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CONSTITUTIONAL FOUNDATIONS FOR A THEORY OF
SYSTEM COMPARISONS: AN INQUIRY INTO PROBLEMS OF
INCOMMENSURABILITY, EMERGENT PROPERTIES, AND DEVELOPMENT

by

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This is a preliminary draft which has been subject to a first round of revisions. I plan to use the present version as the basis for presentation and discussion. Further revisions can be expected. Comments and criticisms are welcome.

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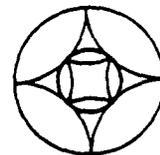


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CONSTITUTIONAL FOUNDATIONS FOR A THEORY OF
SYSTEM COMPARISONS: An Inquiry into Problems of
Incommensurability, Emergent Properties, and Development

I

Introduction

It is both an honor and a challenge to present a paper on "Constitutional Foundations for a Theory of System Comparisons" (Konstitutionelle Grundlagen einer Theorie des Systemsvergleichs) at the twentieth anniversary of the Radein research seminar. That anniversary of the seminar is devoted to the Foundations of a Theory of Order and Methodological Problems of System Comparisons. To address constitutional foundations for a theory of order in light of methodological problems for comparing different systems of order is a substantial challenge.

In attempting to establish the foundations for system comparisons, we confront serious difficulties in achieving commensurability across different systems. These are problems that we must confront; but, these problems cannot be ultimately and satisfactorily resolved by fallible creatures like human beings. We have no ultimate standard by which to judge the merit of the conceptualizations that we use as the basis for organizing ways of life and for thinking about such matters. The best we can do is to use the conceptualization that we have to make comparative assessments and to press the frontiers of inquiry so that we might deepen our understanding and extend the horizons of our conceptual formulations.

In this presentation, I shall make some initial observations in part two about the perspective that Professor K. Paul Hensel (1974) takes in his concern for the study of economic order in the context of patterns of order as ways of life in human societies. I shall then, in part three, pose some questions about difficulties in distinguishing economic orders from political orders. I shall in part four turn my attention to distinguishing types of political order as these distinctions are made with reference to Western societies. A serious problem arises, however, in any effort to achieve commensurability in the comparative study of political orders even within the confines of Western societies. I examine the problem of incommensurabilities in part five of this analysis.

Given the pervasive pattern of incommensurabilities, a conjecture can be advanced that these incommensurabilities are indicative of an order having emerged which cannot appropriately be characterized as a state (Staat). Instead, the reiteration of principles of constitutional rule to apply to all enduring forms of human association may yield self-governing societies rather than

state-governed societies. In such circumstances state-centeredness is probably not an appropriate mode of inquiry with regard to self-governed societies.

In light of this conjecture, I extend the inquiry in part six to consider the conceptual and social foundations for the emergence of self-governing societies. In the course of pursuing that inquiry, I address issues pertaining to metaphysical and epistemological presuppositions that inform human understanding and action in the Western world. I then conjecture whether the golden rule provides a basis for a method of normative inquiry that might serve as a universal standard of judgment pertaining to rule-ordered relationships. I go on to consider the problem of positive inquiry and offer the additional conjecture that W. R. Ashby's law of requisite variety may provide a universal standard for judging the way institutional arrangements structure human activities.

From such an inquiry, I turn, in part seven, to patterns of order and some potentials for making system comparisons. I conclude, in part eight, by returning to Hensel again to indicate the merit of his research program and where this analysis diverges from his. These analyses and conjectures are offered to stimulate further inquiry about patterns of order as ways of life, as Hensel proposed; but without presuming that my analyses and conjectures are correct. At most they are but another step along the way in our mutual efforts to explore foundations that are constitutive of order in human societies.

II

Hensel's Approach to a Theory of Order

As I understand Hensel's work, and that of the German tradition in the theory of order, more generally, the essential perspective is that of an economist who is engaged in economic analysis rather than that of a social scientist or humanist, in some general sense, seeking to understand the general configurations of order in human societies. This suggests that the specialized focus and domain of Hensel's inquiry pertained to the production, exchange, and consumption of goods and services where human beings rely upon institutional arrangements of different types to adjust for disparities between supply and demand. The basic criterion that Hensel uses to assess economic performance is the alleviation of scarcity. His approach might be viewed as being consistent with price theory where one measure of the exchange value of goods and service can be represented in monetary price.

The factor that distinguishes Hensel's work as an economist is his emphasis upon the way that economic relationships are grounded in a more general system of order that is the foundation for our existences as ways of life. In other words, there are ordered arrangements in any society that tie together and coordinate the ways of life that associate individuals, families, and other groupings into aggregate structures of society that can be viewed as ways of life. From this perspective, the work of economists is concerned with the

comparative study of economic orders in a way that is compatible with similar inquiries by others in law, the social sciences, and humanities who are concerned with other aspects of order in human societies. Economic orders are viewed as the preoccupation of economists, but set within an analytical frame that is open to commensurate inquiries about other forms of order and their place in societies as ways of life. This approach is an open invitation to collaborative efforts on the part of scholars from diverse intellectual traditions concerned with the nature and constitution of order in human societies.

Within the narrower confines of economic analysis as such, I find Hensel's analysis, in particular, to be based upon a presupposition that human societies are complexly ordered. The task of inquiry, then, is how to introduce conceptual distinctions that enable scholars to use elements of simplicity to understand a reality that is inherently complex. For example, in a discussion of coordination in arrangements that are subject to a division of labor, Hensel distinguishes between Haushaltungen as consumption units and Betriebe as production units. Haushaltungen are conceptualized not only to have reference to individuals and families but to various social and political types including churches, unions, associations, and collectivities that include local, regional, and national units of government. He estimated that the economy of the Federal Republic of Germany had approximately 23,000,000 organized collective-consumption and production units involved in the production, exchange, and consumption of the large variety of goods and services existing in the West German economy (Hensel, 1974: 32). A system comprising some 23,000,000 independently organized production and consumption units is a complexly organized system of relationships.

I find it interesting that Hensel distinguished between "die Versorgung der Haushaltungen mit Konsumgütern" (the provision of consumption units with consumer goods) from "Erzeugung" and "Herstellung" as these pertain to production. This is the basic distinction that Charles Tiebout, Robert Warren, and I used in an essay published some 26 years ago to conceptualize the order of relationships in the government of metropolitan areas as a polycentrally-ordered public economy (Ostrom, Tiebout, and Warren, 1961). Provision pertains to arrangements for joint consumption. The supply need not be produced by the same instrumentality that provides, i.e., organizes provision for joint consumption.

The principal thrust of Hensel's work was concerned with the comparative study of market economies and centrally-administered economies, especially as these might be clarified by the comparative assessment of experience in the Federal Republic of Germany in contrast to the Democratic Republic. His work, however, was set within a framework which was congenial to the study of public economies and public-industry structures as contrasted to market economies and private-industry structures, within the political economy of the United States, as well as market economies in contrast to centrally-administered economies in the two Germanies and in other parts of the world.

I shall later pursue interesting parallels between these two different strands of work. For now, I shall highlight the distinctions between economic order (Wirtschaftsordnung) and political order (Staatsordnung) that Hensel makes as a basic part of his framework for comparing market economies with centrally-administered economies. His preoccupation with comparative analysis was set within a relatively specific context of the two Germanies and their contrasting economic orders.

I shall, by contrast, be more concerned with constitutional foundations for a theory to make system comparisons with reference to political orders. I shall press that analysis to a concern with the nature and constitution of order in human societies. My focus of inquiry is more concerned with ordering principles that apply to rule-ruler-ruled relationships and less with production-exchange-consumption relationships. We must, however, approach these distinctions with caution. What appear to be sharp distinctions are subject to serious ambiguities both in distinguishing economic and political orders and distinguishing among different types of political order. Distinctions which are useful within given definitional limits tend to merge and to become different aspects of the same referent beyond those definitional limits.

III

Distinguishing Economic and Political Orders

If an economic order is conceptualized as being concerned with the production, exchange, and consumption of goods and services, a political order can, by contrast, be conceptualized as pertaining to rule-ordered relationships. A division of labor occurs in political as well as economic relationships. Distinctions might be made between formulating, applying, and enforcing rules as the essential activities pursued in a political order. A division of labor might be based upon such conceptions.

When rules are used to order relationships as ways of life in human societies, a basic structuring of social relationships must occur with reference to the formulation of rules, their use and application in appropriate circumstances, and efforts to enforce conformity to rules. Rules fit within some context that has reference to those who function as rulers and those who are subject to rules. This is referred to as rule-ruler-ruled relationships that are constitutive of a political order. This is the system of relationships that can be differentially organized in state-governed societies and in self-governed societies.

The distinctions between economic and political orders are relatively easy to make when the referents pertain to the types of goods and services to which exchange relationships in a market economy can apply. These are goods that meet the criterion where exclusion is feasible and the mechanisms of pricing can be used to order exchange relationships. Other criteria are of potential significance, such as jointness or subtractability (nonrivalrousness or rivalrousness) of

consumption. Goods subject to subtractability (rivalrousness) in consumption by individuals or families can be distinguished from those goods that are subject to joint use (nonrivalrousness) by larger communities of users.

The conventional association of the economic realm with exchange relationships becomes much more ambiguous when a good or service is not subject to exclusion. We can conceptualize the peace and order of a community as a good (i.e., a preferred state of affairs, or set of events) to which exclusion is difficult to achieve and where the good is jointly "consumed" or enjoyed in a nonsubtractable (nonrivalrous) way by all members of a community. These meet the defining criteria of public or collective goods. The good, however, does not occur without organized human effort. If viewed from the perspective of an economist, one might conceive the division of labor characteristic of formulating, applying, and enforcing rule-ordered relationships as a part of the productive efforts that enter into the human relationships involved in producing peace and order in a community. These are among the necessary conditions for creating and maintaining the services associated with the peace and security of a community as an economic good.

Viewed from the perspective of rule-ordered relationships, on the other hand, the complex structure of exchange, property, and contractual relationships inherent in a market system is itself an elaborate structure of rule-ordered relationships that has strong implications for the authority exercised by persons in relation to one another, their autonomy and degrees of choice, and their enjoyment of such values (goods) that we might designate as "freedom" and "justice." There comes a point where the peace and security achieved through rule-ordered relationships can be viewed both as an economic good and as a system of governance. Which aspect one chooses to emphasize in the study of such circumstances depends upon the purposes of the inquiry.

There are many circumstances where a particular referent can be viewed as having several aspects that pertain to the same referent. A market can be viewed as a context in which exchange relationships occur among buyers and sellers of private goods and services; but a market can also be viewed as a situation where exclusion does not occur and all buyers and sellers jointly enjoy, as a public good, the opportunity to buy and sell marketable goods and services. Two aspects of market organizations yield quite different modes of analysis with different implications. The same observation might be made about money as a medium of exchange, as Hartmut Picht emphasizes in his work (Picht,). Money as a unit of account meets the criterion of a purely public good. By using the same unit of account, people gain access to a public measure of value. As a means of discharging a liquidity function, each unit of account functions as a private good. These aspects have strong implications for central banking institutions as against private banking institutions. The realms of private law and private property are never purely "private," but always reveal public aspects of those relationships. This circumstance where any one referent may be viewed from different

points of view (frames of reference) is probably inherent in all objects of inquiry in a universe of interdependent relationships. W. R. Ashby has observed that any "thing" can be viewed in many different ways (1956: Ch. 1).

If we use Hensel's distinction where provision (Versorgung) can be applied to consumption units as distinguished from production as applied to business firms, we have the possibility that collective consumption units in what might normally be referred to as the public sector can have recourse to contractual quasi-market arrangements to procure the supply of public goods and services. Private firms can feasibly function in a public economy as distinguished from the normal market contingencies that apply to goods and services where individuals are subject to principles of exclusion as applied in standard market relationships.

As the nature of goods vary, standard distinctions between "public" and "private" or between "economic" and "political" become difficult to maintain. What might be identified as a public economy occurs where production and consumption of collective goods and services do not allow for standard marketing arrangements. A public economy need not be the exclusive preserve of public instrumentalities of government. A public economy may, instead, be complex configurations of relationships among collective consumption units, business firms, and legislative, administrative, and judicial instrumentalities of government. "'Public' and 'private' are not separate domains," as F. X. Kaufmann has observed, "but distinct perspectives that apply in various mixtures to the social, economic and political reality" (F. X. Kaufmann, G. Majone, and V. Ostrom, 1986: 134).

Distinguishing aspects of economic order from political order poses great ambiguities. An economic order is to be distinguished not as a separate reality, so to speak, but as a conceptual distinction for inquiring about human societies as ways of life from a particular perspective or point of view. A political order is not a realm that exists apart from an economic order but is a somewhat different way of inquiring about and viewing social reality. A business firm is not only a production unit but a system of governance as well. A legislature as a rule-making body is engaged in processes where factors are taken into account to yield a product that might be denominated as a statute or law. A statute or law may function as an element in the achievement of orderly relationships and be constitutive of peace and security in a community. A business firm can be viewed as a political order; a political process can be viewed as a production function. We do not look at separate realities; social reality is viewed from different analytical perspectives or points of view.¹ Economic activities are pursued in ways of life constituted as rule-ordered relationships.

If distinctions between economic orders and political orders are largely conceptual, analytical perspectives, we have reason to believe that pervasive patterns of association will exist between economic orders and political orders. The butcher vending meat products is simultaneously a person engaged in transaction in accordance with

rules, a citizen responsible for the governance of his own affairs in relation to others, and capable of constituting a firm (Betrieb) by mutually agreed-upon contractual relations with employees. Contracts -- sets of rules -- are constitutive of business firms.

Hensel's 23,000,000 social units (Haushaltungen and Betriebe), from an economic perspective, are engaged in the production and consumption of goods and services. From a political perspective these same 23,000,000 units are involved in rule-ordered relationships. Each social unit works in relation to its own rule-ordered relationships in carrying on its consumptive and productive efforts. These units get nested and related to one another in different ways which yield different configurations of economic and political relationships. If each unit, and how they relate to one another, could be organized on principles of self-governance, then we might think of the Federal Republic of Germany as having the potential for being a self-governing society. The key to such a possibility is the relationship of those collective consumption units (Haushaltungen) which are also called governments (Regierungen) -- 25,000 communities (Gemeinden), 11 states (Länder), and one Federal government (Bundesrepublik) -- relate to all of the other units among the 23,000,000 units.

Political and economic orders are but different aspects of the same social reality. The one is rule-ordering; the other is acting in accordance with rules. An entrepreneur is as much a constitutor (legislator) as a producer. Political and economic orders are more like two sides to a coin than disparate objects or domains.

Important questions then are what differences do conceptualizations make in the way that human beings order their relationships with one another and how these differences affect potentials for human development. It is from this perspective that I undertake the task of examining different forms of political order that might be viewed as complementary to Hensel's concern with market economies as distinguished from centrally-administered economies.

IV

Distinguishing Types of Political Order

Within the political theory of the seventeenth and eighteenth centuries, reference is made to two types of political order that have strong parallels to Hensel's distinction between a centrally-administered economy and a market economy. One is a unitary theory of sovereignty; the other is a theory of constitutional democracy as applicable to federal or compound republics. The former is associated with the rise of Absolutism among the European nation-state and might be best illustrated by the French and Prussian monarchies of Louis XIV and Frederick II. Hobbes's Leviathan, first published in 1650, provides us with the best articulation of a theory of sovereignty. Montesquieu, by contrast, in his chapter (Book XI) on the constitution of liberty, clarifies some of the rudiments of constitutional government. In another chapter (Book IX) Montesquieu suggests the

potential for what he refers to as a confederate republic. These conceptualizations were further elaborated in the essays written by Alexander Hamilton and James Madison in The Federalist. Together, Montesquieu and the American federalists can be viewed as conceptualizing the basis for a system of constitutional government in compound republics where the provisions of constitutions apply as enforceable rules to those who exercise governmental prerogatives (V. Ostrom, 1987).

The Sovereign State

Thomas Hobbes in Leviathan presents a fully elaborated theory of the sovereign state. Peace as an alternative to war depends upon the maintenance of rule-ordered relationships that provide the foundations for reciprocity in mutually-productive relationships in human societies. Rules to be effective must be enforced: "covenants without the sword, are but words and of no strength to bind a man at all" (Hobbes, 1960: 109). For human beings to enjoy the conditions of peace requires a common, unified body of law to which people can have reference in ordering their relationships. A unity of law, in turn, is presumed to depend upon a unity of power in the governance of a commonwealth. A sovereign authority is one which exercises the ultimate authority to govern in a society.

This conception of sovereignty is consistent with a definition of a state as a monopoly of the legitimate use of force in a society. The sovereign in Hobbes's formulation exercises the ultimate authority to govern including supremacy over legislative, executive, and judicial matters and over all means that are necessary to the peace and the security of a commonwealth. A hierarchy of authority relationships culminates in a single center of supreme authority: the sovereign. Hobbes emphasizes that this characteristic of monopoly power, as applied to the authority to govern, is such that authority is unalterable, so far as subjects are concerned, unlimited, and indivisible. This is why the characterization of absolutism can be applied to sovereign states.

From these attributes of a unitary sovereign, implications follow which pose a serious puzzle for human societies. As the source of law, a sovereign is above the law and cannot be held accountable to a rule of law in the governance of a society. A sovereign is beyond the reach of law. In some fundamental sense, a sovereign can, thus, be regarded potentially as an outlaw in relation to the rest of society. This circumstance gives rise to extraordinary opportunities for sovereigns, or those who act on their behalf, to use instruments of coercion and fashion rules of law so as to dominate the allocation of values in a society. Instruments of government, then, afford extraordinary opportunities for a few to exploit the many.

Hobbes's concluding warning about the "natural punishments" that will be endured by a sovereign, who fails to abide by the fundamental moral precepts that are necessary to peace in human societies, is a recognition of this difficulty in his theory of sovereignty:

- and hereby it comes to pass, that intemperance is naturally punished by diseases; rashness, with mischances; injustice, with the violence of enemies; cowardice, with oppression; negligent government of princes, with rebellion; and rebellion with slaughter (Hobbes, 1960: 241).

Peace gives way to war.

A necessary condition for Hobbes's sovereign to obtain peace and concord in the governance of a commonwealth is a sufficient measure of enlightenment and benevolence to conform to the moral precepts of peace that are grounded in the golden rule: Do not that to another, which thou wouldst not have done to thyself. While a sovereign is not accountable to other human beings, he is accountable to that which "men call God" (Hobbes, 1960: 68).

Constitutional Government

Hobbes recognized that three different forms of government might exist. A monarchy is the form where one person is sovereign; an aristocracy when an assembly of a few exercise the sovereign prerogatives of governance; and a democracy where an assembly of all citizens governs society. The last alternative provides the basis for conceptualizing a system of constitutional government.

When citizens rule by assembly, two sets of rules are necessary. One set applies to the conduct of government -- to the assembly itself; the other set applies to the other exigencies of life that occur outside an assembly. The former is constitutional; the latter, ordinary law. Rules of assembly are necessary conditions for there to exist rule by assembly. Citizens function in the process of government; but citizens are also subjects to the rules which they as citizens adopt in assembly to order their way of life outside the assembly. Citizens are both rulers and subjects who act in accordance with the rules they establish for themselves. This principle might be generalized where individuals are both rulers and subjects in all social units (Haushaltungen, Betriebe, Regierungen). Such a system of governance might yield a self-governing society in contrast to a state-governed society.

The problem of how to make constitutional law enforceable in relation to those who exercise the prerogatives of government depends in a democracy upon placing limits upon all exercises of authority so that no one exercises unlimited authority. Two types of provisions are necessary. One pertains to the basic constitutional authority of citizens and persons and correlative limits upon the authority of government. The other pertains to a distribution of powers that creates a division of labor in the exercise of rule-making, rule-applying, and rule-enforcing functions of government. These types of provisions imply that law pertains to an open public realm (res publica) where the standards set in law can be publicly knowable by those who use these same standards in ordering their own conduct and by those who perform judicial and executive functions in applying and enforcing standards of law. The unity of law turns not upon a

unity of command, in such circumstances, but upon a shared community of understanding. Everyone exercises some basic authority to govern; no one exercises unlimited authority.

When principles of governance consistent with maintaining the enforceability of constitutional law are reiterated to apply to diverse, overlapping, and concurrent associations and communities to form multiple units of government in a compound system of republics, we can imagine circumstances where all authority is subject to limits. No one, nor any one body, becomes the ultimate judge of his, her, or its own cause in relation to the interests of others. Government can then take place through the concurrent exercise of authority by diverse instrumentalities and processes of governance that are all subject to potential vetoes to maintain limits upon all exercises of authority. Judicial processes can afford any person with veto capabilities that pertain to entitlements to due process of law in the discharge of governmental prerogatives. The basic integrity of constitutional government then turns upon the willingness of citizens to challenge any improper discharge of authority by those who exercise the prerogatives of government.

A system of governance grounded in principles of constitutional rule is one that manifests equilibrating tendencies where lawful conduct occurs within the bounds established by potential limits and veto capabilities exercised by diverse instrumentalities of government. The basic design principle uses "power . . . to check power" as Montesquieu has expressed the concept in Book XI in The Spirit of the Laws or "opposite and rival interests" as Madison expressed much the same concept in Federalist 51. Something called government occurs in an open interpersonal, interorganizational, and intergovernmental milieu. The emphasis is upon sharing power with others rather than exercising power over others.

V

The Problem of Incommensurabilities and Emergent Orders

My brief allusions to these two different approaches to the organization of systems of governance has been more fully elaborated elsewhere (e.g., V. Ostrom, 1986: Ch. 5; V. Ostrom, 1987). These two different approaches are at least as divergent in their basic characteristics as exists between a market economy and a centrally-administered economy. We now confront a difficult problem. We recognize that differences exist. How do we identify those differences? How do those differences enter into some form of calculation where we can achieve some measures of commensurability in making comparative assessments? Can we, for example, make direct straightforward comparisons between the government of the Union of Soviet Socialist Republics and the government of the United States of America, both of which are sometimes referred to as federal systems of government? We seem to confront endless difficulties in establishing a basis for achieving a sufficient degree of commensurability to make system comparisons.

If we do no more than rely upon the conceptualization of authority relationships as propounded in Hobbes's theory of sovereignty, and a theory of constitutional rule as derived from Montesquieu, Hamilton, and Madison, and used by Tocqueville, incommensurabilities are of a substantial magnitude. A sovereign exercises unlimited authority; officials in a system of constitutional government exercise limited authority. The peace and concord of Hobbes's commonwealth depends upon an obedience of subjects and upon a level of enlightenment by those who exercise sovereign authority so as to avoid what Hobbes refers to as the natural punishments. Residual levels of enlightenment are presumed to reside with citizens of constitutional republics so that officials are held accountable to appropriate standards of performance. Furthermore, when problems of institutional weakness and institutional failures arise, appropriate methods are required to identify the potential sources of difficulty and to institute appropriate changes in constitutional arrangements. Constitutional democratic republics, as Montesquieu emphasized, depend upon a sufficient level of enlightenment so that each individual is presumed to be first his or her own governor. This implies the existence of substantial self-governing capabilities on the part of each individual.

Wherever governance is achieved through multiple instrumentalities of government and among numerous units of government, equilibrating tendencies are presumed to exist among the diverse structural components, each of which is governed by rules of law subject to limits inherent in the veto positions exercised by others. Any system of equilibrating structures acquires operational characteristics from the way that the parts interact with one another rather than by the dominance of one part over all of the other parts. In an equilibrating system, the parts contribute to a systemic order that has emergent properties which are distinguishable from the parts. In a system of dominance, the dominating part, presumably, imparts an essential element of order to all other parts of the system by virtue of its domination and their subordination.

Such considerations led Tocqueville in Democracy in America to indicate that the system of constitutional rule which was used in the design of that system of governance yielded a political system of a distinct kind. He characterized three types of political order. One is where a state rules over society. Another is where "the ruling force is divided, being partly within and partly without the ranks of society." The third, which he identified with American democracy, is one where "society governs itself for itself" (Tocqueville, 1945: I, 57).

If we follow Tocqueville's conceptualization, we then have two basically different types that parallel the distinctions between Hobbes's theory of sovereignty and a theory of constitutional rule reiterated to apply to all associations in a society. Tocqueville's second category has elements of both other types: "the ruling force, being partly within and partly without the ranks of society." This clue affords some measure of commensurability with regard to the forms of political order which occur among the nations of Western Europe.

These might be identified with a theory of "limited" sovereignty. Hobbes, however, would have considered a theory of "limited" sovereignty to be an absurdity; a "limited" sovereign would be one which exercised a limited and ultimate authority. The two terms, "limited" and "sovereign," cannot be used in a coherent way. If those who pretend to be sovereign are subject to limits, then those who interpose limits also participate in processes of governance. The nexus of governing processes in a system of governance would include all of those who pretend to be sovereign as well as those who interpose limits.

An important issue then is whether the intermediate type where "the ruling force is divided, being partly within and partly without the ranks of society" is an intermediate form manifesting emergent properties which have potentials of moving from a state-governed society to a self-governing society and if stable conditions cannot be achieved of moving again to a state-governed society. Such patterns of oscillation might occur amid historical exigencies of accident and force. Under such circumstances the pulling and hauling of social forces might be expected to manifest cyclicity where history has strong tendencies to repeat itself, and where human beings cannot achieve an ordered way of life grounded in reflection, discussion, and choice.

Unfortunately, the same social reality can be construed in many different ways. Potentials for command and control exist in all societies; and these potentials are closely related to rule-ruler-ruled relationships. On the other hand, these same potentials for command and control may be subject to such limits that no one individual or no single coalition of individuals can be said to exercise the ultimate authority to govern.

An essential core in any system of government can be identified with an exercise of executive authority where authority to command prevails. Whenever a division of labor occurs in the exercise of governmental authority so that distinguishable judicial and legislative instrumentalities have an independent existence outside the executive apparatus, some degree of separation of powers can then be identified. To have separately identifiable legislative, executive, and judicial instrumentalities of government is to have a separation of powers articulated with a commensurate division of labor.

How these instrumentalities become linked to one another is an important consideration. Thus, the place of a cabinet in a parliamentary system of governance is an important link especially in identifying the relationship of legislative to executive instrumentalities. But, any such linkages simultaneously involve relationships to electoral processes and judicial processes where larger communities of people monitor events by an autonomous testing of the reality of their experience with one another. Once a division of labor is firmly institutionalized within institutions of governance, simple doctrines of supremacy will no longer suffice to explain the way that these diverse institutions are linked to one

another. The hypothesis needs to be entertained that these structural arrangements manifest equilibrating tendencies rather than dominance relationships. The systems will then have emergent properties that cannot be explained as simple dominance.

The relationship of the institutions of a central government to the ranks of the people may not be confined to the election of representative officials who function in a central government. An important feature of European political thought has been its emphasis upon some significant measure of autonomy on the part of institutions that are constitutive of society as distinguished from the state. A significant measure of self-governing or self-administering capabilities is presumed within the confines of family, church, guild, economic, commercial, and communal relationships apart from the institutions of the central government. These relationships may be grounded in broad latitudes of discretion inherent in code law adjudicable in private-law jurisprudence as contrasted to public-law jurisprudence. When such distinctions are given structural substance, authority is complexly differentiated in the governance of society. Latitude then exists for sufficient diversity to allow for different sources of influence to be articulated in the rules that apply to discrete circumstances. Uniform rules of sufficient generality need not imply a uniformity of administration. European traditions of self-administration (Selbstverwaltung) imply that opportunities exist to exercise discretion within the latitude of what is permissible (may be done) in a rule of law rather than being bound by compulsions of command (i.e., must and must not). Self-administration with reference to general rules of law is a more precisely definable concept than the term "decentralization" which is coming into more general contemporary usage.

We can then imagine the possibility that discrete political orders might exist along some continuum. One extreme is crudely equivalent to Hobbes's theory of sovereignty with an unlimited, indivisible, and absolute sovereign which rules over society. The other extreme is a constitutional system which interposes limits upon the exercise of governmental authority to such an extent that a society might be aptly characterized as a self-governing society. Switzerland might be viewed as a society that manifests strong self-governing capabilities; while France, until recently, continues to articulate a theory of public jurisprudence that justifies broad latitudes of state tutelage where people are presumed, in the context of public and communal affairs, to be wards of the state.

The degree of ordering by reference to state authority may be treated as a variable ranging from absolute states to stateless, self-governing societies (Nettl, 1968; Birnbaum, 19??). As soon as we recognize this possibility, we are then confronted with a further possibility. Stateless societies may become numerous enough to allow for diverse possibilities. The attribute of statelessness may be viewed as a step-function that opens up a new range of possibilities for human development. New forms of political order and new courses of cultural development in human civilization may emerge from societies which previously were thought to be dominated by an absolutism in the exercise of state authority.

Forms of order may, thus, possess emergent characteristics, which, when reiterated and amplified, may become the basis for new patterns of order. Life is itself a form of order which is self-reproducing. This form of order has been subject to reiteration and amplification, by allowing variation and selection to occur, in different self-reproducing species to yield a great variety of life forms. Emergent properties characteristic of animals, as distinguished from plants, have yielded emergent capabilities for learning. When learning is again amplified through vocalization, communication, and language, the emergent properties of cultural evolution and human civilization occur.

We, thus, have the possibility that a particular form of government -- simple, direct democracies -- contained an arrangement where prerogatives of ruling and acting in accordance with rules were exercised concurrently by the same people. When such arrangements can be amplified through reiteration and innovation to apply to all patterns of human association, we have the possibility that human societies can become self-governing without being dependent upon the overlordship (Herrschaft) of some autonomous body (the state) to rule over society. Something called the state might wither away even though some fossil-like remains can still be recognized among the institutions of government. Under peculiar circumstances, fossil-like remains may reemerge as cancerous growths where limits no longer prevail and self-governing societies are transformed into totalitarian regimes.

Incommensurabilities are likely to reveal emergent properties that give rise to divergent tendencies and become increasingly important in an emerging order marked by innovative features that would have been difficult to imagine in prior patterns of order. Should such a development of emergent properties occur, those who are concerned with making system comparisons about political orders cannot confine themselves to a theory of sovereignty and to the study of the institutional arrangements of central governments. The place of the European Community in the constitution of European society, for example, presents Europeans with a difficult dilemma when they insist upon using a theory of sovereignty to explain the forms of order that are emerging in European society.

Since the theoretical foundations for the constitution of what might be designated as self-governing societies was reasonably well-clarified by the end of the eighteenth century, we have access to interesting demonstrations by different political analysts of the difficulties in construing the nature of the political orders which they sought to explain. Walter Bagehot's The English Constitution, for example, is a marked contrast to Tocqueville's Democracy in America. These two analysts show surprisingly few points of commensurability in the inquiries which they offer to their readers. Bagehot is exclusively preoccupied with the institutions of central government. Tocqueville devotes one chapter in a two-volume work to the institutions of American national government. Tocqueville places strong emphasis upon the institutions of local government, and asserts:

[M]unicipal institutions constitute the strength of free nations. Town meetings are to liberty what primary schools are to science; they bring it within the people's reach, they teach men how to use and how to enjoy it (Tocqueville, 1945: I, 61).

Bagehot, by contrast, observes, as though responding to Tocqueville:

We have had the instruction municipalities can give us: we have been through all of that. Now we are quite grown up, and can put away childish things (Bagehot, 1964: 265).

In highlighting the relative importance of institutional arrangements, Bagehot sees the cabinet as the key institution that ties the English constitution into a unified whole. Tocqueville, by contrast, identified the federal form of government, township institutions, and the judiciary as the most important institutions contributing to the viability of American democracy. Tocqueville considered customs, as habits of the hearts and minds of the American people, to be of even more fundamental importance than the institution of government *per se* in the shaping of a democratic society. Indeed, he characterizes religion as "the first among their political institutions" even though "[r]eligion in America takes no direct part in the government of society" (Tocqueville, 1945: I, 305). Such a statement would be incoherent if "political institutions" were equivalent to "governments." Tocqueville's estimate of the long-term viability of American society depends upon a careful assessment, occupying three of the four books in the second volume, about how people respond to conditions of equality in shaping the way they think, the way they feel about themselves and others, and how they relate themselves to one another in various social circumstances. Only by understanding processes of acculturation and socialization through successive generations is it possible for Tocqueville to reach an estimate of the long-term viability of America as a self-governing society where people are first their own governors.

The problem of incommensurabilities in the studies offered by Bagehot and Tocqueville are not resolved by differences inherent in the American and English constitutional systems. Woodrow Wilson, working with the same framework used by Bagehot, provides us in Congressional Government with an American counterpart of The English Constitution. Congress and its committees are viewed by Wilson as the key center of power in the operation of American government. This position is somewhat qualified in the preface to the fifteenth printing of Congressional Government where Wilson conjectures that government by "statesmanship," in what today might be termed "presidential government," may have replaced government by "mass meeting" (Wilson, 1956: 23). Government by mass meeting presumably refers to Congressional government.

When we turn to conjectures about the longer-term viability of the English and the American systems of governance, we can discover important elements of congruence between Bagehot's and Tocqueville's analyses that point to residual characteristics that are more closely

associated with the habits of the heart and mind imbedded in the customs of people. Bagehot's distinction between the dignified and efficient parts of the English constitution assumed critical importance with the passage of the Reform Act of 1867 extending the right to vote in parliamentary elections to conditions approximating universal male suffrage. In the introduction to the second edition, Bagehot is much concerned that these reforms will lead to the dominance of parliament by wire-pullers and demagogues. The pagaentry of the dignified parts of the constitution, in that circumstance, was no longer sufficient to maintain a culture of problem-solving through discussion which had been the central attribute of parliamentary government prior to the passage of the Reform Act.

England was possessed of two cultures, one where a stratum of the population was capable of problem-solving through discussions, another where the residual population was accustomed to doing what they were told and being spectators preoccupied by the pagaentry of royal theater. If the residual population came to dominate the political process, Bagehot was fearful that the voice of the people could become the voice of the devil; and parliament would become a puppet show. On the basis of his own reflections following the enactment of the Reform Act of 1867, Bagehot in effect recognizes the insufficiency of his own analysis offered in The English Constitution. Tocqueville's concern for the habits of the hearts and minds of people in a self-governing society provides us with clues for specifying the constitutional foundations for such societies.

VI

Conceptual and Social Foundations for the Emergence of Self-Governing Societies

Tocqueville, in Chapter II of Democracy in America, addresses his readers directly to indicate:

The readers of this book will find in the present chapter the germ of all that is to follow and the key to almost the whole work (Tocqueville, 1945: I, 28).

That chapter is about the historical origins of the Anglo-Americans. The key resides in the religious beliefs and practices of the Puritans: "Puritanism was not merely a religious doctrine, but corresponded in many points with the most absolute democratic and republican theories" (Tocqueville, 1945: I, 32). They relied upon the Judaic concept of covenant to constitute a church organized as self-governing congregations and civil communities as self-governing republics. Each town was organized as a republic governed by an assembly of citizens. The town was organized before the county, the county before the state, and the state before the Federal union. This tradition of self-governance characterized by Tocqueville as the sovereignty of the people became "the law of laws" (Tocqueville, 1945: I, 56), i.e., the constitutive principle used to create a system of governance.

Something more than the human condition as genetically determined is required for the development of self-governing societies. Such societies are, instead, grounded in long-term cultural achievements that provide the basis for shared communities of understanding, open patterns of discourse, and ways of associating with one another. Self-governing societies depend upon a consensual basis for ordering relationships in accordance with general rules of law. This consensual basis forms "the law of laws" to use Tocqueville's expression. Where do we turn to find the emergence of ideas and patterns of organization that offered potentials for the emergence of self-governing societies among the peoples of Europe?

In what follows in this section, I shall turn first to the creation of two realms with the separation of secular and ecclesiastical authority in the eleventh century. This development is associated with important metaphysical assumptions that provide the epistemological foundation for Western habits of thought that inform human action. Other traditions associated with concepts of covenant and res publica lay the foundations for Western jurisprudence. A method of normative inquiry based upon these foundations serves as a method for formulating, applying, and evaluating systems of rule-orderings in human societies. The method of normative inquiry might be viewed as a basic way for thinking about rule-ordered relationships. Such a method must, however, confront the problem of positive analysis that arises from the circumstance that rule-ordered relationships in human societies can evoke consequences which are counterintentional, counterintuitive, or both. A positive science of association must complement the method of normative inquiry. The mode of positive analysis must, however, be extended to have reference to the functions performed by diverse associated efforts. Ashby's law of requisite variety can be used as a general criterion to enquire about the sufficiency of positive regulatory efforts in guiding human activities and the way that activities are structured by institutional arrangements in complex systems of actions. This implies substantial self-organizing or self-governing capabilities on the part of Hensel's 23,000,000 or more units that comprise the political economy of the Federal Republic of Germany. This places a substantial methodological burden upon those of us who are concerned with making system comparisons with regard to the constitution of order in human societies.

Two Realms

Harold Berman, in Law and Revolution, identifies the scientific study of law as growing out of the investiture dispute between the Roman church and secular authorities in Western Europe. Pope Gregory VII's dictate issued in 1075 is identified as the critical event even though reform of the church as such had been the subject of long-standing dispute. Hildebrand, who assumed the office of pope as Gregory VII, had early associations with those reform efforts. The demand was for autonomous standing of the church and control by officers of the church over the processes that had to do with investing individuals with church offices and administering sacraments and affairs within the church apart from the exercise of authority over secular affairs.

The two realms -- the secular and the ecclesiastical -- existed concurrently with one another. The secular realm reached from emperors to subjects; the church from the pope to each member of the Christian faith. The Gregorian dictate yielded a dual claim to sovereignty -- one in secular matters and another in spiritual matters impinging upon the same lands and peoples in that portion of Christendom which acknowledged the claims of the bishop of Rome. The claims of the pope, as bishop of Rome, gave primacy to the spiritual realm over the secular realm. Emperors, kings, princes, and other secular authorities were held accountable, as Christians, to the laws of God and the teachings of Jesus of Nazareth. In the spiritual realm, secular authorities, who offended against the fundamental canons of the church, could be excommunicated, i.e., banned from the body of the Christian church.

The articulation of this claim did not yield an uncontested separation of ecclesiastical and secular authority. It laid the foundation for a contestation about the nature of authority relationships that became a fundamental part of European history through the centuries that have followed. Short-term patterns of dominance have prevailed in both secular and ecclesiastical affairs; but these short-term patterns of dominance have always yielded to a longer-term contestation over ideas and their application to potentials for development in Western societies.

Contestation and conflict in human societies can, unless limited, escalate into violent efforts of individuals or associations of individuals to war upon one another. In those circumstances, conflict and quietude can succeed one another like day and night without producing fundamental changes that are characteristic of emergent patterns of order that enable us to understand the development of Western civilization. Europe continued to be plagued by violent conflict; but European history, at least from the eleventh century onward, was also occupied with a contestation about the nature of authority relationships which yielded changes in which structures and processes of governance were themselves subject to change.

The Holy Roman Empire included reference to emperors, kings, princes, and to free cities. Emperors never achieved a secure form of overlordship on the part of those who aspired to becoming autocratic rulers. Absolute kings and princes arose in domains such as Sicily, Spain, France, and Prussia. Those rulers who achieved the autonomy of Hobbes's sovereign were never able to establish stable, long-term patterns of dominance. The Holy Roman Empire which never achieved the status of a true empire, nor a true state, endured for a millenium. Frederick II's kingdom of Prussia was conquered by Napoleon in less than a century. Bismark's second Reich endured for only about 50 years. Prussia no longer exists in the political geography of the contemporary world.

What made the investiture dispute and the disputations about the nature of authority relationships which have followed the source of ideas, structures, and processes that have transformed Western societies and yielded the development of Western civilization? In responding to this question, I shall attempt to find basic principles

that provide a key to understanding how contestation between secular and ecclesiastical authorities yielded conceptual and structural developments that are constitutive of self-governing societies. In doing so, I shall draw upon intellectual developments, often associated with religious teachings, that stand at the foundations of modern intellectual and social developments. These teachings have a universality which need not be identified with the dogmas and rituals of particular religious communities. In such circumstances, they might be viewed as general foundations for the constitution of order in human societies. An effort to address constitutional foundations for a theory of system comparison must attempt to take account of those basic presuppositions that are constitutive both of order and the transformation of order to yield further changes that are reconstitutive of societies.

The Eternal and the Temporal

Perhaps the most fundamental presupposition in Jewish, Christian, and Islamic religious traditions is the presupposition that there is one God and only one God. The issue at stake in any such assertion depends upon what men call "God." There is a coherent conjecture in some Jewish, Christian, and Islamic traditions that God is not a mythical superman but that which is eternal. God is the creator of the universe; the source of creation.

The conception of God as eternal -- the creator of the universe and the source of creation -- has, in turn, been the source of a profound tension for the species that identifies itself as homo sapiens -- the thinking one. Human beings find themselves in the dilemma of existing "in-between." There is a here and now that involves the time and place exigencies of living discrete lives. Life itself occurs in a continuity that extends over generations and beyond the limits of human knowledge. Human beings glimpse the possibility of an eternal order -- a creator and creation -- without being able to comprehend all that is implied.

This condition of being "in-between" is a challenge to the imagination in attempting to transcend circumstances which exist in relation to that which might be. The course of human inquiry and intellectual development has been shaped by basic presuppositions about the eternal and what is universal in the order of creation. In turn, the human effort to come to a basic appreciation about the eternal in the context of the temporal, with the separation of ecclesiastical and secular realms, opened a critical dialogue about the nature of order in human societies. This method of critical dialogue informed by contestable arguments has been the process for constituting order in human societies and fashioning a theoretical apparatus appropriate to the study of patterns of order in human societies.

The concept of a creation by that which is eternal has interesting connotations. A creator exists apart from that which is created, yet any creation embodies attributes of its creator. God, as creator of the universe, also has interesting metaphorical

implications with reference to human beings as artisans who create artifacts. One way to attempt to understand God is to study God's creation; one way to understand human beings is to study their creations.

Hobbes, for example, has indicated an association between a study of effects and the source of creation:

Curiosity, or love of the knowledge of causes, draws a man from the effect, to seek the cause; and again, the cause of that cause; till of necessity he must reach this thought at last, that there is some cause, whereof there is no former cause, but is eternal; which it is men call God (Hobbes, 1960: 68).

Hobbes's reference to the love of knowledge as a way to recognize that there is some cause of which there is no former cause but is eternal indicates that there is a way to recognize that the multitudinous patterns of ordered relationships leave open the possibility that there is some aspect of order that is eternal. This conjecture, when accepted as a fundamental presupposition, has the most profound implications for any theory of knowledge concerned with system comparisons. The concept of the eternal, as a hypothetical source of "creation," presumes an underlying unity to the basic ordering of relationships in that which was created. The eternal is correlative with universal and presumes the existence of a universe. The presumption that a universe exists is also accompanied by a presumption that there is a unity of knowledge. When appropriately articulated, the basic principles that are constitutive of order are universal generalizations of eternal proportions.

The presumption of a unity of knowledge carries with it a presumption that a correct understanding of universals will yield systems of explanations that are coherent with one another. Human beings, as fallible creatures, may unravel an order of explanations about different structures of causal orderings. But the postulate that there exists a universe where there is some cause for which there is no former cause yields a demand that a proper order of explanation will yield a unity of knowledge where systems of order are nested in relations to one another in a coherent whole. This is an extraordinary demand for seeing coherence in the ordering of events in the universe and in judging the explanations offered by human beings.

Hypothetically, human beings might use other presuppositions to ground their reflections. Multiple orders might be presumed so that we might postulate the existence of multiverses. Each order in a multiverse might be associated with unique orders of creation. The demand for a coherent order of explanation could be relaxed to allow diverse orders of explanation. The struggle to fashion theoretical generalizations that are consistent with a basic postulate that a universe (one God) exists is an extraordinarily demanding criterion at the foundation both of modern scholarship and of human understanding. People develop habituated ways of thinking in which they hold one another to account for offering conjectures and explanations that meet

standards of universality and coherence. Efforts to establish firm demarcation principles for distinguishing fields of inquiry will always be subject to challenge so long as the presupposition that a universe exists has not been falsified and thinkers continue to demand a coherent order of explanation as a basic criterion that disciplines intellectual curiosity.

The search for criteria for disciplining inquiry is also accompanied by a quest for interposing a devotion to the eternal within the temporal and social exigencies of life as lived by finite human beings. One of the basic precepts in Christian teachings is to render unto Caesar that which is Caesar's and unto God that which is God's. This precept has the initial appearance of a meaningless tautology. If that which is God's is eternal and that which is Caesar's pertains to time and place exigencies which reflect discrete conditions of life, we have a distinction of some importance. Jesus of Nazareth was demanding, as the Jewish teachers before him had also demanded, that those who believe in God should order their lives in such a way that devotion to the eternal has an explicit place in individual human efforts and in human associations with one another. Preoccupation with the practical exigencies of life are always to be ameliorated by a basic reflection upon the larger meaning of life in an eternal (universal) order.

Both the invention of the sabbath and the constitution of communities of believers who seek to understand and honor the eternal have been of major importance in the development of Western civilization. Life goes on where preoccupations with the here and now are always being interrupted and mediated by a commensurate concern for the eternal, the larger order of the universe, and what this implies for the here and now. Several aspects bear upon human contingencies.

First, there is some rudimentary allocation of space-time contingencies in the emotional and cognitive experiences of individuals as personalities so that the pressing exigencies of the here and now are mediated in relation to an eternal. Human thoughts and feelings can achieve an equilibrium by juxtaposing compelling "necessities" against the enduring conditions of an eternal order. Compelling necessities of daily existence can be mediated in a frame of reference that suggests a larger meaning to life.

Second, the partitioning of space-time contingencies of life with a regularity in one's devotion to the eternal allows for an openness to the working of the human imagination that is simply not allowed if there is no regular occasion for rest and reflection. The invention of the sabbath had to be an immense stimulus to the working of the human imagination especially when devoted to reflections about the eternal. Human societies which choose to invest themselves in this way can be expected to yield a large harvest of imaginings. Innovations in the realm of the imagination open potentials for divergence in the realm of ideas and what ideas imply for human actions. Divergent ideas can be disruptive for those who hold diverse beliefs. Disputation over ideas must inevitably plague any society

which partitions the space-time contingencies of life to include frequent and regular devotion to the eternal. So long as orthodoxies cannot be effectively defended by the repression of heresies, contestations in the realm of ideas yield to longer-term efforts to achieve resolution.

Association of believers with one another in communities of believers devoted to the eternal is one way of coping with the disruptive tendencies engendered by the workings of the imagination. This was especially important to a church based in Rome and claiming to be a catholic or universal Christian church. Tendencies toward divergence among believers who devote themselves to the eternal can be brought within the confines of a shared community of understanding only by processes of reformulation and selection so as to yield a coherent body of beliefs. A preoccupation with the coherence of beliefs about the eternal raises issues about the criteria to be used in reformulating and selecting from the vast array of contending and divergent ideas that are evoked by the workings of human imagination. Those who viewed themselves as constituting a universal (catholic) church came to rely upon the doctrine of universality and the criterion of coherence as a basis for selecting and organizing the corpus of its teachings -- what was to be professed and to be taught as true beliefs.

Much of the teachings in both the Jewish and Christian traditions were derived from those who claimed to have a special relationship with God. They received and articulated their message of divine understanding by a process we understand as revelation. Revelations about God, the eternal, can also be subject to tests of universality and coherence. A process that we have come to identify with "reason" draws both upon the processes of inferential reasoning formulated by Greek scholars placed within the frame of some organizing principle that is conceived to be universal in its power of explanation. There is both an element of discovery or insight (revelation) pertaining to some fundamental ordering principle and a presumption that such an ordering principle is amenable to rational processes of calculation that can be characterized as reason. In such circumstances, it is not enough to say "I believe" to justify a belief. Beliefs must be formulated in relation to a more general system of beliefs that are coherent with other beliefs and consistent with a precept of one God (a universe).

The scholasticism of the medieval Christian church was an effort, then, to apply principles of reasoning to the religious teachings derived from revelation. Peculiar puzzles or anomalies which might be viewed as absurdities came to be debated. Revelations were the subject of debate and contestation in the world of ideas. Faith in the principle of a universal order required a formulation of ideas that was consistent with such a presupposition. A faith grounded in such presuppositions became a powerful tool for the critical evaluation of ideas in more general systems of ideas.

The issue at stake in the investiture dispute was who should decide such matters. The pope asserted that the church, as a

universal community of believers devoted to the eternal, should decide basic matters of belief. Authorities in command of the sword and wealth in a society were presumed not to be competent to resolve issues about the proper order of beliefs pertaining to an eternal order and how devotion to the eternal should itself be observed.

Berman has demonstrated that this issue was of momentous importance for Western civilization. Patterns of dominance were ameliorated by the creation of two realms, the sacred and the secular, which reached into the lives of most people within the domain of the Western church. Further, the demarcation of sacred and the secular, the eternal and the temporal, posed fundamental difficulties that remained intractable to effective resolution. The two realms impinged upon each individual's life. The patterns of association were differentiated, but the time and place dimensions of all phenomena are related to underlying principles of order that cohere in presumptions of universality.

This fundamental tension between the temporal and eternal became an engine driving the intellectual development of new modes of thought. The distinction between the temporal and the eternal was of a basic order of magnitude with regard to both cosmology and epistemology. This distinction introduces a transformation in human thinking that permeates the lives of people as they function in two social realms: church and empire; church and commonwealth. It is this distinction that stands at the foundation of scholarship and the organization of schools and universities. Academic freedom is correlative to ecclesiastical freedom. Freedom of thought, speech, discussion, and association about the eternal and the temporal and about patterns of order in human societies emerged as properties characteristic of an open public realm. The distinction between eternal and temporal, church and commonwealth, marks the emergence of new orders of relationships in societies that gave rise to new potentials for development in human civilization. Methods of discussion in arraying contestable arguments evoked alternative ways for coping with problematical situations.

In our concern with constitutional foundations for patterns of order in human societies, we need to shift from the cosmological and epistemological to a more specific concern with law and jurisprudence as the context in which the disputation about the constitution of order in Western societies occurred. It was a society of concurrent realms. The constitution of two realms required recourse to principles of social organization that allow for the development of multiple realms, all of which have reference to rules, standards, or norms for the ordering of human relationships that are potentially applicable to many realms.

Covenant, Res Publica, and the Scientific Study of Law

The church of Rome, in conceiving itself as a universal Christian church, had two traditions to draw upon in articulating conceptions of law that had general applicability. One was rooted in the tradition of the Hebrews, associated with the exodus from Egypt and articulated

in the conception of law received by Moses. The other was associated with Roman law, grounded in republican traditions and codified in an imperial tradition.

The Mosaic tradition and its Christian derivative are rooted in the presupposition that law is grounded in the eternal. The fundamental concept of law is a consenting, covenantal relationship which is mutually binding between God and a chosen people and among a chosen people as sons and brothers of a covenant who bind themselves to act in accordance with eternal law. Being a chosen people implies that such people bear a special responsibility to choose and create an order of relationships with one another that is grounded in a devotion to that which is eternal. The Mosaic code is grounded in these presuppositions and the fundamental teachings in the Jewish religious tradition treat law as the way of God, the eternal.

A basic difficulty exists in both the Jewish and Christian traditions about presupposing the way of God as eternal and how human beings come to understand the way of God. At least two different methods of thinking about the way of God as eternal exist in Western traditions. One way is to anthropomorphize God as seeing, speaking, and acting much as human beings do. God, the eternal, is then viewed as an omniscient and omnipotent being. God would then be infallible as distinguished from human fallibility.

Tocqueville has used such an anthropomorphic conception of God to characterize divine vision in the following way:

The Deity does not regard the human race collectively. He surveys at one glance and severally all of the beings of whom mankind is composed; and he discerns in each man the resemblances that assimilate him to all his fellows, and the differences that distinguish him from them. God, therefore, stands in no need of general ideas; that is to say, he never feels the necessity of collecting a considerable number of analogous objects under the same form for greater convenience of thinking (Tocqueville, 1945: II, 13).

To his conception of a knowing and thinking God, Tocqueville then juxtaposes the mode of human thought:

General ideas are no proof of the strength, but rather of the weakness of the human intellect; for there are in nature no beings exactly alike, no things precisely identical, no rules indiscriminately and alike applicable to several objects at once. The chief merit of general ideas is that they enable the human mind to pass a rapid judgment on a great many objects at once; but, on the other hand, the notions they convey are never other than incomplete, and they always cause the mind to lose as much in accuracy as it gains in comprehensiveness (Tocqueville, 1945: II, 13).

Claims to both papal authority and imperial authority have been grounded in presumptions that both emperors and popes have a special

relationship as God's viceroy on earth or as successors to Christ in exercising leadership of the Christian church. The exercise of authority associated with such presumptions are accompanied with special claims to infallibility on the part of those who exercise supreme authority and correlative obligation on the part of others to obedience.

It was such a claim in Justinian's conception of imperial authority and the function of the emperor in the codification of Roman law as comprehensive body of law which was presumed to meet criteria of universality and coherence. Codification itself was a task discharged by legal scholars. Once a comprehensive code of law was proclaimed by authority of the emperor, that law was treated as authoritatively valid and applicable to all discrete instances. Application was presumed to be in the order of a deduction, moving from the universal to the particular.

A basic problem arises in such presuppositions with regard to the parable of Adam's eating fruit from the tree of knowledge. This parable would imply that the most fundamental way that human beings can offend against God, the eternal, is to presume that they know what is eternal and, by so presuming, to view themselves as the voice of God. Those who eat fruit from the tree of knowledge can too easily presume to take the perspective of an omniscient observer, have God's vision, and consider themselves as God's special representative on earth. Human beings can aspire to understand that which is eternal, but can never realize that aspiration.

The parable of Jacob's covenantal relationship with God has interesting metaphorical implications for another method of thinking about the way of God. Jacob's struggle with God, in some Jewish traditions, is viewed as arguing with God. Jacob argued, not to be impudent, but to arrive at a better understanding of God's way. It was for this attribute that Jacob was named Israel -- the one who argued with God.

This parable has important methodological implications for fallible creatures. Argument, disputation, and contestation in the realm of ideas can be used to clarify issues, penetrate to the core of disagreement, and attempt to move to a deeper level of understanding in order to bring concurrence among those who share a faith in one God presupposing that there is a universal order. Argumentation is not an act of hostility, or war, but a means by which humble and fallible creatures, who honor the eternal as supreme being, can use their emotional and cognitive facilities to advance their own best understanding, consider the arguments advanced by others, and attempt to move to deeper and better levels of understanding and by so doing develop a shared community of understanding. Through such methods, the love of knowledge becomes a quest to understand the eternal that is marked by humility, sympathy, and a continuing effort to understand that has its own reward in opening new vistas to shared communities of understanding with other human beings.

Where conjectures yield contestable arguments, two levels of contestation are implicated. One level pertains to the dispute between two contestants and the conjectures that each is articulating. The other level of contestation is the relationship of the issue under dispute to the larger realm of beliefs that form the corpus of human knowledge. One conjecture is opposed to another conjecture; but the way that the issue is resolved may challenge many other propositions and present a new way of meeting criteria of universality and coherence by which the temporal can be related to the eternal.

A covenantal relationship implies a relationship which presumes a devotion to an understanding of that which is eternal and to a brotherhood in which each individual is a participant in a covenant with the eternal and with one another. Law stands both in relation to an eternal order and as constitutive of a brotherhood among those who choose to order their relationships with one another grounded in their understanding of principles of an universal order. Two levels of human understanding are called for: that which is eternal and universal and that which relates one to another in a brotherhood of human relationships. Law, in such a conception, is not an arbitrary exercise of overlordship in a command-obedience relationship but a way of constituting human relationships marked by a shared community of understanding bound by ties of a brotherhood which strives to cultivate a proper order of relationships with the eternal.

The basic formulation of Mosaic law applied to a people who had endured the servitude of slavery and sought to realize the lawful relationship of a community of covenanting people. God was presumed to be sovereign. The Israelite kings were presumed to be bound by the covenantal relationships of a chosen people with the eternal and subject to the critical assessment of those who spoke out as prophets.

The Roman law heritage of the church of Rome conceived as the universal (catholic) Christian church gave access to a legal tradition that had grown out of efforts in Greco-Roman civilization to articulate law grounded in republican institutions of cities as self-governing societies. Law in a republic is res publica -- a public thing; an open book; an open realm -- subject to open scrutiny by an assembly of citizens and to critical scrutiny by enquiring minds who concerned themselves with the nature of human knowledge and human understanding. Even the late Roman law traditions of the empire were strongly grounded in the standing of citizens and free persons as "subjects" of an empire in contrast to those who are slaves. The subjects of many empires more closely approximate the status of slaves (serfs) than citizens of republics (Pipes, 1974). It was this heritage of long-standing efforts to evolve a system of law in the republic and Justinian's effort to develop a coherent code of law that became available to both ecclesiastical and secular disputants in conceptualizing the proper order of relationships both within the realm of the Roman church, the Holy Roman empire, and how these two realms related to one another.

The investiture dispute beginning in the eleventh century was accompanied by a preoccupation with the study of law that yielded

major advances in legal scholarship during the eleventh, twelfth, and following centuries. This is what Berman refers to as the origin of Western legal science. This tradition grows out of a habit of mind that seeks to understand fundamental principles of order consistent with a presupposition of one God (a universe) despite the appearance of a seeming chaos of endless, surface details. The demand for universality in any effort to understand an eternal order and for coherence in the underlying order of explanation was the fundamental demand that students of the law made upon themselves in their relationships with one another. Reason and coherence in articulating universal principles acquired the standing of a critical method for scrutinizing both biblical traditions and Roman law. The search for Truth acquired a critical method that made extraordinary demands upon the workings of human imagination if ideas were to have standing as worthy of creation by the one God as creator of the universe.

The use of Roman law as a subject of inquiry was not a preoccupation with the laws of Rome, or of the Roman empire, as such but with the systematic study of law as reflecting a more universal order in a coherent system of thought. Contradictions or anomalies in the law posed theoretical problems to be confronted and resolved. As Tierney indicates, Gratian by about 1140 in his Concord of Discordant Canons, "sought to create an ordered synthesis out of the tangle of apparently conflicting laws and practices that had grown up in the church over the preceding thousand years" (Tierney, 1982: 13). Contradictions and anomalies associated with conflicting law might be resolved by recourse to general ordering principles that yield a synthesis in a coherent whole. Tierney also observes that Gratian's work was grounded in a presupposition that "a principal foundation of all law (is) the timeless (eternal) principle that we should do unto others as we would have them do unto us" (Ibid.; My parentheses).

Finding concord among discordant canons meant that methods of inquiry could be used where contradictions, conflicts of law, and anomalies might be resolved by reconceptualizing the principles of order in a system of law to create a synthesis. A coherent order could be developed among multiple realms of law by coming to terms with puzzles, contradictions, and anomalies in systems of law and using the occasion of conflict to attempt to achieve a resolution in a new synthesis. Given presumptions of universality and coherence as achievable in a general corpus of law, methods of conflict and conflict resolution can be relied upon to build a synthesis that is a product of intellectual inquiry and critical analysis rather than the command of a unitary sovereign. It is not only possible to distinguish common law from code law, constitutional law from ordinary law, but to distinguish mercantile law from urban law and from other realms of law. Law itself becomes a subject of inquiry in relation to multiple fields and levels of law so that social order may be created from the ordering of many concurrent realms.

Methods of building coherence in systems of law may proceed by synthesis in the evolution of a common law as well as in the formulation of a unitary code of law by a sovereign authority. Such a synthesis would presuppose that inquiry into law is framed by

universal principles in which people bind themselves in communities of relationships grounded in a shared understanding of those universal principles. The formulation of law appropriate to life in self-governing communities is not an arbitrary matter but one that is constitutive of an open public realm where order conforms to the general principles of universal law. Intellectual effort to build a coherent body of common law depends upon the use of a common method of normative inquiry.

A Common Method of Normative Inquiry

A general system of law is grounded in norms, standards, or criteria of choice that distinguish between that which is forbidden as against that which is permitted and that which is required. Law in self-governing societies is not simply a matter of command and obedience. Rather, standards are set and used by people in ordering their relationships with one another. Since the use of standards to order relationships is itself a matter of choice, the rule-ruler-ruled relationship also implies that such standards need to be enforced. Temptations would exist for some to prey upon others if rules of law were not enforced. The proper application of standards both by users and enforcers of law requires impartial standards of judgments that maintain the publicness of law. The problem then is how to make interpersonal comparisons to achieve knowable standards, norms, or criteria of choice for distinguishing that which is permitted from that which is forbidden or required.

Gratian identified such a method when he indicated, as Tierney observes, that "a principal foundation of all law (is) the timeless principle that we should do unto others as we would have them do unto us." This is one version of the so-called golden rule which is at the core of religious teachings in the Judaic-Christian tradition, and at the core of other moral teachings as well. The reference to all law, properly conceived, does not necessarily apply to all systems of social order. There may be other patterns of order that rely more upon command and obedience than upon general standards or norms for the ordering of human relationships. Gratian's generalization stands as the fundamental principle for constituting self-governing communities of relationships in human societies.

The golden rule, as a basic moral precept, is surprisingly devoid of moral content. Instead, the golden rule can better be conceived as a method of normative inquiry which enables human beings to come to a commonly shared understanding about the meaning of value terms used as norms or criteria of choice. When viewed as a method of normative inquiry, the golden rule is at the foundation of major intellectual efforts in the seventeenth and eighteenth centuries to develop a theory of sovereignty and a theory of constitutional rule.

Hobbes's basic methodology rests explicitly upon using the golden rule as a method of normative inquiry. His efforts to formulate the precepts of peace as "natural laws" turn upon norms or criteria of choice for individuals to use in relating to one another. He proceeds in a lexicographical way to expound a series of rules as the

foundations for peace as a pattern of ordered relationships among human beings. These rules are designated as natural laws implying that they are rules of reason universally applicable to peace as a lawful state of human society.

After having expounded these rules, Hobbes tells the reader that the logical sequence of his lexicographical exposition is not essential to understanding the meaning of these rules and the implicit criterion of moral judgment contained in each rule. Rather, "they have been contracted into one easy sum, intelligible even to the meanest capacity. . ." (Hobbes, 1960: 103). This summation is the golden rule expressed by Hobbes as "Do not that to another, which thou wouldest not have done to thyself" (Ibid.). Hobbes goes on to observe that this measure will "showeth him that,"

he has no more to do in learning the laws of nature, but, when weighing the actions of other men with his own, they seem too heavy, to put them in the other part of the balance, and his own in their place, that his own passions and self-love, may add nothing to the weight; and then there is none of these laws of nature that will not appear unto him very reasonable (Hobbes, 1960: 103).

The golden rule is used as a imaginary scale, or cognitive device, for making interpersonal comparisons so that human beings can arrive at a common understanding of what is meant by norms and criteria of choice that are grounds for moral judgment and the basis for distinguishing that which is permitted from that which is prohibited in ordering actions in relation to rules. Standard-setting, standard-using, judging the application of standards, and the enforcement of standards in societies governed by rules of law depend upon a public understanding of the meaning of standards if people are to be held responsible for a proper ordering of their relationships with one another. The justification of such a method stands upon a somewhat more elaborate set of calculations.

In his introduction to Leviathan, Hobbes begins by indicating to the reader that commonwealths are artifacts in which human beings are both the "matter" forming commonwealths and the "artificers" or artisans who fashion commonwealths (Hobbes, 1960: 5). The first step in understanding the foundation of order in human societies is to understand what it means to be human. Hobbes's advice is to indicate that such an understanding is to be acquired by first learning to "read thyself" (Hobbes, 1960: 6) so that one might come to understand "not this or that particular man; but mankind." This is not a simple task. This task, Hobbes says, is "harder to learn than any language or science," but one that is tractable to human inquiry (Ibid.).

Such a task is possible because, as Hobbes asserts, there is a basic "similitude" of thoughts and passions that is characteristic of all mankind. This similitude of thoughts and passions extends to underlying cognitive and emotional characteristics rather than to the objects of human thoughts and passions. Underlying the characteristics associated with particular languages and patterns of

acculturation and socialization is a potential for human beings to come to an understanding of one another that is grounded in that basic similitude that is characteristic of all mankind.

"Read thyself" is the first step in coming to an introspective understanding of how others think and feel. But the method of the golden rule implies a second step of taking the perspective of the other. Care must be exercised, however, to discount one's own passions and self-love so as to add no weight to the scale.³ The method of normative inquiry implied by the golden rule thus is a combination of introspection as a means of understanding others, taking the perspective of the other as an act of the imagination, discounting partialities, and aspiring to impartiality. These calculations, implicit in the golden rule, provide a basis for making interpersonal comparisons about the meaning of norms or standards that apply to social relationships in human communities.⁴ Human beings can use a method of normative inquiry to understand the meaning of value terms used as norms or criteria of choice for the ordering of relationships in human societies. Indeed, such a level of knowledge is presumed to be necessary to establish the competence of an individual to be responsible for the governance of his or her own affairs.

The method of the golden rule taps a level of human emotional feeling that David Hume and Adam Smith identify with sympathy or fellow feeling. This is the foundation for Smith's The Theory of Moral Sentiments and what Hume refers to as his "theory concerning the origin of morals" (Hume, 1948: 252). Methods of making interpersonal comparison form a basis for deriving an approximate understanding of norms that can be used for ordering relationships among human beings.

Such a method, if relied upon by members of a society, shapes the habits of the heart and mind as people think and act with reference to one another. It is not the letter of the law that is of essential importance but the meaning of the standards and criteria of choice that stand behind the letter of the law. These standards cannot be purely objective if we mean by objective to have reference only to the material objects. There are, instead, ways of making interpersonal comparisons for establishing general criteria for distinguishing right from wrong, justice from injustice, and all of the other standards that get built into a system of law.

Where disagreement prevails, human beings then have the potential for communicating with one another about the appropriateness of norms or standards and what these imply. If the method of the golden rule is used to inquire about areas of disagreement, there is a potential for using any conflict situation to clarify differences and to advance to new levels of understanding. Since no one can know the ultimate Truth, human beings can recognize in one another a potential for sharing companionship in a way of life that permits a continuing inquiry about universal principles and how these might provide grounds for the ordering of relationships in enduring associations. Such a course of inquiry need not be limited to any particular body of doctrine to presume that there is only one way. That which is not

wrong or unjust still leaves open diverse ways for achieving propriety and justice in human relationships.

The golden rule might, then, be considered as a "law of laws" and the method of normative inquiry grounded in the golden rule might also be viewed as a "road to knowledge" that "leads man to civil freedom" (Tocqueville, 1945: I, 41). It is a method where human beings taking the perspective of others, and aspiring to impartiality, might formulate general rules to which each would agree to be bound in ordering their relationships with one another. These same standards might variously be used in setting rules, acting in accordance with rules, adjudicating rules, enforcing rules, and evaluating the conduct achieved by reference to rules. Rules pertain to patterns of interdependency in human relationships. The method of normative inquiry based upon the golden rule is an appropriate basis for making interpersonal comparisons with reference to rules that apply to interdependent situations. Rawl's veil of ignorance is one way to discount partialities and aspire to impartiality. Buchanan and Tullock's "conceptual unanimity" is a way to set general rules in a context of constitutional choice which would meet the standards of fairness implied by the golden rule.

There is then a method of normative inquiry that is potentially applicable to formulating, applying, adjudicating, enforcing, and evaluating rule-ordered relationships. This method is different than that implied by an economic calculus inherent in the maximization of utility. Maximizing utility might be achieved in a purely individual calculus without any effort to make interpersonal comparisons. A purification problem arises, however, where feelings of envy or other perverse manifestations of self-love would have to be discounted (Selten, 1986). Solving the purification problem would drive one back to a method of normative inquiry grounded in the golden rule as an appropriate criterion for addressing rule-ordered relationships. Once human relationships are bounded by appropriate sets of rules, then maximizing strategies within those limits become appropriate. We can begin to imagine how individuals could pursue methods of normative inquiry appropriate to rule-ordered relationships for setting the ways of life that then become appropriate to the pursuit of economic opportunity.

The method of normative inquiry based upon the golden rule implies a strong commitment to a methodological individualism grounded in a fundamental respect for the spiritual and moral integrity of others. Human beings can reason together and, by drawing upon one another's capabilities, move to new frontiers of inquiry and deeper levels of understanding. Such processes can occur only in a circumstance where discussion, argumentation, and communication can occur and the participants can be confident that each shares an understanding of the meaning that stands behind words rather than presuming that words have their own meaning. Reliance upon the method of normative inquiry based upon the golden rule would appear to be equivalent to what Habermas refers to as an ideal-speech situation.

Serious problems arise when the interpersonal context of discussion and argumentation in accordance with the method of the golden rule and presuppositions of an associated methodological individualism are abandoned. Human beings find themselves in situations where the imagination spins freely, devoid of the discipline afforded by the presence of critical thinkers who can array alternative conjectures and contestable arguments. Human compassion in such circumstances is rife with considerations which relate human interdependencies to recurrent situations. Habits of speech are used to categorize whole populations into classes which become characterized as the disadvantaged, the poor, the exploited, and the proletariat. Correlative categories of speech generate the contrary sub-sets: the advantaged, the rich, the exploiters, and the established. Corrective measures are demanded without reference to the structure of interdependencies in situations that have the potentials for yielding perversities in human relationships.

Rift from a context where human beings are communicating with one another in a way that is appropriate to the method of normative inquiry inherent in the golden rule, thinkers easily move on to take the perspective of an omniscient observer and commit the gravest error that can be committed by fallible creatures: to presume themselves to be infallible. Adam Smith refers, in The Theory of Moral Sentiments, to this way of thinking as the "spirit of system":

The man of system . . . is apt to be very wise in his own conceit, and is often so enamoured with the supposed beauty of his own plan of government, that he cannot suffer the smallest deviation from any part of it. He goes on to establish it completely and in all of its parts, without any regard for the great interests or the strong prejudices that may oppose it: he seems to imagine that he can arrange the different members of a great society with as much ease as the hand arranges the different pieces upon a chess-board; he does not consider that the pieces upon the chess-board have no other principle of motion besides that which the hand impresses upon them; but in the great chess-board of human society every single piece has a principle of motion of its own (Smith, n.d.: 380-381).

Methodological individualism by contrast would require that principles of motion that drive human action be taken into account in light of the differential structure of situations in which human beings typically find themselves. In such circumstances, the function of rules is to order relationships in ways that enable human beings to maintain stable (predictable) patterns of relationships and which also facilitate mutually productive relationships despite temptations for some to gain special advantage to the detriment of others.

Smith recognizes that "sovereign princes" are by far the most vulnerable to viewing themselves as omniscient observers. They are not required to confront colleagues who offer contestable arguments in the analysis of problematical situations. The same method of thinking may also affect citizens in large republics who abandon methodological

individualism and presume that they can envisage societies as a whole and can right wrongs by exercising tutelage over other citizens who are regarded as incompetent to govern their own affairs. General rules of law no longer suffice. Commands accompanied by the modal verbs "must" and "must not" drive out the realm of choice associated with the modal verb "may."

The Problem of Positive Inquiry

The golden rule, as elaborated in a method of normative inquiry, provides the foundation for formulating rules, acting in accordance with rules, adjudicating disputes over rules, enforcing rules, and for evaluating performance in accordance with rule-ordered arrangements. Considerations pertaining to norms and their place in the modal logic of rules must, however, always be juxtaposed to the logic of problematical situations within which human beings typically find themselves. At a minimum, prototypical situations which occur in all human societies would have reference to: (1) exchange relationships, (2) teamwork, including the ordering of teams of teams, (3) the use and management of common-pool (property) resources and facilities, (4) the provision of goods subject to collective use (consumption), (5) conflict and conflict resolution, and (6) rule-ruler-ruled relationships. I refer to a logic of situations because the structure of situations and the incentives which motivate human conduct combine to create cognitive puzzles for those who find themselves in such situations.

The logic of situations -- a combination of structures and incentives -- may be counterintentional and counterintuitive. Intentions are not always sufficient to yield patterns of order consistent with results which human beings wish to achieve. The counterintuitive character of the situations in which human beings find themselves means that human perception and judgment about the implications which follow from patterns of order in human society may be subject to serious error. Potential for error should be accompanied by a substantial measure of modesty on the part of those who eat fruit from the tree of knowledge. Cautious attention needs to be given to procedures and processes that facilitate methods of inquiry where conflicting conjectures can be used to correct errors and enlighten further inquiry.

Counterintentionality and counterintuitivity pervade many aspects of human social relationships. An awareness of their existence means that human beings can become aware of potential traps that are inherent in the structure of typical situations and find ways for reordering those situations by modifying rules that help to restructure those situations.

Elements of counterintentionality and counterintuitivity can be illustrated by the way that Hobbes formulates his analysis in Leviathan. Hobbes's parable about man in a state of nature is indicative of counterintentionality. Given the controversies that have been generated by his formulation, there may also be important aspects of counterintuitivity for his critics. Hobbes's state of

nature is a situation in which human beings are motivated to seek their own good in a natural setting where scarcity exists with reference to the fruits of nature upon which human beings depend for a livelihood. There is no law; no mine, nor thine; no shared community of understanding. Each takes what he can and is prepared to defend what he has. The quest for one's own good leads to conflict in the presence of scarcity. Conflict escalates into a war of each against everyone in the absence of shared expectations about ordered relationships. Individuals who sought their own good interacted with one another to yield misery instead. The misery of war in a state of nature is counterintentional for those who sought their own good. Hobbes's parable of man in a state of nature might also be viewed as proof for the insufficiency of self-interest without a shared common understanding about possibilities of order in human societies.

This same parable might be used as a warning to indicate how conflict can escalate to a point where human beings engage in violent efforts to subdue one another. Conflict poses a sensitive problem in human relationships. On the one hand, conflict may be indicative of problematical exigencies in human relationships that can yield to methods of inquiry for coming to a more enlightened understanding of problematical situations and their resolution. On the other hand, conflict can escalate into a mutually destructive struggle characteristic of warfare. An important contingency in any system of order is how to constrain conflict and use the exigency of conflict to enhance problem-solving capabilities.

The discrepancy between intentionality and the effects that occur in Hobbes's state of nature creates a puzzle that leads Hobbes to contemplate an alternative to war. His response is to formulate a series of rules, which if acted upon, would yield peace. These rules are his so-called laws of nature. It is these rules that are grounded in the golden rule as a method of normative inquiry. Having formulated a set of rules that would yield peace rather than war, Hobbes, however, warns his reader that problems still exist. Those problems pertain to making rules binding in human relationships. Peace may be possible, but the man of peace may simply make himself the prey of others, contrary to his intentions, if he acts in conformity to the rules of peace while others pursue temptations of availing themselves to whatever opportunities may be available.

Problems of counterintentionality and counterintuitivity abound in many different types of human relationships. Producers in a competitive market situation may, for example, be motivated to maximize their own profits, but the competitive dynamic that occurs when many vendors offer substitutable products to numerous potential buyers in an open market will lead vendors to lower prices, reduce profits, and yield a net advantage to potential consumers. The effect yielded is counterintentional for the profit-maximizing producer. The major advantage of competitive arrangements is likely to accrue to consumers rather than producers.

Competitive market relationships also have strong elements of counterintuitivity. Circumstances where multitudes of buyers and

sellers pursue their own advantage in conducting their own economic efforts and relating to one another does not yield chaos as some might expect but highly ordered patterns of relationships with predictable characteristics. Reference to an "invisible hand" in market relationships is indicative of counterintuitivity. Economics as a positive science has helped to clarify many aspects of counterintuitivity and counterintentionality which are inherent in different elaborations of systems of exchange relationships.

The logic of the so-called Prisoners' Dilemma and the Commons Problem indicates how individuals who seek their best advantage are motivated to pursue strategies which leave them worse off rather than better off. These are the circumstances that yield the so-called "tragedy of the commons." Human beings in many different societies with diverse cultural traditions have devised rule-ordered relationships so as to constrain the temptation strategies that yield tragedies of the commons and instead develop cooperative methods for productively managing common-pool resource systems and facilities. Competitive games which yield perverse results in relation to the common-pool resources can be transformed by an appropriate modification in rules to yield mutually productive relationships.

Counterintentionality and counterintuitivity abound in many different aspects of human relationships (Schelling,). This implies that a quasi-causal ordering applies in the relationship between conditions and consequences that occur in all rule-ordered relationships. Reliance only upon methods of normative inquiry will be insufficient for understanding patterns of order in human societies. There must, in addition, be elements of positive analysis which seek to clarify structures of incentives in prototypical situations so that quasi-causal contingencies are also taken into account.

In addition, human activity is always mediated in relation to material conditions of life. Those conditions are also subject to transformations which affect human welfare. A knowledge of how to achieve such transformations depends upon the use of methods that are appropriate to yield desired effects. W. R. Ashby has formulated in his law of requisite variety a principle that applies to regulative efforts inherent in human activity. Contingency relationships of both a causal or a quasi-causal nature enter into methods of positive analyses that rely upon a law of requisite variety in much the same way that normative analysis depends upon methods of inquiry grounded in the golden rule.

Ashby's law of requisite variety was formulated as a fundamental law of cybernetics. This law is potentially relevant to all forms of regulation and adaptation. Regulation and adaptation can be achieved only when regulatory or adaptive arrangements have access to as much variety as there is variety in the conditions that are subject to regulatory or adaptive efforts. To realize specified effects, there must exist as much variety in the strategies available as there is variety in the conditions which obtain. Those variables not subject to regulation remain sources of potential disturbance. If the range of regulatory effort is limited, disturbances beyond that range remain.

The law of requisite variety addresses regulatory efforts in light of the potential of affecting transformations in causal or quasi-causal relationships so as to achieve preferred states as against what would have occurred in the absence of human intervention. The law of requisite variety applies, thus, to all forms of artisanship and human productive efforts to achieve what economists might broadly conceive as goods defined as preferred events. The law of requisite variety implies that relationships of a causal and quasi-causal nature must be dealt with knowledgeably and on their own terms. Nature and the laws of nature that apply to the material and biological realms require knowledgeable and respectful efforts by human beings if human beings are to make constructive uses of the opportunities available to them.

The law of requisite variety becomes especially important in making the tie between universal rules that apply to the material and biological realms and the time-and-place exigencies that exist in the discrete world of human experience. Principles of hydrology and hydraulic engineering, for example, must always be applied to the unique characteristics of any particular hydrological system to be developed and managed as a water resource and supply system. The degree of regulation and utilization achieved for multiple uses depends upon the discrete application of the law of requisite variety to the characteristics of discrete hydrological systems and the pattern of uses to be made.

Uniform procedures applied across diverse hydrological systems will not achieve the requisite variety that is necessary for more effective, rather than less effective, regulation. Modern societies drawing upon more extended bodies of knowledge and technological possibilities to yield greater productive potential require a great deal of organized complexity in making best use of adaptive potentials, or productive opportunities. Uniform measures do not suffice. Instead, increasing reliance upon self-organizing capabilities among the great diversity of productive-comsumptive efforts and rule-ordered relationships is required in a modern society.

The constitution of authority in various types of association and organization in human societies is an important factor in formulating capabilities for achieving requisite variety in realizing productive potential in discrete circumstances where there may be substantial variability from one situation to another. The way that human institutions are organized and allow for significant degrees of self-organizing, self-administering, or self-governing capabilities is an increasingly important matter as frontiers of human knowledge are extended and as the variety of productive potentials are increased.

Ashby's law of requisite variety can thus be used as a methodological principle to address problems pertaining to the constitution of order in human societies. Human societies would seem to require recourse to increasing patterns of complexification as the horizons of human knowledge are extended to include reference to increasing productive potentials involving diverse environmental and

cultural exigencies. Increasing patterns of complexification can be achieved so long as commensurate self-organizing and self-governing capabilities are also achieved. The method of normative inquiry inherent in the golden rule can be viewed as a means for achieving the requisite variety that is necessary for resolving the demands that human beings have for both freedom and order in a social milieu that is open to creativity in the pursuit of diverse opportunities.

Conclusion

We thus have two basic methodological foundations for addressing patterns of order in human societies that are amenable to self-organizing, self-administering, or self-governing capabilities. The law of laws for calculating normative consideration is the golden rule. The law of laws for positive analysis is Ashby's law of requisite variety.

These, in turn, are set within cosmological and epistemological assumptions which presume that a universe exists in which universal rules apply to that universal order. Universal rules are subject to tests of coherence so as to yield a basic unity of knowledge. Aspects of this order may manifest patterns of adaptation subject to regulative, interactive patterns of relationships so that the universe is not a simple machine working upon mechanical cause and effect (one-one) relationships but manifests an openness to emergent properties in orders which include one-many and many-one relationships. One-many relationships imply potential variety; many-one relationships imply selection. Choice is a form of selection. Systems capable of generating variety and selecting from that potential variety by the use of appropriate methods and criteria of choice are adaptive systems capable of generating emergent properties in an evolving system of order. Systems of order grounded in combinations of one-many and many-one relationships yield greater developmental potentials than those characterized by one-one relationships.

The structure of opportunities in an emergent system of order is always tied to time-and-place exigencies that apply to the here and now. Patterns of social order, then, must always exist "in-between" the universals as manifestations of an eternal order and the time-and-place exigencies in which human beings live their lives, order their relations with others, and pursue opportunities that are available to them. This condition of being "in-between" means that human beings aspire to a knowledge of that which is eternal but which they can never fully achieve. They can, however, draw upon one another's capabilities to both achieve error correcting capabilities by listening to and being informed by contestable arguments and by engaging in practical experiments to test the warrantability of the conceptualizations and computations which are acted upon.

Human beings can draw upon such potentials to become self-organizing and self-governing creatures subject to the constraints implied by both a golden rule and a law of requisite variety. Significant self-organizing, self-administering, and self-governing

capabilities must exist for there to be tens or hundreds of millions of organized social units functioning autonomously from one another in societies such as the Federal Republic of Germany, the United States of America, or the European Community. If these principles can be extended, as James Madison suggested, to the supreme offices of the state, we can begin to imagine possibilities that self-governing, rather than state-governed, societies can exist.

To achieve such a possibility, one further condition would need to be met. Structures of rule-ordered relationships would need to be extended to communities of relationships which reach beyond the boundaries of nation-states. These are the frontiers of human association which are being explored in the European Community. Whether or not the European peoples can devise complex configurations of order sufficient to meet the requirements of the method of normative inquiry inherent in the golden rule and the positive contingencies inherent in the law of requisite variety remains to be seen.

VII

Patterns of Order and System Comparisons

The conjectures which I have advanced about the conceptual and social foundations for the emergence of self-governing societies present serious methodological problems for the study of patterns of order in human societies. Human beings are subject to the cognitive constraint that each can listen to and understand only one speaker at a time and can address him or herself to resolving only one problem at a time. Memory and habit framed in shared expectations are the foundations of order. The requirements of productive, exchange, and consumptive efforts can be addressed while acting within normative assumptions and rule-ordered relationships as occurring within an habituated context.

When patterns of relationships based upon habituated expectations are violated, the nexus of rule-ordered relationships may become problematical. Economic calculations in such circumstances may yield to what might broadly be construed to be political calculations bearing upon judging, enforcing, and modifying rules that are appropriate to the structural contingencies of problematical situations. Each individual in self-governing societies acts in the context of both an economic order and a political order which exist concurrently with one another but which have reference to different principles of choice and structures of relationships as each order is nested in the other order. Human societies might thus be viewed as complex configurations of "games" which are concurrently and sequentially linked one to another. Rule-ordered relationships structure the pursuit of opportunities in the multitudes of circumstances where people act and relate to one another. Each individual participates in a multitude of structured arrangements which become his or her way of life.

But where and how are the boundaries to be drawn for comparing human societies as aggregated wholes? A theory of sovereignty presumes that relatively firm boundaries can be identified with "nation-states." States then are assumed to have reference to an ultimate authority that exercises rulership prerogatives and a monopoly over the legitimate use of force in a society. The correlative of this theory of sovereignty is that no system of enforceable rules can apply to interstate relationships among nation-states: ultimate authorities cannot be bound by other ultimate authorities.

Federative principles applicable to self-governing societies imply, by contrast, that constitutionally defined communities of relationships can be extended to many concurrent communities of relationships. Self-governing communities in localities might exist within self-governing "provinces" or "states" which might be extended to self-governing federations which can nominally be treated as "nation-states" in the larger world community, as in the case of the Federal Republic of Germany or the United States. Federative principles can also be extended to multinational communities like the European Community. Federative principles imply that both intraorganizational and interorganizational realms can be subject to a lawful order which is potentially subject to indefinite extension.

These same ambiguities existed in relation to Europe as organized with reference to the ecclesiastical realm of the Roman Catholic Church and the temporal realm associated with the Holy Roman Empire. That empire was a complex configuration of rule-ordered relationships which had reference to emperors, kings, princes, and numerous domains constituted as free cities. What is to be properly designated as Germany has always been a subject of great ambiguity and argumentation with regard to what is to be designated as Europe (Herre, 1982). It is these circumstances that have led me to the conclusion that we lack appropriate self-contained units which can readily be distinguished as separable societies having distinctive economic and political orders and which can be directly compared with one another at aggregate levels. Where then do we turn for building theoretical foundations for studying the nature and constitution of order in human societies?

First, I propose that patterns of order pertaining to economic and political orders need to be extended to include reference to epistemic orders which function concurrently with economic and political orders. Reference to epistemic orders permits clarification of conceptual-computational logics that apply to economic and political relationships within civilizations where peoples share similar habits of the heart and mind. Possibilities of comparative analyses occur by using categories and principles of thought associated with particular epistemic order to elaborate a comparative assessment of different epistemic, political, and economic orders.

Another mode of analysis would be to focus upon prototypical situations which are assumed to exist in all human societies. Inquiry into such circumstances would seek to establish whether peoples in

human societies conform to generalized models in ordering their relationships with one another. These possibilities would imply that diverse strategies of inquiry with reference to multiple levels and foci of analysis are necessary to cope with the problems of incommensurability which plague system comparisons of patterns of order in human societies as ways of life.

Distinguishing Epistemic Orders from
Economic and Political Orders

We can, I conjecture, rely upon the distinction I made earlier in the third section of this paper for conceptualizing economic and political orders as different aspects of the same social reality. We have important intellectual resources upon which to draw in advancing some distance in our efforts to understand the nature and constitution of economic and political orders and their relationships to one another in human societies. We must, however, proceed with caution because we, as fallible creatures, cannot presume that the presuppositions which we use and have derived from Hebraic, Hellenic, Christian, and perhaps Islamic traditions are immutable. To do so would suggest that having eaten fruit from the tree of knowledge we presume immutability without recognizing that the tree of knowledge, with which we are familiar, is but one among many trees of knowledge, to speak in metaphorical terms.

My conjectures about the conceptual and social foundations of self-governing societies would suggest that attention needs to be given to the existence of epistemic orders as being a basic element that is constitutive of human societies. An epistemic order has reference to the development, communication, and use of knowledge in human societies. Such orders and their derivative -- knowledge and the realm of the artifactual -- are built upon presuppositions about what is to be known, how human beings organize their thinking in relation to standards which they demand of one another, how they relate to conflicting contentions, use the occasion of conflict to repress or extend inquiry, and how patterns of thought can be used to inform action in the context of time and place exigencies. These, or variable, ways of thinking and relating to others in the development, communication, and use of beliefs (ideas, knowledge) occur with reference to all forms of human artisanship and expression whether applied to productive-consumptive relationships or rule-ordered relationships.

Knowledge, too, is a human creation and pervades every aspect of human life. Artisans who are concerned with the development, communication, and use of knowledge ground their efforts in basic presuppositions and in basic methods (processes) which are presumed to have an instrumental relationship to the development of usable knowledge. They use criteria such as those of universality and coherence to evaluate new conceptualizations and to reevaluate the standing of prior formulations in light of further conjectures. The usefulness of generalizations to discrete applications is revealed by the way that conceptual-computational logics can be used to conceptualize, design, and fashion new artifactual creations by

drawing upon specifiable elements mediated by appropriate actions to yield intended effects. When surprises occur and new potentials are revealed, the effects produced may challenge prior generalizations and explanations.

There are, thus, elements of both anticipatory thinking and reflective thinking. These function by the way that thinking (calculating) relates to action and to what happens; and the way that what occurs yields to reflection about the actions taken and how actions are related to the calculations implicit in thought. Conjectures inform action; and actions yield effects. How meaning is construed in light of experience may, however, challenge prevailing formulations and explanations. Every innovation in conceptualization and associated conjectures is the source of a potential challenge to existing formulations and explanations. Contestation over competing conjectures is not only a contest about two or more conjectures that may be advanced at a particular level of analysis; but each such contestation may also be a challenge to existing formulations and explanations at other levels of analysis in organized bodies of knowledge. Such contestations yield potentials for reducing error among fallible creatures and enhancing the warrantability of conceptual-computational logics upon which human beings rely to organize their thinking and conduct their activities.

While scholars and intellectuals are primarily concerned with the development and communication of knowledge, they are an integral part of society. Their contributions pertain to the way that the development, communication, and use of knowledge yields emergent properties in the evolution of human societies. Human beings are both the principal matter and simultaneously the artificers, which shape the societies in which they live by reference to the conceptual-computational logics they use, the choices they make, and the activities they pursue in relation to one another. All human action is grounded in the cognitive facilities of the voluntary nervous system. What Tocqueville refers to as habits of the heart and mind, thus, are grounded in cosmological and epistemological presuppositions, methods of inquiry, and explanations and standards of judgment that human beings use in communicating to one another and ordering their relationships with one another. Habits of the heart yield potentials for a mode of normative inquiry grounded in feelings of mutual sympathy, or some similar sentiment. A shared community of understanding shaped by the habits of the mind are complemented by habits of the heart to create patterns of association which are constitutive of human societies as ways of life.

Each individual, then, finds himself or herself functioning not only in productive-exchange-consumptive relationships that are characteristic of an economic order and the rule-formulating, rule-using, rule-applying, and rule-enforcing relationships of a political order but also in an epistemic order pertaining to the development, communication, and use of knowledge. The way these orders are linked together and how those configurations of linkages reach out to larger communities of relationships means that the bounding conditions applicable to the organization of nation-states

are of limited usefulness in understanding Western societies. If we view these societies as increasingly manifesting the characteristics of self-governing societies, what happens in the open public realm, which I characterize as res publica, is proportionately more important than what occurs within the more narrowly conceived institutions of government, as such.

The res publica of the epistemic order is what Michael Polanyi, in The Logic of Liberty, has referred to as the republic of science. These patterns of associated relationships have recourse to structures and processes that rely to some significant degree upon the power of the sword in building research and educational infrastructures within which the larger epistemic order functions in generating that knowledge and information which becomes publicly available for anyone to use, subject to the potential constraints of patenting and copyright laws and supporting international conventions.

Fritz Machlup in The Production and Distribution of Knowledge has presented an interesting study of what I have alluded to as an epistemic order and what he treats as a knowledge industry. While the production, distribution, and use of knowledge can, from an economics perspective be viewed as an industry, the place of the development, communication, and use of knowledge so pervades all aspects of human activity that we have an order of relationships which more closely approximates that of an economic order and a political order. An industry study confined to nation-states can serve useful purposes, but the res publica of the epistemic order -- the republic of science -- reaches out to a domain that is by no means confined to nation-states.

Similar issues abound in the res publica of an economic order. German economic theory has traditionally placed strong emphasis upon national economies. Modern macroeconomic theory has, since Keynes, been strongly state-centered, but the fashioning of a European common market and the development of commensurate rule-ordered relationships means that concepts of states and markets are becoming less appropriate to the social and political realities that are emerging in the modern world.

Major tensions, however, still remain with reference to methodological presuppositions that are used to inform ways of thinking that link an epistemic order to the correlative economic and political orders. These difficulties are manifest in tendencies to rely upon aggregate conceptualizations which reify Markets and States. When we rely upon such distinctions, the structure of relationships in human societies is likely to be confined to exchange and dominance relationships. All patterns of associated relationships are subsumed under either exchange or hierarchy. When this is done very little epistemic space is allowed for self-organizing and self-governing potentials. Words in a language of discourse can create cognitive screens which render subjects opaque rather than enlightening them.

Within the confines of Western political thought, the place of an epistemic order occupies radically different positions. In Hobbes's

theory of sovereignty, it is within the prerogatives of a sovereign to decide what is to be taught and who is fit to teach so as to reduce the potentials for disorder that come from disputations about ideas. Truth -- true doctrine -- is the articulation of an orthodoxy. Deviation from orthodoxy is an offense against the commonwealth. By contrast, constitutional republics presuppose that the epistemic order is an open public realm where freedom of speech, assembly, and press are among the inalienable rights of persons and citizens. These "inalienable" rights correlatively establish limits upon the prerogatives of governing officials who wield instruments of coercion. These are among the basic constitutional provisions that establish the res publica -- the open realm. It is the autonomous standing of an open public realm that is the most fundamental feature of self-governing societies.

Whether one takes the perspective of others in hypothetical problematical situations as the methodological foundation for inquiry about the constitution of order in human societies or takes the perspective of an omniscient observer is also at issue in addressing state-governed as against self-governed societies. Law for an omniscient observer becomes an exercise in command and obedience. Law in self-governed societies applies both to citizens who may be selected as governing officials and to persons and citizens who are also subjects. The processes of governance are presumed to be grounded in methodological presuppositions for arraying arguments and evidence in a due process of law that is applicable to the formulation and use of knowledge in the conception, design, and operation of all human endeavors viewed as practical experiments conducted by human beings who find themselves being embodied in artifacts which contain their own artisans. In these circumstances, human beings as artisans need to confront the possibility of fashioning artifacts which, on one hand, devour their own artisans as distinguished from artifacts which, on the other hand, provide incentives to extend the cognitive horizons, skills, and aesthetic appreciation of artisans who continue to confront new challenges and opportunities in the practice of their artisanship in communities of relationships where each is exposed to the critical assessments of his or her fellow artisans.

System Comparisons of Societies as Aggregated Wholes

When the relationship of an epistemic order to economic and political orders is considered, we can begin to appreciate the difficulties of making system comparisons when we also presume that human beings as fallible creatures cannot with confidence establish the immutability of the intellectual foundations upon which they build. We can attempt to clarify what these grounds are and to appreciate how these grounds can be used to fashion epistemic orders, economic orders, and political orders which are complexly linked with one another to yield the societies and create the civilizations in which we live. Other civilizations based upon different conceptual-computational logics function in relation to differently constituted patterns of relationships operable in different ways of linking epistemic, economic, and political orders with one another.

Traditions of thought associated with Confucian teaching, for example, are based upon different cosmological and epistemological presuppositions than those which have emerged from the Judaic-Christian traditions associated with Western civilization. The place of enlightenment and piety in the development of an epistemic order grounded in Confucian teachings and how that order is related to productive-consumptive activities and to rule-ordered relationships imply quite different ways of constituting order in Asian societies than those which apply in Western societies.

Western traditions of jurisprudence, for example, conceive of rule-ordered relationships, whether of common-law or code-law traditions, in a way that stands in marked contrast to the way of achieving ordered relationships in Confucian societies. The emphasis is upon rituals in which people enact a display of respect for one another. The presuppositions of filial piety is one of basic inequalities in an ordered pattern of descent, as between parents and children. These ritualized relationships, characterized as li, imply an obedience to a proper order of filial relationships where the activating sentiment moves the subordinate to express respect to the superior and the superior to reciprocate with a proper expression of respect with reference to the subordinate. The formulae for li relationships are like an elaborate book of recipes prescribing codes of good manners for discrete types of relationships in a multitude of representative situations. The reserve rule, in the absence of a knowledge of the appropriate ritual, is to show a proper order of deference among unequals. When li relationships are violated, remedies can be achieved through fa relationships which presume to use punishment by imperial authorities for corrective purposes in reestablishing the integrity of li relationships. The degree of punishment is proportioned to what is necessary to achieve correct relationships. Submissive deference to authority yields lesser punishment; recalcitrance yields greater punishment; intractable resistance yields extinction.

Confucian civilization and its emphasis upon respectful piety is also accompanied by a high degree of self-organizing capabilities associated with families, clans, guilds, and secret societies. These self-organizing arrangements cannot be characterized as democratic in the Western meaning of that term. The macro-structure of imperial relationships dominated by an emperor as the father of fathers and son of heaven, served by an aristocracy of Confucian scholars supplemented by infrastructures grounded in strong bonds of family, clan, guild, and secret societies has been constitutive of societies which are marked by strong incommensurabilities with Western societies.

The basic methodological presuppositions inherent in the golden rule might now be applied to the tasks of inquiry where scholars, by taking the perspective of others, can attempt to acquire a sympathetic understanding of the basic conceptual-computational logic that is entailed in Confucian philosophy and what this might imply for establishing epistemic, economic, and political orders in life organized in the Confucian way. This would provide a basis for conceiving societies and their associated cultures (civilizations) as

a whole. One might presume a few timeless principles which form the basis for reiterating many similar patterns of organization with significant elements of variability that allow for accommodation to time and place variables and to the variability of productive functions associated in different human endeavours. Conjectures derived from differing conceptual-computational logics as they apply to the development, communication, and use of knowledge; to productive, exchange, and consumptive activities, and to formulating, using, judging, and enforcing rule-ordered relationships provide one way to understand societies as ways of life.

Interpretive efforts to understand the conceptual-computational logics that are constitutive of human societies as ways of life are subject to different types of challenge. One derives from assumptions that revolutionary transformations of societies as a whole can occur as a revolutionary act of choice or of will on the part of those who seize state power. The other arises from critical issues of how people in human societies cope with problems of counterintentionality and counterintuitivity. I shall postpone consideration of the second type of challenge until later. The first type of challenge pertains to societies as wholes and belongs with the purview of making system comparisons at that level of analysis.

The possibility of achieving revolutionary transformations of societies is of substantial contemporary significance when revolutionary efforts are being made to achieve human liberation. The Marxist-Leninist formulation diagnoses the failure of "capitalism," formulates a theory of revolutionary struggle, and proposes the use of state power by a dictatorship of the proletariat led by professional revolutionaries to achieve a transformation in property relationships so that workers are freed from exploitation and realize the fruits of their own labor. Such transformations, in turn, are expected to create a classless society and lead to the withering away of the state. The conceptual-computational logic inherent in Marxist-Leninist teachings are radically at variance with principles of autocratic hegemony which applied to Imperial Russia and the Russian Orthodox church or with Confucian teachings which applied to Imperial China.

When juxtaposed to the exigencies of rule-ruler-ruled relationships in light of a theory of sovereignty and a theory of constitutional rule, the radical difference in revolutionary rhetoric conceals strong parallels between Lenin's theory of revolution, and its proposed use of state power to transform societies, and Hobbes's theory of sovereignty. Hobbes's conjectures that sovereigns exercising ultimate leadership in the governance of societies are the source of law, above the law, and cannot be held accountable to law. These conjectures can be juxtaposed to Lenin's presupposition that those who exercise prerogatives of leadership will wither away leaving a classless and stateless society. These two sets of conjectures can be tested when those who adhere to Marxist-Leninist teachings undertake practical experiments to achieve a transformation of society by the expropriation of private property. What occurs as a consequence of such practical experiments? Milovan Djilas in The New

Class concludes that socialist states do not wither away lends greater plausibility to Hobbes's theory of sovereignty for characterizing the attributes of a society grounded in that way of constituting order in human societies.

This suggests that scholars confront the task of taking different conceptual-computational logics which can be used to constitute order in human societies and array those arguments so as to clarify contradictory inferences. Contradictory inferences might then be used as competing hypotheses to be tested in the conduct of practical experiments where those acting on the basis of revolutionary theories have the opportunity to implement their program. Such an effort is based upon presuppositions that human beings can translate from one conceptual-computational logic to another. It is such a presupposition that is of essential importance if efforts to develop theories of order are to avoid the theoretical difficulties inherent in cultural relativism. While we cannot assume immutability, neither can we assume cultural multiversity and abide by the doctrine of universality and the criterion of coherence. Fallible creatures find themselves confronting the irreconcilable tension of not being able to achieve immutability but always seeking universality and coherence. The reward comes from the shared communities of understanding that are fashioned in such endeavours. The same principles can be applied in clarifying the conceptual-computational logics that are inherent in existing patterns of order.

Richard Pipes's Russia Under the Old Regime advances conjectures about the organization of the Russian Empire as an autocratic patrimonial proprietorship subject to autocratic control by a tsar. Strong parallels exist in the patterns of governance associated with centrally-administered economies prevailing in Imperial Russia and in the Union of Soviet Socialist Republics. This would suggest that the federal features of the Union of Soviet Socialist Republics have more the characteristics of rhetorical illusions than to social realities. Yet, one would expect significant differences to arise from relying upon Lenin's vanguard party to constitute the leadership structure in Soviet society than that which prevailed in a patrimonial aristocracy organized in accordance with the order of ranks formulated by Peter I.

Viewed from this perspective a question that Edward Crankshaw poses in The Shadow of the Winter Palace is of importance for our inquiry. He questions whether serfs comprising 80 percent of the population can be liberated by Imperial decree. Much more than autocratic structures are necessary for liberating serfs so that cultivators of the soil might themselves become self-governing and function in a self-governing society. The lack of appropriate infrastructures in Imperial Russia meant that an Emancipation Edict did not yield a free peasantry. The frame of analysis for self-governing societies requires careful attention to institutional infrastructures to supplement analyses of how larger units of government work.

Similar issues might be raised with regard to the Chinese revolution and the creation of the Peoples Republic of China. Was a

revolutionary transformation of society achieved or did Mao Tse-Tung by his revolutionary struggle create a new dynasty not unlike the founding of the Ming dynasty? An aristocracy of Marxist-Leninists grounded in a science of dialectical materialism replaced an aristocracy grounded in Confucian teachings. The leaders of Lenin's revolutionary party succeed to imperial prerogatives rather than the patrimonial heir of a deceased emperor. Efforts to use communes and work brigades in the practice of agriculture diverged from a family-based agriculture of the empire and became a new form of organization in the Peoples Republic. The transition from patrimonial empires to socialist states requires minor changes in habitual deference to supreme authority even though actions may be taken by individuals in light of a much different language of discourse which holds out the promise of liberation in a classless and stateless society. That promise is one that might alternatively be achieved by self-governing societies which rely upon egalitarian methods of normative inquiry to create associational and communitarian patterns of ordered relationships which meet the requirements of a law of requisite variety.

The revolutionary struggles of the twentieth century provide an experimental milieu that permit the testing of competing conjectures grounded in different conceptual-computational logics. These are propitious circumstances for conducting comparative assessments provided that the basic elements for a theory of order can be established so that the rudiments of such a theory of order might serve as a framework -- a metatheory -- for the comparative assessment of patterns of order in human societies as aggregated wholes. Human societies need not be constructed only in one way. We do, however, need to establish relationships between conditions and consequences for a comparative assessment of differently constituted societies to occur.

The theoretical apparatus appropriate to differently conceptualized ways for constituting human societies must be worked out in a computational logic that can be appropriately elaborated in relation to epistemic, economic, and political orders and how these are nested in relation to one another. No single human society can be used as an appropriate prototype. Jean-Francois Revel in How Democracies Perish introduces his study with a chapter entitled "An End of An Accident." Conceptions of state-centeredness in political discourse and inquiry in the social sciences may not be appropriate for understanding the logic necessary for the operation of self-governing societies. If democracy occurs where people rule, state-centered ways of thinking may yield the death of democracies because people lose consciousness of an appropriate conceptual-computational logic and commensurate structural arrangements which are necessary for creating and maintaining self-governing societies. The properties for self-governing societies may have emerged from centuries of contention and have been elaborated in theories of constitutional governance only to be abandoned to conceptions of state-governed societies when constitutions come to be viewed as mere formalities, and some officials come to be viewed as supreme authorities.

Inquiring About the Logics of Prototypical Situations

Making comparisons of societies as aggregate wholes is sufficiently tenuous that complementary modes of analysis must be developed if we are to have what Tocqueville alluded to as a "science of association" placed within the frame of a theory of order. One such possibility is to attempt to establish prototypical situations that can be expected to occur in all human societies. As I have indicated earlier, we might expect all human societies to develop patterns of association with reference to exchange relationships, teamwork, the use of common-pool resources and facilities, collective goods, conflict and conflict resolution, and rule-ruler-ruled relationships. These are circumstances which will occur and reoccur in the lives of every individual as each is required to associate with others.

We need then to specify the structure of prototypical situations where these various types of social phenomena can be investigated as relatively isolable systems which occur in the context of the structure of societies as aggregated wholes. An important issue is whether the structure of such prototypical situations constrain the choice of actions so that we might expect typical logics to apply to those situations. It is these circumstances where considerations of counterintentionality and counterintuitivity might be expected to prevail.

The structure of any prototypical situation requires reference to those aspects that function in epistemic, economic, and political orders. The structure of any situation can then be specified as having reference to the community of shared understanding (elements of an epistemic order), rules and rule-ordered relationships (elements of political order), and the nature of goods being produced, exchanged, and/or consumed (elements of economic order). Material conditions of the environment, rule-ordered patterns of human association, and the shared cognitive dimensions of human cultures provide the most general context for how the epistemic, economic, and political orders are nested in relation to one another to create an identifiable configuration of relationships which forms the structure of prototypical situations.

We can then presume that human actors with specifiable characteristics confront such structured prototypical situations and act in light of the opportunities and limitations that are available to them (Kiser and E. Ostrom, 1982; Oakerson; E. Ostrom). Human beings are the activating elements whose choices of strategies affect the consequences which emerge from acting within the structures available to them in prototypical situations.

It is these circumstances that can potentially be specified in formal models that are indicative of a particular logical structure. Once particular models have been formulated to specify basic structural characteristics, it then becomes possible to establish whether the underlying structures that pertain to nominally different situations are subject to the same formulations. The so-called

Prisoner's Dilemma in game theory, for example, has the same underlying structure that applies to the use of common-pool resources and facilities.

Conversely, what nominally is referred to by the same name, such as "markets" or "states," may have quite different underlying structural characteristics. Appropriately specified models should help to clarify basic differences. My conjectures about self-governing societies manifesting few commensurabilities with state-governed societies can only be clarified in light of the development of appropriate models which are likely to have the characteristics of being simultaneously and sequentially structured games.

Human beings have the possibility of either taking any particular structure of a situation as given and acting within that context, or of pursuing further inquiry and considering how to transform the structure of any given situation. These possibilities can be yielded in modifying the structure of rule-ordered (decision-making) arrangements, technological possibilities pertaining to productive-consumptive potentials, or introducing conceptual innovations with new ways of thinking about problematical situations. Such possibilities can still be subject to comparative analysis in light of the basic problematics inherent in prototypical situations.

A mode of analysis focusing upon prototypical situations permits a comparative assessment of patterns of order in human societies that can extend across the frontiers of societies that have reference to different ordering principles that might apply to epistemic, economic, and political orders in different civilizations. How human beings respond to counterintentional and counterintuitive contingencies is important in attempting to identify universals which may be operative in human societies.

In the organization of highly elaborated structures of teamwork subject, for example, to a unity of command, questions exist whether systemic losses of information and control occur which are a function of human fallibility specified as a span-of-control problem. If such is the case, limits exist with reference to bureaucratic patterns of organization relying upon command and control. Efforts to tighten the control structures will yield predictable perversities associated with organizational rigidity, while relaxing control will yield predictable perversities associated with goal displacement and corruption. Under these circumstances, increased reliance may need to be placed upon diversely organized coordinating structures grounded in cooperation, competition, and processes of conflict and conflict resolution. It is a combination of these associated coordinating mechanisms grounded in cooperation, competition, and conflict and conflict resolution that enables human beings to move from one to another level of analysis and achieve potentials for ultrastable patterns of adaptation grounded in learning, the generation of new knowledge, and innovations which permit emergent properties to occur in the evolution of human societies.

Multiple Levels and Foci of Analysis

Problems of basic incommensurabilities in patterns of order in human societies will not permit us to rely upon a single specifiable unit such as the nation-state for making system comparisons. Comparisons can be attempted at that level of analysis, but such an approach can give only a limited, partial view of the way that patterns of association order ways of life in human societies. State-centered analysis does not permit serious inquiry about the patterns of order which might exist in self-governing societies, or how peoples might proceed in moving from state-governed to self-governed societies.

We are, instead, required to move to multiple levels and foci of analysis where configurations of relationships can be seen in spatial dimensions that have reference to concurrent patterns of associations and communities of relationships without presuming any single center of ultimate authority. Multiorganizational configurations of relationships are as important as intraorganizational arrangements in achieving coordinated patterns of order. How systems of governance are constituted with reference to constitutional levels of analysis is as important as choosing strategies about what might be done within the context of any particular organization or unit of government. Without the criteria and calculations that pertain to the constitutional level of analysis, every constitutional development is apt to be viewed as a historical accident. In such circumstances, human beings drift through life without any sense of order in history apart from discrete proper names associated with particular individuals, places, and events.

We must in those circumstances respond in the negative to the question raised by Alexander Hamilton of whether societies of men can establish systems of governance by reflection and choice. If societies of men can establish systems of governance from reflection and choice and can do so under terms and conditions where everyone exercises basic constitutional prerogatives to govern his or her own affairs and to associate with others upon mutually agreeable terms and conditions in which no one can exercise unlimited authority, then we can imagine the possibility of human beings achieving self-governing societies. Under these circumstances human beings can draw upon a science and art of association where the creative potentials of both organization and freedom take their place in the unfolding of human civilization. Such a science of association would be built upon a theory of order that is grounded in universal principles which enable people to relate to the great diversity of contingencies operable in unique times and places.

We, as scholars, are a part of that order and we contribute to the unfolding of our societies and to the development of human civilization as we advance our understanding of the nature and constitution of order in human societies. We each function in orders concerned with the development, communication, and use of knowledge that are nested in a nexus of rule-ordered relationships and in a nexus of productive-consumptive relationships. Our own experiences should reflect the patterns of order that exist in human societies as ways of life.

Back to Hensel Again

The frame which Hensel proposed for the study of economic orders in the context of human societies as systems of order that constitute ways of life is of fundamental importance for advancing our understanding of the nature and constitution of order in human societies. His focus upon a program of research to compare patterns of order in two different types of economic order prevailing in the Federal Republic and in the Democratic Republic was well conceived. The two Germanies provided the basis for quasi-experimental research efforts in which economic and political systems vary in societies that shared the commensurabilities of a common historical and cultural heritage. These are circumstances where sound comparisons can be made. Contemporary work in the social sciences can be greatly enriched by German scholarship in developing a theory of order and elaborating that theory by comparative research.

My principal reservation has to do with whether political orders are to be identified with nation-states and whether nation-states can be used as the basic unit for comparative analysis. My conclusion is in the negative. To explain why has required me to address problems of incommensurability which I believe to be of a serious magnitude. These were minimized in the way that Hensel conceptualized a research program as applying to the two Germanies. When we move away from the commensurabilities of a common historical and cultural tradition, the possibility of using nation-states as basic units for comparative analysis becomes less tenable. Nation-states grounded in theories of sovereignty are likely to be only a transitional form of order of limited periodicity in human history.

There is, I believe, a longer-term pattern of order and development in human societies that might be better conceived as the emergence of self-governing societies rather than state-governed societies. Boundaries become more permeable and less exact. The way people function in epistemic orders and economic orders may diverge at least to some significant degree from the way that political orders have been traditionally conceived in our reliance upon theories of sovereignty. The res publica -- the open realm -- of science and the epistemic order, of productive and consumptive relationships, and of rule-ordered relationships has increasingly diverged from the confines specified by the jurisdictions of nation-states, as such.

A function of comparative analysis is to contribute to an understanding of alternative possibilities. Once alternatives have been clarified, we can presume that such an understanding has a place in the future choices that confront human beings. A clarification of alternative possibilities evokes potential for innovation. Selection from among alternatives allows for the emergence of new patterns of order. What, today, is the subject of comparative analysis may, tomorrow, contribute to the emergence of new patterns of order. Problems of error, counterintentionality, and counterintuitivity abound to plague these processes of innovation, selection, and

maintenance that operate in the evolution and development of human civilizations. The comparative study of systems of order, itself, becomes a part of the historical processes that are involved in the development of emergent orders which derive from and contribute to the unfolding of human civilization.

We who devote our lives to epistemic considerations can no longer afford to categorize systems of ideas as ideologies and use language in a way that obscures and leaves meaning opaque. Instead, we bear the burden of clarifying the conceptual-computational logics that are inherent in systems of ideas and considering the implications that such systems of ideas have for organizing practical experiments in efforts to order our relationships with one another as we participate in the affairs of life. We live in societies where scholars do not exist apart from societies, but where members of those societies have an avid curiosity about ideas and their implication for understanding the universe in which we live. People use ideas to fashion emerging patterns of order. Ideas inform actions; and actions have consequences. Ideas, patterns of association, material conditions and productive possibilities meld in relation to one another to form configurations of relationships where individuals in positions take actions, in light of information, the control they exercise, and the payoffs they face, to attempt to achieve outcomes and results (E. Ostrom). Such is the microcosm of human relationships which get aggregated into societies as ways of life.

Footnotes

¹Lasswell and Kaplan (1950: 215) observe:

Thus in a sense all of the social sciences have an identical subject matter, but they adopt toward this subject matter varying observational standpoints (frames of reference) leading to different sets of problems. Hence, though political science as here conceived is characteristically concerned with politics, it is not limited to that concern ("science of government," "science of state," and so on), but deals with the social process in its entirety, though always with its bearing upon power.

²Steven Runciman, in Byzantine Civilization (1965), makes the following assessment of the Imperial Constitution of the Byzantine empire:

The Imperial Constitution, The Emperor, elected by the Senate, the Army and the People of Constantinople, to be the Viceroy of God but to rule according to Roman Law, was in many ways illogical and incomplete, but it had the supreme and essential merit that it worked. Its efficiency is remarkably illustrated by the fact that while in the West innumerable writers arose to discuss the difficult problem of Church and State, of Emperors and Kings and Popes and their inter-relations, for centuries Byzantium did not produce a single political theorist. The constitution worked too well for abstract discussions to be needed (65).

It might be conjectured instead that the Emperor as Viceroy of God and Autocrat left no public space for disputation and contestation to occur with reference to the proper structure of authority relationships in Byzantine society. Silence is construed as efficiency. In the absence of intellectual debate and contestation, Byzantium failed to generate and maintain the self-governing capabilities that had earlier been achieved in the Greco-Roman city-states and that remained as a heritage upon which the early empire could rely.

³David Hume specifies a similar effort to discount such feelings as "[a]varice, ambition, vanity, and all passions vulgarly, though improperly, comprised under the denomination of self-love" as not being appropriate to his "theory concerning the origins of morals" (Aiken, 1948: 252). It is in this context that Hume identifies sympathy or fellow feeling as the sentiment relating the humanity of one to the humanity of others. All of the particular passions are the source of desires and aversions. The sentiment of sympathy is a summary sentiment that enables people to be sensitive to and understand the feelings of others.

⁴The complex order of calculations inherent in a method of normative inquiry is also indicated by David Hume in the introductory

section to An Inquiry Concerning the Principles of Morals where he observes that both "reason and sentiment occur in almost all moral determinations and conclusions." He goes on to observe,

The final sentence, it is probable, which pronounces characters or actions amiable or odious, praiseworthy or blamable; that which stamps upon them the mark of honour or infamy, approbation or censure, that which renders morality an active principle and constitutes virtue our happiness, and vice our misery -- it is probable I say that this sentence depends on some internal sense or feeling which nature has made universal in the whole species. For what else can have an influence on this nature? But in order to pave the way for such a sentiment, and give a proper discernment of its object, it is often necessary, we find, that much reasoning should precede, that nice distinctions be made, just conclusions drawn, distant comparisons formed, and general facts fixed and ascertained. Some species of beauty, especially of the natural kinds, on their first appearance command our affection and approbation; and where they fail of this effect, it is impossible for any reasoning to redress their influence, or adapt them better to our taste and sentiment. But in many orders of beauty, particularly those of the finer arts, it is requisite to employ much reasoning in order to feel the proper sentiment; and a false relish may frequently be corrected by argument and reflection. There are just grounds to conclude that moral beauty partakes much of this latter species, and demands the assistance of the intellectual facilities in order to give it a suitable influence on the human mind (Aiken, 1948: 177-178).