COMMUNITY SELF HELP AND THE LAW AND REGULATIONS OF GOVERNMENT

by

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COMMUNITY. SELF HELP AND THE LAW AND REGULATIONS OF GOVERNMENT

Community self help may be a particularly useful notion for coming to terms with the self organizing and self governing capabilities of people within and across particular historical periods and different political systems. Emphasis on a theory of "the state" as predatory rule and on a theory of politics as exchange has led to too many pessimistic comments about the human condition. At the same time, recent analyses by Jane Jacobs (1984) and Charles Sabel (1982) tend to support the late J.P. Nettl's observation that "the traditional European notion of state and its structural application in practice may not be adequate for the tasks of goal-setting and goal-attainment in a modern, fully industrialized society" (1968: 587). Jacobs argues that cities and not nation states are the salient basic entities for understanding economic life; Sabel offers evidence to suggest that the future of industrial society lies not in "Fordism" but in the small, high technological industries such as those he found in several Italian cities. As for countries in the third world,

> . . . there are probably good reasons why no idea of state is likely to develop from the increasingly unique and particular political experience of these countries. As they develop their own autonomous traditions in coping with their particular problems, . . . it seems improbable that any adequate concept of state will appear (Nettl, 1968: 590).

As long as analysts of third world development are preoccupied with the nature (and sovereignty) of the state, they are apt to miss, and even to contribute to, the factors that impede the unfolding of human capacity in developing countries. William Mangin's 1967 article "Latin American Squatter Settlements: A Problem and a Solution" is now a small classic because Mangin was able to perceive deeper relationships where other analysts, government planners and even well intentioned church leaders originally saw only a "cancer." Without minimizing the problems of over-population, rapid urbanization, poverty, lack of elementary health and public services, the article reoriented Latin American urban research toward viewing squatter settlements as a process of social reconstruction through popular initiative. In short, focus on community self help may offer better prospects for advancing comparative analysis than a simple reliance on "the state" or a particular level of government as the basic unit of analysis.

The utility of the shift of focus turns critically on how to understand and clarify the dilemma, and sometimes antagonism, between community and institutional power. A beginning effort in this direction is to explore the relationship between community self help and the law and regulations of government: Can community self help be viable in the face of the law and regulations of government? But this question in turn involves confronting at least three sets of issues.

First, there is the issue of why the law and regulations of government are so important. Because the law and regulations of government do not as institutional arrangements of society directly impinge on the world (Kiser and Ostrom, 1982: 179-180), the tendency especially in comparative analysis has often been to dismiss them altogether as determinants

of behavior in themselves. The work of public choice scholars has done much to discredit several variants of the "institutions-do-not-matter" argument (e.g.,Sproule-Jones, 1982). Even among neo-Marxists there is now widespread recognition that institutional arrangements of society are important intervening variables for creating incentive systems through which citizens and public officials operate and think politically (e.g., Martin, 1980). The critical issue is how these arrangements actually operate in society and how they are related to constitutional arrangements. For example, Mancur Olson (1965) assumed the existence of a legal order that does not hinder voluntary joint efforts and of instrumentalities of government that do not foreclose the development of alternative sources of supply of public services implied by voluntary collective undertakings. Yet such an assumption is problematic in many political regimes. Hence, given the fact that institutional arrangements vary according to different constitutional arrangements, what theory or conception of law and regulations of government facilitates or hinders community self help? A fundamental shortcoming in much of anarchist thought is to assume that there exists only one kind of state and only one system of legal order (e.g., Holterman and Van Maarseveen, 1984).

Second, we are confronted with the question of why many efforts at community problem solving face comparable institutional problems in spite of different constitutional arrangements. For example, in the 1960s the process of solving public policy problems through community action programs and through continuing participation of citizens' groups was hailed in many Western societies as a new form of "participatory democracy." Elsewhere the same process was hailed as an expression of urban liberation, libertarian communism and, as in the case of Tanzania,

village socialism (ujamaa). The high hopes that accompanied these trends have in more recent times given way to disillusionment and despair (e.g., Ergas, 1980; Piven and Cloward, 1979; Rich, 1982). We seem to have reached a paradoxical situation. On one hand, the notion of community self help continues to receive normative support from a variety of viewpoints, suggesting further that charges about a particular normative cast of the ethics of self help may be false and misleading. On the other, the practice of community problem solving in different societies is leading many to doubt the warrantability of self help efforts. As a recent review article on self help among the urban poor of Latin America expressed this situation, "Few observers doubt the potential value of community action in development, although many question its value in practice" (Gilbert and Ward, 1984: 769) . In short, we need to show why similar phenomena take place in different political regimes. How far can we rely on the constitutional level of analysis to explain the work of instrumentalities of government?

A third set of issues involves the meaning of community self help. Part of the difficulty is attributable to the concept of community itself. Its "open-textured" nature (Taylor, 1982: 2) lends the concept to many different ways of identifying human beings as communities. In using terms like village, city neighborhood, nation and diaspora to stand for community, analysts have tended to cast community in antithesis to urbanization, "capitalism," "the state" and liberty. History has often been invoked in support of this antithesis, only to be found wanting by others (Bates, 1984; Popkin, 1979; Tilly, 1973; Wellman and Leighton, 1979). Unfortunately, this debate has tended to focus more on how to represent descriptions of the world and less on what principles should

apply for understanding the nature of community. One of the arguments of this paper is that community is as much the effect as the cause of political institutions.

The absence or lack of agreement about a theory of what institutions should engage in resolving problems of a collective nature (Olson, 1969) has further complicated the task of describing the nature of community self help. A prevailing tendency in sociological inquiry has been to ask "Can community act?" without considering the problem of how communities as groups of individual human beings are related to organization. At the most general level, community self help can be of two kinds: public collective action and voluntary collective action. In the case of community self help as public collective action, the fundamental question is not "Are there instrumentalities of government?" but "Are these instrumentalities of government so constituted as to facilitate collective efforts on behalf of the common interests shared by people?" In the case of community self help as voluntary collective action the initial question "What accounts for the presence or absence of organized action in the face of common problems?" can better be rendered as follows, "Under what conditions would we expect people to engage in voluntary collective action?" The public choice literature has drawn specific attention to the critical differences between the two types; the recent literature on coproduction has emphasized that the differences between public collective action and voluntary collective action are continuous and not dichotomous (but cf. Kiser, 1984). The critical issue, then, is whether or not, or the extent to which, the law and regulations of government of different constitutional arrangements can sustain an openness to people seeking remedies to their problems through a variety of joint efforts, including coproduction.

We proceed with the innermost box of the nest and work outward. The first section explores the relationship between constitutional arrangement, the legal order and community action. Three conceptions or theories of law and regulations of government are identified. These are: 1) the command theory of law inherent in monocentric systems; 2) the democratic theory of law inherent in polycentric systems; and 3) the convergent theory of law that represents a fusion of the first two. The second, third and fourth sections discuss each theory. Against this backdrop it then becomes easier to assess the relationship between the law and regulations of government and community self help and to suggest reasons why the dilemma between community and institutional power seems so prevalent in spite of different constitutional arrangements. The fifth section makes a beginning effort in this direction, by encapsulating findings in comparative analysis into broad generalizations. The final section briefly explores the implications that this kind of analysis has for the concept of community and the problem of power, and for comparative analysis more generally.

Constitutional Arrangements, the Legal Order and Community Self Help

One of the contributions of the anarchist intellectual tradition has been to draw attention to the extent to which many community efforts can take place on the basis of face-to-face, small group reciprocal interaction, independently of formal governmental arrangements. People can find solutions to problems of organization when and where they are able to engage in joint efforts and maintain reciprocity with one another. For example, the upgrading of several city neighborhoods in Montreal has resulted more from efforts of modest immigrants who over time pooled their

resources and labor than from commercial development schemes and government subsidized projects (Krohn et al, 1977).

One of the more theoretical arguments in the anarchist tradition is found in Michael Taylor's Community, Anarchy and Liberty (1982). Taylor's work is especially important because it recognizes the public-good dilemma of social order. How is this dilemma to be resolved? By making it impossible. By abolishing "the state." The establishment of a communally based society is, in Taylor's view, necessary if people are to live without a state and to have viable anarchy.

Taylor then looks to history of preliterate and literate peoples to find support for his argument. He finds that social order in face-to-face communities can be maintained in a variety of informal ways but he is forced to acknowledge that such arrangements do not guarantee the long-term survival of such communities.

The work of Bullock and Baden on communes and the logic of the commons (1977) suggests that communally based societies can be established and maintained over time. The cooperative behavior held to be the ideal within the familial order can be expanded and applied to the communal order under two conditions. First, human beings have to devise or to evolve a set of institutional arrangements that tend to align individual strategies with the collective welfare. Second, the long-term success of such ventures depends on the extent to which such communities are allowed to organize in the large society. Taylor recognizes the first condition but ignores the second because he relied on an inadequate concept of the state. Community, self help and political association need not be antithetical to one another as long as constitutional arrangements allow people like those in the Hutterite communes

discussed by Bullock and Baden to develop and maintain their autonomous traditions in coping with particular problems.

The value of constitutional arrangements is that they afford opportunities for extending the norms of reciprocity beyond individual transactions and the informal polity to reach larger publics. In this way the legal order can be an expression of community self help in itself (Buchanan, 1975; Hayek, 1973, 1976, 1979; Leoni, 1961; Sartori, 1962: chap. 12). This is, in fact, how Malinowski first drew attention to law in his studies of the Trobriand Islanders (1926: 20-21). But, in primitive or preliterate societies, law and the legal order

> . . . do not consist in any independent institutions. Law represents rather an aspect of their tribal life, one side of their structure, than any independent, self-contained social arrangements . . . Law is the specific result of the configuration of obligations, which makes it impossible for the native to shirk his responsibility without suffering for it in the future (Malinowski, 1926: 59).

The process of modernization radically amplified and institutionalized the legal order. But this process also carried with it conceptions of institutional arrangements that derived their organizing principles from the concept of dominance as well as the concept of self-governing community. One of the earliest and better recorded contexts for the emergence and clash of these antithetical conceptions was the medieval period, when people in Europe were searching for a new social order to replace the remnants of the Roman Empire. But it is with the Enlightenment that these conceptions became sharpened and fixed in the monocentric (unitary) and polycentric (federal) solutions to the problem of human organization. In more recent times, the rise of party democracy, the growth of the welfare state and the oligarchic tendencies inherent

in organized activities have led to an apparent fusion of antithetical conceptions of law. Let us explore each one in turn.

The Command Theory of Law

The revival of the study of law is often viewed as one of the greatest intellectual achievements of the Middle Ages. But the application of Roman law to the emerging world of Italian communes revealed some of its limitations. J.K. Hyde's observations on Society and Politics in Medieval Italy offer a glimpse of how the command theory of law was linked by jurists to a monocentric conception of the political order:

> It was at the highest level of public and constitutional law that the revival of Roman law created serious trouble. Committed as they were to the belief that the imperial and universal law was by nature superior to any local law and custom, whether written or unwritten, the academic lawyers had the greatest difficulty in dealing with the de facto self government of the communes and its practical expression in communal statutes. The breakdown of the imperial system, which had made possible the emergence of the communes, was a scandal in the eyes of many jurists for without an effective emperor as the fount of law and the ultimate source of political authority, the Roman legal structure lacked its keystone and seemed in constant danger of collapse. The civil lawyers tended to become imperialists almost ipso facto and . . . a number . . . entered the service of the medieval empire (Hyde, 1973: 85).

But it was Hobbes, and not the medieval civil lawyers, who made the most theoretically compelling case that there must be a single center of ultimate authority to have a common set of rules to govern society.

Hobbes defines a good law as "that, which is needful, for the good of the people, and withal perspicuous" (1651: 227). He realizes that "unnecessary laws are not good laws; but traps for money . . ." (1651:

227-228). But his conception of institutional arrangements in society is grounded in a command theory of law.

1. A single uniform or overarching structure of governmental arrangements is presumed to serve the public interest of all citizens. The organization of local government and inter-governmental arrangements is within the domain and scope of the sovereign or central government authority. The choice of goods and services provided by local and intergovernmental arrangements is within the authority of the central government. Supervision over the provision of public goods and services by public officials is the exclusive jurisdiction of the government. Checking on public officials can only be done by other officials.

2. A single uniform set of law and other regulations of government is presumed to serve the public interest of all citizens. Law primarily originates from the commands of the sovereign. Those who exercise governmental authority are not only the source of law but are also beyond the reach of legal remedies.

3. Once people enter or agree to a commonwealth they must abandon reason for obedience: "For the prosperity of a people ruled by an aristocratical or democratical assembly, cometh not from aristocracy nor from democracy, but from the obedience, and concord, of the subjects nor do the people flourish in a monarchy, because one man has the right to rule them, but because they obey him" (Hobbes, 1651: 221-222).

Countless examples can be drawn from comparative politics to suggest the prevalence of this conception of institutional arrangements among analysts and public officials, used either to explain or to justify the creation of political order, the realization of developmental opportunities and the striving for some kind of equalitarian victory over particularism or a combination of the three. But three examples drawn from different parts of the world suffice.

First, in the words of a European analyst:

> In Italy, as in Germany, France and other countries with a Roman juridical tradition in contrast to Anglo-Saxon countries, administrative law does not consider negotiations between private citizen and public administrator for the purpose of establishing reciprocal interests in a given measure. Administrative order in these countries is an equalitarian victory obtained by the centralized authorities against particularism and possible private privileges. This has naturally led to the affirmation of the concept of the common good in a version that is, let us say, authoritarian. Direct relations between citizen or group of citizens and administrator is not provided for, because of the consideration that if a measure more favourable to the interests of that single private citizen could arise from this relation, something could also result to injure other unrepresented private interests.
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> One could say that to consider the needs of private citizens, in Italy, as in other countries with an analagous legal system, is not regarded as a praiseworthy quality of the administrator, and, on the contrary, it could be regarded as the first step to corruption . . . . (T)he European-type system assumes that some interested parties are better able to represent themselves and others less able to. Consequently, public administration has the job of bringing equality to the maximum possible level where inequality naturally exists and where the natural functioning of a civilized society does not increase opportunities for the emergence of equality, but perhaps has the opposite effect (Pizzorno, 1966: 90-91; emphasis in the original).

Second, the Tanzanian government under President Julius Nyerere applied similar principles of rule to development efforts (Ujamaa) in the 1960s. On the assumptions that Africans, by tradition, have always been socialist and that he, as the leader of Tanzania, knew best how to improve the life prospects of the peasants who were the backbone of the Tanzanian economy, President Nyerere proceeded to a policy of forced collectivization to pave the way for rapid economic development and social and political emancipation. Nyerere's philosophical articulation of the command theory of law led him to reject other ways of achieving development. By the early 1970s, " . . . ujamaa is no longer viewed as one possible path of development among many; rightly or wrongly, it is seen as the

only logical path" (Temu, 1973: 197). Third, for several decades Chile escaped the coups, rebellions and revolutions that afflict most Latin American countries and, not unjustifiably, was acclaimed as a democracy. But what is generally not well remembered is that the motto on the national emblem even then proclaimed or warned that national objectives will be attained "By reason or by force" (quoted in Loveman, 1979: 7-8). But it would be wrong to conclude that the Hobbesian theory of rule prevails only in traditions of comparative analysis and in the experience of European and other governments. David C. Korten (1980) observed recently that most foreign assistance programming by American and international donors is grounded in a similar conception of problem solving.

As for community self help as voluntary collective action, it follows that this theory of law allows little or no opportunity for citizens to act on a voluntary or coproductive basis. Since the law depends on the exercise of governmental authority,

> The liberty of a subject lies therefore only in those things, which in regulating other actions, the sovereign hath permitted: such as in the liberty to buy, and sell, and otherwise contract with one another; to choose their own abode, their own diet, their own trade of life, and institute their children as they themselves think fit; and the like (Hobbes, 1651: 139).

For example, the Bourbon government of Naples during the nineteenth century went as far as to require members of church confraternities to promise "not to keep secrets from public officials" (quoted in Sabetti, 1984: 91). Thus for private citizens to take a serious interest in public affairs or community problem solving may be regarded as improper and even illegal. The "counterstrikes" to repair public roads organized by Danilo Dolci

among Sicilian villagers in the 1950s were used in part to dramatize the lack of opportunities for citizens to act as coproducers of many essential public services. One of the more extreme cases is offered by the Soviet Union where any lawful voluntary association of private citizens in the countryside is impossible outside of the existing administrative collective and state farms. Thus, we have the situation noted by one Soviet writer writing in an underground publication: "in a country advertising itself as a model of the initial stages of communism, communes are absolutely forbidden" (Timofeev, 1982: 14).

The Democratic Theory of Law

The command theory of law promoted by the medieval academic jurists was in part a reaction to the growth of republican liberties in Italy. But medieval republicanism was still too much of a pragmatic or utilitarian response to the complete dissolution of the Roman empire and in a society still intensely hierarchical to develop a fully democratic conception of law. The history of the term commune illustrates this point.

The term comune stood for voluntary collective self help and self defense, for which the general medieval legal term was societas (e.g., Hyde, 1973: 8, 49-55). As Italian cities were sliding into anarchy during the latter part of the eleventh century, many comuni sought to maintain their viability and the external economy they had created by successfully extending their authority over much of city life. By becoming monopolistic producers of many municipal goods and services, they began to act unilaterally in relation to intra- and intercommunal matters. The history of Italian city republics suggests that this success

led to a logic of mutually destructive relationships and, ultimately, foreign conquest -- furnishing Madison and Hamilton with an example of "republican disease" (quoted in Ostrom, 1971: 64). Only the leaders of the Venetian republic managed, through the skillful adaptation of institutional and constitutional arrangements began in 1198 (Maranini, 1927 and 1931), to minimize "the republican disease," to maintain a fairly high degree of commercial and cultural dynamism over a considerably long period of time but also to exclude most of the citizens from effective participation in government (cf. Rousseau, 1762: 70, note 1). Against imperial and papal design during the Renaissance, Venetians could legitimately claim that their republic owed its existence to the exertions of men who had freely settled the islands in the fifth century: "For where are the law and the right, the empire and the jurisdiction: if not in this company and gathering of men who have established a covenant and laws by a mutual oath?" (quoted in Bouwsma, 1968: 54). By that time, however, there were only few remaining traces of the covenantal base of the Venetian republic. In turn, the term comune was emptied of its original sense well before it was adopted in the nineteenth century to stand for the local administrative unit of many national systems of bureaucratic administration.

It was not until the American experience that the principles applicable to individual governance were successfully reiterated in the governance of townships, counties and states to become "the law of laws" (Tocqueville, 1835: 58) for the nation as a whole. The critical difference between this experience and medieval efforts at self governance was that now the basic conceptions for organizing what became the United States were derived from the spirit of religion as well as the spirit

of liberty. While the Italian communes were established in opposition to, or without the support of, the respublica Christiana or Christendom, the New England townships explicitly derived their organizing principles from that tradition, modified by the Reformation to become known as covenantal or federal theology. A critical difference between this experience and Hobbes' theory was that now it became possible for citizens to retain essential sovereign prerogatives after government was established and for prerogatives of rule to be divided and lodged in many hands. A way had been found for associating both small and large units of government together as a general system of government that would enable people to alleviate problems of institutional failure that are associated with large and small size. As an alternative to the command theory of law, the democratic theory of law incorporated the following attributes:

1. There is no single uniform or overarching structure of governmental arrangements to serve the public interests of all citizens. The public service system consists of an array of autonomous and overlapping units of government. Each unit of government can exercise only a limited and derived authority.

2. The binding force of law and regulations of government does not depend on the command of a sovereign but on the political and legal competence of its authors.

3. Citizens not only can make claims on public officials about the way they discharge their public trust and responsibilities but also retain the right of altering and extending the principles of association.

Tocqueville was one of the earliest analysts to realize the importance that the American experiment had in advancing both a theory of democratic government and a theory of democratic administration: "The most democratic country on the face of the earth is that in which

men have, in our time, carried to the highest perfection the art of pursuing in common the objects of their common desires and have applied this new science to the greatest number of purposes" (1840: II, 115). The American experiment, especially as it is analyzed in Chapters IV and V of the first volume of Democracy in America, suggests, in effect, that a democratic theory of law is conceptually and operationally feasible. In two often quoted passages, Tocqueville draws attention to critical features of the theory that are still not well understood in many quarters. First, the self-governing effects generated by the pattern of intergovernmental relations unique to a public administration without a center:

> Nothing is more striking to a European traveller in the United States than the absence of what we term government, or the administration. Written laws exist in America, and one sees the daily execution of them; but although everything moves regularly, the mover can nowhere be discovered. The hand that directs the social machine is invisible . . . . In no country of the world does the law hold so absolute a language as in America; and in no country is the right of applying it vested in so many hands (Tocqueville, 1835: I, 73-74).

Second, the importance of the courts of justice in counterbalancing elective authority for the purpose of conducting government on a uniform plan: "The extension of judicial power in the political world ought therefore to be in exact ratio to the extension of elective power'; if these institutions do not go hand in hand, the state must fall into anarchy or into servitude" (Tocqueville, 1835: I, 77).

In more recent times, the work of Vincent Ostrom has done much to refine and advance the concept of self governing communities suggested by the American experience and by Tocqueville's analysis. Here we pursue the implications of his thought only as the meaning of community

self help relates to the theory of democratic law.

First, Ostrom has extended the attributes of community from geography and kinship to a mutual consciousness that human beings have of their shared interdependencies by focusing on the concept of community of interest as it relates to public goods and common property resources. "The domain of the common property or the public good defines and bounds the community of interest" (Ostrom, 1974: 64-65). The communities of interest involved may thus range in size from family and neighborhood to global proportions. "People in human societies might then be viewed as sharing diverse and overlapping communities of interest where different values and ways of life can be maintained among good neighbors (Ostrom, 1983: 126-127). With this concept of community, there is, as Gordon Tullock (1969: 21) recognized, no need to search for the optimal size of government as a producer of particular services. The issue then critically turns on the extent to which instrumentalities of government, including the legal order, are so designed as to give human beings opportunities to participate in different community problem solving efforts. This is why the democratic theory of law is so important.

Second, in the Ostrom formulation the concept of self governing community is not simply a manifestation or attribute of utilitarianism. Community is also a context essential to moral judgement. This involves the distinction between right and wrong as well as basic values for ordering relationships among human beings over time. Common agreement about basic values is not a necessary condition for a political association to exist. Coercive capabilities could be exercised to yield conformity to authority regardless of whether or not this conformity provides

the basis for mutually productive relationships. But, as Ostrom notes,

> Human societies that aspire to be self-governing can only be constituted in relation to moral principles of self-respect and mutual respect for one another. A fundamental condition of society is that people 'stand in the dignity of persons in each other's presence' (Taylor, 1966: 12). People must share some fundamental understanding about principles for the right ordering of human relationships; and, as Alexis de Tocqueville has put it, some basic idea of right. There can be no shared communities of interest unless those diverse interests comprising such a community possess a shared idea of right as it is relevant to political experience (Ostrom, 1983: 127).

In this way, the notion of community self help derives from and is supported by (1) communities of interest, (2) a democratic legal order and other such institutional arrangements of society as well as by (3) the moral judgement that informs and shapes both communities of interest and the constitution of the legal order. For these reasons the democratic theory of law stands in sharp contrast to the command theory of law.

A Converging Theory of Law?

Hobbes' theory of law and government is logically sufficient and holds as long as the ruler or the set of rulers is enlightened, benevolent and omnicompetent and the ruled are willing to obey, to remain literally subjects,or simply live in a state of ignorance about who rules them. This latter point is exemplified by Bagehot's discussion of the dignified and the efficient parts of the English Constitution (Bagehot, 1867: esp. 48, 258, note 1). If we relax the assumptions that characterize Hobbes' sovereign to allow for fallible and self-interested individuals

to rule, we would expect (a) institutional weakness and failure to be the normal characteristics of the public service system, (b) some public officials to be in a unique position to exploit others, and (c) citizen alienation to go hand in hand with poor performance and predatory rule. In his opposition to the 1867 Reform Act, Bagehot adduced another consequence: that the very "peculiar old system" of politics would have to be altered (Bagehot: 265) . By contrast, the democratic theory of law incorporates in its design precisely the assumptions about human beings that create problems for Hobbes' model. Against this backdrop it becomes easier to resolve one of the issues discussed at the outset: What conception of law facilitates or hinders community self help?

But to end the analysis here would be inconclusive. We also need to consider the operational side of the democratic theory of law. Tocqueville had much praise for it (e.g., 1835: I, 42-43) but he also expressed the fear that the natural tendencies of democracy might work against it. In a famous passage, he anticipated that "Not only is a democratic people led by its own taste to centralize its government, but the passions of all the men by whom it is governed constantly urge it in the same direction" (Tocqueville, 1840: II, 387). At the same time, in part in response to the failure of political institutions to work as they should, innovations have taken place in many monocentric regimes toward a more complex system of governance. The net result is that more and more in modern societies the command and the democratic theories of law are converging, or becoming fused, in a single conception. The precise boundaries of this new conception are not yet fixed and subject of debate. But at least two attributes can be identified with relative ease.

There has been the shift from the rule of law to the rule by law of legislators. The shift has had the effect of blurring the distinction between general rules of conduct binding on all and measures of government concerning particular matters. Various schools of thought exist to describe and explain this transformation — ranging from "rent-seeking society," "distributional coalitions " and "the dark side of pluralism," to corporatism of various shades and meanings. They all seem to agree with Hayek and Sartori that the shift has taken place to the point where "(w)e are no longer protected by the rule of law but (in Mosca's terminology) only by the devices of 'juridical defense'" (Sartori, 1962: 311).

The shift to the rule of legislators has been accompanied and sustained by an increase in the number, size and powers of public monopolies promulgating laws and regulations of government. The bureaucratic-administration suggested in part by Woodrow Wilson and promoted in much of the metropolitan reform tradition in the United States reveals but a facet of this particular transformation. The emergence of "the modern regulatory state" (Trebilcock, 1975) and the growth in the American public sector (Bennett and Di Lorenzo, 1983) of what in some Western European countries is already known as "underground government" added weight to the argument given about the expanded powers of public monopolies.

The fusion of antithetical systems of law may account for why there has been so much confusion as to what factors account for comparable community problem solving difficulties in different constitutional arrangements. But the factors that contribute to the fusion at the operational level of government may sometimes be present at the constitutional choice level. The organization of Canadian Confederation as

parliamentary federalism (Sabetti, 1982; Sproule-Jones, 1984) and of modern Israel as a "compound state" (Elazar, 1977; Lustik, 1980) reveal why and how antithetical principles of ordinary law can converge and be fused at the level of constitutional choice.

Implications for Community Self Help

The preceding sections make it possible to clarify, and to offer more plausible explanations of why community problem solving in disparate political regimes has faced similar as well as dissimilar challenges -- without falling back on the "institutions-do-not-matter" argument. The preceding discussion permits us to encapsulate the findings in comparative analysis into broad generalizations. And to these we now turn.

Community Self Help as Public Collective Action

In spite of the tendency toward a converging theory of law, local government and inter-governmental relations in federal systems are still provided with more opportunities to act as expressions of community self help than their counterparts in monocentric systems. The case of France is often used to challenge the generalization that government rules and regulations in monocentric systems tends to excel in prevention rather than in action (e.g., Milch, 1978; Thoenig, 1980). France, the counterargument goes, is no longer one of the most centralized and bureaucratized industrial democracies. The informal and personal networks that have developed among local and national elected officials and officials of the national system of public administration cut across ideological and intergovernmental barriers to make the national system fairly

responsive to the articulation of demands for services by citizens and communal officials. Patterns of intergovernmental relations among central, regional, provincial and communal authorities have taken on the appearance of pluralist or polycentric rather than consolidated, monocentric ordering. But this counterargument is wrong for one important reason. The polycentricity that may be visible in France (or countries with similar systems) accrues from informal efforts to overcome dysfunctions in consolidated and hierarchic levels of government and not from a design of self-governing, independent levels of government with overlapping jurisdictions. Monocentric order tends to make a vice of what under federalism is often a virtue (see Elazar, 1977; V. Ostrom, 1972; Sabetti, 1984: 196).

Autonomous political organizations and local government units tend to constitute potential obstacles to national or regional development strategies. Irrespective of constitutional arrangements, the strategy on the part of the higher authority has been one of the following: (1) to impose its value or priorities through a variety of government regulations, including fiscal control mechanisms (Alexander, 1976; Bish and Ostrom, 1973: 64; Richardson, 1969, quoted in Loveman, 1977: 17; Warren, 1970); (2) to undermine local autonomy either through the establishment of more consolidated metropolitan government à la Winnipeg Unicity or through (re)establishing direct control over local government and administration as has been the case in many Latin American countries (Loveman, 1977; Sabetti, 1981); or (3) to engage in resettlement policies such as those that have been pursued, among others, in relation to the Newfoundland outport communities and in relation to independent cultivators in Tanzania (Ergas, 1980; Matthews, 1983:

chapters 6-7; Putterman, 1982; cf. Lustik, 1980). National or regional development strategies can take place independent of the values, living conditions and dreams of human beings but at the risk of becoming new forms of antidevelopment. In fact, in each instance mentioned above there has been a loss of capacity at community problem solving.

Single uniform laws cannot be applied uniformly. The results may be either what Tocqueville found in the old regime in France or what an Italian minister of public works was forced to acknowledge to the Chamber of Deputies in 1962. Tocqueville noted:

> It was the normal thing for a man filing a petition to ask that in his case a departure should be made from the strict letter of the law and petitioners showed as much boldness and insistence in such requests as if they were claiming their legal rights. Indeed, whenever the authorities fell back on the letter of the law, this was only a polite expedient for rejecting a petition (Tocqueville, 1856: 67-68).

The Italian minister of public works explained difficulties in implementing the national urban plan in the following terms: " . . . the laws give (administrative officials) important sanctions, it is true, but since they cannot see and check on everything, to exercise these powers would be a form of discriminatory treatment" (F. Sullo, cited in Fried, 1973: 185).

Community Self Help as Voluntary Collective Action

Laws and regulations of government can affect community self help as voluntary collective action in at least three ways. First, they provide or do not provide the conditions for the pursuit of joint opportunities. In Democracy in America and in. The Old Regime and the French Revolution, Tocqueville observed the positive effects that laws and

other institutional arrangements can have in fostering and promoting the spirit of association. These are by no means the only sources. In his study of Zapata and the Mexican Revolution, Womack (1968) shows how the community organization of the Morelos pueblos provided the organizational base and material and moral resources to keep the revolutionary movement alive even under difficult circumstances. The role of the Southern black churches in providing the organizational network for the rise of the American Civil Rights Movement is almost the same as that provided by local parishes for the rise of Christian Democracy in Northern Italy and Sicily in the late 1890s (Sabetti, 1984: chapters 5-6). David Korten (1980) reports that some of the more successful rural development efforts in Southeast Asian countries have been those that have succeeded in extending the principle of reciprocity from the village level to the establishment of several configurations of enterprises that have now reached regional and national levels. The success of the Mondragon cooperative movement in fostering regional development in the Basque area of Spain owes much of its success to similar institutional reasons as well as to the ability of the Jesuit priest who originally organized the movement (Bradley and Gelb, 1982; Gelb, 1984). Ordinary people can indeed gain the courage and hope to surmount the free-rider problem and to take action on their behalf within institutions partly autonomous from governmental arrangements (Boyte, 1980: 179). But in the absence of legal opportunities such activities may be driven underground or limited to self help organizations of legal, if not always moral, outlaws. Whether outlaw concerted action improves the long-term welfare potential of people is problematic. Three examples illustrate this point.

In an article circulated originally as a samizdat publication in Moscow, the black market is defined as "that art of breathing within the noose of prohibitions and restrictions" (Timofeev, 1982: 5). Official Soviet accounts admit the existence of some 40 million small rural private enterprises after almost half a century of land collectivization. But though individual people benefit from this underground economy, the author of the samizdat publication suggests that, in the final analysis, the macroresults of such self help efforts shield the Soviet system from economic laws. In this way, the black market becomes a mechanism that supports the stability of the Soviet political system CTimofeev, 1982: 18).

Another example comes from Sicily. A time series analysis of a mafia regime in a Sicilian town called Camporano -- from the 1890s to 1907; from 1908 to 1914; from 1915 to 1918; from 1919 to 1926; from 1943 to 1944; from 1944 to its collapse in 1955 — led me to the conclusion that "a general condemnation of the mafia as outlaw concerted action is as inappropriate as general approbation" (Sabetti, 1984: 233). The rise of the Camporano mafia as an expression of self rule and self reliance can be largely explained in terms of both the failure of the official government and the stunted growth of Christian Democracy before World War I. There was a time when the local mafia group was an independent coproducer of public services -- almost fitting the institutional theory of citizen coproduction being developed by Larry L. Kiser (1984). But my research places in sharp relief the paradoxical situation that self help efforts face when they are constrained or forced to take on outlaw forms. In the course of time the Camporano mafia experienced considerable difficulties in remaining an autonomous self help group, became

corrupted and, ultimately, an additional burden on villagers. In the end, the Camporano mafia group vanquished itself but this may not always be so in cases of larger outlaw self help groups turned parasites (Sabetti, 1984: chapters 6-9).

There is now a great deal of literature pointing to the extent to which residents of squatter settlements from Lima to Lusaka have mobilized themselves to run communities and to improve their environment -- in spite of government regulations against urban migration, illegal urban land seizure and citizens acting as essential coproducers of many public services (e.g., Rodell and Skinner, 1983; Ward, 1982). These community problem solving efforts suggest that outlaw self help can have a large measure of success in improving the life prospects of people only in political regimes where there is a considerable gap between the command theory of law and its actual practice. But the extent to which the shanty towns of the third world can be "the slums of hope" (Lloyd, 1979) or bases for a movement toward the transformation of, at least in theory, highly centralized political systems into political systems based upon a democratic theory of law remains problematic (see also Collier, 1976: esp. chapters 5-8).

Second, the law and regulations of government not only provide opportunities but can actually promote or stimulate the constitution of voluntary joint efforts. The Community Action Program of the 1960s in the United States is a case in point. Anti-poverty agencies acted as catalysts and in the course of time provided grassroots organizations with resources, arenas of conflict and legitimacy (e.g. Marris and Rein, 1972). Urban renewal projects involving the demolition of residential neighborhoods have often acted as catalysts in the rise of citizens'

groups as pressure groups and, as the Montreal and Toronto experience suggests, as urban reform movements.

The case of the Canadian government under P.E. Trudeau in the late 1960s emphasizes an important twist to the generalization. In areas which came under federal jurisdiction, federal officials adhered to the conventionel view of citizen participation as simply dialogue with public officials. However, in fields in which the federal government had little direct responsibility, the government strongly encouraged "participatory democracy." Thus it was that "groups of citizens who were organizing to fight municipal or provincial bureaucracies often received generous grants from the Department of Health and Welfare" (Fraser, 1972: 6). Institutional arrangements in monocentric regimes sometimes afford the pursuit of somewhat similar strategies,against the central government. The opportunity to transform the control of communal governments into positions of opposition to the Demochristian-dominated central government led Communist local officials in Italy, especially in the 1950s and early 1960s, to search for ways to strengthen local government vis-a-vis the central government. A 1915 dormant national law permitting city governments to divide cities into administrative zones headed by mayor's delegates was effectively used by the Communists in Bologna as the legal basis for the establishment of some form of neighborhood advisory councils in each city zone. The movement for neighborhood councils soon spread throughout the country and eventually new national legislation was drafted to reflect the change (Sabetti, 1977: 131-132).

The literature on the interaction between public agencies and community organizations suggests another set of generalizations. As voluntary joint efforts move from the role of advocate to the role of service

provider, they tend to become very much like the public institutions with which they interact. They tend to deemphasize citizen participation and to increase their levels of professionalism and bureaucratization. Conversely, if they succeed in limiting the influences of professionalism and bureaucratization, they must sacrifice certain programs of potential benefit to the communities of interest they are supposed to serve (e.g., Cooper , 1980; Gittel, 1980; Kafoglis, 1968; Rich, 1982). An analysis of community organizations in the Los Angeles area suggests some modification in these generalizations (Ventriss and Pecorella, 1984). But the interaction between public agencies and community organizations places in sharp relief the importance of a theory of democratic administration (Ostrom, 1974) for the realization of the unused capacity at self governance among the poor or the less privileged.

Individualistic Choice

When human beings are prevented from cooperating, they necessarily become individualistic. Individualistic action can become a way of life generated by the pursuit of strategic opportunities available to people as "prisoners" of the legal order governing public and private activities. It is possible for people to become "communities of strangers" (Roberts, 1973), or communities of so-called amoral familists (Banfield, 1958). In varying degrees, the work of Hayek, Ostrom and Tocqueville draws attention to the part that extensive laws and regulations can have in creating such communities. Consumers in the modern regulatory state can fall into the kind of servitude anticipated by Tocqueville:

> After having thus successfully taken each member of the community in its powerful grasp, and fashioned him at will, the supreme power then extends its arm over the whole community. It covers the surface of society with a network of small complicated rules, minute and uniform through which the most original minds and the most energetic characters cannot penetrate to rise above the crowd. The will of man is not shattered but softened, bent and guided; men are seldom forced to act, but they are constantly restrained from acting. Such a power does not destroy, but it prevents existence; it does not tyrannize, but it compresses, enervates, extinguishes, and stupifies a people, till each nation is reduced to be nothing better than a flock of timid and industrial animals of which government is the shepherd. I have always thought that servitude of the regular, quiet, and gentle kind which I have just described might be combined more easily than is commonly believed with some of the outward forms of freedom and that it might even establish itself under the wing of the sovereignty of the people (Tocqueville, 1840: II, 337).

Lest these sources appear to be one sided, let me quote at some length from Ignazio Silone who in his own life-long struggle for Socialism also came to rethink "progress":

> Some of my boyhood memories are linked to a mutual benefit society that used to exist in my little native town. Although it had been started without any kind of official support, its financial situation was always flourishing, not only because it had a large membership, consisting mostly of farmers and artisans, and used constantly to organise entertainments and social functions to which members could bring their families, but also and above all because, when it actually came to handing out money, even in clear cases of urgent need, the society would encounter all sorts of obstacles. Chief of these . . . was a peculiar kind of pride or shame that prevented many members who had been striken, and sometimes ruined, by long periods of illness or other misfortunes, from asking for the help to which they were entitled. I can still remember listening to a discussion among the members of the executive committee as to how this stubborn shyness of the needy might be tactfully overcome. I noticed exactly the same behaviour after the earthquake of 1915 that ravaged my native district of Marsica. A few days later we began to see teams of relief workers arriving from other parts of Italy. We were deeply moved, of course, we were grateful, but we were also astounded by

> this entirely new, unforseen and unforseeable development, since the tradition handed down to us by our fathers was that, whatever catastrophe might befall, the survivors should bury their dead and manage, by themselves, as best they could. There was nothing exceptional in such an attitude at that time, and it was certainly not peculiar to my native town. . . . We had a county hospital, but it was nearly always empty. Except in cases requiring major surgery, when the doctor refused to operate in the patient's home, people were ashamed to bring their sick relatives to the hospital, even if hygenic conditions at home left much to be desired. To shirk the duty of caring for an invalid by consigning him or her to the hospital would have been looked on as a disgrace.
>
> There is, of course, no reason to mourn the passing of such traditions. There is nothing shameful in taking advantage, when necessary, of insurance schemes or loan societies. Meanwhile, in my native district as elsewhere, living conditions have improved. . . . Nevertheless the scramble for subsidies goes on there now quite as fiercely as anywhere else. In fact both the parish priest and the local representatives of the various political parties seem to spend most of their time writing letters of recommendation and helping to fill up application forms for subsidies of one kind or another. A bronchial cold is enough to send people rushing to the hospital; beds there are in such demand that it is very hard to get in. And if a heavy shower should leave a puddle in front of someone's doorstep, it will rarely occur to him to fetch a shovel and clean it up in a couple of minutes, as his father would have done; instead, he lodges a protest at the town hall, or writes a letter to his representative in Parliament.
>
> No adequate study has as yet been made of the role now played by government subsidies in the ideology of the social aid State, or of their psychological effect on the beneficiaries. To me it seems a new form of madness (Silone, 1968: 10).

These circumstances can give rise to what scholarly studies of the development of African and Middle East political societies call "the two publics" -- one public sector, founded on indigenous tradition and culture, is identified with primordial groupings and activities; the other, the civil public sector, is associated with the state administrative structures from which one seeks to gain, if possible, in order to

benefit the primordial public (Segre, 1980: chapter 3; see also Lustik, 1980). The same circumstance can foster a logic of corruption as well as limit community self help to organizations of legal, if not always moral, outlaws but, as indicated, without necessarily improving the long-term life prospects of people.

Conclusion

This paper has sought to clarify the relationship between the laws and regulations of government and community self help. The analysis suggests that there are critical variations in this relationship at the conceptual level. Each theory of law carries with it a particular conception of community problem solving. But the analysis further suggests why the dilemma between community and institutional power seems so prevalent at the operational level of different constitutional arrangements.

The genius of the eighteenth century philosophers was to recognize that the self interest of individuals can be made to serve and advance the commonweal under the appropriate institutional arrangements. The genius of the authors of The Federalist and the participants of the Philadelphia Convention was to apply that lesson to the reformulation of the American constitutional system. By contrast, the contribution of eighteenth century political thought to questions of institutional analysis and design has not been well received in much of the world. A bitter harvest has been reaped by modeling and remodeling political institutions on the assumption that, in the words of an eminent European constitutional jurist, "all political, sociological, economic

considerations should be expunged from the pure science of law" (Vittorio Emanuele Orlando, quoted in Sabetti, 1984: 237). But, with all the genius of the eighteenth century behind it, the American system of government too continues to be subject to institutional failure. This is no consolation to anyone.

The result is that we confront an even more fundamental question than those which animated the paper: what kind of premises are necessary for constitutional and institutional arrangements to serve as basis for community self help and for free communities? Whatever aspects this question may assume in different societies, it should not be too difficult to discern the direction in which we should seek our bearings. In the words of Ignazio Silone, "in every age and in every kind of conflict, progress is to be found only in what promotes the freedom and responsibility of man individually and in his complex relationship with his fellow human beings" (1968: 40).

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