment is ignored. Instead, when the 'prisoner' suddenly jumps up from the dinner table, runs, and, then, rips down the screen that is covering the video camera, he is dragged to the isolation closet, and once inside, the 'guards' continue to bang on the door of the closet with their nightsticks despite the prisoner claiming that the sounds are making his headache worse.

The foregoing incident fully displays the abusiveness and betrayal that permeates the experiment. Despite the fact that the 'prisoner' seems to be losing touch with reality, is behaving strangely, complaining of a headache, and expressing a desire to withdraw from the program, the guards are – without interruption by the people conducting the experiment -- permitted to manhandle the prisoner and commit physical violence against him (and his headache) by pounding their nightsticks on the door of the isolation closet.

To justify their behavior in the foregoing case, the guards go to the rule book that allegedly governs the behavior of the 'subjects' in the experiment. They point to the section involving the rule against 'prisoners' destroying private property in the prison area. However, they

seem to be oblivious to the section of the rule book that prohibits the use of physical violence by the guards ... and, in part, they do this because the people running the experiment have enabled the 'guards' to violate those rules with impunity.

During another incident, one of the 'prisoners' refuses to do push-ups. A guard forces the 'prisoner' to go to the ground and, then, presses on the back of the 'prisoner' with a nightstick, telling the 'prisoner to do his push-up.

How is this not an act of physical violence in several ways? Yet, the people conducting the experiment let it go.

The individuals conducting the experiment might wish to object to the foregoing characterizations -- which depicts 'guards' as being permitted to use some forms of 'physical violence' despite the presence of the supposed rule about no physical violence. However, such objections – if they were voiced –tend to resonate with the arguments of those who have attempted to claim that the abuses at: Guantánamo, Abu Ghraib, Bagram Air Force Base, and any number of secret CIA facilities, do not constitute torture because the ones perpetrating the abuses don't agree with how other people define the idea of 'torture'.

In his book, *The Lucifer Effect*, Philip Zimbardo claimed that he made it abundantly clear to everyone that no physical punishment would be permitted during the experiment. Nevertheless, at almost every turn of his project there were forms of physical abuse and punishment that were taking place ... and the examples given here are but a small sample of the sorts of acts of violence that were permitted by the individuals conducting the experiment despite Professor Zimbardo's proclaimed policy of no physical violence or punishments ... apparently one, or more, individuals was in deep denial about the nature of what was transpiring in the experiment.

To be sure, being dragged out of a cell, or being required to urinate within a five minute period, or being forced into an isolation closet, or being forced to do push-ups and jumping jacks, or having loud whistles blown close to one while one is asleep, or nearly having one's hand's crushed by a nightstick, or being sprayed with pressurized carbon dioxide, or having nightsticks pounded against an enclosed space where a person, who seems to be detached from reality, has a headache, might pale in comparison with being gang-raped, killed, and the like, but all of the

foregoing acts are points on a continuum of physical violence, and, therefore, to try to argue that because certain kinds of violence are not present that no violence is present at all is, I think, an exercise in sophistry.

At the very least, the individuals conducting the experiment left the 'guards' considerably in the dark with respect to the meaning of 'violence.' As a result, the 'guards' were enabled, if not encouraged, by people running the experiment to shade the possible meaning of 'violence' with various forms of creative abuse of their own – as long as those acts are not ruled out of order (and the people conducting the experiment, like the perpetrators of abuse or torture elsewhere – are serving as the judges in their own cause here). Despite a variety of considerations that might tend to indicate otherwise, Professor Zimbardo appears to believe that such acts are not of a physically violent nature.

If anything, the Stanford Prisoner Experiment suggests just how vulnerable and fragile human beings are when it comes to any sort of violence being perpetrated against them. One doesn't have to use extreme measures of physical violence in order to affect people's sense of personal agency.

Professor Zimbardo claimed that one of the research questions which his experiment sought to address was: What, if anything, would 'prisoners' do to reclaim their sense of personal agency? Unfortunately, the individuals running the experiment did everything they could to structure the character of the experimental situation in a way that was intended to convince the 'prisoners' that they had no right to a sense of personal agency ... that being able to have a sense of personal agency was not part of the experiment as far as the 'prisoners' were concerned... that in order to collect their pay, the only option which the 'prisoners' had was to play the role of a 'prisoner' as defined by the system.

Like the Milgram experiment involving 'learning/memory,' Professor Zimbardo had sought – unknowingly perhaps -- to manipulate subjects into believing that if they 'trusted' the people conducting the experiment, everything would be okay ... there would be no need to reclaim their sense of personal agency. Like the subjects in the Milgram experiment, the 'prisoner' subjects in the Zimbardo experiment have been led to believe that they should just continue to trust the people conducting the experiment and that nothing of an abusive nature would take place.

The subjects in the Milgram experiment were given the impression that they could discontinue any time they liked, and, yet, subtle steps were taken to prevent people from disengaging from the experiment. Similarly, in the prisoner experiment, the 'prisoners' were given the impression that they could withdraw from the experiment any time they liked, and, yet, subtle – and not so subtle -- steps were taken to prevent the 'prisoners' from remembering that they had such freedom ... for instance, even though the 'guards' were specifically instructed no make sure that the 'prisoners' had no sense of 'personal agency; nevertheless, there were no comparable attempts made prior to the actual running of the experiment to instruct the 'prisoners' that their duty was to assert themselves and defy the guards.

In the foregoing respect, the behavior of the 'guards' was shaped in part by the presence of instructions concerning how they were to engage the experiment. However, the behavior of the 'prisoners' was shaped, in part, by the absence of instruction with respect to the issue of personal agency ... instead they were given 17 rules that were intended to induce the 'prisoners' to forget that they could, if they wish, either discontinue the experiment or seek to reclaim their sense of personal agency by defying the 'guards' in a variety of non-violent ways.

Professor Zimbardo expresses surprise in his book that the 'prisoners' never used the threat of leaving the experiment as a bargaining tool in relation to the abusive treatment they were receiving at the hands of the guards. However, the foregoing perspective does not necessarily correctly describe certain aspects of the prisoner experiment (as will be discussed shortly), and, moreover, even in those facets of the experiment when his observation might be applicable, he never seems to ask himself about the reasons why the 'prisoners' appeared to forget that they supposedly had direct access to such a resource.

The 'prisoners' were attempting to be: 'good,' experimental subjects and meet the expectations of the experimenters by attempting to complete the experiment. They were assuming that the people conducting the experiment would not 'hurt' them, and when that trust was betrayed -- and there can be no question that that trust was betrayed in many different ways, not the least of which was for the experimenters to, on the one hand, proclaim a rule of no-violence and, then, on the other hand,

to repeatedly allow that rule to be violated by the guards -- it already was too late because the 'prisoners' felt duty-bound to see the experiment through to the end, just as many of the subjects in the Milgram experiment had struggled to see their experiment through to the end -- despite the anguish, anxiety, and uncertainty they were experiencing – because the 'subjects' trusted the experimenters not to put anyone in harm's way and because the subjects felt a sense of obligation to meet the expectations of the experimenters with respect to the completion of the experiment.

As noted previously, Professor Zimbardo claimed that one of the research questions that was to be addressed by the prisoner experiment was whether, or not, the 'prisoners' would try to reclaim their sense of personal agency and, if they did, then how would they attempt to do this? Why wasn't a similar research question directed toward determining whether, or not, any of the 'guards' would attempt to reclaim their sense of personal agency and, if so, how would they attempt to do so?

Professor Zimbardo's interest in the behavior of the guards arose only after the experiment began. Even then, that interest was shaped by his belief that the 'guards' had fallen under the influence of the powerful gravitational pull of the situation rather than being a function of the way in which people cede their personal agency to this or that force/individual and, thereby, allow their behavior to become influenced by the gravitational pull of a given situation.

Things don't just happen. We make choices about whether, or not, to cede our personal agency to situations, forces, and other individuals ... although on many occasions, those decisions are made so quickly and in the midst of so many different sorts of 'pulls' and 'pushes' that the point of actual transition from: having control over personal agency, to: ceding that agency to a situation, set of forces, or group of individuals, is often only a diffuse, chaotic blur in our memory.

The 'guards' were encouraged to believe that they had considerable degrees of freedom with respect to their own sense of personal agency – a sense of agency that was augmented in a manipulative manner by the people conducting the experiment. Yet, given such an allegedly enhanced sense of personal agency, why didn't any of the guards remove themselves from the experiment – as one-third of the subjects in Milgram

experiment had done – due to the abuse that was taking place during that experiment?

The fact of the matter is that both the 'guards' and the 'prisoners' were shackled to the same set of restraints, but in slightly different ways. The sense of personal agency of the 'guards' was manipulated by the researchers to induce the 'guards' to believe that it was okay to be abusive to the 'prisoners,' while the sense of personal agency of the 'prisoners' was manipulated by the researchers to induce the 'prisoners' to believe that it was 'normal' for them to be abused and it was 'normal' to be willing to stay within an abusive system.

Perhaps there are a number of questions here. Why do people stay in abusive relationships? Why are some people willing to abuse other human beings when they are enabled to do so? Why do people continue to stay within a framework that is abusive even if they choose not to directly participate in such abuse and, yet, do not do anything to stop that abuse either? ... something that occurred in relation to some of the 'guards', as well as in relation to most of those who helped conduct the experiment.

With respect to the second question above – that is: Why do people stay in an abusive environment if they do not wish to participate in the abuse but are not willing to do anything to curb the abuse? -- one possible, partial answer does suggest itself. For example, consider the following incident.

One of the guards is showing signs of wanting to disengage from the abuses that are being perpetrated by the 'guards.' The body language of the 'guard' involves hanging his head a lot and walking around the 'prison' with drooping shoulders – suggesting that he is feeling considerable shame.

This 'guard' is constantly volunteering to do things outside of the 'prison' ... such as going for food and coffee. Both his body posture and his interest in spending time away from the 'prison' during his shift indicate that he does not want to be a part of what is transpiring there.

Superintendent Zimbardo tells the warden – one of his students – to talk to the 'guard' and remind the 'subject' that he is getting paid to do a job. The 'guard' is told that in order for the experiment to work, the 'guards' must play their role in a certain way ... that is, with toughness.

Taking a 'guard' aside and telling him what his role is supposed to be is not a matter of a subject adapting to a certain role due to the structural character of the social situation or context. An active intervention of experimenter agency had to take place, and during this intervention the subject had to be provided with instructions concerning the nature of his role.

Interestingly, there were no such interventions in relation to the 'prisoners.' No one took them aside and told them that they should attempt to resist the abuses of the guards ... in fact precisely the opposite sort of intervention took place when Superintendent Zimbardo told the 'prisoners' on the grievance committee that met with him that they were responsible for their own troubles.

Consequently, the 'guards' and 'prisoners' were not necessarily individuals who automatically exhibited certain kinds of behavior because they, somehow, mysteriously adapted to a social role or to the structural features of a given social context – i.e., the prison. Instead, the behavior of the 'guards' and 'prisoners' was shaped, in many ways, through the active intervention of the people conducting the experiment – that is, through the process of personal agency that led to various acts of commission and omission by those who were conducting the experiment.

As unexpected as the results of the prisoner experiment might be with respect to the behavior of either the 'guards' or the 'prisoners,' what I find most surprising in that experimental project is the conduct of the researchers. They stood quietly by and allowed abusive behavior to be inflicted upon their subjects ... and one should not forget that individuals who are induced to commit abuses toward other people are also being helped to be abusive toward their own integrity as human beings – a reminder that applies to both the 'guards' and the 'experimenters'.

Following a 'prisoner' revolt – which consisted of barricading their beds against the doors to their cells so that the 'guards' couldn't get into the cells and that the 'guards' crushed within a fairly short period of time and, then, used as a rationalization to become even more abusive toward the 'prisoners – the "prisoners' formed a grievance committee. The grievance committee listed physical abuse among its complaints.

The committee met with Prison Superintendent Zimbardo. Their complaints are dismissed by the Superintendent who claims that the reason for a great deal of the physical hassling by the guards is due to the bad behavior of the 'prisoners' themselves and due to the fact that the 'guards' are new at their line of work.

Apparently, Superintendent Zimbardo has failed to take into consideration that the 'prisoners' are new to their line of work as well. Furthermore, whether knowingly doing so, or not, the Superintendent has lied to the 'prisoners' because if he has been watching the video and/or listening to the audio or viewing the proceedings from the hidden viewing area, he knows that the 'guards' have done many of the things they have done without any real provocation from the 'prisoners' but, instead, have done so because Superintendent Zimbardo has permitted them to do so – even to the point of continuously permitting the guards to push the envelope with respect to violating the 'no violence' rule.

I find it rather disingenuous of Professor Zimbardo when he claims that he is interested in seeing what steps the 'prisoners' will take to try to reclaim their sense of personal agency when he is simultaneously deeply involved in betraying their sense of trust by demonstrating that he personally approves of the manner in which the 'guards' are violating the no violence rule. The Stanford Prisoner Experiment is not a study about whether, or not, people will try to reclaim their sense of personal agency when certain aspects of their freedom are taken away. Instead, it is a study about the dysfunctional character of the psychological condition that results when individuals are betrayed and, then, subjected to continuous abuse. As a result, 'prisoners' are not really given any legitimate opportunity to regain or develop a sense of personal agency.

On another occasion, one of the 'prisoners' complains about feeling sick and wants to talk with the 'prison' warden. During the meeting, the 'prisoner' refers to the "sadistic" behavior of the guards and indicates that if things don't change, he wants out of the experiment.

The 'warden' follows the path blazed by Superintendent Zimbardo. He tells the individual that the 'prisoners' are the authors of their own misfortune.

Once again, despite the existence of a rule concerning physical violence, the various forms of physical violence being perpetrated by the "sadistic" guards are given a pass ... and the term "sadistic" is not an

inappropriate descriptor under the circumstances. Moreover, despite being informed at the beginning of the experiment that the subjects are free to withdraw from the experiment at any time, the 'warden' does not ask the individual if he wishes to disengage from the experiment, but, as was the case in the Milgram experiment, steps are taken to keep the subject in the project.

The aforementioned 'prisoner' goes into an obscenity-laced rage. He demands to see the Superintendent.

The 'warden' tells Superintendent Zimbardo that the 'prisoner' seems deeply troubled by what is going on in the experiment and tells how the 'prisoner' apparently wants to discontinue the experiment. However, the 'warden' isn't sure whether the 'prisoner' is really serious about withdrawing from the experiment or is just saying that he wants out as a tactic of some kind.

Superintendent Zimbardo reports in his book that the 'prisoner' who entered his office is "sullen, defiant, angry, and confused." One of the first things the 'prisoner' says is that he can't go on with things.

The young man is told by the Superintendent – just as was the case in relation to the grievance committee meeting – that he is the author of his own misfortune. In addition, a person who had been recently released from San Quentin and who is helping out in a consulting capacity with the experiment and happened to be in the office when the 'prisoner' came in, begins to verbally abuse the prisoner indicating, among other things, that the little, white, punk sissy wouldn't last a day in a real prison.

Superintendent Zimbardo steps back into the discussion and reminds the 'prisoner' that he will not be paid for the experiment if he quits. The Superintendent asks the 'prisoner' if he needs the money, and the 'subject' indicates that he does.

The 'subject' is propositioned by the Superintendent. Why doesn't the 'prisoner' just cooperate from time to time and the Superintendent will see that the 'guards' won't hassle him.

The 'prisoner' is not sure that he wants to do that. The Superintendent responds with a further proposition which suggests that the 'prisoner' should have a good meal, reflect on the matter, and, then, if the 'prisoner' wants to quit, he can.

The foregoing process – consisting of several propositions and 'negotiations' (which are designed to induce 'prisoners' to remain part of the experiment) -- is not what the 'subjects' were told at the beginning of the experiment. They were told that if they wanted to leave they could, but as was the case in the Milgram experiment, words and warnings are used in the prisoner experiment to prevent 'subjects' from taking back their sense of personal agency.

In addition, the Superintendent seeks to manipulate the 'prisoner's' sense of personal agency in, yet, another way. Professor Zimbardo is telling the 'prisoner' that the Superintendent has the power to tell the guards to lay off the 'prisoner,' and the Superintendent further implies that if the 'prisoner' will stay with the experiment, the subject won't be hassled if the individual will just co-operate from time to time.

The foregoing exchange compromises the integrity of the experiment in several ways. On the one hand, if the 'prisoner' is under the impression that the guards won't hassle him if he co-operates a little, then, the purpose of the experiment will be tainted because it supposedly was designed to see what 'prisoners' would do if their sense of personal agency was taken away by the 'guards.' On the other hand, if the Superintendent actually were to take all of the 'guards' aside and tell them to go easy on the 'prisoner' this will also compromise the integrity of the experiment.

If the Superintendent has no intention of letting the 'guards' in on the proposition/negotiation process that has taken place in his office, then he is lying to the 'subject.' However, if the Superintendent does intend to say something to the 'guards' concerning the matter, then he has compromised his experiment.

Prior to meeting with Superintendent Zimbardo, the 'prisoner' had told the other 'prisoners' that he was leaving the experiment. When he comes back from the meeting, he tells the other 'prisoners' that the people running the experiment won't let him leave.

Previously, the trust of the 'prisoners' had been betrayed by the manner in which the people running the experiment continually permitted the 'guards' to push the envelope in relation to physical violence despite the existence of a rule that was supposed to make such acts impermissible. Now, the people conducting the experiment have betrayed the trust of the 'prisoners' in another fashion – namely,

apparently, despite assurances otherwise, the 'prisoners' were not going to be permitted to leave the experiment ... they really were 'prisoners.'

The people conducting the experiment claim that the essential theme of their project is to discover what people will do when their sense of personal agency is degraded, if not eliminated. Nevertheless, the actual nature of the experiment is about what happens to people when their sense of trust is betrayed and, as a result, they become exposed to abusive treatment as a direct result of that betrayal.

The 'prisoners' answered an ad in which successful candidates would exchange some time for money. Instead, they became entangled in a nightmare ... something for which they had not signed up.

Professor Zimbardo claims that the aforementioned 'prisoner' who said he wanted out of the experiment and came to Zimbardo after seeing the 'warden' should never have agreed to become a 'snitch. Moreover, Professor Zimbardo says that the individual should have insisted on being let out of the experiment but was cowed into backing down when harangued by the person who had recently been released from San Quentin.

I believe the foregoing explanation is not tenable and is rather self-serving. To begin with, the prisoner who complained to Superintendent Zimbardo didn't agree to become a snitch – that is, someone who provides information about other prisoners in exchange for lenient treatment from the 'guards.

Instead, Superintendent Zimbardo was the one who proposed that if the 'prisoner' would stay in the program, co-operate a little, then the Superintendent would arrange to have the guards ease up on their hassling of the 'prisoner.' Therefore, Professor Zimbardo is seeking to re-cast his attempt to save his own experiment as an exercise in mind-games by the prisoner who Professor Zimbardo incorrectly claims made a deal to become a 'snitch.'

Secondly, Professor Zimbardo impugns the character of the 'prisoner' by claiming that the individual was cowed into silence concerning the issue of wanting out of the experiment due to the tongue lashing that the 'prisoner' got from the person who recently had been released from San Quentin and was serving as a consultant for the prisoner experiment. Again, Professor Zimbardo is re-casting events in a manner that is

favorable to himself, because the reality of the situation is that the 'subject' wanted to get out of the experiment, and Professor Zimbardo wouldn't let him do so despite the subject having given clear indications that he did not want to participate in the project any further.

Another 'prisoner' becomes depressed, despondent and glassy-eyed. He lies on his cell floor coughing and asks to see the Superintendent.

Apparently, the 'prisoner' also wants out of the experiment. Although the Superintendent tells the 'subject' that he can get out if he wants to, the Superintendent also seeks to induce to 'prisoner' to continue to cede his sense of personal agency, stay in the experiment, and just co-operate with the 'guards.'

Professor Zimbardo has moved the goal posts. At the beginning of the experiment, he told the 'subjects' that they can leave the experiment at any point. Afterwards he takes steps to keep the 'subjects' in the experiment despite their wishes to do otherwise.

Later on, one of the 'prisoners' is finally allowed to withdraw from the experiment. The decision to allow the 'subject' to leave was not made by Professor Zimbardo but by a 2nd year graduate student.

According to the foregoing graduate student, the individuals conducting the experiment were never quite sure whether, or not, the 'prisoners' were faking their complaints. Moreover, because a lot of money and time had been invested in the experiment, they were reluctant to let anyone leave the experiment because of the way such actions might compromise the experimental results.

Why was a second-year graduate student making those kinds of decisions rather than Professor Zimbardo? If the people conducting the experiment couldn't tell the difference between real trauma and feigned trauma, why were they involved in the experiment at all? Why didn't Professor Zimbardo have any clinical psychologists directly affiliated with his research project? Why were the people running the experiment more concerned about the time and money that had been invested than the physical and mental welfare of their 'subjects'? And, finally, even if the complaints of the 'prisoners' were faked, why didn't the experimenters keep their word and let the 'prisoners' go when some of the latter individuals indicated that they had enough?

After the prisoner being alluded to above was released, one of the guards overheard a plot by some of the remaining 'prisoners' that allegedly involved the released prisoner coming back with a bunch of friends in order to free the 'prisoners' and destroy the 'prison.' Although the people conducting the experiment considered the alleged plot to be a somewhat unlikely possibility, credence was given to the story when the released prisoner was reported by one of the 'guards' to be skulking about in the hallways of the Psychology Department in the floors above the basement area where the 'prison' was housed.

As a result, Superintendent Zimbardo ordered the 'guards' to capture the released 'prisoner' and return that individual to the 'prison.' Superintendent Zimbardo decided that the 'prisoner' had been faking things and was not really in emotional or physical difficulty.

Despite assurances to the participants that they could leave the experiment whenever they wanted to, there now seemed to be an unwritten rider invisibly and secretly inserted into the rules governing the prison. If a 'prisoner' decides he wishes to withdraw from the experiment and is released, but later on the people running the experiment decide the person was only feigning distress, then, the experimenters reserve the right to bring that person back into the project.

Why did Superintendent Zimbardo accept the word of a 'guard' without any corroborating evidence? Was the 'guard' one of those who was abusing the 'prisoners' and, therefore, had a hidden motive to lie about or exaggerate the nature of what he reportedly witnessed? Did the former 'prisoner' have a right to be in the Psychology Department? Was the former 'prisoner' actually skulking about the halls of the psychology building or was the description of that person's behavior either a prevarication or a biased observation? And, once again, irrespective of the 'feigning' issue, why didn't the individual have a legitimate right to withdraw from the experiment.

The foregoing questions are not irrelevant to what was taking place in the prisoner experiment. Later on, Professor Zimbardo came to the conclusion that the whole plot to storm the prison is nothing but a 'rumor' and that all their elaborate arrangements – such as packing the 'prisoners' into a windowless, poorly ventilated storage room elsewhere in the psychology building for three hours – were completely unnecessary ... and, yet, such actions were taken because one of the subjects (a

'guard') had induced the experimenters to cede their sense of personal agency to the uncorroborated word of a 'guard' who might have ulterior motives for saying what he did.

Professor Zimbardo confesses that the "biggest sin" in behaving in the foregoing way is that they did not systematically collect data with respect to the events of that day. Actually, their biggest sin was, apparently, to be so completely oblivious to not only the 'abusive' system they had set in motion but to be so completely oblivious to their role in nurturing that abuse.

In later years, Professor Zimbardo will interpret the experiment as one in which the 'experimenters' as well as the subjects came under the gravitational influence of the situation. However, what Professor Zimbardo still does not seem to understand is that the process of coming under the gravitational influence of a situation is a function of people – each for different reasons – making a decision to cede their intellectual and moral agency to the forces inherent in that kind of a situation.

A situation by itself is powerless. It requires the co-operation of someone with agency ... that is, someone with the capacity to make choices about whether, or not, to cede agency to some situation, individual, or group.

At one point in *The Lucifer Effect*, Professor Zimbardo indicates that it "seems" that some of the 'guards' have been denying the 'prisoners' access to the bathroom after the order for 'lights out' has been given. One wonders why the term 'seems' is used ... how did Professor Zimbardo acquire the information to which the term "seems' is affixed?

According to Professor Zimbardo, the 'prison' area is beginning to smell like a subway washroom. Somehow, he knows that the 'guards' have been requiring the 'prisoners' to relieve themselves into buckets that are in their cells.

In the same section of his book, Professor Zimbardo discloses knowledge about how some of the 'guards' have been reported to be tripping blind-folded 'prisoners' as the latter individuals make their way down a set of stairs leading to the bathroom. In addition, these same guards apparently enjoy poking the 'prisoners.'

One of Professor Zimbardo's observations concerning the foregoing pieces of information is that some of the 'guards' have transcended mere

role playing and, instead, have "internalized the hostility, negative affect, and mind-set" qualities of actual guards in real prisons. Nothing has been internalized.

The individuals displaying the pathological behavior brought that potential with them when they entered the experiment. Neither the allegedly in-depth interviews, nor the psychological tests that were given, were able to detect the presence of those pathological inclinations.

The foregoing sort of pathological inclinations were not the result of role-playing or any mechanism of internalizing the mind-set of actual guards. Those inclinations were nurtured – unknowingly perhaps – by the manner in which the people running the experiment failed, among other things, to enforce the rule requiring 'guards' not to be physically violent toward the 'prisoners.'

Some 'subjects' came to the Stanford Prisoner Experiment with a potential for certain kinds of abusive behavior. The individuals conducting the experiment provided that potential with the opportunity to be expressed within the context of the experiment and, then, the people running things did nothing to curb that behavior once it started to be manifested.

The prison-situation, per se, did not induce such a dispositional potential to surface. What caused that behavior to be expressed was the intervention of the experimenters through their acts of commission and omission with respect to their rule about physical violence and their failure to hold the 'guards' accountable for the latter's repeated transgression of that rule.

Professor Zimbardo indicates that the 'prison' and the 'prisoners' will have to be put in a better light when the parents, friends, and girlfriends of the 'prisoners' visit the prison. In other words, according to Professor Zimbardo, the experiment requires not only for the 'subjects' to be manipulated, but, as well, he believes that the impressions of visitors will have to be managed ... after all, Professor Zimbardo is of the opinion that: "As a parent, I surely would not let my son continue in such a place if I saw such exhaustion and obvious signs of stress after only three days."

The foregoing admission is disturbing on a number of levels. For instance, if as a parent, Professor Zimbardo would not permit his son to

continue on in such a set of circumstances, why does Professor Zimbardo suppose it is okay for him to put his subjects in 'harm's way given that he – unlike the forthcoming visitors -- is actually somewhat cognizant of what is taking place in the 'prison'? Secondly, knowing what he knows about the situation, apparently Professor Zimbardo feels it is okay to manipulate the impressions of the visitors so they won't constitute a threat to the continuation of the experiment.

On the day when parents, friends, and girlfriends are supposed to visit the 'prison,' the facilities and the 'prisoners' are washed, disinfected, and spruced up. The smell of urine and feces are covered up with the scent of a deodorizer, and the 'Isolation Room' sign is taken down.

'Prisoners' are told that if they complain to the visitors during the visits, the visits will be terminated prematurely. The instructions resonate with what the Nazis used to do when the Red Cross showed up ... making threats to the prisoners in order to prevent outsiders from coming to know what actually was taking place in a given stalag.

That the people conducting the experiment apparently found it necessary to dupe the relatives and friends of their 'prisoners,' is extremely disconcerting. Manipulating and betraying their subjects is bad enough, but, they also felt compelled to manipulate and betray people outside the experiment, and the reason the deception is considered necessary is because – on some level -- the people running the experiment were aware that something pathological was taking place during the experiment, but, unfortunately, they weren't ready to close down that kind of process.

Professor Zimbardo recounts how the people conducting the experiment came to the conclusion that they had to bring the visitors under situational control. This meant that the experimental staff was tasked with having to induce the visitors to believe that they – i.e., the visitors – were nothing but guests who were being extended a privilege.

The foregoing is an exercise in dissembling. The idea of bringing something under "situational control" is merely a euphemism for lying to people and misleading them, and through such a process, inducing outsiders to cede their sense of personal agency to the experimenters through the manipulation of trust.

The experimenters should not have been trusted by the visitors. Furthermore, in a number of ways, the experimenters were aware that they should not have been trusted, and this is why things had to be brought under so-called "situational control."

Despite the experimenters' best efforts to cover up the pathology taking place within the prison, some of the reality leaked through the attempts of the experimenters to take situational control and mislead the visitors about the nature of what was transpiring in the basement of the psychology building. Following the 'visitor night,' Professor Zimbardo received a note from a mother of one of the 'prisoners.'

She remarked that she had been troubled by the appearance of her son during the visit. She also indicated that prior to the experiment neither she nor her son had contemplated that anything so 'severe' would be involved with respect to the experiment.

Several more days of experimental treatment had to take place before a decision was made by the experimenters to release her son. Apparently, they concluded that the young man was exhibiting signs of acute stress ... a diagnosis that the mother had tried, in her own words, to communicate to the experimenters a few days earlier – too bad the experimenters hadn't hired her as a consultant for she seemed to have more sense than they did.

On the fourth day of the experiment, Professor Zimbardo has arranged for a real priest to come to the 'prison' in order to interview the 'prisoners.' The priest has had experience as a prison chaplain, and Professor Zimbardo wants to get some feedback from the priest with respect to how 'realistic' he feels the experiment is.

The interviews take place in the 'prison.' One at a time, the 'prisoners' come and talk with the priest.

Many of the 'prisoners' introduce themselves by reciting the number on the front of their 'hospital-like' gown. According to Professor Zimbardo, the priest displays no indication that he finds the behavior of the guards in this respect to be odd.

Professor Zimbardo considers the priest's lack of reaction to be surprising. The professor concludes that: "Socialization into the prisoner role is clearly taking effect."

Although the section in which the foregoing quote appears is somewhat ambiguously written, apparently Professor Zimbardo is of the opinion that the priest has been socialized into the role of the prisoners by not reacting to their manner of introducing themselves by number rather than name. In other words, Professor Zimbardo is surprised by the behavior of the priest and seeks to explain it by claiming that the priest has been socialized into the mind-set of the prisoners.

The foregoing account of things is consistent with Professor Zimbardo's belief that people adapt to social situations because their natural dispositions come under the influence of situational forces. Absent from such a perspective is an explanation about how anyone – for example, the priest -- comes under the influence of those forces.

Socialization is not an automatic phenomenon. Interpretations, judgments, and choices are made concerning whether, or not, to cede one's agency to the forces of socialization.

Professor Zimbardo already has ceded his moral and intellectual agency to the prisoner experiment – which is why he is willing to let abusive behavior take place. He would only be surprised by someone else also ceding their sense of agency as well if he is inclined to ignore the nature of the process through which a person's sense of personal agency is ceded to a given situation and, instead, believes that a process of 'socialization' has somehow mysteriously taken effect sooner than anticipated.

The priest played his role to the hilt. He asked the 'prisoners' about bail conditions, whether, or not, they had lawyers or if they would like him to contact anyone on the 'outside' for them.

Professor Zimbardo assumed that the priest's offer to contact people on the 'outside' was merely a façade with respect to the role the priest was playing. When the priest is questioned by Professor Zimbardo about the offer, the experimenter is surprised to discover that the priest considers it a duty to follow through on his offer to the prisoners.

The foregoing incident demonstrates one of the differences between the priest and Professor Zimbardo. The priest has not ceded certain aspects of his moral agency to the experiment, and, therefore, unlike Professor Zimbardo, when the priest promises something, he feels obligated to follow through on the promise.

On the other hand, the priest has ceded some degree of agency to Professor Zimbardo because the priest seems to accept certain things that are going on in the prison but, presumably, believes that Professor Zimbardo is not the sort of person who would place students in harm's way ... in other words, the priest has conceded a certain amount of trust to the professor, but like the visitors the night before, the priest should not have trusted the professor because the experimenter has imprisoned the 'subjects' in a highly abusive situation.

While the priest is interviewing one of the 'prisoners,' the subject complains of a headache and indicates that he feels anxious and exhausted. Following some questions by Professor Zimbardo directed toward the 'prisoner' in order to discover the cause of the headache, the 'prisoner' breaks down in tears.

The priest speaks to the 'prisoner' and indicates that, perhaps, the prisoner is bothered by the unpleasant smell that pervades the 'prison.' He considers the smell rather toxic in nature, but he also believes that it helps lend a sense of realism to the experiment.

The priest doesn't know how that smell came to permeate the atmosphere. If he did, he might not have been so willing to merely comment on the smell and, then, move on to other things.

The priest has been asked to comment on how realistic the 'prison' experiment is relative to the real thing. He hasn't been asked to make an evaluation on whether, or not, the 'prisoners' are being treated properly.

He trusts that they have been treated properly because he believes that Professor Zimbardo is the sort of person who would not permit students or subjects to be treated in an abusive manner. Since the priest is not willing to entertain the possibility that something pathological is taking place, he misdiagnoses the breakdown of the 'prisoner' as possibly being a reaction to the unpleasant smell in the 'prison.'

After interviewing the 'prisoners,' the priest provides his overview of what he has observed. He indicates that the experimental prison seems to be operating much as a real prison does and, as a result, many of the 'prisoners' are exhibiting what he refers to as "first-offender syndrome" – that is, the 'prisoners' are exhibiting signs of: irritability, if not rage, as well as depression and confusion.

The priest indicates that the symptoms are likely to dissipate after a week, or so. He refers to the behavior as being effeminate in nature and comments that inmates in real prisons learn that such conduct is not conducive to long-term survival.

What the priest does not suspect is that what he refers to as "first-offender syndrome" is actually a function of another kind of phenomenon altogether. The priest is looking at the behavior of the 'prisoners' through the lenses of actual prison life – and the priest has been induced to do so due to the manner in which the experimental situation has been presented to him by Professor Zimbardo.

The professor believed he had to take situational control of the visitors the night before because he knew that the parents would never approve of what was taking place in the prisoner experiment if they were to come to know the truth of what was transpiring in the 'prison.' Obviously, if Professor Zimbardo knew that what was going on in the prison was sufficiently problematic for it to be necessary to manipulate the impressions of the visitors, then he is not likely to be willing to confess to the priest concerning the pathological character of what has been happening in the basement of the psychology building ... the impressions of the priest have to be managed just as the impressions of the visitors had to be handled through the process of taking situational control and, thereby, using disinformation and misinformation to shape people's understanding of the situation.

If the priest knew about the actual nature of the betrayal, and ensuing abuse, that was entailed by the prisoner experiment, would he continue to say that the behavior of the 'prisoners' was merely a reflection of the "first-offender syndrome" that takes place in actual prisons, or would he be prepared to state that what was going on in the experiment was abusive and pathological. One would like to hope that the priest would have been willing to change his opinion about what was transpiring in the 'prisoner' experiment, but in the light of what has taken place in the Catholic Church concerning the issue of sexual abuse, one is not entirely sure what the priest might have done.

According to Professor Zimbardo, the priest's visit helped demonstrate the progressive nature of the conflation and confusion that is occurring with respect to the character of the relationship between reality and delusion during the prisoner experiment. He claims that the

priest played his role of prison chaplain so well that the performance has helped transform the fiction of an experiment into a reality of its own.

Like the 'prisoners' and the 'guards', Professor Zimbardo had ceded his moral and intellectual agency to the delusional pathology that had taken over the experiment. The priest, on the other hand, was merely fulfilling a request by Professor Zimbardo to assess what was going on in the 'prison' and whether, or not, those conditions reflected actual prison life.

In order to gather the data necessary to make such an assessment, the priest played a role. As soon as the priest walked away from the role, he provided Professor Zimbardo with a comparative analysis of the situation.

The priest might have been operating under a misunderstanding with respect to what actually was going on in the 'prison' experiment, but he had not confused delusion with reality. With the exception of the issue of trusting Professor Zimbardo when, perhaps, the priest should not have done so – although such acts of ceding agency through trusting others often takes place in society every minute and hour of the day -- the priest had not ceded his sense of personal agency to the prison experiment except to the extent of temporarily playing a role that he knew was just a role.

The foregoing cannot be said with respect to Professor Zimbardo. He had ceded away his sense of personal agency to the experiment and, as a result, he permitted events to take place in the experiment that might not have occurred if he had not ceded such agency and, thereby, permitted himself to become entangled in a delusional world.

To be fair, there were times during the experiment when Professor Zimbardo reclaimed some degree of his sense of personal agency and disengaged from the delusional world of the prison experiment. For instance, on one occasion he found a 'prisoner' -- who previously had been exhibiting signs of acute stress – in a condition of hysterical meltdown, and Professor Zimbardo reminded the 'prisoner' that he was a student with a name and not just a number and that the 'prisoner' should withdraw from the experiment and go home. Professor Zimbardo wants to take the individual to see a doctor on campus.

The ‘prisoner’ stops crying and trembling. He stands up and insists on going back into the experimental prison.

The ‘prisoner’ says that he does not want to leave under circumstances in which he is being labeled by the other ‘prisoners’ as a ‘bad’ prisoner and whose behavior might result in the other ‘prisoners’ being harassed by the guards. Unlike all too many of the guards, perhaps the ‘prisoner’ has not ceded his sense of moral decency to the experiment, and, consequently, he wants to do the ‘right’ thing by the other ‘prisoners,’ himself, and the experiment.

On the other hand, maybe the desire of the ‘prisoner’ to remain in the experiment is merely a variation on the ‘Stockholm Syndrome.’ In other words, perhaps, the allegiances of the ‘prisoner’ have been captured by the delusional nature of the ‘prison’ experiment, and, as a result, the ‘prisoner’ is having difficulty understanding that his desire to do ‘right’ by the experiment might merely be an expression of how much agency he has ceded to the experiment and why he feels inclined to remain in the experiment when he has the opportunity to escape an abusive situation.

On another occasion, Professor Zimbardo also reclaims a certain modicum of the moral and intellectual agency that he has ceded to the idea of the experiment when he intervenes with the ‘guards’. He instructs them that they must not interfere with visiting hours.

Apparently, the ‘guards’ are upset with this sort of limitation that has been placed upon their conduct by Professor Zimbardo. However, they comply with the directive.

One wonders why Professor Zimbardo didn’t take the steps necessary to rein in their power with respect to far more serious instances of abusing the rights of the ‘prisoners. Perhaps, he was beginning to become a little more aware of the injurious impact that the abusive treatment of the ‘guards’ was having on the prisoners.

Professor Zimbardo might have had some assistance with respect to his condition of possibly enhanced awareness concerning the issue of abuse. After a number of ‘prisoners’ were permitted to withdraw from the experiment, Professor Zimbardo added a new ‘prisoner.’

Despite the ‘prisoner’s’ fear of the guards – he had been struck on the leg by a nightstick while being stripped naked and deloused – once

initiated into the experiment, the new 'prisoner' went on a hunger strike. The hunger strike was intended to protest the manner in which the 'guards' were violating the conditions of the contract with respect to, among other things, the use of physical violence.

The 'prisoner' indicates that when he signed the contract to participate in the experiment, there were certain provisions in that document concerning the conduct of the guards. The 'guards' were violating those conditions, and the 'prisoner' made sure that everyone heard him with respect to that issue.

At least some of the 'guards' don't seem to care about the part of the contract that concerns their own behavior. They are only interested in the parts of the contract that cover the conduct of the 'prisoners' since violation of those portions of the contract enable the 'guards' to rationalize their abusive treatment of the 'prisoners.'

Such 'guards' have a vested interest in selectively reading the contract for the experiment because, apparently, they have begun to enjoy the abuse that they are inflicting on the 'prisoners.' However, the 'experimenters' also have a vested interest – namely, to keep the experiment going – to look the other way when the 'guards' violate sections of the contract (few though these sections might be) that govern the conduct of the guards.

During most of the first five days of the prison project, the experimenters have enabled some of the 'guards' to believe that the contractual rules that addressed the behavior of the 'guards are not relevant to what goes on in the experiment. Only very occasionally – such as when Professor Zimbardo instructed the guards not to interfere with the visiting hour arrangements – did the experimenters honor the contract that they, themselves, had drawn up, and, quite possibly, the fact that at least one of the experimenters reclaimed some semblance of moral and intellectual agency with respect to the experiment was triggered by individuals like the new 'prisoner' who kept reminding the 'guards' – and, perhaps, Professor Zimbardo -- that their behaviors were violating the terms of the contract.

The experiment begins to crumble toward being shut down when someone with whom Professor Zimbardo is romantically involved begins

to insert a few rays of moral agency into the darkness of the 'prison' project. Previously, she had played only a small role in the drama when she served on the Parole and Disciplinary Board, but she had never visited the 'prison' or had any inkling of what actually was taking place there.

On the fifth day of the experiment, she is invited down to the 'prison.' Prior to reaching the 'prison' she has a conversation with one of the 'guards,' and based on that conversation, she comes away with the impression that the individual seems to be a very nice young man.

A short while later she is observing the 'prison' experiment through the hidden portal that is near the video camera. She is appalled that the individual whom just a short while earlier had left her with such a favorable impression is now engaged in mean and abusive behavior.

The transformation in conduct seems incredible. The individual is: talking, walking and acting in a manner that is completely different than had been the case when he was outside the building talking with her.

Professor Zimbardo tries to direct her attention to something that is going on in the 'prison.' She seems uninterested in what he is excited about, and, in response, Professor Zimbardo tries to justify what is going on as constituting a phenomenon involving human behavior that, up until then, was unknown and unsuspected ... other members of the experimental staff who are present take the professor's side in the matter.

Tears are streaming down her face, and she tells Professor Zimbardo that she is going home. He catches up with her outside the building and begins arguing with her and barraging her with belittling remarks concerning her potential for ever being a competent researcher if she can't manage her emotions better than what she is presently doing.

He explains to her that many people have visited the 'prison' and none of them have reacted to the situation in the way she has. He claims that they didn't find anything wrong with what was going on in the prison experiment.

The fact of the matter is that Professor Zimbardo is not being honest when he makes the latter sort of claims. First of all, no one outside of the experimental staff actually witnessed the sort of abusive treatment that was being inflicted on the 'prisoners' by the guards.

The priest who had been permitted into the 'prison' for a short time only interviewed the 'prisoners.' He did not observe any of the 'normal' interaction between the 'guards' and the 'prisoners' ... although the priest did smell one dimension of that interaction.

Moreover, the relatives and friends who had attended the 'Visitors Night' did not witness any of the pathological behavior that was taking place in the prison. However, one of the mothers wrote a note to Professor Zimbardo indicating – based on the appearance her son – that she was concerned about her son's mental and physical health.

By his own admission, Professor Zimbardo had to take situational control of such situations. Otherwise, people might become aware of the abuses that were taking place in the basement of the psychology building and, therefore, he believed he had to manage people's perceptions about what was actually happening in the experiment ... a tacit acknowledgement that the experiment was not as 'innocent' as he was attempting to convince people – including himself -- was the case.

For five days, Professor Zimbardo carried around within him knowledge – at least on some level – that what was taking place in the 'prison' was pathological and abusive. It took only a very short time for the woman with whom he was romantically involved to recognize and understand some of the unseemly underbelly of what he had been up to in his experiment.

The two had further arguments about the matter. She told Professor Zimbardo on several occasions that the young men in the experiment were suffering and that terrible things were being inflicted on those "boys."

She was extremely concerned because like the guard with whom she had talked prior to venturing down into the 'prison,' she had viewed Professor Zimbardo as someone who was caring, kind, and compassionate. Yet, Professor Zimbardo was supervising an experiment in which there seemed to be little evidence that could demonstrate the presence of such a caring, kind, or compassionate person, and, like the guard, the individual (i.e., Professor Zimbardo) that she thought she knew was actually acting in a way that was contrary to what she had expected.

Following their discussion, the professor decides to end the experiment. When Professor Zimbardo returns to the 'prison,' he

discovers that the 'guards' have invented a new form of abuse in which the 'prisoners' are required to mimic sex acts with holes in the floor and with one another whenever the 'prisoners' displease the 'guards.'

Professor Zimbardo concludes that most of the 'guards' were unable to resist the situational temptations of control and power. On the other side of the ledger, Professor Zimbardo feels that most of the 'prisoners' had suffered varying degrees of physical, mental and emotional breakdown under the situational forces that impacted on them.

Unfortunately, Professor Zimbardo does not seem to understand that what has gone on for five days has little to do with people being transformed by situational temptations and forces. Instead, the experimenters enabled the entire pathology of the 'prison' experiment to occur as a result of their failure to enforce the contractual 'right' of the 'prisoners' to be free from physical violence as well as their failure to hold the 'guards' accountable for their many transgressions against that 'right'.

The experimenters were caught up in the delusion that they were objective researchers who were pursuing noble, ground-breaking ends. Consequently, they were more interested in keeping the experiment going than they were concerned about the welfare of their subjects – whether 'guards' or 'prisoners' -- and, as a result, they continued to permit the areas of 'problematic conduct' in relation to the 'guards' to be broadened ... for to have done otherwise would have prevented the 'guards' from doing what they did, and what they did were the sorts of behavior that not only seemed to intrigue the experimenters but which had such 'interesting' effects upon the 'prisoners.'

One of the questions hovering about the Milgram and Zimbardo experiments is the following one. Why did both experiments, each in its own way, permit abuse to be perpetrated in relation to subjects?

If either of the foregoing researchers had, to a sufficient degree, critically reflected on their respective experiments prior to the fact of those experiments being run, they might have considered the possibility that there were abusive dimensions to their research projects. In other words, whatever the 'teachers' might have 'done' (or believed they were doing) to the 'learners' in the Milgram experiment, and whatever, the 'guards' might have done to the 'prisoners', both Professor Milgram and

Professor Zimbardo should have understood that the experimental process to which they were going to expose their subjects was inherently abusive ... if for no other reason than that the trust which subjects placed in the people conducting the experiment (and if trust had not been present, the subjects are not likely to have been inclined to participate in such a process) would be betrayed when, in one way or another, the subjects' sense of personal agency was manipulated, and then, the two experiments – each in its own way -- proceeded to hold that sense of agency hostage to the agenda and purposes of the various researchers.

Neither Professor Zimbardo nor Professor Milgram had a right to the sort of intellectual freedom that entitles them to abuse other human beings for the purposes of discovering something that might be of interest or even of value. The law of ignorance says that the boundaries of one's right to push back the horizons of ignorance extends only to being provided with a fair opportunity to do so, and this sort of fairness entails a reciprocal obligation not to undermine anyone else's right to have the same kind of fair opportunity to be able to proceed in a similar fashion.

When people are deceived and manipulated, the quality of fairness is significantly degraded if not entirely eliminated. What the alleged purpose of such deception and manipulation are is irrelevant to the issue of fairness and its inherent quality of reciprocity.

Just as the Milgram learning/memory experiment carried many implications for issues of governance, there also are many parallels between the Stanford Prison Experiment and the issue of governance. While there were many mistakes made in the Zimbardo experiment that are important to grasp because that sort of understanding might serve to guide one in relation to how not to conduct research, the prisoner experiment might be more important as an illustration of the pathological dynamics that often occur within almost any framework of governance.

For example, the Philadelphia Constitution is often portrayed as an experiment in democracy. However, like the Stanford Prisoner Experiment, the people who dreamed up the idea for such an experiment didn't necessarily know what they were doing or how things would turn out.

During the ratification process, when people asked questions about how the Philadelphia Constitution would work, the supporters of ratification had worked out stock, theoretical answers and these were fed back to the people asking the questions. Those answers were entirely theoretical and speculative because no one had previously tried such an experiment, and, consequently, there was little hard data to support any of those contentions.

Whenever Professor Zimbardo was asked what his experiment was about, he claimed that it was an exploration into what 'prisoners' would do to reclaim control of a situation in which their freedoms had been stripped from them. There was no hypothesis ... just a fishing expedition for data.

The people conducting the Stanford Prison Experiment had no idea how their project would turn out. If they did understand what might ensue from their project, they would either not have run the experiment at all or they would have not been surprised when things had to be shut down after five to six days.

Similarly, the individuals conducting the Philadelphia Constitution Experiment had no idea how their project would turn out. They wanted the power to try certain things – i.e., go on a fishing expedition for data that might confirm their speculations concerning democratic governance – and the deeply flawed ratification process provided them with the opportunity that they sought ... just as a deeply flawed system of ethical oversight (with respect to the sort of psychological experiments that should be given the green light) enabled Professor Zimbardo to have the opportunity and power to run with his ideas.

People suffered as a result of the Stanford Prison Experiment. People also have suffered as a result of the Philadelphia Constitution Experiment.

Blacks, Indians, women, poor people, Chinese immigrants (as well as many other immigrant groups), Japanese-American citizens, the disenfranchised, and blue-collar workers have all been abused by the system of governance put into play by the Philadelphia Constitution Experiment. The people conducting that experiment have known about such abuses, but like the individuals running the prisoner experiment, they have been too caught up in their own delusional systems to fully appreciate, or care about, what they were doing to other people.

The environment – both locally and internationally -- has been progressively degraded under the 'watchful' eye of the inheritors of the Philadelphia Constitution Experiment. In addition, millions of people in other parts of the world have been slaughtered, their lands confiscated, and their resources plundered in order to keep the Philadelphia Constitution Experiment running ... just as young male subjects had to be abused in order to keep the Stanford Prisoner Experiment going.

Professor Zimbardo utilized various experts – in the form of prison consultants, a prison chaplain, and people who conducted various psychological tests and interviews – to help inform the manner in which his experiment was conducted. None of those experts prevented what transpired. In fact, in many ways such expertise merely helped color the delusional character of the understanding through which they perceived their experiment.

Similarly, the people who started running the Philadelphia Constitutional Experiment – as well as their subsequent successors – employed lawyers, leaders of various descriptions, economists, media experts, educators, corporate and business executives, bankers, and military strategists. Yet, none of this expertise prevented the abuse that is continuing to be perpetrated through the legacy of the Philadelphia Constitution Experiment.

Like the Stanford Prison Experiment, the people conducting the Philadelphia Constitution Experiment know that pathological things are happening within the context of their experimental operation. However, just as the people conducting the prison project decided that they had to manage the perception of the 'visitors' to their prison, the individuals handling the constitutional project also have decided they must take 'situational control' and, as a result, they lie to people and hide things from the 'outsiders' who come to them and are concerned about what is taking place within the context of the constitutional experiment.

The people who conducted the prisoner experiment had sufficient awareness to understand that if the parents and friends of the 'prisoners' were to find out about the actual abusive character of the experiment, they would pull their loved ones from the experiment. As a result, they set about trying to mask the odor of corruption that had crept into their experiment, as well as attempted to clean up the physical appearance the facilities and the 'prisoners.'

The people conducting the Philadelphia Constitution Experiment also have sufficient awareness to understand that if 'We the People' were to find out about the actual abusive nature of the constitutional experiment, the people would pull out of that project. As a result, the people conducting the Philadelphia Constitution Experiment spend a great deal of time, energy and resources attempting to mislead, misinform, and spread disinformation among 'We the People' with respect to the 'state of the nation.'

Just as keeping the Stanford Prisoner Experiment going was more important to the individuals conducting that project than was the physical and mental welfare of the 'subjects' participating in their experiment, so too, keeping the Philadelphia Constitution Experiment going is more important to the people running that experiment than is the physical and emotional well-being of the 'subjects' – i.e., 'We the People' – who have been induced to participate in the constitutional experiment.

The people who conducted the prisoner experiment were so caught up in their own delusions concerning what they believed was transpiring in their experiment, that they argued with any 'outsider' – and there was only one such 'outsider' -- who was permitted to peek behind the curtain of secrecy surrounding the experiment and expressed shock with respect to what was taking place. The 'outsider' was told that she didn't have what it takes to be a psychologist, and the 'outsider' was told about the groundbreaking research that was going on and how no one had ever witnessed what was taking place within their experiment, and the 'outsider' was told that no one who been a witness to what was transpiring within the 'prison' had objected to what was taking place.

Similarly, the people conducting the constitutional experiment are so caught up in their own delusions concerning what they believe is transpiring within the context of their experiment, that they argue with and ridicule any 'outsider' who comes along and, somehow, gets to look behind the 'wizard's curtain,' and, as a result, begins to take issue with what is transpiring there. Such 'outsiders' are told that the constitutional project is the greatest experiment the world has ever known, and the 'outsider' is told that groundbreaking, breathtaking progress has been achieved because of that experiment – the sort of progress that the world has never before witnessed – and the 'outsider' is told that no one who

has witnesses what is transpiring within the constitutional experiment has ever objected to what was taking place there.

To those 'outsiders' who are able to witness the tremendous abuses that are taking place within the context of the constitutional experiment and as a result of that project, such arguments are nothing more than attempts to rationalize the indefensible. If people have to be abused in order for progress to be achieved, then there is something inherently pathological about that notion of progress.

Unfortunately, the people conducting the constitutional experiment are too entangled in their own delusional thinking in relation to their project to understand that they don't have the right to abuse people ... any more than the individuals running the prisoner experiment had a right to abuse their subjects in order to serve the purposes of that project. There is no justification concerning those experiments that can demonstrate beyond a reasonable doubt that abusing people is okay and, therefore, the individuals conducting the experiment should be permitted to continue on with their pathological activities.

The individuals conducting the prisoner experiment might have had the most noble of intentions when they began their project. Similarly, the individuals conducting the constitutional experiment might have had the most noble of intentions when they began their project.

None of the foregoing matters because irrespective of whether the people conducting the respective experiments understood it or not, their intentions – noble though they might be -- led to the deliberate abuse of other human beings. Moreover, when those abuses were brought to their attention, they retreated into various delusional systems of thought in order to justify to themselves that the abuses that were occurring as a result of their grand experiments were something other than what they were.

Whether by design or out of denial, Professor Zimbardo and other staff members in the Stanford Prisoner Experiment lied to the 'prisoners' and told the 'prisoners' that their troubles were of their own making. The people conducting the experiment had ample evidence on video and audio tape, as well as through their own direct observations, that not only were the 'guards' behaving in ways that were not permitted by the contractual conditions governing the prisoner experiment, but as well, the 'guards' were inventing reasons and justifications for punishing the

prisoners in ways that were disproportionate to anything done by the 'prisoners.'

Similarly, whether by design or out of denial, the people running the constitutional experiment have lied again and again to 'We the People' and have sought to justify such lying by claiming that the people are the authors of their own misfortune. For instance, those who, over the years, have conducted the constitutional experiment have set forth a mythology (a mythology rooted in misinformation and disinformation of one kind or another) which claims that: It was necessary for the Philadelphia Convention to be secretive and for everyone but the would-be architects of the propose constitution to be kept away from the experiment in constitution-making, and it was necessary for the participants in the Philadelphia Convention to disregard the wishes of the Continental Congress, as well as the provisions of the Articles of Confederation, and it was necessary to induce the members of the Continental Congress to be derelict in their duties under The Articles of Confederation, and it was necessary for the states to be derelict in their duties under The Articles of Confederation, and that it was necessary for many facets of the ratification process to be rigged in favor of those who supported the idea of adopting the Philadelphia Constitution, and that it was necessary for the flawed ratification process to be imposed on people, and that it was necessary for everyone to feel obligated in relation to the results of such a process ... and that whatever abuses have transpired in the context of such a constitutional experiment are entirely the fault of 'We the People' and has nothing to do with the structural character of the constitutional experiment and has nothing to do with the pathological conduct of the people who are overseeing that project.

The people conducting the Stanford Prisoner Experiment claimed that experiment was about what steps the 'prisoners' would take to reclaim their sense of personal agency after, or while, they were made to feel powerless through the actions of the 'guards'. The individuals running the prisoner experiment went to considerable lengths to enable the 'guards' to abuse the 'prisoners' ... even to the extent of permitting the 'guards' to continuously push the envelope on the issue of physical violence despite the fact that the 'guards' were contractually obligated to observe the rule concerning no physical violence.

The individuals conducting the Philadelphia Constitutional Experiment claim that their experiment is about self-governance – that is, the co-operative exercise of the sense of personal agency of 'We the People' – and the constitutional experiment is about what 'We the People' (i.e., the subjects) will do once constitutional arrangements have been made to make 'We the People' feel as powerless as possible through the actions of the Executive, Congress, the Judiciary, and the state. In addition, the people running the constitutional experiment have gone to considerable lengths to enable the constitutional system to abuse 'We the People' ... even to the extent of letting the 'guardians' of the government continuously push the envelope with respect to violating their contractual obligations concerning the 'rights' of 'We the People' in relation to, among other things, the issue of self-governance.

Just as the individuals running the Stanford Prisoner Experiment told their experimental subjects that they would have the right to withdraw from the experiment at any time, so too, the people conducting the constitutional experiment point to the Declaration of Independence and indicate how that document addresses the right of the people to abolish governments that are not serving the proper ends of governance. Moreover, just as the people running the prisoner experiment sought to manipulate their 'prisoners' when the latter individuals sought release from the prisoner experiment, so too, the individuals conducting the constitutional experiment manipulate 'We the People' by indicating that with respect to the basic issues of governance, "you can check out any time you like, but you can never leave" – '*Hotel California*,' The Eagles.

The people conducting the Stanford Prisoner Experiment claimed that they were the most qualified, objective individuals to evaluate what was taking place in their experiment. Yet, they didn't have a clue what they were doing, for if they did, the experiment would not have been terminated eight days earlier than scheduled.

The people who initiated the Philadelphia Constitution Experiment claimed that they are the most qualified, 'disinterested,' republican individuals to judge the character of their experiment. Nevertheless, within ten years of the inception of that experiment, people such as Madison and Hamilton who had been allies throughout the Philadelphia Convention, as well as during the ratification process (in the latter case, they, among other case, wrote the vast majority of the essays that would

become *The Federalist Papers*), turned into the sort of enemies they might never have considered possible a few years earlier.

Such transformational shifts are suggestive. They indicate that one, or more, of the two aforementioned individuals didn't necessarily understand the nature of the experiment they had set in motion.

Professor Zimbardo's romantic partner broke with him over the prisoner experiment and couldn't understand how the person she believed she loved could permit such abusive things to happen to his subjects. Professor Zimbardo belittled his romantic partner and questioned her capacity for objectivity and research

Similarly, although Madison and Hamilton were not romantically involved, nonetheless, as fellow overseers of the constitutional experiment, they could not understand what had come over their former traveling companion along the path of republicanism. They soon were belittling one another in relation to the manner in which they respectively considered the other person to be guilty of betraying the principles of the Philadelphia Constitution Experiment ... despite the fact that the principles of that document were never actually justified beyond a reasonable doubt -- not even to individuals participating in the Philadelphia Convention given that they all had agreed there were many problems inherent in the constitutional experiment they had devised, and given that at least six individuals (George Mason, Elbridge Gerry, Edmond Randolph, John Lansing, Jr., Robert Yates, and Luther Martin) rejected what was transpiring in the Philadelphia Convention.

The people conducting the Stanford Prisoner Experiment induced the subjects who would become 'prisoners' to cede their sense of personal agency to the individuals running the project. Out of a sense of trust – along with other motivations – the subjects who were to become 'prisoners' did cede their sense of personal agency to the people conducting the experiment.

The people overseeing the prisoner project permitted the 'guards' to have an enhanced sense of personal agency by permitting them to have physical and emotional authority over, and control of, the 'prisoners.' In order to accomplish this, the individuals conducting the experiment had to cede some of their own agency – after all, they were the ones who supposedly were running the experiment – to the 'guards.'

Once enabled in the foregoing fashion, the guards – or, at least, some of them -- leveraged the agency that had been ceded to them by the experimenters and set about abusing the 'prisoners,' and began to push the envelope with respect to the rule which indicated that physical violence could not be used in the 'prison' by either the 'guards' or the 'prisoners.' Thereafter, the violent activities of the 'guards' were re-cast by the experimenters as something other than the abuse and contractual violations that they actually were.

The sorts of things that have noted above also have taken place -- and are continuing to occur -- in relation to the Philadelphia Constitution Experiment. The provisions of the Philadelphia Constitution – as interpreted by the Executive, the Judiciary, Congress, and the states -- have been used to cede an enhanced sense of personal agency to the 'guardians' of the constitutional experiment ... which, unfortunately, happens to be the: Executive, Judiciary, Congress, and states, and, therefore, contrary to the principles of republicanism, they all have become judges in their own causes.

Once enabled in the foregoing fashion, the 'guardians' of the experiment in democracy have proceeded to leverage the power that has been ceded to them through elections. As a result -- and as was true in the prisoner experiment -- the constitutional 'guardians' began – almost from the outset of the constitutional experiment -- to treat the 'prisoners' (i.e., We the People) in arbitrary and abusive ways as those 'guardians' sought to push the envelope with respect to violating the rights of the people in relation to the issue of self-governance – that is, the co-operative exercise of their sense of collective and individual personal agency.

The word "arbitrary" is used in the previous sentence because whether one is talking about the Executive, the Judicial, the Congressional, or the state branches of government, none of these facets of governance has been able to demonstrate beyond a reasonable doubt that their respective interpretations of the Philadelphia Constitution are viable ways of serving the purposes and principles that were set forth in the Preamble to the Constitution, or that their interpretation of governance can be justified, beyond a reasonable doubt, with respect to the 'original right' to which Justice Marshall referred in *Marbury v. Madison*. Consequently, the very fact of the arbitrariness surrounding

those interpretive activities makes them abusive in relation to each human being's basic right of sovereignty – that is, the right to have a fair opportunity to push back the horizons of ignorance with respect to the nature of reality. Any interference with that sort of sovereignty that cannot be justified beyond a reasonable doubt is arbitrary.

In the Stanford Prisoner Experiment, the behaviors of the 'guards' and the 'prisoners' are said to give expression to the manner in which situational forces come to dominate the dispositional tendencies of individuals, thereby, inducing individuals to behave in ways that would not otherwise occur. Entirely left out of the foregoing account is the manner in which the people running the experiment manipulated the sense of personal agency of both the 'guards' as well as the 'prisoners' and, in addition, ceded their own sense of personal agency to the kind of delusional understanding of the experiment that would permit fundamental violations of the contractual rules supposedly governing the experiment to occur in order to keep the experiment going.

In the Philadelphia Constitution Experiment, the behaviors of the 'guardians' of democracy are said to give expression to the manner in which the situational principles of the Constitution come to dominate the dispositional tendencies of individuals, thereby enabling individuals to behave in 'civilized' and 'democratic' ways that would not otherwise occur. Entirely left out of that kind of an account is the manner in which the people running the constitutional experiment have manipulated the sense of personal agency of the 'prisoners' (i.e., We the People) and induced them to cede such agency to the 'guardians' of democracy who, then, proceed to leverage that power to serve their own delusional understanding concerning: 'sovereignty,' rights,' 'justice,' 'liberty,' 'welfare,' 'tranquility,' and the 'common defense.'

Finally, during the Stanford Prisoner Experiment, there came a point during their project in which the individuals conducting the experiment convinced themselves that one of the 'prisoners' whom they had permitted to be abused and, then, subsequently released was going to come back with a gang of friends and free the remaining 'prisoners' as well as trash the 'prison.' They became so obsessed with the idea that they sought to move their experiment to an 'out of use' jail facility outside of the university, and when this plan did not work out, moved all the

'prisoners' to a windowless, poorly ventilated storage facility for three hours in order to foil the fiendish plans of the former 'prisoner.'

The foregoing delusional fantasy was set in motion by: (1) several 'guards' claiming that they heard the 'prisoners' talking about such a plot, and (2) one of the 'guards' claiming that he had seen the released 'prisoner' skulking about the halls of the Psychology Department. Rather than investigating to determine whether, or not, there was any truth to the various allegations of the 'guards', the experimenters entered into a paranoid delusional state and took steps that were consistent with such a condition – that is, they did what they thought was necessary to preserve their own experiment no matter how it might affect the 'prisoners.'

Eventually, the experimenters returned the 'prisoners' to the 'prison' facility in the basement. The had come to the conclusion that the whole 'plot' was nothing but 'rumor,' and failed to understand that their behavior was a function of delusional thinking that was present long before the 'rumors' surfaced and that the 'rumors' had been given credence because they were filtered through the lenses of a delusional system of thinking.

Similarly, the 'guardians' of democracy tend to operate out of a delusional framework that is based on arbitrary and abusive interpretations of the Constitution that often compels them to filter unsubstantiated rumors – for example, those connected with Afghanistan in 2001, or those connected with Iraq in 2003, or those connected with Vietnam in the 1960s – through such delusional thinking in a way that has (and has had) terrible consequences for many people ... both Americans and people elsewhere in the world. Furthermore, the purpose underlying those exercises of paranoid delusions is not to protect the 'prisoners' (i.e., We the People') but, instead, is directed toward keeping the experiment going in a fashion that will permit that project to remain completely under the control of those who are conducting the constitutional experiment while operating out of a delusional framework concerning the sovereignty of the 'prisoners' (i.e., We the People') that they are abusing in arbitrary ways ... that is, in ways that cannot be justified.

Chapter 9: Corporate Pathology

There is a common tendency among many individuals to conflate and confuse the following terms: 'sociopath', 'antisocial personality,' and 'psychopath.' A brief overview might be of assistance.

A sociopath is someone who manifests a pattern of behaviors that is considered by a dominant culture to be either criminal or deviant. Yet, within the subculture to which a sociopath belongs, that person is not necessarily considered to be deviant or suffering from any sort of mental/emotional disorder.

A sociopath could have a well-developed sense of 'right' and 'wrong' or 'morality' and 'immorality.' As well, a sociopath might display dispositions involving loyalty toward, and empathy for, other human beings.

Many people who are criminals – whether in prison or free – could be considered sociopaths by the larger society. Yet, the people so labeled are often – but not always – capable of intimacy with other individuals and capable of caring for those people.

The ideas of 'sociopath' or 'sociopathy' are not diagnostic terms. The technical phrase that comes closest to 'sociopath' is: 'antisocial personality disorder.'

Individuals who are diagnosed with antisocial personality disorder tend to fall within a range of possibilities that extends from: those individuals displaying the aforementioned sociopathic patterns of behavior and attitudes, to: individuals who display more severe forms of dysfunctional behavior and attitudes (e.g., maybe they have problems with being intimate or have a diminished sense of 'right' and 'wrong') without spilling over into the still more severe forms of disorder that are given expression through psychopathy.

Psychopaths are individuals who display a certain cluster of personality traits. Among these traits one finds an absence of: empathy, guilt, loyalty, a capacity for intimacy, and conscience.

Not all psychopaths are necessarily highly intelligent. However, psychopaths do tend to have a keen sense of the emotional lives of other people and how to manipulate those emotions in order to gratify themselves or achieve their own completely self-directed ends ... in a sense, they know how most emotions work and that such emotions play

an important part in the lives of others, but psychopaths just don't know how most of those emotions feel.

The first systematic study of the psychopath was done by a psychiatrist, Hervey Cleckley, and he published his findings in a 1941 book entitled: *Mask of Sanity*.

Among other things, Dr. Cleckley indicated that psychopaths were very insincere individuals, and, yet, they had the capacity to mask that insincerity with an appearance of sincerity. In fact, psychopaths were apparently capable of providing the surface semblance of a variety of emotions such as: intimacy, love, loyalty, friendship, empathy, and morality without actually feeling any of these emotions (which is consistent with my previous contention that psychopaths seem to understand how emotions work but not how those emotions feel).

In addition, Dr. Cleckley described how psychopaths seemed to have little, or no, insight into their own condition. As a result, they tend to exhibit little, if any, sense of guilt or remorse with respect to the ways in which they have harmed others through the moral shallowness of their condition.

Another trait of psychopaths noted by Dr. Cleckley concerned their apparent inability to learn from experience. However, if people don't care about the consequences of their acts, then they are not likely to be sufficiently motivated to use past experience to shape future behavior.

On the other hand, there are case studies concerning psychopaths that suggest such individuals can be quite elaborate and calculated in the plans they make for abusing and controlling other individuals. As a result, certain psychopaths are sometimes capable of evaluating complex, social dynamics as well as figuring out the sort of tactic that is necessary to engage those dynamics for purposes of advantaging the psychopath while damaging other human beings.

The only emotions that psychopaths seem able to experience deeply are frustration, anger, and rage. Those emotions tend to surface when the self-serving agenda of the psychopaths is thwarted or threatened in some fashion.

Psychopaths are capable of reasoned, logical, critical analysis. However, this tends to occur within the narrow framework of determining what is necessary to satisfy their desires and interests.

While psychopaths are sometimes described as not being subject to delusional thinking, this might not be true. They often have a megalomaniac sense of self, and, as well, one might argue that their emotional and moral parsing of the universe is delusional in character ... perhaps driven by their inflated sense of self-importance along with their beliefs/attitudes that only their own satisfaction, gratification, interests, and purposes are what matter.

There are four domains of behavioral traits that are considered when trying to diagnose whether, or not, someone is displaying psychopathic tendencies. These domains involve: interpersonal, affective, life style, and antisocial characteristics.

In conjunction with the foregoing domains, Dr. Robert Hare has developed several diagnostic tools for assessing the degree to which psychopathic tendencies might be present. Depending on the tool, these diagnostic techniques involve either a more extensive, or a somewhat less extensive, set of traits in the aforementioned domains of activity to determine a diagnosis.

The more extensive set of traits (found in the Psychopath Checklist – Revised, or PCL-R) are evaluated through in-depth interviews that are scored in accordance with a system -- expounded in an accompanying manual -- that runs between 0 and 40, whereas the less extensive version of the same sort of test – namely, the Psychopath Check List - Screening Version (PSL – SV) – uses a scoring system that ranges between 0 and 24 points.

According to Dr. Hare, the average criminal will score somewhere between 19 and 22 on the PCL-R and approximately 13 on the PCL-SV. The line dividing psychopaths from lesser sorts of dysfunctional or problematic behavior is usually set at 30 in relation to the PCL-R, whereas a score of 18 or above is considered to be the dividing line for a diagnosis of psychopathy in the shorter PCL-SV.

Interestingly enough, there is room for ‘average’ human beings to register on either the PCL-R or PCL-SV. However, these scores generally do not rise higher than 5 on the PCL-R and 2 or 3 on the PCL-SV.

Many psychopaths are very good at ‘reading’ people. They often are quick studies when it comes to acquiring an understanding of what motivates different people and how the interests, attractions, antipathies,

and worries of those people can be translated into vulnerabilities that can be manipulated by the psychopath.

Moreover, as Dr. Cleckley pointed out in the *Mask of Sanity*, psychopaths are often quite skilled in impression management. That is, they use emotional and social masks to influence the impressions that other people might develop with respect to the psychopath.

Finally, many psychopaths exhibit impressive – albeit limited in certain ways – skills of communication. This skill tends to emphasize manipulative style over substantive content, and as true with respect in relation to the capacity for impression management, this sort of a communicative style is used to shape the perceptions, attitudes and beliefs of other people with respect to the 'persona' of the psychopath.

Some psychopaths are quite skilled in the practice of lying and using disinformation or misinformation as means of controlling a situation and/or manipulating people. In fact, certain psychopaths are so good at lying and spreading disinformation/misinformation that they can induce people who already know the truth of a given situation to doubt their own understanding of those circumstances.

Whether, or not, some degree of truth is spoken by a psychopath often tends to be a purely practical or instrumental decision. If telling the truth will further the psychopath's purposes, then the truth will be told, but if telling the truth will not advance those purposes, then disinformation or misinformation will tend to rule the moment.

As indicated previously, psychopaths appear to act without any sense of conscience, guilt, or remorse with respect to the impact that their actions have on others. Therefore, even when psychopaths understand that their actions have caused a problem, psychopaths will often blame others for whatever has transpired.

Not only do many psychopaths feel entitled to do whatever they do, but, as well, they feel that others should take the blame for the actions of the psychopath. This is part of the psychopath's sense of entitlement – to see others as the means to the ends of the psychopath.

Once people trust someone, that trust becomes a potential source of vulnerability. The presence of trust makes the simultaneous presence of certain kinds of flaws in the people being trusted more difficult to detect due to the way the presence of trust tends to inhibit people from critically

examining the behaviors that are hidden beneath such a cloak. Many psychopaths are very good at inducing people to trust them, and then the trust becomes the Trojan horse through which all manner of problems enter into the lives of those who have been willing to extend that kind of trust to the psychopath.

When impression management and facile communication skills are not able to accomplish the purposes of a psychopath, those individuals usually have a fallback position involving overt and covert expressions of meanness, aggressiveness, and intimidation. This fallback position is likely a reflection of the way in which the frustration, anger, and rage that tend to exist just beneath the surface of a psychopath are triggered and channeled into aggressive forms of intimidation/meanness with respect to those who are perceived to be behaving in ways that constitute obstacles to the psychopath's interests and purposes.

However, either serving, or being obstacles to, the purposes of a psychopath are not necessarily the only roles that other people can assume in relation to the psychopath. Some psychopaths derive pleasure from the pain that they inflict on other human beings through the manipulation of emotions and exploiting vulnerabilities, and deriving pleasure in this fashion might be a primary goal for these kinds of psychopaths ... quite irrespective of whether, or not, anything further is gained through that sort of abuse.

Controlling other people through manipulating their vulnerabilities and/or willingness of other people to trust someone is a challenging game for some psychopaths. The foregoing sort of game might become the raison d'état for their lives.

Once people have served their purpose or become a liability, a psychopath will abandon those individuals. The psychopath is indifferent to what happens to the individual (s) who is (are) abandoned in this fashion.

Although psychopaths are often impulsive, unreliable, and irresponsible, they also are often very adept at making things seem to be other than they are. Their communication skills, capacity for impression management, as well as their shameless willingness to throw other people under the bus often – but not always -- help to compensate for various displays of impulsiveness, unreliability and irresponsibility.

Some people have proposed that the number of psychopaths in any given population might be as many as 1 in 100 people. In America, this would mean that nearly 3½ million psychopaths are present.

The foregoing individuals are not necessarily ensconced in a prison somewhere. They are sprinkled across all strata of the population – from: criminals and abusive spouses, to: military personnel, government officials, educators, scientists, and business people -- including executives.

If the foregoing statistics are true, then as terrifying as are, they actually pale in comparison to the possible actual nature of the problem facing society. More specifically, psychopaths are usually considered to be born rather than made ... although environment might serve to exacerbate or modulate (e.g., help hide) those psychopathic tendencies.

Consequently, psychopaths do not necessarily come from abusive families. Many of them grow up in 'normal' circumstances, and, some – perhaps many -- of them might come to recognize at an early age that they are different from other people and that those differences will have to be hidden by means of various coping strategies – such as impression management, communication skills, manipulation, lying and so on – if their 'different' inclinations are not to lead to problematic ramifications for them.

However, what if the condition of psychopathy were totally a function of a combination of environment and the manner in which an individual's sense of personal agency (that is, their capacity for choice) engaged those environments? For instance, many people are driven to such an extent in their pursuit of political, religious, financial, educational, and economic goals that their behaviors often become like a psychopath.

Those people often seem to be: entitled; impulsive; irresponsible, egocentric – if not megalomaniac; lacking in compassion and empathy concerning those to whom they cause harm; inflexible; insincere; manipulative; inclined to blame others; consider other individuals as mere instruments to their own ends; ready to abandon anyone who does serve their purposes; willing to lie or spread disinformation and misinformation if it will further their agenda; inclined to feel little remorse or guilt with respect to the harm and abuse they inflict on those who are perceived to constitute threats or obstacles to the fulfillment of the agenda of such individuals. In addition, the foregoing, psychopathic-like sorts of people are very good at: reading people and calculating what the value and

vulnerabilities of those individuals are relative to the interests of the psychopathic-like individual, as well as being very good at managing the impressions of others, controlling situations, and using their communication skills to convince people that things are other than the evidence suggests is the case.

I refer to the foregoing sorts of individuals as 'ideological psychopaths.' They might not be born that way, but through the interaction of environment and personal agency, those individuals become indistinguishable from psychopaths who appear to be born into their condition.

Previously, I indicated that there might be as many as 1 in 100 people who are 'born' psychopaths. The incidence of ideological psychopaths is likely to be far higher given that there are so many more different ways – religiously, politically, economically, philosophically, and historically – other than genetically through which ideological psychopaths might come into being.

There is one difference between the foregoing two categories of psychopaths. 'Normal' psychopaths can't help themselves, whereas 'ideological psychopaths' can help themselves but choose not to.

People who are willing to go to war and destroy tens of thousands, if not millions, of individuals for arbitrary 'reasons' – that is, for reasons that cannot be justified beyond a reasonable doubt – are psychopaths. The only question that remains concerns the issue of whether they are 'natural' psychopaths or 'ideological psychopaths,' and in some respects the question is a moot one since precisely the same sorts of behavior are in evidence in both cases.

People who are willing to arbitrarily destroy the lives of tens of thousands, if not millions, of people for the sake of economic (whether capitalistic, socialistic, or communistic), political, legal, or religious ideologies that cannot be proven beyond a reasonable doubt are either 'natural psychopaths' or they are 'ideological psychopaths.' However, irrespective of which they are, their behaviors are thoroughly destructive, abusive, and malevolent in ways that lack all empathy, compassion, and concern for the welfare of whoever falls beyond the horizons of their sphere of self-interest and their behaviors are devoid of evidence indicating any sense of conscience or guilt concerning the harm that

ensues from their focused, relatively inflexible pursuit of their arbitrary forms of ideology.

The people who instituted the experiment in constitutional democracy and those who are the heirs with respect to continuing to conduct that experiment – whether these individuals are politicians, government officials, members of the judiciary, or representatives of the military – have again and again exhibited psychopathic-like tendencies with respect to the lives of tens of millions of people (e.g., Indians, slaves, women, minorities, the poor, the disenfranchised) through the arbitrary – and, therefore, unjustifiable – ideological frameworks by means of which they have sought to control and manipulate the vulnerabilities and trust of 'We the People.' The way of power in the United States has been the dominant ideology used to conduct the experiment into democracy, and the way of power is a euphemism for 'ideological psychopathy'.

The way of power – or ideological psychopathy -- seeks to undermine, limit, disempower, destroy, and manipulate the way of sovereignty – that is, the way which is dedicated to ensuring that everyone has a fair opportunity to push back the horizons of ignorance. Moreover, as indicated in the chapter entitled 'Taking Rights Seriously,' part and parcel of this notion of having a "fair opportunity" encompasses not only issues of: food, shelter, clothing, health care, and education, but, as well, includes the right to be free from all of the ways in which ideological psychopathy -- of whatever variety -- might attempt to interfere with the sorts of discussions, assemblies, and arrangements that should be considered in order to be able to advance, beyond a reasonable doubt, the way of sovereignty for everyone.

A corporation is sometimes described as a legal fiction – that is, something that everyone knows does not reflect any reality outside of the legal realm but that, nonetheless, serves some sort of legal function. On other occasions, a corporation is referred to as an artificial person in the sense that such a legal entity is considered to have a personality and legal existence distinct from the human being(s) who are legally associated with that entity.

I have been studying psychology for close to 50 years, and I have taught a wide variety of courses on psychology, including: general psychology, social psychology, abnormal psychology, transpersonal

psychology, and developmental psychology. However, in all that time, I've never come across any understanding concerning the issue of personality which is capable of demonstrating that such an understanding gives expression to a provable system of thought with respect to: what personality is, or how it develops, or what its origin is.

There are many, many theories of personality (e.g., Sigmund and Anna Freud, Carl Jung, Alfred Adler, Henry Stack Sullivan, Gordon Allport, Erik Erickson, George Kellly, Ludwig Binswanger, Victor Frankl, Abraham Maslow, Carl Rogers, B.F. Skinner, Albert Bandura, Jean Piaget, Albert Ellis, etc.). While most, if not all of, the foregoing theories have their advocates as well as their spheres of application, nevertheless, all those theories also require leaps of faith (sometimes quite substantial ones) across a chasm of unknowns with respect to what personality actually involves ... in reality rather than in purely theoretical terms.

Some modern researchers have given up trying to establish a theory of personality and have, instead, selected certain factors to explore that might have something to do with personality and that seem to exhibit a certain amount of empirical stability in individuals across time and circumstances. These elements – known as the 'big five factors of personality' – (1) Openness (as measured by how: independent or conforming, imaginative or practical, and variation or routine-oriented a person is); (2) Conscientiousness (as measured by how: careful or careless, disciplined or impulsive, and organized or disorganized a person is); (3) Extraversion (as measured by how: fun-loving or somber, sociable or retiring, and affectionate or reserved a person is; (4) Agreeableness (as measured by how trusting or suspicious, softhearted or ruthless, and helpful or uncooperative a person is); and, finally, (5) Neuroticism (as measured by how: self-satisfied or self-pitying, calm or anxious, and secure or insecure a person is).

One of the problems with the foregoing approach to the idea of personality is that they are dependent on the nature of the measuring instruments that are used to rate people with respect to the big five personality factors. Not all those instruments necessarily measure what they claim to, or they do so in problematic and contentious ways. Furthermore, some degree of subjectivity enters into the manner in which the results generated through those measuring instruments are interpreted.

In any event, notwithstanding the aforementioned considerations, what would it mean to construe the alleged personality of a corporation in terms of any of the foregoing possibilities? Does a corporation actually have a personality in any of the aforementioned senses, or is the term "personality' used in relation to corporations in an entirely arbitrary sense meant to indicate that every corporation is shaped by human beings and circumstances in a way that is, to varying degrees, distinctive? Moreover, even if one were able to, somehow, evaluate a corporation in terms of, say, the 'big five factors of personality,' what does any of this have to do with permitting corporations to have the right to impact the lives of people in problematic, abusive or destructive ways?

Actual human beings do not have the foregoing sort of right. Why is that kind of right being extended to corporations?

Some people have argued that corporations are persons and, therefore, are entitled to the same rights as people. In what sense are corporations persons?

Corporations are a legal fiction. They have been invented to serve the purposes and agendas of certain forces within the legal world, but what right does the legal realm have to create such fictions and impose them on people?

The first eight chapters of this book have shown, in various ways, that there is no 'rule of law' operative in the United States that is capable of justifying itself beyond a reasonable doubt. For example, the rule of law that is supposedly inherent in the Philadelphia Constitution is, in a number of ways, quite arbitrary (some aspects of which have been explored in previous chapters).

What is the argument – legal or otherwise -- that demonstrates corporations are not only persons but persons with rights? What is the difference between a biological person and an artificial person created through legal means?

A corporation is not considered to be identical to the person or persons who are associated with that legal entity. This element of separation is, among other things, what permits the people who are associated with that sort of a legal fiction to be immune, in many ways, from being held responsible – criminally or financially – for claims against the corporation.

So, if a corporation is not the same as the person or people who are associated with it, in what sense is it a person – artificial or otherwise? To say that corporations are persons because they are considered to have a personality – that is, a dimension of distinctive style or manner of functioning -- is an abusive use of language that is so arbitrary – and, therefore, unjustifiable – that such an argument reduces down to little more than someone operating out of the way of power – which, as pointed out previously, is a euphemism for ideological psychopathy – and claiming that a corporation is a 'person' because such a representative of power says so.

As a legal entity, a corporation has no: intelligence, self-awareness, understanding, creativity, artistic or musical talent, potential for learning, emotion, insight, morality, hermeneutical skills, judgment, ability to choose, or linguistic capacity. One cannot point to the human qualities of the people associated with such a legal entity and claim that the presence of the human beings with the foregoing sorts of qualities transforms the corporation into a person since, legally speaking, a wall of separation exists between the corporation and the people associated with it, and if this were not the case, then, corporations would not be able to offer any degree of legal and financial protection for those individuals, and as a result would serve no legal purpose.

Of course, some people argue that one of the reasons why corporations are considered to be artificial persons is to ensure that those entities are treated fairly before the law, just as human beings are. However, if one were to eliminate corporations altogether, then people engaged in business would be treated just as any other individual is treated, and one wouldn't have to worry about all the legal voodoo that surrounds the idea of corporations as artificial people.

Considering corporations to be artificial persons does not balance the scales of justice. Rather, this kind of a legal fiction renders the scales of justice dysfunctional.

People associated with corporations want to keep their cake and eat it too. On the one hand, when they wish to be shielded from criminal prosecution, financial liability, bankruptcy, or sanctions of one kind or another, then the individuals associated with that sort of a legal fiction insist on everyone remembering that there is a strict separation between the legal entity and the human beings associated with that entity. On the

other hand, when it is advantageous for those people to insist that corporations should have access to the same rights accorded to human beings (for example, speech, equal protection under the law, due process, and so on), then, somehow, the corporation mysteriously acquires personhood.

However, the nature of that mysterious transformation has never been adequately explained by anyone. Instead, the legal system insists that everyone must accept the 'personhood' of a corporation on faith ... that is, because the priests, bishops, and cardinals of the legal system have arbitrarily decreed – meaning that such an act of faith is something that cannot be justified beyond a reasonable doubt – that the foregoing sort of legal arrangement is incumbent on everyone.

What is the source of obligation in relation to that notion of 'incumbency'? What, if anything, makes it binding?

Arbitrary laws have no binding force. The incumbent dimension of those arbitrary laws is nothing other than the threat of force that is given expression through the way of power – that is, ideological psychopathy -- in relation to whoever does not comply with that kind of legal directive.

Furthermore, even if one were to somehow come up with a definitive proof concerning the alleged 'personhood' of a corporation – and no one, to date, has done this successfully -- nevertheless, there still would be a major problem surrounding the idea of treating corporations as persons. Why should some of the individuals associated with corporations get a double portion of 'rights'? – namely, those rights to which they are entitled as human beings independently of corporations and those same 'rights' to which they are supposedly entitled because of their association with corporations.

The foregoing situation is sort of like saying that each of the personalities of someone who suffers from a dissociative identity disorder should be entitled to a separate set of rights. If one considered that kind of a claim to be ridiculous – and it is – then why is the claim of multiple rights for a person and the corporation with which he or she is affiliated any less ridiculous?

How does one justify certain people – i.e., some of those who are associated with a corporation, and, one should keep in mind, that not everyone associated with a corporation necessarily can do this –

acquiring more 'rights' than everyone else? There is an inherent inequity in this sort of an arrangement ... an inequity that receives the full support of the legal system even though that same legal system cannot adequately explain, or justify beyond a reasonable doubt, in what way a corporation is a person -- and the burden of proof concerning this issue is on the legal system, not on 'We the People' to demonstrate the negative.

There are both private and public corporations. Just as private individuals use the corporate dodge as a way of doing an end around certain kinds of legal and financial issues while retaining an array of double-dip rights, so too, public bodies – such as city/town, state, and federal governments – also make use of the legal legerdemain that is afforded them through the legal fiction of 'corporations.'

Whether one believes in the idea of evolution or in the idea of creation, there were no corporations roaming the earth when life, somehow, was manifested on the face of the Earth. Skeletal remains of early hominids have been discovered, but there are no artifacts of corporate bones that have been unearthed in the dust surrounding those hominids.

Corporations are a conceptual invention of human beings ... or some of them. Corporations came into existence as a way for certain religious organizations and local governments to leverage their own 'authority' despite often being financially insolvent or experiencing liquidity problems. In exchange for the power that was vested in a charter of operations by the appropriate source of authority, the ones receiving the charter -- who often had money or resources but not necessarily any recognized authority – would set about earning money for the organization or government that was authorizing the 'corporate' entity to act.

If an organization or government with authority had sufficient money, they would have had no need for corporations to do their bidding. If, on the other hand, a business entity had its own source of authority that was capable of sanctioning its acts, then that entity would have had no need for some form of authoritative backing to sanction the actions of the business entity.

Corporations were a marriage of convenience between power and money, or between power and the potential for generating money. Corporations came into existence through the permission granted by a

source of authority capable of enabling those commercial entities to act in ways that might not otherwise be possible.

Corporations also represented a way to establish a wall of plausible deniability between the authorizing/enabling source and the entity that was being authorized or enabled. If it was politically expedient to do so, a corporation could be blamed or set up to draw criticism for various problematic acts even if those acts had been authorized by a given religious organization or government.

Corporations were quantitative (material and financial) utilitarian instruments for controlling a variety of resources. Those resources ranged from: people, to: property, crops, goods, services, education, tools of war, buildings, art, blessings/prayers, and power.

Finally, in exchange for the charter of empowerment that was granted by a given source of authority, the people associated with a corporation would assume the majority, if not entirety, of the financial and material risks of venturing into uncertain economic/commercial territory. Those who granted the corporate charter stood to gain financially and/or materially without endangering their own wealth or status, whereas those who were being granted the authority to venture forth for possible profit in relation to places and activities that they would not be permitted to venture into otherwise.

There is no concept of personhood in any of the foregoing functions of a corporation. Everyone involved – those granting the charter and those receiving such a grant – knew the nature of the game being played, and it was entirely a matter of power enabling money, and/or money enabling power.

From the very beginning, corporations existed quite independently of the wishes of the generality of people. Corporations were a legal fiction – an expression of the way of power -- created by some, given source of authority/power to serve the interests of that source of power.

Under the best of conditions, corporations had a symbiotic relationship with the source of authority/power that had enabled those sorts of commercial entities to operate under certain conditions and circumstances. Under the worst of conditions, there was a parasitic-like relationship between the two in which either side of the relationship

might serve as the host that is being preyed upon by the other dimension of the relationship.

A corporation can give expression to the sorts of behaviors that might warrant the diagnosis of ideological psychopath. However, those behaviors are a function of human beings operating through a legal entity, and, as a result those human beings ought to be held responsible for those behaviors rather than playing a legal game in which psychopathic behaviors are attributed to a legal fiction that can – within limits -- be held legally responsible for those acts in order to prevent the people who actually perpetrated those acts (using the corporation as their means) from being held accountable for their own problematic behavior.

Whatever laws or moral codes were broken by Frankenstein's monster, one should never forget – and the townspeople in the book/movie did not -- that it was Dr. Frankenstein who set everything in motion and was the one who should be held accountable for whatever acts his scientific fiction committed. In the legal world, however, only the monster can be found legally liable, and the ideological psychopaths who unleashed the monster on the world are considered untouchable ... Charles Dickens was right – "The law is an arse."

Many of the colonies in pre-Independence America came into existence under a corporate charter. Furthermore, various cities and towns within those colonies operated out of charters that had been granted by the individuals who had been given authority by the Queen or King of England to run those colonies for the benefit of: royalty, as well as the members of the charted corporations, and, sometimes even the generality of people, but the latter individuals had, for the most part, little control over what took place in the context of those interacting charters.

In addition, there was another kind of corporation – for example, the East India Company – that constituted a further form of chartered empowerment. Those companies also operated at the pleasure of the Queen or King of England, and its impact on the American colonies was considerable.

Contrary to the opinion of some, America was not founded by the Pilgrims. Nearly 20 years before the Mayflower landed off Massachusetts,

the East India Company already had been visiting America and claiming land on behalf of the Crown.

In fact, the Mayflower was part of a fleet of ships that was owned by the East India Company. Moreover, that ship had made 3 previous trips to America before the Pilgrims chartered it in 1620 to take them to the new continent.

England – under Queen Elizabeth I – entered into the New World corporate business when, in 1580, she granted Francis Drake and his ship, The Golden Hind, immunity from prosecution in exchange for whatever wealth he could manage to 'liberate' from those who possessed resources and valuables.

Other countries – such as France and Holland – were also engaged in these same kinds of corporate relationships. Commercial enterprises and moneyed individuals were granted permission to acquire resources in the New World in exchange for filling up the coffers of the granting powers.

Very pleased with the arrangement she had forged with Drake, Queen Elizabeth I expanded on the original idea. In late 1600, she granted permission for a group of several hundred merchants in London to form a corporation – named, the East India Company – to explore the New World in search of wealth-generating opportunities for themselves and for their Queen.

Initially, the foregoing company was supposed to compete with the Dutch in relation to the spice trade. However, that venture did not turn out very well, and, so, the company turned their attention to other possibilities.

For instance, while trying to make a go of things in the spice trade, the East India Company had been transporting a variety of people to various places in America. These passengers ranged from: prisoners, to: people who were unhappy with life in England and sought a chance for a new beginning elsewhere, and the East India Company made a considerable profit for transporting people to America.

In addition, the East India Company busied itself with claiming large tracts of land for itself and the Queen. The first official, English settlement in America was established at Jamestown in Virginia in 1606, and that settlement was organized by the Virginia Company on land that had been ceded to the former company by the East India Company.

Captain Cook was a company man, and he went on many exploratory voyages on behalf of the company. Captain Kidd was also a company man before he went into business for himself against the interests of the East Indian Company and, as a result, was executed for his enterprising spirit.

For a time, the East India Company became one of the most powerful corporations in the world. By the 1760s, however, it had plunged deeply into debt due to its attempt to rapidly expand its sphere of operations all over the world – from: India and China in the East, to: the Americas in the West.

One of the obstacles that helped prevent the East India Company from being able to get out of debt was America. Most of the colonists were, in one way or another, very active commercially.

Among the foregoing American entrepreneurs were a number of small businessmen who were involved in the tea business. They had found ways to smuggle tea into America and, thereby, cut out both England and the East India Company from the profits.

There were many tea houses that had been established in the colonies. Moreover, since tea houses – along with taverns – were primary social gathering places for the colonists, there was a booming tea trade in America that totaled thousands of tons of tea every month.

The aforementioned small business entrepreneurs who were involved in the tea trade were in direct competition with the East India Company. Because most, if not all of the English royalty were stockholders in that company, their profits were being adversely affected by colonial businessmen.

As a result, a number of laws were enacted – for example, the 'Pirates and Privateers' legislation of 1681 required anyone importing goods into the colonies to have a license ... and such licenses were granted only to very large corporations such as the East India Company. Anyone who did not have the requisite license was considered to be either a pirate or privateer.

Additional legislation – e.g., the Townsend Act of 1767 and The Tea Act of 1773 – was also passed in order to either enhance the power of the East India Company and/or to weaken that company's competition. For instance, The Tea Act gave the East India Company exclusive rights to the

tea trade in the colonies. Furthermore, that company was exempt from having to pay any taxes on the tea exported from England to the colonies.

That sort of legislation enabled the East India Company to undercut the price for tea that was charged by colonial entrepreneurs. The Boston Tea Party of 1773 challenged the authority of the English government to grant monopoly rights to the East India Company with respect to the tea trade and also challenged the authority of the English government to establish an unfair playing field by charging colonial entrepreneurs a tax while exempting the East India Company from having to pay such a tax.

In the aftermath of the Boston Tea Party, a further law was passed. It was referred to as the 'Boston Port Law,' and it was intended to penalize the colonists. More specifically, until the people in Boston and/or Massachusetts reimbursed the East India Company for the tea destroyed during the aforementioned event in Boston harbor, the port would remain closed.

The demanded compensation was not forthcoming. Less than two years later -- during April 1775 -- the battles at Lexington and Concord were fought.

While there were a variety of underlying causes for the American Revolutionary War, nevertheless, in part that war was fought in an attempt to reject: monopolies, monopoly capitalism, and the inequitable manner in which colonial businessmen were treated by the English government relative to the East India Company.

One of the first skirmishes of the Revolutionary might have been won via the Boston Tea Party. However, ironically, the actual war of revolution involving the sovereignty of 'We the People,' has, to a large extent, been lost because, once again, mega corporations like the East India Company rule the American landscape and, with the help of government – both state and federal – many segments of 'We the People' have been placed at a distinct commercial, political, and legal disadvantage.

From the very beginning in America, there has been a very consistent, political/legal situation in America. On one side of the political/legal ledger, one finds the government-coddled corporate world involving both private companies such as the East India Company and public corporations like the Virginia Commonwealth or Jamestown. On the other side of the political/legal ledger one finds the generality of people whose

basic sovereignty has been oppressed, undermined, weakened, and compromised due to the ideological psychopathy generated through the marriage of governance and corporations that forms the way of power.

Like the infamous *Protocols of the Elders of Zion*, some myths are difficult to put to rest. This is not because there are any facts to substantiate those myths but because, instead, there are people with vested interests who keep flogging the myth in the hope that, sooner or later, they can induce other individuals to cede their moral and intellectual agency and, thereby, become invested in those myths – emotionally, politically, and financially.

One of the myths making the rounds in 1882 was the idea that a secret, congressional journal had been kept during the legislative discussions that, eventually, helped pave the way to the ratification of the 14th Amendment in 1868. According to the proponents of this myth, the secret journal proved that members of Congress had forged the 14th Amendment with the intention of having corporations included among the 'persons' to whom rights were granted in that amendment.

Part of the foregoing myth involves two individuals – former railroad lawyer and Congressman John A. Bingham, along with former railroad lawyer and Senator Roscoe Conkling – who, while helping to write the 14th Amendment, inserted the word "person" into the language of the first section or paragraph of that amendment with the secret intention of meaning the term to include artificial persons ... that is, corporations. In other words the references to 'persons' in the first paragraph of the 14th Amendment – for example, "All persons born or naturalized in the United States ... are citizens of the United States"; or, "nor shall any state deprive any person of life, liberty, or property without due process of law; nor to deny to any person within its jurisdiction the equal protection of the laws" – were, according to the aforementioned myth, supposedly intended to refer to artificial persons as well as biological persons.

Even if Congressman Bingham, and Senator Conkling were engaged in the foregoing sorts of underhanded tactics, unless those secrets intentions can be shown to reflect the majority views of other committee members and unless it can be shown that those secret intentions reflected the majority views of other members of Congress, and unless it can be shown that those secret intensions reflected the majority view of

three-quarters of the state legislatures or ratification conventions, then what a couple of congressmen did for their own underhanded purposes is neither here nor there. Their unstated, secret intent does not determine the meaning of the 14th Amendment.

Whether, or not, the two aforementioned individuals actually did what is claimed, and whether, or not, there was some sort of secret congressional journal whose existence has never been proven, one wonders how either the two congressmen or the mysterious journal keepers could reconcile those sorts of secret intention with the actual language of the Amendment. There is a world of difference between the alleged hidden intentions and the actual character of the language.

Corporations are neither born nor naturalized. They come into existence through the granting of a charter.

According to the 14th Amendment, persons who are born or naturalized in the United States are citizens thereof. There is nothing in the language that indicates – explicitly or implicitly -- that artificial persons – who are neither born nor naturalized in the United States – qualify as citizens.

The 14th Amendment goes on to indicate that: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States". Since artificial persons are not citizens – that is, they are neither born nor naturalized in the United States -- they are not the sort of individuals whose privileges and immunities must not be abridged."

The foregoing sentence of the 14th Amendment continues on with: "nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law". However, according to the promulgators of the 'corporation are persons' myth, between the beginning of the aforementioned sentence in which the privileges and immunities of citizens – who must be persons that are born or naturalized in the United States – are being discussed, the rest of the sentence was intended to be construed through a filter that permits artificial persons to be part of the discussion.

Such a hermeneutical construction of the 14th Amendment is entirely arbitrary. In other words, there is absolutely no evidence that can show

beyond a reasonable doubt, that the idea of 'persons' being mentioned in the amendment must encompass 'artificial persons (i.e., corporations) as well as persons who are 'born and naturalized' in the United States. Furthermore, given that artificial persons are not citizens of the United States, there is nothing in the wording of the 14th Amendment that suggests that 'artificial persons' qualify as the kind of persons – i.e., citizens – that are being discussed in that amendment.

Is it possible for someone to imagine that because the latter part of the first paragraph of the 14th Amendment talks about persons rather than citizens, then, therefore, one is entitled to expand the notion of 'persons' to include 'artificial persons' as well as those persons who are born or naturalized? Yes, such a flight of fantasy is possible, but this is not enough to justify doing so.

Finally, the Preamble to the Constitution begins with: "We the people of the United States" and a little later refers to the securing of the "blessings of liberty for ourselves and our posterity." A group of artificial persons, or a collection of natural born persons and artificial persons, does not constitute a group of people, and, in addition, corporations have no posterity because they are not biological entities, but, rather, are purely conceptual fictions.

Someone could, of course, try – through the use of tortured logic and an absence of evidence – to argue that corporations are not just persons but, collectively speaking, they give expression to a people capable of engendering posterity. However, the foregoing would be the exercise of an ideological psychopath who is intent in inducing everyone to cede their moral and intellectual agency to a completely arbitrary understanding of reality.

Moreover, even if someone were successful with respect to the legal equivalent of squaring the circle, one could still ask the following question: Why should artificial persons have more rights than natural born persons?

For example, why should artificial persons be able to shield the people associated with them from criminal prosecution or financial liability when natural born people are not permitted to shield themselves in this way? Or, why should corporations be free from many of the problems surrounding bankruptcy – for instance, credit history and its impact on someone's ability to borrow -- when the credit lives of natural

born persons are not treated in the same manner? Or, why should artificial persons pay taxes at a lower rate than many natural born individuals? Or, why should an artificial person be permitted to make campaign contributions that are significantly different than are permitted by the campaign contribution rules governing naturally born people?

The perfidy of the ideological psychopaths seeking to impose on 'We the People' the idea that corporations are persons -- who are entitled to, among other things, equal protection under the law -- did not stop with the 1882 San Mateo legal case in which the myth was put forth that it had been the secret intent of a congressional committee to confer personhood on corporations. A much more egregious act of subterfuge was committed in 1886 during the Supreme Court case involving *Santa Clara County v. Southern Pacific Railroad*.

The issue at the heart of the latter case involved taxes. For more than five years, the Southern Pacific Railroad had withheld tax payments to Santa Clara County with respect to various rights of way and lands connected with the railroad that were in Santa Clara County.

When arguments concerning the foregoing case were heard by the Supreme Court in 1885, the lawyers for the railroad claimed that given its corporate status, the railroad should be treated as a person. Moreover because the railroad was a person, it was entitled to various rights under the 14th Amendment – for instance, railroads should not be subjected to arbitrary tax policies in different localities that discriminated against the alleged right of the railroad with respect to equal protection under the law.

According to the lawyers for the railroad, the state had been inappropriately including fenced land along the railroad line during its assessment of the value of the railroad's property for purposes of determining what taxes to levy upon the railroad. The railroad lawyers claimed that the county should have been doing the assessment in relation to that fenced land, not the state, and, as a result, the railroad had decided to withhold paying taxes to Santa Clara County until the matter was sorted out.

The railroad acknowledged that it owed back taxes to Santa Clara County. However, it also maintained that the wrong agency of government had done the assessment concerning the fenced area.

In addition, the lawyers for the railroad argued that not only did the wrong branch of government do the assessment in relation to the fenced areas, but, as well, the assessment was done incorrectly. Those lawyers claimed that railroads should have the same right to deduct mortgages from the value of assessments as natural born people did, and, since this was not the case, then railroads, as persons, were being discriminated against under the 14th Amendment.

In rebuttal, Delphin M. Delmas, who was one of the lawyers representing Santa Clara County, argued along the following lines. No one had ever intended that artificial persons – that is, corporations – should be entailed by the nature of the person that was being protected through the language of the 14th Amendment.

His argument included a lengthy analysis of the differences between natural born persons and corporations and why, as a result, the 14th Amendment was not applicable to artificial persons. Therefore, corporations were not immune to the suspension of whatever privileges and protections that might have been temporarily extended to a corporation through its corporate charter.

The actual text of the Supreme Court decision concerning the *Santa Clara County v. Southern Pacific Railroad* specifically indicates that the Court did not intend to rule on the Constitutional issue (involving the 14th Amendment). In fact, the Court stipulated there was no need to address that issue because the case could be adequately settled independently of those considerations.

The Court also argued that the Constitutional matter should be engaged only if it were essential to the disposal of the issue before the court. Since that facet of things was not considered to be an essential feature of the case, it could be set aside.

So, how do perfidy, subterfuge, and ideological psychopathy enter the picture in relation to the *Santa Clara County v. Southern Pacific Railroad* case? The Official Supreme Court Recorder for the foregoing case – John Chandler Bancroft Davis – who in 1868 had been elected to the presidency of the Board of Directors of The Newburgh and New York Railroad Company -- made a claim that during an informal discussion prior to the Court's issuing its ruling on the case, he heard Chief Justice Waite say to the assembled lawyers who were waiting for the Court's decision that although the Court was of the opinion that the provisions of the 14th

Amendment were applicable to the corporations, nonetheless, the Court did not wish to deal with those matters in the present case.

In the 1880s – and later on as well -- one of the ways in which court recorders made money was through the royalties they received in conjunction with published collections of Supreme Court decisions that were introduced by various commentary from the court recorders with respect to any given court case. These comments were referred to as 'headnotes.'

When the *Santa Clara County v. Southern Pacific Railroad* case was published in the foregoing manner, J.C. Bancroft Davis began the headnote for the Santa Clara County case with the statement that corporations are considered to be persons in accordance with the intent of the 14th Amendment. Yet, later in the same headnotes, J.C. Bancroft Davis acknowledged that the ruling of the Court with respect to *Santa Clara County v. Southern Pacific Railroad* sidestepped those matters and that the crux of the Court's decision revolved around issues involving assessment procedures.

Consequently, *Santa Clara County v. Southern Pacific Railroad* does not constitute a precedent that can be used to claim, in a valid way, that corporations are persons under the 14th Amendment. As the Court's ruling stipulated, and as the Official Court Reporter J.C. Bancroft Davis eventually acknowledged in his headnote: The case did not revolve about the 14th Amendment, and, in addition, the case could be settled independently of those issues.

Even if what J.C. Bancroft Davis claimed he heard during the informal discussion prior to the Court's delivery of its ruling on the Santa Clara County case were true, that discussion was not part of the Court's decision, and, therefore, it should not be part of the supreme law of the land. However, there are a variety of considerations that strongly suggest that J.C. Bancroft Davis might have acted with ulterior motives when he stated things as he did in his headnote for the Santa Clara County case.

As noted previously, about 18 years before the Santa Clara County decision of 1886, J.C. Bancroft Davis had been elected to the Board of Directors of The Newburgh and New York Railroad Company. Therefore, he was not necessarily a disinterested by-stander with respect to the Santa Clara Count case.

There is evidence to indicate that at some point during the Supreme Court's engagement of the Santa Clara County case, J.C. Bancroft Davis had written a note to Justice Waite asking for clarification concerning the Court's inclination not to hear arguments about whether, or not, corporations were persons within the intent of the 14th Amendment. In this note, Davis added the sentence: "All the judges were of opinion that it did," indicating that this was something that Davis believed Justice Waite had said during the informal conversation – in other words, that the justices were of the opinion that corporations were persons entitled to the protections of the 14th Amendment.

Davis wanted to know whether, or not, his account of the alleged conversation was accurate. Justice Waite wrote back and said that while the court recorder's memo did capture – "with sufficient accuracy what was said before the argument began," nonetheless, Justice Waite also indicated that since the Court was by-passing the Constitutional issue involving personhood, the Justice left it to the discretion of the court reporter whether, or not, to include that constitutional matter in his report concerning the case.

There is a potentially crucial ambiguity that permeates the foregoing considerations. On the one hand, the Official Court Recorder – J.C. Bancroft Davis – claimed that the informal discussion to which he is referring in his memo to Chief Justice Waite took place just prior to the Supreme Court giving its ruling in the Santa Clara County Case. And, yet, the Chief Justice indicated in his reply to the court recorder's request for clarification, that Davis' understanding of the discussion that took place before the arguments began was sufficiently accurate.

The nature of Chief Justice Waite's response to the court recorder would seem to indicate that the informal discussion in question took place in 1885. However, J.C. Bancroft Davis' had claimed that the discussion took place just prior to the Court released its ruling on the case.

So, which is it? Did the informal conversation take place before lawyers for the two parties in the court case began their arguments, or did that alleged informal conversation occur just prior to the delivery of the Court's opinion?

The arguments for the case were given in 1885. The Court's ruling was issued in 1886.

If one were to assume that the informal discussion occurred in 1885, then one might raise various questions. For example, had anything occurred between 1885 and 1886 that might have changed the alleged opinion of the jurists with respect to the issue of corporations being persons under the 14th Amendment – for example, the arguments put forth by the lawyer for Santa Clara County concerning that very same issue?

On the other hand, if one assumes that the informal discussion took place in 1886 just prior to the Court's issuing of its ruling, then, other questions become appropriate to ask. For instance, given that the Court is about to bring the case to a conclusion by issuing its judgment on the dispute, why is a Supreme Court Justice talking about arguments as if they have not, yet, occurred?

To add further mystery to the foregoing considerations, there is some indication that Justice Waite might not have been present when the lawyers in the Santa Clara County Case made their arguments to the Supreme Court. Apparently, Justice Waite was so ill that he missed most, if not all, of the 1885 session of the Supreme Court, and, to varying degrees, he continued to be ill through much of 1886-1888, until his death in early 1888.

During the period involving both the arguments and the Court's ruling Justice Waite was ill. As a result, there might have been various ways in which Justice Waite was confused in relation to the aforementioned inquiry by his court recorder.

Irrespective of how one settles the foregoing issues, there is another critical question to ask. Why would J.C. Bancroft Davis lead off his headnote to the Santa Clara County case with the contention that corporations were considered to be persons in relation to the intent of the 14th Amendment and only later on – in smaller print – indicate that the issue played no role in the Court's decision? Why didn't Davis indicate at the very beginning of the headnote that the Court's decision was not based on any interpretation of the 14th Amendment and that the idea of treating corporations as persons had been – if true -- an informal, off-the-record remark that had no legal standing?

J.C. Bancroft Davis' previous history with railroads might offer an explanation for the foregoing behavior. In other words, irrespective of when the alleged informal conversation might have taken place, Davis

knew perfectly well what the judge was saying in his reply to the court recorder's request for clarification – namely, quite apart from whatever the informal opinions of the Justices might be, the constitutional issue concerning the 14th Amendment had nothing to do with the Court's decision in the Santa Clara County case.

Unfortunately, J.C. Bancroft Davis seems to have used the degrees of freedom extended to him by Chief Justice Waite in the latter's written note of response to Davis' inquiry – and one wonders why the Chief Justice would do that – to serve an ulterior purpose. One possible answer to the foregoing sense of wondering about why a Supreme Court Justice would leave things to the discretion of his court recorder in relation to the corporate person issue might have something to do with the fact that when J.C. Bancroft Davis had been an Assistant Secretary of State, he was part of the legal team that argued, and won, the 1871 Geneva Arbitration case in which England was sued for the help it gave to the Confederation during the Civil War.

The lead attorney for the United State in the foregoing case was Morrison Waite who would later – in no small part due to his participation in the Geneva Arbitration case -- be appointed to the Supreme Court and, then, become its Chief Justice. J.C. Bancroft Davis and Mr. Waite were re-united in the Santa Clara County Case.

Conceivably, over the years, the two might have had various conversations concerning the issue of corporations as persons. When Chief Justice Waite left things to the discretion of the court recorder with respect to whether, or not, the constitutional issue of corporate personhood should be part of the recorder's report, the act of the Chief Justice might not have been an innocuous act.

More specifically, for some time prior to 1886, corporations had been trying to upgrade their legal status of artificial persons to one that was equal to natural born persons. However, the Supreme Court had not been willing to crown those efforts with success in any of its decisions. One of the primary reasons for the foregoing failures is that no one – Supreme Court jurist or otherwise -- had been able to come with a convincing legal argument for treating corporate persons as equal to natural born persons.

If what Davis claims is true with respect to the informal discussion that allegedly occurred at some point in the Santa Clara County case, then even if the justices might have been of the private opinion that

corporations should be considered as persons within the intent of the 14th Amendment, they had no convincing way to legally justify that sort of private opinion. Understanding this, Chief Justice Waite might have extended discretionary to J.C. Bancroft Davis to do what the latter individual could in relation to the issue of treating corporations as equal to people.

In other words, Davis leveraged Chief Justice's discretionary offering into an opportunity to generate disinformation and misinformation that might subsequently benefit railroads, specifically, and corporations, generally. He did this by creating the impression in the headnote for the case that a precedent had been established in the Santa Clara County case with respect to the issue of corporations as persons.

There is a further interpretation of Justice Waite's use of the word "argument" in his response to J.C. Bancroft memo. Conceivably, Justice Waite might have been referring to the arguments in the Court's rulings that were about to be issued.

If so, then, the foregoing scenario would be consistent with J.C. Bancroft Davis' claim that the informal conversation in question occurred just prior to the Court's release of its ruling in the Santa Clara County case. However, this kind of an account does not preclude the possibility that J.C. Bancroft Davis -- on his own, or through a 'wink and nod' arrangement with Chief Justice Waite – was trying to slip something into the Court record that was of a legally mischievous nature.

Whether J.C. Bancroft Davis acted entirely alone or in collusion with Chief Justice Waite, the foregoing scenario resonates with the behavior of ideological psychopathy. Apparently, J.C. Bancroft Davis – and, possibly, Justice Waite -- had no problem with distorting the truth in an irresponsible fashion, and Davis doesn't seem to care what harm might occur in relation to those who reside outside his narrow sphere of interest (i.e., corporate control of America). Moreover, his act of distortion is one that seems to display no evidence that conscience, remorse, or a sense of guilt is present with respect to what Davis has done.

Like many psychopaths, J.C. Bancroft Davis is someone who appears to be using his skills of communication to manage the impressions of others concerning the issue at hand – in this case, the idea of corporate personhood. Moreover, like many natural born psychopaths, J.C. Bancroft Davis seems recklessly indifferent to the fact that anyone who reads the

decision of the Supreme Court or carefully reads all of his headnote for the case, including the small print, will discover that the issue of corporations as persons had nothing to do with the Supreme Court's decision in the Santa Clara County case ... that is, he doesn't mind being caught in a lie, and this is resonant with the behavior of many natural born psychopaths.

Davis presents himself as a sincere participant in the court proceedings. However, as is the case in relation to many psychopaths, behind the mask of sincerity are inklings of duplicitous intentions that are being expressed through the filters of a former president of a board of directors for a railroad.

In addition, as also is the case in relation to many psychopaths, J.C. Bancroft Davis states things in his headnote in such a way that if someone comes along and fails to read the entire prefatory comment or fails to do due diligence concerning the Santa Clara County case and, consequently, just trusts J.C. Bancroft Davis to be an honest individual of integrity, and, as a result, such a person incorrectly interprets the significance of the Santa Clara County case, then the finger of blame can be directed toward those people ... not at J.C. Bancroft Davis. Left out of this sort of a perspective – as also is left out of the accounts of psychopaths concerning various events -- is the fact that it was J.C. Bancroft Davis who stated things in such a misleading and distorted manner and, thereby, apparently sought to induce people to cede their moral and intellectual agency to his version of things.

Even if one were to give J.C. Bancroft Davis the benefit of the doubt concerning what he allegedly heard Chief Justice Waite say, there is no independent proof that such a view actually was held by the majority of the other Supreme Court Justices. At best, we only have Justice Waite's claim that all of the other justices were in agreement on the issue that corporations are persons within the intent of the 14th Amendment.

Consequently, whatever Justice Waite's private opinion might be concerning the status of corporations within the intent of the 14th Amendment, that opinion is a moot point unless a majority of the justices on the Supreme Court were in agreement with that opinion and gave expression to that perspective in the Santa Clara County decision -- which they did not do. Therefore, whatever Justice Waite might have said

informally concerning those matters is – constitutionally speaking -- neither here nor there.

Finally, even if, for purposes of argument, one were to accept the idea that Chief Justice Waite said what J.C. Bancroft Davis claimed with respect to the issue of corporations being persons under the 14th Amendment, nevertheless, arguments for that position have to be spelled out. The informal musings of Supreme Court justices have the same legal standing and significance as instances in which those jurists happen to pass gas.

Chief Justice Waite would have to demonstrate how his private opinion could be reconciled with the language of the 14th Amendment. In addition, the Chief Justice would have to demonstrate how that opinion could be reconciled with, among other things, the character of the Declaration of Independence, the Preamble to the Constitution, the process of ratification, the Bill of Rights, the Boston Tea Party, and the war for independence.

Prior to the Santa Clara County case, no previous Supreme Court decision -- nor any of the cases decided within any federal or state jurisdiction -- had ever successfully established that corporations should be considered to be persons in the same way in that natural born individuals were persons. Moreover, treating corporations as persons was not part of English law.

So, on what basis would Justice Waite have been able to demonstrate that his alleged opinion concerning the idea that corporations are persons is defensible? There were neither existing precedents on which his Court could call that were capable of justifying that opinion, nor had anyone come forth with an argument detailing the grounds for establishing a new, defensible precedent concerning the matter.

In the twenty-five year period following the 1886 Santa Clara County decision, there were 307 cases that reached the Supreme Court involving, in one way or another, the 14th Amendment. The vast majority of those cases – 288 – were filed by corporations seeking, among other things, equal protection for corporations under the law as allegedly guaranteed by the 14th Amendment.

In the early 1900s, the Supreme Court decided a number of issues by citing, among other things, the alleged rights of corporations under the 14th Amendment. These cases involved a variety of issues – including: utility regulations, minimum wage issues, and child labor concerns -- yet, there was no valid, constitutional basis for those rulings ... those decisions were entirely arbitrary and, therefore, could not be proven to be true beyond a reasonable doubt.

With each succeeding Supreme Court ruling which claimed that corporations were persons within the intent of the 14th Amendment, new precedents were established that could be cited in subsequent cases. However, all of those precedents were fruits of a poisonous tree because no one on the Supreme Court, or in any other federal or state court, had been able to show how corporate persons are entitled to the same rights as natural born persons.

Everything had been predicated on an arbitrary assumption – that is, one that cannot be proven beyond a reasonable doubt. The presumption was that the 'corporations are persons' issue had been adequately settled, but this was not so.

In addition to the foregoing considerations, one might bear in mind that Supreme Court Justices can decide all kinds of issues based on votes of 5-4. However, unless those justices are able to demonstrate that their rulings can be proven to be true beyond a reasonable doubt – something that, at a minimum, requires a 9-0 vote – then, all of the former kinds of votes are entirely arbitrary, and one wonders why 'We the People' should be expected to comply with that sort of arbitrariness.

There is nothing in the Constitution that requires the Supreme Court to operate through a process of majority decision, simple or otherwise. Operating in accordance with that kind of a rule is entirely arbitrary ... a man-made convention that cannot necessarily be justified.

After all, if criminal cases affecting the freedoms, rights, privileges, immunities, and sovereignty of individuals must be unanimous verdicts that give expression to a consensus understanding that is considered to be true beyond a reasonable doubt, then why isn't the same standard applied to the manner in which Supreme Court decisions are made since many, if not most, of the Court's decisions also affect the freedoms, rights, privileges, immunities, and sovereignty of individuals in essential

ways? Why is a less rigorous standard used in Supreme Court decisions than in criminal cases?

Once the sluice gates for corporate personhood were illegitimately opened, there was a flood of litigation by corporations that sought to claim their alleged 'rights' as persons. As a result, corporations began to be awarded decisions before the Supreme Court with respect to, for example, their right to privacy under the 4th Amendment and, therefore, the right of corporations to withhold financial information from the government even though such disclosures previously had been a condition for being granted a charter.

Corporations-as-persons were also able to successfully argue before the Supreme Court that, like natural born persons, they supposedly had First Amendment rights. Consequently, they should be able to petition their government (i.e., the right to lobby) and contribute to the campaigns of individuals running for office because money is supposedly speech, and as persons, corporations claimed the right to speak freely – financially speaking --about those issues.

Apparently, many Supreme Court jurists were indifferent to the fact that the foregoing decisions were entirely arbitrary. After all, as noted earlier, no one in the history of the Supreme Court has been able to successfully argue how and why corporations should be considered to be persons and, thereby, be deserving of all the same rights, freedoms, privileges, and immunities of natural born persons.

To the extent that Supreme Court decisions arbitrarily decide legal issues in favor of arguments which demand that corporations be treated as persons who are entitled to the same rights as are natural born persons, then to that extent, those decisions give expression to the ideological psychopathy of jurists who exhibit those behaviors. To try to present arbitrary decisions – that is, arguments which cannot be demonstrated to be true beyond a reasonable doubt – as something other than they are (i.e., nonsense), Supreme Court jurists must, like psychopaths, use their language skills to distort the truth, manage impressions, and manipulate 'We the People.'

Those kinds of arbitrary arguments are impulsive, irresponsible, and have a reckless disregard for how that perspective destructively impacts

upon the lives of the generality of 'We the People.' The foregoing sorts of qualities reflect many of the properties associated with ideological psychopathy.

Like psychopaths, the individuals being alluded to pretend to be sincere defenders of the Constitution and 'We the People.' Yet, behind the mask of sincerity, are machinations involving the imposition of their arbitrary, ego-centric ideas upon the people irrespective of the consequences of those ideas. Just as is true in relation to psychopaths, everything those sorts of jurists do, is about satisfying and gratifying their own world-view.

Like psychopaths, those sorts of jurists abandon individuals who have trusted them – e.g., 'We the People.' Those jurists betray that trust by empowering corporations to not only have the same rights as natural born persons, but empower corporations to have many more rights than natural born persons have – such as: the 'right' to shield those who are associated with a corporation in relation to criminal and financial liability, and the 'right' to slough off past credit history by adopting a different corporate persona.

There is little, or no, evidence indicating that those kinds of jurists exhibit any signs of conscience, remorse of guilt concerning the issuing of legal decisions that are completely arbitrary. If such a sense of conscience, remorse or guilt were present, then those jurists would discontinue what they have been doing, and since they continue on with their arbitrary decisions, then those behaviors resonate with the lack of conscience, guilt and remorse that is characteristic of natural born psychopaths.

Of course, in certain respects, one shouldn't be surprised that the foregoing sorts of ideological psychopathy have dominated so many of the Supreme Court's decisions during the history of the United States. That kind of psychopathy has consistently been manifested in relation to: Slaves, women, Indians, the poor, blue collar workers, minorities of one kind or another (e.g., the Japanese), and the disenfranchised, ever since the Philadelphia Constitution made its illicit way to the center of American governance ... how else can one explain the near unanimous verdict (8-1) in the 1896 case of Plessy v. Ferguson – to choose but one legal possibility from a legion of them -- that anyone with more than 1/8th Negro blood in them did not have the right to be treated as white people were ... how arbitrary and how psychopathic in nature!!

Furthermore, by way of a side note to the aforementioned Plessy v. Ferguson case – and as additional evidence that people who exhibit ideological psychopathy under one set of circumstances often act in the same manner in other situations as well – J.C. Bancroft Davis (the court recorder in the Santa Clara County case) – wrote a headnote for the Plessy v. Ferguson case in which he indicated that Plessy (the black person who was seeking relief under the 14th Amendment with respect to his treatment on a passenger train) was not really entitled to the rights he was claiming under the 14th Amendment because Davis believed that the aforementioned amendment surely was not intended to eliminate discriminatory distinctions involving considerations of color or race. Such a headnote is as absurd – and as ideologically psychopathic -- as is the headnote that Davis placed before the Santa Clara County Supreme Court decision.

During the first 100 years, or so, of the American republic, thousands of corporations were granted charters. While many of these corporations acted in accordance with the requirements and conditions of their charters and, in the process, served the needs of the people, there were other corporations that sought to leverage the privileges extended to them through their charters in order to eliminate competition, monopolize markets, and control prices.

Railroads, for example, induced federal and state governments to use their powers of eminent domain to confiscate the lands of Indians, settlers, and farmers and, then, give that property to the railroads free of charge. Millions of acres of land were transferred from the people to the railroad companies in this fashion.

The railroads, then, leveraged this free land to force farmers, traders, merchants, and settlers to comply with the market conditions that the railroads (and their associates) began to place on commercial activity. Markets that were supposed to be free were shaped and controlled by the 'way of power' in order to serve the interests of the powerful irrespective of what ramifications ensued with respect to the 'way of sovereignty'.

None of the foregoing monopolistic practices could be shown, beyond a reasonable doubt, to: Form a more perfect union, or establish justice, or insure domestic tranquility, or provide for the common defense, or promote the general welfare, or secure the blessings of

liberty. In many ways, the interpretation of the Preamble to the Constitution was filtered through the lenses of corporations ... that is, whatever: Established justice for the corporations, or ensured their domestic tranquility, or provided for their defense, or promoted their general welfare, or secured the blessing of liberty for corporations was considered to be good, and 'We the People' were free to pick up whatever crumbs, if any, that might be left by such an interpretation of the Preamble and Constitution.

To be sure, some people earned considerable profits through the foregoing set of monopolistic practices, and as a result their lives became more: perfect, 'just,' tranquil, defensible, and free. However, many segments of 'We the People' were oppressively controlled by those same arrangements.

The relationship between the generality of people and corporations was becoming increasingly asymmetric. Corporations had started out in post-Constitutional America as servants of the people – that is, the charters of corporations were granted to serve particular purposes from which the generality of people supposedly would benefit, and, once those purposes were accomplished, the charter would be discontinued – but a turning point was reached early on in the history of the United States in which people became the servants of the corporations – whether, or not, corporations were considered as persons -- and corporations were granted a variety of rights not available to natural born persons.

Corporations that, for the sake of their own profits and power, seek to monopolize, control, ruin, punish, squeeze, undermine, oppress, or eliminate the basic sovereignty of human beings – along with the officials in local, state and federal governments who enable corporations to do so – give expression to ideological psychopathy. Similarly, trusts – which involve the merger of a variety of corporations – that leverage their collective power to control prices, competition and markets for purposes of advantaging themselves while disadvantaging those people who exist beyond the horizons of the inflexible pursuit of profits and power of such trusts, also give expression to ideological psychopathy.

The Sherman Anti-Trust Act of 1890, the Tillman Act of 1907 (which tried, in a minor way, to prevent corporate money from being funneled to political campaigns), the Clayton Anti-Trust Act of 1914, the Robinson-Putnam Act of 1936 (which attempted to make price discrimination

illegal), and the Celler-Kefauver Anti-merger Act of 1950 were all acknowledgements, each in its own way, that the agenda of many corporations – but not all -- was antithetical to the interests of the generality of people in America. Unfortunately, the regulatory character of the foregoing laws was not always enforced or was enforced in arbitrary ways, and, moreover, during the last sixty years much of the regulatory potential of those laws has, for various 'reasons,' either been largely ignored or has been watered down legislatively (and completely arbitrarily) in ways that favor corporate interests rather than the interests of the people.

Ideological psychopathy in the form of corporations that are largely, or only, interested in enhancing their own power and profits are like an invasive species that has spread throughout America which is seeking to supplant all forms of sovereignty among 'We the People' and replace the 'way of sovereignty' of individuals with the 'way of power' of corporations. Corporate ideological psychopaths have been assisted by political ideological psychopaths in local, state, and federal branches of government who have maneuvered to institute legislation that seeks to empower corporations while disempowering ordinary citizens.

The term 'psychopathy' above is used advisedly. It is not just a loose manner of speaking.

Corporations and individuals who give expression to ideological psychopathy are engaged in economic, political, scientific, financial, social, philosophical, and/or religious behaviors that exhibit the qualities of natural born psychopaths. In other words, those individuals are inclined toward: manipulation, dishonesty, insincerity, impulsivity, risk-taking, using others as a means to self-gratification, irresponsibility, inflexibility, ruthlessness, a lack of empathy, egocentricity, callousness, duplicity, shamelessness, emotional shallowness, exploitation, predatory abusiveness, disloyalty, aggressiveness, belligerence, rationalization, impression management, delusions of self-importance, oppressive control of others, as well as a relative absence of conscience, guilt, or remorse with respect to the destructive consequences that their behaviors have on others.

In the Biblical-like language of certain portions of Genesis, the Bretton Woods Agreement of 1944 begat the International Monetary

Fund and the World Bank that, in turn, begat the General Agreement on Tariffs and Trade that, in turn, begat the World Trade Organization. Some 50 years later in November of 1994, the United States accepted paternity for the foregoing process of begetting during the administration of Bill Clinton when the Bretton Woods Agreement was finally ratified.

Moreover, a short while thereafter (December 1994), legislation was passed in relation to GATT – that is, the General Agreement on Tariffs and Trade – along with the concomitant World Trade Organization. The details for the agreement and accompanying organization were spelled out in approximately 30,000 pages ... which like the subsequent Patriot Act were read by very few members of Congress.

The foregoing legislation required America to foot the bill for 23% of the WTO's expenses in exchange for 1% control over the manner in which that money is spent. In addition, the legislation called for the creation of a variety of committees and other organizational arrangements within the WTO over which the United States government would have little, or no, control ... including arrangements that preclude due process and which decide matters in secret by those who are not necessarily American and who have not been elected to their positions within WTO by the American people.

The 'supremacy clause' can be found in Article VI of the Philadelphia Constitution. More specifically, Section 2 states: "The Constitution and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land, and the judges in every state shall be bound thereby ...." Furthermore, in the second paragraph of Section 2 of Article II, the president is given the power to make treaties in conjunction with the advice and consent of at least two-thirds of the Senate.

If the foregoing sections of the Philadelphia Constitution were understood in the context that establishes the nature and purposes of that document – namely, the Preamble -- then none of the laws that might be made in pursuance of that Constitution, nor any treaties which might be made, should be in conflict with the principles put forth in the Preamble with respect to: 'justice,' 'domestic tranquility,' 'the common defense,' 'the general welfare,' and the issue of freedom. Unfortunately,

there is no consensus of opinion concerning the meaning and scope any of the aforementioned principles and purposes.

Therefore, whatever laws and treaties that are made in pursuance of the Philadelphia Constitution are entirely arbitrary because they cannot be demonstrated to be true beyond a reasonable doubt with respect to issues of justice, tranquility, defense, welfare and freedom. Nevertheless, executive, legislative, and judicial branches of the federal government have considered themselves to be entirely justified in interpreting those ideas in whatever manner those officials consider to be 'necessary and proper.'

Since the implementation of GATT, and WTO -- along with other agreements such as NAFTA -- many segments of 'We the People' have become unemployed, and/or are paid less for longer hours, and/or enjoyed fewer, if any, benefits and/or are required to work in more dangerous working conditions. In addition, many corporations have moved their manufacturing operations out of the United States to localities where they can take advantage of foreign forms of governance that enforce regulations involving: Even lower wages; fewer, if any, benefits; more dangerous working conditions; a more pervasive absence of worker protections; lower, or no, taxes, and fewer, if any, protections for the environment than exist in the United States.

Under the foregoing agreements, corporations have acquired more rights than natural born persons have. Such entities are entitled to sue countries – for example, the United States – if those nations implement laws designed to protect either workers or the environment since those sorts of laws are considered to constitute unfair restraint of trade ... and the determiners of 'unfairness' tend to be corporations – or their political/judicial thralls – who believe (in best tradition of ideological psychopathy) that commercial activity must trump all other considerations no matter what the consequences of those inflexible systems of thought might be with respect to the lives of the generality of people either in the United States or elsewhere.

There are some historians who claim there is a huge disparity between, on the one hand, the original intentions of the 1944 Bretton Woods meetings with respect to the proposed functional character of the World Bank, the International Monetary Fund, and the idea of some sort of world trade agreement and, on the other hand, the manner in which

those organizations function today. This might be the case, but, the mistake made by the people from the United States who participated in the Bretton Woods meetings was to believe they had a the right – which they didn't -- to make plans for the American people that had a potential for undermining the basic sovereignty of the latter individuals.

The Philadelphia Constitution might have claimed supremacy for whatever the federal government did in pursuance of that document, and the Philadelphia Constitution might have given the president the power to make treaties with the advice and consent of the Senate that are binding on the states, it judicial systems, and their people. Nonetheless, unless one can demonstrate that the treaties which are established thorough the foregoing sort of pursuance of the Philadelphia Constitution are capable of demonstrating, beyond a reasonable doubt, that those activities and treaties give full and true expression to what are entailed by justice, tranquility, welfare, the common defense, and liberty, then, on what basis can those kinds of actions be justified? Moreover, if they cannot be justified in a non-arbitrary way, then why are 'We the People' being obligated to comply with those laws and treaties?

Such arbitrary laws and treaties are imposed on the American people because of the ideological psychopathy of the corporations – as well as their political/judicial minions – which insists that the interests of those corporations (despite being unproven with respect to the principles and purposes of the Preamble to the Philadelphia Constitution or the Bill of Rights) have priority over the interests of the generality of 'We the People.' The binding force of those arbitrary laws and treaties is derived not from 'We the People' but through the use of various forms of violence, punishment -- or the threat of violence and punishment -- by the 'way of power' with respect to the 'way of (basic) sovereignty' of individuals.

One of the driving forces underlying the ideological psychopathy of corporations was established in 1916. It was given expression through a court decision involving *Dodge v. Ford*.

By way of background, during the early part of the twentieth century (1906), Horace and John Dodge had invested a little over $10,000 dollars in the Ford Motor Company ... which made them major shareholders in the company. Subsequently, John Dodge also served as a director for the

Ford Motor Company, and, as well, the Dodge brothers supplied certain parts used in the construction of the Ford vehicles.

Part of the Ford business model was directed toward helping both workers and customers. On the one hand, Ford wanted to pay his workers more than other companies because he wanted his workers to have the money necessary to purchase, among other things, his vehicles. On the other hand, he also wanted to attract customers by lowering the cost of his cars, and between 1906 and 1916, Ford was able to cut the cost of purchasing a vehicle by almost $500 dollars (from $900 to $440).

Ford felt that while making profits was important, there were other factors to be taken into consideration ... such as people having the money needed to purchase cars being sold at prices that might be affordable to a larger segment of the population. Both of the foregoing factors might lead to enhanced longevity for the country and, therefore, sustained profitability over the life of the company.

In 1916 John Dodge resigned as a director of the Ford Motor Company. He and his brother began to develop a commercial idea of their own involving motor vehicles.

They continued to be shareholders in Ford's company. Their intention was to use a forthcoming quarterly dividend to help finance their own project.

Henry Ford upset the commercial plans of the Dodge brothers when he cancelled the dividend payout. Ford wanted to slash the prices of his vehicles once again in order to generate profits through volume rather than through charging higher per unit prices.

The Dodge brothers sued Ford. The essential nature of their argument revolved around the idea that profits belonged to the shareholders.

The presiding judge agreed with the Dodge brothers and ruled in their favor. In the process, Ford was chastised by the judge.

During the court hearing, Ford had maintained that the primary purpose of a company is not necessarily to make as large a profit as one could but, rather, companies should provide a service to the community as well as make whatever profits were compatible with that sort of service. The judge criticized Ford's perspective and argued that Ford had forgotten the fact that the primary purpose for operating a company for

which shares had been issued was to benefit the stockholders and not the community.

While operating solely for the financial benefit of stockholders certainly constitutes one possible way of running such a company, I'm not aware of any argument that proves the foregoing must be the case or that it is the only possibility that should be considered. Even if one were to argue that Ford might have gone too far with respect to this idea about service to the community, there is nothing which necessitates that the only other option requires one to go to the other extreme and claim that service to the community should not play a primary role in a company's operations.

The judge's decision in *Dodge v. Ford* was entirely arbitrary. It was predicated on a specific theory about the character of the relationship between certain kinds of commercial enterprises and the rest of society ... namely, that the essential nature of those businesses should be about profits. That kind of a perspective is not necessarily reconcilable with the purposes and principles set forth in the Preamble to the Philadelphia Constitution.

Will profits of the sort envisioned by the judge in the *Dodge v. Ford* case guarantee that 'We the People' will be afforded justice, tranquility, a common defense, enhanced welfare, and the blessings of liberty? Commercial activity – as important as it might be – is but one dimension of the American republic, and, therefore, one wonders about the tenability of the judge's claim that profits are the only permissible filter through which the commercial activity of companies like the Ford Motor Company should be viewed?

There is no clearly established rule of law running from: colonial America, through: the Articles of Confederation, the Continental Congress, the Declaration of Independence, the Revolutionary War, the Philadelphia Convention, the Preamble to the Constitution, the process of ratification, and the Bill of Rights that demonstrates, beyond a reasonable doubt, that the sole purpose of a commercial enterprise must be to earn profits -- and earning a living is not necessarily the same thing as earning a profit. Moreover, Ford's attempt to balance community service with profits seems closer to the spirit of the Declaration of Independence, the Revolutionary War, the Preamble, as well as the Bill of Rights than does the decision of the judge in the *Dodge v. Ford* case.

The judge in the foregoing case sent many corporations on the road toward becoming ideological psychopaths. Such businesses were going to be required by law to be driven in an impulsive, irresponsible, inflexible, arrogant, exploitive, manipulative, aggressive, abusive, manner that showed callous indifference toward the needs of the community or the generality of people and did so without any sense of remorse or guilt.

The best interests of a corporation or its stockholders are not necessarily coextensive with the best interests of 'We the People.' However, without really being able to justify his decision – although he gave reasons and rationalizations -- the judge in *Dodge v. Ford* required those companies to give preference to their own interests over the interests of the larger community or the generality of 'We the People,' and this was a recipe for disaster that has played out in destructive ways over the rest of the twentieth century and into the twenty-first century.

The judge in the *Dodge v. Ford* case was like Frankenstein. Corporations that became ideological psychopaths were the monsters that were created, and, now, apparently, all the townspeople (i.e., We the People) can do is to shout and shake pitchforks or lighted torches in anger as they gather about the castled walls of judicial ignorance.

On the other hand, the judge in the foregoing case was just one person. If subsequent judges had not been so unduly influenced by, or so willing to follow along with, his biases -- which held that companies should be controlled by their self-absorbed and self-serving stockholders rather than be encouraged by the courts to serve their communities, as well as their stockholders, in a more balanced fashion -- then, the precedent that was established in *Dodge v. Ford* might have fallen by the wayside.

Unfortunately, many later judges shared the same biases as did the judge in *Dodge v. Ford*. Those kinds of biases were, and are, inconsistent with the Preamble to the Constitution as well as the Bill of Rights, but those who are inclined to ideological psychopathy tend to be indifferent to those sorts of matters.

In legal terms, the judge in *Dodge v. Ford* set a precedent. In reality, precedents (whether set or followed) tend to give expression to nothing more than a judge's biases, and, as a result, the foregoing judge – and a lot of judges since that time – have deemed it 'necessary and proper' to impose their biases on 'We the People' with very problematic results.

More specifically, back in the 1980s, I taught a course on the sociology of crime. One set of facts that I shared with my students revolved around the idea that corporate crime is the cause of more deaths and more financial losses than street crime is ... by many orders of magnitude.

The situation has only become progressively worse since the 1980s. The trillions of dollars that were lost and millions of people whose lives were devastated due to the 2008 financial meltdown encompass just one manifestation of what happens when ideological psychopaths are permitted to have their way with the world.

Should one interpret the foregoing perspective to mean that one should 'legalize' street crime? The answer, of course, is: "No."

However, in effect many judges have legalized corporate crime. Through precedents – that is, biases – like *Dodge v. Ford*, many judges have paved the road to Hell by empowering corporations and their stockholders with all manner of rights that they should not have and that, all too frequently, give expression to the destructive, callous, arrogant, manipulative, dishonest, egocentric, exploitive, ruthless, inflexible, cruel, and irresponsible qualities of ideological psychopathy.

Chapter 10 De-framing Economics

During my undergraduate days, I took an introductory course in economics. The course was taught by a tandem of economists and, as well, brought in a variety of guest speakers ... including Paul Samuelson.

I didn't do very well in the course ... I got some sort of a C. In fact, I was flunking the course prior to making the sort of recovery in the second semester that was sufficient to bring my overall average up to a passing grade.

One possible interpretation of the foregoing difficulties was that I was just too dumb to understand economics. Another possibility is that economics was just too dumb to be understood.

My instructors might have been inclined toward the former explanation. In retrospect, I am inclined toward the latter possibility.

The first half of the course focused on microeconomics, while the second semester explored the world of macroeconomics. For the most part, no facet of microeconomics made very much sense to me -- and the realm of macroeconomics was not far behind in that regard.

For instance, consider the idea of a market. In fact, let's consider one of the most basic forms of market there is – namely, the labor market.

Labor markets are all about the manner in which companies negotiate with potential workers – and vice versa – in order to arrive at a compensation agreement through which various forms of labor will be offered in exchange for certain kinds of payment. I was told that the 'invisible hand' of the market would move the foregoing negotiation to some sort of equilibrium point in which there would be a sufficient number of workers who would be prepared to accept a given level of compensation to permit the company to move forward with production.

There were comparable markets involving such things as resource pricing and product/service consumption. In all of these markets, the invisible hand of the market would push the negotiation dynamic toward an equilibrium point in which buyers and sellers would cross paths in a mutually agreeable manner.

Some said that the best kind of markets were free ones. Markets that, for whatever reason, were not free, introduced various kinds of

distortion into the process of negotiating among buyers and sellers that would affect the efficiency of those markets in problematic ways.

Efficient markets were desirable because they minimized costs and maximized productivity. Moreover, since free markets were believed to be efficient, then free markets also were desirable.

When markets were left to themselves, the invisible hand of the marketplace supposedly would solve whatever economic problems arose within those systems. Consequently, free markets had the potential to be self-regulating.

Okay, let's return to the idea of a labor market. If one permits workers and companies to freely negotiate with one another – that is, without interference – in relation to determining the price of labor, what might happen?

Much will depend on the supply and demand of labor. If there are a lot of people seeking work -- yet there are only a limited number of jobs -- then it is a buyers' market from the standpoint of management and, therefore, companies likely will try to force a fairly low point of equilibrium -- when the situation is graphed out -- in which there will be a sufficient number of people that are desperate enough for work who, as a result, will be prepared to accept a relatively low compensation package offer from the company.

On the other hand, if there are not many workers available, or not many workers with the right sorts of skills who are present, then, it is a sellers' market as far as labor is concerned. Therefore, labor will be in a much better position to push the equilibrium point in an upward direction as far as the size of the compensation package is concerned.

There really isn't any invisible hand at work in the market process. Needs of one kind in a given market tend to pair up with needs of another kind in that same market and, thereby, establish relationships that are -- to one degree or another – considered to be reciprocal or compatible in nature.

What makes the hand of the market appear invisible is that all of the forces at work in individuals (e.g., motivation, interests, needs, character, and values) take place in a largely hidden form of psychological calculus that manifests itself in choices of one kind or another. When those

choices are collectively tabulated, one can plot the character of the dynamics at work in a given market.

However, there is nothing mysterious or mystical taking place. People who are hungry, or who have children who are hungry, or who have bills to pay, can be induced to work in exchange for a compensation package that will keep those individuals impoverished or at a subsistence level of survival since the alternative – not working -- seems even more disastrous.

From the perspective of capital, those markets are most efficient that are able to generate a high degree of productivity as inexpensively as possible. From the perspective of capital, labor is merely a cost, and, therefore, what happens to the lives that are represented by that kind of a cost is irrelevant to the interests of capital.

From the perspective of human beings, those markets are most efficient that are able to satisfy the collective need for justice, tranquility, defense, welfare, and liberty at a cost that everyone is prepared to accept. If capital is used in a manner that will not assist individuals to realize the aforementioned collective need, then capital is being used inefficiently.

In most forms of capitalism, efficiency is a function of what enhances or obstructs the flow of, and return on, capital. However, why should capital, rather than the essential needs of human beings, be used to set the standard for what constitutes efficiency?

The above way of approaching things seems exceedingly arbitrary. Why isn't a human-friendly standard of efficiency used to induce markets to become self-regulating?

A company that is able to negotiate a low wage for workers while demanding a high return of productivity from those same individuals might be quite efficient. However, if one considers the problems that are likely to ensue from the foregoing sort of miserly compensation package – e.g., poverty, crime, dysfunctional families, health issues, worker safety, quality of education, emotional disturbance, substance abuse, and community conflict – then, companies that have adopted the standard that defines efficiency purely in terms of capital flow and return on capital have externalized the true costs of producing whatever they produce and,

consequently, from the perspective of the community or the overall ecology of society, are not all that efficient.

There seem to be at least two schools of accounting principles at work in the foregoing considerations. One accounting method concerns itself only with the flow of capital through a company and the profits that are generated by that flow, while the other modality of accounting keeps tract of the multiplicity of costs that accrue to the community and arise as a result of the characteristics of that capital flow through the company in question.

What is efficient from the perspective of a company is not necessarily efficient from the perspective of the surrounding community. Yet, the former perspective is the standard that tends to be adopted by those who operate out of capitalistic framework when it comes to issues of efficiency, and this never made any sense to me.

Furthermore, negotiations that are entered into out of desperation – such as often – but not always – occurs with labor -- do not really have much of the aura of freedom about them. The idea of 'free markets' exploits the positive feelings that surround the term "free" and uses those feelings to camouflage the fact that the only facets of those markets that are actually free are capital and those who possess that commodity.

From the point of view of capital, governmental regulations constitute sources of distortion that are being introduced into markets ... distortions that will adversely affect the efficiency of that market because those regulations tend to adversely affect the flow of capital and/or lower the rate of return on capital investment On the other hand, material, financial, emotional, social, and environmental pressures acting on a given party – for example, labor – during market negotiations also constitute potential sources of distortion that are being introduced into such a market that, from the perspective of human beings, will adversely affect how truly "free" those markets are, as well as whether, or not, the idea of "efficiency" will be defined in a manner that serves the interests of 'We the People' or only the interests of capital.

Being able to induce workers to accept a certain level of compensation is one thing. Being able to arrange for a fair level of compensation with respect to those workers is often quite another matter.

Why are only markets that meet the criteria of capital efficiency considered to be free? Why is 'freedom' being defined as a function of what happens to the flow of capital within a market. Moreover, if allegedly free markets are not fair, then, what value do those markets have except to serve the interests of capital against the interests of 'We the People'?

How does the invisible hand of the market solve the problem of 'fairness?' If people are forced by circumstances to accept a low-level package of compensation for their labor, then as long as efficiency and freedom are defined by the needs of capital, those laborers will never be treated with fairness.

Moreover, how does the invisible hand of the market solve the problems of: justice, tranquility, common defense, general welfare, and liberty? There is no room for any of the foregoing issues within the flow charts of capital interests because those issues tend to complicate the flow of capital with respect to the generation of maximized profits.

What is truly remarkable is the manner in which the language of capitalistic economics has been used to induce people to cede their moral and intellectual agency to a theory of life that is largely devoid of humanity. Free market enterprise is not about what is good for humanity but about what is good for capital formation, capital accumulation, and the capacity of capital to control the lives of people to serve the interests of capital.

The language of: "free" markets, efficiency, and the invisible hand of the marketplace are at the heart of capitalist economics. However, those terms only make sense – in a pathological sort of way -- when one deals with an abstracted notion of capital flows from which issues of: justice, tranquility, common defense, general welfare, and liberty for the collective – as opposed to the capitalist – have been removed, and it never made any sense to me why anyone would want to learn about an economic theory that was so biased in its depiction of the world and so readily inclined to slip into destructive behavior of one kind or another with respect to the ramifications of capitalism for those who lived outside the channel-ways of capital flow.

Two other economic terms that are skewed by the biases of those who wish to control commercial activity and, thereby, undermine basic sovereignty among 'We the People' are: "wealth" and "capital." The

"commerce clause" in Section 8 of Article I of the Philadelphia Constitution indicates that Congress shall have the power to regulate commerce "with foreign nations, and among the several states, and with the Indian tribes," but that clause does not give Congress the power to regulate such commerce in order to favor either corporations or capitalism (as a theoretical system of philosophy).

The 'commerce clause' is supposed to serve the principles and purposes of the Preamble. After all, allegedly, the Preamble is the reason why the Philadelphia Constitution was established.

There is nothing in that Preamble about corporations or capitalism. It is entirely about 'We the People' and the establishing of: a more perfect union, justice, tranquility, common defense, general welfare, and liberty for the people.

Therefore, with respect to the regulation of commerce, wealth is a function of whether, or not, the purposes and principles of the constitutional Preamble are realized. Real wealth – not the superficial, shallow wealth of financial self-aggrandizement -- gives expression to the degree to which the people of the United States collectively enjoy the benefits of justice, tranquility, defense, welfare, and liberty.

Wealth is not a matter of financial accumulation. Wealth is about the quality of life among 'We the People' considered both individually and collectively.

Unfortunately, there tends to be an inverse correlation between the level of financial wealth of the few and the quality of life of 'We the People.' In other words, regulating commerce in a way that enables a relatively few people to become wealthy in a financial sense tends to adversely affect the quality of life for the generality of people, and, as a result, this sort of an arrangement does not serve the purposes and principles for which the Philadelphia Constitution was supposedly created ... which, in turn, means that the foregoing manner of regulating commerce is neither 'necessary' nor 'proper' per the requirements of the Philadelphia Constitution.

In short, defining "wealth" in purely financial and material terms cannot be reconciled with the Preamble to the Philadelphia Constitution. Justice, tranquility, defense, welfare, and liberty transcend those purely financial and material considerations ... although, to be sure, financial and

material dynamics have a role to play to help realize the purposes and principles that are entailed by the Preamble.

Similarly, the proper meaning of 'capitalism' should be about the flow and enhancement of the capital of human life in conjunction with a fiduciary responsibility to the environment that makes that kind of flow and enhancement possible (i.e., it is the ground out of which all forms of capital emerge). One degrades the idea of capitalism when one reduces it down to merely financial/material considerations ... in fact, if capitalism does not serve the interests of the collectivity of human beings, then, it is no better than socialism and communism – both of which seek to use arbitrary philosophies to undermine the basic sovereignty of human beings.

Therefore, the manner in which my introductory course in economics tended to approach and engage the ideas of 'wealth' and 'capital' made no sense to me. I was being asked to accept a perspective that went contrary to my feelings and thinking with respect to democracy, morality, humanity, life, and justice.

Another part of the lexicon of capitalist economics is 'competition.' Supposedly, markets are at best when they are competitive.

When companies compete for a share of the market, then, they must do whatever they can to attract customers. Competitive markets are said to enhance efficiency by driving down costs, improving productivity, and enhancing the quality of products.

However, competition also can bring out the worst in people. When this occurs, then people will cheat, lie, manipulate, exploit, bribe, and abuse others – whether workers, suppliers, customers, or society -- in whatever way they can get away with in order to generate a profit.

Many economists are inclined to argue that in the long run, illicit forms of competition – that is, forms that involve unethical behavior – will not be rewarded and, therefore, the only stable form of competition is fair competition. The foregoing perspective assumes, of course, that, sooner or later, the unethical behavior being alluded to will be uncovered – in the courts, by the media, through political activity -- but this is not always the case ... especially if the courts, the media, and political activity happen to be co-operating, in one fashion or another, to cover up or camouflage that sort of unethical behavior.

After all, government officials have been known to accept bribes or campaign contributions in exchange for looking the other way with respect to problematic economic activity. Similarly, media outlets have been known to kill or alter stories that cast an unattractive light on one, or another, of their advertisers. Moreover, those judges whose understanding of the world is, for whatever reasons, heavily influenced by capitalistic biases (for example the judge in the *Dodge v. Ford* case), will interpret the law in ways that are favorable to corporations and other capital interests rather than 'We the People.'

Unethical commercial activity is best uncovered when a given market is transparent and well-regulated. Those who conduct themselves in an unethical manner are adept at obfuscating matters as well as undermining regulation ... which is why one hears so many ideological psychopathic entrepreneurs criticizing the presence of regulation in their markets since regulation – when it is done properly – interferes with the desire of those individuals to have their unethical practices remain in the dark and out of sight of inquiring minds.

According to Adam Smith, a market that is made up of a number of relatively small, and roughly equal, competitors is likely to produce the fairest form of competition. Problems arise, however, when the participants in a given market are either limited and/or not necessarily equal to one another, and, under those conditions, 'competitors' are capable of leveraging the asymmetry of power distribution of these sorts of circumstances to hold a market hostage. One possibility that arises from the foregoing sort of asymmetry is that companies in such a position of power will not necessarily seek to enhance the quality of products, or increase productivity, or decrease the prices of products/services.

The emergence of monopolies, trusts, mergers, and multinational corporations over the last one hundred and seventy years has come to have a dominant – and, for the generality of people, problematic -- impact on almost all markets. Consequently, competition has become increasingly less fair as it is shaped by the interests, resources, powers, influences, and financial clout of a variety of commercial behemoths in conjunction with their fellow political, media, and judicial supporters.

Markets that are dominated by a few companies are not free. The efficiency of those markets is distorted by the manner in which the very meaning of "efficiency" must – according to the controlling companies --

be defined by the interests of those companies and by the manner in which whatever negotiations that occur in those markets are driven by the advantages enjoyed by those companies relative to other players in that market.

This is most readily understood in the context of labor markets where companies use their financial and political power to prevent workers from receiving fair compensation for the labor of the latter individuals. From the perspective of management, efficient companies are those that have poorly compensated workers generating high rates of productivity that lead to attractive profit margins.

Consequently, companies that compete with one another – whether fairly or illicitly -- will not necessarily help to bring about the realization of basic sovereignty for the generality of people. Sovereignty requires co-operation, not competition.

Sovereignty is not a zero-sum game. Sovereignty is rooted in the willingness of people to co-operatively struggle against and resist all forces – including commercial ones – that would seek to undermine individual and collective attempts to activate the principles inherent in the basic right of sovereignty.

Furthermore, I am not aware of any proof that shows, beyond a reasonable doubt, that co-operation is incapable of generating (if not improving upon) what competition supposedly does – that is, lower prices, enhanced quality of products/services, and higher productivity. In fact, co-operative commercial activity is much more likely to lead to the realization of sovereignty – both individually and collectively (and this resonates to some degree with what Henry Ford was trying to accomplish before the Dodge brothers took him to court) – than is the sort of competition that is narrowly focused on inducing capital flow to generate profits.

The division of labor with which Adam Smith was so enthralled in *The Wealth of Nations* is about co-operation, not competition. By breaking a job down into small steps that are performed by different people, one can produce more – for example, pins -- than one could achieve if one were to have different people compete with one another when each of them was responsible for the entire production process of individual pins.

Studies tend to indicate that companies work best when their employees co-operate with one another. On the other hand, a variety of research also tends to show that companies become dysfunctional when their employees are engaged in competitive, internecine turf wars with one another.

In sports, teams that work co-operatively with one another tend to do better than those teams in which its members are in competition with one another. In addition, plays, movies, and television programs tend to be better when all the participants in those productions are working from the same page.

Furthermore, military success depends on all facets of the military being able to harmonize their efforts with one another. While competition, within limits, might help soldiers to hone some of their skills, the goal is to generate a set of people who are capable of co-operating with one another in order to be able to meet their assigned objective.

If co-operation – rather than competition – works best in the division of labor, corporate functioning, team success, and military operations, then why not entertain the possibility that co-operation among companies for the purposes of establishing an economy that meshed with issues of individual and collective sovereignty might be a much better way of engaging the problems of life than to suppose that competition will be able to resolve all problems? In other words, another basic term – that is, 'competition' – which is drawn from the lexicon of the sort of capitalistic economics to which I was introduced as a fledgling student doesn't necessarily make all that much sense.

Capital and labor should not have an antagonistic relationship with one another. In fact, capital and labor are two sides of the same coin of sovereignty.

Capital is a catalyst for labor. Labor is a catalyst for capital.

Their relationship – if functioning properly -- is symbiotic in nature. When financial capital (capitalism), labor (communism), or the state (socialism) seeks to assume control of that relationship, sovereignty is adversely affected.

Commercial activity is a necessary part of society. However -- when, at the expense of basic sovereignty (the only right that can be demonstrated beyond a reasonable doubt to reflect the actual existential

status of human beings) commercial activity is filtered through the biases of arbitrary philosophies – such as capitalism, socialism, and communism – commercial activity becomes destructive of purposes and principles that are essential to being human.

Back in the mid-1960s, a few friends of mine somehow – and quite mistakenly -- got the idea that I was something of a financial wizard. If any of them had taken the time to critically reflect on the quality of my living arrangements or the kind of job that I had, they might have come to a more appropriate conclusion.

Nevertheless, one day a friend showed up unannounced at my apartment in East Cambridge and indicated that another friend of mine had told him that he should come to me for assistance with respect to helping him find a way to earn some quick money in the stock market. Perhaps, they were confused about how I got into Harvard ... which wasn't through possessing an impressive stock portfolio or travelling in elite financial circles.

I was kind of dumbfounded when the aforementioned individual showed up on my doorstep with his plea for help. However, not wanting to turn the person away without attempting to offer some form of assistance, I managed to blurt out a few things about 'put options' that I had come across somewhere in a newspaper, magazine, or book and alluded to the possibility that one could sometimes purchase stocks on margin ... the stock market's version of placing a bet (making a trade) with a bookie (broker) and putting it on one's tab (account).

I explained – in a rather halting and unsure manner – that if the value of the stock rose, one could sell the stock at a profit without having risked any of one's own money. In other words one would have leveraged the money 'borrowed' from the brokerage firm and translated the loan into a financial gain.

Of course, if the value of the stock went down and the stock broker called for the margin to be paid, then the outcome became more problematic. Under those circumstances, one would have incurred a debt that had to be paid ... and if the size of the loss was more than one's available cash flow, one had problem.

I tried to tell my friend that I really didn't know much, if anything, about such things. Unfortunately, and to paraphrase someone else, even the relatively ignorant are treated like wise men in the land of the completely ignorant.

After listening to me for a short while, my friend thanked me and left. Hopefully, he was smart enough not to invest much stock in my ramblings.

I've never had the 'green' thumb -- or inclination-- necessary to nurture the growth of money. On the other hand, I was fairly accomplished at inducing my debt load to assume a weed-like growth pattern.

Notwithstanding all my financial incompetence, however, I do tend to grasp some basic truths concerning the stock market. For instance, with the possible exception of an IPO, or initial public offering, in which people are actually investing money in a company with the hope that both the company and the investor will get a good return on their respective investments, the stock market is, for the most part, really nothing more than a legalized form of gambling.

Most people buy and sell stocks to make money, and, as a result, they often don't actually care about the company (or its people) whose stock is purchased, any more than a gambler cares about the individuals on the sports team that he bets for or against. The way one makes money in the stock market is to buy stocks that rise in value and, then, to sell those stocks off before they lose their enhanced value.

A stock rises in value because of the perception – whether correct or not – that the company for which the stock serves as something of a public persona is undergoing certain kinds of commercial dynamics that, for whatever reason, will lead to a more advantageous positioning within a given market that, in turn, might enable the company to make profits in the future. Similarly a stock goes down in value if the perception – whether correct or not – concerning a company's future economic outlook becomes stormy or risky.

There are all kinds of indicators that people (both professional and amateur) look at in order to try to develop a sense, financially speaking, of where a given company might be headed -- and when. The quality of competition, technological developments (present or forthcoming), labor

contracts, possible transitions in management personnel or strategies, rumors of one kind or another, credit ratings, debt burden, forthcoming mergers or possible hostile take-overs, and so on, are all fuel for the process of trying to analyze that way a given investment fire will burn, or for how long, and with what level of intensity.

Oftentimes, the value of a company tends to rise if the productivity of that company is perceived to increase. Productivity is enhanced when costs go down while the quantity and/or quality of output either stays the same or improves.

There are several ways in which costs might be lowered. For example, when a company: Decreases the compensation package for workers (involving wage/salary levels, health benefits, and/or retirement plans); or, asks the workers to do more for the same level of compensation; or, downsizes and, as a result, lays workers off; or, moves its operations to another state or country where labor will work for less, and/or the taxes, environmental standards, and safety considerations are less regulated, if at all, then productivity is likely to be measured as having increased.

The more money that is made by those who play the stock market, then, quite frequently, the more the quality of life is lowered for those people – i.e., the workers --who help subsidize those profits through: Lower wages, lost jobs, increased work burdens, slashed pensions, and/or diminished safety considerations). In those sorts of cases, stock profits are made by leveraging the labor of workers, and, in many – but not all -- ways, picking stock winners is about identifying those companies where there is a high likelihood that the life of workers will, in some way, be diminished in order to give such a company an alleged competitive advantage in the marketplace so that the value of the stock will rise and someone will make a profit when the stock is sold or when a dividend is issued.

Hedge funds, mutual funds, venture capital, brokerage firms, and banks give expression to systematic attempts to develop betting or trading strategies concerning the perceived value, over time, of various companies, commodities, currencies, services, governments, and resources. Those bets or trades often leverage the lives of human beings associated with those companies, commodities, currencies, governments, or resources and, if necessary, place the lives of those human beings at risk for purposes of turning a profit.

Generally speaking, the riskier a given trade is, the greater is the possible payout associated with that trade. The other side of this coin is that the higher the risk, then the greater is the likelihood that one will lose the money invested ... bets are placed and the wheel is spun ... round and round she goes.

Time, interest rates, price, yield, market conditions, inflation, and other factors are gathered together in various formulas designed to determine the risk associated with any given betting or trading strategy. Those formulas might be linear or non-linear in character, but they tend to be based on, and attempt to reflectively model, what has happened within a given market across a certain time frame, and, then, such calculations are used to make forecasts with respect to various possible kinds of economic and financial trends into the future.

The more nuanced and complex a given formula or model is, the more vulnerable that formula or model is to fluctuations in the real world that fall outside the predicted parameters of such a trading formula or model ... and, quite frequently, those fluctuations don't have to be very big in order for trouble to creep into one's financial life. For instance, the property or house that is associated with a mortgage that has been leveraged at 20 to 1 only has to fall in value by a little more than 5 % before the whole investment is lost.

Mathematicians, physicists, and engineers are often hired by companies to handle the complexities of model construction. When those constructions work, the currents of flowing money are propitious, but when those model/formulae don't succeed, money still flows, but the currents transform into a riptide that tears a person's life apart and pulls her or him under.

The foregoing formulas and models are based on the assumption that the future will look much like what has happened during the period that is being modeled. Unfortunately, the future doesn't always repeat the recent past, and when this occurs, financial losses become very likely.

As was the case with respect to the 'counsel' that I gave to my friend back in 1965, if one can manage to make money with other people's money – called leveraging – then, when this works out, this is the best sort of scenario. However, when this kind of arrangement doesn't work out, then trouble ensues ... margins are called, and one's life slides into a financial abyss.

When one juxtaposes complex mathematical formulae and models – ones whose relationship with reality is understood, if at all, by very, very few people, including the people who invent them – next to risk-taking behavior, uncertainty, leveraged money, and ideological psychopathy, one is asking for trouble. Welcome to the world of derivatives.

In simplest terms, derivatives are a function of – or derived from -- the value of some underlying asset (e.g., mortgages). Trading or betting strategies (in the form of complex mathematical models and formulae) concerning those derivatives – which are financial instruments rotating about the performance of some given asset -- attempt to forecast or track how the value of the underlying asset will unfold over time and generate – hopefully – some sort of return on investment concerning that asset.

Mortgage-backed securities – with mortgages being the underlying asset, and the securities being the derivative, or financial instrument, based on that asset – are only one of many kinds of derivatives that were developed over the years. Whatever names are assigned to those financial instruments, nevertheless, when one removes all the hype, complexity, mystery, and opacity surrounding the idea of derivatives, those financial instruments are nothing more than a form of gambling involving whether, or not, some underlying asset will prove to be a winner or a loser.

Simple derivatives begat more complex forms of derivatives. For instance, out of mortgage-backed securities arose what are called collateralized debt obligations or CDOs.

In CDOs, the underlying assets were often pooled together – mixing financially strong manifestations of the asset with less financially sound editions of the same asset. For example, mortgages based upon sound lending principles might be thrown together with mortgages that were based on manipulation, misinformation, disinformation, and something other than sound lending practices (e.g., the realm of subprime mortgages)

These pooled assets were, then, run through a tranching blender (in the form of some kind of mathematical formula or set of formulae) to create different streams of risk/payout investment possibilities. The foregoing sorts of arrangements were often given credit ratings as a guide to the degree of risk associated with the likelihood of realizing any given

stream of income, much as certain people in Las Vegas create betting lines with respect to this or that sporting event.

Unfortunately, quite a few people who set the credit-rating part of the betting line in relation to an array of derivatives did so in a dishonest fashion. As a result, derivatives were often knowingly rated with a higher – and, therefore, less risky – credit rating than those derivatives deserved, and, in the process, investors were scammed.

CDOs didn't necessarily include just one category of assets. A variety of assets with a range of values might be included in the aforementioned tranching packages, and, consequently, each CDO had its own unique risk/payout investment structure.

As long as the underlying assets performed well – or were made to appear to be successful -- then everyone (investors, model makers, financial instrument innovators, banks, hedge funds, brokers, and financiers of various descriptions) earned money. When those underlying assets performed poorly -- or not at all -- then financial fault lines began to run in all directions.

Because the early returns from playing the derivative's version of roulette appeared to be fairly lucrative, many people began to jump onto the financial bandwagon and place their bets. Quite a few of them did this with leveraged money -- that is, money borrowed from other people which was, then, used to purchase one, or another, brand of the financial instruments known as derivatives – and among the borrowers were investment houses, banks, hedge funds, pension funds, and so on.

A variety of companies were so highly leveraged in the derivatives gambling games that when the market began to go south (partly – but only partly -- set in motion when people in the subprime mortgage market could not pay their mortgages when interest rates rose and/or jobs were lost) panic beset the gaming tables. As a result, margin calls began to be issued like falling dominos with respect to various loans that had been leveraged to purchase derivatives because many of the loaning institutions and organizations were, themselves, scrambling to pay off their own failed leveraged betting strategies for which margin calls had been issued.

The monster of derivatives was spliced to the monster of leveraged money by unsuspecting or indifferent financial 'scientists,' and a

chimerical form of being was created that began to consume the world. A weapons-grade financial plague had been released.

In December of 2007, derivatives trading, of one kind or another, accounted for nearly $700 trillion dollars. This amount of money is more than 10 times the GWP – Gross World Product – of all the nations on the face of the Earth.

Obviously, if this great gaming table of derivatives – with its many risky bets -- begins to unravel, there are not enough assets in existence to cover the money that has been wagered. Individuals and a variety of financial institutions will fall ... but so will many countries.

One of the problems – and, there, are many others -- surrounding the idea of derivatives is that they were not regulated in any way. In essence, they constituted the promised land of capitalist economics – namely, a completely free market in which capital – through the magic of the invisible hand of the market – would be enabled to travel in any direction without interference.

The results were disastrous. Free market economics didn't work, and if one has any doubts about this go and ask: Bear Sterns, Fannie Mae, Fanny Mac, Lehman Brothers, Merrill Lynch, American International Group, and a host of other champions of 'free market capitalism'.

A fundamental precept of capitalism was dysfunctional because the idea of free markets is an economic fiction, just as corporations are a legal fiction. Those sorts of fiction work great in the fantasyland of theoreticians, but they are difficult to reconcile with the real-world needs of human beings.

Markets form, or are generated, in accordance with not only the strengths of the players in those markets, but, as well such markets are formed in accordance with the biases, ignorance, and character flaws of those same players. The so-called invisible hand of the market is nothing else but the dynamics of those strengths and weaknesses made manifest.

There can be no guarantee that the biases, ignorance, and character flaws that help shape a given market will automatically generate equilibrium points within that space which will magically give expression to solutions capable of satisfying the needs of everyone associated with that space. As computer programmers have been known to say: garbage in, garbage out.

Greed, ambition, selfishness, arrogance, hubris, ruthlessness, ignorance, dishonesty, irresponsibility, callousness, aggressiveness, recklessness, impulsiveness, abusiveness, remorselessness, emotional shallowness, cruelty, duplicity, egocentrism, as well as lack of empathy for, or indifference to the pain of, others – that is, most, if not all, of the characteristics of ideological psychopathy – were fully present during the organizing, shaping, orienting, and coloring of the derivatives market. Unfortunately, most economists and politicians were too blinded by their delusional, ideological thinking about the nature of reality to be able to understand that from the very beginning, the so-called free market of derivatives was nothing but a figment of someone's imagination that, among other things, failed to take into account the manner in which ideological psychopaths will seek to exploit such an opportunity without any regard for the possible destructive ramifications that are likely to ensue for either themselves and/or others.

Derivatives, along with other financial instruments, are not – as some advocates try to argue – a means of introducing: Increased choices; enhanced credit; and improved pricing into the world for the benefit of investors. The foregoing points are merely part of the marketing ploy that is being used to induce people to believe that the creation of the derivatives roulette wheel – along with other manner of financial gaming tables -- is just another form of 'free markets' in action, or that everything associated with derivatives is being done for the benefit of 'We the People' when, in truth, at best, only a few people – with the help of government assistance -- are able to surf the wave of financial tides to a safe and satisfying conclusion ... sooner or later, most people wipe out.

Like the Walt Disney version of the Sorcerer's Apprentice, the dynamics of derivatives (i.e., the water-carrying-ever-multiplying brooms) have taken on a life of their own. The complexity of: The tranching process, the leveraging process, and the destructive unraveling process that arises from failed betting/trading strategies is so extensive, that the full extent of the damage is still not known, and – to mix metaphors -- like the fault lines of an earthquake zone, the fractured world of derivative is very likely awaiting the right set of political and economic conditions to once again shake apart the lives of human beings, along with their associated institutions of governance and economics.

Within the context of the foregoing betting/trading strategies, capital in the form of money is given preference to capital in the form of human beings. When capital is defined in terms of financial considerations, human beings have a value only to the extent that those individuals are capable of facilitating and enhancing the flow of money.

When capital is a function of financial considerations, it tends to be a purely quantitative transaction. When capital is a function of human considerations that involve basic sovereignty, capital assumes a variety of qualitative features that, in many ways, cannot be adequately represented through the quantitative metrics of dollars, euros, yuan, pesos, or the value of a derivative.

Many people want the dynamics of free market economics to govern the world. However, the meaning of "free" in those dynamics tends to be a function of ideological biases – such as those that are present in the derivatives market -- that are antithetical to the actual sovereignty of human beings and which wish (intentionally or unintentionally) to place the lives of human beings under the control of the movements of financial capital ... movements that, all too frequently, are 'freely' manipulated by the machinations of various corporations, as well as by different representatives of the executive, legislative, judicial and state branches of government.

Those who are the primary shapers of financial markets of whatever description – that is, banks, corporations, insurance companies, hedge funds, investment houses, multinationals, and the government – have given 'We the People' no reason to trust them to do the right thing when it comes to helping to establish, protect, or enhance the sovereignty of individuals, considered both singly and collectively. Economics has failed every bit as spectacularly as has governance when it comes to nurturing, protecting, and honoring the basic sovereignty of 'We the People.'

Attempting to impose on people the biased ideology of capitalism (its bias gives preference to the movement of capital considered as a financial commodity) is no different than seeking to impose the biased ideologies of socialism (the bias is in favor of centralized or state public policy planning) or communism (the bias is in favor of a limited, materialistic conception of classless owners of the means of production) on people. Sovereignty is not about ideology, but, rather, sovereignty is about recognizing the nature of the human condition and having a fair

opportunity to push back the horizons of ignorance ... and neither capitalism, socialism, nor communism is capable of establishing that kind of fairness or even proving in any non-arbitrary way what that 'fairness' might entail.

The idea of 'rational utility maximization' – or, alternatively, 'maximizing a rational utility function' -- plays a central role in economic theory. The actors in economic dramas are assumed to be individuals playing the role of rational agents who are interested in maximizing their potential according to some sort of theory of utility.

On the surface, the foregoing assumptions seem 'reasonable.' However, with a little reflection, that which appears to be 'reasonable' tends to become less so.

For example, what are the criteria of 'rationality'? Moreover, what justifies using those criteria?

Is it necessarily rational to pursue that which is pleasurable? Is it necessarily rational to avoid that which is painful?

Accomplishment often comes through difficulty. Enduring through, and triumphing over, difficulty frequently establishes its own metric of pleasure.

On the other hand, pleasurable experiences sometimes entail problematic consequences. For instance, the highs of various kinds of addiction are capable of motivating one to seek more of the same until that kind of addictive behavior establishes its own metric of pain.

Obviously, the significance of pleasure and pain depends on the ultimate nature of reality. Furthermore, one interprets, or measures, the character of pleasure and pain against the possible meanings of life.

People have different ideas about what they consider to be desirable forms of pleasure and pain. Motivational patterns are woven into life as a function of such ideas, or, alternatively, those patters arise out of the phenomenology of experience as we come to identify the kind of circumstances that are deemed to be worthwhile to seek out, as well as those situations that are considered to be worthy of being avoided.

Not all motivational patters are necessarily rational. Yet, this does not prevent people from acting in accordance with those patterns.

Consequently, not all utility functions are necessarily rational. This raises the problem of having to differentiate between rational and irrational utility functions.

Furthermore, utility functions come in qualitative, quantitative, and mixed varieties. Not all qualitative utility functions (e.g., liberty, justice, truth, tranquility, and spirituality) can be solved through one, or another, kind of pricing arrangement or accurately reflected through quantitative measurements.

Sometimes we have understandings that are backed up by a variety of evidence indicating that a certain path forward is a 'rational' one. Unfortunately, our behaviors don't always reflect those understandings ... that is, we don't always act in accordance with what we 'know' -- or believe we know.

To use reason and logic to seek or acquire that which is not in one's best interests, does not necessarily constitute rational behavior. To use reason and logic to avoid doing that which might be in one's best interests, also does not necessarily constitute rational behavior.

Human beings are not always purely rational beings. Emotion and reason interact with one another in complex ways.

Sometimes reason informs emotion (for example, helping to modulate anger, jealousy, greed, and so on), and benefits ensue from that arrangement. Sometimes emotion (in the form of empathy, compassion, love, gratitude, and the like) informs reason and benefits often follow from that dynamic.

Is reason without the right sort of emotional counsel necessarily rational? How does one determine what 'the right sort of emotional counsel' is?

If reason is divorced from considerations of justice and morality, is that sort of reason rational? If not, then in what way must justice and/or morality be understood in order for reason to qualify as being rational?

Can one maximize justice for oneself without also maximizing justice for others? What is the relationship between morality and rationality?

The idea of rational utility maximization was, and continues to be, at the heart of the array of formulae and models that populate the derivatives market. However, a great deal went wrong with the "rational," "utility," and "maximization" parts of those formulae and models.

The idea of rational utility maximization is at the heart of most markets. Yet, many of those markets often fail because the nature of the understanding of different participants in those markets concerning the nature of 'rationality,' 'utility,' and 'maximization' has destructive ramifications for not only the market but the surrounding society as well.

For instance, socializing costs and privatizing profits – as often is done in the case of free market economics -- might give expression to a form of 'rational utility maximization' for one, or another, company. However, that kind of a utility function is parasitic and, sooner or later, the host will die, and, therefore, so will the parasite.

When different rational utility functions vie with one another in the marketplace, there is more than one possible outcome for such a dynamic. Not all outcomes of the foregoing sort of interaction will necessarily be favorable to either the participants or to society.

The invisible hand of the market is not inherently benign. It reflects, and gives expression, to the intentions and character of the participants in that market.

The Iroquois – and several other Indian nations – have indicated that every judgment and decision made by the people of that nation must take into consideration the impact of that decision/judgment on the next seven generations of people. How many economic decisions are made with the foregoing sort of understanding in mind?

If the answer is not very many – and I believe this answer overestimates the situation – then, just how rational are the utility functions that are employed in those economic models for purposes of maximizing outcomes? Moreover, for whom are those functions being maximized, and at what cost to others or the environment, and with what justification?

Economists – and most of the rest of us -- are ignorant about (that is, we cannot prove, beyond a reasonable doubt, the truth concerning) the nature of: intelligence, consciousness, reason, rationality, emotion, motivation, justice, morality, or life. Consequently, how can they – or we -- make any constructive suggestions concerning the idea of maximizing rational utility functions when everything that is said in this respect tends to be entirely arbitrary?

Rational agents are assumed by economists to be individuals who have perfect knowledge of all relevant considerations concerning a given market. Even if one were to concede that kind of an assumption – which seems a dumb thing to do -- nevertheless, having knowledge of a situation and understanding what do with such knowledge -- and when or to what extent or in relation to whom -- are not necessarily coextensive.

The gulf between information and knowledge is considerable. So, too, is the gulf between knowledge and wisdom.

Economists have a lot of data or information. They have very little knowledge or wisdom that can be demonstrated to be accurately reflective of reality in a manner that is beyond all reasonable doubt, and if economics can't satisfy that sort of a standard, then, why should anyone comply with economics' interpretation of what constitutes 'rational utility maximization', let alone its understanding – or lack thereof – concerning the nature and purpose of life?

Misinformation, disinformation, rumors, dishonesty, limited information, incorrect understanding, and uncertainty characterize all markets. Idealized venues in which those sorts of problematic features are not present have very little to do with the real world.

What does it mean to talk about maximizing rational utility functions when we are immersed in an ocean of unknowing and uncertainty? Is it rational to make decisions with incomplete information?

Are interpretations of incomplete information necessarily rational? Are attempts to maximize some form of utility function in the light of that kind of incomplete information necessarily rational?

What if our interpretations and attempts to maximize those utility functions turn out to be wrong ... as was the case with derivatives? Is it rational to try to maximize one's own utility function if this will have adverse consequences for others?

The nature of life requires us all to make choices. The capacity to choose does not guarantee that those decisions will be rational, maximizing, or serve some utility function.

The idea of maximizing rational utility is an economic fiction that has more to do with mythology than reality. It is a snipe hunt that all too many economists and politicians wish to impose on people as a proposed solution to the problem of sovereignty.

In reality – and the derivatives fiasco is very instructive in this regard – the 'science' of snipe hunting that is being advanced by many free market economists is a process that tends to entangle sovereignty – both individual and collective – in endless forms of arbitrary exercises that, sooner or later, lead to oppression and injustice. Such snipe hunts are inherently unstable because they do not accurately reflect the existential and epistemological circumstances in which we find ourselves, and, consequently, one should not be surprised to discover that the history of capitalism is replete with the foregoing sorts of instabilities.

Ideological psychopaths all possess rational utility functions that they are attempting to maximize. Their utility function gives expression to various, characteristic features of their ideological orientation.

Ideological psychopaths consider their utility functions to be rational 'because' they (both the individuals and the functions) are inflexibly tied to the definitions, assumptions, logic, and values of their delusional system of thinking and, therefore, those individuals have no way to independently and objectively verify the degree of truth, if any, in their perspective. Because there is a method to their pathology, they confuse and conflate methodology with rationality.

Making sense of things is not necessarily the same as establishing the truth of those things. Having a system of logic and reasoning does not render a system rational, any more than the logic and reasoning of a paranoid schizophrenic are rendered rational just because the logic and reasoning inherent in their condition seem compelling to the individual operating under the influences of that sort of pathology.

Free market capitalist theorists are ideological psychopaths for a number of reasons. For instance, not only is their understanding of reality delusional – that is, it is a false belief system -- but, as well, they have a pathological expectation that everyone else should be willing to comply with, if not subsidize, that sort of a delusional worldview.

The foregoing expectations are pathological because they tend to lead to a variety of very problematic behaviors and inclinations. As is the case with those who are born with psychopathic tendencies, ideological psychopaths who are immersed in the delusional system of 'free market capitalistic theory' often exhibit qualities of: arrogance, impulsivity, recklessness, irresponsibility, abusiveness, manipulation, dishonesty, emotional shallowness, cruelty, callousness, self-aggrandizement,

selfishness, and egocentricity, as well as a lack of empathy concerning other human beings, together with a lack of remorse or sense of conscience in relation to the manner in which their own satisfaction must be paid for through the pain and suffering of other human beings.

Like many natural-born psychopaths, ideological psychopaths of the free market capitalistic variety use their language skills to manage and manipulate the impressions of others. Advertising and public relations activities give expression to that kind of a skill-set because the intention of advertising and public relations is to frame people's attention by excluding all the problematic ramifications from the picture (e.g., in relation to: worker compensation, hazardous working conditions, environmental pollution, tax evasion, customer safety, undue influence on the media and politicians) that often arise in parallel with the profits that are to be made in relation to the alleged value of some given product or service (i.e., the focus of advertising).

Advertising, marketing, and public relations are used to induce potential customers or the public to cede their moral and intellectual agency to the company and product being promoted. Like natural-born psychopaths, ideological psychopaths of the free market capitalistic system use the allure of sex, self-image, power, and control -- or one's insecurities concerning those issues -- in an attempt to push and prod our buttons of existential vulnerability.

To the best of my knowledge, I have never met John Perkins ... although, conceivably, my degree of separation from him might have been much less than I suppose. More specifically, during my undergraduate days, I had to work various jobs in order to try to survive while going to school, and one of those jobs began around 1965-1966 at the Business and Economics Library at Boston University.

John Perkins began college in 1965 at Boston University. His major was business, and, therefore, he was enrolled in the Business Administration program at BU.

Since I often ran the 'desk' for signing out books, periodicals, and course materials that had been placed on reserve at the Business and Economics Library, there is a fair chance that, at some point, I might have checked out books, periodicals, or reserve materials for him. Otherwise,

we probably just passed one another like two silent, darkened ships in the night along the hallways and in the elevators of the Boston University School of Business and Economics.

The Business library often served as a social meeting place for students who were occupying the interstitial times and spaces between classes. Therefore, the library tended to be a rowdy place, and, once or twice, in my best sarcastic form, I had to venture into the rather large reading room and made an announcement that there had been complaints from many of the students that the people who were using the library for purposes of studying were interfering with the attempts of the complainants to converse with one another.

I don't know to which of the two foregoing group John Perkins belonged. Of course, I am assuming that he was actually in the library during such instances.

There is another piece of information about the Business and Economics Library that might serve as a sort of segue into the ideas of John Perkins. From time to time, the staff would check the library's actual holdings against the card catalogue to determine what books, if any, were missing.

Ironically, the section of books in the library that tended to suffer the worst losses – including defacing – dealt with one, or another, aspect of business ethics. The relevance of the foregoing fact to the experience of John Perkins is that he -- according to his own later confessions -- became engaged in a very ethically-challenged form of work for many years.

Although, initially, Mr. Perkins had been interested in joining the Special Forces and going to Southeast Asia to help fight the Vietnam War, he turned against the war when the media began to report on the many atrocities that were being committed there. Later on he learned Spanish, and following completion of his studies at Boston University, Mr. Perkins joined the Peace Corps, and went to Ecuador.

While in Ecuador, he met a man who was employed by MAIN (Chas T. Main, Incorporated). MAIN was a consulting firm whose primary task was to determine the 'suitability' of various countries for being granted loans from the World Bank for purposes of building hydroelectric dams, roads, and other similar projects designed to enhance a country's infrastructure.

The man encouraged John Perkins to apply for work at MAIN after he finished his Peace Corps assignment. In the meantime, he asked John to write to him with respect to whatever was going on in Ecuador.

As a result, Mr. Perkins wrote 15, or so, relatively long responses concerning events in Ecuador. Later on, he was hired by MAIN.

He became an econometric analyst. His job was to generate economic forecasts concerning different countries that would serve as the basis for deciding whether, or not, MAIN should become involved in various engineering projects in those areas.

His first assignment was Java in Indonesia. He was informed that Java's economy was about to explode, and his forthcoming economic forecast should reflect that 'fact.'

He learned how to use statistics to construct whatever economic models that might be needed to serve the interests of MAIN or those for whom MAIN served as a consultant. In other words, part of his task was to develop economic reports and models for a country that would seem to justify making loans to that country ... policy positions that already had been determined prior to the generation of those reports or the construction of relevant models.

Consequently, the purpose of the foregoing reports and models was to 'rationalize' loaning money to certain countries so that the loans could, in turn, be paid to a variety of corporations (e.g., Halliburton, Bechtel, and others) to undertake massive infrastructure projects in those nations. The reports and models were part of an ingenious make-work scheme for western corporations in which countries – via MAIN – were induced to sign off on loans for hundreds of millions of dollars that, then, would be forwarded to different companies for services rendered for those countries ... irrespective of whether those services were actually capable of benefitting the people of the country that was going into debt in order to generate profits for western companies.

John Perkins' job at MAIN had a second dimension to it. Once the aforementioned loans had been made to a given country, he was tasked with arranging things so that the debt could not be repaid and, instead, the country would be induced to go even deeper into debt.

When the amount of a country's debt reached a certain level, that nation would be pressured into slashing spending on various social

projects (such as education, health care, and welfare programs for the poor) – known as Structural Adjustment Programs -- in order to, at least, pay the interest on the loan. In addition, those countries would be maneuvered into selling off their natural resources and privatizing many aspects of community infrastructure (such as utilities, water, and transportation) in exchange for certain concessions with respect to their outstanding debt. Finally, those countries were forced to 'free' their banking system and currencies in a way that rendered their banks and currencies vulnerable to a systematic dismantling by foreign financiers and banking interests.

In short, Mr. Perkins job was to economically destroy countries for the benefit and profit of western corporations and governments. Everything began with the reports and models he generated that were intended to induce various western banks and so-called 'leaders' in different countries to believe that rosy economic times were just around the corner if certain sorts of infrastructure projects were initiated, but what was left unsaid, or hidden, in those reports and models was the fact that the only people for whom rosy economic times were really being forecast were western corporations ... including banks.

The 'leaders' of those targeted countries were manipulated in various ways – through money, sex, power, and threats – to take out massive loans on 'behalf' of the people who, then, would become responsible for paying back what had been borrowed on their 'behalf.' In other words, small segments from the 'elite' of a given country would be bought off in one way or another, while the generality of people would become the ones who -- through taxes, inflation, confiscated property, and slashed social services – had to bear the burden of subsidizing the life styles of western corporations and corrupt, or corrupted, 'leaders.'

One of John Perkins predecessors in the foregoing sort of international intrigue and corporate manipulation was Kermit Roosevelt, grandson of Theodore Roosevelt. In 1951 Roosevelt – who, at the time, worked for the CIA -- helped to overthrow the democratically elected Iranian government of Mohammad Mossadegh and replace the latter individual with Mohammad Reza Pahlavi, the former Shah (or King) of Iran.

Roosevelt manipulated a variety of people in Iran -- through money, threats, and the allure of acquiring power – into staging violent riots and

demonstrations in order to give the false impression that Mossadegh was unpopular with the Iranian people, as well as that he was a dysfunctional leader. Mossadegh was actually very popular with the vast majority of Iranians because he had nationalized the oil industry after his election to office, and this is the reason why the CIA decided to engage in regime change.

The same tactics have been used again and again in various parts of the world (e.g., Indonesia, Guatemala, Cuba, Vietnam, Nicaragua, Haiti, Chile, and Panama ... to name but a few). The work in which John Perkins became engaged for a time via MAIN was merely a more politically cosmeticized variation on the original template that had been introduced by Kermit Roosevelt in 1951.

In other words, rather than have the CIA directly take charge of projects that altered the economic and political environment of a country, 'economists' like John Perkins would be sent in to bring about the same sort of results through, seemingly, more innocuous means. After all, what could be wrong with helping countries to improve their infrastructure and, thereby, assist those nations to take their 'rightful' place at the world economic table? Unfortunately, as pointed earlier, the entire scenario was a scam intended to, on the one hand, benefit western corporations and banks, and on the other hand, plunder the resources of various countries at fire-sale prices while enslaving the populations of those countries for generations to come.

The World Bank and International Monetary Fund had become the staging grounds for planning one economic coup after another. People like John Perkins were the Special Forces' officers who economically infiltrated countries and helped destroy those nations from within.

The CIA did not disappear from the foregoing sort of economic warfare. Their role merely changed in certain ways.

For example, if 'leaders' in a given country would not play along with the economic version of 'Three Card Monte' that had been devised by the World Bank (located in America and largely funded by the United States), those 'leaders' would be offered various incentives to get their head in the 'game.' Some of those incentives were pleasurable and beneficial, while others ended in death.

In the latter case, certain elements in the CIA became enforcers for the policies of the 'economic mob.' Mr. Perkins referred to them as 'jackals.'

In passing, one might note that John Perkins speaks at some length in several of his books about how a 'friend' of his – Omar Torrijos – encountered a private, real-world version of the 'Day of the Jackals.' At the time, Torrijos was head of state in Panama and, among other things, he had been instrumental in getting the School of the Americas (a U.S. run school that had been located in Panama and that taught leaders and military officers from Central and South America how to oppress, terrorize, and control their own peoples) thrown out of Panama. Torrijos' reward for opposing the interests of the United States in the region was to be eliminated by one, or more, jackals.

The foregoing gives expression to the real meaning of terms such as: "free markets," competition, the invisible hand of the market, and efficiency. In other words the 'economic mob' for which John Perkins once worked busies itself with: rendering markets free for capital to exploit; eliminating all forms of competition (part of the process of making markets "free" for capital); being the invisible force that moves markets in directions that serve the interests of the economic mob, and efficiently generating profits for corporations and banks at the expense of local populations who are the ones who actually subsidize those companies.

After nearly fifty years, my memory is a little hazy on the matter. However, I don't remember any of my undergraduate, economic professors discussing the foregoing kinds of activities when attempting to initiate me into the finer points of microeconomics or macroeconomics ... maybe something was lost in translation, or, perhaps, I just wasn't paying sufficient attention to class discussions or the text materials.

The 'economic mob' – consisting of an amalgamation of corporations, banks, and the United States government – are ideological psychopaths. They don't care who they hurt as long as they get what they want.

In best psychopathic fashion, the members of the aforementioned mob will use the flowery language of: freedom, development, democracy, progress, self-regulating markets, efficiency, leadership, and competition to give expression to the economic 'miracle' that is being created in country A, B, or C. Unfortunately, that language is only being used to camouflage the horror and tragedy of what is actually transpiring as the

people of country after country are cruelly abused, exploited, manipulated, enslaved, and destroyed by a variety of 'market forces.'

While the foregoing activities are couched in the language of the rule of law, the only rule that is being manifested is the 'way of power.' The people of America have been induced by representatives of the way of power – whether corporate or governmental -- to cede moral and intellectual agency to the progenitors of ideological psychopathy.

There is no way in which the activities of the 'economic mob' can be justified in a manner that, beyond a reasonable doubt, can be shown to be legitimate expressions of non-pathological forms of behavior. Unfortunately, all too many representatives of the executive, congressional, judicial, and state branches of government have sought to 'educate' Americans and, in the process, induce Americans to accept a delusional and Orwellian-like understanding concerning the nature of that behavior such that: 'freedom' becomes a synonym for oppression, and 'manipulation' is relabeled 'the invisible hand of market forces', and 'efficiency' is a euphemism for the destruction of the environment, people, and their sovereignty.

Here are some facts to consider. These facts are among the products of free market capitalistic economics.

The combined total of the financial/material wealth of 90 % of households in the United States is less than the wealth of the top 1 % of households. Furthermore, since the mid-1970s, all increases in household income have gone to the top 20 % of households.

If one probes the foregoing data a little more deeply, one learns that during the last 25 years, or so, there has been a tremendous shift in income levels. More specifically, in the early part of this century, the top one-tenth of one percent of taxpayers was collectively earning more income than were the bottom one-third income levels. Yet, approximately thirty years ago, that same bottom one-third was collectively earning twice as much income as was the top one-tenth of one percent of taxpayers.

Over the last fifty years, the productivity of workers in the United States increased by a little over 110 %. Nevertheless, during this same

period of time, the average hourly wage went down by about 5 %, and, therefore, in part, increased productivity was subsidized by lower wages.

Thirty years ago, the CEOs of a variety of major corporations earned incomes that were about 45 times the size of non-executive, full-time workers. The foregoing wage rate differential rose to a factor of 140 times in the early 1990s, and, then a little over ten years later, the wages of CEOs were approximately 350 times greater than were the wages earned by most full-time employees in non-executive positions ... and over the last few years, the wages of CEOs has climbed to more than 430 times that of regular full-time workers.

During the 1980s, the average net worth of individuals who were on the Forbes 400 list was around $400 million dollars. In the first decade of the twenty-first century, the average net worth of those appearing on the Forbes 400 has climbed to nearly 3 billion dollars.

The average level of education achieved by workers over the last forty years has risen dramatically -- with more workers having acquired a high school education than ever before, and, as well, there has been a doubling of the number of working individuals who have at least four years of college/university under their belts. Yet, when adjustments for inflation are factored in, the hourly wage rate for workers has dropped by more than 10 per cent over the same period of time.

On average, women earn $ .24/hour less than men for doing the same work. Over a forty-year work life, this pay differential translates into approximately $450,000 for high school graduates, and the pay differential between men and women doubles to about $ 900,000 in relation to individuals who have a bachelor's degree of some kind. Moreover, women with a professional degree are likely to earn about two million dollars less than their male counterparts during the course of their respective careers.

The differences are even starker when one factors in race. Nearly half way through the opening decade of the current century, the median household income for people of color was just under $ 25,000/year, while the median household income for whites was nearly six times higher ... and if one considers the plight of Indians in particular, the discrepancies in average earnings are, on average, even worse.

Nearly 50 million people in the United States subsist at, or below, the poverty level. This includes millions of children.

Since the financial debacle of 2007-2008, millions of people have lost their homes and jobs. Homelessness and hunger are on the increase in the United States.

Companies that have higher percentages of women in their management groups tend to perform financially better than those companies that have lower percentages of women on their management teams. Nonetheless, 95% of the top salary earners at the largest 500 corporations in the United States are men.

More and more, corporations are shedding full-time employees and replacing them with part-time workers. Many of these: contract, leased, and temporary workers are required to take cuts in pay, benefits, and health care.

In addition, many corporations are increasingly shifting their operations to other countries where: labor is cheaper; benefits are non-existent; health and safety standards are lax or not enforced at all; taxes are low, and there are few, if any, environmental regulatory laws. Americans either lose their jobs and are told that the business environment in America must become more competitive – which is code for the idea that the United States must become just like any number of third-world countries when it comes to wages, benefits, taxes, regulatory restraints, and so on.

What if the tables were turned? What if corporations were told that they have to be far more competitive with respect to issues of: wages, benefits, safety conditions, environmental issues, and paying their fair share of taxes or else their products will not be permitted to be sold in the United States?

Those companies would likely be screaming about unfair restraint of trade. However, what about unfair restraint of sovereignty with respect to the vast majority of people in America? ... a form of restraint that is the direct result of corporate activity.

The advocates of free market capitalism would have us believe that all of the foregoing statistics reflect: the superiority of whites over other races, or the superiority of men relative to women, or the superiority of CEOs compared to average workers, or the superiority of the rich over the

poor, or the superiority of free market enterprise compared to other economic system. However, notwithstanding that kind of braggadocio and self-promotion, the foregoing differences actually reflect a system that is rigged to favor: Men over women, whites over people of color, executives over non-executives, and the rich over the poor.

The foregoing differences are not a testament to the wealth-producing capacity of free market capitalism. Those differences are a testament to the way in which free market capitalism exploits women, workers, people of color, and the poor to subsidize the life-style of – for the most part -- rich, white, males.

Certain rich, white males are becoming increasingly wealthy because increasing numbers of women, workers, and people of color are becoming poorer. Money is increasingly being siphoned from the less well-off and channeled into the lives of the more well-off.

Governments – both at the federal and state levels – as well as many courts and the media are increasingly serving the interests of corporations. Those corporations need government, the courts, and the media to arrange things in a favorable manner for the corporations because otherwise everyone would soon learn that free market capitalism does not work ... in other words, to whatever extent so-called free market capitalism succeeds, this is because of the assistance it receives from productive workers, government subsidies, and coddling from the judicial system.

Under the right set of circumstances – ones rooted in the idea of sovereignty -- commercial enterprise can work to the benefit of everyone. However, commercial enterprise is not capitalism.

Free market capitalism is a theoretical fiction with no proven track record. In fact, as the foregoing statistics point out, the terminal equilibrium point of free market capitalism always tends toward dividing society into those, on the one hand, who have and, on the other hand, those who have far less or nothing at all.

Corporations don't want the government and the courts to regulate corporate behavior and interfere with their capacity to generate profits at the expense of the generality of the people and the environment. From their perspective, that kind of regulation constitutes interference with the process of free market capitalism.

In best hypocritical fashion, however, corporations do want government and the courts to regulate: subsidies, tax codes, mergers, investments, safety conditions, environmental pollution, and minimum wages in a manner that favors corporate interests. Of course, the latter sorts of regulatory activities are not considered to be interference by corporations but, rather, are merely fulfilling the "necessary and proper" function of the commerce clause.

When free market capitalism controls issues of sovereignty, one gets the foregoing sorts of statistics ... and many others that are just as discriminatory, offensive, and oppressive. The Preamble to the Philadelphia Constitution alludes to the promise of sovereignty shaping economics (instead of economics controlling sovereignty), and when understood in this fashion, the 'commerce clause' becomes a matter of regulating economic activity in a way that establishes, protects, and enhances the sovereignty of 'We the People' as measured by qualitative indices such as: justice, tranquility, the common defense, general welfare, and liberty rather than through the sort of quantitative indices that show how the rich are growing richer and everyone else is sliding into an economic abyss.

One of the sacred principles of free market capitalism is the idea of 'property.' However, the issue of 'property' has a very problematic history.

If we restrict ourselves to just the United States, the nature of the problem becomes quite apparent fairly quickly. For instance, long before the Pilgrims allegedly landed at Plymouth Rock, the East India Company was busy claiming land in America on behalf of English royalty -- just as land in various other parts of the 'New World' was being claimed on behalf of France, Spain, and Holland.

The land being claimed didn't belong to the ones doing the claiming. Nevertheless, they proceeded to claim it anyway.

There was no argument that the English, French, Spanish, or Dutch could put forth that was capable of demonstrating, beyond a reasonable doubt, that their property claims were justified. They did what they did because no one stopped them from doing so.

Possession might constitute nine-tens of the law in England, France, Spain, and Holland, but the existence of that sort of a legal idea doesn't necessarily translate into a defensible right – one that can be established beyond all reasonable doubt. Of course, through the use of power and violence, those countries sought to enforce their arbitrary claims, however, might doesn't necessarily make a given action 'right' ... although might does often constitute an effective form of control with respect to those claims.

The East India Company didn't have any right to claim land for England that could be proven in a non-arbitrary manner -- that is, in a way that was evidentially independent of the mere act of making such a claim. Moreover, the East India Company didn't have a non-arbitrarily determined right to cede property/land to the Jamestown Company.

Similarly, the French didn't have a non-arbitrarily determined right to sell its non-arbitrarily determined possession of 'Louisiana' lands, and the United States didn't have a non-arbitrarily determined right to make such a purchase. Moreover, the United States didn't have a non-arbitrarily determined right to take vast tracts of land (encompassing the current states of: Nevada, Colorado, California, Utah, New Mexico, most of Arizona, as well as portions of the present states of: Oklahoma, Wyoming, Kansas, and Texas) from the Mexicans for nearly 19 million dollars at the conclusion of a trumped-up war. Nor did the Russians have a non-arbitrarily determined right to sell Alaska to the United States, any more than Secretary of State William Seward had a non-arbitrarily determined right to buy his 'folly.'

Abraham Lincoln didn't have a non-arbitrarily determined right to cede land to the railroads. Moreover, Lincoln didn't have a non-arbitrarily determined right to cede land to people via the Homestead Act of 1862.

Many Jewish people referred to the formation of Israel as being a matter of bringing together, on the one hand, a people without a land (i.e., the Jewish people), and, on the other hand, a land without a people (i.e., Palestine). However, as I.F. Stone observed not too long before his death -- and he was someone who initially supported the idea of Israel but later came to have concerns about the morality of what had transpired -- Palestine was never a land without a people.

In like fashion, the lands being claimed by the East India Company and called Virginia, or the 828,000 acres sold by the French to Jefferson,

or the millions of acres finagled away from the Mexicans by the United States, or the lands purchased by Seward, on behalf of America, from the Russians, were not empty of people ... people who had lived on those lands long before the Europeans arrived. Of course, the fact various Indian nations occupied different parts of the land that came to be known as the 'New World, doesn't necessarily mean that the lands in questions belonged to the Indian peoples either.

To whom, if anyone, do the lands, waters, and resources of the world belong? No one has been able to answer this question in a non-arbitrarily determined fashion.

Everyone has pointed to sales, treaties, histories, contracts, deeds, eminent domain, and so on in an attempt to justify their claims to this or that portion of the Earth. All of those claims have a suspect pedigree.

Like the principle of the 'chain of custody' concerning evidence that requires the integrity of that chain to be preserved and capable of being demonstrated at every point of transition along the path from crime to courtroom, so too, one must be able to establish the integrity of ownership when it comes to matters of land and resources. However, the legitimacy of all claims concerning land and resources are obscured by everyone's inability to establish that the evidential and moral basis on which any initial or original claims concerning land and resources can be demonstrated, beyond a reasonable doubt, to an array of people who have no vested interests in such claims.

The law of ignorance indicates that we don't know -- in any fashion that can be demonstrated beyond a reasonable doubt – to whom, if any one, the lands, waters, or resources of the Earth belong. In essence, the idea that the world belongs to no one seems less arbitrary than does the idea that the world belongs to particular individuals, nations, or corporations since the latter claims are all a function of arguments of dubious validity, whereas the former contention – i.e., that the world belongs to no one – is consistent with what we can prove concerning the ultimate nature of Being or is consistent with what can be demonstrated, beyond a reasonable doubt, with respect to the relationship of human beings and Being ... which is nothing at all.

Free market capitalism wishes to make everything a function of markets, prices, costs, efficiency, capital, equilibrium conditions, productivity, wealth, competition, profit margins, rational utility

functions, and the like. However, free market capitalism has never demonstrated beyond a reasonable doubt that its way of parsing reality is correct – especially when it comes to the issue of determining who, if anyone, has a non-arbitrarily determined right to reduce the world and its resources down to parcels of property or packages of resources that benefit the few, while enslaving and impoverishing the many, as well as destroying the Earth itself.

Chapter 11: The Money Problem

In November of 1910, seven individuals arranged an ultra-secret meeting on Jekyll Island, off the coast from Brunswick, Georgia ... an island that J.P. Morgan had purchased in the not too distant past. The seven individuals were: (1) Charles Norton, President of the First National Bank in New York, part of the J.P. Morgan financial empire; (2) Henry Davison, a senior partner in the J.P. Morgan Company; (3) Benjamin Strong, kingpin of J.P. Morgan's Banker's Trust Company; (4) Frank Vanderlip, President of New York City's National City Bank and who was standing in for William Rockefeller, as well as for Kuhn, Loeb, & Company, a powerful international investment house; (5) Paul Warburg who was not only a partner in Kuhn, Loeb, & Company, but, as well, he was representing the interests of the Rothschild banking empire located in France and England, and he also was the brother of Max Warburg who oversaw the Warburg banking empire in Germany; (6) Nelson Aldrich, Senate Chairman of the National Monetary Commission, as well as father-in-law to John D. Rockefeller and a business associate of J.P. Morgan; and, finally, (7) Abraham Andrew, Assistant Secretary of the Treasury Department.

At the time, J.P. Morgan, the Rockefellers, the Rothschild family, and the Warburg brothers collectively controlled at least one-fourth of the world's financial wealth. They ran a network of banks, investment houses, and other financial entities that influenced a great deal of commercial and political life in Europe and the United States.

The meeting had a fairly straightforward agenda. They wanted to find a way to take financial control of the United States.

Mayer Rothschild once said: "Give me control over a nation's currency, and I care not who makes its laws." He was alluding to the fact that money actually tends to rule what goes on in a country, not its laws, and, the people who were meeting on Jekyll Island were interested in putting that principle into practice in the United States.

Up until the 1880s, most banks in America were national banks. Those banks were chartered by the federal government.

However, by 1910, the year of the meeting as Jekyll Island, national banks constituted only a small percentage of the overall number of banks in the United States. Not only were non-national banks exploding in

numbers – more than doubling in the first ten years of the 1900s – but, by 1910, those non-national institutions constituted over 65 % of the banks in America.

The national banks tended to be located in the big cities along the East coast. The non-national banks were proliferating in both the western and southern portions of the United States ... in cities both big and small.

As a result, the big banks were losing their market share of the financial industry to the smaller, non-national banking institutions. With a diminishing market share, the commercial and political influence of the big banks was also being affected in a variety of ways.

Banks – whether they were national or non-national in character – loaned money to individuals, businesses, organizations, and governments. Ostensibly, the money loaned out came from the deposits made by a bank's customers.

However, banks loaned a great deal more money than was on deposit. Generally speaking, the banks leveraged their deposits by a factor of 10 to 1 ... which meant that banks tended to loan out ten dollars for each dollar that was on deposit.

These leveraged deposits led to loans that often cycled back to the bank as deposits from the people or businesses that had been given loans. Consequently, rather than leveraging deposits by a factor of 10 to 1, banks could end up leveraging the original deposits by a factor that, depending on circumstances, might rise to as much as 300 to 1.

Usually speaking, this Potemkin arrangement worked. On average, only 3% of depositors wanted their money back at any given time, and, therefore, the banks had an opportunity to move the financial cards around in their game of 'Three-card Monte.

In other words, many banks operated in a way that induced their depositors to adopt a 'false belief' concerning the real financial condition of those banks at any given point in time. For the most part, there was literally nothing in the way of actual 'money' to back up most of the loan and investment activities of banks.

In 1927, Sir Josiah Stamp, head of the Bank of England, admitted to an audience at the University of Texas that banks – not governments – create money. Banks accomplish this through the mechanism of debt that loans money into existence, and with respect to this process, Sir Josiah

Stamp warned the audience – apparently to no avail – that: "... if you want to continue to be the slaves of banks and pay the cost of your own slavery, then let bankers continue to create money and control credit."

Everything was a matter of accounting gimmicks. If one took the amount of money that was actually in a given bank's vaults at any point in time and compared that against the amount of money that had been loaned and invested by the bank, the two figures would be very different from one another.

Therefore, accounting tricks were invented to reconcile the differences. One learned how to categorize and label financial transactions in a variety of ways to paper over the fact that banks were largely a function of smoke and mirrors because most of the money they loaned out or invested didn't actually exist ... until it was loaned or invested.

From time to time, however, a perfect storm of political and/or economic events came together that would, in one way or another, either move depositors to begin withdrawing their money from the bank, or such events would lead to other forms of financial problems for the bank. Ultimately, all roads led to the same place – namely, because a bank had loaned out and/or invested more money than had been deposited into it, those banks didn't have sufficient funds on hand to meet the increasing demands of depositors and/or other creditors.

As a result, the bank would either have to declare a bank holiday in order to buy the time needed to be able to come up with the money that would repay depositors what they were owed, or the bank would have to come up with some sort of public relations spiel to try to quell the insistence of depositors and creditors to receive the money that was owed to them. When the foregoing stalling ploys did not work, banks would become insolvent, and the depositors who still thought they had money in the bank would lose out.

In short, banks were permitted to commit fraud. They knowingly made false financial claims (e.g., your money is safe and will be returned to you whenever you like) that induced people to deposit money that, when things went sour, would disappear.

For a variety of reasons – and somewhat ironically – the foregoing sorts of panics were not necessarily a reflection of difficult economic

times but often took place under conditions of prosperity when many people and businesses were borrowing money in order to take advantage of prosperous times, and as a result, banks didn't have much of a margin with respect to on-hand reserves.

Many kinds of economic factors might lead to the bank's equivalent of a margin call. On those occasions, if banks were loan/investment rich but revenue poor, the banks were in trouble, and, therefore, so were their depositors ... they were all facing a cash-flow or liquidity problem of one description or another.

The seven individuals who met on Jekyll Island were interested in organizing the foregoing issues in a manner that would be advantageous to the big banks. For instance, the Jekyll Island seven wanted the large national banks to be able to reassert dominance in the financial markets relative to the increasing number of non-national and, usually, smaller banks.

Consequently, the Jekyll Island 7 – and those they represented -- wanted to be able to exert a considerable measure of control over the non-national banks by centralizing the administration of the banking industry. In the process, the smaller, non-national banks would be required to follow the rules of financial engagement that would be introduced into, and controlled by, the banking system in accordance with the ideas being advanced on Jekyll Island in 1910.

Perhaps, most importantly, the members at the Jekyll Island meeting wanted to come up with a persuasive sales pitch that would convince the American public and the members of Congress that the whole purpose of revamping the banking industry was to protect and serve 'We the People' – even though this was not the reason why the aforementioned seven individuals had gathered together. However, in order to accomplish this, the Jekyll Island 7 would have to convince legislators and the public alike that the process of re-organizing the banking industry was something other than the grab for power that it actually was.

The American people disliked monopolies, trusts, and cartels. Therefore, the Jekyll Island 7 needed to develop a marketing and sales strategy that would dispel that kind of distrust by making the idea of a revamped banking system appear to be something other than the financial cartel is was intended to be.

Consequently, banks were to be promoted as institutions that: Enabled commerce, lowered interest rates, and brought financial and economic stability to the American public. Yet, the reality of banks did not change – namely, they were engaged in activities that would fraudulently leverage other people's money in order to make profits for themselves.

Although the Jekyll Island 7 were reticent with respect to what banks would get out of the plan for a new banking system, the fact is, banks would not only be able to control many facets of commerce by determining who would receive loans and under what conditions, but, banks also would be able to influence the process of government. This sort of control would enable the proposed banking system to realize Mayer Rothschild's belief that those who controlled the dynamics of money would have priority over those who made the laws.

Once the aforementioned meetings of November 1910 had come to their conclusion, Robert Aldrich (one of the participants) became the point man – at least initially -- in the Jekyll Island operation. Robert Aldrich was a Senator, Chairman of the National Monetary Commission, father-in-law to John Rockefeller, an associate of J.P. Morgan, and, as well, he was the 'whip' for his party.

The 'whip' is the individual who is responsible for keeping party members in line – either: for or against -- with respect to legislation that is being advanced by one party or another, and, as well, the 'whip' is the individual who ensures that quorums are met, or not, when legislation is being voted on. The 'whip' uses various modes of motivational pressure – whether in the form of rewards or punitive measures – to induce party members to vote in accordance with what the leaders of the party consider to be appropriate in any given instance of proposed legislation.

Aldrich began to push the Jekyll Island idea in Congress. The sitting president was William Howard Taft who was facing an election campaign in 1912.

Taft was opposed to Aldrich's plan for a new banking system. Taft's concerns revolved around the way in which the Aldrich idea would empower private commercial interests while leaving the federal government relatively powerless with respect to the activities of the misleadingly named agency.

Despite bucking his party in various ways, Taft was a fairly popular president. Economically, things were going fairly well for many people, and Taft's popularity reflected, in part, the positive commercial tenor that was being manifested in many segments of American life.

J.P. Morgan wanted the Jekyll Island ideas passed into legislation. Taft was standing in opposition to what Morgan desired, and, therefore, Taft had to be stopped.

Frank Munsey and George Perkins – who were close associates of Morgan – were dispatched to persuade Teddy Roosevelt to run against Taft – either within the Republican Party or as a third-party candidate. As a result, the Bull Moose Party came into being.

Although Morgan initiated the process that led to a three-party presidential race, he was not acting alone. Other participants in the Jekyll Island meeting were also organizing things behind the scenes, including Paul Warburg, who was supporting the candidacy of Wilson.

In addition, National City Bank of New York – which had been represented by Frank Vanderlip in the Jekyll Island meetings – played a key role in the Wilson candidacy. More than one-quarter of the money raised by Wilson came via an individual – Cleveland Dodge – who was employed by National City Bank, the most powerful banking concern in America at that time that also had a presence at the Jekyll Island meeting.

Roosevelt was enticed to run not because he necessarily could beat Taft but because he would be able to siphon away a sufficient number of votes from the incumbent president during the forthcoming election to be able to prevent Taft from being re-elected. The strategy succeeded, and Woodrow Wilson won the presidential election.

Wilson won only 42% of the popular vote. The other 52% of the electorate was divided between William Taft and Teddy Roosevelt.

Why did the forces behind the Jekyll Island meeting support the candidacy of a person whose party – Democrats – had specifically indicated in its election platform that it opposed the Aldrich Currency Bill which was proposing a new banking system. Perhaps, they knew something that most other Democrats did not know – namely, that, secretly, Wilson already had agreed to back the Aldrich plan if Wilson became president.

The individual who was responsible for getting Wilson nominated for President during the convention of the Democrats was Colonel Edward House. As a result, he became a close political advisor for Wilson.

Colonel House was also the individual who introduced Wilson to the ideas of Jekyll Island. Although Wilson had: passed the bar exam in Georgia, earned a doctorate in history and political, become the President of Princeton University, and served as Governor of New Jersey, by his own admission, he knew little about banking and monetary issues.

Therefore, Wilson relied heavily on the 'knowledge' of Colonel House for his 'understanding' of such matters. The understanding that Wilson thereby acquired reflected the values and beliefs of the forces behind the Jekyll Island meetings because Colonel House was busily engaged in tutoring Wilson accordingly.

Colonel House kept a personal journal. Entries in that journal dating from: before Wilson's inauguration as President, until: after the passage of the Federal Reserve Act, indicated that he was in fairly constant contact – both directly and indirectly -- with the financial forces that were responsible for the Jekyll Island meetings.

Although the Aldrich Currency Bill seemed to pass from the scene, it was actually resurrected in the form of an amalgamation of two bills that had been introduced by, on the one hand, Carter Glass, a congressman from Virginia, who had become the Chairman of the House Banking and Currency Committee, and, on the other hand, a bill co-sponsored by Senator Robert Owen who was president of a bank in Oklahoma and who had taken several trips to Europe to learn about the idea of central banking.

Carter Glass had been opposed to the Aldrich Currency Bill because, among other things, that proposed legislation seemed to place a monopoly-like power in the hands of banking concerns – especially those from New York -- and also because the Aldrich Currency Bill did not contain adequate provisions for governmental oversight. Glass wanted to put forth something completely different from the Aldrich plan, but, unfortunately, Glass didn't know anything about banking ... even though he was the one who had been put in charge of developing a proposal that would counter Aldrich's ideas.

Glass enlisted the services of Henry Willis, a professor of economics, who had been a student of Professor Laughlin. Laughlin had a relationship with the forces behind the Jekyll Island meetings, and, in fact, he had adopted Paul Warburg's position that once the Democrats came to power, Nelson Aldrich's name should no longer be associated with any proposed legislation concerning a revamping of the banking industry.

When Willis began writing the proposed bill, he enlisted the assistance of his old mentor, Professor Laughlin. Colonel House – to whom Carter Glass had once confessed that the congressman knew nothing about banking -- also became involved in the bill writing process as something of a consultant.

Under the influence of Laughlin and House, Willis wrote a bill that – as far as working principles are concerned -- was not really all that different from the proposal that previously had been put forth by Nelson Aldrich. As a result, although Carter Glass had been opposed to the Aldrich plan and wanted a bill that would not generate a monopoly-like financial monstrosity that could not be controlled by government, Glass, instead, got Aldrich-Redux.

The banking-related bill that had been co-sponsored by Senator Owen was slightly different from the Glass Bill. However, Owen's bill represented the interests of bankers quite well ... as one might expect with respect to someone who was, himself, an active banker.

When the Glass and Owen bills were reconciled, the banking industry was well on its way to gaining financial and monetary control of the United States. The Jekyll Island plan was becoming a reality.

Through a strategy of reverse psychology, many of the financial interests represented at the Jekyll Island meetings, began, publically, to denigrate the Glass-Owen Bill. For example, even though the proposed bill was, in all essential ways, the second-coming of the defunct Aldrich Currency Bill, Nelson Aldrich denounced the proposed legislation as being injurious to the principles of good banking.

Frank Vanderlip, another participant in the Jekyll Island meetings, also attacked the proposed legislation. He even debated Carter Glass before an audience of some 1100 businessmen, economists, and bankers in an "attempt" to stem the tide of the Glass-Owen Bill even though more than 20 years later Vanderlip wrote an article for *The Saturday Evening*

Post indicating that there weren't really any substantial, essential differences between the Aldrich Currency Bill that had been rejected previously and the Glass-Owen Bill that was eventually passed into legislation in 1913.

Publically, the impression was created that the financial interests that had arranged and organized the Jekyll Island meetings were horrified by the Glass-Owen Bill and felt very threatened by its provisions. Privately, those financial interests were being given precisely what they wanted through that legislation, and, therefore, like Br'er Rabbit, they were thrown into the briar patch of their dreams and against which they had been 'complaining' so assiduously to Br'er Fox (the media) and Br'er Bear ('We the People').

Within Congress, one of the primary opponents to both the Aldrich Currency Bill and the proposed Glass-Owen Bill was William Jennings Bryan who was a prominent leader of the Democrats but who, as well, was a spokesman for the populist wing of that party. Unless Bryan could be brought on board, in some fashion, the Glass-Owen Bill was unlikely to pass.

There were several maneuvers utilized to move Bryan in the desired direction. For instance, Bryan demanded and 'got' several compromises approved in relation to the Glass-Owen Bill.

One of these compromises concerned the issue of government oversight of the Federal Reserve network of banks. In response to Bryan's concerns, the idea of a Federal Reserve Board was introduced.

The members of the proposed agency would be appointed by the President. Moreover, through the advice and consent of the Senate, those nominees would be vetted and, where appropriate, approved for appointment to the Board.

On the surface, Bryan's concerns seemed to be addressed by the idea of the Federal Reserve Board. The President and the Senate would be able to control who would be appointed to such a quasi-governmental agency.

However, the day-to-day operations of the Board were not clearly delineated. In addition, the lines of authority were also vague since the Board was responsible neither to the President nor to Congress ... although its Chairman might have to come before Congress from time to

time and respond to – but not necessarily answer – questions posed to the Board's representative.

Finally, even if regulatory control of some kind had been present – which it wasn't – that kind of control is only as effective as the integrity of the individuals who are doing the regulating permits. If those individuals happen to be orbiting within the banking industry's gravitational sphere of influence – as often is the case in most regulatory dynamics in government – then, even if possible (which in the case of the Federal Reserve Board was not the case) no real regulation would take place.

William Jennings Bryan believed that the creation of the Federal Reserve Board constituted a win in the compromise-battle with respect to the issue of governmental oversight concerning the Federal Reserve System that would come into existence through the Glass-Owen Bill. In reality, he had lost the war.

While the Federal Reserve Board seemed to have a public face since the appointments were done by the President and the Senate, the reality of the Board would be completely hidden. All decisions concerning the Federal Reserve would be made in secret and undertaken for the purpose of benefitting private, commercial and financial interests.

Another objection voiced by Bryan concerning the proposed Glass-Owen legislation had to do with the identity of who actually would be issuing the currency that was being talked about in the aforementioned Bill. Bryan wanted the national currency to be issued by the government in accordance with the provisions of the Philadelphia Constitution and not by private, commercial corporations ... i.e., the proposed 'federal reserve notes' should be 'treasury notes' that originated with the Treasury Department and not with the Federal Reserve.

President Wilson summoned Glass to the White House to discuss the crisis. Glass was told by the President that the Federal Reserve note would actually be a government-backed currency.

When Glass responded that the only thing backing such notes would be: A limited supply of gold reserves, a great deal of federal debt, and the assets of the banks themselves, Glass was, in effect, told by President Wilson not to worry and, despite appearances to the contrary, the value of the proposed Federal Reserve note was an obligation that was being assumed by the government.

Although President Wilson's understanding – undoubtedly due to the tutelage of Colonel House – was correct with respect to the fact the United States federal government did have an obligation with respect to backing the Federal Reserve notes, the actual reality of the situation was a little more convoluted than President Wilson was either admitting or understood. More specifically, under most circumstances, the members of the Federal Reserve network were the ones who were responsible for the value and operation of the proposed notes, and the obligation of the government would only kick in if the Federal Reserve System broke down.

In other words, the profits for operating the Federal Reserve System had been privatized to commercial banks. However, the obligation for covering costs – that is, if and when the Federal Reserve System failed – would be socialized and assumed by the federal government and its taxpayers.

Bryan's opposition to the Glass-Owen Bill had been dismantled through several forms of subterfuge involving the nature of the Federal Reserve note and the idea of the Federal Reserve Board. His opposition was further diluted when he was nominated by President Wilson to become Secretary of State and subsequently indicated that he was fully in agreement with, and appreciative of, the President's efforts to ensure that the federal government remained fully in charge of both the issuing of currency, as well as the oversight of banking activities.

Glass, Bryan, and Wilson were three individuals who helped usher in the era of the Federal Reserve. They were: dumb, dumber, and dumbest.

Just prior to the Christmas break of 1913, Congress passed the Glass-Owen Bill into legislation. President Wilson signed the legislation into law one day later ... which turned over control for much that went on in the United States to private, financial interests and was an act that Wilson would later come to confess had been a monumental mistake.

Approximately thirty years after the Jekyll Island seven came up with their original idea, there was another refinement introduced into the Federal Reserve System. People who leverage other people's money also tend to be attracted to the idea of having the people, themselves, pay for the privilege of being fleeced by the banking system.

Consequently, a way was sought – and this possibility came to fruition during the presidency of Franklin Roosevelt – that, ostensibly, would be able to protect the public – but mostly the banking system -- against the greed and financial excesses that some of its members were inclined to commit. For instance, why not have some form of an insurance-like scheme – maybe called the Federal Deposit Insurance Company or the Federal Deposit Loan Corporation -- that would reimburse depositors or pay off bad bank loans via taxpayer money, and/or government funds, and/or higher fees to banking customers when the irresponsibility of bankers required the banking system to be salvaged or bailed out in one fashion or another.

However, like pretty much everything else that is connected to the process of banking, the foregoing insurance-like scheme is more about managing impressions rather than actually constituting a safety net for banking customers. More specifically, the banks utilize such a high rate of leveraging relative to deposits, that the amount of money that has been contributed to the FDIC through bank assessments (which are, then, used to purchase treasury bonds), is not anywhere near what is needed to pay what depositors in banks are owed if they – or a substantial portion of them – were to ask for their money back from a sufficiently large number of banks ... money that the banks have fraudulently claimed to be safe, secure, and fully returnable upon demand.

If, in a given set of circumstances, the FDIC becomes depleted of funds, the only source to which the FDIC can appeal is the government. In effect, this really means that if the government decides to act in that sort of a crisis situation, then the people are the ones who will become responsible for paying off the losses that have arisen due to poor banking practices.

When a small bank fails, the FDIC often will make payouts to the 'insured' depositors of the bank and, then, throw the bank into the abyss of liquidation. This gives the public the impression that the banking system works without costing that system much to keep up 'appearances.'

When a medium-sized bank fails, the bank is absorbed by a larger bank -- that has been approved to undertake that sort of venture -- and, in the process the larger bank will take on both the liabilities and assets of the failed bank. In this way, the public's jitters about the safety of its

money are quieted, and the banking system doesn't lose any of the assets that have been accumulated by those failed banks.

Finally, when large banks fail, they are bailed out ... this is what happened during the Savings and Loans scandals of the 1980s, and, then again, in a much bigger way during the financial fiascos of 2008. In the case of bailouts, big banks exploit the people coming and going -- in other words, when profits accrue to the banks as they leverage the deposited dollars of customers, whatever gains are acquired through that process belong to such banks, but if losses accrue to those same banks, then the tab is, in one way or another, often picked up by 'We the People.'

The foregoing three possibilities – payout, sell-off, and bailout – are sold to the public as acts that are protecting the public's interests. In reality, however, whatever the benefits are that might be directed toward the public as a result of various acts of 'contrition' on the part of the banking system, those benefits are secondary to the fact that the banking system is enabled to continue on with being able to fraudulently leverage customer deposits for the purposes of keeping the banking system's gambling habits going at public's expense.

During the Depression Era, nearly 2000 small savings and loans banks closed shop. This led to the FDIC legislation that, supposedly, was intended to help protect depositors from losing money if other banks were to fail.

However, the foregoing legislation did nothing to alter the fact that banks continued to be able to leverage the money of their depositors. This was the very issue that had led to the losses that brought about the foregoing legislation.

Unsurprisingly, therefore, in the 1980s – during the savings and loans scandals – the existence of the FDIC legislation did nothing to prevent nearly 700 more savings and loans banks from failing. The FDIC was intended to treat symptoms – and even then only in a very limited fashion -- but not the underlying disease.

In fact, the system of governance was rigged – in accordance with Mayer Rothschild's dictum concerning the relationship between money and law -- to permit the pathogen responsible for the foregoing kinds of financial pathology to continue circulating in America (and elsewhere in the world). If this were not the case, then the events leading up to 2007

and 2008 would never have occurred since the new symptomology of those events was merely a manifestation of the same old disease – namely, allowing private financial institutions to leverage deposits, loan, and investments to such an extent that there was never enough actual money in the system to cover all the bets that were being made by banks and other financial institutions.

More than anything, the banking system wants to be able to continue on with its addictive game-playing behavioral disorder and, thereby, continue to control the manner in which commerce and governance are conducted in the United States. The banking system that was devised at Jekyll Island was the doorway through which a variety of financial interests were able to grab hold of the reins of power in the United States.

Furthermore, as far as the earlier noted 'promise' of the banking system that was proposed in 1910 is concerned – that is, the capacity of the banking system to be able to stabilize financial and economic aspects of American -- one should understand that the Federal Reserve banking system – as the plan of the Jekyll Island 7 subsequently was referred to – turned out to be an abysmal failure. Its existence – which was established in 1913 via the Federal Reserve Act – did nothing to prevent the massive economic/financial failures of 1921 and 1929.

Moreover, the system did nothing to resolve the ten year depression that began in 1929. In addition, the Federal Reserve network was unable to take effective steps with respect to preventing, or solving, the recessions of: 1953, 1957, 1969, 1971, and 1981, nor did the Federal Reserve do anything to prevent or resolve the financial meltdown of 2007-2008.

In effect, the banking system, as presently conceived, is a government-enabled gambling syndicate that claims to serve the public but primarily serves itself, first, and only secondarily, if at all, serves the public. The banking system induces depositors to leave money with the banks and, then, it wagers that money according to various kinds of table games that assume the form of investments and loans ... wagering that those bets – or investments -- will provide a return or that their loans will yield interest and/or be paid back before too many customers (depositors or creditors) make a margin call with respect to alleged reserves of money that, in reality, are, for the most part, non-existent.

If, and when, the gambling activity of a given bank generates too many losses, then up to a point, the Federal System will lend 'house' money at a discount ... money that has been prestidigitated into existence. This exhibition of magic is done through a sleight of hand process in which, for mere pennies on the dollar, the Federal Reserve buys the various denominations that have been printed by the Treasury, and, then, uses that 'money' – which is backed by nothing – to loan to troubled banks ... or even to loan back to the government through, for example, the purchase of bonds that yield interest for the banking industry or for foreign governments in exchange for money that is backed by nothing of value but, nevertheless, helps create a financial illusion that, among other things, permits the government to keep operating by appearing to pay some of its bills – e.g., servicing the debt -- while running up its overall debt load.

Despite its name, the Federal Reserve idea that was devised in 1910 and legislatively implemented in 1913 through the Federal Reserve Act is neither a federal agency – in other words, it is run by private commercial interests, not the federal government – nor does that banking system operate on the basis of reserves ... that is, banks operate on the principle of leveraging deposits in order to make loans and investments via accounting-generated 'funds' that are largely non-existent, and, therefore, not held in reserve. The name given to the Federal Reserve was intended to be misleading. It was part of the public relations ploy devised by the Jekyll Island 7 to try to allay whatever worries and concerns the public or the legislature might have with respect to the creation of an institution that would have so much financial power.

The foregoing sort of deception matches the associated duplicity that enables member banks to loan or invest money that they don't actually have. In fact, the 'Federal Reserve' name is intended to help camouflage the actual nature of banking activity.

I am reminded of a recurring line in one of the episodes from an old television series entitled: 'Maverick.' In the particular show that I have in mind, a crooked, but very nicely dressed banker (played by John Dehner) keeps saying words to the effect of: "If you can't trust your banker, then who can you trust?"

The foregoing question is intended to disarm skeptics and, in the process, serve as an act of misdirection in which a potential customer's attention is shaped by the banker's allusion to integrity, while the banker simultaneously engages in all manner of underhanded business. The unfortunate fact of the matter is that anyone who would resort to intentionally mislabeling a banking system (i.e., the Federal Reserve) while engaging in questionable, if not fraudulent, business practices cannot be trusted ... but the whole idea of the 1910 meeting on Jekyll Island was to come up with a scheme that would induce the American public and their legislative representatives to trust the banking system and, thereby, be willing to cede their – i.e., the people's -- agency to those institutions in a variety of ways.

Banks, for the most part, are not really interested in assisting people to realize their sovereignty. Banks are oriented around the issue of profits.

The last claim is not hyperbole. Banks are corporations that are driven by court-sanctioned mandates that require them to maximize returns for their stockholders.

Consequently, when push comes to shove, no matter what banks might say in the way of public relations, profits have a higher priority for them than does the sovereignty of the people whom they allegedly are in the business of serving. For example, if an investment in, or loan to, a business is considered to be profitable, then, irrespective of whatever problematic impact that sort of a business might have on the community or the environment, those considerations tend to be irrelevant to a bank -- although, sometimes, there are exceptions to this general trend.

If the business to which a bank is thinking about loaning money, or in which a bank is interested investing, intends to pay low wages, with few, if any benefits, and, as well, wants tax concessions from the community and, in addition, it's manufacturing process will generate toxic materials that will be released into the environment, yet, notwithstanding the foregoing problems, the company's business plan and financial projections indicate that profits are likely to be forthcoming, banks, for the most part, really don't care about anything but whether, or not, that kind of a business is likely to be able to provide the bank with a stream of income.

Banks are not interested in ensuring that 'We the People' will have the opportunity to: form a more perfect union, or establish justice, or

insure domestic tranquility, or provide for the common defense, or promote the general welfare, or secure the blessings of liberty. Unless there is a profit to be made, then the foregoing considerations are not only irrelevant, but potentially injurious to the flow of capital, and, if the latter possibility is the case, then, naturally, the purposes and principles for which the Philadelphia Constitution supposedly was ordained and established must be resisted if not halted.

Banks – along with many other corporations -- believe that the 'commerce clause' in the Philadelphia Constitution is intended to serve the profit-motive of banks. Such an interpretation is, as pointed out earlier, antithetical to the language of the Preamble that precedes the Philadelphia Constitution and is intended to frame the conceptual character of the constitutional articles and sections that follow it.

Is it possible for the idea of a bank -- that is, an institution which assists the flow of capital via loans and investments – to serve the needs of sovereignty? Yes, it is, but not as banks are -- for the most part -- presently understood and constituted.

Whatever profits are made through the activities of a bank should be shared by the community. To the extent that a bank has shares, then the shareholders should include all the members of a community, and not just some of them.

One doesn't have to nationalize banks to realize the foregoing sort of a possibility. Credit unions are not nationalized entities, but they still manage to share their wealth with their members.

Banks should be relatively small, localized organizations that are owned by the community and help serve that community's financial needs. If banks can leverage deposits through a process of accounting-generated money creation in order to benefit private commercial interests, then the same principle can be used to benefit communities.

An important dimension of the Jekyll Island meeting in 1910 was to organize their ideas in a manner that would make it seem almost commonsensical to permit private commercial interests to control the flow of money. If they had been really well-intentioned in their planning, they would have said something to the effect of: 'Wow, we've got a great idea. We have found a way for communities to both generate money and control its flow."

Unfortunately, the Jekyll Island 7 understood the dynamics of the situation and wanted private, commercial interests to be able to shape the community, not the other way around. Keeping the Rothschild's principle about the relationship between money, law, and control close to their hearts, forces behind the Jekyll Island meetings wanted to prevent communities – and the individuals within those communities -- from having some degree of control over their own financial and commercial destinies.

In addition to being localized and owned by the communities in which they operate, banks should be concerned with more than whether, or not, profits can be made from a loan or investment. The business that is being considered for financial assistance by a bank needs to have a commitment to serving the community that is hosting it.

Without such a commitment, then no matter what the profit potential of a given business might be, eventually the community, its people, and their sovereignty will be adversely affected. If a business' primary allegiance involves profit margins rather than the sovereignty of people, then, sooner or later, that business will betray the surrounding community and its people – both employees and non-employees of that company.

In short, banks should be institutions that help establish, protect, and enhance the sovereignty of 'We the People' – both collectively and individually. Banks – as institutions that help create and control the flow of money – have always had the capacity to be midwives to the potential of sovereignty, but, unfortunately, they usually chose to take the more traveled road – that which is paved with greed and selfishness -- and, this has made all the difference to the issue of sovereignty.

Henry Ford once observed that: "It is well that the people of the nation do not understand our banking and monetary system, for if they did, I believe there would be a revolution before tomorrow morning." Perhaps if Ford had done more to educate the people of the United States concerning the actual nature of the banking and monetary system, the sovereignty of 'We the People' – both individually and collectively -- would have been served by a much better banking and monetary system rather than being increasingly dismantled by the arrangement that was put into place in 1913.

Alexander Hamilton, who loved the English government's way of doing things, instituted plans for a national bank early on in post-constitutional America. He wanted to monetize debt by printing up bank notes that would be exchanged for government bonds that would yield interest to those who held them.

Those plans were opposed by Thomas Jefferson. To begin with, Jefferson was concerned about the manner in which such a bank was likely to lead to problems of inflation and deflation. However, he was even more worried about the way in which many Americans might become impoverished through the sort of banks and corporations (i.e., ones owned by an elite who controlled the money supply) that would be enabled by Hamilton's vision for a national bank ... banks and corporations that would use their position of comparative financial advantage to eliminate competition.

In addition, Jefferson believed that Hamilton's bank was likely to fall under foreign control. In this respect, his concerns were confirmed when – thanks in large part to Jefferson's efforts – Congress did not renew the national bank's charter in 1811.

More specifically, during the process of liquidating the assets of the defunct national bank, the discovery was made that almost three-quarters of the bank's 25,000 shares were owned by individuals who were not American. This meant that the bank's operations were being heavily influenced by private, foreign, financial and commercial interests rather than being fully dedicated to what might be best for the sovereignty of Americans – both individually and collectively.

Jefferson didn't want foreign interests to control monetary and banking policy in the United States. To accomplish this, he believed the Constitution would need to be amended so that the government could do more than coin money to resolve monetary and financial problems.

Several individuals – e.g., Senators Henry Clay and John Calhoun – talked about the possibility of having a national bank that was owned by the government and that would be capable of developing its own credit system quite independently of private, financial interests – foreign or domestic. However, their ideas fell by the wayside when the Second National Bank was inaugurated in 1816 ... a bank that would be 80% privately owned.

The initial president of the Second National Bank was not successful. Poorly administered, the bank produced a variety of financial and commercial disasters that created a stagnant, if not depressed, economy littered with unemployment and bankruptcies. The fortunes of the Second National Bank appeared to improve under its next president, Nicholas Biddle.

A Bank Renewal Bill was put forward in 1832 for the purpose of getting congressional approval for the bank's charter renewal. Andrew Jackson opposed the proposed renewal legislation. He considered the bank to be largely a "den of vipers and thieves" ... a "hydra-headed monster" that was devouring the financial flesh of many average workers in America while it served the interests of the wealthy.

Jackson was up for re-election. He ran against Henry Clay who was a proponent of national banks of one kind or another.

Jackson won the election and proceeded to veto the Bank Renewal Bill. However, when he instructed the Secretary of the Treasury to transfer the government's deposits to state banks, the Secretary refused to comply with the directive.

The Secretary was fired. A new Secretary of the Treasury was installed and given the same instruction ... with the same result as before.

The third time around turned out somewhat more propitiously. That Secretary began to follow the President's instructions.

However, Nicholas Biddle, the President of the Second National Bank, went into attack mode and successfully induced a sufficient number of the Senate members to block the new Secretary's appointment. In addition, Biddle not only threatened to create a depression in the United States if the bank's charter were not renewed, but he proceeded to both stop making new loans, while calling in outstanding loans ... thereby bringing to fruition his previous threats.

When the country's economy crashed, Biddle blamed Jackson for the mess. A variety of newspapers began to push Biddle's version of things, but, eventually, the governor of Pennsylvania – which hosted the Second National Bank – backed Jackson, and the tide of battle began to turn in Jackson's favor.

While in session during 1834, the House defeated the re-chartering proposal. In 1836, the charter for the Second National Bank expired.

The foregoing set of events is instructive in a variety of ways. To begin with, a corporation that was 80% privately owned used its power to intimidate several Secretaries of the Treasury and induce them to refuse to comply with the President's instruction to begin transferring government money from the Second National Bank to different state banks.

Secondly, the same largely privately owned bank influenced the Senate to block the appointment of a nominated Treasury Secretary who was willing to assist Jackson in his opposition to the Second National Bank. The bank evidently believed it had the right to dictate national monetary and financial policy, as well as undermine the political process.

Thirdly, in the best tradition of ideological psychopathy, Biddle pushed the country into depression. He didn't care who might be harmed by his actions ... he wanted what he wanted when he wanted it.

There was both an upside and a downside to Jackson's opposition to the idea of a national bank. The upside was that a den of hydra-headed vipers and thieves had been dispensed with, but the downside was that the banking and monetary system had been thrown into chaos.

Banks were unregulated. In addition, the United States was bereft of a national currency and, instead, the country had to deal with a variety of locally-issued forms of currency.

Many banks wagered bets on various forms of speculative enterprises via their many species of currency. When the speculation proved faulty, the banks lost their investment, and, in turn, customers lost their deposits.

Without a national bank, the government was limited in what it could do without going into debt to private financial interests. As a result, to a great extent, big construction projects involving railroads, canals, and/or roads disappeared.

The foregoing trends were reversed during the presidency of Abraham Lincoln. The steel industry became established, and, as well, the idea of a continental railroad began to be realized.

In addition, the government began to promote free higher education through the Land Grant College system that was instituted. As well, the West was opened up through the Homestead Act.

A country that had been suffering from a cash-flow problem since the demise of the Second National Bank, and a government whose coffers had been fairly empty for, in part, the same reason both began to generate a dynamic economy. The source of this resurgence was, to a great extent, due to the invention of the 'Greenback' ... a government issued form of fiat currency whose back was printed in green ink.

The currency was backed by work done rather than by gold or some other underlying material asset. Essentially, the government notes were just a receipt that acknowledged someone had done 'x' amount of work or provided some sort of service, and once given or issued to someone, those same notes could be used in exchange for payment of various forms of work and/or services.

Via the government issued notes, the government increased its investment in the economy by roughly 600 %. Moreover, the government used the new currency notes to make cheap credit available to entrepreneurs for the purpose of generating more manufacturing and commercial enterprise.

Lincoln was not the originator of the government fiat currency idea. However, he did recognize its potential and -- via his Treasury Secretary, Salmon Chase -- helped bring it into existence.

The inventor of the fiat currency idea was Henry Carey, an economist. Carey felt that using gold bullion to back money put those who owned gold – mostly bankers -- in the driver's seat as far as controlling the supply of money in any given economy was concerned.

Moreover, the value of gold was set by a world-wide market. This meant that, in part, the value of all gold-backed currencies would be affected by the manner in which the owners of gold set the price of that asset.

In addition, trade balances were settled through exchanges of gold. If a country had a negative trade balance, the difference had to be paid in gold bullion which meant not only that gold tended to accrue to those who exported more products/services than they imported (for example, England), but, as well, there also would be less gold left in the system of a net importing country to be available for backing up the value of the national currency of that nation.

In order to address the foregoing issues, Carey proposed the idea of a government-backed currency that would never leave the country and, therefore, would not be subject to the vagaries of either trade balance issues or fluctuations in the supply and price of gold. Carey envisioned the value of the national currency to be a function of 'national credit' ... a sort of faith-based system in which a government and its people would have to trust one another with respect to the exchange of goods and services.

In short, a country should produce what is needed locally. Moreover, it should use non-exportable fiat currency that facilitates localized exchanges of goods and services by acknowledging the work that made those exchanges possible through the use of transferable currency notes.

When money or gold leaves a country in order to pay for imported goods, one loses money/gold while acquiring a good or service. When money remains in the country where a good or service is produced, then the country gets to retain the money as well as the goods.

Free trade, via the principle of comparative advantage, purports to be able to improve on the foregoing situation. Unfortunately, the reality of so-called 'free trade' – which is anything but free -- is that free trade is not a co-operative enterprise but a zero-sum game in which people's lives are used to subsidize exchanges of money and goods that tend to disproportionately benefit the financial interests that control the dynamics of markets because those vested interests have induced people to adopt the delusional belief that capital in the form of money has more value than capital in the form of human sovereignty.

Money does not finance work. Rather, work finances money since without some amount of underlying work being present to subsidize a given currency, then the money really has no value or purchasing power because nothing has been produced by labor to be available for purchase.

Monetary currency facilitates the exchange of work. However, the real currency is not money but work ... paper and coin currencies are redeemable in a given number of hours of work.

In effect, money is an accounting system. It constitutes a metric through which hours of work can be measured and exchanged.

When money – that is, currency – becomes divorced from the reason why it has originally came into existence (i.e., the work for which it serves as an accounting metric), the value of money becomes distorted in

various ways. The system of credit or trust on which it was founded erodes away, and, as a result, deflation and inflation enter the picture.

Inflation and deflation are not a matter, respectively, of either too much money chasing too few goods, or too many goods chasing too little money. Inflation and deflation are a reflection of the dysfunctional behavior that enters into an economic/political system when the basic credit/trust between people and its government that is necessary for that kind of a system to properly operate disappears, and, as a result, the value of work is degraded in one way or another.

Work is a manifestation of life. Nobody's hours of life are worth more or less than the hours of life of anyone else.

When people get paid at different rates of pay, a devaluation of the hours of someone's life is taking place. Profits made at the expense of an equitable evaluation of the worth of the hours of life that have been necessary to produce a product or service is an arbitrary process that cannot be justified.

The Legal Tender Acts of 1862 and 1863 stipulated that the money – both coins and currency – which were issued by the government constituted legal tender for all manner of debts. In other words, government issued money was not intended to be a proxy involving some underlying material asset such as gold and silver for which the money could be redeemed upon demand, but rather, it was intended to be a direct medium of exchange.

Fifty years later, the Glass-Owen Bill – i.e., the Federal Reserve Act – made a consortium of private banks the issuers and controllers of money. The government and the people were relegated, once again, to a very subordinate position in which they were required to dance to whatever financial and monetary tune the banks decided to play.

The golden goose – i.e., the Greenback fiat currency – was, to a great extent, killed by the Civil War. The United States government issued around $400 million in government notes during the conflict in order to pay for war supplies, the wages of soldiers, and related services.

War-profiteering and speculation were rampant during this period of time. Consequently, inflation began to eat away at the value of the Greenback.

In addition, another sign of the breakdown of the idea of a system of 'national credit' between the government and its citizens was the fact that not everyone would accept Greenbacks as a medium of exchange—a sure sign of distrust and suspicion concerning the worth of the government's credit in the eyes of such people. As a result, Greenbacks had to compete with other forms of currency, and this also tended to move the value of the government issued currency in a downward direction.

By the end of the Civil War, the Greenback had a value of $.68 cents when measured against a gold dollar. The value of that currency continued its downward spiral until it earned the title of 'not being worth a greenback dollar,'

The Greenback dollar lost much of its value because the arrangement of trust and credit that is necessary to enable such a currency to be able to float, rather than sink, within a social milieu was undermined by a variety of events, and the socially destabilizing forces of the Civil War, along with post-war reconstruction, played a prominent role in this process. However, for as long as a relationship of trust and credit were present between the government and its people with respect to the value of the Greenback, an amazing economic transformation swept across the United States.

One of the forces of dissolution affecting the value of the Greenback was a piece of legislation entitled: The National Banking Act. It was proposed, discussed, and passed during the period of: 1863-1864.

Among other things, The National Banking Act permitted national banks to issue their own currency notes. In addition, the aforementioned Act enabled the national banks to impose a substantial tax on the currencies issued from banks that had been chartered by the states and, in the process, pushed the state banks to the margins of financial viability and relevance.

Moreover, whereas the foregoing National Banking Act permitted national banks to issue their own currencies as they liked, Greenbacks were issued in limited numbers. As a result, the national banks used to acquire the Greenbacks, take them out of circulation, release their own currency notes, and, then, use those notes to purchase government bonds for which they earned interest payable in gold, and, in this way,

their notes were perceived to be more valuable than Greenbacks and, consequently, the latter traded at a discount relative to such bank notes.

The National Banking Act of 1863-1864 enabled a number of private banks to come into existence. They all were able to issue their own bank notes at will and, thereby, among other things, compete with the Greenback in ways that were advantageous to the banks.

Between the issuing of Greenbacks in 1861-1862 and the Federal Reserve Act of 1913, a variety of financial interests in America were involved in a series of running battles revolving about the issue of controlling the monetary system in the United States -- both with respect to the structure of that system, as well as in conjunction with the identity of the people who were to have operational control. These battles left many commercial, financial, and social casualties across America because almost all of the individuals who were vying for control of the monetary system were inclined toward ideological psychopathy, and, as a result, they tended to be indifferent to the suffering their actions caused.

Contrary to the opinion of some, the Greenback idea -- which involved a government-issued fiat currency -- was not inherently flawed. Private financial interests often argued that such a fiat currency system would necessarily lead to inflation, but, inflation only enters the picture when the worth of the hours of life of certain people – e.g., workers – are devalued and, in the process, the monetary accounting system becomes distorted through the activities of various financial interests who wager the price of a currency up or down.

The Greenback idea pointed toward the necessary elements of a socially stabilizing form of monetary system ... one that has a potential for operating independently of private financial interests. More specifically, such a monetary system needs: (1) a form of social organization (e.g., a government) that has sufficient trust from its members to enable it to issue credits that would be accepted as a form of currency to facilitate the exchange of goods and services, and (2) people who recognize that currency is merely an accounting system that facilitates an exchange process and that the value or asset that backs such currency is not capital, per se, but the work (or hours of life) of people that brings goods and services into existence.

Unfortunately, vested financial interests do not want a monetary system that is beyond their control. The history of monetary systems in

the United States – ranging from: The First and Second National Banks, to: the National Banking Act of 1863-1864, as well as the Federal Reserve Act of 1913 – all indicate that private, financial interests have constantly been trying to gain control over the monetary system of America, and in the process, gain control over the sovereignty of Americans – both collectively and individually.

The Greenback was not the first time in America that the idea of a government issued fiat currency had been explored. More than one hundred and thirty years earlier, the government of Pennsylvania had established a government backed paper currency.

The project had been sufficiently successful to inspire Benjamin Franklin to write a pamphlet about the idea in 1729. Moreover, Franklin's pamphlet was so popular that he began to receive printing orders for paper currency from a number of colonies.

Prior to its experiment with government-backed paper money, colonial Pennsylvania had been losing both people and commercial enterprises. One of the causes for those losses was due to the fact that the colony had no currency to facilitate the exchange of goods and services in a way that permitted people and businesses to escape the skewed, self-serving manner in which private banks controlled commercial and monetary activity.

When colonial Pennsylvania began to release its own fiat currencies in 1723 at a cost that undercut the interest rates of existing financial arrangements, both individuals and businesses began to refinance their debts to private banks with cheaper, government issued paper money. Because the government currency was less expensive and was intended to improve: Production, commerce, and the life of the people -- rather than merely turn a profit on conditions favorable to the private banks -- the economy began to thrive.

An agency within the colonial government of Pennsylvania had taken on the functions of a bank. Between: 1723 and the mid-1750s, that governmental agency was not only able to loan money into existence more cheaply than banks, but, as well, it used the interest earned from those loans to eliminate -- with the exception of import duties on certain

commodities such as liquor – most taxes in Pennsylvania, and also managed to keep the prices of goods and services fairly stable.

According to Franklin, the key to the whole operation was to ensure that not too much money was loaned into existence. Loans should reflect the productive capacity of society – that is, loans should reflect the readiness of people to use their labor to generate a variety of goods and services that were of value to the community.

The essence of the underlying principle is that when gold or silver – or some other 'precious' commodity – backed up a currency, then production was a function of the amount of that commodity that was available, as well as the way in which a value was set for that commodity. However, when production – or, hours of labor – led the way, then production, in and of itself, determined the money supply, and, as a result, the value of money was a reflection of the status of the value of the labor or work which made that production possible.

Because labor determined production and because this sort of production determined the money supply, there would always be sufficient amounts of money available to be able to support production. The money that government loaned or spent into existence would always balance productive capacity, and vice versa.

In 1764, Franklin boasted – perhaps unwisely given the future course of events – to members of the Bank of England that there were no houses for the poor in Pennsylvania. Everyone who wanted a job had one, and this state of affairs was entirely due to the manner in which production and money supply were kept in dynamic balance with one another.

The foregoing facts surprised the financial elites of England. After all, many people who ended up in America had been among the poor and destitute in England.

Franklin had undertaken his 1764 journey to England in order to petition the English Parliament to lift its ban on the paper money that had been issued by various colonial governments in New England. The ban originally had been proclaimed by King George II in 1751 and was continued under his son, King George III, who ascended to the throne in 1752.

The ban had been placed because English merchants and financiers – and, therefore, royalty – were losing money due to the unsound monetary

practices surrounding government-issued fiat currencies in various colonies. Initially, the injection of those government-issued currencies had been a stimulus to commerce, but over time, problems began to arise.

Whereas Pennsylvania had matched the money that it loaned and spent into existence with the productive capacity of the people of Pennsylvania, the New England states were loaning and spending more money into existence than could be used productively. Consequently, the value of the paper money being issued by governments in New England began to lose value since among other things there was nothing available for the excess money to purchase – either in the way of labor, goods, or services.

Idle money often leads to speculation. Speculation tends to undermine commerce because of the manner in which that sort of gambling activity further distorts (beyond that caused by a mismatch between money supply and productive capacity) the relationship between productive capacity and money supply. In the process, people lose money.

The English solution to the tendency of certain colonies to mismanage the administration of their money supply was to ban the different forms of paper money that were circulating in New England. As a result, merchants and governments in New England would not only have to borrow money from private banking interests in England in order to finance commercial and governmental activities, but, as well, the colonists would have to pay back those loans or taxes with gold and silver.

Once debt was created and opened to the demands of interest, there was never enough money in existence to pay back the debt. Interest constituted a cost that fell beyond the horizons of the available money supply, and the people who controlled the money supply – in the form of gold and silver – were the ones who were demanding the payment of the additional cost of interest.

Franklin was pleading with the English Parliament to change its manner of responding to the mismanagement of government-issued fiat currencies in New England. His time might have been better spent trying to convince the governments in the New England colonies to alter the conditions under which they issued their currencies.

The flow of government-issued fiat currencies operates in accordance with certain ecological principles. When the money issued – whether

spent or loaned -- returns to the government, that money can be circulated again as well as pay for the costs of operating the system of government that makes such loans and spending possible. However, when too much money is issued, then in one way or another that excess money tends to fuel the devaluation of a currency, as well as inflate prices.

When labor matches the money supply, and vice versa, then the monetary ecology tends to thrive. When there is too little currency or too much currency in existence, or debt and interest rates clog the flow of commerce, then the monetary ecology tends to break down.

Within a few years of the English Parliament's passing of the Currency Act of 1764, considerable poverty began to emerge in America. The money supply had been reduced, and, consequently, workers went idle while commerce began to fall apart because few people had the money to pay for the goods and services being produced.

The Revolutionary War was as much a battle against the manner in which private, financial interests in England sought to control commercial and governmental activity in America, as it was a battle against the way in which the East India Company, at the behest of royalty, sought to control competition in the colonies. In both instances, the colonists were seeking to remove their sovereignty from beneath the foot of English oppression – governmental, financial, and corporate.

Somewhat ironically, it was paper money that helped the Americans defeat the English. One of the first orders of business undertaken by the Continental Congress was to issue its own form of script ... the Continental.

Although that script became relatively worthless by the end of the Revolutionary War because, among other things, it had been issued as a proxy that subsequently needed to be redeemable in hard currency (which the United States did not have) rather than constituting a currency in its own right (and the Confederate States made the same mistake during the Civil War), nonetheless, the Continental lasted in value for a sufficiently long period of time (despite the extensive counterfeiting efforts of the English) that the currency enabled the government of the Continental Congress to fight a war against a major power without the benefit of gold or silver and without having to tax the American people.

One of the forces that helped to devalue the Continental was the activity of speculators. Those individuals consisted of a variety of banking and financial interests who engaged in a propaganda campaign to convince Americans that the Continentals would become worthless and, then in the ensuing confusion and chaos, brought up Continentals at discount prices that initially lowered their value, but they were later brought back by the post-Philadelphia Constitutional government for premium prices.

The aforementioned speculators also forced the Continental to compete with other forms of currencies – both hard (i.e., gold and silver) and soft (e.g., state-issued currencies). Through that sort of competition, the value of the Continental could be manipulated.

Once again, those individuals who were only interested in profits and controlling the lives of others showed their inclination to behave as ideological psychopaths. They were more interested in the way of power than in the way of sovereignty, and, as a result, they were indifferent to the 'collateral' damage that followed from their various financial machinations concerning the Continental.

Colonial America, Revolutionary America, and Civil War America were not the only place and times when people experimented with the idea of government-issued fiat currency. For instance, an even more successful manifestation of that idea took place in Guernsey, one of the British Channel Islands, located approximately 75 miles south of England.

In 1816, Guernsey's debt was about 19,000 pounds, and at that time a pound was worth a lot more than is the case today. In addition, the average yearly net income of residents was about 600 pounds (2400 pounds a year went to service the island's debt ... which meant that, on average, 80% of their incomes went toward paying taxes).

The island's infrastructure was falling apart. Many people were leaving Guernsey.

Beginning in 1816, the government of Guernsey began issuing interest-free government fiat currency. The currency was issued in relatively small amounts (e.g., amounts of 4000 to 6000 pounds) and only periodically (ranging anywhere from one to four years periods).

Much of the fiat money was used to pay for the repair and enhancement of the island's infrastructure. Another effect of the money was to more than double the island's money supply, and, in the process, the production capacity of the island was brought into greater equilibrium with the amount of money that was flowing through the island.

A total of nearly 550,000 pounds of interest-free currency was issued by Guernsey through 1958. Despite the influx of additional currency into the overall money supply, prices did not inflate during the more than one hundred and forty years of experimentation that were conducted between 1816 and 1958.

Through the foregoing process of government-issued fiat currency, the government of Guernsey has managed to become debt-free while improving its infrastructure. Furthermore, one of the few forms of taxation that exists on the island is a simple 20% flat tax that is not befuddled with all manner of tax loopholes ... in addition, there are no capital gains taxes or inheritance taxes.

Private, financial businesses cannot accomplish what was accomplished in colonial Pennsylvania, Revolutionary America, or Guernsey beginning in 1816. Profits, debt, and interest that are controlled by private, financial interests do not help to: Form a more perfect union, insure domestic tranquility, provide for the common defense, promote the general welfare, establish justice, or secure the blessings of liberty, but, instead, profits, debt, and interest, undermine such possibilities by distorting the relationship between productive capacity and the supply of money in ways that end up benefiting the few at the expense of the many.

When done properly, government-issued fiat currencies do not constitute a form of socialism, communism, or capitalism. Rather, when the labor of sovereign individuals becomes the asset that backs the currency of a given society, and when that currency is used to facilitate the growth of the underlying asset – human beings – so that productive capacity is permitted to come into equilibrium with the money supply, then many constructive possibilities come into play.

Private financial interests have spent a considerable amount of time, effort, resources, capital, and political power to convince people

otherwise. Unfortunately, that agenda of propagandistic control has induced all too many people to cede their agency to such forces ... forces that, more often than not, are manifested in some form of ideological psychopathic behavior that moves in accordance with the gravitational and delusional influence of the idea of 'capital' understood in very narrow, self-serving, as well as destructive material and financial terms.

Chapter 12: National Interests

Nations are arbitrary constructs. That is, nations come into being as the result of forms of governance that cannot be demonstrated, beyond a reasonable doubt, to give expression to the way things 'ought' to be in a certain geographic area.

Nations are always, and everywhere, parasitic upon the people who are encompassed by, if not enslaved within, the arbitrarily arranged boundaries and arbitrarily determined manner of organizing what goes on within those borders. Nations seek to induce their people – as if people were the possessions of nations -- to cede their moral and intellectual agency to the service of 'leaders' who are primarily self-serving ideological psychopaths (whether this is filtered through religious, economic, philosophical, racial, militaristic, and/or financial colors).

The history of nations is universally one of: oppression, exploitation, murder, conflict, war, discrimination, dishonesty, abuse, manipulation, vested interests, theft, injustice, callousness, enslavement, irresponsibility, impulsiveness, and destruction. However, in the best tradition of ideological psychopathy, those histories tend to be glorified through self-aggrandizing literary constructions that use misinformation, disinformation, and falsehoods to paint a historical portrait of a nation that tends to distort the truth of things.

Moreover, that kind of historical propaganda is used to shape the thoughts, beliefs, attitudes, values, and behavior of people in order to persuade the latter individuals that they have a duty or obligation to service the needs of a nation. People are encouraged to believe that the interests of a nation are synonymous with their interests ... that what is 'good' for the 'national interests' is automatically and necessarily what is 'good' for the people living within the borders of that nation or good for the people living elsewhere.

'National interests' are code words for that which serves those who either have, or want to have, control of people and resources. 'National interests' are euphemistic code words for the 'way of power.'

National interests are considered by some to be sacred. The way of power is the holy road for realizing those interests.

The role of individuals is to bow down in submission and utter gratitude before their 'god' – the state or nation. The role of individuals is

to be ready to sacrifice themselves, their families, their resources, and their communities in order to appease their 'god' – the state or nation.

The state is a jealous god. It will not countenance worship of anything but itself and will treat as blasphemous the words of anyone who alludes to a 'reality' other than what has been revealed to the 'prophets' (founders) and 'apostles' (judicial interpreters) of the state.

Those who reject the revealed truths of the nation concerning the nature of duty are apostates. Those who do not wish to be oppressed, exploited, and manipulated by the nation-deity are infidels.

Apostates and infidels are guilty of treason against the alleged moral imperative of the nation/state. Those treasonous wretches deserve to become outcasts among civilized peoples.

There is an experiment conducted by Stanley Milgram that is relevant here. The experiment that I have in mind is different from the learning/memory-shock study explored in Chapter 8: Ceding and Leveraging Agency.

More specifically, Milgram instructed a number of his graduate students to venture forth into the subway system of New York City. Their task would be to ask subway patrons to give up their seats so that the graduate student could sit down even though there was no apparent reason – such as illness, disability, elderliness, or the like – why a person who was sitting down should give up her or his seat to a perfect stranger.

As was the case in the 'learning/memory' experiment conducted in the early 1960s, Milgram had no specific hypothesis about what subway patrons would do under those circumstances. He wanted to see what would happen and, then, try to figure out the social dynamics after the fact.

A number of graduate students came back to Milgram and indicated that they were having difficulty with their role in the experiment. They couldn't bring themselves to ask sitting subway patrons to give up their seat so that the graduate students would be able to sit down.

Milgram was annoyed with their reports. Consequently, he descended into the bowels of the New York City subway system himself to show his graduate students how it was done.

Strangely, just as had been the case with some of his student assistants, Milgram found that he couldn't voice the request. He would

stand before a sitting subject and feel helpless as the required words became stuck in his throat.

In the process, Milgram discovered that there are social forces in existence that are so powerful -- even in relation to what appear to be very simple situations unrelated to issues of power and authority -- that can, among other things, impede a person's ability to voice a seemingly simple request. Those forces tend to dominate even in circumstances when a person is strongly motivated – as Milgram was – to speak.

A person sitting in a subway seat is only likely to do so many things in relation to the foregoing request ... assuming, of course, that obvious gang members are eliminated from the subject pool. The sitting individual can give up the seat or refuse to do so.

In the latter case, the refusal can be polite or impolite. If impolite, one's ego is likely to be the recipient of some sort of verbal abuse and, in addition, there could be a degree of belittling body language that might be offered up by the sitting subway patron as well.

Depending on how, where, or when the experimental request is made, there might, or might not be, other subway patrons who are observing what is taking place. If there are such witnesses, then the force of rejection – if not conflict/antagonism -- becomes intensified and, consequently, gives rise to a more unpleasant set of events with which the experimenters must deal.

Nations take advantage of the foregoing social phenomenon. Not only are people socialized into not asking strangers for their seats when there is no justifiable reason for doing so, but, as well, people are socialized into not asking people of power to give up their seats of authority even when there are justifiable reasons for doing so.

In fact, many people cannot bring themselves to say anything. Like Milgram, their words become stuck somewhere within themselves.

Of course, the situation with authority figures is different from the people sitting in a subway. The latter individuals are unlikely to react with physical violence, and, moreover, they have little capacity – except for a few words of sarcasm or criticism, along with accompanying body language and/or facial expressions – to punish someone who asks them to give up his or her seat, whereas the individuals sitting in power have an array of punishments that can be brought to bear on the individual who

dares to request or suggest that the people in authority give up her or his seat in the governmental counterpart to the New York City subway system.

The template for nationalistic and commercial behavior in the Americas was set by, among others: Columbus in conjunction with the Arawaks of the Bahamas; Cortes in relation to the Aztecs in Mexico; Pizarro and his treatment of the Incas in Peru; the settlers of Jamestown with respect to the Powhatan-led Indian Confederacy in Virginia, and the Puritans interaction with the Pequot Indians in Rhode Island and Connecticut. Via the foregoing template, millions of Indians were slaughtered and millions of acres of land were confiscated so that the royalty and financial interests in Europe and America could earn profits and claim resources to which they had no right.

In an attempt to justify the foregoing slaughter and theft, Europeans and Americans sometimes made a distinction between 'natural rights' and 'civil rights.' While white Europeans/'Americans' were sometimes willing to acknowledge that Indians had 'natural rights' with respect to the land and its resources, the visitors to the New World also said that those 'natural rights' did not have the legal standing that civil rights did.

Civil rights were those that were arbitrarily recognized by arbitrary systems of laws that were generated by arbitrary systems of governance. The forms of governance, systems of laws, and instances of recognition were arbitrary because they couldn't be justified in a way with which everyone could agree beyond a reasonable doubt.

Civil rights had legal standing while natural rights did not have legal standing because, by definition, this was the manner in which those legal systems were structured. Those sorts of legal systems only recognized the validity of the logic that was given expression through the 'way of power' that authorized those laws ... it was tautological in character.

Something was true or valid because a source of power said something was true or valid. Laws – and their derivative civil rights – acquired legitimacy through proclamation -- and those 'rights' could be proclaimed out of existence just as easily.

Civil rights depend on the network of arbitrary laws promulgated by a given system of arbitrary governance. For those who have been socialized

into that sort of an arbitrary system, it seems commonsensical to consider those rights to be superior to natural rights even though civil rights are entirely arbitrary, while natural rights – properly understood -- can be shown, beyond a reasonable doubt (via the principle of ignorance discussed in Chapters 5 through 7), to constitute a way forward that is capable of being justified.

From the perspective of Europeans, the enjoyment of civil rights by the commercial and governmental agents of a nation entitled those people to kill, enslave, steal, rape, and oppress whomever and whatever they liked – especially those who were only protected by 'natural rights' – since, as indicated earlier, 'civil rights' had legal standing, whereas 'natural rights' had no legal standing.

The idea of 'natural rights' constitutes a threat to the idea of 'civil rights.' After all, if natural rights actually exist, then they have existential priority over civil rights since 'natural rights' existed prior to the formation of any form of governance, state, nation, or legal system.

'Natural rights' also constitute a threat to the legitimacy of governance, states, nations and legal systems because those rights are not derived from the activity of government but, instead, precede that activity. As a result, forms of governance that cannot be reconciled with those 'natural rights' are revealed to be arbitrarily constructed.

When the idea of 'national interests' is invoked, those invocations tend to be based on the premise that the interests of a nation have priority over civil rights, just as civil rights are considered by some to have priority over natural rights. In other words, those arguments suppose that national interests have a greater legal standing than do either civil or natural rights.

Those kinds of arguments cannot be justified. They only can be advanced through a way of power whose tactics of violence, exploitation, oppression, and manipulation serve to express their own brand of 'logic' ... a form of 'logic' that might be able to influence, but can never justify, what takes place through the exercise of power.

Whatever the public relations officers for a nation might say, the 'state' tends to be inherently opposed to the sovereignty of the individuals who fall within the borders of the geographical area associated with that state. National interests are very difficult to reconcile, if this can

be done at all, with the principle of individual sovereignty, because, generally speaking, national interests – such as power and control -- require people to be willing to sacrifice their own sovereignty in order for the given goal(s) of national interests to be realized.

The Preamble to the Philadelphia Constitution indicates that the national interests of the United States should be a function of: forming a more perfect union, establishing justice, insuring domestic tranquility, providing for the common defense, promoting the general welfare, and securing blessings of liberty. In practice, however, national interests in America – as elsewhere –have become a function of whatever the people in power decide will advance the agenda of the way of power, and, as a result, perfection, justice, tranquility, defense, welfare, and liberty – to the extent they are considered at all (and, frequently, they are not) -- are filtered through the colored lenses of various machinations of power.

For instance, according to some people, the Civil War was necessary because, in effect, that war was in the service of national interests – that is, among other reasons it was supposedly fought in order to hold the United States together as one nation. I'm not certain what the argument is that justifies the loss of nearly 600,000 lives, along with millions of others who were severely wounded, tortured in prisoner of war camps, lost their homes and families, as well as became economically, if not politically, oppressed – not to mention the bitterness that has been generated and lasted for more than a hundred years -- so that a bunch of states operated in accordance with vested interests could remain a nation.

What is the nature of the metric that enables one to demonstrate that national unity is worth the lives of so many people? How does one organize the liabilities and assets of such an existential ledger to demonstrate that preserving the nation constituted a net gain despite the tsunami of destruction that swept over the lives of millions of individuals during and after the Civil War?

At one point, Lincoln had argued – incorporating ideas from Daniel Webster – that because the Constitution had been ratified by the people, then, only the people – considered as a whole – had a right to dissolve the Union. However, Lincoln's understanding of history is a little distorted since a considerable amount of evidence can be put forth (and some of that evidence has been explored in the first several chapters of this book)

to indicate that the people, as a whole, did not ratify the Constitution, but, rather, only a very limited, select portion of the people got a chance to participate in the process ... a process that, in many ways, was both corrupt and corrupted.

The way of power had been used to forge the United States. Lincoln wanted to use the same way of power – this time manifested in the form of the Civil War -- to continue to force on people the sort of Union that really only served the interests of the few – both on the level of state and federal government.

Whatever the arguments are that seek to justify preserving national interests over human lives those arguments require one to devalue the sovereignty of individuals so that the idea of national interests might endure. One cannot set events in motion that which will lead to the death and destruction of the lives of hundreds of thousands of people without devaluing the sovereignty of those individuals whose lives are destroyed quite independently of their wishes.

Of course, someone might want to respond to the foregoing considerations by claiming that no one could have predicted how the war would unfold. No one intended that what happened would or should happen.

The same sort of principle holds in relation to war as holds in a courtroom. In other words, just as is true in the case of a lawyer who doesn't know the answer to a question that such a question shouldn't be asked, then, similarly, if people don't know what the outcome of a war will be, then, perhaps it shouldn't be waged.

Quite frankly, in stark contrast to the moving gravitas of, say, the Gettysburg Address, on the night that the Civil War began, Lincoln maneuvered the South into firing on Fort Sumter – which actually belonged to South Carolina – to prevent the North from further reinforcing a fort that the North had confiscated. The South was made to appear the aggressor when it was merely trying to reclaim a facility that was continuing to be occupied by Northern troops despite the South's repeated attempts to peacefully resolve the problem.

Furthermore, despite the fact that no Northern troops were killed or injured by the South on that occasion, Lincoln used the events at Ft. Sumter to declare war on the South. As a result, several weeks later,

Lincoln authorized, without Congressional approval, a naval blockade of Sothern ports.

The naval blockade was about collecting tariffs, and, thereby, it helped to perpetuate the nearly forty-year tariff conflict that had been waged by Northern financial interests against the labor-intensive Southern states. Thus, the blockade – as was true of the rest of the war -- was primarily about control and money rather than being a matter of preserving the Union for 'We the People.'

For most people – including Lincoln -- the idea of freeing the slaves via the Civil War did not arise until after that conflict had been underway for some time. In fact, for a long time Lincoln believed that the best solution to the problem of slavery – and Lincoln was very much a white-supremacist – would be to ship people of color to some country in Africa or the Caribbean. Moreover, at the beginning of the Civil War there were more northern states that supported slavery than there were southern states that did so.

Moreover, even if the idea of freeing the slaves had been part of the reason why it would be in the alleged national interests to fight the Civil War, the lives of people of color continued to be devalued both in the North and the South for more than another hundred years after the Civil War ended. Therefore, to whatever extent the sovereignty of people of color was part of the national interests at the time of the Civil War, that purpose was never served very well by the war.

The Civil War was primarily fought due to an array of economic and political considerations. Those considerations were largely a matter of which group of bankers, entrepreneurs, financial interests and politicians would be able to control the United States commercially, financially, and politically. Whether states-rights-oriented or federalist-rights-oriented financial interests get to call the shots makes little difference to the individuals whose sovereignty was not actually championed by any of the economic and political forces that led to the Civil War.

Many people seem to forget that Lincoln had been a top-tier lawyer and lobbyist for the railroads prior to becoming President. Railroads were part of the Northern power base that created the Republican Party and financed Lincoln's election run.

After Lincoln became President, railroads were the recipients of a great deal of government subsidies and largesse. Moreover, as president, Lincoln also served the interests of northern manufacturers – who also financed his Presidential bid -- by instituting tariffs that would give Northern entrepreneurs a distinct advantage relative to their Southern counterparts.

Lincoln used the military to imprison tens of thousands of Northern critics of the war. In addition, he closed down more than 300 newspapers because they had the audacity to question his judgment.

On orders from Lincoln, Ohio congressman Clement L. Vallandigham was arrested by nearly 70 armed federal soldiers, imprisoned, tried by a military tribunal, and, then, forcibly deported to Canada. The congressman's crime, apparently, was that he gave a speech in the House of Representatives that criticized Lincoln's suspension of habeas corpus as well as the President's tendency to violate the Philadelphia Constitution.

The federal government was confiscating firearms from people. Government officials in Maryland were being imprisoned. People were being incarcerated without due process.

A number of federal judges were detained for a period of time via Lincoln's decisions. In addition, Lincoln arranged for an arrest warrant to be issued for the chief justice of the Supreme Court.

Lincoln often considered anyone who disagreed with him or his policies to be guilty of treason. Such a perspective was not about the interests of 'We the People,' but, rather, that perspective gave expression to Lincoln's belief that his paranoid delusions concerning the way things were or should be were more important than the sovereignty of people.

Many political prisoners during the Civil War were sent to Fort Lafayette in New York harbor. When members of Congress inquired about whether, or not, constituents of theirs had been incarcerated at the Fort, they were told by the Lincoln administration that providing such information was not in the national interests.

None of the foregoing events were about serving: 'We the People.' They were entirely an expression of the way in which power seeks to control or eliminate anyone who threatens what certain individuals (the so-called 'leaders') consider to be in the national interests ... that is, the interests of the way of power.

Lincoln had become – if he was not always this way – an ideological psychopath. All that was important to him was his own beliefs, interests, and goals, and, he didn't care how many people had to die or how many lives had to be destroyed in the process ... moreover, like a lot of ideological psychopaths, he was facile with language and could use that skill set, without any sign of remorse on his part -- to manipulate, exploit, and abuse people.

More than a hundred years later, a number of presidential administrations used Lincoln's behavior as justification for perpetrating many of the same kinds of abuses as were set in motion by Lincoln ... and with the same underlying argument – national interests. All those administrations have succeeded in doing is demonstrating their own forms of ideological psychopathy.

During the Second World War, Ho Chi Minh had fought against the Japanese forces that had invaded and occupied Indochina. After the war ended, Ho Chi Minh, together with others who had fought alongside him, issued a declaration of independence – patterned, somewhat, after the American document – with respect to the unjustifiable actions of another previous invader and occupier of Indochina – France.

France had perpetrated many crimes against the Vietnamese people. The French had confiscated lands and resources, taxed the people mercilessly, and either imprisoned or killed anyone who spoke out against those abuses and forms of exploitation.

The French – no doubt due to reasons of national interest – had decided that the Vietnamese should subsidize a variety of French vested interests. At one point, the French had disrupted the economy of Vietnam to such an extent that more than two million Vietnamese starved to death when the French confiscated – and let rot – all available rice.

In 1941, Churchill and Roosevelt had met off the coast of Newfoundland. They drew up what is referred to as the Atlantic Charter. Supposedly, the charter was an affirmation of the right of self-determination for all peoples ... that is, the right of all peoples to determine how they would govern themselves.

Shortly after the war ended, the United States was encouraging Britain – the ones occupying South Vietnam at the time -- to return

control of southern Vietnam to the French. Britain, being a civilized country, complied with the request, and everyone 'forgot' all about the Atlantic Charter.

In October of 1946, the French began to bomb the port city of Haiphong in northern Vietnam. A war ensued that lasted approximately eight years.

Beginning in 1953, the United States supplied the French with arms. By 1954, America was underwriting nearly 80% of the French war effort in Vietnam.

The Vietnamese had not invaded the United States. The Vietnamese had not invaded France.

Yet, the national interests – i.e., control, power, theft, and profits -- of France and America apparently required that Vietnam be invaded, occupied and controlled by France. The Atlantic Charter meant nothing ... in fact, like the many treaty and agreements that were signed by the United States with respect to Indians in America, such agreements were just pieces of paper that were not to be taken seriously and, as a result, they could be broken – and were -- whenever the way of power decided that duplicitous behavior was 'necessary and proper.'

In 1954, the French were militarily forced to withdraw from North Vietnam. An agreement was reached in Geneva to permit the French to temporarily occupy South Vietnam, while the Vietminh would continue to rule in North Vietnam.

A further facet of the foregoing agreement was that elections were to be held in two years. Supposedly, the Vietnamese were going to be given the opportunity to unify Vietnam through free elections in which the Vietnamese people would be able to determine their own form of governance.

The United States induced Ngo Dinh Diem, who had been living in New Jersey, to: Return to Saigon, head up the government there, and resist any efforts that might be made with respect to fulfilling the conditions of the Geneva agreement involving free elections. The latter step was necessary because U.S. intelligence reports indicated that if elections were held, Diem, along with the network of landlords who had connections to the military and were running South Vietnam, would lose.

Diem was a Catholic in a largely Buddhist country. He was also a friend of the rich and powerful in South Vietnam who oppressed the largely peasant population of that area.

Diem ran a corrupt regime in which imprisonment, or worse, was used as the means to stifle criticisms of the corruption. The United States government fully supported Diem.

The agreement made in Geneva indicated that the United States would be permitted to have 685 advisors in South Vietnam. President Eisenhower secretly violated the agreement and ordered several thousand military personal to be sent into that country, and, subsequently, President Kennedy exacerbated things by not only deploying some 16,000 troops to South Vietnam, but, as well, he permitted those troops to take part in combat missions.

The foregoing escalations were deemed to be necessary because Diem's position in South Vietnam was becoming increasingly unpopular and, therefore, untenable. With the assistance of a CIA agent, Lucien Conein, and the American Ambassador for South Vietnam, Henry Cabot Lodge, a coup was set in motion in November, 1963 and Diem was murdered ... three weeks later, Kennedy was also assassinated.

Publically, Truman, Eisenhower and Kennedy spoke about the value of freedom versus the totalitarian nature of Communism. Privately, they supported the French occupation of South Vietnam, subsidized war against North Vietnam, as well as actively violated or worked against the Geneva Accords and the Atlantic Charter that had called for the Vietnamese people, among others, to be able to determine their own political fortunes.

Ho Chi Minh was not a communist but a nationalist who fought for self-determination (against the French, the Japanese, the French again, and, finally, the Americans) and who also fought to enable peasants to be able to take economic control of their own lives. What was at stake in Southeast Asia was not the realization of the domino theory – a theory for which there was no substantiating evidence either before or after Vietnam – but, rather, the loss of American access to, and control of, a variety of resources including: rubber, teak, corn, rice, spices, oil, and tin ... not to mention all the money that was being made through war-profiteering.

In August 1964, the Gulf of Tonkin event was invented. President Johnson used a non-event to start a full-scale war with North Vietnam.

According to American officials, the U.S.S. Maddox, a destroyer, had been on a routine mission in international waters when it was attacked in an unprovoked manner. However, the ship was not in international waters but was operating in coastal waters controlled by North Vietnam, and the ship's mission was anything but a routine one since it was using electronic surveillance to spy on the North Vietnamese, just as the United States had used a Gary Powers'/CIA operated U-2 plane to spy on the Soviet Union in 1960.

Violating territorial waters and engaging in spying activities is entirely a matter of provocative activity ... if the North Vietnamese actually had attacked, which they didn't. However, official U.S. reports to the contrary, the North Vietnamese never fired torpedoes at the U.S.S. Maddox.

Just as the fictional slaughter of incubator babies in Kuwait by Iraqis (the story was tearfully sold by the 15-year old daughter of the Emir of Kuwait and was organized by the public relations giant Hill and Knowlton) was used to induce Congress to pass a resolution concerning war with respect to Iraq in the first Gulf War, so too, the alleged North Vietnamese attack was used as a pretext to induce Congress to pass the Gulf of Tonkin Resolution to enable President Johnson to substantially escalate the war in Vietnam. The foregoing scenarios are similar in a number of ways to the manner in which President Lincoln used the non-event of Fort Sumter -- in which no Northern troops were killed or injured as a result of Southern activities – and that, in any event, had been maneuvered by President Lincoln as a pretext for labeling the South as an aggressor in order to be able 'justify' declaring war on the South.

More than 50,000 American soldiers died in Vietnam. Hundreds of thousands more were wounded and scarred for life ... and, in passing, one might note that one of the largest segments of the homeless population in America consist of Vietnam veterans, although that percentage is now being challenged by an increasing number of veterans from wars in Iraq and Afghanistan.

Millions of people in Vietnam, Cambodia, and Laos also lost their lives, families, and homes. Their countries were saturated with toxic Agent Orange, just as countries in the Middle East recently (over the last

twenty-four years or so) have since been saturated with the toxicity of depleted uranium.

The International Red Cross reported that during the Vietnam War up to 70,000 Vietnamese were detained in prison camps in South Vietnam. Many of those individuals were, with U.S. assistance, beaten and tortured ... and, therefore, Abu Ghraib and Guantanamo are not really new and startling developments -- just more of the same.

The foregoing prison camps were augmented by 'Operation Phoenix' that was run by the CIA in Vietnam. More than 20,000 Vietnamese civilians were executed through that program which, surely, was serving 'national interests.'

As President Lincoln did in the South during the Civil War, President Johnson also did in South Vietnam. A scorched-earth policy was pursued and whole towns, cities, and jungles were destroyed ... women, children, and old people were all considered to be targets of opportunity.

The manner in which war was conducted in Vietnam was a bright and shining expression of ideological psychopathy, just as had been the case in the Civil War. 'National interests' in both cases was not about: Perfecting the union; establishing justice; ensuring domestic tranquility; providing for the common defense; promoting the general welfare, or securing liberty, but, rather, such 'national interests' were about promoting the agenda of ideological psychopaths with respect to issues of control, power, war profiteering, and making the world free for corporations.

On March 19, 2003, the United States launched 'Operation Iraqi Freedom.' The mission was not only supposed to protect America from the weapons of mass destruction (nuclear, biological, and chemical) which Saddam Hussein allegedly possessed and, supposedly, was ready to use, but, as well, Operation Iraqi Freedom was going to free Iraq from years of oppression, exploitation, and abuse by a vicious dictator.

The foregoing operation achieved neither of its stated objectives. The goal of protecting Americans against weapons of mass destruction was not realized because Saddam Hussein didn't have any such weapons – something that United Nations weapons inspectors Scott Ritter and Hans Blix had been telling the West for quite some time.

The goal of freeing Iraqi people also was not realized. This is because, despite the appealing sounding name of 'Operation Iraqi Freedom,' the United States became a military and economic occupier of Iraq rather than its liberator.

On May 8, 2003 the United States sent a letter to the United Nations Security Council that outlined the alleged intentions of the Coalition Provisional Authority that, in the near future, would begin occupying Iraq. Two days earlier, Paul Bremer III had been appointed to head up the CPA, and he would, in effect, replace Jay Garner who, since January 20, 2003, had been running the Office of Reconstruction and Humanitarian Assistance at the Defense Department ... an agency that had been busily planning for a post-war Iraq.

Garner, who was a general, wanted to put Iraqis in charge of their own self-determination – both political and economic -- as quickly as possible. He arrived in Baghdad on April 23, 2003, several weeks after the fall of that city, and was told by Rumsfeld on the night of Garner's arrival that Garner was going to be replaced in a month's time by Paul Bremer III who, aside from a number of years in the State Department, also had been managing director of Kissinger Associates, as well as the CEO and chairman of Crisis Consulting Practice for the insurance company Marsh and McLennan.

In 2001, Bremer had written a paper that provided an overview of the sorts of problems that would be encountered by multinational corporations during the process of globalization. In the paper, he described the destructive ramifications that would accrue to local populations as multinational corporations undertook policies of globalization, but Bremer stipulated that those sorts of problems were a necessary by-product of a process that, in time, supposedly would bring benefits to that local population.

In 2003, Bremer was given the opportunity to put theory into practice. As a result, he began implementing the policies outlined in the 2001 paper – knowing that those policies would have a destructive impact on the Iraqi people.

According to the aforementioned U.S. letter to the United Nations Security Council, America was going to temporarily occupy and rule over Iraq. The Americans indicated that the administration of Iraq would employ power only as much as was necessary to successfully bridge the

time needed to reach a point when the Iraqi people would begin to rule themselves. In the meantime, the United States would undertake to oversee the running of Iraq in a responsible fashion that would deliver humanitarian relief, provide for the re-construction of the Iraqi economy and infrastructure, as well as regulate its financial and resource sectors.

The U.N. Security Council approved the U.S. proposal for Iraq on May 22, 2003. However, the Security Council added a few provisions that were intended to guide the efforts of the CPA.

The Security Council wanted to ensure that the focus of the CPA would be on providing for the security, stability, and welfare of the Iraqi people. In addition, the Council emphasized the right of the Iraqi people with respect to self-determination.

Moreover, the resolution of the U.N. Security Council also stipulated that the CPA was bound by both Hague Regulations of 1907 and the Geneva Conventions of 1949. Previously, the United States had ratified both documents.

Article 43 of the Hague Regulations – which is mirrored almost exactly in the U.S. Army's laws concerning the conduct of land warfare – indicates that one of the responsibilities of an occupying force is to administer the life of an occupied country in such a way that the basic necessities of life for the people in the occupied country will be provided for – including electricity, drinking water, street safety. Article 43 of the Hague Regulations also indicates that an occupying force is not permitted to make any changes in the occupied country beyond what is needed to deliver the foregoing services.

During its occupation of Iraq, the United States repeatedly violated the conditions for being an occupying force. More specifically, not only did the United States violate the Security Council Resolution concerning the CPA, but as well, the United States violated the conditions of the Geneva Conventions, the Hague Regulations, and the provision of the U.S. Army's own manual concerning the Law of Land Warfare.

The Bremer Rules (a list of one hundred edicts) that were put into effect in Iraq between May 6, 2003 and June 28, 2004 were in direct conflict with established international law – i.e., The Hague Regulations and The Geneva Conventions – as well as Security Council Resolution 1438 that had granted the CPA approval to serve as a temporary occupying

force in Iraq. The Bremer Rules reflected, in considerable detail, the contents of a hundred-plus page document written by Bearing Point, Inc. that had been given an initial three-year contract – later renewed for an additional three years – by the United States to provide technical and consulting support to the U.S. Agency for International Development with respect to restructuring the Iraq economy.

The essence of the foregoing collaboration was intended to move Iraq away from an economy that was, in many respects, controlled by the state, and toward an economy dominated by privatization, free markets, and free trade. As I pointed out in an earlier chapter, the term: "free" in the foregoing sort of context is intended to apply only to corporations and not necessarily to the people who will be impacted by that corporate freedom ... 'free trade' and 'free markets' refer to the ability of private businesses to do whatever they deem to be necessary to turn a profit irrespective of how those activities affect people beyond the horizons of that business.

According to the U.N. Security Council Resolution 1438 as well as The Hague Regulations, an occupying force was not permitted to make any changes to the country being occupied that were not directly related to providing the people being occupied with the basic necessities of life. Bremer, Bearing Point, Inc. and the United States had other ideas concerning the provisions of Resolution 1438.

In effect, Bremer became the 'emperor' of Iraq. The Iraqi people had been relieved of one tyrant – i.e., Hussein – to become entangled with someone –i.e., Bremer -- who was, in many ways, far worse than Saddam.

Bremer proclaimed the laws. The U.S. military -- contrary to the U.S. Army's own rules concerning land warfare -- enforced those laws.

For instance, one of the very first edicts of the Bremer Occupation was to fire all Iraqis workers who had an affiliation with the Ba'ath Party. Under Hussein, if one wanted to work in the civil service, then irrespective of one's feelings about the Ba'athist perspective or Saddam Hussein, one had to be a member of the Ba'ath Party, and, therefore, many scientists, skilled laborers, doctors and engineers – the very people who were expects in keeping the lights on, the water running, sewage treated, the streets safe, transportation moving, money flowing, and the medical needs of people addressed – were dismissed.

In short, Bremer's first proclamation undermined, if not completely thwarted, the requirements of the U.N. Security Council Resolution 1438 and The Hague Regulations. He – and, therefore, the United States – was obligated to satisfy the basic needs of the occupied people and do this in a way that would not change the occupied country in any unnecessary way, and, yet, the first Bremer rule made both facets of the foregoing goal largely unrealizable.

During the first gulf War, the United States had concentrated on destroying many parts of the infrastructure of Iraq – including water and electricity facilities. Iraqis – that is, the very ones who were dismissed by Bremer -- had the foregoing systems up and running within three months of their destruction. Yet, the foreign contractors that Bremer unnecessarily forced on the Iraqi people could not get those systems running even after years of collecting fees for providing non-existent services.

Another promulgation of Bremer was aimed at liberalizing trade policy in Iraq. As a result, policies were eliminated (e.g., tariffs, licensing fees, and import taxes) which previously had protected the Iraq economy from foreign competition and, in the process, made Iraq entirely self-sufficient with respect to, among other things, its food production, and, consequently, as a result of one of Bremer's rules, many aspects of the local network of producers and suppliers in Iraq were destroyed.

Iraqi people were put out of work, local supply lines were disrupted, and many people went hungry and without necessary services. However, international corporations benefitted from the new markets in Iraq that were opened up due to the trade liberalization policies of Bremer ... policies that were in direct conflict with the U.N. Security Council Resolution 1438 and The Hague Regulations by which the United States had agreed to be bound in the administration of Iraq during the period of occupation.

Another of Bremer's Rules protected all military forces, foreign contractors, and private security firms (such as Blackwater, which, after a number of scandals, later changed its name to Xe) against being held accountable by the Iraqi legal system for whatever violations of Iraqi law that might be committed by those individuals (for example, think Abu Ghraib). In addition, the same Bremer proclamation stipulated that Iraqis who were not provided with the promised, basic necessities of life – such

as water, electricity, sewage treatment, and so on -- by foreign contractors responsible for those services, were excluded from having any legal standing in those matters, and, therefore, could not sue the incompetent contractors.

Bremer also issued several edicts concerning the banking system in Iraq. The first of those rules opened up Iraqi banks to 50% ownership by foreign, financial interests, while a follow up rule expanded the percentage of an Iraqi bank that could be owned by foreign interests to 100%.

A further proclamation by Bremer opened up all Iraqi businesses to foreign ownership. Furthermore, a great many of the services that previously – i.e., before the war – had been run by the government were privatized under Bremer's loving care.

Due to the foregoing provisions concerning the occupation of Iraq, scores of American companies received contracts that were worth multiples of the previous GNP for Iraq. Commercial activity that should have been directed to Iraqis and controlled by them was usurped by foreign businesses ... businesses that not only had been enabled by the Bremer Rules, but, as well, were handed the advantage of playing in an unfair economic game that was being rigged by American referees.

No one can plausibly argue that any of the foregoing arrangements – or the scores of other rules introduced by Bremer to transform Iraq into an economic fiefdom of Western corporations and financial interests -- were integral elements in a fair plan that would provide the Iraqi people with the basic necessities of life and, in the process, not unnecessarily change the way in which an occupied country had been operated prior to becoming occupied. Consequently, all of Bremer's Rules were in direct violation of the U.N. Security Council Resolution 1438, as well as The Hague Regulations.

Before the U.S. invasion of Iraq in 2003 – which most everyone now acknowledges was entirely unwarranted, if not illegal – Iraq, despite years of economic and military sanctions by the West, had one of the most advanced societies in the Middle East. Furthermore, despite the sanctions, Iraq had a functioning system of: Health care, food production, commerce, education, and public service, and, yet, under the Bremer Rules all of that changed.

Iraq never attacked the United States with military forces, nor did it ever have any intentions of doing so. Iraq was not a threat to the American people.

Nonetheless, 'national interests' dictated that Iraq needed to be destroyed and made safe for various foreign financial and economic corporate agendas. Once again, the way of power that controls the United States government provided evidence that demonstrates, in fairly clear terms, that 'national interests' is just a code phrase for the developmental plans of ideological psychopaths who do not really care about what happens to Iraqis as long as the former individuals make a profit and get to control Iraqi society and resources, and, consequently, 'Operation Iraqi Freedom' was oxymoronic.

The Office of Legal Counsel is part of the Department of Justice. The function of the OLC is to provide legal advice concerning the lawfulness of various possibilities being considered by the President or by other departments within the Executive Branch of government.

The legal advice that is generated through the Office of Legal Counsel is binding upon all members of the Executive Branch. The authority underlying such an obligatory dimension comes from a statute passed by Congress.

In effect, the foregoing statute serves as something of a 'necessary and proper' clause for the Executive Branch. As a result, the Office of Legal Counsel was enabled to determine what qualifies as being 'necessary' and 'proper' with respect to the Executive Branch being able to carry out its perceived duties.

However, there is a black-hole of ambiguity at the heart of both the statute that allegedly invests the legal advice of the OLC with binding authority, as well as Congress's presumed 'right' to bestow that sort of authority on the Office of Legal Counsel. More specifically, what meaning is to be given to the idea that something is 'necessary and proper' and what justifies that kind of an assignment?

Article IV, Section 4, of the Constitution guarantees that: "The United States shall guarantee to every State in this union a republican form of government..." One of the principles of republicanism requires that a person should not to be a judge in his or her own cause, and, yet, the

statute that enables the Office of Legal Standing to issue binding legal advice does just that ... it requires members of the OLC to be judges in their own cause, and, as well, by passing the statute that gives the OLC such authority, Congress also is serving as a judge in its own cause – namely, determining what constitutes being 'necessary and proper.'

Well, if the OLC and Congress should not be judges in their own cause, then who can inform either body what constitutes 'necessary and proper' activity? If one assigns that task to the Supreme Court, then, those nine individuals also become judges in their own cause since their 'cause' is claiming to understand the Philadelphia Constitution, when, in fact, their judicial perspectives are nothing more than their own arbitrary theories of legal hermeneutics concerning the nature and meaning of the Constitution, and by making a ruling in any given case, those justices are only imposing their own ideas about things onto that document ... that is, they are serving as judges in their own cause.

There is an additional dimension to the problem of determining the meaning of whether, or not, something is 'necessary and proper. The Ninth Amendment indicates: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people," while the Tenth Amendment indicates that: "The Powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states, or to the people."

The Constitution did not give Congress explicit authority to determine what constitutes being "necessary and proper" – that is, interpreting the meaning of the "necessary and proper" clause is not an enumerated power. In fact, that sort of a process is not even an implied power but, rather, it is an inferred power, and the question is whether, or not, such an inference is justifiable.

Under the Ninth and Tenth Amendment, whatever is not delegated to the federal government, nor prohibited by the Constitution to the states, are retained by, and reserved for, the people. Consequently, the business of determining what is meant by the idea of something being "necessary and proper" belongs to the people.

The role of the Supreme Court as the final arbiter of the meaning of the Philadelphia Constitution is not an enumerated power that is clearly indicated in the foregoing document. It is an inferred power – an inference that began to be articulated by John Marshall in *Marbury v.*

Madison, but as has been pointed out in chapters 3 and 7 of the present book, Marshall's inference is problematic in a variety of ways and on a number of levels.

There is a further problem surrounding the issue of determining the meaning of "necessary and proper" in the context of the Philadelphia Constitution. The entire purpose of the Constitution is to serve the purposes and principles set forth in the Preamble to that document.

Given the foregoing – and how else can construe the nature of the relationship between the Preamble and the articles and sections that follow the words contained in the Preamble -- whatever meaning might be assigned to the idea of being "necessary and proper" must be capable of being fully reconcilable with: forming a more perfect union; establishing justice; insuring domestic tranquility, providing for the common defense, promoting the general welfare, and securing the blessings of liberty. However, the problem that arises at this point is that no one has fully articulated a non-arbitrary perspective (that is, one which can be demonstrated as being true beyond a reasonable doubt) concerning what is meant by perfection, justice, tranquility, defense, welfare, or liberty.

The only perspective that can be demonstrated beyond a reasonable doubt with respect to the issues and principles inherent in the Preamble involves the basic right of sovereignty – the right of everyone to have a fair opportunity to push back the horizons of ignorance concerning the nature of existence (a right that was explored and developed in chapters 5-7) ... including one's relationship to Being. Thus, the meaning of "necessary and proper" needs to be worked out by the people – not the government -- in the context of how the principles and purposes of: perfection, justice, tranquility, defense, welfare and liberty are to be manifested in terms of the basic right of sovereignty to which everyone is entitled.

Supposedly, the statutory provisions that enable the Office of Legal Counsel to issue binding opinions to members of the Executive Branch, also prohibits anyone from being able to prosecute those who follow that counsel. Again, this is a violation of Article IV, Section 4, since the provisions of the statute being alluded to not only empower: Congress, the Executive Branch, and the Judiciary to be judges in their own causes

but, as well, seemingly prevents anyone from doing anything about those matters.

As far as the way of power is concerned, the foregoing arrangement works out quite nicely and insulates those in power from being held accountable for their deeds. As far as the way of sovereignty is concerned, the foregoing arrangement is entirely arbitrary, and, therefore, cannot be justified in a manner that can be demonstrated to be beyond all reasonable doubt concerning the 'necessity' and 'propriety' of that kind of an arrangement.

Moreover, once again, the reader should be reminded that the standard of something having to be proven beyond a reasonable doubt is an appropriate principle to employ in the matter of determining what is 'necessary' and 'proper' for all three branches of government to be able to do. As is the case in criminal trial where the one who is being prosecuted stands to suffer substantial losses with respect to issues of justice, tranquility, defense, welfare, and liberty, so too, when it comes to giving expression to the Philadelphia Constitution, the same high stakes are present, and, therefore, the same high standards of proof – that is, beyond a reasonable doubt -- are applicable ... or should be – in relation to that document.

In the light of the foregoing considerations, let's take a look at the issue of "national interests" in the context of the Office of Legal Counsel. The question that needs to be asked, of course, is whether, or not, making the legal opinions of that agency binding upon the members of the Executive Branch is really in the "national interests."

The Office of Legal Counsel falls under the authority of the assistant attorney general for the United States. Such an individual has to be nominated by the President, and, then, with the advice and consent of the Senate, confirmed.

The head of OLC oversees the work of 4-5 deputies who are appointed by the President. None of these deputies goes through a process of Senate confirmation.

There are a further group of lawyers – usually consisting of between 15 and 20 individuals – which also work in the OLC. This group of lawyers lends assistance to the head of the OLC, along with his or her deputies,

and like the deputies, the additional lawyers do not go through a Congressional vetting process.

Due to a variety of considerations – including in-fighting among members of Bush's administration – the Office of Legal Counsel was without an acting head on September 11, 2001. Although Jay Bybee was confirmed, approximately a month after the events of 9/11, to become the next head of the OLC, Bybee did not actually show up for work until near the end of November of 2001 so that he would be able to finish up dealing with a prior commitment to the University of Nevada at Las Vegas.

Why arrangements were not made to get someone else to fulfill those obligations at UNLV once 9/11 occurred is something of a mystery. Then, again, maybe there is a 'rhyme and reason' to that sort of a decision.

The vacuum in leadership at the OLC was filled by John Yoo, a Deputy Assistant Attorney General. Yoo began to write legal opinions for the Executive Branch that, by statute, were supposedly considered to be binding upon the administration with respect to the matter of what was, and wasn't permissible, with respect to the so-called war on terror.

John Yoo had not been elected to his office, nor had he been confirmed by the Senate. Nonetheless, without appropriate oversight, he was, in effect, telling the President and the rest of the Executive Branch – including the Pentagon and the CIA – what was, and was not, appropriate to do in relation to, among other things, the 'war on terror.'

John Yoo's journey to becoming Deputy Assistant Attorney General was a tale of two interests. On the one hand, John Yoo was asked to join the OLC by John Manning who, initially, accepted the Bush administration appointment to be head of the OLC, but, subsequently, withdrew his name from consideration. However, despite Manning's departure, the Bush administration asked Yoo to remain with the Office of Legal Counsel.

Yoo was placed in charge of offering counsel with respect to legal questions concerning presidential powers involving matters of national security. The reason why Yoo was asked to stay on at the Office of Legal Counsel by the Bush administration and the reason why Yoo was assigned the foregoing role of providing legal counsel about the scope of presidential powers might very well be related to the reason why Jay

Bybee was permitted to continue teaching at UNLV while the country was trying to deal with the aftermath of 9/11.

John Yoo was a proponent of giving the Office of President an expansive set of powers to do what the President might consider to be 'necessary' and 'proper' with respect to fulfilling the duties of office. Yoo's perspective was deeply colored and shaped by his family's experiences in Korea.

Yoo was born in South Korea in 1967, but his family had survived the Korean War and, as a result, held staunchly anti-Communist views. His parents believed that President Truman's intervention – although it was done without Congressional authority – had saved the Yoo family, along with all of South Korea.

The foregoing attitudes were absorbed by Yoo, the younger. Therefore, among other things, he believed that leaders should have the power to enact certain policies even if they weren't necessarily overtly authorized to take those actions.

After graduating from Harvard and, then, getting a law degree from Yale, Yoo made a further splash in the academic pond by writing an article in 1996 – 'The Continuation of Politics by Other Means: The Original Understanding of War Powers' -- that was published in the *California Law Review*. The foregoing article maintained that the Founding Fathers championed the English way of doing things with respect to the issue of initiating war – namely, the king was the person who had the right to declare war.

While there might have been some individuals among the Founders who liked the English model of governance – for example, Alexander Hamilton, and, to some extent, John Adams – there certainly was no established consensus among the Founders that suggested they believed that the President should have the power to not only be Commander in Chief with respect to the manner in which a war was conducted, but, as well, should have the power to initiate war. Moreover, even if there were such a consensus – which there wasn't -- the Philadelphia Constitution is not worded in a way that reflects that kind of a perspective ... so, go figure.

Yoo's views concerning the 'real' beliefs and values of the Founders with respect to the powers of the Presidency in relation to declaring war

were rejected by anyone who knew anything about either the views of the Founders and/or the wording of the Constitution. More importantly, Yoo's views – even if true (which they weren't) -- were actually irrelevant to what the people considered to be 'necessary' and 'proper' concerning such matters, for, supposedly, America belonged to 'We the People,' and not to the Founders, or to the Framers, or to any of the branches of federal or state government.

Quite independently of what the Founders might have believed concerning the issue of presidential powers in relation to the declaration of war, there was no enumerated power entitling the president to declare war. Furthermore, even Congress' stated power to declare war must be capable of being reconciled with Article IV, Section 4, of the Philadelphia Constitution, and as well, the Preamble to that document.

Yoo, of course, didn't care about any of the foregoing considerations. Based on a scholarly-challenged understanding of both history and the Philadelphia Constitution, Yoo believed that the President had certain powers that few other individuals were willing to acknowledge. Therefore, Yoo was, by the authority of a congressional statute, in a position to enable a president to do what the Philadelphia Constitution didn't entitle a president to do ... no wonder the Bush administration asked him to stay on at the Office of Legal Counsel and assigned him the legal responsibilities it did.

On September 25, 2001, John Yoo – an ideologically driven 34-year old unelected official, who had not been confirmed by the Senate and who was operating without oversight from the Assistant Attorney General (i.e., the absent head of the OLC) – issued an opinion that, by statute, was not only legally binding upon the Executive Branch of the United States Government, but as well, exonerated officials from any questions of culpability that might arise in relation to what they were legally being obligated to do. In his legal memorandum, Yoo repeatedly cited his own paper in the *California Law Review* – and like most law review journals, the articles in such periodicals tend to be reviewed and edited by students, not professors – as an authority for what he was claiming in the Office of Legal Counsel document that was counseling the Executive Branch.

Yoo's legal memorandum informed the President, and the rest of the Executive Branch, that the war powers of the President were unassailable.

In other words, nothing that the President, as Commander in Chief, wanted to do or decided to do with respect to waging war could be overridden by congressional statute ... according to Yoo the President was a law unto himself in such circumstances.

By the time that Jay Bybee showed up – which was in late November of 2001 -- to assume his responsibilities as head of the Office of Legal Counsel, the Executive Branch already was deeply ensconced in its preparations for war with Afghanistan and Iraq. To the best of my knowledge, Yoo never thought to – and/or was never asked to -- send his legal memorandum to Jay Bybee to be reviewed or critiqued.

Yoo worked in the Office of Legal Counsel until the summer of 2003, well after the wars in Afghanistan and Iraq had started, and in the case of Iraq, supposedly stopped. Throughout this period, his legally binding counsel to the Executive Branch was always the same: The President, as Commander in Chief, could do whatever he liked and no one had the legal authority to say otherwise ... and Yoo (in the form of his 1996 article for the *California Law Review*) was the authority for what Yoo was saying in this regard.

Was it in the national interests to have an ideologically driven, unelected official (with no accountability to an oversight process) tell the Executive Branch what it could, and couldn't do, in the area of presidential powers and national security? No, it wasn't, but the Bush Administration wanted someone like Yoo to be present so that it would be enabled to do what it already wanted to do without being held legally responsible for doing so.

In the case of the Yoo legal memorandum of September 2001 that told the President, and the rest of the Executive Branch that the power of the presidency was unlimited when it came to war, 'national interests' had been reduced down to, on the one hand, the mind-set generated through the Korean war-values inculcated into a youngster by his Korean parents, and, on the other hand, the imperious inclinations of a President who wanted to impose his ideas about national security and national interests on everyone else quite independently of whether any of those ideas were tenable or warranted ... which, it turns out, they weren't.

Was it in the national interests to take authority away from 'We the People' with respect to deciding what was 'necessary' and 'proper' for the

Executive Branch to do in relation to the matter of war powers? No, it wasn't, but this is what happened.

Yoo was the unelected catalytic ideologue who enabled the Executive Branch to push for, and engage in totally unnecessary wars in both Afghanistan and Iraq (although the United States promised to do so, it was never able to produce the necessary evidence to the United Nations, NATO, or the people of the United States that could justify either of the foregoing wars). Some 7,000 American soldiers, and counting, have lost their lives in those two wars and four times that number have been seriously injured, and many more have suffered some form of Post-Traumatic Stress Disorder as a result of their experiences in those two countries. In addition, hundreds of thousands of Iraqis and Afghanis lost their lives, and many more were seriously injured, and/or have fallen victim to the extensive use of depleted uranium in those countries by the U.S. military, and, finally, a great deal of the infrastructure and economy of those countries has been destroyed (unless, of course, one wishes to place the heroin trade that has flourished as a result of the wars on the asset side of the ledger). Moreover, trillions of dollars have been, and will continue to be, wasted in waging such unnecessary wars... where are the national interests in all of this?

The moral of the foregoing story is not that people and circumstances sometimes come together in ways that serve personal rather than national interests of 'We the People.' Rather, the foregoing account is intended to illustrate the point that people cannot be trusted with power because the nature of that catalytic agent both temps, as well as enables, people to serve their own interests and claim that what is being done is in the 'national interests.'

The way of sovereignty is not about national interests. The way of sovereignty is a function of whatever helps establish, preserve, and enhance basic sovereignty for individuals, and this is, rarely, if ever a matter of national interests since national interests tend to be about what helps establish, preserve and enhance the way of power as filtered through the ideology of arbitrary belief systems.

Two-time medal-of-honor winner, Smedley Butler – to whom I referred in the Introduction -- was familiar with the Janus-like duplicity of America's use of power. He knew that one face – the public face, the one that was promulgated through most of the media and the one that was taught to unsuspecting children in thousands of classrooms across America -- claimed that its use of force was entirely defensive in nature and/or for the good of humanity and/or was used to facilitate the advancement of democracy throughout the world. However, Butler also knew that the other face – the business-end of the American Janus-mask as it were – conducted wars wherever and whenever it could in order to benefit, in one capacity or another, the 'way of power,' and Butler's observations and conclusions in this regard have been confirmed repeatedly by a vast array of independent observers/researchers.

The Janus-like character of America existed before Smedley Butler arrived on the scene in the late 1800s and early-to-mid 1900s. The Janus-like character of America existed when, after a lifetime of military service, Butler explicated, in considerable detail, why 'war is a racket'. The Janus-like character of America's presence in the world has continued on since Butler passed away from this world.

This chapter has considered just a few examples from American history to illustrate the idea that the idea of "national interests" is very rarely, if ever, about what is actually in the best interests of the people in the United States, but rather, "national interests" are a function of what serves certain narrow financial and political interests that seek to control the lives of other people – whether American or non-American. Moreover, for those who are interested, the bibliography at the end of this book contains a great deal of evidence supporting the foregoing contention -- evidence that forms the horizons for the focus of this chapter.

Chapter 13: Filtering Information

In 1955, Solomon Asch, a mentor of Stanley Milgram, performed an interesting experiment that demonstrated the existence of a powerful force at work in groups ... a force that likely had been suspected for many years but stood in need of empirical verification. Ostensibly, the Asch experiment was a simple perceptual task.

Four lines were presented on two viewing cards. One card displayed just one line, while the other card displayed three lines.

The lone line on one of the two cards was the 'standard line.' The three lines on the second card were of different lengths, and they were the 'comparison lines.'

Subjects were required to judge that of the 'comparison lines' was a match for the 'standard line.' When subjects performed the experiment in the absence of other people, they were able to identify the correct match more than 99% of the time.

However, when other people were present and involved in the task, some rather startling results emerged. More specifically, if there were a group of five to seven people who were all required to identify the correct match on any given trial, and if the first five or six people (depending on the size of the group) misidentified the correct match, the last person to give an answer quite frequently also misidentified the correct match in one-third of the trials.

As it turns out, the first five-to-six individuals in the experiment that provided answers to the perceptual task were 'confederates.' In other words, those individuals had been provided with a script by the people running the experiment that told the confederates to intentionally misidentify the correct match on certain occasions.

For each subject, there were 18 trials that involved the perceptual matching task. In six of those trials, the confederates answered correctly, while in the other 12 trials, the confederates gave incorrect answers.

When those confederates gave the correct answer, the experimental subject – the one who went last – also would give the correct answer. Yet, when those confederates provided an incorrect answer, then errors tended to be committed by the experimental subjects.

Irrespective of whether, or not, the subject gave a correct or incorrect response in such cases, their body language and behavior clearly indicated that when they were faced with the prospect of having to go against group opinion, the situation tended to be stressful to them. Some people allowed the stress, and associated social forces, to sway their answer.

Overall, 24% of the subjects did not go along with the confederates during any of the 12 trials in which incorrect answers were given by the confederates. 75% of the subjects went along with the incorrect 'judgments' of the confederates at least one or more times. 5% of the subjects followed the incorrect responses of the confederates on each of the 12 instances in which the latter individuals gave incorrect answers.

Collectively considered, the subjects matched the incorrect responses of the experimental collaborators one-third of the time. Some of the subjects who gave incorrect answers were aware of doing so, but later on, when they were interviewed by the experimenters, they indicated they didn't want to 'rock the boat,' or create conflict. Other subjects who gave incorrect answers subsequently claimed that they were not aware of doing so and attributed their mistakes to poor eyesight.

Asch discovered that there were different structural factors which seemed to impact the experiment. For example, when the incorrect response of the confederates was not unanimous, the number of subjects who would comply with the response of the majority dramatically decreased to between 5 and 10% of the overall number of trial responses involving incorrect answers -- down from the one-third percentage noted earlier.

If even one confederate gave a response that was different from the other confederates, subjects were more likely to provide a correct match in the perceptual task. This was true quite independently of whether, or not, the dissenting response involved a correct match between the 'standard line' and the 'comparison line' ... in other words, dissent rather than correctness seemed to be the deciding factor.

The Asch experiment involved a simple, objective perceptual task in which the difference between the incorrect lines among the 'comparison lines' and the standard line was so clear that subjects only missed identifying the correct match in less than 1% of the cases. What if the task were something that was: More complicated, less 'objective,' while also being more emotionally and psychologically engaging?

The foregoing questions were often asked of my students during the introductory psychology courses that I taught. The same questions can be directed to the American public.

In 2003, Tony Smith, who played basketball for Manhattanville College, demonstrated his disapproval of the forthcoming invasion of Iraq by standing sideways rather than face the U.S. flag during the national anthem. When he did this at the arena for an opposing team, the people in the crowd began chanting: “Leave the country.”

In 1991, during the first Gulf War, Marco Lokar, who was from Italy and played basketball for Seton Hall, refused to wear the American flag on his uniform as an indication of his opposition to the war. Some of the individuals who attended Seton Hall basketball games exhibited behavior that became so abusive that Lokar actually did leave America and returned to Italy.

The 1991 Persian Gulf War was predicated on a variety of disinformation and lies. First, the alleged atrocities of Iraqi troops with respect to incubator babies in Kuwait did not take place, but, instead, it was a publicity stunt dreamed up by Americans and Kuwaitis in order, among other things, to persuade the United Congress to support hostilities against Iraq.

Secondly, prior to the first Gulf War, Saddam Hussein asked the U.S. Ambassador to Iraq what the view of America was concerning Iraq’s border dispute with Kuwait, and April Glaspie, the ambassador, indicated that Arab-Arab conflicts – such as the one between Iraq and Kuwait – were of no concern to the United States. Whether intended or not, the communication was interpreted by Saddam Hussein as indicating that the U.S. would not interfere with the dispute.

Thirdly, while it is true that Saddam Hussein attacked and killed thousands of his own people, this is not the whole story. In those attacks, he used biological and chemical weapons that had been supplied to him by the United States.

When Churchill advocated the use of chemical weapons against Iraqis in 1920 that act, apparently, was the action of a civilized country. When Hussein did so with U.S. assistance in 1988, this became evidence that demonstrated what kind of a pathological monster Hussein was.

The act of gassing the Kurds was pathological. However, the United States Government was complicit in that pathology, just as the British government committed pathological behavior in the earlier case involving Iraq.

When Iraq served U.S. 'national interests' by engaging with Iran in an eight year bloodbath, the United States government supported Iraq militarily and financially – except, of course, in the little matter of the Iran-Contra scandal in which the United States illegally sold arms to Iran in order to get cash to illegally help the Contras who were fighting against the Sandinista government in Nicaragua. When Iraq began to go 'off the reservation' in 1990, by, among other things, seeking to move the world away from using the U.S. dollar as the currency of last resort, Saddam Hussein had to be schooled in the etiquette of world politics ... which as is usually the case in those kinds of affairs, the lesson plan was imposed on, and subsidized by, the people of Iraq rather than its 'leaders.'

In 2003, Iraq again had to be taught a harsh lesson. Despite having nothing to do with 9/11 and despite having no weapons of mass destruction, Iraq was invaded by the United States – euphemistically referred to as a 'coalition' – and much of the physical, economic, political, medical, financial, and social infrastructure of Iraq was destroyed ... nine years later, Iraq is still trying to recover from the 'dogs of war' that were unleashed by the United States upon that country in 2003.

The people who induced Italian Marco Lokar to leave the United States in early 1991 and who wanted Tony Smith to leave America in 2003 were like the subjects in the Asch experiment. The former individuals who accepted or complied with the media accounts concerning Iraq in relation to what, supposedly, was taking place in that country during 1991 or 2003 – and the media played the role of confederates in the real life experiment being run in the United States – either suspected that they were not being told the truth about Iraq but did not want to 'rock the boat,' or those 'subjects' were individuals whose judgment concerning Iraq was totally shaped by the misinformation and disinformation that was being fed to the public by the government – i.e., who played the role of experimenters who were controlling what was taking place in the lab (i.e., the United States arena of public opinion) and who were inducing the confederate media to distribute propaganda, disinformation, and misinformation to the public (i.e., the subjects).

Propaganda, disinformation and misinformation don't have to convince everyone in order to be effective. If one has – in line with Asch's much simpler perceptual task – a third of the people who are willing, for one reason or another, to go along with the stories being spun by the government and/or the media, then one has created a powerful advocacy group for trying to impose – if not enforce -- certain kinds of ideas, values, and behavior on the rest of society.

Moreover, when 'objective' tasks are being engaged – for example, the line-matching task of Asch's experiment – the presence of even one voice of dissent can often be enough to permit subjects to break free of the social influence of other members of a group who are giving misinformation. However, when one is dealing with issues – e.g., Iraq in 1991 and 2003 – that are difficult to sort out in order to know where the truth might reside, the presence of dissent might only complicate, if not confuse, matters.

When conditions of ambiguity and uncertainty are high, many people often tend to adopt coping strategies that are likely to entail the least amount of problems ... even if such coping strategies tend to be flawed in various ways and even if the projected number of problems is only apparent and not necessarily accurate. In many political/economic issues, the least problematic path is usually to side with 'the way of power' because that way has the capacity to inflict punishment on those who are not prepared to 'get with the institutional program.'

If the subjects in the Asch experiment refused to go along with the disinformation and misinformation being supplied by the confederates, no physical or financial or political penalty would be imposed on them. The situation tends to be quite different in the world beyond the psychology lab.

Moreover, in the Asch experiment, none of the confederates overtly interfered with any of the subjects as they were making their judgments about which of the 'comparison lines' matched the' standard line.' If, on the other hand, a person were besieged by the comments and behavior of others who were seeking to influence one's judgment – as often occurs in real life -- this might affect not only the process of arriving at a judgment but, as well the character of that judgment.

There are a variety of conditions that tend to increase the likelihood that the phenomenon of compliance will occur. For instance, the more attractive a group's status is perceived to be, the more likely it is that an individual will become vulnerable to going along with the group view.

Groups that are perceived as being powerful, influential, wealthy, patriotic, or winners are very attractive to many people – quite irrespective of whether, or not, that group is dedicated to truth or justice. In addition, to be considered an 'outsider' in relation to those sorts of groups is a very difficult psychological and emotional situation with which to deal ... circumstances that many people try to avoid.

Furthermore, if one lives in a culture in which one is, from an early age, socialized to have respect for certain standards/values/ideas, then this condition tends to render people more inclined to comply with the standard of judgment to which the surrounding group gives expression. In fact, despite the prevailing mythology that the United States is all about individualism, there is a very strong set of social currents in the United States – sent in motion quite early in life – that is intended to inculcate a deep, sometimes unquestioning, respect in the generality of people in relation to so-called 'leaders' – whether governmental, educational, legal, medical, scientific or corporate in nature.

Another factor affecting the issue of compliance involves the issue of the degree to which one's behavior is observed by others. We all engage in various forms of consequential calculus in which we attempt to estimate the social risks and benefits for behaving in certain ways ... especially when we know that such behavior might be observed by other people.

Moreover, when people can be induced to feel insecure or incompetent in various ways, the likelihood increases that those people will become inclined to comply with group values and standards. This factor can become quite significant when the issues being considered are uncertain, ambiguous, or complicated, and someone uses that sort of uncertainty or ambiguity to attack another person's sense of security or competency concerning those matters in order to induce the latter individual to comply with the perspective of the group.

Finally, the likelihood of someone's being willing to adopt the group perspective increases in situations where an individual has not made any previous commitment to a given position. In other words, the default

position for many people who really don't know much about a given subject area or who haven't thought about those issues very much often tends to coalesce around the group perspective ... which is why propaganda, misinformation, and disinformation can be so effective in shaping people's ideas, views and values with respect to current events ... events that people have not had much of an opportunity to learn about or reflect upon in a way that is independent from the influence of vested interests.

The basketball fans who riled away at Tony Smith in 1991 and Marco Lokar in 2003 were the experimental subjects whose ideas had been shaped not by facts but by a variety of social forces that had been set in motion by a group of experimenters and their confederates – namely, government, the educational system and the media. Those fans were merely doing what they had been unthinkingly induced to do by an array of social forces that shape, color and orient the everyday lives and understanding of millions of people across the United States.

All war is an exercise in terrorism. The object of war is to induce one's opponents – whether soldiers or civilians – to become so psychologically overwhelmed by the horror of destruction, or the threat of destruction, that they will surrender ... there is a reason why the opening salvoes of the 2003 Iraq were referred to as 'shock and awe.'

Everyone who participates in, or supports the conduct of, war is a terrorist. They all wish to strike terror into the hearts of their 'alleged' enemies.

One of the enduring campaigns of propaganda, disinformation, and misinformation undertaken by successive governments of the United States – as well as most, if not all, other countries – is to persuade citizens that when one goes to war, one will be fighting evil, injustice, and oppression, and, yet, the inherent nature of war – no matter what the underlying intentions are claimed to be -- is to give destructive expression to the very horrors it is intended to combat. In addition, the issues and circumstances that lead to war are almost invariably a function of the manner in which the respective ways of power on all sides of a conflict have greased the skids toward armed conflict.

People do, I believe, have a right (and this is inherent in the basic notion of sovereignty that is being developed in this book) to repel direct attacks against their own lives or the lives of their family and community.

However, whether, or not, that kind of a right is exercised, or should be exercised, is a separate matter, and, in addition, the idea of preventative war – that is, attacking a country simply because one believes that country might, at some point in the future, constitute a threat – does not qualify as an instance of being directly attacked since it is entirely hypothetical in character.

Moreover, the conceptual slope between self-defense and the terrors of war is a very slippery one. Once a course of action is undertaken, preventing it from destructively spreading in all directions in uncontrollable and unimagined ways can become a very difficult, if not impossible, process.

Who would have thought that the simple expression of an opinion – for example, standing sideways during the playing of the national anthem or refusing to wear an American flag on one's uniform in order to oppose the terror that was to be unleashed upon the Iraqi people – should be so abusively upsetting to people who live in the land of the free consisting of – allegedly -- the most knowledgeable, compassionate, friendly, humane, understanding, and caring people to ever grace the face of the Earth. On the other hand, falsehood tends to give rise to a great deal of untenable ugliness, and the perpetrators of falsehood, propaganda, disinformation, and misinformation understand this fact very well ... indeed, they count on it, for this is one of the fundamental methods through which the way of power controls what is, and is not, permitted to take place in society.

The idea of 'brainwashing' found its way into the public lexicon in 1950. Edward Hunter wrote an article for the *Miami News,* and during the article, he used the term to give expression to the Chinese idea of 'hsi-nao' or 'cleansing the mind.'

Hunter was attempting to alert people in the United States about an insidious social and psychological process that, reportedly, was being used by the Chinese in order to alter the way people thought, felt, and behaved. According to the article, the way in which people were induced to join the Communist party was through the technique of brainwashing.

What the article did not say is that Hunter worked for the CIA. He was a specialist in issues of propaganda, and he was using a scare story about

Chinese brainwashing as a Trojan horse for introducing his own set of mind- and attitude-shaping techniques into the public arena of America.

Hunter wanted his readers to begin to engage information concerning world events through his filters rather than through those of the Chinese Communists. However, irrespective of whether one is an operative of the CIA or of the Chinese Communists, when a person uses techniques that are designed to prevent people from critically reflecting on a given situation or intended to prevent those individuals from becoming aware of how they are being subjected to forces of manipulation, the methods are abusive and reprehensible.

Although the idea of 'brainwashing' often has become entangled in a mythology that tends to attribute rather magical, all-powerful, irresistible properties to the process, the bottom line is that 'brainwashing' is one possibility among an array of processes that have the intention of altering people's ideas, values, beliefs, sense of identity, and behavior. 'Propaganda', 'indoctrination', 'advertising', 'conditioning,' 'socialization,' 'training', 'therapy', 'marketing', 'framing,' 'the media', 'interrogation,' 'torture,' and 'education are related ideas because all of the foregoing terms have one thing in common – they are attempting to affect the way the 'target' audience – whether one person or many -- understands and engages the world.

Many accounts of brainwashing emphasized the physical means that were used to try to break people and render them emotionally, psychologically and behaviorally malleable with respect to whatever a 'subject's hosts' wished to impose on that individual. For instance, those accounts often spoke about: Sleep deprivation; being required to adopt stress positions for extended periods of time; exposure to stimulus overload in the form of repetitive, loud, annoying sounds; being subject to sensory deprivation; the use of heat and cold to wear down resistance; reduced calorie intake, and so on.

However, physical abuse does not necessarily constitute an inherent component of any attempt to bring about changes in another's person's beliefs, values, ideas, and behaviors. One also could bring about those sorts of changes through not only manipulating people's vulnerability to factors involving: Social contact, approval, consensual validation, sense of identity, hope, guilt, ambition, group pressure, self-interest, anxiety, uncertainty, reward contingencies, and emotional dependency but, as

well, by manipulating the nature of the information people are given in order to form judgments that generate behavior.

Edward Hunter, the aforementioned journalist/CIA operative used nothing more than carefully constructed information as his preferred technique of inducing changes in his reader's perception about themselves, China, Communism and America. The process of education does something very similar in nature.

For example, one technique used by the Chinese Communists would require people to participate in their own process of transformation. The individuals running the conversion process would not only force people to listen to various lectures, but, as well, the 'leaders' would require the participants to respond to those lectures both verbally and in writing.

Those responses either would be critiqued by the leader of the group or the various members of the group would be induced to criticize one another with respect to those assignments. In addition, the foregoing process would be repeated, and individuals would, from time to time, be required to demonstrate to the leader of the group that this or that principle had been mastered.

The foregoing arrangement sounds an awful lot like compulsory education. Students, under threat of punishment, are required to attend daily lectures and engage those lessons in a manner that is pleasing to the group leader – usually referred to as a teacher.

Children are put in competition with one another to win the favor of the teacher and other administrators. Students are often encouraged to criticize one another.

Lessons are repeated through seemingly endless homework assignments that must be mastered in written and verbal formats. Tests are given to ensure that one is learning what is being demanded of one in a way that meets with the approval of the teacher.

If one does not please the group leader in any of the foregoing tasks, one is subject to disciplinary treatment. Or, one is ridiculed in front of the other students ... a technique used to great effect by the Chinese Communists.

A student's sense of personal worth and identity -- just as is true in a Communist re-education program -- is constantly under pressure – both by the teachers and administrators, as well as by other students. The

individual is constantly being pulled and pushed in different directions by a variety of social, psychological, and emotional forces ... all intended to induce individuals to become compliant with respect to someone else's agenda – that of a group 'leader', and/or a student 'leader', and/or a community 'leader', and/or a religious 'leader.'

Surely, someone might object, there is a huge difference between what goes on within the American educational system and what goes on in, say, a Communist re-educational program. For instance, American students learn about the truth, whereas the people in the Communist system learn falsehoods.

I've never seen the study that demonstrates, beyond a reasonable doubt, that the foregoing is true. People in America, in their own self-serving manner, assume this to be the case, but they can't prove it.

One can talk about the many atrocities of: Stalin, Mao, Pol Pot, Castro, or any number of other Communist leaders – and I have never been a fan of Communism, feeling, among other things that much of its theoretical framework (e.g., historical materialism), along with its social excesses, are, respectively, neither tenable nor justifiable. However, unfortunately, one also can match the foregoing with the many instances of American terror that have been perpetuated in relation to, for example: Indians, Blacks, women, poor people, Hiroshima, Tokyo, Dresden, Hamburg, Nagasaki, Vietnam, Indonesia, Cambodia, Iraq, Iran, Central America, and Palestine.

Millions of innocent people within, and beyond, the United States have not been killed and brutalized by Americans for the sake of truth – which even if this were so (which it is not) would be unacceptable – but, rather, innocent people have been slaughtered for the sake of: Power, control, resources, profits, and terrorizing whole populations. However, Americans are socialized and educated to believe that what Tony Smith did in 2003 – protest an unjust war in Iraq– and Marco Lokar did in 1991 – protest an unjust war in Iraq – and what I did in 1968 – protest an unjust war in Vietnam -- are despicable betrayals of American values, while the destruction of innocent people and societies by Americans is an exercise in glorious patriotism that is making the world safe for democracy.

Welcome to the world of Orwell's Newspeak, where 'peace' really means war, 'freedom' actually means oppression, and 'truth' stands for that which is false. However, because all too many 'teachers' and

'administrators' in the American educational system are fluent in the language of Newspeak, they have become like the 'confederates' in the Asch perception experiment that was discussed earlier and, therefore, are engaged in manipulating students – knowingly or unknowingly – through disinformation, misinformation, and outright falsehoods on behalf of those in government and commerce who are in control of the experimental lab called America.

Why is education compulsory in America? Or, perhaps, the question should be phrased somewhat differently – namely, why are governments the agencies that are making education compulsory?

There are many arguments that can be advanced with respect to why learning is important. Indeed, learning is at the heart of the basic right of sovereignty that involves having a fair opportunity to push back the horizons of ignorance concerning the nature of existence.

However, a process of education that is compelled by state governments tends to be a different matter. That kind of a compulsory system is intended to serve the political, economic, social, and/or religious agenda of those who are in control of the way of power that renders education a compulsory activity, and, therefore, whatever learning takes place within that system is not necessarily about pushing back the horizons of ignorance concerning the nature of reality or one's relationship with reality but is, instead, a function of the interests of the way of power.

Under the provisions of the Philadelphia Constitution, education is not an enumerated power of the federal government, nor is it prohibited to the state governments. The 9th and 10th Amendments indicate that: (a) The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people; (b) The powers not delegated to the United States, nor prohibited to it by the states, are reserved to the states respectively, or to the people.

While states – within determinate limits -- might have the power to implement and administer educational programs, there is nothing in the Constitution that indicates that states should either have exclusive authority over education or that they should have the right to compel people to be educated. To give states priority in the matter of education, would be to "deny or disparage" other rights – in violation of the 9th Amendment -- that are retained by the people but which have not been

enumerated in the Philadelphia Constitution, and as well, giving states exclusive priority in the matter of education would also be in violation of the wording of the 10th Amendment which indicates that whatever powers are not delegated to the federal government or prohibited to the states are reserved for the states "or to the people."

People have a legal standing within the context of the amended-Constitution that is independent of the states. In fact, the first ten amendments – that is, the so-called Bill of Rights – are entirely about the rights of people. The 10th Amendment does not suddenly deprive people of rights or power but, rather, indicates that either: (a) the states – considered as one expression of 'We the People' -- have certain rights reserved for the people of those states, and/or (b) the states, considered as agencies acting on behalf of the people, as well as the people considered apart from the states, both have a legitimate claim with respect to those powers that are not delegated to the federal government or prohibited to the states.

If the term "states" in the Tenth Amendment meant precisely the same thing as "or to the people," then, the amendment is unnecessarily repetitious unless it was confirming that the ultimate owners of the sort of powers that are being alluded to belong, first and foremost, to the people. In other words, either the 10th Amendment is unnecessarily repetitious, or a distinction is being made which confirms that irrespective of whether 'people' are considered as part of a state, or considered independently from the state, they have certain powers that are reserved to them and that government -- of whatever kind -- cannot take away.

Since the phrase "or to the people" was suggested by (according to some) Roger Sherman and, then, accepted without discussion by the other people who were in attendance during the process of forging the first ten amendments, one cannot be quite certain what the individuals participating in the 1790 discussion had in mind. However, the fact is that -- in a very important sense -- what they might have thought is irrelevant because there is no non-arbitrary argument – that is, an argument which can be proven to be true beyond a reasonable doubt -- that can be advanced that shows why anyone in twenty-first century America is obligated to act in accordance with what people In 18th-century America thought about things.

People have the right to have control over their learning process because this is inherent in the nature of basic sovereignty that pre-dates the Philadelphia Convention, the Philadelphia Constitution, the ratification process, and the Bill of Rights. Everyone has the right to have a fair opportunity to push back the horizons of ignorance concerning the nature of reality, as well as one's relationship to that reality, and a learning process that is organized and compelled by governance – whether federal or state -- will not necessarily ensue such a fair opportunity because that educational process will tend to be biased by the interests of its own 'way of power' rather than 'the way of sovereignty' that is in the interests of the individual.

As noted earlier, the 9th and 10th amendments of the Philadelphia Constitution can be understood in a way that is consistent with the nature of basic sovereignty outlined above. However, if someone wishes to argue that the foregoing sort of meaning is inconsistent with what the Framers intended (and one would like to see the argument for that sort of perspective), then one can counter with the fact that people of today do not need to be bound by what those people intended since the dimension of obligation associated with that sort of an intention (whatever it might have been) cannot be proven beyond a reasonable doubt to be incumbent on the people of today.

Like the Chinese Communist process of re-education – which is a way of power -- the notion of compulsory education in America – which is also a way of power – is intended to force people to be complicit in their own conceptual and ideological conversion in order to serve the purposes of ideologically-driven governance. The way of power – whether Chinese or American in character – does not want people to be in control of their own learning processes ... people must be 'educated' in accordance with the hermeneutical template set down by the 'way of power.'

In 1967 Martin Seligman and Steve Maier conducted an experiment at the University of Pennsylvania. Like the experiments performed by Stanley Milgram (memory/learning/punishment) and Philip Zimbardo (prisoners), the Seligman/Maier experiment would not be permitted in today's ethical environment that establishes the conditions under which proposed experiments are either approved or not approved.

The Seligman/Maier investigation involved dogs, and their experiment was divided into two stages. Without becoming too engrossed in the details, the first step produced three kinds of dogs – (a) dogs that were put into a harness arrangement for a period of time, and then released; (b) dogs that were put in the same sort of harness, shocked (unlike the Milgram experiment, the shocks were real) and, then, permitted to learn how to stop the shocks; (c) dogs that were put in a harness, shocked, and, then not permitted to learn how to stop the shocks ... in fact, for these dogs, there seemed to be no discernible pattern to the shocks or any way to control them.

In the second stage of the experiment, all three groups of dogs were run through a large box-like structure consisting of two chambers divided by a partition that the dogs easily could jump over. The floor of the first chamber of the box was electrified, and the shocks delivered in that room could be escaped if the dogs jumped over the partition to a 'safe' room.

Group (a) and (b) dogs quickly learned how to escape the shocks that were delivered in the first room. Group (c) dogs – the ones that were never permitted to learn how to control the shocks that were delivered to them in the first stage of the experiment – tended to lie down in a corner of the electrified room and merely whimper as the shocks continued to be delivered. Even when group (c) dogs were dragged across the partition and shown that they would be free from shocks in the second room, many of the group (c) dogs would not exhibit escape behavior when placed back in the first compartment but, instead, would, once again, lie down and whimper while being shocked.

Seligman referred to the behavior of the group (c) dogs as "learned helplessness." In other words, after these dogs learned in the first stage of the experiment that nothing they did seemed to be effective in stopping or controlling the shocks being delivered to them, then when it came to the second part of the experiment, those dogs tended not to take advantage of the opportunity to escape ... either on their own, or when they were shown how to do so by the experimenters.

The experiment had been undertaken as part of Seligman's study of the phenomenon of depression. He felt that the idea of learned helplessness might apply to what had taken place in the life of human beings who later suffered from clinical depression.

Whether, or not, learned helplessness constitutes part of the phenomenology of depression, that concept might apply to other facets of human existence. For example, the experience of some individuals in the educational system seems to entail characteristics of learned helplessness.

More specifically, those people are put into a harness – i.e., compulsory education – and shocked in a variety of ways (emotionally, psychologically, socially, or academically) over the years by: Parents, other students, teachers, homework, tests, grades, and administrators. For some of the foregoing students, nothing they do seems to enable them to gain control over (that is, develop effective coping strategies with respect to) the various kinds of shocks that are delivered through the educational system ... everything appears to be so random and uncontrollable.

In effect, they seem to have acquired or learned a form of helplessness that is debilitating. As a result, many of them give up, lie down somewhere in a corner of their lives, and just whimper as shocks are delivered.

I have encountered the foregoing sorts of students in my classroom. Within the boundaries of what I could do as an instructor, I found that almost nothing I did appeared to make much, if any, academic difference in the lives of those kinds of individuals.

Of course, psychology is not everyone's cup of tea. Therefore, one has to factor in this issue to get a better idea of which students seemed to be suffering from learned helplessness and that students were either uninterested in, or bored by, the topic of psychology.

However, without trying to water-down the curriculum, I developed a technique of teaching that permitted the bored and uninterested students to escape the shock of poor grades ... although, sometimes, just barely. However, the students whom I suspected were debilitated with learned helplessness would not take any of the avenues of escape that were provided to them ... no matter how simple and accessible those pathways might be.

These latter students were not dumb. They were decent kids.

They didn't act out in class. They often came to school on a regular basis.

I did the educational equivalent of dragging these kids across the partition that separated the room of shocks from the room of 'safety' (passing grades). However, eventually, these youngsters would merely do the human equivalent of lying down on the floor and whimpering when, once again, they found themselves placed back in the room of shocks with respect to tests, papers, and class participation.

One could argue that those students do not belong in school, and there is something to be said for this kind of a perspective. At the same time, those students have been, and are being, marked with an indelible ink (grades), and many of the things that they can, and can't do, later in life will be affected by the presence of those marks.

Trying to determine what happened to the foregoing students and what helped bring them to such a condition is a complex issue. However, whatever the causes might be – and, I suspect those causes are quite varied in some ways and quite similar in other respects – at some point the foregoing students chose to cede their agency and permit the system to take them in whatever direction the existential currents were flowing, no matter what the nature of the shocks might be that were delivered ... they permitted the system to engage them, but they stopped engaging the system because trying to do so seemed to make no sense or did not lead to results that, to a degree, could be controlled by the students.

Blaming those students for their own plight is a tempting thing to do, and, undoubtedly, they did – and do – have a role to play in why their condition is the way it is. However, I have had over fifty years of experience in many different facets of the educational system, and during that time, I have seen any number of: intellectually abusive teachers, arrogant administrators, bullies – both students and school officials -- and closed-minded 'educators' ... the sorts of individuals who could make the lives of some individuals a living hell of constant shocks that might, eventually, induce someone to lie down amidst such an onslaught and just whimper.

The informational content of education – about which one might have many concerns – is always filtered through the structure of education – which entails an entirely different set of concerns. The structural process of schooling is capable of filtering information in a variety of ways that are both quite independent of the content of education, as well as in ways that impact on that content.

Sometimes what is learned from the phenomenology of schooling has much more to do with the structural character of that process than it does with any academic content which is channeled through that program. For instance, among other possibilities, one is taught to become subservient to a process that is controlled by other people for purposes that are not necessarily one's own, and one is taught -- as The Borg might say -- that 'resistance is futile' ... or largely so.

One can swim upstream against the current. However, there is usually a considerable price to be paid for those sorts of actions, and there is no guarantee that railing against the machine will, eventually, lead to success.

It took me sixteen years to get my doctorate (13 if one subtracts the three years spent obtaining a master's degree). My biggest sin – or, at least, one of them -- was that I was unwilling to bow down to the alleged authority of professors concerning a variety of issues and play the academic 'game' in the way they considered to be appropriate.

They had control over my life, and they emphasized that point in any number of ways. I met students from other graduate departments who had encountered similar problems.

I remember seeing photocopies of an article that had been posted on a number of bulletin boards around the university. The article was about a former graduate student – living in California I believe -- who was being released from prison after 17 years, or so, for killing one of his professors. The number of years was circled in red, and a note – written in red marker ink -- was added in the margin to the right of the circled words that said, in effect: 'Just think of it ... only 17 years.'

The posting didn't give me any ideas about my professors. However, the posting did allude to the considerable amount of abuse that is taking place at all levels of the educational process.

Sometimes, students commit murder as a result of that abuse. Sometimes, they develop learned helplessness in relation to that abuse.

In my own case, a way to escape the abuse bubbled to the surface of my consciousness following a talk on science and spirituality that I gave at a university in Ottawa, Canada. After the talk, I met a physicist who I thought would make a great external examiner for my dissertation, and when he agreed to take on that role, I fired everyone on my thesis

committee, cobbled together a new committee, and since my thesis was already written (it was actually the second dissertation that I had written, but my original thesis committee refused to read either one), I asked for, and was granted, the right to go directly to the oral defense of my dissertation.

The professors that I had kicked off my thesis committee, along with a number of other professors in my department, were all certain that I would not pass the oral exam. When I returned to my department, and they asked me about the results of the examination, the drop of their jaws in disbelief and consternation that resulted from my words of success was almost worth the 17-year wait.

There was, however, a cost. Although I eventually did find a job teaching various courses in psychology and did this for a number of years, nonetheless, being able to have the opportunity to gain tenure somewhere or secure a full-time in teaching had pretty much been taken off the table.

In many ways, the deciding factor in the foregoing set of events – and there might be many reasons for why that factor was present – was fairly straightforward. I was not going to cede my moral and intellectual agency to people (professors and administrators) who might have had the power to do what they did, but they could not justify what they had been doing for so many years.

It was the same factor that surfaced when I was on the bus traveling to the Charlestown Naval Base in order to take a physical for the draft during the Vietnam War. Two or three individuals – and although I don't know who they were, I owe them a lot -- were walking up and down the aisle of that bus as we were making the journey to the military base and indicating to the 30 or 40 other individuals on the bus that -- in effect and using my terminology -- we didn't have to cede our moral and intellectual authority to people who could not justify what they were doing in Vietnam and elsewhere in the world ... and, in fact, we should not cede that authority to those people.

Learned helplessness involves, in part, the issue of foregoing our own sense of agency and permitting the agency of other people to impact our lives in potentially problematic ways. The person who is suffering from learned helplessness has been induced by a variety of events to believe that the exercise of his or her own agency will make no difference to the

outcome of events, and, as a result, all the information that comes to the individual from the environment is filtered through the lenses of learned helplessness.

The classroom, however, is not the only place where the phenomenon of learned helplessness occurs. That phenomenon also shows up in social, economic and political spheres as well.

For example, many people have dropped out of the political process because that form of activity has taught them that, for the most part, no matter what they do, the nature of the political process will not change because it is completely entangled in: Vested interests, struggles for power, corruption, disinformation, corporate money, manipulation, dirty tricks, hypocrisy, misinformation, greed, ambition, lobbyists, and dishonesty. As a result, people retire to their corner of the room of political shocks, lie down, and whimper about the ways in which that process brings pain into their lives.

I don't disagree with those people. Or, at least, I agree with their belief that the political process in America is not salvageable under the current set of arrangements, and that no matter what one does under those conditions, the individuals who are in power are unlikely to give up their control of a system that serves their purposes, and, therefore, it is in their interests to keep the political process in its current dysfunctional condition that renders it vulnerable to all manner of political, economic, financial, legal, and media forms of undue influence.

There is a very real sense in which democracy has become something of a cult in America. For example, like cults, so-called political leaders – some of them quite charismatic – often try to induce people to cede their moral, intellectual, and financial agency to one, or another, cause or ideology.

Like cults, the political parties often troll the waters of the disaffected and seek those who are going through various kinds of transitions in their lives – e.g., unemployment, loss of one's home, divorce, rising costs, and education. These kinds of individuals are particularly vulnerable to becoming highly suggestible with respect to the 'solutions' that are being offered by this or that party or political organization.

Like cults, political parties often attempt to leverage and manipulate the fears, anxieties, uncertainties, and confusion of people. Like cults, the

purpose of that leveraging and manipulation often is not to solve problems but to acquire power.

Like cults, political parties often seek to foster a sense of 'us' versus 'them.' Like cults, political organizations often attempt to forge a sense of 'family-like' community through which the individual develops some form of loyalty or obligation to the 'leaders' in exchange for having a sense of 'belonging' to something bigger than themselves.

Like cults, political leaders often seek to control the channel-ways of information flow and use this control to keep their followers in the dark about any number of issues. Moreover, like cults, when embarrassing 'facts' come to light, those 'facts' are re-framed and given another interpretation that is more favorable to the political leaders.

Like cults, political leaders often use a form of 'love bombing.' In politics this form of love bombing is known as 'patriotism'.

Endorphins flow as a result of the 'power' and 'glory' that are associated with the manner in which a given cause, party, or organization gives expression to the superficial trappings of patriotism. As a result, leaders manipulate that endorphin flow (the same sort of high one gets when one's team wins the Super Bowl or the world series or the Stanley Cup) through their speeches and writings by pressing all the right buttons through the use of words such as: 'freedom,' 'rights,' 'democracy,' 'honor,' 'duty,' 'justice,' and so on ... words that are ill-defined and mean many things to many people but, nonetheless -- due to years of classical and operant conditioning by politicians, the educational system, and the media -- stir the heart and soul whenever they are mentioned.

Like cults, political leaders and parties often play on people's sense of guilt concerning the foregoing issues, and, then, use that guilt to fuel commitment to the cause or ideology that allegedly will assuage or redeem that guilt through accomplishment and victory. Like cults, political leaders and political organizations often create 'true believers' who will stick with the party no matter what nonsense the leader or organization utter and irrespective of whatever form of betrayal might be committed.

Like cults, political leaders, organizations, and parties often use disinformation, misinformation, propaganda and outright lies to shape the understanding of their followers. Like cults, political leaders, organizations, and parties often seek to induce their followers to filter

information concerning national or world events through the ideological lenses that are provided to those followers.

Like cults, political leaders, organizations, and parties often denigrate anyone who does not agree with them. They tend to use techniques that are intended to attack the integrity, credibility, and sense of identity of their opponents ... and, frequently, this is done quite apart from whether, or not, those attacks are empirically justified.

Like cults, the followers of a given political ideology are often very resistant to any data which suggests that the cause to which those individuals are committed might be other that what they have been led to believe by their leaders. Like cults, the followers of those political ideologies all too readily become abusive toward anyone who is perceived to be a threat to their sense of ideologically-induced identity.

Like cults, political leaders and parties often like to create a condition of emotional and/or financial dependence in their followers with respect to the leader or party. This sort of dependency is used to forge feelings of duty, loyalty, and moral obligation in the followers.

Like cults, political leaders and parties often urge their followers to become willing to sacrifice their lives, resources, time, and families for the sake of the leader or party. Like cults, political leaders and parties encourage their followers to be willing to go to war to preserve the sanctity of their cause.

There are a variety of terms that might be used to describe the techniques that frequently are employed by cults and political leaders/parties. Some of the terms that allude to those techniques are: bounded choice, thought-reform, indoctrination, propaganda, undue influence, menticide, and information disease.

Irrespective of what word one uses to refer to those techniques, they all have a common purpose ... although the underling methods that are used to implement those techniques might differ considerably from case to case. That purpose is: To induce people to cede their moral and intellectual authority to a given individual, party, organization, or form of governance.

So-called representational democracy is nothing more, or less, than getting the electorate – or an appropriate percentage thereof – to cede the agency of the various members of that electorate to a given

candidate. The problem with this is that very rarely, if ever, do those candidates represent the people who vote for them ... especially, when the aims and goals of that set of voters is diverse, if not contradictory, in nature.

No form of representational government is capable of representing the soul of another human being. Nevertheless, the idea of representational government is often predicated on such a myth, and, as a result, when a given representative fails to represent someone, people feel betrayed, and, as a result, become cynical toward, or disgruntled with, the process -- and the foregoing situation will invariably occur since such a representative will necessarily filter information through the lenses of his or her understanding of things and not, necessarily, through the understandings of her or his constituents.

The foregoing problem might, or might not be, an indication of personal failing on the part of any given representative. However, the foregoing issue definitely indicates that there is a structural flaw at the heart of the process of representational democracy.

In her book, *Cults in Our Midst: The Continuing Fight Against their Hidden Menace*, Margaret Singer, now deceased, attempts to put forth an argument that purportedly shows how the Marine Corps differs from cults ... and she did this because when she gave talks on the subject of cults, she repeatedly ran into questions and comments concerning the cult-like character of the Marine Corps. Her perspective on the issue indicates that she might not have understood as much about the nature of cults as some people supposed was the case.

The following comments should be prefaced by several observations. First, wanting to defend America against armed invasion is a noble calling. Secondly, I am willing to grant that many, if not most, individuals who join the Marines do so out of honorable intentions. Thirdly, I believe that most individuals who want to become Marines believe they are serving the interests of: justice, liberty, democracy, and human rights. Fourthly, it takes courage to be willing to put one's life and body on the line for one's country and one's fellow Marines.

Notwithstanding the foregoing considerations, none of those observations precludes the possibility that the Marine Corp itself might be a cult. Many, if not, most of the people who join, say, spiritual or religious

cults do so with noble and honorable intentions, and they believe they are serving the interests of truth, goodness, wisdom, and justice.

Moreover, many cult members are quite prepared to sacrifice themselves, their possessions, their money, their time, and their talents on the line for the sake of what they consider to be the truth. Marines are not the only individuals who have a willingness to sacrifice their personal interests for the sake of others.

The very first reason that Singer gives as to why the Marine Corps is not like a cult is because supposedly, unlike cults, Marines understand the nature of the organization they are joining, and, as a result, there are no secret aspects of that organization and Marines know what to expect. The fact of the matter is – and earlier I referred to the perspective of Smedley Butler, a two-time medal of honor winner, in this regard – war is a racket, and, consequently, Marines do not necessarily know whose interests they are serving, and when they do have such an understanding, they often also tend to have some appreciation that those interests are not necessarily synonymous with justice, freedom, or democracy ... that war is a dirty, messy business in which the first casualty tends to be the truth.

Marines are trained to obey orders. Those orders are shaped by presidents, politicians, and military authorities who do not necessarily feel obligated to share their purposes and ideas with “grunts.”

Marines are trained to trust their superiors just as cult members are trained to do so. Marines are trained to follow orders without question, just as cult members are.

As is true in many cults, there are all kinds of secrets in the military. Secret operations, classified materials, information that is on a ‘need to know’ basis, and so on, are all part of military life – both within and outside of the Marine Corps.

Marines can be trained in the art and technology of killing. However, until a person has actually taken the life of another person, then contrary to what Singer claims, that individual cannot possibly know what to expect with respect to how one will emotionally and psychologically respond to that sort of an event, or what ramifications that kind of act will have on the rest of an individual’s life.

Moreover, the fact that Marines kill people is not necessarily a strong selling point with respect to the task of differentiating the Marine Corps from cults. After all, many cults – but not all – seek to use non-violent means to achieve their objectives.

According to Margaret Singer, another difference between the Marine Corps and cults is that physical fitness is encouraged for members of the USMC, but this is not the case with respect to cults. While it might be the case that some cults eschew physical activity, many cults actively engage their members in physical activity as both a way of breaking down their resistance in order to render those individuals more vulnerable to cult indoctrination, as well as to suppress the inclination of individuals to engage in critical reflection (i.e., they are too tired to think).

In addition, Singer claims that one of the differences between the Marine Corps and cults is that the USMC values rational behavior and independent thinking. Up to a point, she is probably right, but cults also encourage members to use their rational capacities for independent thinking as long as that activity serves the interests of the cult.

Beyond a certain point, however, that sort of rational, critical, independent thinking is not encouraged in either the Marine Corps or cults. For instance, killing people and destroying the infrastructure of a country might be very rational things to do within the context of a military operation, but that sort of an operation might not be very rational when it comes to finding the best way of solving the underlying problem in a non-violent fashion, and any Marine who insisted on the peaceful solution to all conflicts would not necessarily be considered either rational or an asset to the USMC, any more than a cult member who always advocated pursuing solutions that were antithetical to the cult's raison d'état would be considered 'rational' and exhibiting good, independent thinking.

Singer believes that another difference between the Marine Corps and cults is that the USMC is not above the law of the land, whereas cults consider themselves to be above that law. This is a very sweeping statement, both with respect to the Marine Corps, as well as in relation to cults.

Many cults don't necessarily consider themselves above the law, but, they do want to have equal protection under the law and sometimes feel that they are not always afforded equal treatment. Furthermore, there is the problem of determining whose interpretation of the law will be

applied in any given instance and whether, or not, that kind of an interpretation is actually capable of being justified.

On the other hand, SOFA – Status of Forces Agreements – are often forced on countries and contain conditions that prevent American military personal – including Marines -- from being held accountable under the laws of the country in which they are stationed. Apparently, Americans believe they have the right to dictate to the rest of the world about what constitutes moral and immoral behavior or what does, and does not, constitute crimes for which one should be held accountable by people who are impartial in their judgments ... which is not what military legal proceedings necessarily involve.

Margaret Singer indicates that another difference between cults and the Marine Corps is that members of the USMC cannot be used in medical and psychological experiments without their informed consent. However, military personnel – including Marines -- have been repeatedly been put in harm's way with respect to all manner of radiological (e.g., depleted uranium), chemical (e.g., Agent Orange), and biological (e.g., forced inoculations of unproven biological agents during several Gulf wars) experiments without their informed consent.

Moreover, with the exception of, perhaps, Jonestown, I am not aware of too many cults who have subjected their members to medical and psychological experiments without their informed consent ... unless, of course, one wishes to count meditation and chanting as instances of psychological experimentation – which raises a variety of interesting questions but does not necessarily meet the abusive standard that government officials set in the Tuskegee syphilis experiment when unsuspecting Black men went untreated for the disease, or the LSD experiments that the CIA performed on unsuspecting Canadians and graduate students.

Singer also believes that an important difference between the Marine Corps and cults is that, unlike cults, the USMC encourages its members to read, gain knowledge, take courses, or actively engage the sort of information that is available through Stars and Stripes or Armed Services Radio. However, once a Marine has gone through boot camp, everything that is read, heard, or learned is very likely engaged through the filters of the perspective of the USMC, and if it isn't, then, for one reason or

another, the USMC and such an individual are likely to part company in the not too distant future.

None of the foregoing considerations is intended either to denigrate Marines or serve as a form of advocacy for this or that cult. Nevertheless, I believe the foregoing comparisons indicate that there might be a lot more similarities between cults and the USMC than Singer was willing to acknowledge.

The term “deprogramming” is sometimes used to refer to the attempt of one, or more persons, to induce an individual who is part of a cult to begin to become aware of the techniques of undue influence that are being used, and have been used, by the cult to: recruit an individual, initiate that person into the cult, and, then, maintain such an individual within the sphere of influence of that cult. In fact, one could describe the present book as an exercise in ‘deprogramming’ with respect to all those individuals who are entangled – willingly or otherwise -- in the cult which democracy has, to a great extent, become.

Chapter 14: Returning to the Teachings

Approximately 16 years ago I was writing something for a group to which I belonged. As was often the case when I was writing, I had the television on in the background so that I could feel connected to the world even while being isolated from it ... a psychological trick designed to help me cope with the loneliness of being a long-distance writer.

The television was tuned to a Canadian station. The program was a morning program similar, in format, to the *Today Show*.

The person being interviewed had just written a book and was making the rounds to promote his work. The title of his book was: *Returning to the Teachings*.

The author's name was Rupert Ross. He was an Assistant Crown Attorney for Canada.

During the interview, he provided some background that attempted to place his book in context. In 1992 he had been assigned to fly to a small Aboriginal village in northwestern Ontario.

Among the cases awaiting him were 20 Aboriginal youth who were charged with having consumed intoxicants in contravention of by-laws. The children had been discovered at three o'clock in the morning, waist-high in lake water, screaming, and sniffing gas fumes.

The children constituted 1/20th of the entire Aboriginal population for the community that was situated by the lake. Whatever decisions were made concerning those youngsters might substantially impact the future of that community.

Substance abuse has been a significant problem within many Aboriginal communities – not just among the youth, but among adults as well. The homes of many Aboriginal families have been devastated by substance abuse and its ramifications ... violence, rape, sexual molestation, and murder.

Ross indicated that from the perspective of many western systems of law, the commission of a crime is an indication that the person who has committed a crime is, in a sense, 'bad' and, as a result, punishment of some kind is an appropriate response. However, from the perspective of many Aboriginal systems of understanding, a person's misbehavior

indicates that some sort of appropriate moral teaching is needed or some form of pathology is present and requires a process of healing.

At the time, the Canadian legal system‘s solution for dealing with the behavior of the youngsters would be to label it criminal and, then either send the individuals to jail, or fine them, or require them to perform so many hours of community service. The Aboriginal suggestions concerning the matter were much more comprehensive and inclusive.

First, rather than structure the legal proceedings in an adversarial manner with a judge, crown attorney, police officers, and probation officers on one side of a table, while the accused sat on the other side of a table, three elders of the Aboriginal community made an alternative suggestion. Why not include anyone who might have something to contribute to the proceedings and form a circle with no particular order to the seating arrangements.

Presumably, the purpose of those proceedings should be about collectively finding a way to make life better for both present and future generations. People in the circle should be committed, as equals, to find a lasting solution to the problem confronting them and not merely be preoccupied with issues of judgment and punishment that might deal with symptoms but not necessarily their underlying cause (s).

All misbehavior occurs in a context. If one does not understand the dynamics of that context, then one will not understand the character of the misbehavior.

With and without the presence of substance abuse, all too many people in Aboriginal communities have done terrible things to one another in the form of dysfunctional coping strategies intended to deal with a lifetime filled with abuses of one kind or another. Those actions were a destructive and ineffective form of communication.

The Aboriginal elders indicated that, perhaps, parents needed to be taught better ways of communicating with one another about why they were together and how the pain and suffering they were feeling in relation to a life of difficulties was feeding their abuse of one another. Teaching circles and healing circles were ways to begin that kind of a process.

Aboriginal children were often traumatized and confused by the violence that they witnessed in their homes. If the elders of the

community did not intervene and help the children to understand what was taking place, the children and youth might well grow up to become just like their parents, and, once again, teaching and healing circles were ways to engage those issues.

The problem was not just the behavior of an individual. The problem was a manifestation of something much broader involving parental relationships, family relationships, and community relationships.

For years, the Western approach to justice had imposed itself on the Aboriginal peoples and insisted on doing things in a way that tried to make sense of things – to whatever extent this was possible from such a perspective -- within the context of a certain kind of arbitrary worldview. In doing so, the Western approach to justice had been violating the natural law systems of native peoples.

For Aboriginals, misbehavior is not a matter of crime and punishment. Instead, misbehavior is a sign of disharmony and calls for appropriate steps to be taken that are capable of restoring harmony within an individual, marriage, family, and/or community.

Punishment would not necessarily make things better. Teaching and healing circles often were able to achieve what punishment could not accomplish.

From the perspective of Aboriginal peoples, jails or prisons remove those who have committed some form of misbehavior from the very people who are not only the victims of such behavior, but who, as well, are the key to healing, forgiveness, and reconciliation. Putting people in prison or jail removes the one who has committed some form of misbehavior from having the opportunity to be held accountable by, learn from, and be healed through, the process of interacting with the person or people she or he has affected in some problematic way.

Rupert Ross indicated that one of the things that he discovered was that under the Aboriginal way of dealing with disharmony in the community, people who had committed some form of misbehavior – for example, sexually molesting a minor – would often voluntarily come forth and seek assistance from the elders. However, in all his years of working as a Crown Attorney, Ross had never known of anyone who voluntarily came in and indicated that he or she wanted to be prosecuted for sexually molesting someone.

Rather than being hierarchically organized – e.g., government, judge, Crown Attorney, misbehaving person – such that the way of power is disseminated along certain authorized pathways for purposes of implementing judgment and punishment, Aboriginal approaches are often centered on the dynamics of consensus involving the whole community. The dynamics of consensus-making entails struggling with issues involving the restoration of whatever community harmonies have been disturbed.

The Aboriginal approach to justice requires people in a community to establish a balance between two things. On the one hand, misbehavior must be publically acknowledged and condemned for what it is – a disruptor of harmony – while, on the other hand the person who has misbehaved must continue to be accepted as a person of value who is worthy of reclamation, teaching, and healing.

Society is an ecological system. When that system exhibits disharmonious disequilibrium, the dynamics need to be restored to an appropriate form of harmonious functioning ... and dynamics are always about more than judging and punishing one individual.

In a community – as is true in all ecological systems -- everything we do affects other people. This network of interactions can be conducted in a constructive, synergistic, and symbiotic manner, or it can be carried out in problematic, parasitic, and pathological ways.

A person who has misbehaved has ceded away his personal agency to forces of disharmony (whether internal and/or external in nature). If that individual is to undergo a process of ecological restoration through teaching and/or healing, then that individual must be helped to reclaim his or her moral and intellectual capacity for constructive agency.

The ecology of western society is in shambles. Despite a surface that seems to reflect order and prosperity, disharmonies manifest themselves everywhere through the cracks that are present in the glossy surface in the form of: Poverty, prisons, substance abuse, rape, murder, exploitation, infidelity, suicide, manipulation, corruption, wars, greed, oppression, cruelty, indifference, abuse, violence, depression, dishonesty, injustice, delusions, and dysfunctional systems of governance.

Although individuals are the ones through whom those disharmonies often are manifested, the underlying causes are systemic. More

specifically, the form of governance within which we operate has induced us to cede away our moral and intellectual agency to an array of pathological forces that control the current dynamics of our communities.

To have a realistic chance of healing, we must all begin to reclaim what we have been induced to cede over to the way of power – that is, our basic sovereignty ... the right to have a fair opportunity to push back the horizons of ignorance concerning the nature of existence, along with our relationship to ourselves and the rest of Being. A properly functioning human ecology is rooted in basic sovereignty and not in the way of power ... in fact, the exercise of power always gives expression to disharmony in one way or another.

The way of power is about arbitrary forms of: hierarchy, authority, control, logic, and oppression. The way of sovereignty is about what can be demonstrated beyond a reasonable doubt through: decentralization, consensus, reciprocity, and the realization of the constructive dimensions of human capacity.

The way of power leads to, and gives expression to, ideological psychopathy, or disharmony, in one form or another. The way of sovereignty leads to, and has the potential to give expression to: healing, essential learning, reconciliation, and restoration of harmony.

The existence of Ideological psychopaths is nature's way of telling us that our system is in serious disequilibrium. The ideological psychopath is -- in his or her own way -- also a victim of the pathology that besets our social/political/economic ecology even as that individual also bears responsibility for having ceded her or his agency to various pathological forces.

225 years ago, the Framers/Founders made some bad choices. Their decisions put America on a path that would lead to a way of power rather than to a way of sovereignty.

Giving the Framers/Founders the benefit of a doubt, they probably thought they were realizing the latter (that is, a way of sovereignty), when, unfortunately, they actually were busily engaged in establishing the former (that is, a way of power). In many respects, things could not have turned out other than they did – at least, in general terms – because the whole idea of the Philadelphia Constitution was about inducing people to

cede their agency to a central, hierarchical, powerful source of governance.

The Philadelphia Constitution was described as an experiment in self-governance, and, indeed, there were a few – very few – indications that this idea had formed some part of the intention of the participants in the Philadelphia Convention. For example, the Preamble to the Constitution suggested as much, and, to a certain extent, so did Article IV, Section 4, that guaranteed a republican form of governance to every state such that qualities of: disinterestedness, fairness, honesty, integrity, compassion, nobility, and generosity of spirit were supposed to guide the decisions of governance that were to help: form a more perfect union; establish justice; ensure domestic tranquility, provide for the common defense; promote the general welfare, and secure liberties in such a way that people would be able to realize the promise of the Declaration of Independence – namely, the inalienable rights of: Life, Liberty, and the pursuit of Happiness.

In addition, the first ten amendments – which were ratified several years, or so, after the ratification of the Philadelphia Constitution – also suggested the formation of a framework through which people might establish some form of self-government. However, less than twenty years later, the meanings of: the Preamble, the Constitution, and the amendments were held hostage to the hermeneutical activities of the representatives of the way of power – in the form of: the Executive, Congress, the Judiciary, and the state branches of governance.

For more than 200 years, there has been a battle taking place for the soul of America. On one side of the tug-of-war is the way of power, while on the other side of the line of demarcation that determines the winner or loser of the struggle is the way of sovereignty.

The unfinished revolution concerns the struggle to fully realize the way of sovereignty. The foregoing revolution was started by individuals prior to the convening of the Philadelphia Convention or prior the writing of the Articles of Confederation, but that revolution, unfortunately, was usurped by a way of power or governance that began to be instituted through: The Continental Congress, the Philadelphia Constitution, the ratification process, and the ensuing history of federalist government that gradually induced people to cede more and more of their agency to serve

the way of power rather than retaining such agency in order to journey along the path of sovereignty.

Just as the law of ignorance indicates that the only human right that can be demonstrated beyond a reasonable doubt is the idea of basic sovereignty – that is, the right to have a fair opportunity to push back the horizons of ignorance concerning the nature of reality and our place within that reality – so too, there is just one set of teachings to which virtually all spiritual, humanistic, and atheistic traditions subscribe and consider to be valid beyond a reasonable doubt. This set of teachings concerns what might be referred to as the natural law of character.

There is no one who can bring forth a non-arbitrary argument – that is, one which can be proven beyond a reasonable doubt – which demonstrates that: honesty, patience, compassion, empathy, fairness, balance, gratitude, reciprocity, nobility, integrity, sincerity, forgiveness, courage, tolerance, humility, friendship, and charitableness are not desirable qualities to realize during the events of everyday life. Similarly, there is no one who can bring forth a non-arbitrary argument – that is, one which can be proven beyond a reasonable doubt – which demonstrates that: dishonesty, impatience, callousness, indifference, unfairness, imbalance, thanklessness, selfishness, ignobility, untrustworthiness, insincerity, holding grudges, cowardice, intolerance, arrogance, hostility, and lack of charitableness are desirable qualities to apply to the events of everyday life.

Furthermore, if one were to engage people in conversation about the issue of character, I believe there would be considerable agreement concerning the meaning of most, if not all, of the foregoing terms. For example, we all have a sense – and I believe this remains true across many cultures -- of what friendship, honesty, sincerity, gratitude, humility, courage, tolerance, and so on entail, just as we all have a sense of what selfishness, greed, hostility, cruelty, and so on look like.

Some of the social conventions that are used to express the foregoing dimensions of being human might vary from culture to culture, but, nonetheless, the underlying phenomenology of character issues remains pretty much the same from location to location. The positive and negative dimensions of character are all principles that might be variable in the way they are manifested but tend to be constant with respect to the way

in which people are able to recognize the presence of this or that facet of character.

Character in the foregoing two-dimensional mode of properties (that is, in a positive and negative, or constructive and destructive sense) is antithetical to the way of power. Or, said in another way, the way of power reverses the polarity of the two dimensions of character, and that which most people, cultures, and traditions acknowledge to be desirable qualities are considered to be undesirable from the perspective of the way of power, while that which most people, cultures, and traditions consider to be undesirable are treated as being desirable by the way of power.

However, character – in the sense in which the vast majority of people, cultures, and traditions consider to be desirable – is integral to the way of sovereignty. In fact, to whatever extent an individual is dominated by, or has ceded his or her agency to what most people, cultures, and traditions consider the undesirable dimension of the character issue to be, then, sovereignty is not likely to be realized.

When the way of power is in ascension within a given individual, family, community, or society, then under those circumstances, the dynamics of human ecology will tend to place the positive or constructive dimension of character under siege, while creating opportunities for the negative or destructive dimension of character to be manifested. When, on the other hand, the way of sovereignty is in ascension within a given individual, family, community, or society, then under those conditions, the dynamics of human ecology will tend to place the negative or destructive dimensions of character under siege, while creating opportunities for the positive or constructive dimension of character will tend to be manifested.

For the last several hundred years, the growing ascendency of the way of power within the American form of governance has placed the constructive sense of character under increasing stress. The way of sovereignty can only be reclaimed by refusing to cede our agency to the way of power and, instead, use our agency to give expression to the constructive or positive dimension of character that, in turn, will lead toward the realization of the way of sovereignty.

To achieve the foregoing sort of transformation in orientation we must return to the teachings of natural law – both with respect to

sovereignty and character -- which are the principles underlying all great humanist traditions ... whether secular or spiritual in nature. We must gather together in teaching and healing circles to work out principles of consensus, reciprocity, decentralization, and co-operation that will serve the way of sovereignty and not the way of power and that will provide constructive character qualities with an opportunity to develop rather than nurture problematic qualities of character.

If societies and communities ignore the natural laws of character, no manner of governance will function to the advantage of those societies and communities. This is especially true in relation to the issue of self-governance.

If societies and communities ignore the natural law of ignorance -- from which the idea of basic sovereignty is derived -- then all forms of governance will be inherently oppressive and ruled by the way of power. Moreover, the idea of having a form of self-governance that is rooted in something other than basic sovereignty is oxymoronic.

Despite media, educational, and governmental hype to the contrary, the American system of government does not, for the most part, give expression to a form of self-governance. Instead, the way of power has devised a way to induce people to believe they are participating in self-governance through the process of elections that is nothing more than an exercise in changing, or confirming, the face of power that will rule over society.

There is, however, one dimension of the American way of doing things that has nothing to do with the electoral process but has everything to do with the issue of self-governance. The dimension being alluded to in the foregoing sentence is the jury system.

Juries have as much, if not more, to do with regulating order and justice within society than, perhaps, any other facet of governance. All across America, five days a week, ordinary people, who are not elected officials and are paid very little money, gather together, listen to evidence/testimony/arguments, evaluate that material, discuss it, and struggle to reach a consensus about that material in relation to a given case – whether criminal or civil and on both a state and federal level.

Those jurors are independent of the government and are free to arrive at whatever conclusions they feel are justified. The only principles that are intended to guide their deliberations are those of impartiality and common sense.

Although, on occasion there might be problems here and there, nevertheless, on the whole, the unelected, poorly paid, ordinary jury participants using nothing more than common sense do a far better job in the exercise of self-governance than do all the various branches of state and federal government. Moreover, their decisions affect the quality of our daily lives in countless ways – mostly in an unseen and unappreciated -- or underappreciated -- manner.

Given the foregoing, let's undertake a thought experiment of sorts. What if we were to wed three ideas together – namely, the trial jury, the grand jury, and the Aboriginal healing/teaching circles – and utilize this combination as a real system of self-governance.

Forget about elections with all their attendant corruption, inequities, abuses, negativity, and money. Elections have become a tool of the way of power, and as long as there are elections, people will never be permitted to exercise self-governance.

Instead, perhaps, there should be a series of – let's call them – 'grand jury oversight committees' whose task would be do deal with the disharmonies that are manifested in a given social ecology. The purpose of such committees would not be to determine, say, the criminality of actions or to make public policy but, rather, to use their collective experience and common sense to help people re-establish harmony within a given community.

The committees would be a resource in the process of self-governance ... not a director of self-governance. That is, the proposed committees would not be able to tell people what to do but would only be able to assist them to make the journey from misbehavior to the restoration of lost character and sovereignty.

The issue of misbehavior covers a lot of possibilities – from: family life, to: social, economic, and financial matters. In fact, there really are no aspects of community life that might not be considered in relation to the issue of misbehavior and/or the emergence of disharmony.

As is the case with grand juries, trial juries, and healing circles, members of the proposed committees would be selected from the community at large. In part this is a 'random' process – for example, the means through which names are arbitrarily selected from a pool of possibilities. However, once the general pool of candidates had been identified, one could use a nominal culling process of sorts – as occurs with trial juries -- to eliminate either hardship cases or potential problem selectees – in order to arrive at the final number of committee members.

Unlike grand juries that are conducted by a prosecuting attorney or unlike trial juries that – until their turn arrives -- are largely observers in a trial that is conducted by opposing attorneys and a judge, the proposed 'grand jury oversight committee' would be more like the healing/teaching circles of Aboriginal peoples. Participants in the committee would determine what cases, ideas, evidence, and testimony would be considered ... as well as in what order or at what length and with what ramifications.

The proposed committee would be free to bring in consultants to help the members of that committee gain the most balanced and objective understanding of various testimony and evidence. However, the final authority would rest with the committee.

The length of service could last anywhere from one to two years. Moreover, although the participants might have to be paid more than jurors are currently paid – a lot would depend on the nature of the social ecology in which such committees are embedded -- participation would be a matter of civic duty just as is the case with respect to grand juries, trial juries, and the healing/teaching circles.

The size of the committees would be open to community debate. The Goldilocks principle might be of assistance in relation to those considerations – neither too big, nor too small, but something that was: 'just right.'

Grand juries often consist of 23-30 people. This might be an appropriate size through which to permit a diversity of perspectives to be exercised.

Those committees would be appropriate for neighborhoods, communities, towns, cities, counties, states and nationally. The number

and size of those committees would depend on the dynamics of the social ecology at any given location.

I believe that some sort of security system – whether policing in nature or some other kind of arrangement – would be necessary. However, whatever security arrangement was chosen, that system would be working in conjunction with the proposed grand jury oversight committees, rather than have some sort of power relationship over those committees ... in other words, security arrangements or policing should be servants for the way of sovereignty and not for the way of power.

In many ways, lower courts are concerned with issues of epistemology. That is, they are preoccupied with issues of fairness concerning the presentation of evidence.

As such, I think the epistemological aspect of the court system is, in some form, an important process to retain in relation to the proposed grand jury oversight committees. On the other hand, epistemology does not have to be handled through an adversarial system that tends to reduce down to a zero sum game in which only one side can be victorious and with respect to which winning often becomes more important than truth, justice, or actually resolving a problem.

As noted earlier, the grand jury oversight committees that I have in mind would not be responsible for generating public policy or establishing laws – indeed, no one would. Those committees would be focused entirely on issues of: disharmony, character, sovereignty, consensus, reconciliation, fair opportunity, and a re-establishing of harmony ... issues with which public policy and laws are supposed to deal but often do so in self-defeating, dogmatic, linear, inflexible, and polarizing ways.

Public policy is the secular version of religious dogma. No one should be required to submit to someone else's ideology – whether secular or religious in nature.

Moreover, the previous chapters of this book should have made it quite clear that there are a number of facets of governance as currently practiced that I consider inherently problematic. For instance, although I believe that under the right circumstances (ones that serve sovereignty and are done in accordance with the qualities of positive character) commerce can be a good thing, capitalism is a theory of commerce that is

no more capable of being demonstrated as being true beyond a reasonable doubt than communism or socialism can be so demonstrated.

Similarly, corporations – unless they are controlled by the qualities of constructive character, help to establish and enhance basic sovereignty, and are closely regulated by various grand jury oversight committees – tend to be antithetical to the best interests of society. More often than not, in the absence of conditions of restraint and control, corporations exhibit the symptomology of ideological psychopathy, and, therefore, are likely to create disharmony rather than restore harmony.

In addition, banks should not be privately owned. Everything that private banks allegedly do for society can be done more constructively and cheaply by local communities themselves.

Most forms of currency are about the perceived value of arbitrary characteristics. Real currency, however, is about the intrinsic value of characteristics that are often not appropriately perceived.

Character, labor, and sovereignty have intrinsic values that tend to be de-valued in many, if not most, modern, commercial systems. On the other hand gold, silver and paper money, have arbitrary characteristics that are perceived to be of intrinsic worth and, as a result, are confused and conflated with matters of intrinsic value, resulting in cycles of inflation and deflation.

Although markets are hyped as the means through which financial capital is set free to move the invisible hand of the market in ways that serve everyone's interests, this simply cannot be demonstrated to be true, beyond a reasonable doubt. By and large, financial markets are merely legalized, and in many cases unregulated (e.g., derivatives), forms of gambling that often have devastating consequences for maintaining harmony within neighborhoods, communities, towns, cities, states, and nations.

Similarly, stock markets are, for the most part, just legalized forms of gambling that have destructive consequences for labor, businesses, the environment, justice, and society. In fact, almost all markets are inherently unfair because one, or more, of the participants in those markets are participating under some form of duress (for instance, consider labor) or playing on an unfair playing field in a game that often is refereed by people with vested interests.

Supposedly, stock markets are, in part, a method for valuing what businesses have to offer. However, more often than not, those valuations are shaped by individuals who are engaged in the manipulation of perceptions concerning that kind of a process of valuation.

National defense should be just that ... national defense. The United States has no business setting up more than 700 military bases world-wide (at a cost of hundreds of billions of dollars a year) or engaging in military adventures whenever and wherever vested financial and economic interests need to have their bottom line protected ... and Smedley Butler was emphatically correct when, based on his own experience, he proclaimed that 'war is a racket.'

More than fifty years ago, Dwight Eisenhower warned us against the military-industrial complex and the problematic impact it had on democracy. All too many people and businesses in the United States earn their living by making the death of others a horrible reality.

If one got rid of elections, corporations, private banks, stock markets (and other markets that are vehicles for gambling, manipulation, and exploitation), the military-industrial complex, most facets of governance (with the exception of the proposed grand jury oversight committees and associated minimally necessary security apparatus), as well as capitalism, socialism, and communism (but not commerce), one would eliminate a great many of the sources of disharmony in society. Of course, people being people, one would not create a utopia, but maybe – just maybe – the problems of disharmony that remain after all of the foregoing considerations have been eliminated might be become far more manageable.

The ecological system known as America is dying. When it runs down to a final state of stagnant, putrid equilibrium, most of the people who presently populate it will also die ... as will character and sovereignty.

I am not a utopian idealist. The struggle to bring the positive sense of character into ascendency, as well as to establish, protect, and enhance basic sovereignty is a very difficult one.

On some days, I am not hopeful with respect to the prospects for America's future with respect to either the issue of sovereignty or character. I fear for America and its people, as I fear for the people of all countries.

On the one hand, the aforementioned fear is rooted in the way in which negative character seems to be ascendency in all too many places – federal, state, and local governments, commerce, education, legal systems, and religious institutions. On the other hand, the foregoing fear is rooted in manner in which the way of power, with its tendency toward ideological psychopathy, is making the planet uninhabitable for every manner of ecology.

The present system of governance will not be able to avert the human tragedy that is not only heading our way, but is, in all too many ways, already here. A substantial change must be made in the manner through which we go about governance for us to have any chance to save either present or future generations ... we must move in the direction of a true form of self-governance that is rooted in the natural laws of ignorance and character.

There will be many people who will dismiss what is being said in this book. Their rejection of this material will not be because they can bring forth arguments and evidence that are capable of disproving, beyond a reasonable doubt, what has been said here but because their vested interests are being threatened by what has been discussed across the pages of this work.

The 1% versus 99% issue is not a matter of class warfare or the financial version of penis-envy. Rather, the real issue in the foregoing divide is that the 1% (and, maybe, one should refer here to the 10% rather than the 1%) is responsible for 99% of the problems that plague society, and, yet they want the other 90-99% of the people to subsidize the way of power that has been instituted by the 1% (10%) and that has led to the current condition of extreme disharmony.

The part that the 90-99% has played in the present crisis is, for a variety of reasons, to have become vulnerable -- through the presence of an array of forces of undue influence – to ceding our moral and intellectual agency to the way of power that, in turn, has leveraged that process of ceding to fashion a cult of democracy. The revolution that was started more than 230 years remains unfinished and will continue on in that condition unless we – individually and collectively -- reclaim our basic sovereignty ... the most fundamental of rights for all human beings.

However, if the process of reclamation is not filtered through the qualities of positive character, then we will run the risk of becoming

ideological psychopaths. By all means, reclaim the basic sovereignty that has been ceded away ... but in doing so choose wisely and by means of the potential for constructive character – rather than the destructive capacities – which are within each of us.

Everyone wants change, but few people are willing to change themselves or the way in which they go about life with respect to the activities that are necessary to truly enhance the health of the social/political/economic/moral ecology in which we live. Change is going to come whether we like it or not ... the only choice we have is whether we will reclaim the agency that we have ceded to the way of power and establish a viable form of self-governance through the way of sovereignty ... or continue to permit ourselves to slide ever closer to the abyss that is being fashioned by the ideological psychopaths of the world.

This book has focused on the United States ... its history, form of governance, problems, and the challenges that populate the existential horizons of the near and distant future. However, the underlying principles that have been delineated here are applicable to every nation and every person on the face of the Earth, and in this sense, the United States is but a case study concerning the manner in which the way of power and the way of sovereignty are involved in a battle for the souls of both nations and individuals everywhere.

More, perhaps, might have been said about how the proposed grand jury oversight committees work or what they would do. However, I feel those issues are best left to the people who are on those committees ... after all it is their future – and the future of their families, friends, neighbors, and posterity -- that is at stake.

Appendix: Freedom/Liberty

[Originally, this appendix was a chapter situated between: Natural Law and Taking Rights Seriously. For a variety of reasons, however, I decided to remove this material from its initial position and re-label it as an appendix.

On the one hand, the following material concerning 'Freedom/Liberty' does complement and extend the arguments of the two, aforementioned chapters, as well as develops some themes that are relevant to the rest of the book. On the other hand, the discussion in this appendix also tends to be somewhat more abstract than most of the other chapters, and, therefore, might be better left for readers who are so inclined.

Most of this appendix was written in response to Isaiah Berlin's essay: 'Two Concepts of Liberty.' Those who are familiar with that essay will have a context for the sort of philosophical journey that is undertaken during the course of this appendix.]

Some have argued that to coerce a person is to deprive the latter individual of freedom. Whether, or not, this sort of coercion or the correlative freedom are 'bad' or 'good' things tends to be a more complex issue.

To some extent, the foregoing perspective seems to assume that the natural, default condition of a human being is freedom. If so, then that sort of an assumption is, I feel, something that is very difficult to demonstrate, beyond a reasonable doubt, in any sort of a: Non-arbitrary, non-circular, non-tautological and evidentially-based manner

Nonetheless, coercion might deprive an individual of his or her sovereignty – that is, deprive an individual from having a fair opportunity to explore the possible palimpsest character of reality. For instance, depending on circumstances, coercion could have the potential to remove the condition of fairness from one's need to push back the horizons of ignorance, and stating things in this way, tends to leave room for the possibility that some degree of coercion might be justified in those circumstances in which a person's exercise of sovereignty interfered with the reciprocal need of other individuals to have a fair opportunity to push

back the horizons of ignorance and, thereby, exercise their own sense of sovereignty.

One can derive the foregoing sense of sovereignty from the law of ignorance that governs the starting point of our existential condition. However, one has considerably more difficulty trying to derive the notion of freedom from the default position of ignorance – both individual and collective.

The idea of freedom has been analytically broken down by some individuals to suggest that there are both "positive" and "negative" senses of freedom. Positive freedom concerns those conditions that allegedly give expression to the nature or source of authority for determining what can and can't be done in any given set of circumstances, whereas negative freedom supposedly refers to the character or shape of the 'space' within which people should be permitted to pursue their interests without interference from others.

While the foregoing senses of "freedom" might lead to overlapping considerations, some have argued that 'positive' and 'negative' senses of freedom point toward very different sorts of questions and issues. That kind of an argument seems problematic.

More specifically, if one identifies the source or authority for establishing who gets to do what when (i.e., the positive sense of freedom), then one also will probably have considerable insight into the character of the 'space' (i.e., the negative sense of freedom) that is likely to be generated through, or permitted by, the exercise of the positive sense of freedom. Similarly, if one understands the shape of the character of the space within which people are considered to be free to pursue their interests without interference (i.e., the negative sense of freedom), then one also is probably going to have insight into the character of the source or authority (i.e., the positive sense of freedom) that is structuring the space of the negative sense of freedom in one way rather than another.

In addition, irrespective of whether one is considering the positive or negative sense of freedom, one will be engaging issues that entail questions concerning what justifies either sense of freedom in any given set of circumstances. In other words, if someone identifies a given 'what' (e.g., principle) or 'who' (e.g., ruler) as the source of authority for setting the conditions of negative freedoms, then one is justified in asking: 'How so?' … that is, what justifies identifying a given 'what' or 'who' as the

source or authority for shaping the space of negative freedom in one way rather than another? Similarly, if someone outlines the shape of the space within which negative freedom is to be manifested, then one is justified in asking the same: 'How so?' … that is, what justifies structuring the shape of political/legal/ethical space (i.e., the negative sense of freedom) in one way rather than another?

The epistemological considerations that justifiably establish someone or something as being the source or authority for regulating the affairs of others are also likely to be the epistemological considerations that justifiably establish how and why the affairs of people are to be regulated in one fashion rather than another. To claim that someone could settle issues concerning the source or authority for the exercise of positive freedom without simultaneously settling what that sort of a source or authority can permit in the way of negative freedom seems to be a rather curious claim.

If one understands how and why someone or something constitutes the source or authority for regulating the affairs of others (i.e., the positive sense of freedom), then one also will have at least a general understanding concerning the shape of the political space within which people should be left alone to pursue their respective interests (i.e., the negative sense of freedom). Otherwise, everything will be completely arbitrary and, as a result, making the distinction between positive and negative freedom seems rather pointless.

If there is no justifiable reason or set of reasons that can be established beyond a reasonable doubt as to why one should identify a particular 'what' or 'who as the source or authority for regulating the affairs of others, then what purpose is served by talking about those matters? If there is no justifiable reason or set of reasons that can be established beyond a reasonable doubt as to why the shape of negative space should be one thing rather than another – that is, why the source or authority for positive freedom should regulate such space in one way rather than another – then one has difficulty understanding what the point is of that discussion.

To claim that: the nature of positive and negative freedoms are separate issues, one has to be able to put forth a justifiable framework that demonstrates, in a non-arbitrary manner, how the two notions of freedom aren't inherently connected. One has to show how the issue of

identifying the 'what' or 'who' of positive freedom is independent of the shape of the space within which people will be permitted to pursue their respective interests according to the character of negative freedom.

Suppose, for example, that the principle for identifying the source or authority for regulating society is hereditary succession. One must be able to justify that principle.

Justifying the foregoing principle will necessarily involve considerations about why people should accept such a source or authority for regulating their lives. Advancing that sort of a principle will also involve considerations about whether, or not, there are any conditions or qualifiers concerning those regulations, as well as why those conditions or qualifiers are, or aren't, necessary.

If a ruler can do whatever she or he likes, then the entire shape of the space that gives expression to negative freedoms will be settled through the likes and dislikes of the source or authority for regulating the lives of others. If a ruler cannot do whatever he or she likes with respect to the lives of others, then such a consideration is likely to be an intrinsic part of the process through which one chooses the source or authority for regulating the lives of others.

Positive and negative freedoms are not independent of one another. They have a yin/yang sort of relationship such that the manner through which one engages either sort of freedom in a non-arbitrary way has ramifications for how one engages the complementary notion of freedom.

Freedoms – whether considered in a positive or negative sense -- and rights are not necessarily coextensive terms. Rights give expression to entitlements that are capable of being justified beyond a reasonable doubt, whereas freedoms give expression to the set of choices from which a person might select a possible course of action without such a choice necessarily being capable of being justified -- either in terms of: a preponderance of the evidence (in the case of an isolated individual or an individual whose acts do not adversely affect the sovereignty of another human being), or in terms of being: beyond a reasonable doubt (in those instances where the exercise of sovereignty of one individual interferes with the like sovereignty of another person).

We are free to do as many things as our abilities and circumstances permit. That freedom lies at the very heart of what it means to be able to choose … to whatever extent we possess that kind of a capacity.

However, not all those manifestations of freedom are capable of being justified in the sense that one can be said to have a right to realize such freedoms in the realm of action. Rights are those freedoms that are capable of being justified under the appropriate circumstances … either according to the standard of constituting a preponderance of available evidence (in the case of individuals acting in ways that do not undermine the basic sovereignty of others) or according to the standard of being beyond a reasonable doubt (in the case of individuals acting in ways that do affect the basic sovereignty of others).

Sovereignty – in the sense of being entitled to a fair opportunity to explore the possible palimpsest character of reality -- is a right that can be justified in terms of what follows from our condition of existential ignorance. However, that sovereignty is not without limits since it gives expression to various degrees of freedom that must be capable of being justified in the context of a similar right of sovereignty that belongs to other people with a correlative set of degrees of freedom.

Not all degrees of freedom are necessarily capable of helping someone to realize the fullness of sovereignty or even to partially realize the potential of such sovereignty. For example, one is free to make selections from amongst the degrees of freedom that are available to one that might lead in the direction of alcoholism and/or drug addiction, but those choices and the degrees of freedom to which they correspond will not necessarily advance the moral project of sovereignty in a justifiable way – either with respect to oneself or in relation to others.

Implementing this or that degree of freedom from amongst those that might be available to one will not necessarily enhance sovereignty. Freedoms that are exercised have the capacity to adversely or constructively affect the process of sovereignty.

Consequently, one cannot address the issue of the shape of the space within which people should have the ability to pursues their interests (i.e., the negative sense of freedom) without taking into consideration the nature of sovereignty and what can, and cannot, be justified, depending on circumstances, either through a preponderance of the evidence or through being beyond a reasonable doubt. Stated in a slightly different

manner, that which can be determined -- either through a preponderance of the evidence or through being demonstrated beyond a reasonable doubt -- concerning the nature of sovereignty is the source and authority for determining how the space of negative freedom should be shaped or regulated.

Freedom, considered in its own terms – that is, as the capacity to choose – is not necessarily the goal or purpose of sovereignty. Freedoms – of the right kind – are the means through which the potential of sovereignty is to be explored, and one cannot speak about freedom as being a – or the -- sought for end unless one can justify, in some non-arbitrary sense, that the idea of sovereignty necessarily reduces down to nothing more, or less, than the capacity to exercise choice.

Therefore, considered from the perspective of the law of ignorance, the challenge of sovereignty is not a matter of trying to maximize freedom per se. Rather, the task with which one is confronted concerns one's need to determine the character of the freedoms that are necessary to be able to explore the possible palimpsest character of reality in a constructive fashion – that is, in a way which does not interfere -- in an unjustifiable manner – with the process of exploring the potential of sovereignty ... either with respect to oneself or others.

How we conceive of: 'justice,' 'duty,' 'obligation,' 'right,' 'purpose,' 'equality,' 'governance,' and 'reason' are all a function of the process of moral epistemology that is set in motion through the sovereignty project that arises out of the law of ignorance … the most basic modality of our existential condition – both individually and collectively. Freedom per se – that is, the capacity to choose – doesn't necessarily inform the sovereignty project except as the experience generated through the exercise of that freedom leads to a 'better' (whatever this might mean) understanding of what is entailed by the notion of sovereignty.

The process of leading to a "better understanding" is an exercise in learning how to choose wisely (that is, constructively in relation to realizing the full potential of sovereignty … or as much of this as we are able to realize) rather than merely being able to choose irrespective of the consequences of those choices. Therefore, while freedom, of a sort, might be a necessary condition, nonetheless, freedom, per se, is not a sufficient condition for realizing the potential of sovereignty since not any and all

choices will help that potential to unfold in a viable and constructive fashion.

Sovereignty stands at the cross road between, on the one hand, identifying those freedoms that are conducive to the process of sovereignty -- along with its concomitant project of moral epistemology -- and, on the other hand, identifying those freedoms that have problematic ramifications for realizing the potential of sovereignty. This is not a matter of differentiating between positive and negative freedoms but, rather, it is a matter of being able to justify – on both an individual and collective level – the sorts of freedoms that will assist the process of unfolding the potential of sovereignty in relation to the task of determining the possible palimpsest character of reality.

If one is incapable, for whatever reason, of doing justice – that is, of exhibiting fairness – with respect to engaging one's essential rootedness in the phenomenology of sovereignty, then one is unlikely to be capable of doing justice to anything else in the universe … or beyond. Justice begins with the issue of sovereignty, and our understanding of justice is shaped according to the manner in which we proceed from our existential default mode of ignorance in conjunction with the project of moral epistemology that is inherent in the challenge that is posed by sovereignty.

The basic freedom is a "freedom to", not a "freedom from". The basic freedom – which is rooted in the sovereignty that is justified through the law of ignorance -- involves the right to push back the horizons of ignorance as long as the act of 'pushing' does not adversely affect the like sovereignty of others.

Reciprocity is a duty of care that is entailed by the basic existential condition of sovereignty. Reciprocity is what permits a person to continue– within limits -- the project of moral epistemology that is inherent in the process of sovereignty.

Reciprocity is rooted in an understanding that develops as an individual probes the character of experience and acquires a sense of that which is, and is not, capable of being justified with respect to giving expression to the process of sovereignty. Therefore, reciprocity also primarily involves a "freedom to", not a "freedom from," since reciprocity marks the boundaries of the former in a justifiable manner … it is affirmative rather than restrictive.

Interference arises as an issue only when previously justified boundaries concerning sovereignty are transgressed from within (i.e., the individual) or from without (i.e., the collective). Until that kind of a breach point is reached, everything is a matter of the 'freedom to' act in accordance with the basic sovereignty that gives expression to one's existential condition.

Reciprocity is a matter of extending to others the sort of non-interfering assistance that one has come to understand might enhance another person's attempt to push back the horizons of ignorance just as similar sorts of support have played a constructive role in one's own struggle with engaging sovereignty. As such, reciprocity constitutes an appreciation of the difficulties that surround the problem of trying to establish a balance between those acts that would adversely affect another person's basic sovereignty and those acts that might constructively enhance another person's process of exercising sovereignty.

We are "free – within limits – to" help others with their process of sovereignty. The aforementioned "limits" concern those acts that would undermine another person's sovereignty in a way that could not be justified beyond a reasonable doubt.

People do have a right to be 'free from' the latter sort of acts. However, this 'freedom from' is measured against, and derived from, a person's basic 'freedom to' -- or right to -- pursue sovereignty.

Given the foregoing considerations, there seems to be an inversion of priorities in the positive/negative freedom distinction. Apparently, the idea of being "free from" tends to imply that the 'what' (e.g., principle, constitution, or legal system) or 'who' (e.g., ruler or leader) which are said to possess positive freedom – that is, the 'what' or 'who' that has been identified, for whatever reasons (arbitrary or otherwise), as being the source and authority for regulating the lives of others -- needs to be restrained from interfering with or restricting, the 'space' within which people should be free from interference (i.e., negative freedom) by the former form of positive freedom.

As such, positive freedom seems to be given a certain priority over negative freedom. More specifically, from the perspective of the positive/negative sense of freedom perspective, only positive freedom entitles a 'what' (e.g., constitutional system) or 'who' (ruler) to be free to

act, whereas those who operate within the space defined by 'negative freedom' should be free from certain kinds of interference from the means through which positive freedom is exercised.

However, from the perspective being given expression in this book, the sovereignty of the individual is more basic than any other kind of freedom. To whatever extent some 'what' (e.g., legal system) or 'who' (ruler) can be justified, that kind of a justification must start from the realization that only individuals are entitled to the basic sovereignty that arises in the context of the law of ignorance that prevails over our individual and collective existential condition.

The belief that 'all power of governance derives from the consent of the people' gives expression to the inherent priority that is entailed by the basic sovereignty to which everyone is entitled. The 'what' or 'who' that is the source of, or authority for, the power (freedom to) regulate the lives of others must be justified beyond a reasonable doubt in the context of the sovereignty of individuals that is capable of being justified beyond any reason in relation to the law of ignorance that prevails at the most basic level of existential conditions – both individually and collectively.

John Stuart Mill, among others, claims that unless individuals are free from interference, then truth will not be established and, therefore, society will not progress. 'Freedom from interference' is the 'space' through which individual genius, creativity, and inventiveness will be enabled.

What the 'truth' of any matter is, Mill doesn't say. Consequently, Mill is merely assuming that there is a necessary link between, on the one hand, 'freedom from interference' and, on the other hand, 'establishing the truth'.

Irrespective of what the truth of things might be and irrespective of whether, or not, anyone will come to understand the nature of that truth, everyone is entitled to the opportunity to try to push back the horizons of ignorance that envelop him or her. That kind of an opportunity is not necessarily the royal road to the land of truth, nor is that sort of an opportunity required so that creativity, genius, and inventiveness will be manifested.

Sovereignty is not a means to an end. Sovereignty is merely a starting point that permits one to have an opportunity – within limits -- to explore

one's existential condition … there are no guarantees concerning where the process of engaging such an opportunity might take one.

Mill maintains that from the perspective of 'liberty', "pagan self-assertion is as worthy as Christian self-denial." Without knowing the truth of things, one really is not in any position to evaluate the worthiness of either 'pagan self-assertion' or 'Christian self-denial.' Moreover, without knowing, or being able to justify, the criteria for determining the worthiness of any given activity, one cannot defensibly equate 'pagan self-assertion' with 'Christian self-denial'.

Ignorance does not make activities equally worthy. Ignorance cloaks the possible worthiness of those activities in the darkness of the unknown.

'Pagan self-assertion' and 'Christian self-denial' certainly are two of the many directions in which one might choose to journey with respect to trying to push back the horizons of ignorance. Whether: either of those two possibilities, or neither of them, or both of them, are, in some sense, worthy will depend on the truth of things … for there can be no non-arbitrary sense of worthiness apart from the truth.

A 'what' (e.g., constitutional system) or 'who' (e.g., ruler) interfering with the sovereignty of others is as much in need of being justified beyond a reasonable doubt as is the case when an individual that is exercising sovereignty interferes with the sovereignty of other individuals. The existential problem with which we are confronted is not a matter of positive and negative freedoms, but, rather, the aforementioned problem is a function of individual sovereignty and whether, or not, in any given instance, departures from that basic, existential standard can be justified.

Mill also argues that whatever errors an individual might commit despite the best efforts of others to persuade such a person that she or he is making a mistake are trivial compared to the evils of trying to restrain that individual from committing those sorts of errors. Whether, or not, one would agree with Mill with respect to the foregoing contention might depend on the nature of the mistake being made by some given individual, as well as on the nature of the means of constraining an individual from committing such an error, as well as the nature of the method of evaluation used to make such judgments.

Apparently, Mill believes there is a moral calculus that has been proven beyond any reasonable doubt that is capable of demonstrating, to one and all, where the greater evil lies with respect to individual freedoms and collective constraints. Unfortunately, there are many such systems of moral calculus, and the problem confronting individual sovereignty is to determine which, if any, of them are true.

Individual sovereignty – at least in the sense being employed in this book – only entitles a person to have a fair opportunity to try to push back the horizons of ignorance. The degrees of freedom associated with the exercise of that sovereignty are subject to considerations involving, among other things, issues of justification either with respect to 'a preponderance of evidence' or 'beyond a reasonable doubt' … depending on the nature of one's mode of exercising one's basic sovereignty (that is, by oneself or in conjunction with others).

Unless one can show that a given departure from the basic standard of sovereignty (which is a fair opportunity to push back the horizons of ignorance and nothing more) can be justified beyond a reasonable doubt, then individual departures from the basic standard are as problematic as are collective departures from that standard. Individuals do not have priority over the collective with respect to the issue of sovereignty, and the collective does not have priority over the individual in that regard … instead, everything depends on how one chooses to exercise sovereignty and whether, or not, departures from the basic standard of sovereignty can be justified beyond a reasonable doubt in any given case.

Mill maintained that only individuals with certain qualities were capable of realizing the potential of freedom. In other words, individuals who manifested qualities of being: independent, critically inclined, non-conforming, creative, and original were, according to Mill, best situated to reap the fruits of freedom.

The foregoing qualities were either never defined by Mill or, where defined, not justified. Moreover, despite Mill's belief that those qualities could only thrive in the condition of being free from interference, there is considerable historical evidence to suggest that individuals (e.g., Socrates, Jesus, Spartacus, William Wallace, Tom Paine, Gandhi, Rosa Parks, Martin Luther King, Nelson Mandela) were often at their individualistic, non-conforming, critically inclined, creative, morally courageous best when those people were opposing authoritarian challenges to the sovereignty

of the individual ... which is not a justification for the existence of those sorts of authoritarian challenges.

Indeed, Mill's perspective concerning liberty makes no sense unless it emerges out of the sort of context in which Mill believes that individuals have not been free from the sorts of interference about which he is concerned in his essay on liberty. If tyranny and authoritarianism of various kinds did not exist, Mill likely would have had no reason to say what he did … he would have had nothing against which to push.

Furthermore, someone could exercise the foregoing qualities (i.e., being non-conforming, critical, and so on) in relation to a given authoritarian attempt to constrain individual sovereignty or one could exercise such qualities in relation to Mill's perspective itself. However, neither case necessarily guarantees that one will be any nearer to the truth at the end of the day.

The fact of the matter is that we are not quite certain how to go about establishing the truth of things concerning the nature of the universe … even though we might have an idea concerning how to go about establishing the likely truth of this or that limited fact. The process through which anyone comes to the realization of the truth of something is, more often than not, clouded in mystery.

Qualities of independence, critical thought, originality, creativity, and non-conformity – even if we were able to define them in some non-arbitrary manner – might assist one in the search for truth. Yet, there are a lot of people who exhibit those qualities but who don't necessarily make the critical breakthroughs to important 'truths' of one kind or another.

Furthermore, there are a variety of historical instances involving conditions of apparent serendipity that have led to the discovery of important insights. This tends to suggest that factors other than the sort of personal qualities that Mill considered to be critical to civilization might play a role in the search for the truth of things.

Some have argued that Mill's notion of liberty is not inconsistent with some forms of tyranny or autocracy. In other words, one need not argue that such a notion of liberty can only be realized in the context of some form of democracy or self-governance.

According to that kind of a perspective, one could conceive of a ruler who simultaneously permitted his or her subjects freedom from

interference in some areas while limiting freedom from interference in other areas. Some people have concluded from the foregoing possibility that this kind of a state of affairs indicates that the issue of who governs a person is distinct from the issue of the character of the degrees of freedom that are granted to individuals through the source of authority regulating the structural character of the space through which 'negative freedoms' – freedom from – are exercised.

While it might be true that Mill's conception of liberty is such that it permits one to differentiate between positive and negative senses of freedom, acknowledging this does not prevent one from asking: Why should one accept Mill's way of looking at things as the standard process for filtering those matters? Having a point of view and having a justifiable point of view are not necessarily the same things?

Why should one adopt a Mill-like framework concerning the issue of freedoms? For instance, historically speaking one might be able to point to this or that instance in which distinguishing between positive and negative senses of freedom helped to make sense of those sorts of historical circumstances, and, yet, one might still ask: Why should one accept that way of doing things – either historically or methodologically?

The fact something can be done in a certain way does not necessarily mean that things should be done in that manner. Mill is certainly free to look at history and his experience in the way he does, but why should I – or anyone -- do so as well?

Historically speaking, there might have been any number of rulers or systems of government that arranged things so that some areas of the activities of subjects/citizens were free from interference while other areas of activities were not free from that kind of interference. What gives that ruler or system of government the right to arrange things in one way or another? Such a 'right' stands in need of being justified … not just in terms of a preponderance of evidence but beyond a reasonable doubt with respect to that evidence.

The fact Mill's approach to the idea of liberty permits a certain kind of "freedom from interference' (the negative sense of freedom) to peacefully coexist with an otherwise authoritarian regulation of life (the positive sense of freedom) does not necessarily justify either the positive or negative facet of that kind of an arrangement. In fact, one might argue that under the foregoing set of circumstances, individuals who enjoy the

fruits of being free from certain kinds of interference have been 'brought off' at the expense of those who will not be free from certain kinds of interference … for example, scientists who are given freedom from interference – a freedom that is leveraged for purposes of exploring the physical and material universe -- could be subsidized by those who will not have freedom from being interfered with and who will be forced to help certain 'elites' to benefit economically from the discoveries made by those same scientists.

Freedom from interference of a certain kind does not exist in isolation. The foregoing sort of freedom is part of a social system, and that system, considered as a whole, stands in need of being justified.

Mill's perspective concerning liberty provides one with a hermeneutical way of interpreting different contexts. Nonetheless, one legitimately can still ask: How does such a perspective enhance one's understanding of sovereignty understood as constituting the right to have a fair opportunity to push back the horizons of ignorance?

Any constraint on sovereignty that cannot be justified beyond a reasonable doubt is likely to lead to an unfair system of opportunity in relation to the project of moral epistemology that is entailed by the basic condition of sovereignty … a condition that can be justified beyond a reasonable doubt in a way that Mill's approach to liberty cannot be so justified. Permitting some degrees of freedom from interference (the negative sense of freedom), while not permitting other sorts of freedom from interference (which has to do with the positive sense of freedom) is not self-justifying … even thought this sort of arrangement might be convenient for those who find those spaces -- being free from interference -- enjoyable or valuable.

To argue – as some have – that there is no necessary logical connection between Mill's notion of freedom and the nature of self-governance or democracy indicates that Mill's perspective is, at best, problematic. In other words, if one is seeking some form of political/legal arrangement that is, broadly construed, democratic in the sense that it permits individuals to govern themselves (i.e., to be their own source or authority for regulating the public space) then, presumably, one should be looking for a notion of freedom that does have a necessary logical connection to that form of self-governance.

The most basic form of freedom is the "freedom to" have an opportunity to push back the horizons of ignorance – within the limits of a reciprocity that establishes fairness with respect to such an opportunity. This freedom is a right because it can be justified beyond any reasonable doubt in the context of the existential conditions we find ourselves … conditions that give expression to the law of ignorance.

The foregoing "freedom to" is at the heart of the basic sovereignty to which every individual has a right. This sort of sovereignty, freedom, or right is logically linked to the issue of self-governance since the latter is not possible without, at a minimum, possessing the basic sovereignty that is being delineated here.

What does it mean to be master of oneself? Does it necessarily mean that all one's decisions are based on one's own ideas, thoughts, inclinations, purposes, reasoning processes, and will?

If so, then every 'junky' is a master of himself or herself. Obviously, there appears to be a fly in the foregoing brand of logical ointment concerning what is meant by the idea of mastery.

How does one distinguish between, on the one hand, delusional: ideas, thoughts, inclinations, purposes, or reasoning processes, and, on the other hand, those ideas, thoughts, purposes, and so on that give expression to the truth of a matter (or a greater degree of the truth of a matter)? Isn't it possible that, on occasion, the ideas, thoughts, inclinations, purposes, reasoning processes, and behaviors of others (which might give expression to their wills) might be able to assist one to struggle toward the truth of a situation?

Certainly, we wish to be free from the ideas, purposes, and so on of others that are imposed on us independent of our concerns with respect to those issues. However, the dialectic between oneself and others can be both beneficial as well as problematic.

Being able to choose as one likes might, or might not, advance the cause of sovereignty. Being free from the interference of others, might, or might not, advance the search for truth.

To have responsibility for the choices one makes is a good thing … unless, of course, this sort of responsibility carries injurious ramifications with respect to one's capacity for making further choices. Every choice we

make leads to an unknown future … a future for which one might wish not to be held responsible.

Everyone wants to have control over their decisions. Often times, however, when problems arise in conjunction with those choices, the first thing many people do is disavow responsibility for the decisions that have been made.

To be master of oneself requires a person to push back the horizons of ignorance concerning the nature of self and mastery. As long as one remains in ignorance, one is no position to know what will enhance one's mastery of oneself.

Some individuals have argued that "rationality" is what sets human beings apart from the rest of the universe. Even if, for the moment, one were to leave aside those questions that revolved about the issue of just what was meant by "rationality", one still would be left with questions about the possibility that other dimensions of being human might also might distinguish between human beings and the rest of the universe – for example, dimensions that involve to varying degrees: creativity, moral character, self-awareness, language, spirituality, and so on that are not necessarily reducible down to only considerations of "rationality' … however this latter term might be defined.

In any event, if one were to define self-mastery as the ability to use reason to explain one's decisions to others in terms of one's own thoughts and purposes, this assumes that this sort of explication can be justified. Using reason might not, in and of itself, guarantee that one's explanation concerning the relationship among thoughts, intentions and behaviors will give expression to a relationship that can be justified – either with respect to considerations involving the preponderance of evidence or in relation to considerations that carry one to a point of being beyond a reasonable doubt.

For example, while an individual might use 'reason' -- in some sense of the word -- to connect one's thoughts, intentions and behavior in a manner that seems to embrace a preponderance of the available evidence, that kind of an argument might not convince others of its truth, or likely truth, beyond a reasonable doubt. If one is merely providing an account of one's reasoning concerning some issue, the foregoing sort of an 'explanation' might be satisfactory, but if one is trying to justify the manner in which one's behavior interfered with the sovereignty of

another individual, such an explanation -- while reasonable in some sense -- would not necessarily be fully satisfactory.

The notions of 'reason', 'reasonable', and 'reasoning' are very contentious issues. Some explications of 'reason', 'reasonable', and 'reasoning' might satisfy some standards of acceptability, and, yet, fail to meet other, more rigorous standards of critical exploration.

Does the expectation that someone's reasoning process should be capable of meeting a certain, rigorous standard of critical acceptance enslave that individual? If the latter standard is not justifiable, then one might be inclined to say that the foregoing sort of expectation is enslaving. However, if that standard is justifiable, then any failure to meet it carries the possible implication that the thinking of the person being examined does not necessarily give expression to 'rational' thought.

If standards of reasoning are arbitrary (that is, they cannot be shown as being likely to be true beyond a reasonable doubt), then to whatever extent those standards or conventions are imposed on others, then to that extent those standards have a potential for enslaving people. If, on the other hand, one can show beyond a reasonable doubt that a given set of standards is not arbitrary, then that set of standards is not necessarily enslaving but, instead, constitutes one of the conditions that need to be met in order for someone to be considered as being rational.

The law of ignorance that justifies the basic sovereignty to which each individual is entitled (that is, a fair opportunity to push back the horizons of ignorance) entails a high standard with respect to transgressing against another individual's sovereignty. One must be able to show beyond a reasonable doubt that such a transgression is justified.

If one cannot meet the aforementioned standard, then although a person's argument might employ reasoning of one kind or another, nevertheless, that argument is not necessarily rational. In other words, this sort of an argument has failed to satisfy the standard that justifies someone's departing from the basic process of sovereignty to which ignorance concerning the truth of our existential conditions gives expression.

People are free to believe whatever they like about the nature of 'the self', 'reality', 'truth', 'mastery' and so on. However, not all of those beliefs are capable of being justified beyond a reasonable doubt – in fact,

most of those beliefs cannot be so justified -- and, therefore, the right to invoke those beliefs as reasons for departing from the basic sovereignty to which we are all entitled has not been justified in a rational fashion.

Moreover, even when considering things in relation to those aspects of a person's life that do not spill over in a problematic way with respect to the basic sovereignty to which others are entitled, nevertheless, although people are free to believe whatever they like in such circumstances, not all such beliefs are capable of being justified in terms of even the lesser rational standard of a preponderance of the available evidence.

The basic sovereignty to which we each are entitled as a result of the law of ignorance permits an array of degrees of freedom for proceeding in this or that direction. However, not all of those choices are necessarily rational ones despite the fact that a reasoning process might have preceded the exercise of any given choice … that is, not all those choices will necessarily be able to help push back the horizons of ignorance in a justifiable fashion even though those choices might arise in a context of reasoned meaningfulness.

We are all entitled to have a fair opportunity to push back the horizons of ignorance. Not all of us take constructive advantage of that kind of opportunity in a way that can be justified – depending on circumstances -- according to the rational standard of a preponderance of the available evidence or according to the rational standard of being beyond a reasonable doubt.

Desiring something is not the same thing as being able to justify -- according to some rational standard in the foregoing senses – that which is desired. Self-mastery is not necessarily what one supposes it to be.

Mastery is as an expression of the actual way of the universe. Mastery is something that having a fair opportunity to push back the horizons permits one to pursue, but having that kind of an opportunity doesn't guarantee anyone that the truth of things will be realized through the pursuit of that sort of opportunity … even when everything is done fairly or in a reciprocally appropriate fashion.

Some individuals (e.g., Kant) have argued that values are values only to the extent that they have been generated through the free choices of

human beings. If so, then truth is not a value since the truth of something is not what one freely chooses it to be but is, instead, what reality requires it to be.

We grasp truth to the extent that our understanding reflects the character of the way things are. Values that do not conform to the truth of things have questionable value even though we might choose them.

Man is not the measure of all things. Truth is the measure of all things, and men adopt this or that metric as ways of attempting to plot the nature of that truth according to the capacity of chosen metric to do so.

Contrary to what Kant and others tend to maintain, self-mastery might not be a matter of resisting one's desires and emotional impulses. This is so for several reasons.

First, not all desires and emotions are necessarily injurious to the existential project of pushing back the horizons of ignorance. For example, sincerely yearning for the truth or sincerely desiring to do justice to the truth might be allies in the cause of enhancing sovereignty.

Emotions and desires are not inherently at odds with the issue of sovereignty. Much depends on whether, or not, those forces are capable of being harmonized with the task of trying to push back the horizons of ignorance.

Secondly, the belief that emotions and desires must be controlled by reason ignores the possibility that reason might be as much in need of being informed and shaped by certain emotions and desires, as certain emotions and desires are in need of being shaped by reason.

Having empathy for another human being -- or for life in general -- might be an important and appropriate way of orienting reason with respect to reality. A process of reasoning that sought to control empathy might not be an effective form of reasoning … although some sort of an 'appropriate' balance between reason and empathy might be considered prudent.

Love can both blind and cripple reason as well as set reason free. The dialectic between love and reason is not something that should always be settled in reason's favor and, therefore, this sort of dialectic is not something that should necessarily be controlled solely through considerations of reason.

Reason might argue that discretion is the better part of valor, but courage might counter with the possibility that discretion is reason's way of avoiding responsibility with respect to taking necessary action. Should reason control emotion, or should emotion inform reason?

Empathy, love, and courage – along with a number of other emotions – have as much right to shape the choices human beings make as reason does. A person must learn to distinguish among her or his emotions and desires with respect to those that are able to constructively enhance one's basic sovereignty with respect to pushing back the horizons of ignorance (including those horizons that surround one's attempt to understand the nature of emotions and desires).

Not all reasons are good ones. Not all emotions should necessarily be controlled or discarded.

One does not comply with reasons because they are inherently 'reasonable'. Rather, reasons are reasonable to the extent that they help one push back the horizons of ignorance.

Similarly, an individual does not admit emotions only to the extent that they are controlled by reason. Instead, emotions might have a constructive role to play to the extent that they assist reason to push back the horizons of ignorance.

One's ability to search for the truth can be hindered both by problematic reasons as well as problematic emotions. Alternatively, one's ability to search for the truth can be enhanced both by justifiable reasons and constructive emotions … that is, emotions which do not undermine a person's search for truth but, instead, assist that search in various ways.

The truth is not a law to be obeyed but, rather, truth is a reality to be recognized and used to further the project of moral epistemology that is entailed by the basic sovereignty that follows from the nature of our relationship to existence. We are not autonomous because we follow the rational laws that we impose upon ourselves but, rather, we are truly autonomous only when our choices are informed by the truth – to whatever extent this is possible – and, therefore, our behavior gives expression to the only form of autonomy that is defensible both rationally and emotionally … namely, to choose the way of truth since all other choices will lead to error and delusion.

The closer one is to the truth, the closer one is to having an opportunity to maximize one's autonomy. Autonomy means being free from all considerations other than the truth.

One does not become enslaved to the truth thereby. Rather, the truth actually does set one free to engage the universe or reality in the least problematic, most effectively functional manner possible.

The truth does not cause our choices. Rather, the truth is either accepted or rejected by our willingness to proceed in one direction rather than another.

The truth might not be recognized as such – that is, beyond a reasonable doubt and with something akin to certainty -- when it is rejected. Similarly, the truth might not be recognized as such – that is, beyond a reasonable doubt and with something akin to certainty -- when it is accepted.

Many factors and forces might shape and color the circumstances of choice. However, no matter what those factors and forces might be, choice gives expression to the manner in which a person's will engages understanding such that some portion of the array of possibilities that are entailed by the foregoing sort of an understanding are selected by that within one which does the selecting from amongst those possibilities.

Circumstances and understanding propose possibilities. Will disposes – via choice – those proposed possibilities, and, therefore, the direction of causality extends from will to the indicated possibilities.

In other words, we cede authority to some aspect of those hermeneutical circumstances. Irrespective of the hermeneutical and behavioral direction in which one goes, the act of willing is the process of ceding authority, for good reasons or bad, to some aspect of reality that will shape and color the character of one's behavior. The ramifications of those choices will always come home to roost and help shape, color and orient the nature of one's sense of self through which choice is filtered.

Habit gives expression to one of the inertial forces of mental space. Life trends – such as attitudes, coping strategies, and motivational patterns -- are very difficult to alter once they have acquired inertial properties of their own.

Contrary to what Kant claims, human beings are not necessarily ends in themselves. The nature of human beings is a function of what the truth is concerning that nature.

The reason why we do not have a right to interfere with the basic sovereignty of another human being is not because of what we know – beyond a reasonable doubt -- about the nature of being human and how (as Kant believed) human beings are ends in themselves. Rather, we do not have a right to interfere with the basic sovereignty of another human being because of what we don't know – beyond a reasonable doubt -- about the nature of being human.

Contrary to what Kant claims, human beings are not necessarily transcendental beings who are beyond the realm of natural causality. Human beings are thoroughly entangled in natural causality, but we are ignorant about the precise character of that entanglement and concomitant causality.

To claim with some degree of justification that humans are transcendent beings, one must be able to demonstrate beyond a reasonable doubt what the nature of that transcendence is and how it is independent of considerations of causality on every level of nature. Kant didn't demonstrate the foregoing … merely assumed it.

Are human beings capable of making choices that are uncaused in some sense? We don't know, and what follows from this is that until one can demonstrate beyond a reasonable doubt that nothing within human beings is capable of such uncaused choices, the law of ignorance requires one to treat human beings – within certain limits -- as if they were so capable … that is, we have no compelling reason that can be substantiated beyond a reasonable doubt for doing otherwise.

Degrees of freedom are granted to the exercise of basic sovereignty by each individual in accordance with whatever does not interfere with the right of others (via the principle of reciprocity) to purse a similar set of degrees of freedom in accordance with their own decision processes, opinions, inclinations, choices, or the like. The more the degrees of freedom of basic sovereignty are shaped and informed by truth, then the more autonomous a person becomes in the sense of not having 'choices', decisions, and so on filtered through delusional systems of thinking and understanding … that is, human beings are free to be whatever it is they

are rather than being something else (i.e., the product of delusional systems of thought).

Irrespective of whether, or not, there is some dimension of human beings that is entirely uncaused, nevertheless, to whatever extent falsehood directs the understanding through which: decisions, judgments, selections, and 'choices' are filtered, then human autonomy is compromised. We are only truly free to be human when one's sovereignty has embraced the truth of what it is to be human … everything else is slavery to falsehood.

Given the foregoing, Rousseau is wrong when he argues that a person is only free when she or he can actually realize that which is desired. Desiring this or that, and acting on such desires, might, or might not, push back the horizons of ignorance. Freedom or autonomy is not about the desires – taken as a whole – which one can, or cannot, act upon.

Real freedom is to disentangle ourselves from everything within and without that distorts the truth about what it is to be human. Only when our desires reflect the essential potential of what it is to be a human being as a function of reality and only when we are able to realize those desires can a human being be said to be free.

Do we know what it means to be human? To whatever extent there are some people who might have correctly grasped what being human means, most of us – collectively speaking -- have no knowledge -- beyond a reasonable doubt -- concerning the nature of being human. Moreover, even if one assumes that there are some people who do grasp what being human means in the full context of the nature of things, nonetheless, unless those individuals can induce the rest of us to understand, beyond a reasonable doubt, how things are in that respect, then being correct doesn't entitle those individuals to impose their ideas on other human beings.

Two dimensions of the degrees of freedom that are inherent in the basic sovereignty of human beings concern the possibility of being right or wrong with respect to understanding human nature, in particular, and/or reality in general. No one should be deprived of those degrees of freedom unless one can demonstrate beyond a reasonable doubt why departures from that kind of a standard are justified.

Within limits, arguments that are capable of satisfying a standard that transcend reasonable doubt can be constructed for certain classes of individuals – for example, children – with respect to how far those degrees of freedom should be granted without various safeguards (which constitute forms of interference) being established to protect the continued viability of an individual. The nature of those limits can be quite complicated especially in view of the fact that one of the ways through which human beings learn some of the realities about being human is by means of exercising the degrees of freedom inherent in our basic sovereignty that have a potential to lead to either that which is false or that which is true.

To whatever extent it is possible – and I'm not sure what the precise character of that extent is – attempts should be made to minimize the manner in which the basic sovereignty of individuals (that is, having a fair opportunity to push back the horizons of ignorance) is constrained. Simultaneously, however, such minimal interference should not compromise the physical, emotional, psychological, or spiritual health of those individuals since the latter sort of problems will eventually be able to adversely affect an individual's ability to have a fair opportunity to push back the horizons of ignorance, and, consequently, the dynamic between the 'mini' and the 'maxi' sides of things can become quite complex.

The problems that political systems face in the foregoing respect are but family life writ large. The same sort of mini-maxi puzzle (i.e., the minimum levels of interference that can be justified beyond a reasonable doubt and that are compatible with a maximum set of degrees of freedom of basic sovereignty of individuals that is reciprocal in nature) awaits human beings at every level of social interaction.

Most people tend to agree that falsehood tends to enslave human beings, whereas truth tends to free human beings. The problem is that we are not necessarily always able to distinguish the two.

We continually commit what are referred to as Type I and Type II errors. In other words, we often accept as true that which has not been proven to be so beyond a reasonable doubt, or we reject something as being false when considerable evidence suggests that it might be true.

Delusions and illusions should be rejected. Reason and rationality should be accepted.

Sometimes, however, what we consider to be reasonable is delusional in character. At other times what we consider to be delusional in character might reflect more of the truth than what we believe is the case.

Hobbes, Rousseau, Kant, Marx, Hegel, and many others all advanced theories that purported to offer a means of permitting individuals to be able to distinguish the true from the false when it came to understanding the 'proper' relationship between individual and society. Whatever insights the foregoing individuals might have had to offer concerning this or that aspect of our existential condition, none of them was able to establish a system that could be shown to be true beyond a reasonable doubt … or that was even capable of being shown to be true in terms of a preponderance of the available evidence – then or now.

In short, each of the foregoing individuals advanced ideas that were meaningfully reasoned without necessarily being rational. In other words, one often could make sense of what they were trying to say concerning the nature of the individual's relationship with society because each of the aforementioned theorists offered reasons, arguments, and a certain amount of experiential data to support their positions, and, yet, those reasoned positions were not capable of meeting the conditions of rationality in a way that showed how they were true beyond a reasonable doubt or even true with respect to a preponderance of the evidence.

Many people accept the ideas of one, or another, of the foregoing individuals (i.e., Kant and others) because those ideas are considered to have meaning and can be put to this or that purpose. However, demonstrating that those ideas are actually capable of reflecting the truth of things beyond a reasonable doubt is an entirely different matter.

Everything that is reasonable is not necessarily rational in the sense that the former can be shown to be likely to be true beyond a reasonable doubt or shown to be true even in accordance with a preponderance of the evidence. Everything that is rational in the foregoing sense will not necessarily reflect what one or another us considers as being reasonable.

We often make conventions out of what we consider to be reasonable or reasoned meaningfulness. However, those conventions might reflect only the logical nature of their own structural character and reflect little of the actual nature of reality.

The law of ignorance governs much of our relationship with reality. Being able to establish a viable path for departing from that ignorance is a very difficult epistemological problem to solve in any way that is capable of satisfying standards that require claims to be true beyond a reasonable doubt or to be true in accordance with 'a preponderance of the evidence' … and, here one might note that the term "preponderance" in the foregoing phrase is problematically ambiguous.

The forces that lead to error and delusion might come from within or from without an individual … or from both. The means that lead to truth might come from within or from without … or from both.

Having reasons for proceeding in one direction rather than another is not enough to make an understanding true. To qualify as constituting more than just a reason or set of reasons, a given understanding must be capable of being shown as being likely to be true beyond a reasonable doubt.

We 'choose', but our choices often are not rational even as they seem reasonable. We choose from within the cloud of unknowing ignorance.

The law of ignorance lends credence to our right to choose as an expression of the basic sovereignty to which we are entitled – that is, having a fair opportunity to push back the horizons of ignorance – even as that same law points in the direction of a need for reciprocity when it comes to honoring the same right to others because of our inability to depart from ignorance in any fashion that can be shown to be true beyond a reasonable doubt.

In order to proceed individually and collectively, one doesn't have to know what it means to be a human being; one doesn't have to know what the nature of reality is; one doesn't have to know what the purpose of life is. The law of ignorance lays out the path that should be pursued with respect to the possible palimpsest nature of reality since such a path can be shown to be methodologically defensible beyond a reasonable doubt under the circumstances of the existential condition in which we find ourselves.

What is it to have a reasonable doubt about the truth of something? If one's doubt cannot be shown to be false, then that doubt is reasonable to the extent that it does not interfere with the basic sovereignty of other human beings.

Reasonable doubts are those that can be entertained as being possible without being self-contradictory. Reasonable doubts are those that can be entertained without being shown to be inconsistent with experiential data considered as a whole … rather than considered from the perspective of this or that belief system.

Do reasonable doubts necessarily point in the direction of truth in some ultimate sense? No, they do not, but until proven otherwise, those doubts might be of value to the process of trying to push back the horizons of ignorance.

Reasonable doubts give expression to an informed understanding concerning the limits of knowledge in a given context. When ignorance prevails, it is reasonable to understand that ignorance is what it is and not something else.

Furthermore, in the 'light' of that ignorance, the path forward should be guided through a certain amount of prudent caution with respect to various proposals concerning what the character of that proposed path should be. In addition, reasonable doubt means that questions concerning the possible nature of the path forward should be engaged from the perspective of considering how those proposals affect the basic sovereignty of individuals and whether, or not, those proposals are likely to lead to unjustified departures with respect to all individuals continuing to have a fair opportunity to push back the horizons of ignorance.

In many respects, most of us do not really know what it means to be a rational human being. This is because most of us are not in a position to demonstrate that a variety of possibilities are likely to be true beyond a reasonable doubt and, thereby, satisfy a basic standard of rationality.

Instead, oftentimes, we tend to be rational only to the extent that our doubts are reasonable. If we engage our ignorance through reasonable doubts, we might come to understand that some conceptual possibilities are more tenable (e.g., they lead to fewer conceptual problems and/or leave fewer critical questions unanswered) than are others … although being more tenable doesn't necessarily make something true beyond a reasonable doubt.

If we choose wisely with respect to those possibilities, we might be able to push back the horizons of ignorance in limited ways. Reasonable doubt is a method through which to engage experience and try to

determine whether, or not, some forms of doubt are more reasonable than others … more reasonable in the sense that the doubts one has about how to proceed might push one more tenably in the direction of exploring ignorance from certain perspectives that might turn out to be more heuristically valuable than are other possible directions.

What is heuristically valuable is not necessarily what is true. Rather, something is heuristically valuable to the extent that it (whether this is in the form of a given: assumption, idea, way, method, or whatever) permits one to generate a variety of questions that lead in constructive – although not necessarily ultimately true – directions.

The experiences one gains from pursuing those heuristic possibilities might induce an individual to rule out some possibilities, while engaging others. Whether one is committing either a Type I or Type error during the process of pursuing those heuristic options is a separate matter.

There are many possibilities that can be shown to be reasonable in the foregoing sense. Each person must choose from among those sorts of possibilities with respect to which of them she or he will commit his moral and epistemological agency (i.e., will).

All of the considerations that are being alluded to above are among the degrees of freedom that might shape or orient the process through which an individual might orient his or her sovereignty – that is, having a fair opportunity to push back the horizons of ignorance. However, few, if any, of the foregoing possibilities are necessarily capable of being demonstrated as giving expression to what the truth is likely to be beyond a reasonable doubt when it comes to the collectivity of humanity.

As long as pursuing those possibilities does not interfere with the capacity of another person to exercise his or her basic sovereignty, then they are permissible degrees of freedom with respect to seeking to realize such sovereignty. Once the boundary to another individual's basic sovereignty is transgressed or violated, then it is reasonable to have doubts about the wisdom or propriety of pursuing the possibilities associated with that kind of a problematic degree of freedom.

Northing in the foregoing indicates that there is only one way to truth or that there can only be one understanding of truth. Nothing in the foregoing suggests that the understanding of everyone concerning the

issue of truth must be the same or that everyone will understand truth to the same depth … to whatever extent such truth can be understood.

On the one hand, there is the truth of reality … whatever that might be. On the other hand, there is our relationship to that reality … a relationship that is frequently, if not largely, obscured by ignorance.

Reality will hold us responsible for the choices we make with respect to the foregoing relationship. In other words, there tend to be experiential ramifications, of one sort or another, associated with those choices … ramifications that frustrate, complicate, support, discourage, confirm, undermine, and/or bring those choices into question.

Other individuals will hold one responsible for the choices that impinge on or violate the basic sovereignty of those individuals. Social problems are resolved, to whatever extent they can be, by providing viable, constructive means for negotiating the dynamics of the boundary conditions with respect to the exercise of the basic sovereignty of different individuals.

A minimal sense of justice is linked to circumstances in which people's basic sovereignty is reciprocated in relation to one another. Departures from that kind of a standard indicate the degree to which injustice is present in a given society.

A maximal sense of justice is linked to a condition in which individuals become autonomous and, therefore, are free from all biases that distort the true nature of what it is to be a human being and prevent a person from acting in accordance with such a nature. Departures from that standard – to the extent that this can be known in a manner that is beyond all reasonable doubt – indicate a further degree to which injustice is likely to be present in a given society.

The latter maximal notion of justice and injustice is unknown and, possibly, unknowable and unrealizable -- except by, perhaps, a very few – although we all feel the presence of, as well as suffer from, the extent to which we collectively give expression to falsehoods rather than truth. The former, minimal sense of justice and injustice seems to be – at least potentially -- both knowable and realizable.

According to Locke, true freedom does not exist without rational law. Rational law is that which assists human beings to work toward some sort of generalized good or toward their own best interests.

Furthermore, Kant maintains that authentic political freedom is a matter of willing what one ought to under certain conditions of rationality. In other words, by submitting to rational laws, we become as free as is possible in such a political/legal context.

As reasonable as the foregoing ideas sound, one really doesn't know what significance to assign to those ideas because they are devoid of important details. For instance, to say that rational law is that which leads humans to realize the general good or what is in their best interests doesn't say anything about what the nature of such a 'general good,' or one's 'best interests,' is.

If one knew what the 'general good' or one's 'best interests' were, then one might have some insight into what kinds of laws might help people realize those things and, thereby, qualify as being rational. However, as long as one doesn't know what the 'general good' or one's 'best interests' entail, then one has absolutely no idea what kind of a law would qualify as being rational.

Similarly, claiming that one becomes free by willing what one ought to, reveals absolutely nothing about what one ought to be willing. Moreover, one might also question the nature of the relationship, if any, between what a given law requires and that which one ought to be doing.

A commonality that is present in the perspectives of Locke and Kant, along with many others, concerning the relationship between individuals and society is that those laws are considered rational that enable people to do what they ought, and/or do that which is in their best interests, and/or do that which contributes to the general good. Therefore, claiming that a given law will assist people to do what they ought to do, or assist them to realize their best interests, or help them to contribute to the general good automatically renders that kind of a law to be a rational one … or so such thinking goes.

If someone needs a law or legal pronouncement to induce individual to do that which they ought to, then this is because those people have not, yet, found their way to understanding what they ought to do and, as a result, have not, yet, become willing to do what they ought to do on

their own, quite independently of laws. Even if someone were right about what people ought to do, the step from that kind of an understanding to requiring people to comply with that sort of an understanding is not necessarily an exercise in political freedom or rationality.

To claim that: Someone ought to do something or that such a something is in a person's best interests or that this sort of something contributes to the common good, stands in need of justification beyond a reasonable doubt. Laws that are not rooted in that kind of a justification are not 'rational' in any sense but an arbitrarily constructed one.

From the perspective of Locke and Kant, rationality is a matter of understanding what the nature of truth is in relation to what people ought to do or what constitutes the general good or what involves someone's best interests. One implication of the foregoing perspective is that as long as one does not have that kind of an understanding, then what one thinks or does is not rational.

However, another implication of the foregoing perspective is that when one understands how one does not possess such an understanding, then whatever one proposes in the way of law cannot be rational in the sense that it is known – beyond a reasonable doubt -- to give expression: to that which one ought to do, or to that which is in one's best interests, or to that which contributes to the common good. In other words, if the relevant knowledge or understanding is not present, then no law can be considered rational in the sense alluded to by Locke and Kant … and we'll leave aside, for the moment, the issue of whether, or not, one has the right to legally or forcibly require people to do what someone believes – no matter how rationally – might be in the best interests of others or might be something that they ought to do.

According to Locke, rational laws – i.e., good laws – are what prevent people from wandering into problematic social landscapes. Consequently, those laws do not place human beings under confinement since those sorts of laws only protect people from that which will lead to difficulty.

Nonetheless, one might well ask someone like Locke to not only explain, but justify, how restraining people's behavior is not an exercise in confinement in those instances where one cannot demonstrate that such an arrangement is the only way to avoid the pitfalls of social life. Locke's understanding of what he believes to be a rational way to avoid social problems might not be only way to engage those issues, and, therefore,

one would like to know how restraining people in a possibly arbitrary manner is not an exercise in confinement.

In addition, one might wish to critically probe what Locke considers to be the sort of social pitfalls and hazards that people need to avoid. One person's judgment of a social hazard that should be avoided at all costs might well be another person's notion of what constitutes the best interests of people.

Locke believed in the almost sacred-like character of private property. Thomas Paine thought otherwise and felt that such an approach to the idea of property was one of the underlying causes of many of society's problems.

Why should one assume Locke necessarily got things right in the matter of property? Why shouldn't one consider the possibility that laws which prevent people from questioning the legitimacy of ownership and property rights are not justifiably restraining people from wandering into hazardous territory but are, instead, unjustly preventing issues of social justice from being addressed?

Kant argued that a person would only become truly free when that individual had abandoned her or his unjustifiable pursuit of wild, unrestrained freedom and come to understand that submitting to, or becoming dependent on, rational law was the essence of freedom. As indicated previously, Kant considered rationality to be equivalent to that which one ought to be willing.

According to Kant, wild, lawless expressions of freedom are not rational. Rationality is a matter of willing one's behavior to conform to, or comply with, that which one ought to will.

Given the foregoing, then, presumably, refraining from willing one's behavior to conform to what one does not recognize as being necessarily rational is also a rational act. Consequently, in the 'light' of our ignorance about so many things, one might be exercising reasonable – and, possibly, rational – doubt by distancing oneself from laws that claim, without rational justification, that one ought to be attempting to will behavior in one direction rather than another.

Recommending that people be dependent on laws that stipulate what one ought to be willing only makes sense if those individuals recognize that those laws give expression to that which has been shown

to be true and , therefore, something that ought to be willed. Without the requisite recognition or understanding, then the aforementioned sense of dependency is unwarranted, and, consequently, the associated laws are not necessarily rational.

Kant is seeking to establish an equivalency of sorts between rationality and the authority of law. According to him, we should obey laws that are rational because those laws reflect the authority of our understanding concerning the requirements inherent in rationality (i.e., that one ought to will such things).

Under the foregoing circumstances, to obey law is to be rational. To be rational is to obey certain kinds of law.

However, if laws cannot be shown to be rational in the sense that we ought to be willing them, then there is no reason to obey them. If laws cannot be shown to be rational, then one really has a sort of obligation not to comply with those laws … seeking to will that which ought not to be willed does not seem to be a very rational thing to do.

What happens if someone recognizes a legal/social/political prescription to be rational because it gives expression to something that one believes ought to be willed, and, yet, the person disobeys that kind of a law? What if an individual chooses to do that which is not rational?

What is a rational response to the foregoing situation? Should a person be forced to comply with that sort of a law, and what would be the justification for the exercise of that kind of force or coercion?

Knowing what a person ought to do, does not necessarily determine what should be done when a person does not behave as he or she ought to behave according to the requirements of rationality. This set of circumstances opens up a separate set of questions – namely, those concerned with determining what the rational thing to do in such a situation would be.

Even if one were to agree with Kant that one ought to will that which is rational, this does not necessarily settle the problem of what to do when a person is not rational and, therefore, does not conform his or her behavior to that which ought to be done. Presumably, there will have to be other laws governing that sort of situation that can be shown to be rational in the sense that one ought to comply with those kinds of laws.

Unfortunately, unless one has a complete understanding of the truth concerning the nature of reality and what such reality entails with respect to being human, then one would be at a loss to propose laws that reflect what should be done when human beings don't will what they ought to according to the requirements of rationality. More importantly, if one lacks the requisite understanding of reality to determine what ought to be done with those who don't do what they ought to do as required by rationality, then one wonders what the point is of having any laws in the first place.

In other words there are two problems here. One difficulty concerns the issue of what ought to be done – that is, what sorts of laws should there be that reflect the requirements of rationality, while the other difficulty involves the issue of what ought to be done if what 'ought' to be done (??) is not done.

Kant doesn't really adequately address either of the foregoing issues. He doesn't demonstrate beyond a reasonable doubt – except, perhaps, in a sort of tautological manner -- what ought to be done, and he fails to persuasively demonstrate what should be done if what he claims ought to be done is not done.

Kant wishes to argue that any restraint on my behavior that involves something that I might desire and, yet, which could not be shown to be rational, does not constitute a deprivation of freedom. Freedom only involves doing that which can be shown to give expression to what one ought to do – i.e., that which is rational.

While one might agree that real freedom is a function of doing only what – according to the nature of truth – one ought to do, I believe Kant is quite wrong to suppose that no deprivation of freedom is involved when one is required to do only that which the law says one ought to do in order to qualify as rational behavior. Freedom is a matter of having choice and, therefore, not necessarily a function of the kinds of choices – rational or irrational – one makes.

Certain kinds of choices – i.e., those that are rational – might lead to real freedom in the sense that one attains a station in which everything that one ought to do is rational and everything that is rational is done. Autonomy in this sense frees one from everything other than the rational.

Other kinds of choices – i.e., those that are irrational – might lead away from real freedom in the foregoing sense. Nonetheless, taking away someone's ability to pursue these latter sorts of choices still constitutes a deprivation of certain degrees of freedom even though the 'best' sense of freedom – i.e., that which is rational and, therefore, ought to be willed -- is not so restrained.

Whether, or not, someone should be deprived of those degrees of freedoms is a separate issue. Even if one were to know what ought to be done, it does not necessarily follow that people should be deprived of all those degrees of freedom that did not lead in the desired direction of that which was considered to be rational … a lot might depend on what ramifications, if any, those 'irrational' choices had on the ability of people (whether this refers to the one doing the choosing or it refers to other individuals who might be affected by such choices) to continue having a fair opportunity to push back the horizons of ignorance.

The problem with Kant – and Locke -- is that as soon as one raises questions concerning what actually can be demonstrated, beyond a reasonable doubt, with respect to the nature of the dynamic between reality and human beings – rather than assuming as Kant (and Locke) appears to do that he knows the nature of what is rational concerning that kind of a dynamic – one faces a rather sizable problem. If one doesn't know the degree to which any given law participates in the rational, then one is left in the dark concerning what one ought to do and whether, or not, one ought to will what such a law requires and whether, or not, anyone should be deprived of the opportunity to exercise those choices.

It has been argued by some (e.g., Fichte) that the process of education should be pursued in such a fashion that the object of the exercise – i.e., the pupil – comes to understand why things were done in one way rather than another during that process. However, if the nature of the educational process were largely a matter of propaganda, then the person who went through such a process might very well come to understand why things were done in one way rather than another, but this sort of understanding would not necessarily justify that kind of a process … except, perhaps, in the minds of those who sought to propagandize their students and did so successfully.

One cannot automatically assume that the purpose of the State/Nation is to ensure that its citizens will come to know the truth of things. Therefore, one cannot suppose that by coming to understand the 'educational' system that has been set in place by the State/Nation from the perspective of those who have organized such a process that one will, thereby, necessarily arrive at the truth about how the notions of: justice, rights, fairness, justice, duty, obligation, governance, and knowledge are to be tied together in a fashion that is justifiable beyond a reasonable doubt.

Even if one were to assume that the State/Nation knew the truth about such matters – an assumption that stands in need of being justified beyond a reasonable doubt -- it doesn't necessarily follow that the State/Nation has the right to compel citizens to be educated in accordance with those truths. As important as having the opportunity to acquire truth might be, it is possible that what is equally as important is how a person comes to those truths and the quality of the struggle to which such a journey gives expression.

Being able to make a given truth one's own in the sense of being able to integrate that knowledge into one's life in a way that permits one to have mastery over that truth as it is applied to the problems of one's life is quite important. Compelling people to acquire truth in one way rather than another might interfere with, or undermine, a person's ability to develop and utilize that kind of mastery in a way that was maximally effective for any given individual in relation to their life circumstances.

Alternatively, what if one goes through an educational process and one doesn't agree with why things were done in one way rather than another? It seems rather arrogant, narrow, and rigid to suppose that anyone who undergoes an educational process should come to understand and agree with that process in precisely the way in which it was intended by those who implemented that sort of program.

Moreover, the foregoing sort of approach tends to imply that there could be – or should be -- no improvements concerning a given educational system since under those circumstances the only perspective that would be recognized as being 'rational' would be one that understood the educational process as its designers originally intended. This seems a very arbitrary position to take … and, therefore, unjustifiable

beyond a reasonable doubt or, perhaps, even with respect to a preponderance of the evidence.

If one assumes that the 'teachers' in a given educational system are all rational people, then one might maintain that by submitting to the teachings of those sorts of individuals, students are only being asked to recognize and submit to the rational authority within themselves. However, what justifies that sort of an assumption … even if one could specify what is meant by the idea that someone – i.e., a teacher – is considered to be a rational person.

If a given State/Nation is governed by rational laws, and if one of the purposes of the educational process is to induce students to come to understand the manner in which those laws are rational in the same way that the State/Nation understands those laws to be rational, and if teachers are rational agents who transmit principles of rational understanding to students, then one might come to understand how a person ought to will that which is rational and, as well, one might come to understand how that kind of compliance is nothing other than the process of a student coming to recognize and realize the presence of rational authority within themselves, and, therefore, how submitting to that rational authority constitutes a perfect expression of true freedom. However, one cannot merely assume one's way to the conclusions that one might like to achieve.

One must be able to justify, beyond a reasonable doubt, each and every step in the foregoing perspective. Otherwise that scenario is entirely arbitrary in the way it links what appear to be reasonable ideas together without having demonstrated how those links are capable of being justified.

Fichte argued that no one has rights against reason. In other words, once one understands the nature of the rational, then the issue of rights becomes a function of that which is rational.

Reason has priority over rights. For Fichte, discussion of rights only makes sense in the context of that which is rational.

In terms of the foregoing perspective, rights that cannot be reconciled with the rational can be stripped from people. People have no right to that which is not rational.

On the other hand, if one does not know the nature of the rational beyond a reasonable doubt, then what is the status of rights? Presumably, the law of ignorance establishes the way forward under those circumstances in the sense that people have a right to sovereignty … that is, a fair opportunity to push back the horizons of ignorance according to one's capacity to do so as long as the exercise of that sort of an opportunity does not interfere with a similar exercise of sovereignty by other people.

For Fichte – or anyone -- to be able to argue persuasively that the foregoing sort of right can be trumped by reason, he would have to be able to show, at a minimum, that his conception of reason or the rational was defensible beyond a reasonable doubt. If this cannot be done, then the foregoing right of sovereignty trumps what might be 'reasonable' (i.e., reason is present in some form) and meaningful (an understanding with a logical structure that doesn't necessarily reflect the truth) but that cannot be demonstrated to be rational in the sense of likely being true beyond a reasonable doubt.

What is it to be a sovereign individual? The idea of sovereignty suggests a right – that is, a justifiable entitlement that is more than merely a capacity to choose among degrees of freedom – to help determine the boundaries through which other people might engage one. Sovereignty suggests a right to help shape the limits within which interpersonal transactions take place. Sovereignty suggests a right to pursue interests, purposes, goals, and inclinations that are not necessarily a function of the likes, dislikes, or wishes of others as long as those interests, purposes, and so on do not interfere with the similar rights of other individuals. Sovereignty suggests a right to help negotiate behavioral boundary conditions that are capable of preserving everyone's sovereignty in a reciprocally agreed upon fashion.

We might not be able to avoid the fact that as social creatures we tend to rub up against one another in a variety of ways. Nonetheless, the idea of sovereignty indicates that the structural character of that 'rubbing' process cannot be arbitrarily delineated … that the way in which such interaction takes place should be capable of meeting standards of fairness construed, at a minimum, through a sense of reciprocity in which everyone has the same kind of opportunity to proceed forward in life.

No one can realize the sovereignty of another. Sovereignty necessarily gives expression to the process through which an individual explores the potential of his or her own existential circumstances.

Each individual has duty of care with respect to realizing her or his own sovereignty. Each person has a duty of care to acknowledge, if not assist, the right of others to work toward realizing their own sense of sovereignty.

Sovereignty is not a matter of gender, race, ethnicity, religion, talent, beauty/handsomeness, sexual orientation, education, wealth, occupation, or social position. Sovereignty is that which lies beneath the surface of those considerations … sovereignty is what remains of an individual after all those peripheral factors have been discounted.

People have a tendency to confuse the peripheral with the essential. Sovereignty is essential and gives expression to the most basic of rights – the right to have a fair opportunity to push back the horizons of ignorance concerning the nature of sovereignty and its role, if any, in reality.

None of the aforementioned peripheral characteristics or qualities can be shown, beyond a reasonable doubt, to entitle people to rights. On the other hand, via the law of ignorance, sovereignty can be shown to confer a basic right that can be demonstrated as being justifiable beyond a reasonable doubt in the context of our current existential condition.

Sovereignty is not a matter of freedoms and liberties per se. Sovereignty, however, is rooted in having a fair opportunity with respect to trying to push back the horizons of ignorance.

Liberty gives expression to the degrees of freedom that are engaged by choice for the purposes of exercising sovereignty. Not all those choices will necessarily lead to pushing back the horizons of ignorance, and, moreover, some of those choices might undermine one's ability to be able to continue on effectively with respect to the project of moral epistemology that is entailed by one's sovereignty.

The truth of our ignorance concerning the significance of those choices can be proven beyond a reasonable doubt. However, the truth of our knowledge claims concerning the same issues cannot be proven beyond a reasonable doubt.

Consequently, one does not necessarily have a right to freedom per se for the truth of that kind of a right cannot be proven beyond a

reasonable doubt. One, instead, has a right to a fair opportunity with respect to pushing back the horizons of ignorance.

Ignorance is what prevents one from knowing the nature and purpose of one's sovereignty or individuality with respect to the rest of reality. Therefore, there is no more compelling problem confronting human beings – both individually and collectively – than the issue of sovereignty and its relationship with the rest of reality since coming to understand the nature of the truth of such things – to whatever extent this is possible -- is likely to depend on how one proceeds with respect to the foregoing problem.

No family, group, class, nation, state, institution, organization, corporation, community, or society is entitled to any kind of sovereignty that is not limited to, and proscribed by, the right of basic sovereignty to which any given individual is entitled. An alternative way of saying the same thing is that, in accordance with the law of ignorance which currently governs our understanding of things, there is no argument that is capable of demonstrating beyond a reasonable doubt that groups, classes, institutions, and so on are entitled to any right that is not a function of the basic sovereignty of an individual in the sense of having a fair opportunity to push back the horizons of ignorance concerning the possible palimpsest nature of reality.

To return to an issue explored earlier in this appendix – namely, the matter of negative and positive freedom – the minimum and maximum space within which human beings should be free from interference (i.e., negative freedom) is a function of the basic sovereignty to which every individual is entitled with respect to having a fair opportunity to push back the horizons of ignorance. Furthermore, the answer to the question of what source or authority should be entitled to determine the manner in which public space is to be regulated (i.e., positive freedom) is also a function of sovereignty … in other words, no source or authority is entitled to regulate the lives of people (i.e., control their exercise of sovereignty) without being able to demonstrate, beyond a reasonable doubt, that this sort of entitlement gives expression to an accurate or true understanding concerning the nature of reality and what it is to be a human being in the context of that reality.

The essence of negative freedom is a reflection of the basic sovereignty to which all individuals are entitled as a right and not as a

mere freedom. One might refer to such negative freedom as 'the way of sovereignty'.

The essence of positive freedom (in its sense as a process through which to identify the source or authority that allegedly entitles one to 'order' public space) is a reflection of the desire to regulate, control, or direct the way of sovereignty. One might refer to that kind of positive freedom as 'the way of power'.

The way of sovereignty can be demonstrated, beyond a reasonable doubt, to be a viable way of approaching our existential condition of ignorance. The way of power cannot be demonstrated, beyond a reasonable doubt – and, perhaps, not even in relation to a preponderance of the evidence – to be a defensible way of engaging our existential condition of ignorance.

The way of sovereignty and the way of power tend to be inherently opposed to one another. To the extent that sovereignty exists, power is likely to be attenuated, and to the extent that power exists, sovereignty is likely to be attenuated.

Many revolutions – but not all -- have been about attempts to either re-assert the way of sovereignty and/or to curb the way of power so that pathways might be opened up to establish the way of sovereignty. Most revolutions have failed to the extent that they either confused the way of power with the way of sovereignty or to the extent those ways have been conflated with one another.

The revolution that began in America in the late 1760s and continued throughout the 1770s (which increasingly gave expression to the longing for the way of sovereignty) was co-opted by the way of power that was instituted through the Philadelphia Constitution and the ratification process. In addition, the aforementioned revolution also was undermined by the manner in which the radical ideas of the Atlantic world that fueled the fight for independence were discredited in the 1790s by representatives of the way of power (whether in the form of state authorities, legislators, the judicial system, religious leaders, or newspapers) by tying – rather unfairly and untruthfully in many respects -- the albatross of 'The Terror' of the French Revolution around the neck of Atlantic radicalism with the latter's emphasis on the importance of the way of sovereignty to human beings considered both individually and collectively.

Revolution is a process not a destination. When one considers revolution to be a destination, revolution tends to slide into a way of power in which some particular purpose, goal, person, institution, and/or idea comes to be recognized as the 'legitimate' source or authority for regulating the public space in one way rather than another.

Sovereignty is also a process and not a destination. The task of pushing back the horizons of ignorance is unlikely to ever be fully realized.

A yearning for the way of sovereignty – which is currently frustrated by the current way of power – has the potential for leading to revolution in a constructive sense. In order for that sort of a revolution to be realized, the way of sovereignty needs to be made available to everyone – amongst both present and future generations -- and not just to the few.

Assisting individuals to engage the process of sovereignty is a revolutionary project because it constitutes a threat to the way of power being able to continue on as it is inclined to do … and revolutions, of whatever character, have always been about disempowering a prevailing framework of control and oppression. This is why the way of power is dedicated to interfering with, suppressing, and/or undermining the revolutionary project of sovereignty.

My way of engaging sovereignty might not be your way of engaging sovereignty. My way of engaging sovereignty might not lead to pushing back the horizons of ignorance in the same way or to the same extent as your way of engaging sovereignty does. My way of engaging sovereignty might not lead to the same sort of understanding concerning the nature of being human or the nature of truth as your way of engaging sovereignty does.

Our respective purposes, interests, inclinations, commitments, and understanding do not have to be harmonious in any manner except to the extent that those purposes, interests, and so on should be capable of coexisting in such a way that our respective ways of engaging sovereignty do not undermine, interfere with, exploit, obstruct, or oppress one another with respect to having a fair opportunity to push back the horizons of ignorance. Generating the foregoing sort of compatibility in the midst of the complex dynamics of sovereignty is truly revolutionary in character because it enables all of us to continue on with the project of moral epistemology that is inherent in the exercise of sovereignty by

limiting the extent to which the way of power intrudes into our lives and threatens to thwart such a project of reciprocity.

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