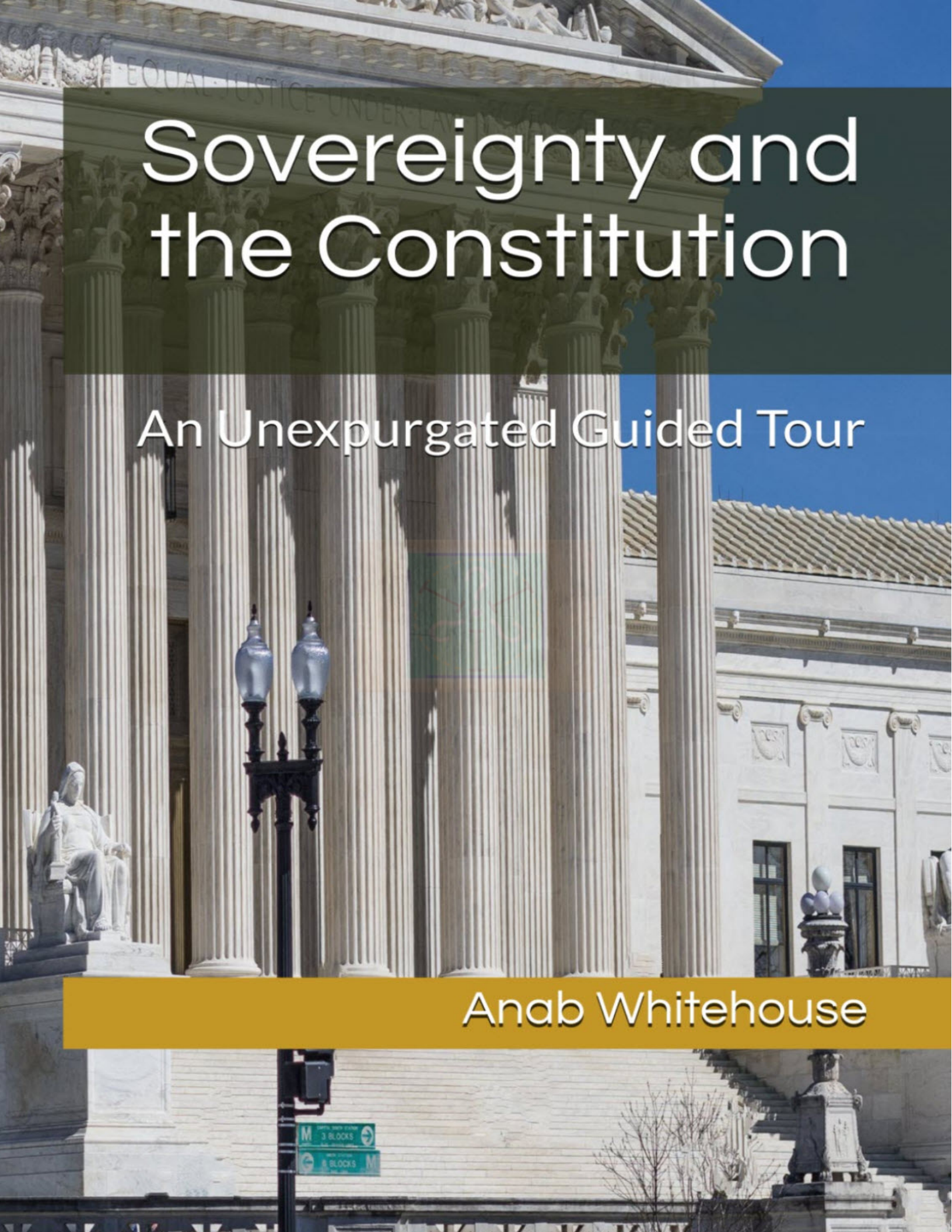

Sovereignty and the Constitution

An Unexpurgated Guided Tour

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The greatest obstacle to discovery is not ignorance -- it is the illusion of knowledge. Daniel J. Boorstin.

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Chapter 1: The Essence of the Problem

The First Amendment of the U.S. Constitution states that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof …" There are, at least, three questions which tend to arise within me when I read the foregoing words.

Once those three questions have been asked and answered – and this will require some time to properly address even in the form of an overview -- a new perspective will be introduced that might permit us to critically engage much of what is transpiring today in the United States and, in fact, has been taking place in America since, if not before, the Philadelphia Constitutional Convention of 1787. In short, the three questions that are to be asked and answered in the following exploration will serve as a staging area from which to launch an analysis that, I believe, will give expression to a very clear understanding concerning what the essence of the problem is with which we are confronted and which is adversely affecting virtually every aspect of our nation, and, as a result, has been leaking into the world like some form of toxic waste release.

Let's begin constructing the staging area for the subsequent analysis by noting – as stated previously -- that the First Amendment begins in the following manner:

"Congress may make no law respecting an establishment of religion, or prohibiting the free exercise thereof … ."

Nothing is said in the foregoing wording about the Executive or Judicial branches of the federal government, and since both the President (through, for example, Executive Orders – as well as the Judiciary – via, for instance, the setting of precedents) are considered to have the capacity to issue edicts that supposedly carry the weight of law despite being done through extra-legislative means, then, one wonders whether, or not, either the Executive or Judicial branches has the authority to establish religion or prohibit its free exercise thereof.

Thus, we come to the first of my three questions: Although Congress is constitutionally forbidden to make laws involving either the establishment of religion, or the prohibition of the free exercise of religion, nevertheless, should one conclude that the wording of the

First Amendment is such that it leaves open the possibility that the Executive and Judicial branches are, in fact, entitled to issue executive orders or render judicial decisions, respectively, concerning either the establishment of religion and/or the prohibition of the free exercise of religion?

A second question also arises in conjunction with the foregoing considerations. For instance, although the following sentiment remains unspoken in the federal constitution, nonetheless, one might wish to argue that if the notion of a centralized form of legislative activity (e.g., Congress) is explicitly prohibited -- via an amending process that required state ratification -- from establishing religion, then, this would appear to serve as a prima facie case in support of, if not constitute a precedent for, the idea that the right to establish religion or prohibit its free exercise thereof should also be denied to non-federal forms of law-making activity as well – such as, for example, the legislative assemblies of the various states.

Consequently, another question (a second one) tends to emerge with respect to the First Amendment's pronouncement on religion, and this question emerges primarily because of what is not said by the establishment/prohibition clause of that amendment. In other words, does the aforementioned prima facie case involving Congress serve as a precedent with respect to whether, or not, state legislatures should be forbidden –- as Congress is -- to make laws concerning an establishment of religion or to make laws which prohibit religion's free exercise thereof?

Finally, a third question that arises in conjunction with the establishment clause of the Constitution's First Amendment has to do with the nature of that to which the word "religion" refers. In short, what is the character of the phenomenon or concept with respect to which Congress is being constrained from making laws concerning its establishment or prohibition?

As far as the first of the aforementioned three questions is concerned (i.e., whether the Executive and Judicial branches of the federal government can establish or prohibit the exercise of religion), perhaps the best place to begin critically reflecting on matters is to engage the last of the original ten constitutional provisions that,

collectively, are referred to as the Bill of Rights. More specifically, according to the Tenth Amendment:

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people."

If one consults the pre-amended Constitution, one learns that there is nothing in that text which specifically delegates any sort of explicit power to either the Executive or the Judicial branches with respect to the "establishment of religion," or "prohibiting its free exercise thereof." In addition, given that the colonists had already fought an eight year War of Independence (1775 to 1783) in order to liberate themselves from not only the English Parliament's arbitrary forms of taxation and its problematic modes of representation (or lack thereof), but, as well, fought such a costly war in order to extricate themselves from the tyranny of monarchal rule, the Framers of the Constitution were not inclined to replace one form of monarchy with another (i.e., the Executive Office), and, consequently, a great deal of care was taken by the Framers in order to make sure that this branch of government would not just be a reincarnated form of monarchy which had the power, among other things, to summarily and arbitrarily impose a given kind of religion on citizens.

For example, according to the Constitution, the primary executive power of the President does not consist in a capacity to pursue whatever national interests he, she, or they consider to be important, nor does such a power entitle the President to lend support to or protect the purposes of corporations. Rather, the primary responsibility of the President is to: "… preserve, protect and defend the Constitution of the United States."

The Constitution has delegated authority to the Executive to serve as commander in chief of the Army, Navy, and the militias of the several states. However, such authority can only be used to carry out the functions to which the President, prior to assuming the duties of that office, has sworn to faithfully execute – namely, to: "…preserve, protect, and defend the Constitution of the United States."

The President also has the power to make treaties as well as appoint ambassadors … both of which are to be executed in conjunction with the advice and consent of the Senate. In addition, the

President has been granted the power to appoint: "… public ministers and counsels, judges of the Supreme Court, and all other officers of the United States whose appointments are not … otherwise provided for" by the Constitution "and which shall be established by law." Notwithstanding the granting of all of the foregoing powers, there is nothing in the aforementioned discussion which indicates that either the President, or the treaties and appointments that are made with the advice and consent of the Senate, or any of the other appointments that are made by the President have the capacity – either directly or by proxy of appointment – to either establish religion or prohibit the free exercise thereof. Indeed, since treaties and ambassadorial appointments, as well as other appointments that "are not … otherwise provided for" by the Constitution, but which, nonetheless, are a function of the laws that are made by Congress, then, since the First Amendment states that: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof," then, the treaties and appointments that the President makes are also constrained by the First Amendment since those treaties and appointments must be done in accordance with the laws that Congress has passed.

Furthermore, while some of the following themes will be explored in greater detail a little further along in this commentary, one should also point out that since appointees to the Supreme Court must be done in conjunction with the Senate, and, as well, since all other inferior courts that from time to time might be ordained and established also arise through the activities of Congress, then, none of the courts can serve as vehicles for establishing religion, or preventing the free exercise thereof because "Congress shall make no laws respecting an establishment of religion, or prohibiting the free exercise thereof," and, by implication, this also applies to whatever courts – Supreme or inferior – that are made possible via the laws that Congress makes.

In whatever way the power of the Supreme Court or other inferior courts may "extend to all cases, in law and equity", and in whatever manner the Supreme Court is considered to have either original or appellate jurisdiction in law and fact, what the courts can, and cannot do, is constrained by the way in which their activities are entangled

with, and, to varying degrees, are a function of the deliberations of Congress. Consequently, the federal Judiciary cannot be engaged -- either directly or indirectly -- in decisions, rulings, or judgments that establish religion or prohibit its free exercise thereof.

So, the clear answer to the initial question that was raised in conjunction with the First Amendment would seem to be that not only is Congress to be constrained from making any "law respecting an establishment of religion, or prohibiting the free exercise thereof," but, as well, the Constitution does not assign any specific powers to the Executive branch or the Judicial branch which clearly indicate that either of those branches has the right or power to issue, respectively, either, Executive orders or judicial rulings that constitute what, in effect, amounts to processes of making "law respecting an establishment of religion, or prohibiting the free exercise thereof."

Furthermore, one might presume that due to the absence of any explicit powers concerning the establishment of religion or its prohibition having been assigned to either the Executive or Judicial branches by the Constitution, such a lack of authority should hold irrespective of how one characterizes the meaning of "religion." However, this is a presumption to which we will return during the discussion which occurs a little later in the present commentary and which will address the previously noted third question concerning the nature of religion.

This brings us to the second of the three questions that were alluded to earlier. Given – as previously stated -- that the Tenth Amendment stipulates how any "powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people," and given, as previously stated, that the Constitution has not delegated specific powers to any of the three branches of the United States government concerning the establishment of religion or prohibiting its free exercise thereof, can one assume that, therefore, the Tenth Amendment has assigned states the power to make laws concerning "an establishment of religion or prohibiting the free exercise thereof"?

The initial answer to the foregoing question can be stated in the following manner. Given that the Constitution has not assigned to any of the three branches of federal government the specific power to

make laws, executive orders, or judicial rulings concerning the establishment of religion or the prohibition of its free exercise, and given that the Tenth Amendment specifies that whatever powers have not been assigned to the United States or prohibited to the states, are reserved for the states, or the people, one cannot necessarily assume that the power to establish religion or prohibit its free exercise has been reserved to the states.

To be sure, certain powers – i.e., those that have not been assigned to the federal government or prohibited to the states -- have been reserved for the states or the people. Nonetheless, nothing is said in the Tenth Amendment concerning: (a) what the nature of those reserved powers might be; or, (b) what the method will be for lending specificity to such reserved powers; or, (c) how those reserved powers are to be exercised or realized by either the states or the people … that is, whether such powers will be exercised by the states and the people in concert with one another (and if so, then, how?), or whether those powers will be pursued by the states and the people independently of one another (and, again, if so, then in what way?).

Some individuals might wish to argue that the use of the phrase: "the states respectively," together with the term: "or the people" are just different ways of referring to the same thing. However, such a view does not seem to be tenable.

To begin with, if one were to suppose that the use of the terms: "states" and "the people," which appear in the Tenth Amendment were intended to convey the notion that the two terms are merely different ways of alluding to the same referent, then, the process of mentioning both "the states respectively" as well as "or the people" would seem to be rather repetitious and unnecessary. This sort of excess verbiage seems to be at odds with the wordsmithing predilections that tend to characterize the individuals who put the Constitution together.

Consequently, one is inclined to suppose that the reason why the foregoing terms are mentioned so closely together is intended to suggest that each of those phrases should be understood as indicating that both referents are, to varying degrees, related to, as well as independent of, one another. The foregoing idea that the notion of "the people" is a concept that should be considered somewhat apart from, if

not independently of, the concept of "states" also tends to be reinforced by the Ninth Amendment.

In other words, before even noting that states – as well as the people – are entitled to an unspecified set of powers which have been reserved for them under the Tenth Amendment, the Ninth Amendment acknowledges -- rather than grants -- the principle that the people possess rights beyond those that have been enumerated in the amended Constitution and such rights cannot be denied or disparaged simply because they are, for the moment, unspecified. Moreover, the significance of the word "retained" which appears in the Ninth Amendment is to acknowledge that the people have the right to hold on to that – namely, certain rights – which they already possessed independently of the Constitution and which will not be affected by anything that exists in the Constitution.

If one were to suppose that "the states respectively" as well as "or the people" were merely different ways of making reference to the same entity, then, why risk misleading anyone by mentioning only "the people" in the Ninth Amendment, while mentioning both "the states" and "the people" in the Tenth Amendment? For example, one would like to know why both of the aforementioned amendments just don't speak in terms of either, on the one hand, "the states respectively," or, on the other hand, "the people" in an exclusive fashion in order to substantiate that the same referent -- whether states or the people -- is being identified in each of those amendments?

The people – not state governments per se – voted during the process of constitutional ratification. This tends to indicate that "the people" have a standing with respect to the issue of rights and powers that exists apart from the notion of states (whether federal or non-federal).

Presumably, one of the fundamental reasons why Congress was precluded from making any "law respecting an establishment of religion, or prohibiting its free exercise thereof" is because this is one of the unspecified, but generally acknowledged, rights that is retained by the people. As such, and in accordance with the Ninth Amendment, this would be a right that cannot be denied or disparaged simply because it does not appear among the enumerated rights that are mentioned in the Constitution.

The Ninth Amendment addresses the people. States are not mentioned in that amendment, and, therefore, there are no unspecified rights which have been retained by the states which cannot be denied or disparaged simply because those rights do not appear among the rights that are enumerated in the Constitution.

Furthermore, as indicated previously, although the Tenth Amendment supposedly reserves powers for the states or the people which have not been delegated to the United States or prohibited to the states respectively, the Constitution has nothing to say about what the nature of such powers are (only what they cannot be). Moreover, the Constitution has no authority to say how such unspecified, reserved powers should be divvyed up between, or understood by, the states and the people because, in effect, the Tenth Amendment declares that powers which are not assigned to the federal government nor prohibited to the states effectively fall outside of the jurisdiction of the federal government, just as the unspecified rights to which the Ninth Amendment is alluding also fall beyond the jurisdiction of the federal government, and, perhaps, as well, the state governments.

Under the Ninth and Tenth amendments, establishing religion or pursuing its free exercise could be a right, as well as a power, that have been retained by or reserved for "the people" respectively. However, under the Tenth Amendment, there is nothing which demands that such a power should be reserved for the states, and, in fact, in order to try to argue that states should have the power to establish religion or prohibit its free exercise thereof, one would have to not only be able to demonstrate why the states should have the power to deny the people a right that, under the Ninth Amendment, has been retained by the people (yet not retained by the states), but, as well, one would have to be able to put forth a defensible argument as to why, under the Tenth Amendment, powers (in this case having to do with establishing religion or prohibiting its free exercise) are being arbitrarily reserved only for the states when the powers being alluded to in that amendment are clearly reserved for both the states or the people.

On the one hand, the Ninth and Tenth Amendments give expression, respectively, to the existence of rights and powers that are not, yet, specified. However, on the other hand, the Ninth and Tenth

Amendments also seem to indicate one cannot presume that "the people" and "the states respectively" are necessarily equivalent terms or synonyms for one another.

The latter possibility is given further support in light of the manner in which many states developed constitutional frameworks – both prior to, as well as following the 1787 Philadelphia Convention -- which stipulated how the citizens of those states – i.e., the people -- were recognized to have the right, within certain negotiated parameters, to be free from governmental intrusions concerning the establishment and exercise of religion. Consequently, irrespective of whether, or not, states can claim the power, under the Tenth Amendment, to establish religion or prohibit its free exercise thereof, nonetheless, states seemingly were quite willing to cede away to the people even the possibility of such a state power when they set about, via state constitutions, safeguarding the right of people to be able to establish religion and its free exercise thereof.

The states were not granting people the right to establish religion or freely exercise it. Rather, the states were merely acknowledging the same fundamental principle that the Constitution clearly recognized in both the First Amendment as well as the Ninth Amendment – namely, that the people had rights … one of which concerned the establishment of religion and its free exercise – that were quite independent of the powers of either the federal or state governments.

However, if one were to assume, contrary to what has been set forth previously in this commentary, that states did have the power, under the Tenth Amendment, to establish religion or prohibit the free exercise thereof, then, one is presented with a substantial problem. More specifically, if "the people" have been accorded an array of unspecified rights under the Ninth Amendment and also have been accorded certain unspecified powers under the Tenth Amendment (i.e., those which have not been delegated to the federal government nor prohibited to the states), then how are the conflicts to be resolved (and who does this and through what methods and with what justification?) that are likely to arise when – in conjunction with the "rights" that are "retained" by the people (meaning that they have always had such rights) under the Ninth Amendment, as well as in conjunction with the "powers" that have been "reserved" for the

people under the Tenth Amendment, -- "the states respectively" attempt, under the Tenth Amendment, to either establish their own religion or prohibit the free exercise thereof with respect to whatever sorts of religious activities are being pursued by the people?

The simplest way of resolving the foregoing sorts of problems is to merely accept the principle that is implicit in, at a minimum, the First, Ninth, and Tenth Amendments as well as the traditional practice of state governments -- both prior to, as well as following, the ratification of the 1787 Constitution. More specifically, governments (whether federal or state) should not have the right or power to make laws (irrespective of whether this arises through legislative, executive, or judicial proceedings) "respecting an establishment of religion, or prohibiting the free exercise thereof".

Notwithstanding the foregoing considerations, the issue of who has the power or right to undertake "an establishment of religion" might not be as straightforward as the previous discussion seems to suggest. For example, some individuals have argued that there are implied powers contained in the Constitution by virtue of such features as, among other possibilities, the "necessary and proper" clause that is found in Article I, Section 8 of the Constitution. Conceivably, such alleged implied powers might have consequential ramifications for, among other things, how the First, Ninth, and Tenth Amendments play out within a given existential framework involving, for instance, the establishment of religion or prohibiting its free exercise thereof.

The fuller context in which the aforementioned "necessary and proper" clause appears is:

"The Congress shall have Power to: ... make all Laws which shall be necessary and proper for carrying into execution the foregoing powers vested by this Constitution in the government of the United States, or in any department or officer thereof."

Unfortunately, nowhere in the Constitution is one given guidance concerning the nature of the specific criteria that are to be used to identify or justify what is meant by the terms: "necessary" or "proper"

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Furthermore, the Ninth Amendment would appear to have a potential for placing constraints of one kind or another on any notions of ‘‘necessity’ and ‘propriety’ that might be invoked by the federal government as the government seeks to act upon the authority which the Constitution lends to it. In other words, as previously noted, the Ninth Amendment stipulates that:

“The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.”

So, one can’t help but wonder what the nature of the rights are that are being alluded to in the Ninth Amendment that cannot be denied or disparaged. In addition, one can’t help but wonder about how the unspecified rights that are potentially present in the Ninth Amendment might have the potential to serve, in various ways, as a source of possible constraint on what is considered to be “necessary and proper” with respect to the dynamics of federal government.

When one takes the vagueness of the “necessary and proper” clause of Article I, Section 8 and juxtaposes it next to the constitutional allusion, vague though this might be, concerning the unspecified rights in the Ninth Amendment that belong to the people, then one encounters a potential for considerable conflict. This is because one does not know whether, or not, what is considered “necessary and proper” by the federal government will end up denying or disparaging the sort of rights that, nonetheless, according to the Ninth Amendment, are still retained by the people despite not having been enumerated.

Article 8, Section 1 of the Constitution does indicate that among the powers of Congress is one that involves the capacity:

“… to lay and collect taxes, duties, imposts and excises to pay the debts and provide for the common defense and general welfare of the United States … .”

This, however, seems to accomplish little except to make the political waters even murkier since, as previously indicated, not only is nothing said in the Constitution about what the properties are that one should consider in order to be able to identify what is either “necessary and proper” in order to “provide for the common defense and general welfare”, but, perhaps, even more importantly, the Constitution offers little help with respect to identifying what is meant,

or entailed, by the notions of "general welfare" and "common defense". Consequently, until one knows what is actually meant by any the foregoing terms, as well as what justifies such an understanding concerning those notions, then, one is not really in any position to be able to argue for what is "necessary and proper" with respect to those notions.

People are likely to generate different theories about what constitutes the "general welfare" or the "common defense. In addition, for each theory concerning what is meant by those two terms, there will be accompanying theories about what might be "necessary and proper" with respect to the process of bringing to life notions such as the "general welfare" and the "common defense".

How does one go about justifying whatever determinations that might be made with respect to any of the foregoing constitutional vagueness? And, how does one go about justifying how such determinations impinge on, or are constrained by, the existence of possible rights that are not specifically mentioned in the Constitution but which, nonetheless, according to the Ninth Amendment, cannot be denied or disparaged merely because they have not, yet, been enumerated?

The Constitution does have something of potential importance to say concerning the general nature of the process through which one should engage the foregoing questions and problems, but such guidance does nothing to address substantive issues of content concerning, for example, what is meant by "necessary" or "proper" in relation to, say, issues of "common defense" or "general welfare" The aforementioned constitutional assistance comes in the form of Article IV, Section 4 which gives expression to the only guarantee that is present in the Constitution. More specifically:

"The United States shall guarantee to every state in this union a republican form of government, and shall protect each of them against invasion, and on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence."

There were, and are, some who believe that nothing much is entailed by the sort of "republicanism" that is being guaranteed in Article IV, Section 4. If such people are correct, then, one must consider the possibility that the people responsible for drawing up the

Constitution knowingly sought to mislead existing and subsequent generations of the American people by guaranteeing something that, essentially, was devoid of any value and, thereby, create the impression through such a guarantee that something of significance was being offered when this was not true, and such duplicity was pursued in order to try to sell to the American public a set of ideas concerning government about which many people in America at that time had questions and doubts, and, therefore, toward which they harbored a healthy amount of skepticism because of concerns that, possibly, a political system was being foisted on them which might undermine, among things, their rights and liberties.

However, notwithstanding the foregoing perspective, there also were, and are, others who believe, contrary to the foregoing hermeneutical orientation, that what is being guaranteed in Article IV, Section 4 of the Constitution gives expression to something of essential importance. In fact, this latter group of individuals might be inclined to argue that if the Constitution is going to work at all, then such success would be predicated on the idea that those who participated in government were going to be constrained by a set of principles and values in which the people could have confidence and which had the potential to set the American form of government apart from any other mode of government that was known to human beings at that time.

Republicanism was a philosophical world-view that emerged within the context of the 17th and 18th century Enlightenment. This perspective was characterized by a set of epistemological and moral precepts that were intended to help assist human beings to make sound, defensible, equitable kinds of decisions … the very sort of decision process that might be of assistance to individuals during the course of everyday life but, as well, republicanism gave expression to a way of engaging life that could help those who were engaged in government to make decisions that, if properly executed, might be devoid of, among other things, partisan interests.

To act in accordance with republican values, one had to be: Impartial, disinterested in personal gain, unbiased, selfless, objective, fair, honorable, given to reason, compassionate, inclined toward self-sacrifice, committed to the idea of liberty, a person of integrity,

independent, egalitarian, and unwilling to serve as a judge in one's own causes. Given the nature of the foregoing sorts of qualities, the guarantee of a republican form of government to each of the states gives expression to nothing less than the moral obligation of every member of the federal government (thereby encompassing the Legislative, Executive, and Judicial branches) to be entirely devoted to the process of serving the interests of all the people in the United States while being entirely disengaged from one's own personal interests except to the extent that the latter interests were concordant with the interests of everyone else.

The foregoing considerations still do not resolve the difficulties that surround trying to determine what is meant by the ideas of "necessity" or "propriety" in the "necessary and proper" clause, nor do such considerations resolve the problems which tend to permeate the process of trying to determine what is meant by "the general welfare" or what is meant by "the common defense" that are mentioned in both the Preamble to the Constitution as well as in Article I, Section 8. Nonetheless, what the guarantee in Article IV, Section 4 does do is to specify that the only permissible manner through which, among other things, the aforementioned sorts of social, political, economic, and legal difficulties and problems can be addressed is by means of republican principles that are rooted in values of: Objectivity, reason, independence, lack of partisanship, integrity, honor, honesty, objectivity, compassion, fairness, nobility, and an absence of self.

Having set the stage in the foregoing manner, let's return to the third question mentioned toward the beginning of this commentary. What is the nature of the religion that Congress is forbidden to establish, and which the Executive and Judicial branches are not entitled to establish because this is not among the enumerated powers that have been afforded to those branches by the Constitution?

The individuals who helped shape and refine the Madison-based constitutional template during the Philadelphia Convention of 1787 were, to some degree, familiar with a wide variety of religious orientations, ranging from: Deism, to: a multiplicity of Christian sects, and this extended, as well, not only to some of the spiritual traditions of indigenous peoples of North America, but also included a certain amount of information, or misinformation, about Islam and Buddhism,

together with a passing acquaintance with various polytheistic traditions associated with Egypt, India, Greece, Rome, Africa, and various pagan traditions.

Despite whatever differences might exist among the foregoing religious traditions, there are, nonetheless, some themes that are held in common by all of the foregoing possibilities. For example, there is a sense of the sacred or the holy that is associated with such traditions, and in addition, adherents of different religious traditions tend to have their lives organized by the sense of reverence, belief, faith, awe, meaning, purpose, identity, morality, obligation, and devotion that are developed, or expected, with respect to one's religious orientation and which are given expression through the forms of worship, prayer, service, ritual, obedience, and practice that are used to cope with, if not provide a narrative for, the contingencies of life as well as for whatever, if anything, might lie beyond the present life.

In short, religion gives expression to an individual's way of understanding the nature of one's relationship with Being or Existence. Religion gives expression to one's understanding of reality and how reality should be engaged. Religion goes to the heart of what one believes to be true concerning the nature of existence and how one should proceed in life.

Given the foregoing generalized understanding of religion, and given that the individuals who were responsible for generating the 1787 Constitution were aware, to varying degrees, that people in different parts of the world, including America, pursued religion in accordance with the variety of sentiments, interests, activities, commitments, and orientations that have been touched upon earlier, one comes face to face with a rather substantial problem. More specifically, how does one differentiate religion from the public policy of a government irrespective of whether, or not, such policy is couched in overtly religious terms?

Public policy encompasses the political system of ideas, beliefs, values, purposes, meanings, duties, and principles that are used to promote what is considered to be in the interests of the people with respect to issues of common health, welfare, and safety. Yet, isn't the foregoing observation on public policy similar to, if not resonantly reflective of, the general stance of most religions which tend to be

characterized as constituting systems of ideas, beliefs, values, purposes, meanings, duties, and principles that are followed in order to promote what is considered to enhance, or lead to, that which is deemed to be in the interests of people with respect to issues such as their common health, welfare, and safety?

If the answer to the foregoing question is "yes", then whenever governments (via legislative assemblies, executive actions, and/or judicial review) set about trying to put forth policies that require the people to conform to, comply with, or obey some given set of political, economic, social, scientific, medical, and/or financial perspectives concerning the nature of, say, the "common defense" or the "general welfare," and whenever such officials seek to do so in accordance with whatever they believe to be 'necessary' and 'proper' in order to bring to bear the properties and qualities of such perspectives upon, among other things, the common defense and the general welfare, then, how is this any different than what various religions attempt to accomplish as well?

Furthermore, to be religious might involve, but does not require one to accept, either the idea of one God or a multiplicity of gods. To be religious, is to establish a framework of beliefs and conduct concerning one's understanding about the nature of the relationship among the self, the universe, and that which makes the self and the universe possible.

Like religion, the idea of government involves establishing a framework of beliefs that give expression to an individual's understanding concerning the nature of the relationship among the self, the universe, and that which makes the self and the universe possible. Like religion, the idea of government may involve, but does not require one to believe in, the idea of God, or a multiplicity of gods, but, nonetheless, with, or without, God or gods, there is a sense of sacredness that tends to pervade one's beliefs about how the self, the universe, and that which makes everything possible are related to one another which is considered to be worthy of one's veneration and commitment.

In both government and religion, the sacred is that which is inviolable. The sacred is that which gives purpose, meaning, direction,

and value to existence, and, therefore, the sacred gives expression to what seems to be essential.

For some, the sacred is a function of the Divine. For others, the sacred is a function of whatever is believed to make that which is possible, possible and, in addition, is a function of whatever is deemed "necessary and proper" to help government officials and religious leaders realize such possibilities.

Both government policies and religious perspectives often tend to share a common orientation with respect to the dynamics of leading or guiding people toward what is considered to be the nature of reality. For instance, both government officials and religious clerics believe that they are operating in accordance with the requirements of truth, and, therefore, each of the two approaches associates feelings of awe, value, respect, authority, absoluteness, reverence, and adoration concerning their understanding of the nature of those requirements.

As a result, both government officials and religious clerics tend to believe that compliance with, respectively, government policies or a given religious perspective are characterized by a need for forms of: Commitment, duty, submission, obligation, subservience, self-sacrifice, obeisance, and morality that are mandatory in nature. Consequently, breeches of the aforementioned sorts of qualities are perceived in terms of: Infidelity, iconoclasm, betrayal, treason, sedition, unbelief, ignobility, sin, pathology, and crime.

People who turn away from, or reject, what is considered to be the truth of things are perceived by government officials or religious clerics as lacking in character and reason. Such supposedly destructive, selfish, ignorant purveyors of allegedly false doctrines cannot be trusted; they are disloyal, traitorous, and evil. As a result, they must be punished, ostracized, oppressed, censored, shunned, ridiculed, tortured, imprisoned, or killed.

Both government officials and religious clerics tend to make promises concerning the felicitous rewards awaiting those who are compliant with, and subservient to, the truths that give expression to government policies or a given religious perspective as understood, respectively, by government officials and religious clerics. Both government officials and religious clerics warn their respective congregations about the terrible calamities that are fated to befall

people if the latter individuals will not adhere to the truth as promulgated by their governmental or religious leaders.

Both government officials and religious clerics often try to seek to control their respective flocks in various ways. Both government officials and religious clerics often believe that propaganda, indoctrination, censorship, manipulation, undue influence, intimidation, threats, bribes, penalties, operant conditioning, classical conditioning, infantilizing, and, if necessary, force are all legitimate ways of seeking to implement the aforementioned sort of control.

Both government officials and religious clerics often seem to be preoccupied with establishing, perpetuating, and using the way of power to advance their policies and perspectives … that is, they appear to be preoccupied with the development and implementation of policies or theologies that induce people to be willing to subjugate themselves to servicing the interests and agendas of government and religious leaders. Rarely do government and religious clerics seek to encourage and support the efforts of individuals to establish the sort of conditions of sovereignty that would actually assist people to better be able to seek the truth by being permitted to acquire and operate in accordance with the qualities of character that are inherent in, say, the republican values that are supposed to be guaranteed by Article IV, Section 4 of the Constitution.

The principles of republicanism tend to resonate with the moral precepts advocated by many, if not most, spiritual traditions and humanist orientations. Thus, in one way or another, republican, spiritual, and humanist traditions all tend to encourage individuals to be: Objective, impartial, unbiased, noble, honest, compassionate, fair, rational, selfless, and to not become engaged in conflicts of interests that will adversely affect one's judgment, and, yet, nonetheless, many public officials and religious officials seem disinclined to operate in accordance with such principles and values.

Government officials and religious leaders often tend to be evangelical, imperialistic, and tyrannical with respect to establishing the scope and realization of their policies and perspectives. The First Amendment's stipulation that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof" acknowledges the truth that is inherent in the foregoing claim. There

are secular religions involving theories about: Economics, politics, financial and monetary policy, medicine, law, science, philosophy, and humanism in which people actively worship, and have reverence for, whatever truths are considered to be at the heart of the foregoing sorts of perspectives. There also are non-secular religions such as: Taoism, Judaism, Christianity, Islam, Buddhism, Hinduism, Sikhism, and so on.

As the Declaration of Independence indicates, everybody has the inherent right to search for the truth concerning the nature of his, her, or their relationship with reality through either secular or non-secular means. However, no one has the inherent or derived right to seek to impose her, his, or their way of seeking such truth onto other people.

The condition of certainty that exists in many government officials and religious clerics tends to be rooted in a delusion that they are right. However, a healthy sense of doubt and critical reflection is needed in order to give expression to a cautionary principle in which one realizes there needs to be some sort of balanced dynamic between, on the one hand, being free to make choices intended to assist one to be able to advance along one's chosen path in search of the truth while, on the other hand, simultaneously understanding that there also is a need to exercise care with respect to how the ramifications of such choices might affect other people in problematic ways. Unfortunately, government officials and religious leaders are often too ensconced in their own sense of certainty to be sensitive to the damage that can accrue to other people as a result of the unbridled convictions of such officials.

Article III, Section 2 of the United States Constitution stipulates that the judicial power that is to be vested in one Supreme Court: "… shall extend to all cases in law and equity" involving: the Constitution; the laws of the United States; treaties; matters which affect Ambassadors, public ministers, and consuls; affairs arising in conjunction with the admiralty and maritime jurisdictions; controversies to which the United States shall be a party, as well as has responsibility for an array of possible controversies consisting of states and states, individuals and states, or individuals and foreign nations. Nothing is said in any of the sections of Article III in the Constitution about how the Supreme Court – or how any of the other,

"inferior courts" that Congress ordains and establishes "shall extend" to the cases for which they are deemed to have responsibility. Moreover, nothing is said in Article III of the Constitution about the nature of the controversies in which the United States might be a party, or the nature of the controversies in which two or more states might be involved, and so on, or, just as importantly, how such controversies might conflict with the exercise of any of the powers that have been delegated to the Congress or the Executive, or the rights and powers that are to be "retained" or "reserved", respectively, under the Ninth and Tenth Amendments, for the people or the states.

Article III, Section 2 does say:

"In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make."

What does it mean to have "original jurisdiction" or "appellate jurisdiction, both as to law and fact"?

If a jurist is to exercise judicial power in relation to both law and fact with respect to either matters of original or appellate jurisdiction, then, presumably, some sort of overarching hermeneutical method for engaging cases is going to be used in order to ascertain the nature and significance of whatever laws and facts are being considered. What will be the conceptual basis for such a method of determining the significance of any given set of laws or facts, and how does one justify the foundational concepts that are to be used in the generation of such modes of determination?

The Constitution does indicate in Article IV, Section 4, that: "The United States shall guarantee to every state in this union a republican form of government." However, to say that a government official – for example, a jurist -- should be: Objective, impartial, non-partisan, fair, rational, noble, self-less, compassionate, or unbiased, doesn't really resolve what it means to be objective, impartial, fair, rational, and so on. The substantive content of the aforementioned republican qualities have to be established. Objectivity, impartiality, fairness, rationality, as well as other qualities that are associated with republicanism require

one to have a theory about the nature of reality and how objectivity, and so on, fit into, or gives expression to, that theory.

To use such a theory is to set forth a framework for understanding the nature of objectivity, rationality, non-partisanship and other republican qualities. To use such a theory requires one to develop a framework for how such qualities are to be used to "extend" to "all cases in law or equity", or how such qualities are to be used in conjunction with determining the nature of "law and fact" in cases of either original or appellate jurisdiction, or how those republican qualities are to be used in a manner that does not conflict with the rights and powers that, under the Ninth and Tenth Amendments, have been "retained" or "reserved", respectively, by the people and the states, or which have been assigned to the Congress or the Executive.

One has difficulty understanding how the aforementioned sort of overarching hermeneutical theory of judicial understanding concerning, say, the meaning of the principles of republican government that are being guaranteed to the states -- and, therefore, the people of those states -- via judicial review, ruling, or precedent does not also constitute a form of establishing the very sort of religion that Congress has been prohibited from undertaking. Religion is the process of seeking to discover, and act upon, the truth concerning the nature of one's relationship with oneself, the universe, and that which makes it all possible, and when a jurist goes about determining what the law and facts of a case are through engaging events in accordance with her, his or their understanding of republican principles, then, such a person is making a statement about what that individual considers the truth to be with respect to what the nature of the relationship is among individuals, the universe, and what makes such relationships possible.

One can refer to the foregoing activities as a process of judicial review, or a philosophy of law, or a form of constitutional hermeneutics, or a legal theory, or the rule of law. Nonetheless, irrespective of the words that might be used to describe those sorts of conceptual dynamics, the individual who is pursuing such a course of action is engaged in a process of establishing religion of either a secular or non-secular nature in order to be able to impose that conceptual orientation on a given population of people.

All the qualities that are used to refer to the process of religion are also present in conjunction with the aforementioned sorts of judicial activities. More specifically, one speaks about the rule of law as: Binding, obligatory, consecrated, essential, fundamental, true, necessary, moral, absolute, transcendent, traditional, and worthy of a person's reverence, awe, devotion, and obeisance. The foregoing terms are the same sorts of words that are used to describe the foundations of one's alleged duty with respect to acting in accordance with the requirements of religion.

The rule of law is a form of religious doctrine. The manner in which individuals petition the hierarchy of power within government in order to address their grievances resonates with the manner in which a person is allegedly required to petition the hierarchy of power in religion … namely, with fear, trembling, and hope in relation to such presumed courts of last resort.

The notion of "extend" that appears in Article III, Section 2 of the Constitution could be – and, perhaps, should be -- understood to refer to processes that involve non-adversarial modes of mediation and/or negotiation that are brought to bear on problems in order to resolve such "controversies" in a constructive manner for all parties concerned. Such a process of mediation and negotiation could be conducted in accordance with the requirements of republican government.

However, if one were to understand the term "extend" in Article III, Section 2 as referring to a process of interpretation or hermeneutical dynamics that reflects a jurist's way of understanding the nature of people's relationship with reality, then this is tantamount to trying to resolve problems by imposing judgments that reflect the personal religious predilections of the ones who are imposing judgment, and this is nothing other than a process of establishing religion under the pretext of delineating the rule of law.

Article III, Sections 1 and 2, assign powers to The Supreme Court and, as well, assign Congressionally legislated powers to all inferior courts, and all such powers could be understood as processes for extending jurisdiction by means of a system of negotiation and mediation in relation to various kinds of cases of controversy. To have jurisdiction in law and fact could be – and, perhaps, should be --

understood to be just another way of saying that the Supreme Court and all inferior courts created by Congress have the authority to bring people together to collectively work out the facts of a case and, as well, to collectively work toward determining the degrees of Constitutional freedom and constraints within which people are to mediate and negotiate solutions concerning their cases and controversies.

The foregoing scenario is consistent with the guarantee of republican government that is given in Article IV, Section 4. However, to engage in judicial review for the purposes of imposing on American citizens what amounts to the religious perspectives of one, or more, jurists and in the process, generate precedents that are entirely arbitrary (that is, done without specific Constitutional authorization) which people must follow, is to be engaged in establishing religion or prohibiting its free exercise thereof.

Furthermore, given that Article III, Section 1 refers to: "such inferior courts as the Congress may, from time to time ordain and establish," this means that the prohibitions that the First Amendment imposes on Congress to refrain from establishing religion or prohibiting its free exercise thereof, also extends to the inferior courts that Congress may ordain from time to time. In other words, because the federal court system has been created by Congress and because Congress has been prohibited from making laws that establish religion or that prohibit its free exercise thereof, then the courts that are created by Congress are also not permitted to engage in any action that entails processes of making laws that establish religion or prohibit its free exercise thereof because to do so would be a process of making judgments that involve interpretations of the Constitution which reflect a jurist's understanding concerning the rule of law according to that individual's beliefs, or according to the beliefs of a group of such individuals, with respect to the nature of the relationship among individuals, the universe, and that which makes it all possible, and to do this is to engage in the establishment of religion or the prohibition of its free exercise thereof.

Since the times of Chief Justice John Marshall, members of the legal profession have deluded themselves – and evangelically sought to infect outsiders with this same delusion – that the judiciary and the legal system are the best way of engaging the Constitution in order to

ascertain its meaning (For a more in depth exploration of these issues, please read my book: *Beyond Democracy*). Yet, the American form of governance is also frequently described as consisting of three separate but equal branches of government, and, thus, the judicial delusion of interpretive supremacy concerning the meaning of the Constitution cannot answer – in any non-arbitrary or non-partisan manner -- how there can be three separate but equal branches of government if one of those branches gets to determine what the different branches can and cannot do.

The many books of laws which are filled with case descriptions, proceedings, and judicial decisions establishing this or that precedent are nothing more than ways of obfuscating the fact that there can only be one precedent in the American system of governance and that is the Constitution itself. Judicial systems of constitutional meaning are rooted in theories of hermeneutical valuation which are capable of generating precedents that are little more than arbitrary, legal fictions concerning the possible meanings of the Constitution that serve to impose (i.e., make law) the jurist's understanding of human beings and their place in the scheme of things onto others – and, therefore, establish the religious beliefs (whether secular or non secular in nature) of the jurist or jurists who are issuing a judgment.

The very act of making a judgment that is to be imposed on others is to be engaged in making laws that establish religion or prohibiting its free exercise thereof. This takes place in the form of a jurist's beliefs (or set of jurists' beliefs) about, and understanding concerning, the nature of the relationship between human beings and reality.

There tends to be a fundamental disconnect between, on the one hand, the qualities that are necessary to give expression to a republican form of government (one that is, for example, unbiased, impartial, objective, compassionate, noble, fair, as well as unwilling to serve as a judge in its own causes) and, on the other hand, the qualities that are exhibited by most jurists. For example, one of the most fundamental values in the observance of republicanism indicates that one cannot serve as a judge in one's cause, and, yet, every exercise of judicial review, precedent, or decision is nothing less than a violation

of the aforementioned republican principle because the processes of exercising judicial review, or issuing legal rulings, or, making precedents are all instances in which jurists are serving as judges in their own cause.

What is the cause which jurists are serving – but should not be serving -- in their capacity as judges? Their cause is to serve as the primary arbiters of meaning with respect to the Constitution despite the fact that the Constitution does not actually authorize jurists to serve as interpreters concerning the Constitution's meaning.

Their cause is to interpret the power that is being granted to them by the Constitution (for purposes of extending to, and having jurisdiction in law and fact in conjunction with, various kinds of cases and controversies) as consisting of more power than it actually does. In fact, this is the mistake that John Marshall first made in Marbury V. Madison and which he, his associates, and successors on the Supreme Court continued to make for more than two hundred years.

The courts – consisting of both the Supreme Court and whatever inferior courts are ordained by Congress from time to time – are being called upon by the Constitution to resolve various cases and controversies. This must be done in a manner that is consistent not only with, among other things, the unspecified rights and powers that are retained and reserved, respectively, by the people and the states under the Ninth and Tenth Amendments, but, as well, must be consistent with the guarantee of republican government that is stated in Article IV, Section 4 of the Constitution. While processes of negotiation and mediation would be forms of judicial activity that, as noted earlier, are quite consonant with the Ninth and Tenth Amendments as well as Article IV, Section 4 of the Constitution, nonetheless, undertaking judicial review as a process of hermeneutics that supposedly determines the meaning of the Constitution as a function of a jurist's understanding of the nature of the relationship that ties together, (1) individuals, (2) the universe, and (3) that which makes individuals, the universe, and such relationships possible is to engage in making arbitrary laws that establish religion or prohibit its free exercise thereof.

Just to identify a few problems that have been created by both the Congress and the Judiciary in relation to (a) the prohibition against

making laws concerning the establishment of religion or its free exercise thereof as well as violating the requirements of Article IV, Section 4 of the Constitution, or (b) failing to properly acknowledge the rights and powers that have been retained or reserved by the people and the states under the Ninth and Tenth Amendments, one might consider:

The Federal Reserve Act of 1913, along with: the National Security Act of 1947 (together with its pathological spawn, the CIA), the NDAA (National Defense Authorization Act of 1961), the War Powers Act or Resolution of 1973, the Children's Vaccine Injury Act of 1986, the Patriot Act of 2001, the Model State Emergency Health Powers Act of 2001, the PREP Act of 2005, and the John Warner National Defense Authorization Act of 2007 – to name but a very few – all constitute violations, of one kind or another, with respect to the prohibitions against making laws that establish religion – whether of a secular or non-secular nature – or which affect the free exercise thereof, and, in addition, run contrary to the requirements concerning the guarantee of republican government that is given in Article IV, Section 4 of the Constitution, and, as well, problematically impinge on the rights and powers that have been retained and reserved for the people and the states under the Ninth and Tenth Amendments.

Capitalism, socialism, libertarianism, and communism all constitute attempts to establish religion or prohibit its free exercise thereof. The democrat, republican, and green parties – to name just a few possibilities -- also seek to lobby government officials to establish their respective forms of religion or prohibit the free exercise of other forms of religion, or they seek to induce government officials to act contrary to the requirements of Article IV, Section 4 with respect to the guarantee of a republican form of government.

When companies such as Google, YouTube, facebook, and Twitter censor people for violating community standards, those companies are operating out of a framework that seeks to establish a framework that aspires to control how people think, feel, or act, and this is effectively religious in nature because it purports to put forth a theory concerning how people, the universe, and that which makes everything possible are related, and, therefore, how people should think, act, and conduct themselves. Consequently, since the FCC is a creation of Congress, and

since the aforementioned companies are only permitted to do what they do as a result of laws that have been passed by Congress, and since the FCC, as a legislatively enabled entity, is, by Constitutional proxy, required under the First Amendment not to establish laws that would enable others – whether biological organisms or legal fictions (i.e., corporations) – to establish policies and protocols that are, effectively, religious in nature and which are being imposed on other human beings, then, neither Google, YouTube, facebook, Twitter or other telecommunication companies are entitled to try to use their Congressionally enabled platforms for purposes of establishing religion, whether of a secular or non-secular nature, that can be imposed on other people.

In fact, since courts have been ordained and established through Congressional legislation, and, therefore, cannot engage in actions that establish religion or prohibit the free exercise thereof, and since the Supreme Court has not been given specific and clear-cut authority by the Constitution to extend its powers or jurisdiction in law and fact to processes that are entangled in the dynamics of interpreting the meaning of the Constitution, and, thereby, make laws which establish religion – whether of a secular or non-secular nature -- or which prohibit its free exercise thereof, and because the Supreme Court has not been given authority to engage in processes – such as Constitutional interpretation -- which also would require the Supreme Court to deviate from operating in accordance with the requirements of Article IV, Section 4 concerning the guarantee of republican government, none of the aforementioned courts are entitled to create the legal fiction of corporations as artificial persons that are entitled to rights of one kind or another. This is because such legal fictions give expression to a theory about how individuals, the universe, and that which makes the universe possible relate to one another, and this is nothing other than a process of making laws establishing religion or which prohibit the free exercise thereof.

Corporations are nothing more than a religious doctrine -- whether of a secular or non-secular nature – that are camouflaged in the rituals and traditions of legal fictions generated by an arbitrary framework known as the rule of law which seeks to impose its view of the nature of reality onto other people. Corporations are merely one

more way in which government officials seek to make laws that effectively establish religion or prohibit the free exercise thereof, and, in the process, violate, among other things, the principles inherent in Article IV, Section 4 of the Constitution, as well as undermine the rights and powers that have been retained and reserved by the people, but which have not been retained or reserved for non-biological legal fictions that seek to deny or disparage the rights that are retained by human beings

When companies seek to obtain the assistance of the federal government to develop and deploy systems of artificial intelligence or arrays of robotic dynamics in order to serve corporate purposes, or when companies are enabled by the federal government to engage in the installation of electromagnetic systems on Earth or in space that will envelop human beings in radiation that can be demonstrated to be harmful, or when companies seek the support of the federal government in order to create and distribute GMOs that could carry problematic ramifications for human beings or other naturally occurring living organisms, or when companies seek to induce the government to pass laws that mandate vaccines or which indemnify the manufacturers and administrators of those vaccines, then such companies are engaging in a process of trying to establish a religion which seeks to impose on others the company's vision concerning the nature of the relationship among human beings, the universe, and that which makes such things possible. Since commerce is one of the powers that has been invested in the Congress, and since "Congress may make no laws respecting an establishment of religion or prohibiting the free exercise thereof," then, Congress may make no laws involving commerce that would enable any of the participants in commerce (corporate or otherwise) to use commercial activity as a means for establishing religion of either a secular or non-secular nature, and, therefore, a great deal of corporate commercial activity actually should be constrained by, among other Constitutional provisions, the First Amendment prohibition concerning Congress's capacity to make laws that establish religion or prohibit its free exercise thereof, and this prohibition extends to all facets of legislation affecting commerce or any other kind of legislation that is issued by Congress affecting education, energy, affairs of state, housing, the environment, defense, labor, the interior, banking, finances, and so on

which is capable of impacting the lives of citizens in a manner in which the vision of one, or more, government officials, concerning the nature of the relationship between human beings and reality is being imposed on the people and, therefore, constitutes a process of making laws to establish religion or prohibit its free exercise thereof.

When Presidents such as: Eisenhower, Kennedy, Johnson, Nixon, Ford, Carter, Reagan, GHW Bush, Clinton, GW Bush, Obama, Trump, or whomever else one wishes to consider, issue Executive Orders that seek to impose on citizens a given President's vision concerning the nature of the relationship between human beings and reality, then, such government officials are seeking to establish a form of religion that is intended to be incumbent on everyone, and, as a result, at a minimum, violates the requirements of Article IV, Section 4 in which a republican form of government that has been guaranteed to each state by every member of the United States federal government, and, in addition, seeks to deny and disparage the rights that have been retained by the people in the Ninth Amendment or to ignore the powers that have been reserved to the states and the people under the Tenth Amendment.

When the military lobbies Congress to declare war or sanction hostilities (and short of a declaration of war, Congress has no power to sanction hostilities), one must be certain, in accordance with Article IV, section 4, that such lobbying is not a function of the beliefs of one, or more, members of the federal government, concerning the nature of the relationship of human beings with reality – as opposed to a clearly delineated need to protect citizens against an imminent attack and for no other reason – and, therefore, does not give expression to the desire of government officials to have laws made that establish religion, or which prohibit the free exercise thereof. A great deal of militarism is nothing more than religious doctrine – of a secular or non-secular nature – that masquerades in various forms of patriotism, or alleged concerns about national defense, or proclamations involving national interests when, in reality, those sorts of activities are often only undertaken in order to protect and serve the wishes of various government officials – military or otherwise – who desire to impose their own mode of religious orientation -- concerning people, the universe, and that which makes both possible – onto everyone else.

To this point, there has been nothing said in the present commentary which explores whether, or not, the coup to which the Philadelphia Constitutional Convention of 1787 gave expression was legal, ethically valid, or, even, very republican in nature relative to the Articles of Confederation which the aforementioned convention sought to disestablish as the prevailing rule of law. Moreover, there is nothing, to this point, which has been said in the present commentary which explores whether the many Machiavellian tactics that were employed by factions favoring the idea of federalism against the people of New Hampshire, Massachusetts, Connecticut, Pennsylvania, and elsewhere in the Colonies might have cast more than a few fundamental doubts on the integrity – and, therefore, validity -- of the results that were generated during the ratification conventions that occurred over a period of several years following the Philadelphia Convention.

In addition, although the following issue has been alluded to during the present commentary, very little has been said at any point in the previous discussion about the vast conceptual area of the unexplored possibilities for establishing conditions of sovereignty that exist in relation to the 'unspecified' nature of the rights that have been "retained" by the people (that is, which existed prior to any formal declaration by government) in relation to the Ninth Amendment and which also exist in conjunction with the unspecified nature of the powers that have been reserved to the states respectively or the people by the Tenth Amendment and which given expression to those powers that have " not been delegated to the United States by the Constitution, nor prohibited by it to the states." States have had a 233-year history of presuming – rather unwarrantedly – that when it comes to the sort of unspecified, reserved powers to which the Tenth Amendment alludes, states believe that they, and not the people, should have priority and preference with respect to claiming and activating such powers … perhaps even to the exclusion of "the people" for whom unspecified powers are also, supposedly, reserved in the Tenth Amendment.

The Ninth Amendment is an acknowledgement of unspecified rights that belong to, and have been retained by the people (in the sense of always having had such rights), and, consequently, that

amendment cannot be understood to constitute a process for denying and disparaging an array of unspecified rights in relation to the people. However, more often than not, states have tried to bully and intimidate "the people" in relation to the latter's attempt to realize their unspecified rights that have been acknowledged to exist under the Ninth Amendment, and, among other tactics, the states have sought to harass the rights of the people by using the federal court system as a way of trying to deny and disparage the unspecified rights of the people that the latter have retained in (and, therefore, possessed independently of) the Ninth Amendment, and, unfortunately, more often than not, the federal court system – including the Supreme Court -- has allowed itself to be used as a means of denying and disparaging the unspecified rights that have been retained under (and, therefore, existed prior to) the Ninth Amendment (see my book: *The People Amendments*) because such unspecified rights are as much a threat to the way of power in which the federal government is entrenched with respect to the people as those unspecified rights of the people are a threat to the desire of state governments to have hegemony over their citizens.

The same set of problematic dynamics between state governments and the people that are being outlined with respect to the Ninth Amendment also exist within the fabric of the Tenth Amendment. What are the unspecified powers that are being reserved for the states respectively or the people?

Is the word "or" intended to be an exclusive conjunction, and, if so, then under what circumstances do the people get to exercise the powers that have been reserved for them under the Tenth Amendment and what justifies such an arrangement. Alternatively, is the word "or" intended to be an inclusive term, and if this is the case, then, how do states and the people work out the power-sharing arrangements that have been reserved for them?

Finally, and perhaps most importantly, nothing has been said to this point in the present commentary about whether, or not, decisions that were made 233 years ago have any valid, binding, legal or moral authority over subsequent generations. The possible meaning and nature of the Constitution is one thing, but whether, or not, people today have any obligation to abide by its conditions – as opposed to

being forced to abide by it under threat of punishment or penalty of some kind – is an entirely different matter.

The discussion throughout the present commentary has focused exclusively on: (a) the nature of various aspects of the framework to which the amended-Constitution gives expression, and (b) the character of some of the rights, powers, entitlements, or responsibilities that are entailed by the sort of constitutional framework that is being engaged. The working assumption of the current commentary is that given such a constitutional structure exists, then, what are some of the possible implications inherent in such an arrangement.

With respect to both (a) and (b), special attention has been given to the nature of the role that the initial statement concerning religion in the First Amendment might play in various constitutional considerations. In addition, special attention also has been directed toward considering the possible relevance that the Ninth and Tenth Amendments, as well as Article IV, Section 4 might have when trying to critically reflect upon the nature and potential of the U.S. Constitution.

If one believes that the U.S. Constitution has the kind of heuristic value that is capable of meeting the needs of people in America, then, there are some features of that constitution which one needs to take into consideration which -- although, seemingly largely misunderstood for 233 year – nonetheless, entail qualities and principles that appear to go to the heart of whatever heuristic value the Constitution might have at the present time, and such possibilities have been explored during the present commentary. However, if one does not believe that the U.S. Constitution is capable of adequately resolving current exigencies, then, some other arrangement will have to be considered.

If one were to try to reduce the thrust of the present commentary down to its simplest formulation, one might say something along the following lines. From very early on during the Constitutional history of America – perhaps even from the very beginning – people (both government officials and otherwise) have failed to come to terms with the depth, breadth, and rigorous nature of the dynamic potential that the opening statement of the First Amendment has for what can, and cannot, be done by government officials, and, as well, government officials and others also appear to have misunderstood the rich

potential that is inherent in Article IV, Section 4 of the Constitution, along with the Ninth and Tenth Amendments to that Constitution, for placing constraints on what governments can, and can't, do which go far beyond what most observers might have supposed to be possible.

The individuals in Congress that discussed, debated, constructed, and, then, voted on the components of the First Amendment failed to define what was meant by the notion of religion. Nonetheless, most, if not all, of those individuals were aware that the idea of religion extended to a wide variety of possibilities, and, therefore, to be properly understood, that term had to be understood in its most generic, broadest sense.

Furthermore, many, if not most individuals in the different states who subsequently voted to ratify the First Amendment also were aware that the idea of religion could encompass considerable conceptual latitude. Religion wasn't restricted to churches, temples, synagogues or other kinds of buildings and institutions.

In addition, religion in all manner of forms, rituals, observances, and peculiarities existed among Native people, as well as was understood to be present in ancient Roman, Norse, Greek, African, and pagan societies. Religion might involve gods, a God, or no god at all.

Religion in its most generic sense gave expression to a person and/or society's search for, and application of, the truth concerning the nature of his, her, or their relationship with Reality, or Being, or the Universe. Moreover, whatever the nature of that relationship might be, it was considered to be sacred, essential, fundamental, and necessary existential Ground that entailed binding responsibilities which shaped, colored, and oriented how one engaged life or how one thought that life should be engaged.

People might have supposed that politics, economics, science, law, education, and philosophy were capable of being compartmentalized and treated as something other than religion. However, those topics were all part of the same underlying search for the truth concerning the nature of one's relationship with reality.

Furthermore, whatever the political, economic, philosophical, legal, or scientific nature of that relationship might be, such a relationship gave expression to what the proponents of those views

considered to be sacred, essential, fundamental, and necessary existential Ground that entailed binding responsibilities. This sacred Ground of understanding shaped, colored, and oriented how one engaged life or how one thought that life should be engaged.

In other words, whether the aforementioned individuals (sometimes known as Framers) were, or were not, prepared to admit as much, their political, economic, philosophical, legal, and scientific activities were all expressions of religious dynamics of one kind or another. The beliefs, values, principles, duties, obligations, observances, and rituals that were entailed by those forms of engaging existence were nothing other than manifestations of various religious doctrines and practices.

The individuals who discussed, debated, reflected upon, codified, voted on, and ratified the First Amendment might have allowed themselves to suppose that religion is something apart from the activities of politics, economics, law, science, banking, and so on. However, if they did permit themselves to proceed in the foregoing manner, then, they were merely deluding themselves and didn't properly recognize, understand, or appreciate what they were doing, or what – in a very religious, evangelical manner -- they were seeking to impose on their own generation of citizens, as well as all subsequent generations of citizens.

If good government is limited government, then, one needs to understand how the Constitution has the potential to provide precisely that – namely, limited government. However, to accomplish such an understanding, requires a person to critically reflect on the possible meanings of a few essential terms such as: "religion," "retained rights," "reserved powers," "the people," and "republicanism", and, engaging in such a process of critical reflection is primarily what the present commentary has sought to do.

I believe that everyone has the retained right (that is, a right which exists independent of government) to seek the truth concerning the nature of one's relationship with: the universe, or Being, or that which makes everything possible. I also believe that everyone should have the right to pursue the foregoing sort of truth in accordance with whatever manner of secular or non-secular orientation one feels best

reflects such truth as long as such a pursuit does not adversely spill over into how other people wish to pursue such matters.

Nonetheless, governments do not have such rights. Thus, governments do not have the right to impose religion of any kind – whether secular or non-secular -- on other people, and, unfortunately, as I have endeavored to delineate throughout the present commentary, governments have a tendency to make laws that establish religion, or prohibit the free exercise thereof, but, then try to disguise the presence of such religious sentiments by using terms like: "government policy," "politics," "economics," "finance," "banking," "rule of law," "public health," and so on.

In closing, one might note how the pathology of secrecy that infects all levels of government is, more often than not, just a form of religion in which the values and principles that are used to prevent other people from knowing things (such as the different levels of presumed classified entitlements is little more than a way of obscuring the fact that, in most cases, the underlying motive for secrecy is to hide the existence of the religious doctrine that is at the heart of such secrecy – a religious doctrine that gives expression to a perspective concerning how people, the universe, and that which makes such things possible are related, and, therefore, a religious doctrine which is used to justify – at least in their own minds and hearts – why other people ought to comply with, abide by, be willing to be oppressed and terrorized by such a sanctum sanctorum of what amounts to nothing more than a collection of theological assumptions concerning the nature of reality and how it should be engaged.

In short, for more than 233 years, America has torn itself apart through a series of internecine disputes, conflicts, and wars that have been religious in nature (For a more nuanced discussion of some of these issues, please refer to my book: *The Quest for Sovereignty*). These antagonisms have been carried out on battlefields of politics, economics, finance, education, banking, law, medicine, science, and classified secrets, but the underlying motivation for all of them has been, and continues to be, the desire to impose one's religious beliefs on the rest of society.

Let us make no mistake about the extent to which the foregoing commentary illuminates the nature of the problem that lies before us.

Consider all the obfuscating, evasive rhetoric of various medical doctors and related personnel, along with specialists in such areas as: Infectious diseases, immunology, physiology, epidemiology, and so on: (a) who continue to claim that COVID-19 is caused by a virus, despite the fact that there are no reliable electron micrographic images or studies demonstrating its existence, nor do they have any studies which demonstrate that SARS-CoV-2 is actually infectious or which prove that SARS-CoV-2 is lethal or highly infectious; (b) doctors and specialists who proceed on the basis of presumptive diagnoses concerning the presence of certain kinds of presenting symptoms because data had been framed for them in a way that led them to believe that SARS-CoV-2 was responsible for such symptoms and not because anyone possessed hard, rigorous scientific evidence which was capable of demonstrating that the underlying cause of the presenting symptoms was, and is, in fact, SARS-CoV-2; (c) doctors and specialists who continue to claim that the PCR test is capable of not only detecting the unique presence of SARS-CoV-2 (which it is not … there are many false positives and many reasons for the possibility of such false positives) and who continue to ignore the fact that the creator of the PCR test – namely, Nobel laureate, Kary Mullis – explicitly stated that such a protocol cannot, and should not, be used to test for the existence of specific viruses, and, therefore, such doctors and specialists fail to inform the public that the results of all PCR tests involving SARS-CoV-2 are, to all intense purposes, utterly meaningless; (d) doctors and specialists who seem to have difficulty understanding that dying with SARS-CoV-2 (even if one were to agree that it could be identified as being present) is not necessarily the same thing as dying from SARS-CoV-2 since no one has proven (as opposed to having hypotheses about) how SARS-COV-2 actually infects organisms or, purportedly, goes about its lethal activity within such organisms; (e) doctors and specialist who continue to maintain that because there might be an increasing number of people who are testing positive for SARS-CoV-2 (by means of tests that are not only unreliable but relatively meaningless) that this sort of an increase means that the situation is becoming more serious despite the fact that none of those doctors and specialists can show that SARS-CoV-2 – even if present – is either infectious or lethal, or who continue to not consider the possibility that even if one were to believe that SARS-CoV-2 is

responsible for COVID-19 that the existence of a growing difference between an increase in putative, positive cases together with a decreasing number of deaths is a good thing (i.e., a possible marker for the establishment of herd immunity) and not an indication that the pandemic is getting out of control (a casedemic is not the same thing as an epidemic or pandemic); (f) doctors and scientists who under pressure from the CDC (which has a long history of lying to, and misleading, the public about, many issues affecting public health including, for example, its cover up of the toxicity of Agent Orange and the catastrophic impact that chemical had on American soldiers and the Vietnamese people, as well as its attempt to hide the very real relationship between autism and vaccines -- as disclosed by CDC whistleblower Dr. William Thompson) either looked the other way with respect to the doctoring of data involving alleged cause of death in cases involving presumptive diagnoses of COVID-19 or who actively participated in the altering of such data and, thereby, gave the impression that COVID-19 was more deadly than available evidence actually demonstrated; (g) doctors and scientists who continue to argue – on the basis of no, reliable evidence -- that wearing masks, or maintaining social distance, or quarantining people who are asymptomatic and healthy benefits anyone and, in fact, actually downplays or ignores the substantial evidence indicating that such arbitrary practices have been shown to adversely affect people's physical, mental, emotional, and economic health; (h) doctors and scientists who continue to be unwilling to address the substantial amount of evidence which tends to indicate that biggest problem associated with COVID-19 might not necessarily be the disease – whatever its nature might actually be – but rather involves an iatrogenic dimension in which doctors have misdiagnosed, mistreated, and misunderstood the nature of the COVID-19 phenomenon (and just one aspect of this iatrogenic aspect of things is the insistence of many doctors to put patients on certain kinds of ventilator protocols that were inconsistent with the available evidence but, nonetheless, many doctors continued to do so because the "standard of care" manual by which they operate required them to do so and not because such treatments worked (in fact, many patients were dying as a result of the ventilator protocols being used … e.g., consider the testimony of Dr. Cameron Kyle-Sidell and Nurse Erin Olszewski in this regard); (i)

doctors and scientists who, despite many conflicts of interest, are rabidly insisting that mandatory vaccines should be implemented despite the fact that such vaccines are not being developed in accordance with proper testing protocols of safety and despite the fact that, at best, the so-called science underlying the process of vaccination rests on such problematic empirical foundations that the manufacturers of those vaccines have demanded, and been granted, freedom from all liability concerning any injuries or death that might arise in conjunction with the administering of such vaccines and, despite the fact, that the number of deaths being reported around the world with respect to COVID-19 – whatever this phenomenon actually might be -- has leveled out for a number of months now, and, consequently, there is no demonstrable need for such a vaccine; (j) and, finally, doctors and scientists who, without rhyme or reason – and certainly without evidence – have decided that Farr's law of epidemiology is no longer applicable to instances of alleged viral infections and, as a result, such doctors and scientists have insisted that medicine and public health must now adopt a policy of total eradication concerning not only COVID-19 but, as well, apparently, in relation to every other COVID-19 like phenomena that might be invented in the future by doctors and specialists who quite sadistically it seems, seek to place human beings in a condition of continuous lockdown and unending rounds of mandatory vaccines which cannot be proven to be either safe or effective and irrespective of the damage that such lockdowns inflict on the lives of individuals. In the light of all of the foregoing considerations (and many other evidential items could have been mentioned in the foregoing overview), there can be no doubt that such doctors and specialists seem to be engaging in nothing short of a form of religious fanaticism in which those individuals are increasingly insisting – despite a complete absence of reliable evidence – that they have the right to impose such theological proclamations concerning medicine and public health on the rest of society.

Government officials who are influenced by the foregoing sorts of individuals are using arbitrary and imagined powers of government in order to make laws respecting an establishment of religion concerning their fabricated network of ideas about such issues as: Infectious diseases, germs, viruses, well-being, public health, treatment,

vaccination, and so on which cannot be demonstrated to be true … but which are, at best, merely working hypotheses or theories that are capable of being countered by a great deal of evidence (some of which has been presented in this commentary) that runs counter to the narrative about which such hypotheses and theories are conjecturing.

COVID-19 is just a variation on the game that for hundreds of years has been, and continues today to be, played by a rogue's gallery of government leaders whose sole desire is to control and exercise power over citizens by unwarrantedly stripping such individuals of both constitutional and extra-constitutional rights or powers and, thereby, subjecting, citizens to all manner of tyranny, oppression, and injustice. What such government leaders are doing in response to, among other aspects of life, the current COVID-19 crisis is totally at odds with the provisions of the U.S. Constitution (some of which have been outlined in the current commentary) and, consequently, gives expression to a very ugly form of religious charlatanism, if not, terrorism … this is the essence of the problem that lies before us. COVID-19 is 9/11 in slow motion.

Chapter 2: Constitutional Gaslighting

Thesis: The unspecified "retained rights" of the Ninth Amendment and the unspecified "reserved powers" of the Tenth Amendment are independent of the jurisdiction of both the federal government as well as state governments. Therefore, the executive, legislative, and/or the judicial branches of federal and state governments do not have any constitutional standing or authority with respect to identifying, designating, defining, or making rulings concerning the conceptual structure and/or content that might be entailed by either the "retained rights" or "reserved powers" of the Ninth and Tenth Amendments respectively.

Another way of stating the foregoing thesis is the following. Anyone (whether government official, lawyer, judge, media personality, senator, representative, corporate official, or academic) who tries to claim that the Constitution recognizes only the rights, powers, and sovereignty of federal or state authorities, and, thereby, allegedly establishes that individuals do not have "retained rights" and "reserved powers" under the Ninth and Tenth Amendments that give expression to a separate, independent venue of rights, powers and sovereignty which is not subject to the authority of either the federal or state governments is engaging, knowingly or unknowingly, in a process of seeking to gaslight whomever they are addressing.

To restrict the nature of the Constitution to being the exclusive function of either federal or state rights and powers is to significantly distort the character of what is being said in the Bill of Rights facet of the Constitution. Unfortunately, the foregoing, erroneous, binary reading of the Constitution not only began to increasingly manifest itself after 1791 when the Bill of Rights had been ratified, but, in fact, constitutes a perspective that can be traced back to the various Ratification Conventions that were subsequently convened in order to consider, discuss, as well as vote upon the acceptability of the constitutional document that emerged from the Philadelphia Convention of 1787.

More specifically, during the aforementioned ratification conventions, the statements of many participants in those gatherings concerning individual rights and powers were consistently ignored or

dismissed by those individuals who were in favor of a binary axis of authority that was to be divided between federal and state governments and, therefore, who sought to rigorously resist all efforts to have any of the ideas about individual rights and powers included in the text of the pre-amended Constitution that was to be ratified.

Promises to address the foregoing sorts of concerns were made by those who were in favor of a binary division of power between federal and state governments, but those promises were soon forgotten when the constitutional document of 1787 was ratified by the requisite number of conventions … a number which was arbitrarily fixed by the Philadelphia document that was to be ratified. One might also note that the various ratification conventions which took place following the public release of the 1787 constitutional document consisted entirely of people who had been appointed by an array of communities, villages, towns, and cities rather than by state governments.

In short, state governments were not ratifying the 1787 constitutional document. That document was being ratified by people who were serving as representatives of other individuals rather than their state governments, although, as the activities of the ratification conventions unfolded, the fact that quite a few of the representatives in the conventions being held in various states were serving as lobbyists and power brokers for state and federalist interests soon became quite clear.

As indicated earlier, promises that had been made during different ratification conventions concerning the issue of individual rights and powers were forgotten once the Constitution of 1787 had been ratified. Those concerns might have remained in the dustbin of history if a variety of individuals had not persistently reminded an initially resistant James Madison about those promises and, as a result, induced him (some might say guilted him) to put together a number of rights concerning people and bring those ideas to Congress for consideration.

One might also note in passing the following piece of history. When the wording of the Tenth Amendment was being discussed by the members of Congress, the following version of the Tenth Amendment had, more or less, been agreed upon – namely:

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved for the states respectively."

After some collective reflection on the foregoing, Roger Sherman, of Connecticut, added: "or to the people", to the foregoing. His offering was accepted without discussion.

Roger Sherman is the only individual in American history to have been part of the processes that led to the signing of: (a) the Continental Association; (b) the Declaration of Independence; (c) the Articles of Confederation, and (d) the 1787 Philadelphia Constitutional Convention, and, as well, participated in the official Congressional formulation concerning the Bill of Rights. Furthermore, one should keep in mind that Sherman, along with many of the other participants who helped bring the United States of America into formal existence, tended to be wordsmiths, and, therefore, in light of his experience throughout the early history of America, the fact that he added the words "or to the people" to the aforementioned preliminary text of the Tenth Amendment indicates that "or to the people" means something that is different from, and not identical to, the term "states". Moreover, given that the addition of the four words which he was suggesting should be added to the end of the Tenth Amendment were accepted without comment by his Congressional colleagues indicates that most, if not all, of them understood the significance of what he was proposing.

The foregoing comments are intended to provide a context through which the concepts which are about to be explored in this essay are to be engaged. Although the principles that are to be examined in what follows are implicit within -- if not specifically stated, in one form or another, during the pages of a previous essay: namely, The Essence of the Problem That Lies Before Us -- nonetheless, perhaps a more nuanced and direct rendering of those ideas, along with an application of those ideas to various current events, might be of value. To begin with, and as noted previously, while many commentators often approach Constitutional issues through the either-or formulation of federal versus states rights, the aforementioned essay indicates how, from a number of vantage points, that sort of characterization of the Constitution is inappropriate.

For example, the first ten amendments – known as the Bill of Rights – are almost entirely committed to stipulating that the people (qua people and not considered as citizens of this or that state) have a standing in matters of government that are quite independent of both the federal and state governments. For example, the term "state" appears only three times (2nd, 6th, and 10th Amendments) in the Bill of Rights, while the remaining contents of those ten principles concerning rights are focused on the people and not the states.

Even when the term "state" appears in the amendments within the Bill of Rights, the term tends to play a contextual role rather than conveying a sense in which the state is to have a role of primary and overarching authority or centrality with respect to the rights and powers of the people. Thus, in the second amendment, one discovers that:

"A well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed."

The foregoing amendment does not identify the state as having the right to keep and bear arms. Rather, the amendment identifies the people as the resource which is needed to keep a state free, and, thus, the people – not the state -- are the ones who are being given the right to keep and bear arms. Consequently, the presence of the term "state" in the 2nd Amendment plays a purely secondary, contextual role with respect to the identity of those who have authority concerning the keeping and bearing of arms.

In the 6th Amendment one encounters the term "state" within the Bill of Rights for a second time. Thus, one reads:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law …"

The phrase "state and district" that appears in the foregoing amendment refers to a geographical location where a given crime is supposed to have occurred. Nothing is said about whether the alleged crime in question constitutes a violation of principles that have been established by the people – operating in accordance with the rights

and powers of, respectively, the 9th and 10th Amendments – or whether such an alleged crime is considered to constitute a transgression of the statutes that have been passed into law by the state within which a given crime supposedly has been committed.

Furthermore, although the term "district" in the 6th Amendment is qualified by the following:

"… which district shall have been previously ascertained by law",

nothing is said about whose law – i.e., laws of the state or laws of the people (a possibility to which allusions are made in both the 9th and 10th Amendments) and, therefore, laws which would be independent of the states -- is responsible for having ascertained the nature of such a district.

Once again, the term "state" – or a given geographical "district" that has been ascertained by the laws of either the people or the state – which appears in the 6th Amendment is merely playing a secondary, contextual role. In other words, there is nothing in the foregoing amendment which indicates that the state –- as opposed to the people (under the provisions of the 9th and 10th Amendments) -- has primary authority in such matters.

What is stipulated, however, is that irrespective of the nature of the alleged transgressions (i.e., independently of whether those supposed misdeeds are said to be crimes against a state, district, or the people), the accused is entitled to certain protections. Among these is the right to:

(1) "be informed of the nature and cause of the accusation"; (2) "to be confronted with the witnesses against" one; and, (3) "a speedy and public trial, by an impartial jury of the state or district wherein the crime shall have been committed."

Although the 6th Amendment does indicate that an impartial jury must be selected, nonetheless, the amendment does not specify whether the forming of such a jury should be done in accordance with, on the one hand, the authority of the state or district wherein a crime is alleged to have been committed, or, on the other hand, whether such a jury might be formed in accordance with the authority of the people living within that state or district in which a crime is alleged to have been committed … a Constitutional authority that has been established

through the 9th and 10th Amendments. All that the aforementioned amendment stipulates is that the jury – by whomever it is organized -- must be impartial and drawn in some fashion from among the people who reside in that state or district.

Moreover, while the 6th Amendment stipulates that trials must be public, the foregoing amendment does not indicate how such trials should be organized or conducted. In addition, the amendment does not indicate who should have authority to establish the framework through which such a public trial takes place – that is, whether such authority is to be exercised by, on the one hand, the state, or, on the other hand, by the people, independently of the state governmental machinery, as they seek to operate in accordance with the Constitutional standing to which the 9th and 10th Amendments give expression.

The third, and final, use of the term "state" which occurs in the Bill of Rights takes place within the 10th Amendment. More specifically:

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people."

The 10th Amendment is not an assertion of states' rights. Rather, the amendment is about the existence of powers that have been reserved to either the states or to the people as long as those powers have not been "delegated to the United States by the Constitution, nor prohibited by it to the states."

The first use of the term "state" in the 10th Amendment is a reference to considerations of governance that have been prohibited to the states. The second use of the term "state" is an allusion to the powers (which have not been specified) that have been reserved for "the states respectively, or to the people."

Given that the first nine amendments of the Bill of Rights are almost, if not, exclusively about the rights of people – rather than about the rights of states – and given (as outlined previously) that the use of the term "state" plays an entirely secondary and contextual role in those first nine amendments, one cannot suppose, in any rigorous or well-reasoned sense, that the Tenth Amendment should be understood to be exclusively about the "rights" of states since the Bill of Rights was

intended by Madison (who introduced into Congress the original list of possible amendments … a list that was subsequently modified in various ways) to address the concerns voiced by many people throughout numerous ratification proceedings with respect to the need to include in the Constitution a set of principles that safe-guarded the rights of people over against the activities of any given form of governance – local, state, or federal. Consequently, the phrase: "Or to the people" is not just an alternative way of talking about "states" but is, instead, a phrase that continues to develop a constitutional framework which began during the first eight amendments and has been extended by alluding to the rights that have been "retained" by the people (in the 9th Amendment) as well as to the yet-to-be determined "powers" that have been "reserved" for the people and to the respective states in the 10th Amendment.

Some might wish to suppose that the Constitution has given ultimate jurisdiction to the Supreme Court in conjunction with the many issues that are touched upon during the foregoing discussion concerning the Bill of Rights. Nevertheless, notwithstanding the long-standing policy (more than two hundred years) of being governed by, and steeped in, precisely that sort of supposition with respect to who has the authority to determine the meaning of Constitutional provisions, such a perspective is problematic, and this is so for a number of reasons.

First, if one assigns powers to the Supreme Court that permit it to have preeminent authority in relation to determining the meaning of the Constitution, this tends to undermine the idea that the Constitution gives expression to a republic that consists of three separate, but equal branches of the government, as well as runs contrary to the idea that the Constitution constitutes a method of governance which provides a tripartite set of checks and balances to ensure that government will serve the interests of the people rather than the interests of the people in government (and these two sets of interests, unfortunately, are not necessarily co-extensive).

If one of the three branches of government – e.g., the judiciary -- gets to have the final say about what the Constitution means, then the three branches of republican governance are no longer equal. In addition, if one of the three branches of government – e.g., the

judiciary – has the capacity to assign meanings to the nature of the Constitution, then, the other two branches (namely, the legislative and the executive) have no effective way to check such a process of rendering Constitutional meaning, and, in effect, are held hostage to those judicial determinations.

Article III of the Constitution stipulates that:

"The judicial power shall extend to all cases, in law and equity, arising under the Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; - to all cases affecting ambassadors, other public ministries and consuls; - to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be party; - to controversies between two or more states; - between a state and citizens of another state; - between citizens of different states; between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects."

One might note that there is nothing in the foregoing section of Article III, nor any of the other sections of Article III (either preceding the quoted section, or following it) that defines what is meant by the notion of "judicial power".

Judicial power could involve various modes of consultation, arbitration, mediation, or what might be termed "methodological validation" (more on this shortly) rather than primarily being focused on issues of interpretation concerning "the meaning" of the Constitution … a process which was arbitrarily invented by John Marshall. For instance, with respect to the aforementioned notion of 'methodological validation', the power of the judiciary might only give expression to a process which concerns itself with trying to ensure that the cases which came before it – whether original or appellate – would have been conducted, or are being conducted, in accordance with the provisions of Article IV, Section 4 which:

"… guarantee to every state in this union a republican form of government"

… that is, a form of governance which must abide by the principles of republicanism that require government officials to be individuals who are: Impartial, disinterested in personal gain, unbiased, selfless,

objective, fair, honorable, given to reason, compassionate, inclined toward self-sacrifice, committed to the idea of liberty, as well as require individuals in government to act with integrity, independence, egalitarianism, and who are opposed to the idea of serving as judges in their own causes.

When Justice John Marshall decided to relegate to himself and his fellow jurists on the Supreme Court the power to interpret the meaning of the Constitution – as was first evidenced in Marbury v. Madison and which constituted a form of hermeneutics that dominated the dynamics of the Marshall Court for the next three-and-a-half decades -- he (and all those who, subsequently, followed in his hermeneutical footsteps) violated one of the central precepts of republicanism since every decision which he rendered served to make him a judge in his own causes … namely, to attempt to impose on everyone else in America an understanding of the Constitution that gave expression to his political, economic, social, and legal philosophy concerning the nature of life.

In his own way, he -- along with his fellow cohorts on, and subsequent members of, the Supreme Court –- attempted to establish a form of religious philosophy which specified how people should, and should not, engage life. However, whereas the 1st Amendment specifically constrains Congress from establishing religion or prohibiting religion's free exercise thereof, nonetheless, when one considers members of the judiciary (as well as members of the executive branch) such individuals are prohibited -- through the provisions of Article IV, Section 4 of the Constitution which guarantees a republican form of government -- from engaging in forms of governance in which they serve as judges in causes that are shaped by their own set of legal, political, economic, scientific, philosophical, and/or religious orientations. Indeed, to advance interpretations of the Constitution that are shaped by one's legal, economic, or political philosophy concerning the nature of the Constitution is to serve as a judge in one's own personal cause and, therefore, is contrary to the requirements of republicanism … a principle that is guaranteed by the Constitution – indeed, it is the only principle that is guaranteed by the Constitution.

In addition to the foregoing considerations, there is another limit or restriction on judicial power that is of fundamental importance. For example, reflect on the list of circumstances that are cited in Article III, Section 2 of the Constitution for which the Supreme Court has either original or appellate jurisdiction. More specifically:

"The judicial power shall extend to all cases, in law and equity, arising under the Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; -- to all cases affecting ambassadors, other public ministries and consuls; -- to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be party; -- to controversies between two or more states; -- between a state and citizens of another state; -- between citizens of different states; between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects."

The foregoing section of Article III makes no mention of circumstances involving an individual (or individuals) within a given state who is (are) seeking to exercise the nature of one's (their) retained rights under the 9th Amendment or one's (their) reserved powers under the 10th Amendment but who are not (as outlined in Article III, Section 2) engaged in: (1) "claiming lands under grants of different states," or (2) who are not involved in matters "between a state, or the citizens thereof, and foreign states, citizens or subjects," or (3) who are involved in controversies "between a state and citizens of another state," or "between citizens of different states." In other words, what about an individual or a number of individuals within a given region – which happens to be part of the area that is encompassed by a specific state -- who are attempting to seek or to explore the possible parameters and degrees of freedom entailed by the retained – but unspecified -- rights of the 9th Amendment or the reserved – but unspecified – powers of the 10th Amendment?

One cannot claim that the foregoing possibilities fall under the purview of a judicial power that "shall extend to all cases, in law and equity, arising under the Constitution, the laws of the United States" since the very essence of the rights that are retained under the 9th Amendment and the powers that are reserved under the 10th Amendment is that those rights and powers fall beyond the scope of

the federal government's capacity or authority to regulate. In other words, the federal government does not have the Constitutional authority or standing to make laws – via the legislative, executive, or judicial branches – concerning the nature of the unspecified rights or powers to which the 9th and 10th Amendments refer respectively.

Furthermore, the rights and powers of the 9th and 10th Amendments do not give expression to "controversies to which the United States shall be party" (Article III, Section 2). The federal government gave up being a party to whatever controversies might arise in conjunction with the two aforementioned amendments when the 9th and 10th Amendments were formulated and approved by the two Houses of Congress, agreed to by the executive branch and, subsequently, ratified by the citizens of various states.

In addition, the judicial power – as well as the power of the legislative and executive branches -- concerning the first 8 amendments of the Bill of Rights is, as previously indicated, also circumscribed by the requirement of Article IV, Section 4 of the Constitution which indicates – as noted earlier -- that the United States

"shall guarantee to every state in this union a republican form of government."

Therefore, among other things, the federal government – including the judiciary – is prohibited from advancing any policy, law, program, decision, order, or judgment in which members of the judiciary will serve as judges in their own causes, and, therefore, through which the federal government will seek to impose its own personal political, economic, legal, religious, or social philosophy concerning, or orientation toward, life on the citizens of the states to which such a guarantee is being given.

What is the principle, or set of principles, that supposedly justifies the judiciary's self-assigned authorization in, say, Marbury v. Madison for engaging in a process of interpreting the possible parameters and degrees of freedom, or restraints, which arise in conjunction with the provisions being given expression through the Constitution (including amendments)? How does one seek to justify such an alleged constitutional standing without wading into theories concerning legal, political, social, economic, religious, and philosophical perspectives that entail members of the judiciary (at whatever level) serving as

judges in causes that advance their own set of personal beliefs and values, and, consequently, transgress against the guarantee of republican government which are stipulated in Article IV, Section 4 of the Constitution?

The states (both the original thirteen as well as all subsequent additions) have sought to leap into the power vacuum to which the 9th and 10th Amendments give rise. As a result, states have attempted to usurp authority with respect to all issues arising out of the 9th and 10th Amendments, and, consequently, unfortunately, states have sought to create a proprietary Constitutional standing for themselves through their confiscation of the aforementioned unspecified rights and powers at the expense of the rights which have been retained by the people (and not the states) under the 9th Amendment as well as at the expense of the powers that have been reserved for the people – and not just the states – under the 10th Amendment.

The problem – as was indicated previously – is that the federal government has no constitutional standing to adjudicate the usurpation of rights and powers by the states that have been acknowledged as belonging to the people under, respectively, the 9th and 10th Amendments. On the other hand, the states cannot constitutionally justify their power grab and subsequent denial of the rights and powers that belong (according to the Constitution) to the people quite independently of the states, and, as such, this dynamic of power politics has been a cancer eating away at the soul of American social, political, economic, educational, and legal existence for more than two hundred and thirty years.

For instance, during the current COVID-19 controversy -- many states and local districts have implemented a series of mandates concerning the wearing of masks, together with social distancing provisions, as well as policies involving the locking down of various facets of society for different periods of time, and, finally, a push toward -- teetering on the edge of compelling – a society-wide implementation of programs involving experimental inoculations which give expression to, among other things, various forms of gene therapy (which are not vaccinations in any traditional sense of that term). The states and districts that are engaging in the aforementioned sorts of practices claim to have a Constitutional right as well as the

Constitutional power to pursue those kinds of policies, but, in point of fact, the 9th and 10th Amendments do not acknowledge that any such rights or powers exists independently of, or in preference to, the retained rights – under the 9th Amendment -- and reserved powers – under the 10th Amendment -- of the people to be able to deal with such issues in a manner that is determined by individual choice rather than collective, state-sanctioned impositions.

The essence of the challenge that lies before us is the task of working out an arrangement involving individuals, states, and a federal government that, among other things, acknowledges and enables the Constitutional standing of individuals to explore -- free from unnecessary and oppressive interference by local, state or federal governments -- the significance of the unspecified retained rights of the people that are established through the 9th Amendment, as well as determining the degrees of freedom that might be entailed by the reserved powers of the people who have been assigned equal Constitutional standing with the states under the 10th Amendment. This remains one of the great, unresolved issues that are a natural consequence of the structure of the amended Constitution.

Article III, Section 2 indicates that:

"In all cases affecting ambassadors, other public ministers, and consuls, and those in which a state shall be party, the Supreme Court shall have original jurisdiction. In all other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make."

What is the nature of the "original jurisdiction" -- "both as to law and fact" -- with respect to cases in which a state is a party but, as well, an individual (or individuals) also is (are) a party (or are parties) but the latter individual (or individuals) is (are) <u>not</u> engaged in the sorts of cases over which the Supreme Court has jurisdiction – namely: (1) "claiming lands under grants of different states," or (2) cases involving matters "between a state, or the citizens thereof, and foreign states, citizens or subjects," or (3) cases involving controversies "between a state and citizens of another state," or "between citizens of different states," but who, as a person or persons, is (are), instead, seeking to establish the nature of his, her, or their unspecified, retained rights

and unspecified, reserved powers under, respectively, the 9th and 10th Amendments of the Constitution? The Supreme Court might have original jurisdiction with respect to states – because Article III, Section 2 says as much – but it has no Constitutional authority or standing (whether original or appellate) in relation to an individual or individuals who are seeking to assert their retained rights under the 9th Amendment or their reserved powers under the 10th Amendment but who do not fall under any of the previously noted exceptions [namely, instances (1), (2), and (3) stated earlier] that are identified in Article III, Section 2, of the Constitution.

How does the Supreme Court exercise judicial power in mixed cases involving not only entities (i.e., states) over which it does wield Constitutional standing but, entities (individuals pursuing their 9th and 10th Amendment rights and powers) with respect to which it has no Constitutional standing or authority to make judgments concerning either law or facts? And, moreover, given that the Supreme Court is constrained by the guarantee present in Article IV, Section 4 of the Constitution and, therefore, cannot serve as judges in their own causes (i.e., whatever the character of their judicial philosophy might be concerning the nature of the Constitution), what, exactly, would the role of the Supreme Court be in the foregoing sorts of mixed cases involving a given state and an individual (or individuals) who is (or are) seeking to realize some of the retained rights of the 9th Amendment or the reserved powers of the 10th Amendment?

Conceivably, under the aforementioned set of circumstances, the Supreme Court could serve as some kind of a consultative or mediating body. As such and for reasons stated previously, its task would not be to generate legal decisions that are binding on either states or an individual (individuals) who are engaged in trying to work out the boundary dynamics of the 9th and 10th Amendments between a state and an individual (or individuals), but, rather, the task of the Supreme Court would be one of trying to facilitate constructive discussions concerning, and explorations of, a variety of possible arrangements in conjunction with the 9th and 10th Amendments by organizing a consulting and mediating dynamic of some kind that is operated in accordance with the constraints that are imposed on the Supreme Court (as well as on Congress and the Executive) through the

principles inherent in the guarantee of a republican form of government.

Unfortunately, notwithstanding whatever common sense might be present in the foregoing considerations, there is a game that has been played within America for more than 220 years. It is called the game of "the rule of law."

This game seeks to give the impression that the society operates in accordance with a set of rules that are Constitutional in nature and, which, therefore, are entitled to claim the status of law. In point of fact, almost none of the elements or dynamics of that game can be reconciled with the provisions which are set forth in the amended Constitution, especially in conjunction with its provisions which stipulate: (1) that there are constraints concerning any kind of legislation that seeks to establish and/or prohibit the exercise of religion; (2) that the members of government – irrespective of branch – must operate in accordance with the moral requirements inherent in Article IV, Section 4, and (3) that both federal and state governments are constrained by the potential for self-governance that is inherent in the people's retained rights under the 9th Amendment as well as their reserved powers under the 10th Amendment.

However, the inertial momentum that has been generated through the activities of more than 220 years of federal and state bodies of governance and the manner in which those dynamics have transgressed against, ignored, and sought to undermine the aforementioned principles of constitutionality (i.e., the First Amendment provisions concerning religion; Article IV, Section 4 of the Constitution prior to being amended, as well as the 9th and 10th Amendments), and in the process of ignoring or dismissing such constraints on government, a playing field has been established in which federal and state governments get to do pretty much whatever they want while actively denying the retained rights and reserved powers that could form the foundation of a process of sovereignty that would enable people to exercise more self-governance – independently of the federal and state governments -- than is currently permitted by the game known as the "rule of law".

Many lawyers, judges, political organizations, educational institutions, corporations, and forms of media are entangled within the

different facets of the foregoing game. Those individuals and groups are often quite talented and have many resources on which to call when it comes to playing the game known as "the rule of law," and as a result, they are able to realize their interests at the expense of the people's ability to pursue forms of self-governance – independent of the federal and state governments -- that might protect against the gaming activities of those who have a deep, vested interest in ensuring that the pathological and oppressive forces of inertia which are present in the rule of law game continue on unabated no matter what the costs to the generality of people might be.

Notwithstanding the manner in which many non-governmental entities have discovered ways through which to derive benefit from skillfully playing the rule of law game, nevertheless, the chief architects of that game are also the creators of the rule books (on both a federal and state level) that govern the game, as well as serve as the referees who have assigned themselves to be the sole interpreters concerning the meaning and application of those rules, and such individuals are none other than the many men (mostly) and some women who have become justices on the Supreme Court (on both the federal and state level of government) and, in the process, have invented a game of their own making that often has very little to do with the actual provisions of the amended Constitution.

The rule of law game is possible because, on the one hand, jurists – along with members of Congress and the Executive – refuse to act in accordance with the principles of morality that are inherent in republicanism, and, on the other hand, refuse to acknowledge, via a process of willful blindness, the unspecified, but potential, "retained rights", as well as the unspecified, but potential, "reserved powers" of the people that are quite independent of both federal and state governments. The rule of law game has led us into the political, economic, legal, educational, media, military, corporate, and institutional cul-de-sac in which we currently find ourselves.

Of course, all of the game players being alluded to in the foregoing are likely to complain loudly concerning the current critique of their game. After all, their vested interests -- whether in the form of finances, resources, property or power -- are being threatened.

Nevertheless, none of those game players – not even the inventors, rule makers, referees, and custodians of that game -- has a rigorous, plausible, justifiable basis for asserting (let alone compelling) that the rule of law game deserves everyone's moral, political, or legal allegiance. One simply can have no respect for a game that ignores – if not actively evades -- the requirements of character, integrity, and fairness that are present in the principles of republicanism which are guaranteed in the Constitution, nor can one have any respect for a game that seeks to prevent individuals from being able to lay claim to their retained rights or reserved powers under the 9th and 10th Amendments respectively.

For instance, among the retained rights and/or reserved powers of the people – considered independently of the spheres of authority and influence that give expression to the activities of federal and state governments -- one might find the following issues: Education, travel, military conscription, and medicine. The foregoing four issues do not exhaust the possibilities for the kinds of activities over which the people – as individuals – might have the sort of constitutional standing and authority that is independent of federal and state constitutional authority, and, therefore, are merely intended to be suggestive.

Let's consider the last of the four issues noted previously – namely, medicine – and, furthermore, let's do so in a specific context that has relevance for events taking place in today's world. More specifically, in late 2020, claims were made (e.g., Alan Dershowitz) that a person has "no constitutional right to endanger the public and spread … disease." He goes on to claim that an individual has "no right not to be vaccinated" or "not to wear a mask" or to "open up" a business during a health crisis.

He adds that: "If you refuse to be vaccinated the state has the power to literally take you to a doctor's office and plunge the needle into your arm." Dershowitz also has indicated that there have been many decisions handed down by the Supreme Court which stipulate that governments are entitled to place restraints on human liberty in order to protect the health of the public.

There are various issues which can be raised in conjunction with Dershowitz's foregoing perspective concerning the status of human liberty vis-à-vis government authority. For example, while one might

agree that an individual does not have a constitutional right to endanger the public or to spread a disease, one might also note that the government has no constitutional right to impose policies on the public that either endanger the public or which make claims that a certain kind of viral disease exists when this is not necessarily the case.

Furthermore, whether, or not, a person has a right not to be vaccinated would depend on the extent to which such vaccinations can be shown to be safe and effective. Similarly, whether, or not, an individual has the right not to wear a mask would depend on the efficacy and safety of those masks, and, in addition, one might note that whether, or not, a business has a right to open up during an alleged health crisis would depend on whether, or not, the reasons for seeking to prevent a business from conducting its commercial activities are capable of being rigorously justified.

Finally, one might also raise issues concerning the notion of "public health." For instance, who gets to define what constitutes health or how one should go about establishing such a condition?

Why are governments so readily inclined to believe that they are the default choice for determining all manner of issues? Such a question is even more relevant in light of the many aforementioned constraints that have been noted in conjunction with the manner in which governments are constitutionally permitted to go about their activities.

Mr. Dershowitz seems to be of the opinion that only federal or state governments have the constitutional authority or requisite expertise to be able to determine how to proceed with respect to issues involving, for example, health and medicine. Such a perspective is supposedly supported by his reference to the fact that the Supreme Court has issued an array of decisions which stipulate that government authorities are entitled to place restraints on human liberty in order to protect the health of the public.

Notwithstanding the foregoing considerations, nowhere in the Constitution does one find clear, compelling evidence that any of the branches of the federal government possesses a right to develop and impose theories about what constitutes health or disease, nor does the Constitution specifically authorize any of the three branches of the

federal government to mandate how to go about acquiring health or avoiding disease. Therefore, the fact that over the passage of time, the Supreme Court has issued decisions stipulating that governments are entitled to place constraints on human liberties in order to protect public health is neither here nor there since the Supreme Court has no Constitutional authority to make those kinds of decisions. Indeed, any attempt by the federal judiciary (whether through the Supreme Court or any of the inferior forms of federal judicial activity) to establish policies concerning what constitutes health and disease or to establish policies which provide institutionalized systems for how to acquire the former (i.e., health) while avoiding the latter (i.e., disease) would be a violation of Article IV, Section 4 of the Constitution which guarantees each of the states – and the citizens of those states – a republican form of government. After all, as previously noted, one of the tenets of republicanism – which is a moral philosophy that emerged during the Enlightenment -- is that individuals should not be judges in cases involving their own causes and interests.

As a result, the jurists on the Supreme Court do not have the Constitutional authority to impose their ideas, values, and beliefs (i.e., their causes and interests) concerning issues of health and disease on to the general public. Furthermore, in view of the fact that the First Amendment denies Congress the authority to make any law respecting either the "establishment of religion, or preventing the free exercise thereof," and, moreover, since ideas concerning health and disease (physical, emotional, social, political, economic, financial, and spiritual) are often central to the notion of religion because such perspectives are functions of hermeneutical processes that are geared toward trying to understand or realize the truth concerning the nature of one's relationship with Being or the Universe, then in effect, Congress would be seeking to either establish or restrict religion if that political body were to pursue policies that sought to impose ideas about health and disease on to the people of the respective states because such policies would be an attempt to dictate how people could, and could not, go about trying to determine the truth with respect to the nature of their relationship with the Universe, Being, or reality in conjunction with issues involving health and disease.

Given that agencies such as the CDC, the FDA, and the NIH are created through Congressional legislation, this means that while those agencies are perfectly entitled to pursue research that might, or might not, be of assistance to the public, nonetheless, those agencies have no Constitutional authority to impose their ideas or policies on the general public. Doing so would constitute a form of either trying to establish or restrict processes that seek to determine the truth concerning the nature of the relationship between human beings and reality – in other words, such ideas and policies would be an attempt to establish or restrict religion.

Let's further explore the foregoing ideas in a concrete setting of events that have transpired over the last year and a half. More specifically, in December 2019, an unknown – but, apparently, substantial -- number of cases involving a respiratory disease of some kind began to occur in Wuhan, China. An early diagnosis – supposedly backed by studies in China, Canada, and Australia that claimed to have isolated a "novel" virus -- asserted that the phenomenon was a viral infection caused by SARS-CoV-2, and the disease began to be known as COVID-19.

However, the foregoing conceptual orientation is problematic for a number of reasons. To begin with, although there were several research papers that were issued (e.g., China, Canada, and Australia) indicating that the virus allegedly responsible for the outbreak of the aforementioned respiratory disease had been isolated, nevertheless, none of those papers actually accomplished what they claimed (in this regard, see the work of Dr. Andrew Kaufman, Dr. Thomas Cowan, and Dr. Stefan Lanka) because all of those alleged scientific papers had committed the same mistake that had been made by an early pioneer in the field of virology – namely, John F. Enders. This mistake consisted in a failure to properly purify and isolate viruses and, instead, have tried to argue, again and again, that an amalgamation of cells drawn from sick individuals which were, then, subsequently cultured in a stew of toxic chemicals and left in a nutrient-deprived condition which was followed by the death of those cells somehow constituted proof that the cause of cellular death was due to the presence of a virus.

The foregoing conclusion was reached despite the fact that none of the virologists who followed in the footsteps of Enders ever ran

control experiments. Oddly enough, Enders did run an appropriate sort of control experiment and stated that he could not distinguish any difference in outcome between the experimental group and the control group and, yet, nobody seemed to grasp the significance of his words because if both the experimental group and the control group generated the same results (i.e., the death of the cells in both cultures), then one could hardly claim that a virus was responsible for the death of the allegedly "infected" cells in the experimental culture.

An appropriate control experiment would have involved obtaining cellular material from healthy people and, then, subsequently exposing those cells to the same concoction of toxic chemicals and nutrient-deprived conditions to which cells drawn from sick people had been exposed and, then, record whether, or not, the cells from healthy individuals died because if one wishes to claim that a virus is the cause of an observed demise of cells under laboratory conditions, then the tenability of such a claim depends on being able to demonstrate that there will be a difference in outcome between the cells from healthy people that are exposed to such laboratory conditions and the cells from unhealthy individuals which are similarly exposed to the same set of conditions.

Stefan Lanka , a German biologist , has actually run the foregoing sorts of control experiments . He discovered that what kills the cells from both sick and healthy individuals is the process of culturing those cells and not any inferred, but unseen entity such as a "virus".

With the possible exception of bacteriophages, which are viral-like entities that allegedly attack and infect various kinds of bacterial and Archaea organisms, virologists have never succeeded in either purifying or isolating other kinds of viruses … especially the kinds of viruses that, supposedly, attack and infect human beings and other mammals or vertebrates. This is as true for SARS-CoV-2 as it is for the alleged measles and polio viruses, as well as a host of other candidates for viral instantiation.

Since SARS-CoV-2 has never been properly purified or isolated, the actual contents of such an alleged virus have never been opened up and analyzed to ascertain its purported genetic sequence. The alleged genetic sequences that are attributed to the SARS-CoV-2 virus (along with the alleged genetic sequences of any number of other viruses) is

nothing more than a theoretical model that has been stitched together by selecting various short genetic sequences from an assembled library of RNA or DNA sequences that have been arbitrarily collected, characterized, and categorized in accordance with the determinations of a set of mathematical algorithms, and, then, combined together to construct what is claimed to reflect the genetic sequence of a virus that has never been properly purified or isolated, and, therefore, has never been empirically verified to contain the genetic sequence that the mathematical model claims the purported virus has.

In short, every non-bacteriophage virus that is said to exist is, actually, nothing more than a model that has been constructed by means of a template which operates in accordance with a set of algorithms that organize short segments of RNA or DNA from a library of such segments into a theoretical rendering of a purported virus according to a consensus of opinion (and not actual empirical facts) of like-minded virology researches. As such, the foregoing sorts of viruses are purely theoretical entities and not actually existing bodies that have been discovered, isolated, purified, and whose genomes have been empirically sequenced rather than merely having been cobbled together in accordance with an arbitrary set of mathematical modeling assumptions and calculations.

In effect, what virologists do when they invent viruses is comparable to what artists might be required to do under certain circumstances. For example, if an artist were asked to paint something that the artist had never seen and which might not even actually exist, the artist would have to rely on his, her, or their imagination in order to come up with some sort of image.

Artists use paints, brushes, charcoal, pens, crayons, as well as canvasses, paper, and boards to create their rendering of something they have never seen and which might not even exist. Virologists use mathematical algorithms and a library of arbitrarily collection snippets of RNA and DNA to give expression to their rendering of something that they have never seen and which might not even exist.

Since the existence of the SARS-CoV-2 virus has never been purified, isolated, or genetically sequenced through a rigorous and competent scientific methodology, no one has actually shown that SARS-CoV-2 exists or that it is either infectious or lethal. Everything

about SARS-CoV-2 – from beginning to end – is merely a theoretical narrative that has been concocted through the imaginations of virologists.

There are many environmental poisons and conditions that are capable of helping to induce the array of symptoms that frequently are associated with COVID-19. Furthermore, one should keep in mind that the foregoing notion of symptoms reflects the body's manner of responding to the presence of certain kinds of environmental poisons and toxic conditions rather than necessarily constituting properties that such poisons engender in the body. Furthermore, environmental poisons and toxic conditions are capable of causing a clustering of cases (i.e., individuals who have been exposed to the same set of poisons or toxic environmental conditions) that are often misinterpreted as constituting the presence of an infectious agent.

Since something called SARS-CoV-2 has never been properly purified, isolated, sequenced, and shown to be infectious, then, in reality, SARS-CoV-2 has never been proven to exist. Furthermore, since SARS-CoV-2 has never been shown to exist, then, the PCR protocols that are being used to infer the presence of such a theoretical entity are entirely fictitious.

Non-existent "viruses" with genetic sequences that have been invented via a set of mathematical algorithms and accompanying assumptions do not have any features that are unique to them (indeed, they have no features at all except their fictitious nature). Therefore, those entities either contain no elements that are capable of being detected through the use of the PCR protocols irrespective of how few or many cycles are run, or, alternatively, whatever is detected is a reflection of an invented, theoretical model of what virologists believe such alleged viruses might look like if they were to exist, and, therefore, the PCR protocol detects whatever the people running the protocol want to detect and has nothing to do with having detected the presence of a purported infectious agent.

Furthermore, all claims concerning the formation of antibodies in response to the alleged presence of SARS-CoV-2 bodies are also entirely fictitious. Even if a given virus were to exist – and there is absolutely no proof that this is the case – the fact of the matter is that antibody proteins are notoriously promiscuous, and, therefore, just

because some serological procedure generates a positive result does not necessarily indicate that the cause of such a result is the presence of a virus for which a given antibody is supposedly a marker.

For instance, back in the 1980s and 1990s, various antibody tests for HIV were all demonstrated to be fatuous because the antibodies being focused on in those tests have been shown to cross-react with more than 70 different conditions – including pregnancy (see the work of Val Turner and Eleni Papadopoulos of the Perth Group in Australia for further information). As a result of such erroneous positive tests, many people were unnecessarily subjected to an array of toxic antiviral medications and speculative forms of medical treatment because of antibody tests that weren't worth the paper on which those tests were recorded. Now, people are being pressured into accepting a form of gene therapy in conjunction with SARS-CoV-2 that is based on a set of theoretical models that are as fictitious as the ones on which the HIV causes AIDS myth were based (Nobel Prize winner Kary Mullis showed that this was the case back in the 1990s … he demonstrated that no one could point to any compelling experimental evidence which showed that HIV caused AIDS) … and, indeed, the same is true for all of the viruses that have been mentioned in connection with, for example, various forms of influenza (e.g., bird flu, swine flu, and Hong Kong flu, as well as any of the many theoretical models of purported corona viruses) that have been invented through various algorithmic concoctions.

Allegedly, various kinds of gene therapies have been concocted by Moderna, Pfizer, AstraZeneca, Johnson & Johnson, as well as various Russian and Chinese companies in order to attack, among other things, the so-called spike protein of the purported SARS-CoV-2 virus. Since SARS-CoV-2 has never been properly isolated, purified, sequenced, characterized or shown to be either infectious or lethal, the claim that such an entity contains a spike protein of some kind is purely speculative, and, moreover, the notion that the spike protein is how the aforementioned virus gains entry to human cells is a purely theoretical one and, therefore, not based on actual empirical data.

No one actually has seen the dynamics through which such a putative spike protein is actually capable of gaining access to human cells through, for example, alleged ACE-2 receptors in the lungs. This is

nothing more than a theory which has little, or no, empirical evidence indicating that the star of such a theory – namely, SARS-CoV-2 – even exists or is infectious.

Consequently the RNA and DNA gene therapies that have been invented and are being touted as the way to deal with the mythical SARS-CoV-2 entity are nothing more than treatments that are based on speculative theories that have no actual basis in empirical discoveries concerning the existence, genetic sequence, infectivity, or lethality of such a viral body. Not only are the aforementioned sorts of genetic therapies chasing an empirical will-o'-the-wisp, but those therapies actually constitute a violation of those facets of the Nuremberg Code that forbid governments and medical doctors from using members of the general public as experimental guinea pigs.

All of the foregoing considerations and comments could easily be summed up by a quote from Leo Tolstoy's War and Peace (Chapter 1, Book XIII) – Namely,

"Man's mind cannot grasp the causes of events in their completeness, but the desire to find those causes is implanted in man's soul. And without considering the multiplicity and complexity of the conditions any one of which taken separately may seem to be the cause, he snatches at the first approximation to a cause that seems to him intelligible and says: 'This is the cause.' "

Radio frequency poisoning is capable of inducing all of the symptoms that are claimed to be characteristic of COVID-19, including those that involve blood clotting, hemorrhaging, apoxia, extreme fatigue, lost of a sense of smell, and/or neurological deficits. Moreover, unlike SARS-CoV-2, radio frequency poisoning has a long, documented history of actually existing (e.g., see the work of Arthur Firstenberg, Daniel T. DeBaun, Samuel Milham, Dr. Olle Johnston, Dr. Devra Davis, and Dr. Martin Pall, as well as the extensive research that, for more than 50 years, has been pursued with respect to this topic by a variety of Russian scientists and which was known about by the CIA, and in conjunction with that research, the agency released a report in 1970s).

COVID-19 is a real condition, but, as indicated previously, the nature of that condition has not, yet, been empirically identified in any methodologically rigorous manner. However, what is capable to being empirically demonstrated is that SARS-CoV-2 has not been proven to:

Exist, be infectious, or shown to be the cause of COVID-19. Instead, unfortunately, sloppy science, medicine, journalism, and government activity have led to a series of misdiagnoses and/or dubious forms of medical intervention that have exacerbated a set of symptoms that might, or might not, be due to such environmental toxins as radio frequency poisoning, but certainly have not been shown to be caused by SARS-CoV-2.

Whatever happened in Wuhan in late 2019 is, currently, unknown. However, based on speculative and misleading papers that, euphemistically, might loosely be referred to as being "scientific" and which were issued in conjunction with the events of 2019, and despite an absence of real, substantive evidence concerning either the existence or infectious nature of the purported cause of the clinical pathologies that were being observed in Wuhan, nevertheless, a tentative diagnosis was issued claiming that the pathology which had emerged in Wuhan was due to a corona virus.

As a result of the foregoing clinical diagnosis that was largely devoid of any reliable evidence concerning the actual cause of the pathological condition that was being diagnosed, a set of medical protocols were implemented (according to standards of care that already had been established previously) which were based on the assumption that the respiratory disease that was being observed by individual medical doctors as well as in hospitals was viral in nature. Consequently, among other things, an array of toxic antiviral drugs (e.g., Remdesivir which, according to theory, attaches itself to the RNA-dependent polymerase of a virus and, allegedly interferes with the ability of the virus to complete the process of viral transcription, and, therefore, replication) began to be used in order to treat such patients. Given that the existence, infectivity, and lethality of SARS-CoV-2 has never been proven, one can only wonder about the possible problematic ways in which such antiviral drugs interacted with human tissue, and, so, when, patients receiving such treatments became worse, those individuals were often placed on ventilators that were programmed in a manner that did not necessarily reflect what might actually have been wrong with those patients, and, as a result, a lot of people began to die.

The foregoing deaths were attributed to the presence of a virus whose existence had not been proven and, therefore, had not been empirically demonstrated to be either infectious or lethal. No one considered the possibility that the deaths were entirely iatrogenic in nature – that is, those individuals were dying due to a faulty modality of medical diagnosis along with problematic forms of medical treatment rather than from a virus.

About 300,000 people die from respiratory diseases of one kind or another every year in China. Those diseases have many non-viral causes – excessive pollution being one of them.

Other countries also have many people die every year as a result of non-viral forms of pathology. However, when the medical communities in Italy and Iran began to look at new cases of respiratory diseases in their respective countries through the clinical filters that had emerged in conjunction with declarations that had been made about events in Wuhan (e.g., The WHO), medical practitioners in those countries began to operate in accordance with group think and, as a result, failed to ask questions about whether a virus was the actual culprit that was causing such respiratory problems in the patients they were seeing.

Consequently, many medical people and institutions were induced to operate (without any real evidence) as if they were dealing with a viral epidemic or pandemic of some kind. As a result, they began to apply the same sorts of problematic treatment protocols to their patients in Italy and Iran as had occurred in China.

Possibilities -- concerning the impact that environmental pollution and toxicity of different kinds might be having on the patients they were seeing -- were all ignored or discounted because of a ill-considered diagnosis of viral infection that, at no point, had been proven to exist. Death ensued in many cases by virtue of what appears to be a massive dose of iatrogenic misadventure rather than necessarily being due to the purported presence of an infectious and deadly viral disease.

Shortly, thereafter, the same faulty set of medical protocols involving misdiagnosis and mistreatment were pursued in the United States. The result, once again, led to a plethora of deaths that appear to

have been the result of iatrogenic misadventure rather than due to the proven existence of an infectious and lethal virus.

When various scientists, medical clinicians, governments and media representatives began to look at the events in China, Italy, and Iran through the lenses and filters of a novel viral disease – and, as noted previously but needs to be said again, this was a perspective which had zero empirical evidence to support it – then every sniffle, cough, fever, or sense of fatigue was colored by the character of the lenses of virology through which such complaints were being engaged. This was especially the case when such symptoms were accompanied by a PCR positive result despite the fact that those results had never been proven to have anything to do with the existential presence of a purported SARS-CoV-2 virus.

The foregoing cloud of unknowing was hyped by the media as being evidence that humanity was in the midst of a terrible pandemic, and the WHO, as well as the CDC, contributed to the foregoing hysteria by failing to do due diligence and confirm that something called SARS-CoV-2 actually existed. Such a perspective both misinformed as well as unnecessarily terrorized the public, and, as a result what began as a set of pathological conditions of unknown cause in Wuhan, China, soon became a PCR-test driven pandemic of ignorance and premature diagnoses that led to a lot of people being unnecessarily subjected to toxic medicines and inappropriately programmed ventilators, and, as a result, a lot of people died.

Earlier during this essay, references were made to the fact that Alan Dershowitz claimed that, among other things, the government had the right to force people to wear masks in order to protect public health. What Mr. Dershowitz seems to have failed to consider is that even if the SARS-CoV-2 virus had been proven to exist, the putative size of that body is in the order of .127 microns or less, and since the size of the mesh of pores in most masks is of the order of .3 microns or larger, then, the foregoing sorts of masks would have had absolutely no impact on the capacity of those masks to prevent bodies which are the purported size of viruses from entering, or leaving, the human body.

As has been revealed in the recent release of thousands of e-mails to and from Anthony Fauci, very early (February of 2020) during the

declared pandemic (and that is all that it was – a declaration with no real evidence to back it up), Fauci readily admitted that masks were useless against entities that were the purported size of viruses. The recently published randomized controlled Danish study conducted by Henning Bundgaard and John Skov Bundgaard (Annals of Internal Medicine, November 2020) concerning the efficacy of masks with respect to COVID-19, as well as the April 2020 paper by Canadian physicist D. G. Rancourt ("Masks Don't Work: A Review Of Science Relevant to COVID-19 Social Policy") that provides a critical review of an array of previous studies concerning the alleged efficacy of masks in conjunction with different kinds of diseases, both of the foregoing studies, along with a great deal of other research, support a perspective which indicates that masks don't work.

Fauci subsequently went on to reverse his position concerning the efficacy of masks claiming that he was only responding to changes in the scientific data with respect to such issues. However, one can only wonder to what empirical data he was referring when he changed his rhetoric concerning masks because every rigorous study (including the recent Danish study) that has been conducted in conjunction with this topic of health has come to the same basic conclusion again and again – namely, masks, in general, do not show any greater capacity to protect people from infectious agents than is the case in individuals who do not wear masks under similar conditions.

One might also note that Alan Dershowitz seems to be entirely ignorant of, if not ill-informed concerning, the many problems that surround and are entailed by the whole issue of vaccination. A proper discussion of this topic would best be left for another venue, but one can say that at the very least that Mr. Dershowitz's notion concerning the alleged right to physically drag someone into a medical facility and inoculate that individual in order to protect public health needs to be placed in a more nuanced and empirically verifiable context. For example, if one were to read: *Dissolving Illusions: Disease, Vaccines, and the Forgotten History* by Dr. Suzanne Humphries and Roman Bystrianyk, or *The Illusion of Evidence-Based Medicine* by Jon Jureidini and Leemon B. McHenry, or *Vaccines: A Reappraisal* by Dr. Richard Moskowitz, or *Vaccine Epidemic: How Corporate Greed, Biased Science, and Coercive Government Threaten Our Human Rights, Our Health, and*

Our Children, edited by Louise Kuo Habakus and Mary Holland, as well as *Bechamp or Pasteur* by Ethel D. Hume, or *The Vaccine Court* by Wayne Rohde, or *Jabbed* by Brett Wilcox, or *Master Manipulator: The Explosive True Story of Fraud, Embezzlement, and Government Betrayal at the CDC* by James Ottar Grundvig or *Vaccines, Autoimmunity, and the Changing Nature of Childhood Illness* by Dr. Thomas Cowan, or *Virus Mania* by Torsten Engelbrecht and Dr. Claus Kohnlein, or *What Really Makes You Ill: Why everything you thought you knew about disease is wrong* by Dawn Lester and David Parker, as well as the *Contagion Myth* by Dr. Thomas Cowan, one would get a very different understanding of the situation which Mr. Dershowitz seems to believe is a constitutional fiat accompli.

Among the many points that are established through the foregoing research are the following:

- The CDC and the FDA are both regulatory agencies that have been captured by the pharmaceutical industry. Both the CDC and the FDA have massive conflicts of interests as a result of the money that they receive from pharmaceutical companies in order to, among other things, to fast track the approval process for dumping drugs and vaccines into the general population. For example, the FDA receives "user fees" from the pharmaceutical industry which constitute roughly 75% of its operating budget, and, in addition, among many other fraudulent missteps pursued by the CDC, according to government whistleblower William Thompson, the CDC lied to the general public for more than a decade when the members of that agency asserted – despite substantial empirical evidence to the contrary – that there was no connection between thimerosal – a mercury-based preservative -- contained in various vaccines (sometimes only in trace amounts) and the occurrence of autism, especially among black, male youth.

- All the various allegedly infectious diseases to which children seemed to be vulnerable – such as mumps, measles, chicken pox, polio, and so on – and for which vaccines have become mandated in many, if not most states, were all in substantial decline long before vaccines directed against those diseases actually emerged.

- The CDC has persistently resisted all calls for studies that compare the health of those who have been vaccinated with the health of those who have not been vaccinated, and when such studies have

been conducted through other venues of research, the empirical results show, again and again, that unvaccinated individuals tend to be much healthier in general than vaccinated individuals are.

- There is no proof that vaccines actually confer immunity with respect to any specific given individual, but there is evidence demonstrating that people who have been vaccinated are, nonetheless, often subject to becoming ill with the very sort of malady against which they, supposedly, have been vaccinated.

- The primary evidence that is cited by various individuals within the medical and vaccine industries as indicating that vaccines confer immunity protection has to do with the presence of what are deemed to be relevant sorts of antibodies. However, a fair amount of clinical evidence indicates that people without such antibodies are, nevertheless, able to maintain their health despite having been exposed to allegedly infectious diseases while, alternatively, there also are people who have been shown to possess antibodies which, supposedly, protect against contracting a given disease and, yet, become ill with that very disease.

- There is substantial empirical and clinical evidence indicating that, at best, vaccines might have something to do with suppressing the body's response to certain pathological conditions, yet, in the process of doing so, they render individuals vulnerable to an array of chronic illnesses.

- All vaccinations are inherently experimental because not only can one not predict who will, and who will not, become sick despite having been vaccinated, but, as well, one cannot predict who will, or who will not, experience adverse reactions in conjunction with such vaccinations. As such, when mandated, all vaccines are in violation of the Nuremberg Code concerning such medical issues.

- Nearly 5 billion dollars have been awarded to individuals who have been adversely affected by the use of vaccines. The money is paid out by the United States Government because as a result of 1986 federal legislation, the government has permitted itself to become a prostitute for the pimps it serves in the pharmaceutical industry, and the money that is paid comes not from the pharmaceutical industry but from citizens to whom the costs have been passed on through the pharmaceutical, medical and insurance industries.

■ As noted earlier, nearly 5 billion dollars have been paid out to individuals who have had adverse reactions to vaccinations, and this rather substantial amount has been awarded despite the rather arbitrary set of definitions, rules, procedures, and standards of "proof" that have been instituted by the U.S. government in order to protect the image of pharmaceutical companies that in other contexts have been convicted for being criminally responsible or found to be civilly liable for all manner of practices and products that have been shown to kill and maim thousands, if not millions, of human beings on a fairly regular basis.

■ The number of individuals whose adverse reactions to vaccinations has been studied. The individuals – themselves, or through family members, or, occasionally, via medical doctors and hospitals – who report adverse vaccine reactions to VAERS (Vaccine Adverse Event Reporting System) has been estimated by various research studies to be somewhere between 1% and 10% percent of the actual number of adverse events that occur in conjunction with vaccinations. In the light of such data, the notion that vaccines are safe is laughable.

■ Doctors who willingly co-operate with a system that forces on children (or adults) vaccines that are of questionable efficacy or safety and who are compensated for doing so according to the number of people they vaccinate (i.e., the more people they vaccinate, the more money they receive, and a substantial portion of the income of such doctors comes from giving vaccinations) have a massive conflict of interest when it comes to the issue of vaccines and, therefore, cannot be considered to be a credible source of information concerning the alleged benefits or necessity of such procedures.

■ By law, infants in the United States – and in many other locations around the world as well – are required, within twelve hours of having taken their first breaths, to receive the Hep B vaccine which allegedly protects those children against a virus that is claimed to induce various forms of liver pathology. Originally, the Hep B vaccine was only given to infants who were born to mothers who showed evidence of suffering from liver diseases attributed to the presence of the Hep B virus, but for reasons that are far from clear or justifiable, the Advisory Committee on Immunization Practices at the CDC

indicated that such vaccinations should be extended to less than twelve-hour old infants irrespective of the degree of risk to such babies with respect to having been exposed to conditions that might result in some form of liver disease.

- The medical problem against which tetanus is directed is not infectious in nature. The conditions under which the associated disease is incurred are very rare in most facets of modern societies, and, yet, a vaccine for a non-infectious and rare disease has been made mandatory on children in many parts of the United States. Similarly, diphtheria has not been proven to be an infectious disease but gives rise to a pathological condition that is caused by a toxin that is released from a bacteria and, for the most part, not only did this disease largely disappear long before a vaccination for it was invented, but in addition, the best sort of prevention against diphtheria is not a vaccine but, rather is accomplished through being able to have access to clean drinking water as well as an environment which is kept free from the sorts of health conditions that are capable of giving rise to diphtheria.

- The notion of herd immunity – though widely used – is of questionable empirical status. It was based on an informal observation that was made more than two hundred years ago in which an individual noted that a given disease seemed to play itself out in a given population or community and that this might be due to the possibility that those who did not get sick were somehow able to acquire a form of protection with respect to a given disease that was circulating within that community. However, this observation has never been empirically proven to be a sustainable idea either in relation to the notion of natural immunity or in conjunction with the process of vaccination.

In light of the considerable evidence that is given expression through the foregoing research – and those cited works are just a small sampling of the material which is available -- what Alan Dershowitz seems to be proposing is that the government has the right to take away the liberties of individuals in order to protect the public health based on theories that have not been shown to be correct, safe, or effective. Consequently, one can't help but wonder about exactly what parts of the Constitution Mr. Dershowitz is basing his evidently quite

premature and unsubstantiated claims concerning what the government supposedly has a right to do to people?

Undoubtedly, Mr. Dershowitz might be able to come up with any number of "experts" whom he feels have a superior understanding of issues such as disease, vaccination, and health. However, on what actual evidence is such a feeling based, and why should the people – who have "retained rights" and "reserved powers" under the Ninth and Tenth Amendments – be forced to accept as authoritative only those opinions, ideas, values, and principles that members of the Supreme Court consider to be acceptable given that the Supreme Court has no intrinsic authority over, or constitutional standing with respect to, the "retained rights" and "reserved powers" of the people in matters of medicine, health, vaccination, or disease.

These days, one hears terms like "vaccine hesitancy" and "anti-vaxxer" which tend to be used by some individuals who are trying to frame and control a given discussion concerning the issue of vaccines, much as the term "conspiracy theorist" is used by various people in an attempt to control discussions in conjunction with other kinds of controversial topics. When people start using ad hominem attacks in an attempt to undermine another person's perspective and place such a point of view in a derogatory light, then, this is a fairly strong indication that the ones who are using such invective language really do not have much in the way of evidence or rational arguments to present for consideration but, instead, are just trying to induce other people to adopt a negative attitude toward whomever the terms "vaccine hesitancy" and "anti-vaxxer" might be directed.

I'm not against vaccines, and I do not suffer from vaccine hesitancy as long as vaccines are developed in accordance with the following provisions or conditions:

(1) If vaccine developers employ – and this has not heretofore been done -- randomized groups, one of which includes a control group whose members are given a true placebo (meaning that it contains only demonstrably inert materials). Moreover, for those people who wish to argue that it would not be ethical to have control groups whose members are deprived of the potential benefits of vaccines, such individuals are putting the benefit cart before the empirical horse … that is, before entertaining questions about

whether, or not, having a placebo, control group as part of a vaccine study constitutes an ethical violation of some sort, one, first, needs to be able to prove that a given vaccine that has the benefits that are being hypothesized for it, and this can't be done until one conducts the appropriate sort of randomized, controlled studies being alluded to here;

(2) If vaccine developers actually explore – and this has not heretofore been done -- differences in health (both short-term and long-term) between individuals who have been vaccinated and those who have not been vaccinated;

(3) If vaccine developers alter – and this has not heretofore been done -- the temporal framework of their research and look beyond relatively short-term considerations (which are the usual focus of studies for the development of vaccines) and, instead, also investigate what long-term problems might arise following the vaccination of individuals involving different ages, genders, vulnerabilities, conditions, and so on;

(4) If vaccine developers conduct studies – and this has not heretofore been done -- which rigorously investigate the kinds of problems that might arise when individuals are given multiple injections at one sitting rather than being exposed to a single dose of different vaccines at various intervals;

(5) If vaccine developers eliminate – and this has not heretofore been done -- the use of adjuvants, preservatives, stabilizers, and other vaccine additives that do not directly contribute – in a provable manner – to enhancing the condition of immunity rather than just bringing about, say, an increase in antibody counts that do not necessarily confer immunity, and, moreover, do so at considerable risk to the individuals being exposed to such adjuvants and other additives;

(6) If vaccine developers eliminate – and this has not heretofore been done -- the use of all heavy metals (such as mercury or aluminum and irrespective of whether only trace amounts of these substances are present) from vaccines;

(7) If vaccine developers engage in studies – and this has not heretofore been done -- that look at the synergistic interaction between metals such as mercury and aluminum which might be used

in the same vaccine and which, as a result, tend to induce those metals to become substantially more toxic than is normally the case – and, one needs to keep in mind that when such metals are used individually, they are, nonetheless, highly toxic and capable of leading to various kinds of, among problems, neurological deficits;

(8) If vaccine developers utilize – and this has not heretofore been done – only viral antigens that have been properly isolated, purified, sequenced, and proven to be infectious and dangerous;

(9) If vaccine developers can show – and this has not heretofore been done – that vaccines are completely safe and effective for every individual since if vaccines were truly safe and effective then, among other things, the U.S. government would not have paid out nearly 5 billion dollars in acknowledgment that vaccines do cause damage and, therefore, are not necessarily safe and effective;

(10) If vaccine developers are prepared to return to the pre-1986 arrangement in which manufacturers, distributors, and injectors of such vaccines will assume all liability for whatever damages arise as a result of the use of those treatments. If the producer, distributor, or medical practitioner is unwilling to stand behind the safety and efficacy of certain products and, as a result, assume full liability for whatever problems might arise in conjunction with the use of those products, then, this tends to indicate that there is something deeply problematic with respect to the producer's claim (or the claim of doctors who use that product) that such a product is both safe and effective;

(11) If vaccine development, distribution, and application only occurs when possible recipients have been given an opportunity for informed consent concerning the alleged benefits as well as potential risks of a given vaccine and, therefore, are free to accept or reject such vaccines upon being fully informed about them;

(12) If government agencies such as the CDC, FDA, and NIH are no longer permitted to engage in massive conflicts of interests due to having been captured by the pharmaceutical industry, and as a result, vaccines and drugs are approved by the aforementioned agencies for public use in exchange for payments or subsidizations from the pharmaceutical industry, or are approved in conjunction with, say, the registering of patents by members of the CDC or NIH

concerning the development of drugs and vaccines that are, then, imposed on citizens;

(13) If any vaccine developer satisfies all of the foregoing conditions – and this has not heretofore been done – then, I will experience no "vaccine hesitancy" whatsoever, and in addition, I will not be opposed to the use of vaccines with respect to those individuals who are free to accept or reject those treatments.

Returning, now, to the earlier discussion about whether, or not, the Supreme Court is the appropriate venue for determining matters concerning health, disease, or medicine (a topic which Alan Dershowitz touched upon in his earlier comments), one should note that many of the so-called precedents that have been issued by one, or another, setting of the Supreme Court might be unconstitutional because, when closely analyzed, many of those decisions have not necessarily been issued in accordance with the requirements of Article IV, Section 4 of the Constitution which guarantees to the states, as well as the citizens of those states, a republican form of government – that is, a form of government which stipulates how everything the federal government does must reflect the republican moral philosophy which is at the very heart of such a form of government, and in the case of jurists, this requires, among other things, that those individuals cannot be judges in matters that serve their own causes or interests. In short, jurists do not have the Constitutional authority to advance their own hermeneutical beliefs, ideas, theories, principles, and values concerning matters involving health, disease, or medicine as the legal tender with which everyone in the country must come into compliance.

To impose such hermeneutical perspectives on the republic is tantamount to doing what Congress is forbidden to do in the First Amendment – namely, to: "make laws respecting an establishment of religion, or prohibiting the free exercise thereof." When federal jurists seek to set a precedent, they are, in effect, attempting to establish a form of religion because the ideas, values, principles, theories, and beliefs that underlay, and are given expression through, such precedents are nothing more than a set of statements concerning what those jurists consider to be the nature of the truth concerning their – and everyone else's – relationship with reality … i.e., they are

advocating for a form of religion that requires people to acquiesce to those beliefs and in the process prohibits people from being able to freely exercise their own way of engaging the search for truth concerning the nature of the relationship between a human being and Being, the Universe, or Reality.

The First Amendment prevents Congress from acting in the foregoing manner. Article IV, Section 4 prohibits jurists and members of the Executive Branch from acting in that manner.

In effect, based on the previously noted statements of Mr. Dershowitz, he appears to be trying to argue that irrespective of how spurious, fictitious, unfounded, and evidentially challenged the models, theories, frameworks, and systems are that are entailed by a given government's policies, decisions, programs, precedents, and orders, nonetheless, according to him, apparently, people are under a obligation to submit to such proclamations because governments – both state and federal – supposedly have been given a Constitutional right by the Supreme Court to impose on the public whatever the members of those governments like, irrespective of how problematic or scientifically and medically challenged those policies might be.

Alan Dershowitz, like most, if not all, good lawyers, approaches the law like a lot of good baseball players tend to approach baseball. More specifically, baseball players know that individual umpires have similar, but different, ways of: Calling a game, setting the strike zone, and responding to individuals who question the umpire's way of officiating any given contest, and, therefore, good baseball players make adjustments with respect to the way in which they pitch a game, approach hitting, or question calls depending on the umpire who is officiating a contest.

Similarly, good lawyers tend to engage judges within the legal system – whether at a state or federal level -- out of a perspective that is similar in many ways to the manner in which good baseball players operate within the degrees of freedom and constraints that characterize the manner in which a given umpire calls a game. Good lawyers, like good baseball players, know the importance of understanding how any particular judge likes to call a legal contest, and, as a result, such lawyers will attempt to adjust – to varying degrees – their legal strategies accordingly.

Mr. Dershowitz is a good lawyer. Consequently, like a lot of other good lawyers, he appears to be a member in good standing with respect to the aforementioned rule of law game and might even be a possible candidate for a mythical Hall of Fame that – at least informally – could be invented to enshrine the individuals who not only play such a game with skill but who also seem consumed with the expectation that everyone else should play the game in the same way that such lawyers do.

One might note in passing that the foregoing expectation of lawyers (namely, that the law as they see it should be incumbent on everyone else) seems to allude to something akin to a moral clause that is necessary in order for someone to be eligible for consideration with respect to gaining entry into the aforementioned legal Hall of Fame. Be that as it may, Alan Dershowitz is very good at the game known as the "rule of law", but the activity at which he is very good often appears to have little, or nothing, to do with the actual nature of the Constitution.

As noted previously, the activities of every member of the federal government are proscribed by the moral requirements that are inherent in the guarantee of a republican form of government that is proclaimed by Article IV, Section 4 of the U.S. Constitution. And, this is why, for reasons stated earlier, not only are most of the pronouncements of the Supreme Court and other inferior courts often likely to be unconstitutional, but, as well, this is why almost everything that Congress and the Executive Branch do, and have done, is also often unconstitutional since those activities frequently fail to satisfy the principles of morality to which republicanism gives expression … principles such as: Honesty, selflessness, nonpartisanship, refraining from being judges in their own causes, compassion, and fairness.

In the case of Congress and the departments of the Executive Branch that have been created through the legislative process, their activities are not only constrained by the moral requirements of Article IV, Section 4 but, in addition, are also circumscribed by the prohibitions of the First Amendment that concern processes which involve the making of laws that either seek to establish religion in some form or prohibit the exercise thereof.

Political policies – whether economic, financial, institutional, social, legal, commercial, or militaristic in nature – are all predicated on an underlying hermeneutical theory or model about what the members of government believe to be the truth concerning the nature of the relationship between, on the one hand, human beings and, on the other hand, Being, the Universe, Reality, God, or gods. Such policies, programs, and pronouncements are nothing but a process of religion that is being referred to by way of another name, and through a lot of legal legerdemain, misdirection, and the legal equivalent of an elaborate game of Three-card Monte, people like Mr. Dershowitz appear to be trying to convince citizens that the rule of law game which individuals like him have helped to invent is incumbent on everyone.

The individuals who play the rule of law game are likely to attempt to argue – ultimately ineffectively -- that the laws enacted by legislative bodies have nothing to do with First Amendment restraints concerning the establishment of religion or the prohibition thereof. Those same individuals are also likely to try to argue – again, ultimately ineffectively -- that there is no moral philosophy contained in the idea of republicanism, or are likely to claim that the unspecified retained rights of the Ninth Amendment, along with the unspecified reserved powers of the Tenth Amendment are matters that must be decided by federal and state governments through venues of duly appointed jurists.

All of those individuals are seeking to engage in a process of Constitutional gaslighting. They are trying to tell people/citizens that reality is a function of their way of doing things and, consequently, anyone who speaks about the constraints that the First Amendment places on government activities involving the establishment of religion or its prohibition concerning the exercise thereof, or anyone who mentions the absolute set of moral obligations that Article IV, Section 4 places on all federal employees, or anyone who indicates that neither the federal nor state governments have any Constitutional standing or authority with respect to determining or defining the nature, scope, and meaning of the unspecified retained rights of the Ninth Amendment or the reserved powers of the Tenth Amendment is operating in a delusional state.

The rule of law game is another way of referring to the way of power. Those who advocate for the rule of law game or the way of power will always try to convince the people that the latter do not have the liberties, rights, and powers that they actually have, and, as well, will try to convince citizens that those who form governments – whether federal or state – are not under any obligation to operate in a manner that has an intrinsic duty of care concerning the protection and cultivation of the liberties, rights, and powers of the people that have been given full Constitutional standing via, among other provisions, the Ninth and Tenth amendments.

One further set of points should be advanced in conjunction with all that has been said up to this juncture of the present essay. In Article VI, paragraph two, of the Constitution, one finds the following:

"This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding."

There are at least two points that might be made with respect to the foregoing constitutional excerpt. These points are reiterations of things that already have been said, but, nonetheless, need to be said again.

First, in order to make laws "in pursuance" of the Constitution, or to make treaties "under the authority of the United States" those laws must not only be in full compliance with the moral requirements of Article IV, Section 4, but, in addition, those laws cannot transgress the boundaries that have been generated through the restrictions that are present in the First Amendment with respect to either "an establishment of religion or prohibiting the free exercise thereof." Every political policy which gives expression to the making of laws or treaties involves philosophical, social, economic, financial, corporate, commercial, and/or military components, and, therefore, all such components are invariably a form of religion since all those policies are advocating for one, or another, theory concerning the alleged nature of the relationship between, on the one hand, human beings, and, on the other hand, Being, the Universe, or reality, and,

consequently, irrespective of whether one refers to those policies as being philosophical, political, economic, financial, commercial, or military in nature, can one really effectively argue that what is being done is anything except attempting to establish religion or prohibit its free exercise in some fashion?

The second point to note in conjunction with Article VI, paragraph two of the Constitution is the following. In order for a document like the Constitution to be considered consistent and, therefore, reliable, it cannot both permit and forbid the same thing.

The Ninth Amendment indicates that there are "retained rights" – unspecified though they might be – that existed prior to the existence of the Constitution and will continue to exist should the Constitution be subsequently ratified. Furthermore, the Tenth Amendment stipulates that there are "reserved powers" – unspecified though they might be – which have not been "delegated to the United States by the Constitution, nor prohibited by it to the states" that "are reserved to the states respectively, or to the people."

If the people – independently of the states and the federal government (and in the latter case, independence is what is meant by the idea that something has not been delegated to the United States by the Constitution) – have "retained rights" and "reserved powers," then, one cannot interpret Article VI, paragraph two of the Constitution to mean that such "retained rights" and "reserved powers" are to be expunged or withdrawn as a result of the words" "anything in the Constitution or laws of any State to the contrary notwithstanding" without coming to the conclusion that either: (1) The promises which had been made to the people during various constitutional ratification meetings concerning the protection of various "retained rights" and "reserved powers" of the people that were independent of government, or: (2) The process of introducing, discussing, writing, approving, and ratifying the amendments that constitute the Bill of Rights – or both (1) and (2) together -- were duplicitous in nature, and if so, no country that is a duplicitous enterprise can expect to survive for very long without the nature of that duplicity becoming known, understood, and resisted.

Finally, while "the judges in every state shall be bound" by the stipulation that "This Constitution, and the laws of the United States

which shall be made in pursuance thereof, and all treaties made, or which shall be made under the authority of the United States, shall be the supreme law of the land," nothing in what is being said in the foregoing declaration indicates that the people – considered as individuals who are not judges -- are bound by such an arrangement. Nevertheless, notwithstanding the relevance of such an observation, one should not suppose that what is being implied is a call for some sort of political chaos, but, rather, that to which an allusion is being made in the foregoing comments is something that has been unacknowledged, ignored or dismissed for far too long.

For the most part, the Constitution is a document that sets forth a system in which the way of power might be shared between a central, federalized form of authority and a more decentralized and distributed form of authority known as states. That bifurcation of power is – at least in theory – constrained by the moral requirements of Article IV, Section 4 of the Constitution, but, in reality – and any rigorous, competent examination of American history, government, and society since 1787 would confirm this – neither the three branches of the federal government nor the judges of the respective states have managed to comply – in any consistent or continuous fashion -- with the facet of "the supreme law of the land" that concerns the moral requirements of republicanism that are being guaranteed by Article IV, Section 4 of the Constitution.

The conscience of government – whether federal or state – has always arisen from among the people. The fact that there were many people during various constitutional ratification meetings that followed the release of the 1787 Philadelphia Constitution and that were being held in different states, who voiced, again and again, during those meetings that they were concerned about the rights and powers of the people independent of government tends to support the previously noted idea that the conscience of government – whether federal or state – has always arisen from among the people, and, furthermore, the fact that the "retained rights" and "reserved powers" of the people – independent of government (whether federal or state) – were enshrined in the Ninth and Tenth amendments respectively also attests to the foregoing claim concerning the fact that the

conscience of government is a function of the people considered independently of government.

If the people who are addicted to the way of power are to survive as a source of functional governance, the federal and state governments must come to grips with the foregoing reality – namely, that the people constitute a locus of power that is independent of governments. What the federal and state governments need to do if they do not wish to disappear in a self-destructive dissolution of their constitutionally assigned authorities due to the manner in which they have failed to comply with the moral requirements of republicanism, is to find ways to work with the people in accordance with the guarantee that is given through Article IV, Section 4 of the Constitution in order to be able to assist the people to have an opportunity to discover ways of actualizing, in practical and constructive ways, the unspecified "retained rights" and "reserved powers" that have been acknowledged in the Ninth and Tenth amendments respectively.

The federal government and state governments do not have some sort of automatic, default authority or priority over the people. Unfortunately, both the federal and state governments have a long history of trying to usurp, disparage, or deny the "retained rights" and "reserved powers" that have been given to the people through the Ninth and Tenth Amendments of the Constitution.

The foregoing essay has offered some observations, comments, and suggestions concerning how federal and state governments might conceptualize and engage the people as self-actualizing agents who have rights and powers independent of government. Those observations, comments, and suggestions have been introduced in both a general, constitutional sense, as well as in a more specific manner with respect to some of the issues surrounding, and entailed by, COVID-19.

If you would like to explore issues of sovereignty and constitutionality further please read any, or all, of the following books:

1. Quest for Sovereignty
2. The People Amendments
3. Beyond Democracy
4. The Search for Sovereignty
5. Sovereignty: A Play
6. Sovereignty and the Constitution

https://www.billwhitehouse.com/press.htm

Chapter 3: Republicanism

Alexander Hamilton thought that the notion of republicanism encompassed a variety of meanings. John Adams wasn't sure whether the term referred to anything of a determinate nature.

Yet, the only guarantee given in the United States Constitution comes in Article IV, Section 4 in which the federal government guarantees every state a republican form of government. So, if republicanism can have a variety of meanings or, perhaps, no definite meaning at all, why was a republican form of government being guaranteed to every state?

According to some thinkers, republicanism – and, for the moment, let's leave this term undefined until the latter part of this chapter -- gave expression to a "form of life". It could not be reduced down to just a framework for government but encompassed a way of engaging life.

Some historians (e.g., Gordon Wood) believe that republicanism and republican principles were responsible for the demise of monarchical society. However, according to those historians, the dissolution of the latter kind of society didn't happen all at once, but, rather, it took place throughout the 18th century and the transition arose through a variety of historical and social events.

Monarchy was steeped in a web of hierarchy, paternalism and dependency. Over the course of the 18th century, republicanism supposedly led to the desacralization of that web.

For example, republicanism induced people to reflect on the nature and importance of individuality. As a result, republican principles undermined established notions of hierarchy, patriarchy, systems of patronage, and dependency.

According to some historians, there were no real economic causes such as poverty or class struggle that gave rise to the American Revolution. More specifically, relative to the rest of the world, and relative to the their previous situations in their lands of origins, the vast majority of people in the Colonies were freer, more prosperous, and enjoyed more degrees of equality with respect to other inhabitants in the Colonies than had been the case prior to coming to America, and, in fact, those relative advantages helped lay the basis for inducing individuals in America to re-consider their place in the

scheme of things and, as a result, served as something of a catalyst for colonists wanting to seek to retain those conditions of relative social, economic, or political advantage and, if possible, improve upon them.

The principles of republicanism – at least as far as those individuals were concerned who were persuaded by that perspective -- led to large-scale changes in how people thought about life, the individual, family, society, and government. For those who, allegedly, were enamored with republican principles, issues such as: injustice, racism, exploitation, inequality, and so on were all perceived to give expression to abuses of government, and, furthermore, if one wished to eliminate those sorts of problems, then one had to bring about a different form of government.

Those who operated out of a republican perspective believed that in order to change society, one had to change the form of government. However, willingness to set about changing the current form of government, presupposed a change of understanding concerning the nature of the relationship between individual and a variety of social institutions.

In 1760, most people in America accepted the idea of social relationships that were immersed in conditions of: Monarchy, paternalism, hierarchy, patronage, inequality, and the like. Less than fifty years later, many people in America had jettisoned that set of ideas and, instead, were seeking to realize a very different way of engaging in social, political, and economic relationships … relationships that were freer, less hierarchical, more egalitarian, and less entangled in dependency relationships.

Allegiance … loyalty … fealty … Divine right of lordship … stability … order … power … superiority … patronage, and social position were all part of a fiduciary sense of duty concerning individual responsibility that were at the heart of monarchy. The foregoing set of forces framed and regulated how individuals, society, culture, and government operated.

In monarchy, the king/queen was the head of the social family. Subjects were his or her dependents who were treated in accordance with the likes and dislikes of the monarch at any given time.

The king/queen was strong and powerful. Subjects were weak and powerless.

Power was the basic form of currency. It was loaned out at interest by the monarch to those who were willing to serve the interests of monarchy.

Prior to War for Independence, many of the Colonists didn't consider themselves to be American, but, instead, they thought of themselves as British subjects. However, in those days, the English were renowned throughout much of the West for being insolent and insubordinate toward authority – irrespective of whether that authority was religious, economic, or political in nature.

Therefore, unlike the well-ordered and established ways of doing things culturally, socially, economically, religiously, and politically that were present in Europe in 17th and 18th century Europe, the relatively isolated conditions (geographically, socially, economically, and politically) that were present in the Colonies were conducive to nurturing the aforementioned tendency in those from England toward insolence and insubordination. As a result, in Colonial America the cultural inclination of many English people with respect to being insubordinate and insolent toward authority began to manifest itself by means of different forms of resistance and rebellion in relation to various facets of the entire fabric of society in which monarchy was rooted.

Nonetheless, as noted earlier, the foregoing transformation did not take effect right away. In the early-to-middle portion of the eighteenth century, the same sort of educational and cultural background framed the understanding of large segments that encompassed the elite aspects of Colonial America.

Many colonists were familiar with the same books and thinkers. Consequently, important facets of Colonial America shared in a common heritage concerning: Literature, law, philosophy, history, and science.

As a result of this shared cultural heritage, they tended to operate out of the same sorts of sensibilities concerning how to engage life. This included their sense of propriety, manners, and morals.

On the one hand, most English men and women could not vote, and, therefore, had no say in governance. On the other hand, due to the precedents that had been established in the 13th century as a result of the Magna Carta as well as the Charter of the Forests, most people in England enjoyed, to a considerable degree, a form of liberty that was firmly rooted in an array of rights involving speech, thought, travel, trade, and legal trials that were carried into the New World.

Unfortunately, the aforementioned fabric of freedom and liberty were embedded in, and subsidized by, a social/cultural framework that was infused with monarchist sentiments along with the sort of hierarchal and dependency arrangements to which those sentiments gave expression. Consequently, English citizens suffered from a strange sort of affliction in which they were simultaneously both free and not free.

Prior to the Revolutionary War, Colonial governors, leaders, educators, lawyers, and judges tended to be loyalists with respect to the legal, cultural, economic and political currents that were operative in England at the time. This sort of orientation tended to inform and shape many of the activities and institutions that were present in Colonial society.

In addition, despite the presence of a certain amount of piracy and smuggling in the Americas, the vast majority of economic activity took place above board, so to speak, and was done in conjunction with British laws governing trade, shipping, and the like. As a result of the Franco-Anglo hostilities that took place in America during the 1750s, many people in the Colonies were aligned with Britain, and a great deal of British money and resources found their way into the Colonies to foster and support that sort of an alignment.

Religious leaders, institutions, and congregations were proliferating in America throughout the eighteenth century. Whatever religious differences might exist among those leaders, institutions, and congregations, they all seemed to accept – at least during the first half of the 18th century -- the idea that individuals should exhibit deference toward, and obedience to, the leaders who, supposedly, had been placed in authority over them by means of Divine decree (For many, this was an unquestioned assumption rather than a proven fact).

Moreover, religious issues aside, other kinds of hierarchical influences also shaped and organized much of pre-1750 Colonial society. For example, one's military rank had ramifications for social status, and what one did for a living also shaped how other people perceived one's value and place within society.

People tended to accept the idea that society was a complex mechanism with many moving parts. Moreover, each person understood that he or she was tasked with the challenge of trying to find a role and a place within that dynamic process, but, as well, they also understood that the role and place one found tended to carry a pre-determined value as far as other members of society were concerned.

The value that was assigned to an individual as a result of the role and place that the latter person chose (or which was selected for that individual by family or fate) would determine, to a large degree, how one was supposed to interact with other members of society. Behavior was a function of whether the other person with whom one might be interacting was considered to be above or below one in the social hierarchy as a function of the value that had been assigned to various parties through cultural assessments based on considerations related to nobility, wealth, social status, origins, marriage, and so on.

Before the Revolutionary War and even during that latter period of conflict, nobility, gentlemen/ladies, and the common people constituted three groups that made up society. Within each of the foregoing broad groups, an array of value distinctions arose through which all of society became hierarchically arranged.

Thomas Jefferson believed that commoners should not be included in any assessment of national character. Alexander Hamilton looked down on commoners as an unthinking lot.

John Adams – another one of the so-called "Founding Fathers" -- considered the common people to be without learning, insight, or eloquence. Gouverneur Morris – one of the so-called "Framers" of the Constitution – had come to the conclusion that commoners had a sense of morality that was entirely a function of their personal interests, and this was a perspective that overlapped with the opinion of, among others, James Madison … an opinion that Madison developed as a result of his experiences in Virginia politics as well as in conjunction

with the many problematic machinations that took place during various activities associated with the operations of the Continental Congress.

For many, if not most, of the leaders during the period leading up to, and including, the Revolutionary War, only those who populated the ranks of nobility/aristocracy or who were considered to be gentlemen possessed the kind of minds, virtues, and ambitions that were capable of guiding society along the paths of righteousness. Aristocracy and gentlemen were individuals of character.

Commoners, on the other hand, possessed no character. At least this seemed to be the opinion of many of those who, as a result to their arbitrarily determined sense of status, perceived society through the lenses of the viewing glasses that were constructed from their so-called aristocratic or gentlemanly qualities.

Parentage, manners, wealth, property, dress, aesthetic sensitivities, classical learning, and the sort of activities (e.g., reading, dancing, socializing, traveling) that were pursued by a person determined who was, and was, not a gentleman. Character was, to a considerable degree, considered to be a function of birth. Thus, character did not seem to something an individual needed to forge through a constructive fashion that required an individual to struggle with the difficulties of life.

Furthermore, it was the task of aristocrats and gentlemen to consume. It was the task of commoners to produce objects and services that were consumable.

Out of the goodness of their hearts, aristocrats and gentlemen consumed in order to provide the poor with a means of livelihood (i.e., providing commodities and services for the well-to-do). If the poor were not poor and, therefore, had no need to be provided with a source of livelihood by aristocrats and gentlemen, then, according to the members of nobility and the gentlemanly class, commoners would fall prey to their inherent laziness and would lead lives of purposeless idleness.

As long as one worked to earn money in order to survive, then one was a commoner. If one wished to be a gentleman, then, whatever activities one pursued could not be done for the sake of money but had

to be a function of some other sort of non-financial motivation, and, consequently, any form of monetary remuneration that arose from those ventures had to be purely incidental, if not superfluous, in nature.

Aristocracy and being a gentleman were about being independent from dependency. To rely on trade and commerce in order to survive were considered to be forms of dependency that were antithetical to the life of an aristocrat or gentleman.

Being engaged in trade – especially retail trade – was considered to be inconsistent with being a gentleman. Trade was steeped in dependency relationships, and, as far as aristocrats and gentlemen were concerned, perhaps an even more problematic aspect of trade is that the aforementioned classes of individuals believed trade gave expression to a person's desire to pursue one's own interests quite apart from what might be considered to be for the good of society in general (and, of course, this assumes that aristocrats and gentlemen knew what was good for society).

Owning an estate was consistent with aristocracy and being a gentleman. However, individuals other than the owner must do the work of an estate … that is, work must be done by those who were dependent on wages in order to be able to survive.

Working with one's hands ran contrary to the life of an aristocrat or gentleman. In addition, working out of necessity, rather than as a result of free choice, removed one from the ranks of being a gentleman.

Because, to a considerable degree, the sort of legal titles that identified aristocracy in Europe were not present in Colonial America, being perceived as a gentleman – rather than a member of the nobility -- seemed to be the best gateway capable of opening one up to the upper echelons of American society. Among other things, if one had the reputation of being a gentleman, then one would enjoy access to forms of financial credit and preferential treatment that were not available to commoners.

To be a gentleman meant that one had social credibility. With that sort of credibility came an aura of authority, and, as a result, one's opinions carried weight.

To be a gentleman was to be perceived as a person of honor. Gentlemen supposedly did not act from personal interest or due to lowly appetites but, instead, acted out of a sense of moral and social propriety concerning any given issue.

Gentlemen were individuals of conscience. Honorable ambitions were not to be confused with the morally questionable ambitions of commoners and merchants.

Gentlemen were people of their word. Gentlemen were honest and trustworthy.

If one were not a member of the aristocracy or a gentleman, one was a member of the vulgar, common mob and did not possess honor. Freedom meant something very different depending on the side of the foregoing cultural divide in which one was ensconced.

To be a gentleman was to acknowledge, and accept, the system of hierarchy that governed society, in general, as well as that generated the social gradations that characterized the relationships among gentlemen. On the one hand, Kings/Queens, nobility, and their appointees constituted the overarching leaders of society, while, on the other hand, gentlemen and the families of which they were heads, were the localized representatives of law and order.

Monarchy was family writ large. Just as one owed one's fealty to the ruling monarch (and all the relationships of superiority and inferiority that this entailed), so too, one owed one's fealty to the patriarch of one's own family, and all the relationships of superiority and inferiority that this entailed).

In monarchy, blood and marriage helped shape society. In Colonial America, blood and marriage also organized a great deal of society quite apart from issues of nobility.

In pre-revolutionary America, many local and provincial governments tended to be operated through a web of direct and indirect monarchical influences. In other words, a great deal of the fabric of governance involving legislation, common law, judges, policing, military leadership, and the like were a function of monarchical-based family ties.

Blood and marriage – whether in terms of monarchy or family -- tended to create a network of obligations and rights. Law and

governance were often a reflection of that network of obligations and rights.

Furthermore, commerce and trade also tended to be a function of the aforementioned network of obligations and rights. Family came first with respect to that kind of network.

However, women, children, and slaves (both indentured and otherwise) were considered to be chattel within the context of the foregoing network. Tens of thousands of white men and women came to America as indentured servants, while there were a half million, or more, black men and women who had been brought to America to service the gentlemen's club that been made possible through monarchy, blood and marriage.

Unlike England, American colonists – at least those in power – passed legislation that circumscribed the movement of servants. In addition, there were legal and cultural protocols that governed problems involving run-away servants of whatever description.

Servants could not buy, own, or sell property unless their masters agreed to those kinds of transactions. Furthermore, without permission, servants could not marry.

Servants could be bought, sold, and rented. They could serve as a form of payment for unpaid debts of their masters, and, in addition, they could be bequeathed to other individuals in wills.

To some extent, indentured servitude gave expression to a less onerous and, generally, less permanent condition than being a slave. Nonetheless, the treatment of servants and slaves was governed by many of the same restrictions and, consequently, many people in Colonial America accepted the idea that, under certain conditions, both black and white people could be controlled and considered as inferior species of human beings.

The web of hierarchical relationships governing servants and slaves were of one kind, while the web of relationships governing gentlemen was of another kind. Nonetheless, in each case, those relationships were infused with qualities of dependency of one variety or another.

Arrangements of: Mutual assistance, reciprocal allegiances, exchanges of favors, and the requirements of etiquette were often a

function of the dynamics of patronage relationships that governed the world of gentlemen and also divided that world into those who were superior and those who were less so. Dependency created a network of ties marked by obligation and loyalty.

The appointment of: Military officers, judges, sheriffs, clerks, justices of the peace, and officials were all a function of the foregoing sort of dependency networks. Those networks were designed to control events – as much as this could be done -- in a manner that benefitted those who controlled the way things were done.

Consequently, no one was truly independent. Patrons needed their clients as much as clients needed their patrons.

To whatever degree Colonial America was entrenched in monarchy-infused networks, then, governance was a matter of adjudicating and controlling matters to serve the interests of the monarchy. As Americans sought to become independent of networks dominated by monarchy, gentlemen used their reputations and concomitant influence to establish a new set of dependency relationships – economically, militarily, legally, and politically – that might prove to be beneficial to adjudicating and furthering the interests of gentlemen within America … but those dependency relationships might not necessarily serve the interests of the commoners who constituted the greatest portion of the population in America.

To a great extent, Colonial economics was largely governed by personal relationships. A person tended to do business with those who were known to that individual.

Despite the mercantilist assumptions that shaped a great deal of colonial economics -- in which the goal was to export more than was imported and, thereby, enhance the overall wealth of society -- many well-to-do individuals in the colonies increased their fortunes by extending credit – in various forms – to other individuals within their communities. The goal underlying that activity was not only to become as independent of the vagaries of trade as one could but, as well, to develop a network of dependency obligations and allegiances through that process of extending credit.

People's reputations were enhanced or diminished according to how they fit into the foregoing sort of network of obligations and allegiances. Community influence tended to be a function of the foregoing kinds of network dynamics.

As a result, the law in local communities was often rooted in the arbitrary likes and dislikes of those who wielded influence within those localities. As such, law and order were functions of the influence wielded by reputation rather than being a function of well thought out legal systems that were capable of being defended independently of a web of reputations and associated influences

In Colonial America, the source of reputation and influence were, in many ways, a matter of one's connections within the network of monarchy that had been exported to the New World. However, over time, the wellsprings of reputation and influence shifted from the degree to which one was ensconced in the web of monarchy and became a function of how and where one fit into the web of colonial and continental revolutionary politics and economics.

The constitution that came out of 1787 Philadelphia was, to a large extent, a work of reputation and influence. For example, with the exception of the guarantee of republican governance that was set forth in Article IV, Section 4, in many ways the Constitution was not a document that was rooted in first principles of law and governance that had demonstrable value independently of the reputations of those who were constructing that document but was, instead, a document that gave expression to the likes and dislikes of the people who were producing that document.

Leaders in Colonial America were people of high community standing and good reputation. Social distinctions were the basis of political authority.

Thus, social standing and reputation were used to leverage political authority. Political authority was rooted in the idea that the common people should be willing to acquiesce to, and be guided by, the social – and, therefore, legal and political – influence associated with those individuals who possessed standing and reputation.

Commoners were bereft of power and did not possess the social connections that might be conducive to furthering their interests.

Commoners were perceived to be without the sort of reputation and concomitant social influence that could serve as a basis for political authority.

Consequently, those who were members of the gentleman's club considered themselves to have an obligation to serve those who were without power. Moreover, public service was to be done without thought of recompense and was often considered to be a burden that must be borne by the elite.

Order, stability, and authority within society were all considered to rest upon a foundation of social and moral respectability. If individuals with the wrong sort of character were placed in, or assumed, positions of authority, then gentlemen believed that social order and stability would disappear.

In many ways, the Revolutionary War was a clash over which network of reputations and social influences were to govern America. More specifically, should a web of reputations and social influences that were ensconced in a monarchist network determine who governed the colonists – most of whom were commoners -- or should governance be entrusted to a group of individuals whose reputation and social influence was independent of monarchy?

As noted toward the beginning of this chapter, according to Gordon Wood, the network of monarchal ties that were rooted in relationships of dependency, hierarchy, and patronage were destroyed during the 18th century, and, in the process of disintegrating, the realm of monarchy supposedly was replaced by a society that was characterized by qualities of democracy, capitalism, and liberalism. Unfortunately, that realm of alleged democratic, liberal and capitalistic values fostered its own set of influences that were built around relationships of dependency, hierarchy and patronage.

Monarchy might have dissipated. Nonetheless, it was replaced by a system that was just as rooted in issues of control and power as monarchy had been.

Wood is right -- a transformation had taken place within American society during the eighteenth century – especially during the latter part of that century. Yet, that transformation was about the form or framework through which power, control, dependency, hierarchy, and

patronage would be realized rather than being about the acquisition of sovereignty by the vast majority of American people.

Supposedly, republican values and principles undermined the values and principles that glued together monarchical society. In reality, one system of control, hierarchy, dependency, and patronage was replaced by another such system.

Through the influence of republican values, principles, and behavior, the class origins of the individuals who could occupy the apex of power might have undergone a transition from those who constituted nobility to those who made up the set of gentlemen in America, and, furthermore, while the rules of the power/control game that arose during the latter part of the eighteenth century in Colonial America might have undergone a substantial set of changes – that is, from the rules governing monarchal societies to the rules governing societies rooted in democracy, liberalism, and capitalism -- nevertheless, something very important had not changed. More specifically, irrespective of whatever the origins of those who governed might be and whatever the nature of the rules might be through which governance was realized, the process of governance was still a matter of one group of people (nobility and or gentlemen) assuming that they were entitled to control and exercise authority and power over other individuals (commoners and merchants).

Just prior to the mid-point of the eighteenth century, Charles Montesquieu (born Charles Louis de Secondat) released *L'Esprit des lois* (*The Spirit of the Laws*). Among other things, that work gave expression to the idea that: Executive, judicial, and legislative powers should operate through separate spheres of influence.

Montesquieu believed that many countries in Europe already involved a mixture of republican and monarchal perspectives concerning both the nature of governance, as well as the engagement of life in general. He further believed that a transition to a more republican form of government involving a tri-partite system of power sharing might be most conducive to the realization of liberty, both individual and collective.

During the eighteenth century, those who were committed to the idea of monarchy often implemented republican values and principles to give expression to the foregoing sort of orientation. At the same

time, many of those who were seeking some form of governance or manner of organizing society that was non-monarchal in character were also inclined to operate out of a republican perspective.

Republicanism was at the heart of the Enlightenment. The Enlightenment involved an interest in the thoughts, values, ideas, principles, and behavior of leaders in classical republics such as: Rome, Sparta, and Athens.

Republicanism encompasses the way of life to which classical republics seemed to give expression and that was elucidated in the works of, among others, Virgil, Tacitus, and Cicero. Enlightenment republicanism became a modality of thought that was used by poets, essayists, and philosophers to critique society, governance, economic activity, banking, and a variety of other 17th-18th century institutions.

Republicanism advanced ideals such as: Selflessness, liberty, meritocracy, integrity, and modest modalities of living. Consequently, those who were enamored with republican ideals criticized instances of: Selfishness, tyranny, unearned status, corruption, and profligacy that populated much of the social, political and economic landscape of 17th and 18th century life in Europe and Colonial America.

Republicanism held that, in essence, human beings were political beings. Furthermore, republicanism maintained that the best way to realize that dimension of being human was through participating in governance through virtuous means.

Among other things, to be virtuous meant that an individual had to be free of any sort of dependency that might corrupt the nature of one's participation in governance. By being virtuous – that is, by being willing to sacrifice one's personal interests for the good of the community -- an individual secured liberty for oneself as well as for others.

The primary form of dependency from which republicanism sought to distance an individual had to do with trade and the marketplace. To whatever extent an individual was dependent on commerce in order to survive, then, from a republican perspective, that person's capacity for acting in a disinterested manner was corrupted and, therefore, the liberty of everyone affected by such commerce was placed at risk.

However, to hold fast to the foregoing sort of disinterested orientation required a variety of ancillary qualities. If one lacked: honesty, nobility, courage, honor, integrity, perseverance, selflessness, and compassion, then, one would be unlikely to be able to achieve, or remain committed to, a sense of disinterestedness concerning the nature of governance and its alleged republican goal of promoting the liberty and welfare of everyone that was established within the context of any given sphere of governance.

To be disinterested was not a matter of lacking interest in what went on within the process of governance. Instead, to be disinterested was to harbor no personal biases or sense of partisanship concerning the process of governance … especially with respect to the manner in which governance might affect one financially – whether directly or indirectly.

Republican virtue required one to be willing to sacrifice one's personal interests for the benefit of the community, state, or country. Republicanism was about serving – without recompense -- the interests and needs of others so that everyone might have an opportunity to realize (according to their capacity) the fullness of liberty.

Thomas Jefferson's version of republicanism involved the idea of a yeoman farmer who owned property and was self-sufficient – i.e., independent of commercial transactions that involved customers. Yeoman farmers were individuals who relied on their own labor and resources to maintain themselves and their lands.

Commoners did not own their own property. Moreover, they acquired whatever resources they had by hiring out their labor to others or by relying on customers, and, in each case, their lives were governed by the dynamics of dependency and the vagaries of the marketplace.

Therefore, according to the thoughts of people such as Jefferson – as well as many other, so-called "Founding Fathers" -- commoners were likely to be overwhelmed by the shifting sands of dependency and marketplace volatility. From the perspective of republicanism, commoners could not be leaders in government because their financial circumstances would undermine any attempt by them to make decisions that were independent of their own dependencies, biases,

partisan views, and personal interests … in short, commoners would be incapable of being disinterested with respect to the manner in which the process of governance supposedly needed to be conducted.

If the leaders of government were virtuous – that is, if they were disinterested in personal gain and committed to securing liberty for everyone – then, according to the republican perspective, institutions, charters, contracts, and civil liberties would arise that could be trusted to serve everyone's interests because the individuals responsible for establishing that form of governance would secure and regulate those possibilities in a completely disinterested, impartial, fair, egalitarian, and non-partisan fashion. On the other hand, if the leaders of government were corrupted by an array of financial and ideological dependencies that undermined their capacity to think, judge, and behave in a disinterested manner, then, nothing in governance could be trusted to serve or advance the welfare and liberty of society in general.

One potential fly in the republican ointment, however, was that very few – if any – individuals in the colonies could disengage themselves completely from economic dependency relationships of one kind or another. In different ways, commerce, trade, or the marketplace filtered into the lives of almost everyone in the colonies and, therefore, such economic and financial forces contaminated disinterestedness with various forms of commercial dependency that were capable of biasing thought, judgment, and behavior in problematic ways … ways that – potentially – might adversely affect the extent to which many people in society might be able to have access to any meaningful sense of liberty, welfare, or justice.

Furthermore, the idea of being disinterested should not be restricted to financial considerations. If the principle underlying governance is that one's judgments cannot be biased and partisan as a way of advancing one's own personal gain by means of this or that instance of political judgment, then, that principle also should extend to all policy matters and not just to issues involving financial matters.

Presumably, if financial dependency concerning the marketplace is a mark of political corruption, then, any form of philosophical, economic, or political affiliation also gives expression to a form of dependency that is capable of adversely affecting the welfare and

liberty of others. One must exercise integrity, impartiality, honesty, fairness, independence, and objectivity in all instances of political judgment – not just financial ones -- in order to exhibit the kind of disinterestedness that a republican form of governance requires of its practitioners.

To tie the quality of being disinterested exclusively to just financial issues and whether, or not, a person -- while serving in the federal government – might use one's political influence and votes as a way of financially benefitting that individual makes no sense. If one must be: Non-partisan, unbiased, impartial, fair, just, objective, egalitarian, honest, noble and, so on, when it comes to whether, or not, one's political behavior will beneficially enhance one's own financial situation, then, an individual should have integrity across the board and be: Non-partisan, unbiased, impartial, fair, just, objective, egalitarian, honest, and noble in all facets of political behavior.

In other words, can anyone persuasively argue that as long as a member of the federal government has integrity with respect to not financially benefitting himself, or herself, by means of that person's government employment, then, it follows that such an individual need not have integrity with respect to other facets of her or his job? Presumably, exhibiting the quality of being disinterested in the republican sense should permeate every aspect of the intention and performance of an employee of the federal government, or guaranteeing a republican form of government to every state becomes empty.

As much as republicanism was dedicated to the idea of liberty, it also was dedicated to all manner of government corruption. Engaging governance through the lenses of republicanism required an individual to be: Disinterested, unbiased, objective, impartial, honest, and egalitarian.

Living in accordance with republicanism, required one to have honor and integrity. Those qualities enabled one to actively stand in opposition to corruption, both personal and governmental.

One might argue that sovereignty – as understood from the perspective of Chapter 15 – is a measure of, or index for, the extent to which a given mode of governance can be considered to be manifesting the quality of being disinterested … in the republican sense of the

word. In other words, to advance the sovereignty of one individual, one must advance the sovereignty of all people, and by advancing everyone's sovereignty, one will not be able to enhance one's own interests at the expense of other individuals … and this is the essence of republicanism.

As noted earlier, Gordon Wood maintains that republicanism was one of the primary forces that helped to desacralize monarchy and, thereby, enabled a colonial society that was deeply embedded in a monarchal model characterized by hierarchy, dependency, and patronage to transition into a society that was imbued with qualities of egalitarianism, independence, democracy, and capitalism. I'm not sure that republicanism accomplished the things that Gordon Wood says it did.

For me, a more plausible hypothesis would be to consider the possibility that the network of dependency, hierarchy, and patronage to which the system of monarchy gave expression in Colonial America became transferred to a federalist system of governance that gave lip service to the ideals of republicanism but pursued a very different path. In other words, while the system of monarchy might have been overturned in America during the 18th century, the qualities of dependency, hierarchy, and patronage tended to remain but were refashioned as a federalist form of government that could be used to deprive people of sovereignty … just as monarchy had been used to achieve that same end.

The moral principles associated with republicanism did have the potential to transform society. Unfortunately, that potential was squandered and replaced with a two-tiered system of government (federal and state) that, to a great extent, ignored those principles and, instead, devolved into a game of power musical chairs from 1776 onward.

Quite independently of republicanism, there were a variety of factors that weakened and undermined the influence of monarchy. For example, there were many different kinds of religious affiliation in Colonial America, and, therefore, the influence of the Church of England -- which often served as a surrogate for monarchal interests – tended to be attenuated in America.

Moreover, the population of America was exploding during the second half of the 18th century. For example, the number of inhabitants in Colonial America doubled to two million people between 1750 and 1770, and, then, doubled again to four million people between 1770 and 1790.

To a great extent, this expanding populace was more interested in finding and securing opportunity, land, wealth, and power than it was interested in worrying about its possible responsibilities toward monarchy. As a result, the allegiances of those individuals often were more pragmatically directed toward improving their own financial, economic, and social situation than those allegiances were concerned with the issue of loyalty to monarchy.

Concomitantly, a considerable number of individuals within America migrated again and again as economic possibilities opened up in a country that was expanding westward. These sorts of individuals were consumed with the contingencies of their own changing lives and, consequently, had little time or inclination to think about whatever duties, if any, they might have with respect to the King (Queen) of England or his (her) appointees.

In addition, representatives of nobility were omnipresent in England, but, to a great extent, they were relatively absent in Colonial America. Therefore, much of Colonial America was devoid of the trappings of monarchy, and, as a result, the social, political, and cultural vacuum that existed due to the relative absence of nobility in America was ripe for being dominated by other individuals – namely, the class of gentlemen that was assuming prominence in America.

In many ways, the Constitution of 1787 was a gentleman's agreement that sought to replace monarchy with a form of governance that would replace the class of nobility with members from the class of "gentlemen". That agreement was intended to primarily serve the interests of gentlemen and was intended to prevent commoners from being able to change much of anything in the future.

Once written, the Constitution became something of a fait accompli due to the games of manipulation that were played out during the process of ratification (see: *The Unfinished Revolution* for a more in-depth account of some of the games that are being alluded to in the opening sentence of this paragraph). As a result, the

Constitution began to be understood and implemented in a manner that was the antithesis of republicanism.

For instance, within the context of republicanism, there are only two senses of representation that are capable of being defended. One sense of republican representation has to do with using the influence of one's political office to simultaneously advance the sovereignty interests of all citizens, while the second sense of republican representation is a function of operating in accordance with the principles of republicanism with respect to everything one does.

Consequently, members of a federalist form of government that guarantees a republican species of governance – as the U.S. Constitution does -- cannot represent the interests of individual constituents unless this is done in accordance with republican principles of morality and, as well, unless that representation enables other members of society to be benefitted in the same manner as the constituent being represented (which is, itself, an expression of republican moral principles). This means that a form of federalism that guarantees a republican species of government is not about the idea of majority rules that most people associate with democracy but, instead, is about acting in accordance with republican moral values and principles, and, unfortunately, from 1787 forward, American governance rapidly drifted away from the guarantees of Article IV, Section 4 and became a process in which different dimensions of the Constitution were leveraged to serve the interests of whomever was able to befuddle the American people and acquire the reins of power.

Aside from representational issues, Article IV, Section 4 also requires one to entertain the idea that the Preamble to the Constitution should be filtered through the principles and values of republicanism. Whatever is meant by the notions of: Justice, domestic tranquility, the common defense, general welfare, and liberty, those ideas need to be filtered through a framework of republican morality that is woven together with strands of: Impartiality, non-partisanship, objectivity, honesty, nobility, disinterestedness, integrity, fairness, egalitarianism, and so on, but, to a great extent, the words of the Preamble were reduced to nothing more than a literary flourish at the beginning of the Constitution that was meant to inspire the electorate but were never meant to be realized.

In addition, all of the often cited clauses of the Constitution – such as the "proper and necessary clause", the "commerce clause", and the "supremacy clause" – must be understood in terms of the guarantee of a republican form of government to which Article IV, Section 4 of the Constitution gives expression. If this is not done, then, one can hardly be described as guaranteeing a republican form of government to each of the states, and, to a large extent, the foregoing clauses were never viewed through the lenses of republicanism but were, instead, filtered through the aspirations of power.

Moreover, in order for the guarantee of republicanism to be realized, the duties of the legislative, executive, and judicial branches of government that are outlined in the Constitution must be circumscribed by, and give expression to, the principles or republicanism. In addition, the Bill of Rights must be implemented and regulated in accordance with the moral values and principles of republicanism.

Unfortunately, for the most part, in neither of the foregoing cases, was the promise of Article IV, Section 4 in the Constitution realized. Instead, the different branches of government often just pursued power for self-serving, arbitrary ends.

Even the realm of state's rights -- which, supposedly, encompasses issues that are neither specifically assigned to the federal government nor prohibited to the states -- should operate within a framework of republican governance. More specifically, any actions of a state that affect, or impinge upon, a citizen's right to freely operate out of the sphere of republican governance that has been established through, and, guaranteed by, the U.S. Constitution must be capable of being reconciled with republican principles of governance.

In areas where states are free to act – that is, areas that are neither specifically assigned to the federal government nor prohibited to the states – states are not entitled to act in any way they like. Instead, the guarantee of a republican form of governance in relation to the states means that the federal government has a fiduciary responsibility to the citizens of any given state to ensure that those individuals are treated by the states in a republican manner … even in those areas in which states are entitled to generate their own policies.

However, states' rights were rarely, if ever, considered from a republican point of view. Instead, states' rights were understood in terms of the attempts of one locus of power (the states) to push back against another locus of power (the federal government) in an eternal struggle to determine who got to control the lives of other people – that is, the citizens of the United States.

However, the ninth and tenth amendments indicate that states do not necessarily have primary jurisdiction with respect to any policy areas that are not specifically assigned to the federal government nor prohibited to the states. The ninth and tenth amendments of the Bill of Rights indicate that the citizens of the United States – irrespective of the states in which they reside – have rights and powers that are independent of states, but as is the case with respect to the rights of states, the rights and powers of the people must be exercised in accordance with republican principles of morality.

While a number of the participants in the 1787 Philadelphia Convention were active members of the Continental Congress, and while a number of other participants in that convention had served in the Continental Congress at some point in the past, there were quite a few other individuals who were in attendance during the Constitutional Convention that had never been an active part of the Continental Congress. Why were many – if not all -- current members of the Continental Congress not in attendance at the Philadelphia Convention, and why were many individuals who were in attendance at that convention either not current members of the Continental Congress or had never been members of the Continental Congress?

Patrick Henry had refused his invitation to the Philadelphia Convention because it had the smell of monarchy about it. And, indeed, the idea of a federalist form of central governance is entangled in many of the same problems of hierarchy, dependency and patronage that also swirl about monarchy.

One wonders how committed – actually rather than nominally -- any of the signatories to the 1787 Philadelphia Constitution or the leaders at the various ratification conventions were to the principles of republicanism. For instance, irrespective of whether, or not, the participants to the Constitutional Convention owned slaves, they collectively enshrined slavery into the Constitution and, as a result,

their self-serving judgments and actions adversely affected American history for more than 200 years.

What does enshrining slavery have to do with exhibiting integrity and honor? What does enshrining slavery have to do with qualities of being impartial, unbiased, objective, noble, egalitarian, and the like – that is, qualities that give expression to the very essence of republican values and principles?

George Washington made a big deal of his retirement from public life following the cessation of hostilities in relation to the Revolutionary War. He was lauded throughout the Western world as a man of integrity who, unlike so many past historical figures, had not sought to leverage his military successes in order to become the head of a country, and, yet, a mere four years later, Washington had been seduced into coming out of retirement and lending his name to a cause (a new constitution) in order to bestow credibility upon a group of individuals who were to be associated with that cause.

To live in accordance with republican values, one had to honor one's words. In 1783, Washington, to great fanfare, had said he was retiring from public service, but, in 1787, those earlier words seemed to have little value for Washington.

However understandable Washington's actions might have been from this or that perspective, those actions do not seem to be very republican in nature. By agreeing to participate in the Philadelphia Convention, he was becoming involved in a process in which he was not a disinterested party and from which he stood to derive benefit (e.g., a presidency) … that is, he was serving as a judge in his own cause, and this was antithetical to republicanism.

If Washington had completely distanced himself from the Philadelphia Constitutional Convention and, then, subsequently (i.e., after the process of ratification had been completed) had been called upon by the country to come out of retirement in order to offer a selfless form of public service, then, perhaps, a case could be made that he was only going back on his word – which was a matter of honor -- in order to serve a higher purpose … namely, the welfare of the country. However, by allowing himself to become entangled in the machinations of the Philadelphia Convention and the subsequent ratification process, he was acting in opposition to the very principles

of republicanism that had been enshrined in Article IV, Section 4 of the Constitution because he was advancing his own interests, as were the other members of the Philadelphia Convention.

In addition to the foregoing considerations concerning Washington, reflect on the following: During the Revolutionary War, Washington thought so highly of Thomas Paine's work: *Common Sense*, that Washington arranged for the purchase of many copies of Paine's book to be distributed among the soldiers he commanded, and, as well, he encouraged his troops to read that book. Yet, after the French imprisoned Paine in 1793 during the reign of terror that took hold at a certain point within revolutionary France, Washington refused to lift a finger to seek the release of Paine.

Deeply disillusioned by Washington's failure to act, Paine leveled a barrage of criticism against Washington … someone whom, previously, Paine considered to have been a friend. In a letter that reached the President as the latter was preparing to leave office Paine stated that: "Monopolies of every kind marked your administration almost in the moment of its commencement. The lands obtained by the revolution were lavished upon partisans; the interests of the disbanded soldier were sold to the speculator; injustice was acted under the pretence of faith; and the chief of the army became the patron of the fraud." Paine went on to assert: "The world will be puzzled to decide whether you are an apostate or an imposter; whether you have abandoned good principles, or whether you ever had any."

Paine's criticisms of Washington maintain that the latter individual had failed to conduct himself with the sort of integrity that is consistent with republican moral principles and values. According to Paine, the President had not been impartial, unbiased, objective, or fair during his tenure in the Executive Branch of government but was, instead, partisan and, as a result, did not serve the interests of all of the people of the United States.

Paine did not refer to Article IV, Section 4 of the Constitution in his letter. Yet, in effect, Paine was charging the President with having failed to act in accordance with the duties of care that are encapsulated in that aspect of the Constitution.

One can spin the motives of the participants in the Philadelphia Constitutional Convention in any number of ways, and, perhaps, when

filtered through the perspective of some of the foregoing spin scenarios, the motives of at least some of the Convention participants might be considered to have been honorable and sincere. Nonetheless, at least for me, there seem to be a number of issues that cast the results of the Philadelphia Convention in a rather dubious, shadowy light.

More specifically, the Annapolis Convention that preceded the 1787 Philadelphia Convention was a failure precisely because most of the people who were supposed to attend the 1786 convention in Annapolis did not show up (or showed up too late), and, therefore, nothing of an official nature could be decided. The few individuals who did manage to attend the meeting in Annapolis passed on a report to the Continental Congress suggesting that another attempt to resolve outstanding problems concerning the existing framework of governance should take place in Philadelphia the following year.

Subsequently, the Continental Congress tasked the Philadelphia Convention with working out some amendments to the Articles of Confederation. Therefore, the purpose of the Convention was about modifying the Articles of Confederation rather than replacing them.

Furthermore, the results of the Philadelphia Convention were supposed to be presented to the Continental Congress. In turn, Congress would debate the issues arising out of the Philadelphia Convention before bringing various matters to a vote.

Although the members of the Continental Congress did begin to debate various portions of the Philadelphia Constitution, the delegates at the Philadelphia Convention had written a letter that accompanied the Constitution which urged that citizens – and not the Continental Congress -- should be allowed to vote directly on whether, or not, the Philadelphia Constitution would be adopted.

The discussion that had been taking place in Congress was suspended. Ratification conventions were organized in each of the states.

For the most part, the procedural rules governing those conventions were written by individuals who were inclined toward the federalist point of view and, as a result, those rules were used to manipulate what could and could not take place during the

conventions – often to the disadvantage of those who were not inclined toward a federalist perspective. In addition, with the exception of New York, those conventions were held in cities/towns where federalist sympathies ran high, and this atmosphere of dominance was often used to intimidate or undermine those who were not aligned with the federalist perspective.

At the Philadelphia Convention, George Mason had wanted to include a bill of rights in the Constitution. Other members at the Convention resisted those efforts, and this was one of the reasons why Mason would not sign off on the Constitution.

Furthermore, during different ratification conventions, a number of delegates also advocated introducing specific rights into the Philadelphia document. The forces backing federalism opposed those suggestions and insisted that the Constitution must be accepted, or rejected, as is … although the arguments that were given for why things must be done in this manner tended to be arbitrary and intended to serve the interests of the federalists rather than the generality of the citizenry.

If things were to have been done in accordance with republican principles – something that was guaranteed by Article IV, Section 4 of the Constitution, the ratification process should have required all states to vote on the Constitutional issue on the same day or set of days. By stringing the process out over several years, the ratification process permitted people in different states to try to influence what was taking place in other states or be influenced by what was transpiring in other states with respect to the Constitutional issue, and none of this can be reconciled with republican principles.

Furthermore, citizens should have been permitted to vote directly about whether, or not, to accept the Philadelphia Constitution without having to attend ratification conventions. Instead, they were required to vote for delegates who, in most cases, would be required to travel to localities where federalist influences were prevalent and, as a result, be subject to an array of dirty tricks, manipulative activities, and forms of intimidation or undue influence that were present at many of the ratification conventions.

In addition, there should have been an attempt to be as inclusive as possible with respect to who could vote for, or against, the

Constitution. Instead, many people (e.g., women, blacks, Indians, poor people) were often excluded from that process.

Article IV, Section 4 of the Philadelphia Constitution guaranteed that the federal government would provide a republican form of government to each state. Yet, many facets of the push for a new Constitution – from the Philadelphia Convention to the ratification conventions -- were riddled with problems that placed such a guarantee in a very dubious light since, again and again, the moral tenets of republicanism had been ignored or violated in the attempt by federalists to bring about the instituting of a constitution that, supposedly, guaranteed that the states would be governed in accordance with a republican form of governance.

Even if one were to suppose -- in a contrafactual manner -- that everything about the Philadelphia Convention, the Philadelphia Constitution, and the ratification process was capable of being reconciled with republican principles, one is still left with a major question. Why should anyone today feel bound to honor a political dynamic that took place more than 225 years ago?

What is the source of authority, duty, or obligation that, today, ties an American citizen to the Philadelphia Constitution? Moreover, given that principles of republicanism were often absent from the processes that led to the Philadelphia Constitution being adopted more than two centuries ago, doesn't that reality undermine whatever moral claim the Philadelphia Constitution might have on people today?

If government officials engage issues with: Impartiality, objectivity, fairness, honesty, integrity, nobility, and in a non-partisan manner, one might develop a sense of obligation toward that sort of a system and, as a result, one might feel inclined to try to co-operate with that kind of a process, and, as well, one might seek to defend that sort of an arrangement against all attempts to adversely affect it. On the other hand, if government officials are: Dishonest, biased, corrupt, unfair, and lack integrity, then seemingly, there is absolutely nothing that could serve to forge a sense of obligation in a person that would induce one to co-operate with or defend that sort of a process.

Said in another way, if a form of governance can guarantee to treat its people in accordance with republican moral values and principles, then, one would have a certain amount of justification for why

individuals hundreds of years later ought to feel bound to live in compliance with that form of governance. However, if a form of governance does not interact with its citizens in a republican way but, instead, engages in behavior that is antithetical to the moral principles and values of republicanism, then there is nothing – except, perhaps, fear and the threat of physical violence – that ties citizens to such a system.

Without the lived reality of Article IV, Section 4, the Constitution (including its Preamble and amendments) is relatively meaningless. Article IV, Section 4 is what brings the Constitution alive and serves as the source of its legitimacy, authoritativeness, and capacity to generate a sense of obligation in citizens.

Republican values and principles could serve as the means through which sovereignty could be established and nurtured. However, in the absence of republican values and principles, then, the Philadelphia Constitution – even when amended – becomes little more than a play-thing in the hands of those who wield power and who have no intention to secure the sovereignty of anyone but themselves and their associates.

Chapter 4: Perspectives on Framing

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

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

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

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

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

Founders/Framers allegedly intended should be done by subsequent generations is more of a myth than a reality.

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

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

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

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

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

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

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

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

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

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

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

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

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

Those who were inclined toward the perspective of the Enlightenment as given expression through various Republican authors believed that the highest, fullest form of human excellence was achieved through participating in the life of a self-governing society (i.e., a Republic) in accordance with a set of values (i.e., republicanism) that enhanced both collective and individual liberties. Whereas the idea of monarchy – the prevailing mode of governance in the 18th century -- was rooted in considerations of kinship, patronage, fear, and tyranny, the idea of republicanism was rooted in considerations of character, virtue, integrity, and a willingness to work for the common good through leaders that had the best interests of the citizens at heart … which was to induce people to aspire to a republican way of life.

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

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

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

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

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

of economic turmoil as were laborers and artisans, and, therefore, such individuals were also vulnerable to the corruption to which that sort of dependency might incline an individual.

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

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

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

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

Oddly enough, one of the motivations underlying the Founders/Framers desire to jettison the Articles of Confederation in favor of the Philadelphia Constitution involved a desire to increase commercial activity. Furthermore, many of the Founders/Framers

were entangled in various schemes involving land speculation and the attempt to enhance their property holdings or the value of such holdings.

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

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

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

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

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

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

Moreover, because the Framers/Founders considered themselves to be members of this natural aristocracy, they felt that they had both the ability and a duty to fulfill the responsibilities of such a 'natural aristocracy'.

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

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

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

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

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

were convinced that they were correct, but they, themselves, indicated that this was not necessarily the case.

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

There is a certain disconnect in the foregoing juxtaposition of ideas. On the one hand, the Founders/Framers considered themselves to be members of a natural aristocracy who had all the understanding, knowledge, skills, talents, wisdom, and abilities that were necessary to effectively govern. In addition, they considered themselves to be proponents of the philosophy of republicanism that equipped them with the necessary commitment to truth, justice, and virtue to ensure that such effective government would also be a fair and impartial form of governance.

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

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

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

different state ratification conventions to introduce amendments as threats to their plan for ascending to power via the Philadelphia Constitution.

In any event, if the Founders/Framers couldn't develop a constitution that was free of flaws, if 39 signatories and three dissenters could not resolve such acknowledged flaws in the Constitution, and if those 39 individuals were resistant to receiving any assistance in this regard from the ratification conventions, then what made them think they would be able to run a government that would not become entangled in the very problems they failed to solve. Seemingly, they were recklessly trying to steamroll a country into adopting something that their alleged commitment to the principles of republicanism should have told them was a massive conflict of interest – between, on the one hand, their ambitions and self-serving biases (if not arrogance), and, on the other hand, the welfare of 3.1 million people who inhabited America at that time, along with countless more millions in subsequent generations.

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

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

Without some sort of moral compass to guide government administrators through the many treacherous reefs and shifting sandbars that were likely to populate the political/social oceans of the

future, then the constitutional machinery that was invented in Philadelphia was relatively worthless. Having three branches of government that were to be run by people who, when it served their purposes, had shown a willingness not to act in accordance with the very noble aspirations of republican philosophy did not auger well for succeeding generations of Americans.

If the very first generation of natural aristocrats displayed such an unreliable commitment to principles of virtue, integrity, disinterestedness, and fairness, then what implications did this have for ensuing generations of administrators? If the principles of republicanism were capable of being jettisoned by the natural aristocrats for the sake of their ambitions and convenience, then just what sense could be made of the guarantee they had given in Article IV, Section 4 of the Constitution, and what would be the obligation of succeeding generations of government leaders to honor that guarantee if they didn't subscribe to the principles of republicanism?

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

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

promise -- of republicanism that is entailed by the opening words of Article IV, Section 4 of the Constitution.

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

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

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

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

Madison considered himself to be a member of a minority – which, in effect, members of the power elite always have been – and, therefore, he sought to protect himself, and others like himself, from the hordes (i.e., the majority) whom Madison perceived to be storming

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

Madison's understanding of political life was not just informed by his three years, or so, of experiences in the Virginia state legislative assembly. He also took to heart his years of participation in the Continental Congress that was set in motion through the Articles of Confederation.

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

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

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

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

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

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

Therefore, to a certain extent, Madison's approach to the world of politics could be seen as being just as self-serving as was the manner in which many of his fellow legislatures engaged political activity. Nevertheless, Madison believed that what he was interested in doing was, somehow, more honorable, virtuous, and enlightened than were

the interests of those who were not members of the natural aristocracy and who saw things differently than he did.

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

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

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

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

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

offer governance through qualities such as: integrity, honor, disinterestedness, fairness, and virtue.

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

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

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

Republicanism required that people should not be judges in their own cause. Yet, advocates of republicanism often presumed that what they were doing was republican in nature, and, therefore, they were acting as judges concerning the quality of their behavior vis-à-vis their own cause … namely, republicanism.

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

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

during the administration of John Adams, Madison became an ardent advocate for state rights.

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

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

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

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

One could even put forth the argument that Madison's willingness to initiate the congressional process that eventually would lead to a Bill of Rights was done more out of a desire to place constraints on the people's desire to have more control over their own affairs, and, thereby, preserve the authority of centralized government, than his act of introducing amendments to Congress was necessarily due to any

desire to serve the needs of the generality of people. To be sure, Madison did act in a way that was consistent with the philosophy of republicanism when he sought to honor what he felt was a duty with respect to a prominent theme in many ratification conventions – namely, the persistent call for amendments to the Philadelphia Constitution – by introducing a package of amendments to the newly formed Congress, but, presumably, Madison also felt he was acting in a republican fashion when he limited the kinds of amendments that were introduced for Congressional consideration to ones that would not pose any serious threat to the ability of central authority to conduct its business.

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

One might wish to argue that Madison always was sincere in his desire to act in compliance with the philosophy of republicanism. Nonetheless, this desire gave expression to very different priorities, objectives, interests, and behaviors across time and changing circumstances, and this facet of variability probably was one of the reasons why people like John Adams wondered if 'republicanism' had ever actually existed because establishing a clear understanding of that idea as it manifested itself in actual circumstances could be quite a slippery challenge.

So, which, if either, of the foregoing editions of James Madison give expression to the 'real' nature of what is meant by a constitutional democracy? Apparently, as was the case with Madison, the answer to this sort of question varies across time and circumstances.

One could, of course, try to answer the foregoing question by saying that both editions of Madison reflect the 'real' nature of a constitutional democracy. However, if one does this, then the idea of constitutional democracy runs the risk of becoming almost anything one wants to believe it is.

Under such circumstances, the criteria one uses for justifying one constitutional perspective rather than another seem quite arbitrary. In

other words, although one might be able to explain why, say, one edition of Madison acted in one way, while another edition of Madison acted in a different fashion, there doesn't seem to be anything that is common to the two editions and by means of which one might be able to construct a plausible, unified theory concerning the intentions of the Founders/Framers with respect to how subsequent history should be constitutionally engaged.

Was Madison entitled to change his ideas about governance? Of course, he was.

Was Madison entitled say that he was opposed to the notion of central authority being envisioned by Alexander Hamilton or John Adams … that their ideas were not what he had in mind when he advocated for having a strong, central government? Again, the answer is: 'Yes'.

The problem emerges when one tries to determine who -- if anyone -- was right in their conception of how central authority should operate. Was the younger Madison correct? Was the older Madison correct? Were they both correct in some sense? Was Hamilton right? Was Adams correct?

The foregoing questions all share one thing in common. They all lead to further, more basic questions.

Asking who, if anyone, is correct in her or his manner of engaging and understanding the Constitution does not probe the underlying issues with sufficient depth or rigor. One also must ask why any of the individuals named previously – and many others who might be named -- is correct and according to what criteria, and, in addition, what justifies using those sorts of criteria rather than some other set of criteria to evaluate those matters?

Madison is considered by many to be the father of the Constitution. If this were really true, nearly four months and many hours of disputation would not have been required to come up with the document that eventually arose out of the Philadelphia Convention.

However, even if one were to adopt a very simplistic interpretation of historical events and suppose that Madison was the sole architect of the Philadelphia Constitution, one must grapple with

the fact that Madison had at least three ideas about the role of central authority within a constitutional democracy. At one point (the Virginia Plan), Madison believed that states should have no real authority. At another point (the Philadelphia Constitution), Madison believed that states should have some power but that the authority of the central government should prevail in many, if not most, circumstances. Finally, at yet another point in time (the late 1790s), he believed that states should have much more power than he earlier believed to be appropriate.

Moreover, if one were to restrict oneself to considering only the views of Madison with respect to the idea of constitutional democracy – and there is really no justification for doing so – there does not seem to be any consistent theory of constitutional interpretation capable of reconciling his different perspectives. Furthermore, even if there were such a unified theory, one still would be faced with the following question: Why should anyone feel, or be, obligated to comply with Madison's understanding of such matters?

There is one further issue to add on to the foregoing discussion. Madison's Virginia Plan -- which was favored over William Patterson's New Jersey Plan -- became the basic template that the Philadelphia Convention worked on in order to generate a final constitutional product. To a large extent, the Virginia Plan was a response to the many problems that Madison experienced during his years as a member of the Continental Congress and the Virginia state assembly … problems that had to do with the way in which the generality of people in America seemed to eschew republican principles and, instead, pursued what Madison considered to be narrow, selfish, passion-driven interests.

Consequently, one would like to know what made Madison think that things might be different from his previous experiences in government if the Philadelphia Constitution were to be adopted by a sufficient number of state ratifying conventions. In other words, if the problem with state and national government up to 1787 was, among other things, due to the manner in which people were not properly morally oriented to do the 'right' thing – the republican thing -- when it came to governance, then what made Madison believe that this same

problem would not carry over into a new system of governance filtered through the Philadelphia Constitution.

The problem facing Madison in 1787 was not necessarily a system problem. It was a people problem.

Madison – and the other participants in the Philadelphia Convention – invested a lot of time in the assumption that if one fixed the framework of governance, then, everything else would fall into place. Yet, they all knew that the overwhelming history of the world – even in the case of their beloved 'republics' of the past -- tended to indicate otherwise.

The people in the Continental Congress could not be depended on to do the 'right' thing … the republican thing. The people in the state legislatures could not be depended on to do the 'right' thing … the republican thing. Why should one feel confident that the people in the new Congress, judiciary, and presidency would do the 'right' thing … the republican thing?

Many of the people who participated in the Philadelphia Convention were allegedly committed to the principles of the philosophy of republicanism. Yet, the activities of that convention were rooted in some rather questionable behaviors with respect to issues of disinterestedness, honor, duty, loyalty, judiciousness, fairness, integrity, equitability, and truthfulness – the mainstays of republicanism.

Whatever the merits of the Philadelphia Constitution might be relative to the Article of Confederation, republicanism is not measured by the value of the document one produces but by the quality of how one goes about producing such a document. In that respect, the Founders/Framers failed because there are many key aspects of the manner in which they conducted themselves in Philadelphia that really can't be reconciled with the philosophy of republicanism.

Given their disregard for the existing system of governance (the Articles of Confederation), as well as their disobedience concerning the authorization that had been extended to them through the Continental Congress, along with their efforts to urge the states – in the form of ratification conventions -- to by-pass the system that had been authorized by the Articles of Confederation (and already ratified

by the states), and given their manner of seeking to dictate the terms under which a new constitutional system would come into being (i.e., Article VII in the Philadelphia Constitution which arbitrarily stipulated that if nine states ratified the Philadelphia Constitution, the Constitution would be adopted), the Founders/Framers had not been true to their republican principles. The ends (a new constitution) could not justify the means (the abandonment of republicanism), because without the principles of republicanism to give ethical life to governance, the proposed Constitution was relatively worthless.

The truly radical dimension in the ideas of the Founders/Framers was not the Philadelphia Constitution. The philosophy of republicanism gave expression to the real radicalism inherent in their ideas.

To propose that governance should be conducted in accordance with standards of ethical principles – namely, republicanism – was nothing short of breathtaking for the 18th century … for any time actually. However, the Founders/Framers fell short of this standard during the Philadelphia Convention and, afterwards, during the process of ratification.

The Founders/Framers guaranteed (they did not promise or recommend this) that the states would each be the beneficiaries of a republican form of government. This was done in the form of Article IV, Section 4 of the Constitution.

Those 16 words are the most revolutionary set of words in the entire Philadelphia Constitution. They are the same 16 words that, for the most part (and there have been some notable exceptions) have gone unheeded by virtually every ensuing body of governance in the history of the United States.

Madison was faced with a people problem in 1787 (that is, people in government who did not abide by a set of ethical principles). The Philadelphia Convention did not solve that problem but merely camouflaged it.

Thomas Jefferson did not participate in the Philadelphia Convention of 1787. He was in Europe acting on behalf of the Continental Congress.

Consequently, there is a sense in which Jefferson was not among the Founders/Framers of the Philadelphia Constitution. One wonders what, difference if any, Jefferson's presence might have made to the assembly out of which that document arose … as one could wonder what difference, if any, the presence of Tom Paine, Sam Adams, Patrick Henry, William Findley, and Richard Henry Lee … all of whom were much more radically inclined – each in his own way – than was James Madison or many of the other participants in the Philadelphia Convention.

Of course, 11 years earlier Jefferson had played a leading role on the committee that drafted the Declaration of Independence (and it is important to keep in mind that Jefferson did not act alone with respect to that document). Yet, there is a revolutionary fervor – for obvious reasons -- present in the Declaration of Independence that – with the exception of Article IV, Section 4 -- is missing in the Philadelphia Convention.

The aforementioned revolutionary character also was present in a letter that Jefferson had written to William Stephens Smith -- nearly two months after the Philadelphia Convention concluded its business. Jefferson wrote: "The tree of liberty must be refreshed from time to time with the blood of patriots and tyrants. It is its natural manure."

Nowhere in the Philadelphia Constitution does one find anything that remotely resonates with the foregoing sentiments. There are, of course, provisions in the Constitution for removing people from office for 'high crimes and misdemeanors' or other untoward behavior, and there are provisions in the Constitution for changing that document through Congressional votes, state amendment conventions, and the like, but the aura of revolution has disappeared from the Philadelphia Constitution.

The Philadelphia Convention was revolutionary in character because it constituted a rebellion against the way things in government were, and, as well, it was a peaceful attempt to overthrow the established, legal way of doing things in America. However, the Philadelphia Constitution itself was, for the most part, not revolutionary in character.

The constitutional document was not about freeing the people. Instead, it was a set of procedures that would free the practitioners of

governance from the people in substantial ways so that the 'natural aristocracy' could do whatever it deemed to be "proper and necessary" to carry out its various policies.

Therefore, although there is a very real sense in which Jefferson helped shape some of the conceptual landscape out of which the Philadelphia Convention operated, there is much less of a sense in which Jefferson helped shape the structural character of the Philadelphia Constitution. In light of this distinction, one wonders whether, or not, Jefferson can be considered one of the Founders/Framers … or, stated in another way, while there is a sense in which Jefferson is among the Founders of America, there is much less of a sense in which he is a Framer of the Constitution.

There is another factor that muddies the water when it comes to trying to figure out Jefferson's place in the realm of democratic thinking. While Jefferson had great rhetorical style – both spoken and written -- that verbal style was not always backed up with behavior that easily could be reconciled with the democratic-sounding flourishes of his mouth or pen.

Jefferson had a vision of what he believed democracy to be, but he was often ideologically driven concerning that vision. As a result, he tended to be somewhat inflexible concerning the way he believed his vision should be put into operation.

In other words, Jefferson was not immune to the idea of interfering with the liberties of others if such individuals got in the way of his attempt to realize his own vision of things. Moreover, Jefferson was not opposed to the idea of censoring ideas with which he disagreed … and Jefferson's participation in the ugliness of slavery is but one piece of evidence in support of the foregoing contentions.

On the one hand, Jefferson 'talked the talk' when, on many occasions, he advocated against the institution of slavery. On the other hand, Jefferson did not 'walk the walk' when one considers his willingness to flog his slaves or to go after them if they tried to escape.

In addition, while Jefferson condemned the idea of blacks and whites genetically commingling with one another, there is considerable genetic evidence concerning his (or someone in his household's) relationship with Sally Hemings suggesting that he – or a

mysterious other -- seemed to be a proponent of the school of: "do as I say, not as I do.' Again, there appears to be a 'disconnect' of sorts between what Jefferson said and what he did or permitted to happen.

Whereas Madison sought to wed the philosophy of republicanism to the Philadelphia Constitution, Jefferson was more interested in having the principles of republicanism manifest themselves in the manner in which independent, yeoman farmers would conduct themselves in the world of subsistence living and/or in the realm of commerce. Whereas the pre-1798 Madison was something of an authoritarian centralist, Jefferson was more inclined toward some form of decentralized authority in the form of yeoman farmers regulating themselves in accordance with principles of republicanism.

Both Madison and Jefferson, however, suffered from the same sort of problem. They each were proponents of the philosophy of republicanism, and, yet, they didn't always comply with the requirements of that philosophy.

Just as one could ask of Madison why he would believe that subsequent generations of government officials would abide by the philosophy of republicanism when those who participated in the Philadelphia Convention and the subsequent ratification conventions often ignored such precepts when it was convenient for them to do so, one also could ask of Jefferson why he would believe that subsequent generations of yeoman farmers would comply with the principles of republicanism when Jefferson, himself, often did not do very well in this respect.

Like Madison, Jefferson considered himself to be a member of the 'natural aristocracy' – that is, individuals who had been gifted by nature with considerable intelligence, talent, and ambition. From the perspective of those 'natural aristocrats', they were individuals who, as a result of such gifts, ought to be leaders (whether publically or privately) of others.

Nevertheless, if members of the 'natural aristocracy' could not – each in his own way -- live up to the standards of republicanism, then why did they believe that anyone else would be able to do so? Yet, both Madison and Jefferson – each in his own way – believed that the philosophy of republicanism would be the salvation of government, society, economics, and individuals.

Jefferson was a student of the Enlightenment. He believed in pushing boundaries concerning the nature of politics, economics, religion, society, and science.

There is nothing necessarily wrong with such a belief. Problems do arise, however, when one supposes that one's way of pushing such boundaries is necessarily the 'right' way or the 'better' way of engaging such issues and, as a result, one seeks to impose those ideas on other people.

Thomas Jefferson, James Madison, George Mason, Patrick Henry, Samuel Adams, Tom Paine, William Findley, John Adams, and any number of other individuals who might be mentioned here all had their unique take on how to push the boundaries with respect to the search for truth, justice, wisdom, and personal fulfillment that was promulgated by the Enlightenment. Their critical and skeptical inquiries all had their individual signatures … the pattern that gave expression to the degrees of freedom with which they were comfortable – each in his unique way -- within the context of such exploratory behavior.

Consequently, there was not one theory of the Enlightenment. There were many ideas – as many possibilities as there were individuals -- about what constituted a "correct" understanding of: knowledge, justice, truth, reason, and wisdom.

Similarly, there was not one theory of republicanism. There were many ideas about how to be honorable, disinterested, unbiased, judicious, fair, impartial, loyal, and dutiful.

Herein is the problem. How does one derive a consistent theory of constitutional interpretation from such diversity?

One cannot say, with any substantial degree of justification, that the Founders/Framers, as a whole, meant this or that, or intended this or that, or believed this or that … if by 'this or that' one is alluding to some underlying unified perspective concerning the nature of life – politically, socially, individually, scientifically, religiously, or spiritually. What is more, even if one could do this, so what?

It is one thing for the Founders/Framers to all have their individually-tweaked, Enlightenment-influenced ideas about the nature of things. It is quite another thing to try to argue that there was

unanimity or consensus among the Founders/Framers concerning such matters or that everyone in succeeding generations should be bound by their understanding of things.

Jefferson was an accomplished musician, linguist, natural scientist, and draftsman. He was an aficionado of good wines and fine foods.

As such, he proved that one's evaluation of people should be based on merit rather than on one's social background. After all, if family pedigree were the deciding factor in Jefferson's case, he would forever have been tainted by a father who was fairly wealthy but exhibited few of the qualities of the Enlightenment.

On the other hand, the wealth that was acquired by Jefferson's father played a role in Thomas Jefferson's subsequent development. If not for that wealth, Jefferson might never have attended the college of William and Mary or gone on to attend law school … institutions where he began to explore the sensibilities of the Enlightenment, along with becoming adept at music and language.

There was a certain skewing of the scales when it came to the 'natural aristocracy'. Undoubtedly, Jefferson, like many others among the Founders and Framers, brought considerable potential to the table, but they also had the opportunity to realize such potential because they were not slaves, or indentured servants, or the working poor, or Indians, or women.

Jefferson, like many of his fellow members of the 'natural aristocracy' appeared to be blind to the manner in which the realization of their potential depended on the existence of inequalities in the surrounding society. Wealth might accumulate due to the hard work and sound decisions of an individual, but, almost invariably, wealth also accrues because of the way in which different groups of people – for example, slaves, the working poor, women, Indians, and children --need to subsidize the accumulation of that wealth.

The 'natural aristocracy' was not entirely natural. It grew from the manure of political, social, and economic inequalities.

Jefferson talked about how 'all men are created equal", but in the process of doing so, he appeared to be blind to the existence of slaves, women, the poor, and the powerless. Jefferson talked about the

'natural aristocracy', but in the process of doing so, he seemed to be blind to the fact that such an 'aristocracy' was, in many ways, the product of something that was not natural but, rather, was the result of considerable social, political, and economic engineering.

Whereas Madison envisioned the task of the natural aristocracy to provide effective governance to work toward the common good, Jefferson considered the task of the natural aristocracy to be a matter of leading the general public toward greater civility and sociability. Madison believed in the mechanisms of government to achieve the common good, but Jefferson believed that the common good was best realized not through government, per se, but by means of those who were 'enlightened' to lead people to the same 'Promised Land' as was enjoyed by the 'enlightened'.

Jefferson had faith in the ability of people to become 'enlightened' (in his sense of the term) if they were led – and not necessarily just in a political way --by the right sort of individuals … that is, people who were schooled in republican values and principles. Jefferson had faith that the generality of people had the capacity to recognize members of the natural aristocracy and to follow such individuals – whether politically, socially, educationally, or otherwise – toward enhanced forms of civility and sociability … two hallmarks of the "Enlightenment"

On the other hand, pre-1798 Madison was relatively indifferent to the enlightenment of the generality of people. He was more interested in getting the people out of the way (i.e., to participate in elections and, then, become quiescent) so that the natural aristocracy would be able to generate effective governance free of interference from the people.

Jefferson envisioned a social revolution of sorts. The Madison who helped negotiate the Philadelphia Convention envisioned a political renaissance of sorts that would enable America to solve its economic and political problems and, thereby, become a viable nation on the world stage.

Both Jefferson and Madison believed in the existence of a 'natural aristocracy'. However, they each envisioned the members of that group operating on society in different ways.

The society that Jefferson sought to bring about was rooted in an Agrarian Utopianism. He believed that if more and more people were able to gain control over their economic lives through the ownership of small, independent farms, then they would not be vulnerable to the same forces that had ravaged Europe as the confiscation of limited land pushed people into the cities in search of work … a social phenomenon that led to poverty, disease, exploitation, and an array of other social problems.

For Jefferson, the salvation of society was not effective governance per se. Instead, the salvation of society was an agrarian model of life that encouraged individual independence.

Jefferson was less interested in altering the way government was related to people (as Madison tended to be) than he was interested in altering the way people related to one another. For Jefferson, the viability of society was more dependent on the civility that people might be engendered to have with respect to one another via the enlightened leadership of the natural aristocracy than the aforementioned social viability might be dependent on the establishment of this or that form of government … with its attendant bureaucracies, laws, and tyrannical inclinations toward ruling over people.

Whereas many of the participants in the Philadelphia Convention that took place during the summer of 1787 looked upon events such as Shay's Rebellion in western Massachusetts as a reason why a new form of governance was needed, Jefferson did not see that uprising as much of a problem but, instead, considered it to be a part of the natural order of things … like a storm that helped clear the atmosphere.

People such as Madison – which included most, but not all, of the other Framers of the Philadelphia Constitution – were interested in establishing clear lines of nationhood and power. Jefferson was much less interested in such projects.

Jefferson wanted a social revolution in which people would be able to break free from the shackles of ignorance that came from a failure to struggle toward a life of 'enlightenment', along with the civility that Jefferson believed such an understanding made possible. From this perspective, a nation/state was the place where such things

occurred rather than being the purpose for which such things occurred.

During the 17 years that separated the end of his presidency (1809) and his death in 1826 (on the same day as John Adams passed away), much took place in America that led Jefferson to feel deeply disillusioned with respect to the future of democracy. Despite his successful struggle to establish the University of Virginia, there was much going on in America with which he was concerned.

Evangelical religion was on the rise and Jefferson saw this as antithetical to his ideas about the role that rational discourse should play in establishing enlightened civility in society. Moreover, society was becoming more democratized and, as a result, people were less inclined to follow the leadership of the natural aristocracy and more inclined to go in their own individual directions … whatever those might be.

When one adds to the foregoing considerations such problems as: wars involving Indians and the British, widespread economic problems, and growing conflict concerning the spread of slavery in places such as Missouri, the prospects for civility and sociability seemed rather dim. There appeared to be less and less opportunity for Jefferson's dream of an agrarian utopianism to be realized.

Furthermore, America was becoming increasingly commercialized, and Jefferson did not care for the direction in which he saw things headed. While he always believed in the necessity of some degree of commercial trading, the extent to which America was becoming a place of constant commercial trafficking of every conceivable kind was distasteful to Jefferson … such intense, omnipresent commercialization was not what a cosmopolitan, civilized, enlightened life should be about.

As a result, in the years between 1809 and 1826, Jefferson became increasingly provincial and dogmatic in his outlook. He disengaged himself from the political process and even, to a large extent, discontinued trying to acquire much knowledge about what was happening politically in the country.

In retirement, Jefferson adopted a position that was 180 degrees opposite of the one that James Madison had taken in the Virginia Plan

that the latter individual had introduced into the Philadelphia Convention. More specifically, whereas in 1787 Madison believed that the federal government should have the right to veto all state legislation if this was deemed to be necessary, Jefferson now believed that states should have the right to veto all federal legislation.

For a time, the two individuals had collaborated in the middle when they joined forces against the Alien and Sedition Acts in the late 1790s. However, although Madison subsequently became interested in trying to 'balance' state and federal rights (whatever this might mean), in the end, Jefferson became, almost exclusively, an advocate of state rights.

Many people today approvingly quote the later Jefferson – that is, the ideologue of state rights. Nonetheless, the later Jefferson is at considerable odds with the earlier Jefferson who sought to realize an agrarian utopia in which independent farmers – yeomen – would live a life of cultivated, rational civility that would bind people together quite apart from governmental activity and bureaucracy … just as the later Madison (vintage 1798 and later) is at odds with the earlier Madison -- although in a different fashion than is the case with respect to Jefferson.

The Founders/Framers of the Philadelphia Constitution did not have either the early Jefferson or the later Jefferson in mind when they crafted that document. On the other hand, the Philadelphia Constitution could be seen as a sort of utilitarian tool that might be used to advance policies that were quite consistent with either the earlier or the later Jefferson.

As such, the Philadelphia Constitution doesn't really have any purpose in mind except in the very general, undefined sense of the Preamble to the Constitution that alludes to issues such as: justice, tranquility, the common defense, and liberty. In other words, the Constitution is a procedural means of implementing public policy in whatever way one might be able to justify as advancing the principles of the Preamble and still be consistent with those procedures … and the criteria for what constitutes "consistency" are quite mysterious, if not fairly arbitrary.

If the foregoing perspective is true, this would render 'We the People' vulnerable to whatever agenda a given Congressional, Judicial,

or Executive session wanted to pursue. Moreover, there would be nothing to prevent all three branches of government from pursuing conflicting programs.

The Constitution enables power to manifest itself in a way that serves those who hold the reins of power. Moreover, once the reins of power are taken up, the people discover that it is not so easy – if possible at all – to reclaim that which has been usurped from them because once the voting is done, the Constitution is primarily about protecting the interests of those who have been voted into power.

Jefferson's understanding of democracy is no more favored by the Constitution than Madison's understanding of democracy is … or the understanding of Washington, Adams, or anyone else concerning the issue of democracy. This is because the Constitution is not a document of democracy.

The Constitution is a set of procedures that, once acquired via election, enables people to use the power that an election puts into play to bring about pretty much whatever such elected officials decide to do. Moreover, this can be done quite irrespective of whether, or not, those activities are agreeable to the people whose votes have been leveraged for purposes of harnessing that power.

Quoting Jefferson, Madison, Adams, Washington, or anyone else concerning the meaning of democracy is quite irrelevant to the actual nature of the Constitution. The Constitution is about the uses to which power can be put, and as such, that document is not a procedural plan for how to go about and realize democratic ideals … except incidentally so -- such as in the case when someone who actually had a thoroughly democratic perspective and wanted to use the Constitution in accordance with the principles and values of republicanism somehow stumbled into being elected.

Virtually every candidate professes that they are such a person – that is, the person who will actually serve 'We the People' by actively seeking to realize democratic ideals concerning" rights, liberty, tranquility, justice, and the common good. However, once those people are elected – and assuming they were ever sincere in their professions concerning democracy -- the corrupting influence of power has its way with such individuals, and principles of republicanism and democracy fade into insignificance.

Although many people generally think of individuals such as Jefferson and Madison when they asked to reflect on what they suppose the meaning of the Philadelphia Constitution to be, Alexander Hamilton might have understood the possibilities inherent in that document better than anyone … even its primary architect: James Madison.

The collection of essays that have come to be known as *The Federalist Papers* were largely written by Hamilton – and, indeed, he was the individual who initially conceived of such a project -- with about a third of the essays being contributed by Madison and a further 5% coming from the hand of an ailing John Jay. These essays were published in various New York City newspapers during the ratification debate in that state and were an effort to explain and defend the ideology of federalism that was at the heart of the Philadelphia Constitution, and, therefore, those essays are frequently cited, and quoted from, by those who subscribe to a federalist ideology.

As previously indicated, Madison's views on federalism were strongly influenced by his experiences in the Virginia state assembly as well as the Continental Congress. Therefore, much of his Virginia Plan -- which served as a template for the Philadelphia – was an attempt to find a way of countering the sorts of influences and narrow interests that Madison found so distasteful and ill-conceived with respect to his earlier experiences in state and national governance.

Madison conceived of effective governance as being a function of the principles of republicanism … principles that would be capable of controlling the untoward impulses that Madison believed increasingly were being manifested through state governments and other legislative forums. Hamilton also believed in effective governance, but he was interested in harnessing the power of federalism to serve what he considered to be national interests that were evaluated in accordance with a metric composed, in equal parts: glory, honor, power, and empire.

Madison knew what he wanted to avoid and helped structure the Philadelphia Constitution accordingly. Hamilton knew what he wanted to secure through that document and exploited it accordingly.

While Hamilton did strive to terminate the institution of slavery in New York, he was not an advocate for the people, per se, and had little faith in them. He and Jefferson were polar opposites in relation to one another in that respect, and this is just one of the differences that fueled a continuing feud between the two individuals for more than 17 years.

Hamilton believed in democracy to the extent that it might enable him to do what he wanted to do. He had ambitions for himself and for his adopted country, and 'democracy' was seen as the midwife for those ambitions.

Hamilton did not spend a lot of time theorizing about democratic ideals like: rights, individual sovereignty, or civil liberties. In fact, Hamilton had indicated in 1804 that he considered democracy to be precisely what was wrong with America … that democracy was destroying the possibility of establishing and maintaining an American empire.

Hamilton was a different kind of theorist. He had ideas about how to: administer government, run an economy, institute a banking system, and build a strong military.

For Hamilton, the purpose of government was not to serve democracy. Instead, for him, the purpose of democracy was to serve the state … to build an empire that was capable of taking its place on the world stage … to construct a nation of glory and power.

In many ways, Hamilton's life exemplifies some people's idea of the American Dream. He was born an illegitimate child in the British West Indies, abandoned by his father when Alexander was 10 years old, and orphaned entirely when his mother passed away when he was 13 years old.

Yet, in spite of the foregoing sorts of handicaps, Hamilton's natural talents, gifts, and intelligence manifested themselves at an early age. As a result, he was given, and was able to take advantage of, a number of opportunities to improve his life that had come via various influential and wealthy patrons.

Hamilton ended up in New York, where he attended King's College (now, Columbia University). In 1775, Hamilton went to war on the side of the American revolutionary forces.

At the age of 22 he became a lieutenant colonel and was assigned to George Washington's military staff. Hamilton, however, was not content with being an aide to Washington and wanted a field command, and this was realized in the form of a light infantry battalion operating out of New York State.

From an early age, Hamilton longed to escape his troubled life in the British West Indies. One of the ways in which he envisioned himself doing so was through war.

For Hamilton, war was about glory, honor, bravery, and power. He was willing to risk both his own life and the lives of his men to realize the hidden treasures of war, and there are a number of accounts from the revolutionary war that indicate how he did exactly that.

This attitude concerning conflict carried over into the rest of his life. It drove both the manner in which he conducted himself within, and outside, government, and, eventually, it was the reason why he lost his life in 1804, at the age of 49, during a duel with Aaron Burr who happened to be the sitting Vice President of the United States at the time … which, among other things, means that Dick Cheney was not the first, active Vice President to shoot someone.

At the age of 27, Hamilton was elected to the Continental or Confederation Congress. Through that body, Hamilton came to know James Madison, and as a result, the two began to work toward the idea of improving on the form of governance that existed in America … but they each did so with different goals in mind.

Finally, Hamilton married into one of the most powerful and wealthy families in New York. Moreover, he went on to become the first Secretary of the Treasury during the administration of George Washington.

Thus, the journey from problematic origins to the heights of accomplishment was realized by Hamilton. In this respect, he was a success, and, for many people, the arc of ascent traced out by the events of his life gives expression to what some refer to as: 'The American Dream.'

Hamilton's version of The American Dream was not about struggling for the rights of the people or seeking to ensure that there was economic fairness or social justice in America. Moreover,

Hamilton was not committed to rooting out tyranny wherever it might be found.

Hamilton's orientation was entirely aristocratic in character. He firmly believed in the idea that people such as himself should have the power they needed to realize whatever their ambitions concerning: honor, glory, and power might be and quite independently of how any of what he did might affect the vast majority of Americans.

Although Hamilton fought for the Philadelphia Constitution during the ratification debates, he did not view that document as the royal road to democracy. He had always been an admirer of the form of governance in Britain and harbored doubts as to whether any form of governance that was different from the British model would be able to succeed.

On the other hand, Hamilton went with what was available – i.e., the Philadelphia Constitution – and understood that it could be adapted for purposes of bringing about a form of governance that, in its own way, would be capable of reflecting many of the sorts of things that he admired in British government … namely, a central banking system, a strong military, a vibrant commercial sector, and aspirations for empire.

Washington appointed Hamilton as the first Secretary of the Treasury. More importantly, Washington had a relationship with, and affection for, the much younger Hamilton that permitted Hamilton degrees of freedom with respect to the exercise of independent authority that were not necessarily available to other members of Washington's cabinet such as Henry Knox (Secretary of War) or Thomas Jefferson (Secretary of State).

Other cabinet members were required to report to Washington and take their directives from him. Hamilton, on the other hand, dealt directly with Congress and often didn't consult with Washington on many matters.

At least from the perspective of Hamilton, his relationship with Washington seemed to reflect the way things were done in Britain. More specifically, Hamilton often considered himself to be something of a prime minister to the king-like status of Washington.

Hamilton sought to shape other aspects of American national governance to better reflect the British model that he idolized. For instance, the British system was built around the role that patronage played in getting things done, and so, Hamilton developed his own system of patronage in which he used the perks of power to buy the loyalty of different commercial interests and members of government.

He didn't consider such uses of power as expressions of corruption. Rather, like the British system that he so admired, Hamilton was convinced that certain practical considerations were necessary in order to be able to stabilize governance … and patronage issued through the exercise of power was one of these considerations.

Madison believed that the glue that would bind society and governance together was republican principles. Hamilton believed that the glue of political life was patronage.

People – whether lawyers, merchants, bankers, speculators, government officials, or professional people – wanted to make money. Consequently, those individuals could be depended on to engage in a game of quid pro quo with the federal government, but they couldn't necessarily be depended on to do the 'right' thing in a republican sense.

Hamilton's plan to create a central bank is a case in point here. Although the ostensible purpose for establishing such a bank was to enhance the credit standing of the United States in the world community, and although Hamilton knew that many of the primary beneficiaries of such an institution would be the rich and powerful, nonetheless, he went ahead with his plans for a central bank in order to engender stronger ties between such people and the national government, and, thereby, help make America a more powerful country.

Similarly, Hamilton's proposal to have the federal government take over the obligation of the states with respect to paying back their war debts had the same sort of underlying motive. His intention was to re-direct the focus of creditors away from the states and toward the national government and use that focus to serve national interests even as such creditors would make money off the federal government in the process.

Hamilton wanted to create a world-class power that was saturated with glory. He was willing to increase the wealth of businessmen, speculators, and other individuals to accomplish his aristocratic purposes.

A number of Hamilton's ideas not only were opposed but were considered to be unconstitutional, and this was especially the case with respect to the idea of a national bank. Hamilton – at the urging of Washington – responded to such allegations by citing the "necessary and proper' clause of Article I, Section 8.

There are a number of problems surrounding the "necessary and proper' clause. For example, from what perspective should one engage the meaning of "proper" or "necessary"?

One meaning of "necessary" generally has to do with outlining a scenario that shows how doing things in a given way serves to bring about a given purpose … although there might be other ways of achieving such a purpose. However, there is another sense of "necessary" which indicates that achieving a particular purpose can only be done in a certain way.

Thus, to get to the other side of the road, it is necessary to cross the street. How one does this – whether by bicycle, running, walking, crawling, piggy-back, or car – is not necessary to the task at hand since they all would serve the task of reaching the far side of the road, but to the extent that one is looking at things from the perspective of the need at hand – i.e., to get to the other side -- each of the alternative ways of crossing the street could be considered somewhat necessary.

If one specified that one must get to the opposite side of the street without assistance and in an ambulatory fashion, the means of satisfying such conditions are narrowed considerably – to perhaps one or two possibilities (walking or running). Walking and/or running then become the necessary means of reaching the other side of the street because they, alone, satisfy the conditions as stated.

At this point, one could ask whether, or not, getting to the other side of the street is actually necessary? For instance, one might ask: Why do I need to go there? What purpose is served by my crossing the street? What if I don't want to go there? This raises the question: How does a given action become a necessary one?

The fact that something is considered necessary – whether in a utilitarian sense or in a manner that is some way integral to being able to do a task at all – doesn't automatically make such a 'necessary' act proper. In order to rob a bank, I might need a plan and a gun, but such 'necessities' don't necessarily render the bank job proper.

Like the term "necessary", the idea of being "proper" can be understood in several senses. On the one hand, something can be "proper" if it is capable of being an effective way of doing something … for instance, walking across the street might be considered to be the proper manner in which to cross to the other side of a road, whereas crawling across that same street might be considered to be a less effective way of accomplishing the goal at issue.

On the other hand, there is a possible meaning of "proper" that concerns whether, or not, some given way of doing something is appropriate in terms of a given set of rules or principles. Thus, walking across the street when the light is green is "proper" in a way that forcing someone at gunpoint to carry one across the street is not.

What makes an activity of government proper? From one perspective, an activity is proper if it is done in accordance with the procedural rules set forth in the Constitution.

From another perspective, making reference to the Constitution as a way of justifying an activity is not enough. One also must be able to demonstrate that the Constitution itself is a proper set of procedural principles … and under those circumstances, the propriety of the Constitution would have to be evaluated in terms of some extra-constitutional and, therefore, extralegal set of criteria that, in turn, must also be capable of being justified.

From the perspective of pure governance – and quite aside from any considerations of democracy, rights or individual sovereignty – something is necessary and proper if the government deems it to be integral to its policies and purposes. Under such circumstances, the government says: "We need to do 'x' and it is proper to do 'x' because we believe that 'x' will further the cause of liberty, tranquility, defense, justice, or the common welfare.

In saying such things, has the government shown that what it wants to do is proper and necessary. Not necessarily.

The claims of the government are more like an 'if-then' statement. More specifically, governments tend to argue that if it were the case that it wanted to do 'x', and if 'x' will serve certain values that exist in the Preamble, then doing 'x' is both necessary and proper with respect to the realizing of such values.

The foregoing perspective notwithstanding, one could still ask: Is 'x' really necessary to the realization of one, or another, value of the Preamble to the Constitution? One also might ask: Is 'x' really a proper way of realizing such a goal?

For example, one way of ensuring a certain amount of tranquility and providing for the common defense would be to institute martial law. As such, martial law might be considered as a necessary and proper way of realizing the values of tranquility and providing for a common defense.

However, what if there were other ways of achieving tranquility and providing for the common defense. For instance, what if someone were to argue that one might realize the desired values by instituting public policies that are geared toward establishing social justice and equitability in the use and distribution of resources?

How does one distinguish between the two possibilities – namely, martial law and social justice – with respect to the issue of what is "necessary and proper" in relation to realizing the values of tranquility and providing for the common defense? What are the criteria that should be used to decide such a matter and what justifies the use of those sorts of criteria with respect to that issue?

There is absolutely nothing in the Constitution that is capable of settling the foregoing sorts of questions concerning the meaning of what is "necessary and proper" with respect to the actions of Congress.

The foregoing problem does not just exist in conjunction with the "necessary and proper" clause. It casts a shadow over every power that has been delegated to Congress via the Constitution.

For instance, according to Section 8, Article I of the Constitution, Congress has the power to "constitute tribunals inferior to the Supreme Court". What is the necessary and proper way to constitute such tribunals? In terms of what theory of justice should such courts be constituted and what justifies doing so? What are the "necessary

and proper" purposes of such inferior tribunals, and whose purposes are served by such tribunals?

Having the power to do something does not answer the question of how such power is to be used or in accordance with what goals. Having the power to do something does not justify the exercise of power.

To be sure, if one has the power to do something, then there is a sense in which whatever plan one comes up for putting that power into play is necessary and proper for the exercise of that power. However, the logic here is circular, and when one talks about what is "necessary and proper" to the exercise of a power, one is, I believe, alluding to something more than the fact that a given policy is needed in order to give expression to that power.

Indeed, one is asking for the exercise of such a power to be justified in terms other than the power itself. However, the Constitution is not capable of offering such a justification.

Congress has the power to declare war. Yet, one still can ask: What are the conditions that make that declaration "necessary and proper"? Proper and necessary according to whom and on the basis of what criteria, and what sort of justification will be able to render the use of those criteria acceptable to most people in a plausible, reasonable, and demonstrable manner?

The Constitution cannot answer such questions? So, in what sense does the Constitution authorize the use of powers for purposes that fall beyond the horizons of the Constitution's ability to justify any given exercise of power as being "necessary and proper"?

In passing, one might note that Hamilton liked war. He saw war as a way -- if necessary -- of subjugating rebellious states and inducing them to comply with the policies of the national government, and he also considered war to be a 'necessary and proper' way through which to engage the warring nations in Europe or to expand the size of the American empire.

Hamilton wanted Congress to declare war in the late 1790s because he considered war to be the solution of choice for realizing a variety of ambitions that he harbored for the United States and himself (namely, glory, honor and power). Fortunately or unfortunately

(depending on one's point of view) Hamilton's ambitions came crashing back to earth when, in 1799, John Adams initiated his peace offensive in relation to France, but Hamilton's affection for war as a tool of empire and means to glory has resonated with all too many people in subsequent generations.

Was Hamilton's penchant for war as a way of solving problems a necessary part of government policy? Was his inclination toward war a proper expression of the government's power to declare war? Congress might have the power to declare unjust and unnecessary wars, but it doesn't necessarily have the right to do so?

Who gets to decide this and on what basis? To claim that these sorts of questions fall within the purview of the judicial system begs the issue, because one also would like to know with what justification a given jurist, or set of them, will decide such issues.

Almost everything jurists have to say on such matters will be extra-constitutional in character. In other words, although they might cite this or that Founder/Framer, or this or that session of the Continental Congress, or this or that session of the ratification conventions, or this or that session of the Philadelphia Convention, or this or that pre-Constitutional piece of historical evidence, nevertheless, such a citing and referring process (which is part of the process of establishing and identifying precedents) must itself be justified.

For example, Hamilton had a different perspective concerning the nature of governance than Madison and Jefferson did, just as Madison and Jefferson were different from one another with respect to the issue of governance. Moreover, Madison and Jefferson had different ideas about governance at different points in their lives.

So, which of the views -- if any -- of the foregoing individuals should become the "intentions' of the Founders/Framers that are cited by jurists as constituting what is "necessary and proper" for succeeding generations to follow? How does one justify such a judgment? According to what theory of law, justice, truth, and/or morality?

Moreover, if someone disputes such theories, then how do those ideas become obligatory on the individuals who dispute them? A

majority perspective might give someone the power to force people to do that with which the minority disagrees, but rights are not a function of what the majority says.

Indeed, rights exist to protect minorities against the majority. Rights exist independently of majority opinion and are intended to trump such opinions. The only thing that limits those rights is the comparable rights of another person.

Congress might have the power to declare war or constitute tribunals inferior to the Supreme Court. However, Congress needs to be able to justify the exercise of those powers and to demonstrate in clear terms how certain actions are both "necessary and proper" for the purposes set forth in the Preamble to the Constitution.

What is justice? What does it mean to promote the general welfare, and what do we mean by welfare? What kinds of blessings of liberty do we want to preserve for ourselves and our posterity? How do we provide for the common defense?

The Constitution is silent on all of the foregoing matters. What the Constitution does say, however, is something that is actually quite irresponsible – that is, the Constitution enables elected people to do pretty much whatever they like as long as they follow a set of procedural rules that they often get to interpret in self-serving ways according to their own theories about what is "necessary and proper" for the country to be governed – allegedly -- effectively.

Even the meaning of the idea of effective governance cannot be answered by the Constitution. The Philadelphia Constitution is nothing more than a mechanism for enabling the channeling of power according to certain procedural requirements … procedural requirements that are, themselves, often rather ambiguous and vague, if not entirely arbitrary.

Hamilton understood the foregoing aspect of things very well. He exploited and leveraged it for his own purposes. That is, Hamilton wanted to use the federalized form of government in America as his primary tool for working toward realizing his aspiration to shape America to become more like his idol – i.e., the British government … aspirations that were realized, to some extent, in a number of ways – administratively, militarily, commercially, and financially.

If one mentions the name: 'George Mason' most Americans will draw a blank … although they might reply with something like: "You mean George Mason University?" However, even if they are familiar, to some extent, with the university, they might not know who George Mason was or what role he played in American history.

Yet, George Mason had as much to do with the founding of America as did Jefferson. Moreover, Mason participated in the Philadelphia Convention of 1787 while Jefferson did not take part in that series of meetings.

George Mason was one of the three individuals who stayed in Philadelphia throughout the summer of 1787 but who were not prepared to sign the Philadelphia Constitution. The other two individuals were: Edmund Randolph, Governor of Virginia, and Elbridge Gerry who was from Massachusetts.

Mason was one of the most active participants in the Philadelphia Convention. He: gave speeches; made recommendations; asked questions; and noted problems with respect to the constitutional document being constructed in Philadelphia. He helped shape some of the language that would be used in that document.

In the end, however, Mason could not bring himself to add his name to the list of people who were prepared to go forward with the Philadelphia constitutional project. Although there is some mystery surrounding the precise nature of the reason or reasons that led George Mason to reject the Philadelphia Constitution rather than accept that document with its acknowledged flaws as a number of other participants (perhaps most) in the Philadelphia Convention had done, there is no mystery surrounding the nature of the problems that Mason believed were inherent in the form of the Philadelphia Convention that was released to the public in mid-September of 1787.

When the Committee of Style presented its final report on the constitutional project to the Philadelphia convention, Mason wrote his objections concerning that document on the back of the report. He was quite clear with respect to what he found problematic in relation to the Philadelphia Constitution.

First and foremost, Mason found the absence of any sort of bill of rights to be unacceptable. Other than the general declaration of the Preamble, there was very little in the Constitution that indicated a willingness to protect and preserve specific civil liberties such as the right to a trial by jury in civil cases (although the right to a trial by jury was preserved in Article III, Section 2) or the right of the press to be free from censorship.

In addition, Mason was concerned that there were no provisions in the Constitution preventing the existence of standing armies during times of peace. Like many of the people on Nantucket Island, Mason considered standing armies to be a potential threat to the people.

George Mason was also concerned about the "necessary and proper" clause in Article I, Section 8 of the Constitution. He felt the clause was replete with dangers for abusing power in ways that would undermine the freedoms of the people as well as diminishing state power.

Mason considered the Senate to be far too powerful, and he believed the term of office for senators was too long – especially since, at the time, Senate members would be chosen by the state legislators and, therefore, were neither necessarily answerable to, nor representative of, the American people. He disliked the fact that the Senate, and not the entire Congress, would have the authority to approve the appointment of ambassadors and many government officials. Furthermore, Mason found the fact disquieting that the Senate – without the assistance and approval of the House -- would be able to approve treaties that might carry problematic ramifications for all Americans and, yet, become part of the supreme law of the land.

Moreover, Mason was unhappy with the absence of what he considered to be sufficient safeguards in the case of the Executive Branch of government. He felt that the Executive Office was too vulnerable to the possibility of being manipulated by government officials who were motivated by self-interests and, as a result, this set of circumstances would permit a variety of forms of oppression to creep into governance via their advice to the Executive Office.

Another criticism that Mason had concerning the presidency revolved around a president's power to grant pardons – especially to those who might have been entangled in treasonous behavior. One of

his concerns with respect to this sort of a power is that a president could authorize someone to commit such acts and, then, by pardoning that individual, a president would be able to conceal his own role in such activity.

Mason also considered the position of vice president to involve a violation of the separation of the three branches of government. On the one hand, the vice president was aligned with the Executive Office, and, yet, that same person was President of the Senate and, as a result, was empowered to break tie votes in that body and, thereby, could affect what the Senate might be able to do or not do.

Finally, George Mason believed that the Philadelphia Constitution increased the likelihood that the five southern states – which produced a variety of crops – would be at the mercy of the eight northern states. More specifically, the Philadelphia Constitution enabled Congress, via simple majority votes, to pass navigation laws that affected commercial trade, and Mason was concerned that this rule of simple majorities might be exploited by the northern majority to force southern crop states to either pay exorbitant transportation charges and/or accept low prices for their crops. Mason preferred that a majority vote of two-thirds be required.

Many of Mason's criticisms of the Philadelphia Constitution re-surfaced during the ratification debates. This was especially so in states such as: Massachusetts, New Hampshire, Virginia, and New York where there was considerable debate during their respective ratification conventions concerning the issue of amending the Constitution … and, in fact, approval of the Philadelphia Constitution was forthcoming in such states only when the delegates to the different conventions were led to believe that something would be done about the matter once the Philadelphia Convention had been adopted.

Mason was not opposed to the idea of a strong central government. He was among those who believed that things could not continue on in the way they had under the Articles of Confederation.

Yet, he also believed that the defects which he had outlined with respect to the Philadelphia Constitution could easily be fixed prior to the ratification conventions. Furthermore, apparently, until such flaws

were corrected, he did not feel he could lend his signature to the Philadelphia Constitution.

In October 1787, following the termination of the Philadelphia Convention, Mason sent a somewhat revised list of his foregoing criticisms to Washington. During that communication, Mason indicated that he was not interested in preventing the Philadelphia Constitution from being adopted, but, rather, he simply wanted to improve the document.

On another occasion, Mason expressed his fervent hope that all of the state ratifying conventions would meet at the same time and be able to communicate with one another for the purpose of developing a coherent and consistent list of amendments that could be incorporated into the Philadelphia Constitution and be adopted by America. His hope was unrequited.

During the ratification debates, there were two groups who were proponents of the idea of amendments. One group – to which Mason belonged – wanted amendments to be made prior to any ratification vote, whereas the other group wanted amendments but were prepared to accept the promise that such amendments would be addressed at the earliest convenience of the first Congressional session.

Consequently, not everyone who ended up voting in favor of ratifying the Philadelphia Constitution believed that such a document was acceptable as it was. The existence of the aforementioned second group of advocates for amendments played a fundamental role in why the Philadelphia Constitution was ratified rather than rejected because across much of America, the majority of people were opposed to the Constitution as it had been written in Philadelphia.

George Mason continued his efforts to introduce amendments into the Philadelphia Constitution during the ratification convention in Virginia. He, along with a number of other delegates – including Patrick Henry – wanted amendments to be incorporated into the Philadelphia Convention before any ratification vote was taken, but they were overruled by a coalition consisting of those who were proponents of the Philadelphia Constitution-as-written, together with those who were not proponents of the document in its current form

but who were prepared to have faith that the first session of Congress would address their concerns.

Once again, Mason voted to reject the proposed constitution. Once again, he came out on the short end of the vote.

Mason was fairly bitter with respect to the ratification vote. Moreover, a number of people felt Mason had behaved badly, via intemperate speech, both during certain stages of the ratification convention as well as afterwards.

Among other things, Mason considered Edmund Randolph – who had stood with Mason in rejecting the Philadelphia Constitution during the final vote of the Philadelphia Convention – to be something of a quisling. Apparently, prior to the start of the Virginia ratification convention, Randolph had received a letter from Governor George Clinton of New York which suggested that, in some fashion, New York and Virginia should co-ordinate their efforts during the ratification process in relation to the Philadelphia Constitution, yet, Randolph had not disclosed the existence of such a letter to the ratification convention.

Conceivably, Governor Randolph might have thought that introducing such a letter into the Virginia ratification convention would constitute an inappropriate sort of interference in the ratification process. On the other hand, such pro-ratification advocates as George Washington – who was not participating in the Virginia convention – thought nothing of writing a letter (at the urging of James Madison) to a Maryland ratification delegate (Thomas Johnson) in the hope of inducing the latter individual to work to make sure that Maryland did not adjourn its ratification convention since this might affect what went on in both South Carolina and Virginia.

On the other hand, it is also possible that Governor Randolph did not inform the Virginia ratification convention concerning the existence of the letter from Governor Clinton of New York because Randolph was fairly young and still had political ambitions. If so, Randolph – like Governor John Hancock of Massachusetts – was willing to place his own self-interests above the possible interests of people in Virginia and elsewhere in America in relation to the ratification issue.

In any event, earlier in life, George Mason had been one of the primary architects of both the Virginia Constitution and its Declaration of Right. A number of years later George Mason had a tremendous impact on the structure and wording of different sections of the Philadelphia Constitution, and, as well, he had assumed a leading role during the Philadelphia Convention that led to the generation of such a document.

In fact, some historians believe that Mason had a role at the Philadelphia Convention which was equal to that of: James Madison and Edmund Randolph, both who were from Virginia; Benjamin Franklin from Pennsylvania; James Wilson from Pennsylvania; William Patterson from New Jersey; and Rufus King from Massachusetts. Yet, Mason rejected the very document on which he had worked so assiduously and that he had played a leading role in helping to shape in different ways.

What is one to make of Mason's intentions concerning the possible relationship between the Philadelphia Constitution and the meaning that subsequent generations should give to that document? On the one hand, there can be little doubt that George Mason was one of the Founders/Framers of the Philadelphia Constitution, but there also can be little doubt that Mason harbored considerable ambivalence concerning that very same document … sufficiently ambivalent that he rejected it twice.

The views of Madison, Jefferson, Hamilton, and Mason bear a family resemblance to one another – that is, they are connected together by a set of overlapping interests and concerns, and, yet, when one begins to examine what they each believed concerning the nature of governance, there is no underlying themes of commonality that ties them all together. One could add any number of Founders/Framers to this stew of family resemblance, and upon sufficient examination, one would come to the conclusion that there really is no underlying theme of commonality that ties them altogether in a coherent and consistent fashion … despite the presence of similar terms and ideas that populate their writings and speeches.

This absence of an underlying or essential commonality constitutes a significant problem for anyone who seeks to argue that: (1) The Founder/Framers collectively intended 'this' or 'that' by what

they said or did'; or, alternatively, (2) based on such 'precedents', later generations are justified in claiming that the meaning of the Philadelphia Constitution can be clearly stated in terms of what kind of democratic document it is. Rationalizations can be given as to why this or that action or policy is "necessary and proper" in terms of things that the Founders/Framers said or did, but rationalizations are not the same thing as justifications.

Chapter 5: Constitutional Hermeneutics

Some people believe that the federal government of the United States is divided into three separate but equal branches. Yet, one of those branches – the judicial -- gets to establish what the Constitution supposedly means (even though the Philadelphia Constitution does not necessarily entitle the courts to be the determiners of that sort of meaning) , and, therefore, one wonders in what way the three branches can be said to be equal to one another.

Anyone who gets to have the last word on what can and can't be done is hardly on the same level as those who must get approval to proceed on with their various spheres of activity. The real head of government in the United States is the judiciary rather than either the executive or the legislature because what the judiciary decides – at least on the level of the Supreme Court – is, contrary to the belief of Harry Truman, where the buck actually stops.

Notwithstanding Abraham Lincoln's attempt to arrest the Chief Justice of the Supreme Court, the executive and legislative branches are answerable to the Supreme Court … not the other way around. Except for needing to be appointed by the President and confirmed by the Senate, as well as act in accordance with principles of "good behavior" – whatever that means -- the members of the Supreme Court are not answerable to either the executive office or the legislature … although the latter two branches are answerable to the Supreme Court.

The asymmetry of the relationship between, on the one hand, the Supreme Court, and, on the other hand, the executive and the legislative branches is quite remarkable given that the Philadelphia Constitution never clearly established what the precise character of the role of the Supreme Court should be. Article III says that judicial power, of some kind, should "be vested in one Supreme Court and in such inferior Courts as the Congress might from time to time ordain and establish," but the process of 'vesting' remains unclear … as is the nature of the 'judicial power' that is to be so vested.

Section 2 of Article III indicates that "judicial power shall extend to all cases in law and equity, arising under this Constitution." In addition, the same judicial powers shall be extended to: the laws of the United States; all treaties made under the authority of such laws; cases

involving ambassadors, public ministers, and consuls; admiralty and maritime issues; controversies to which the United States is a party; disputes involving two or more states; cases between any given state and the citizen of another state; conflicts between citizens of the same state that involve land granted by other states, as well as cases between a state or its citizens and some foreign country or citizens/subjects of such a country.

However, the precise meaning of how judicial power will be "extended" to any of the foregoing possibilities is not further elaborated upon in the Philadelphia Constitution. Article III, Section 2, Paragraph 2 of the Philadelphia Constitution does indicate that the Supreme Court will have original jurisdiction in all cases involving states, ambassadors, public ministers, and consuls, while the Supreme Court retains only appellate jurisdiction in all other cases.

What ensues from either 'original' or 'appellate' jurisdiction is not specified in the Philadelphia Constitution. Number 78 of the collection of essays that have come to be known, collectively, as *The Federalist Papers* (written by Hamilton, Madison, and Jay for various newspapers during the ratification process in New York State) does develop a perspective concerning the idea of judicial review in relation to the judiciary, but *The Federalist Papers* are not part of the Constitution.

Some people might wish to argue that the position concerning judicial review that was put forth in Number 78 of *The Federalist Papers* gives expression to the intent of some of the Founders/Framers. Consequently – or so the argument might go -- the views contained in *Federalist*-Number 78 should carry a special weight with respect to how anyone envisions the activity of the judiciary.

The foregoing argument might be more credible if there were evidence that all – or a substantial majority -- of the participants in the Philadelphia Convention shared the perspective put forth in *Federalist*-Number 78. However, if this had been the case, then one might have anticipated that at least a paragraph, or two, of Article III of the Philadelphia Constitution might have introduced the idea of judicial review and provided an overview of how that activity would serve as the process through which the meaning of the Constitution is to be confirmed or established.

Since nothing concerning the idea of judicial review appears in the Philadelphia Constitution, then what the intent of Alexander Hamilton (the author of Number 78) might have been with respect to the functioning of the judiciary – especially the Supreme Court – is really neither here nor there. Madison, the so-called father of the Constitution, might have agreed with Hamilton concerning the contents of Number 78, but, again, there is no indication that the majority of the participants in the Philadelphia Convention – or, perhaps more importantly, the majority of the participants of the ratification process -- shared such a point of view, and, therefore, there is no really plausible argument which demonstrates that what Madison and Hamilton might have thought about the idea of judicial review should carry any special constitutional weight.

Despite the fact that *Federalist*-Number 78 really has little, or no, standing with respect to the issue of determining what the function of the Supreme Court is within the framework of the Philadelphia Constitution, nevertheless, examining that essay might prove to be of some value. So, let's take a brief tour of that essay.

Federalist-Number 78 indicates there are three questions concerning the functioning of the judiciary that need to be answered with respect to the proposed constitution (the Philadelphia Constitution had not, yet, been ratified by the required number of states at the time this essay was written). The three questions involved: (1) the process through which judges will be appointed; (2) the issue of tenure or length of appointment; (3) the manner in which the courts will be partitioned and how those courts will interact with one another.

The first and third of the aforementioned questions are barely touched upon by Hamilton in *Federalist*-Number 78. The second question occupies most of the rest of the essay even though many of the ideas in that discussion revolve around arguments involving: judicial discretion, the role of the judiciary, and the issue of precedents. Those arguments are, then, used to defend the idea of having an independent judiciary that, once appointed, becomes permanent.

During the course of examining the issue of tenure, Hamilton maintained that among the three branches of government, the

judiciary should be considered to be the least dangerous to the people. More specifically, whereas, on the one hand, the legislative branch held the purse strings, as well as possessed the capacity to determine the rights of every citizen through the laws it made, and while the executive had the authority to command the power of the sword, on the other hand, the judiciary had no force or will of its own since all the judiciary could do was exercise judgment, with no capacity to enforce its decisions.

Hamilton's foregoing argument seems to be rather unconvincing. After all, if the people do not comply with the executive's wielding of the sword or the legislature's issuing of laws, then the executive and the legislature have as little power as he claims is the case in relation to the judiciary.

Just as people are necessary to carry out the directives of the executive and the legislature, people also are necessary to carry out the directives of the judiciary. Without co-operation and compliance by the people, none of the branches of government will be functional.

The executive, the legislature, and the judiciary have as much -- or as little -- power as the people concede to them. If the people accept – actively or passively -- the role of the judiciary, then one cannot necessarily argue that the judiciary has less power than either the executive or the legislature or that the judiciary is necessarily less of a threat to the liberties of the people than the other two branches of government are … a lot depends on what the judiciary does with the power that has been delegated to it.

According to Hamilton, the judiciary has "no influence over either the purse or the sword." If this were true, then, presumably, this means that whatever the function of the judiciary might be, the judiciary could not make judgments affecting how Congress spent money or how the executive wielded the sword.

Subsequent events have proven Hamilton to be wrong with respect to the degree of potential influence that the judiciary has over the executive and the legislature. If nothing else, time has demonstrated that Hamilton didn't really understand the nature of the beast that the essays in *The Federalist Papers* were attempting to bring into existence.

Nothing like the Philadelphia Constitution had been attempted before. Consequently, most of the material in *The Federalist Papers* was entirely theoretical -- that is, those essays gave expression to the 'best guesses' of how people like Hamilton, Madison, and Jay thought the process of governance might unfold

In any event, the rule-making dimension of Congress is not mentioned in the foregoing quote concerning Hamilton's contention that the judiciary has: "no influence over either the purse or the sword." Therefore, one is uncertain whether, or not, the absence of that facet of Congressional activity in the indicated quote from *Federalist*-Number 78 carries any implications for how the judiciary might affect and influence the functioning of the executive or the legislative branches.

Hamilton continues on with his argument by stating that the judiciary was not only the weakest of the three branches, but, as well, he indicates that the judiciary would never be able to mount any sort of successful attack against either of the other two branches of government. However, Hamilton did warn that the judiciary would have to protect itself against attempts by the executive and legislative branches to undermine its authority.

Federalist-Number 78 held that as long as the judiciary is kept separate from the executive and legislative branches, then the people have nothing to fear from the judicial branch with respect to liberties. A threat to the liberty of citizens would only become a possibility if the judiciary came under the sway of executive and/or legislative power.

Apparently, one of the themes relevant to the exercise of judicial power is ensuring that the limits placed on the legislative branches by the Constitution would be upheld. Hamilton specifically mentions several examples (coming from: Article I, Section 9, Paragraph 3) – namely, bills of attainder (the process of legislatively singling out a person or group for punishment without benefit of a trial) and ex post facto laws (e.g., passing laws that criminalize previous acts that were not criminal at the time they were performed), and Hamilton claims that maintaining such limitations are appropriate issues for the judiciary to handle.

Hamilton seems oblivious to the discrepancy between what he believes to be a proper role for the judiciary – namely, upholding the

constitutional limits that had been placed on the legislative branches – and his earlier contention that the judicial branch was the weakest of the three branches. If the judicial branch is as weak as he claims, then how does that branch propose to restrain the legislature from exceeding its constitutionally approved sphere of activity?

According to Hamilton, fulfilling the foregoing function might require the judiciary to decide in a given case whether, or not, the legislature was violating the Constitutional prohibition against bills of attainder and ex post facto laws. Moreover, by implication, this sort of decision process might require the judiciary to interpret the structural character of the conceptual boundaries concerning those issues – that is, whether, or not, some given act of the legislature was a violation of Constitutional prohibitions involving bills of attainder and ex post facto laws.

If so, then the problem becomes whether, or not, such a process of interpretation involves the exercise of discretionary degrees of freedom by the judiciary. If bills of attainder or ex post facto laws are rules that are fairly linear and consistent in their sphere of applicability, then in accordance with the requirements of legal positivism, one merely has to determine what the 'facts' of a given case are and compare those facts with the character of the Constitutional provisions and, then, determine the nature of the relationship between the 'facts' and those provisions.

If, on the other hand, bills of attainder or ex post facto laws are somewhat non-linear in character, then the judiciary might have to exercise interpretive or hermeneutical discretion concerning whether a given Constitutional prohibition was, or was not, violated. Under those sorts of circumstances, one would have to try (as Dworkin did) to come up with a defensible theory of interpretation or hermeneutics concerning how discretion was to be exercised in such cases.

Hamilton claimed that it was the duty of the courts to: "declare all acts contrary to the manifest tenor of the Constitution void." Unfortunately, this kind of language is not found anywhere in the Constitution.

Furthermore, even if this kind of language had appeared in the Constitution, one would still be faced with a problem. What is meant by the idea of: "the manifest tenor of the Constitution"?

Does the Constitution have a manifest tenor? Chapter 3 ("Perspectives on Framing") suggests that in many respects – but not necessarily all -- there is not any manifest tenor inherent in the Constitution.

There were as many understandings concerning the nature of the Constitution as there were participants in the Philadelphia Convention. There were as many understandings concerning the nature of the Constitution as there were participants in the ratification process … which is one of the reasons why so many delegates to the ratification conventions wanted to introduce amendments in order to protect against possible problems manifesting themselves in the future as a result of the ambiguities that were perceived by many to be present in the Constitution-as-written.

To be sure, there are likely to be a variety of areas within the Constitution on which there might have been a general consensus concerning the "manifest tenor" of that document. However, assuming that there is a similar 'manifest tenor' that can be extended to the entire Constitution is another matter – especially in light of the fact there have been so many 5-4 and 6-3 decisions that have been rendered during the history of the Supreme Court.

One of the reasons why there is so much partisan bickering concerning the confirmation of judges has less to do with the possible "manifest tenor" of the Constitution than it does with wanting to ensure that the judges who are confirmed will interpret the Constitution in a manner that is resonant with the political and economic interests of those who command the majority position in the Senate. If there really were a "manifest tenor" of the Constitution, there would be only one way to understand the nature and meaning of the Constitution, and, yet, no one has been able to put forth an unassailable case in that respect.

One needs to go no further than the Preamble to the Constitution to understand that the meaning of the Constitution is hopelessly ambiguous. No one – in government or beyond – can put forth a case that is defensible, beyond a reasonable doubt, with respect to what is meant by: 'establishing justice,' 'insuring domestic tranquility,' 'providing for the common defense,' 'promoting the general welfare,' and 'securing the blessings of liberty to ourselves and our posterity.'

Everyone has theories about the foregoing ideas. No one has proof beyond a reasonable doubt that his or her theories accurately reflect the 'manifest tenor' of the Constitution … or, perhaps more importantly, accurately reflect the nature of reality.

Hamilton argued that elected representatives should not be judges in their own causes with respect to what was, and was not, appropriate with respect to the meaning of the Constitution. Consequently, Hamilton believed that the role of the judiciary was to act on behalf of the people by limiting the activity of the legislature and restraining the latter through demarcating the proper boundaries within which the legislature was entitled to operate with respect to the enumerated powers that had been granted to it via the Constitution.

For Hamilton: "Interpretation of the law is the proper and peculiar province of the courts". Yet, if there is a "manifest tenor to the Constitution," then what need is there for judicial interpretation?

Stated somewhat differently, one might ask: If only judges are capable of interpreting the law – since, according to Hamilton, it is their proper and peculiar province -- then one wonders just how manifest the tenor of the Constitution actually is? Alternatively, if judges are the only ones capable of understanding the manifest tenor of the Constitution, then why do they disagree with one another?

Wherever there are ambiguities present in the Constitution (and there are many – for example, what is meant by the "necessary and proper" clause in the last paragraph of Section 8 in Article I), judicial discretion will enter the picture. Whenever judicial discretion becomes necessary, one needs to be able to demonstrate that a given mode of exercising that kind of discretion is defensible beyond all reasonable doubt … otherwise the exercise of that sort of discretion will be entirely arbitrary.

Hamilton considered a constitution to be a fundamental form of law. Furthermore, he maintained that it was the function of the courts to determine what the meaning of that sort of fundamental law is, as well as to determine the meaning of whatever laws might be issued by the legislature.

If the courts determine that there is some sort of irreconcilable discrepancy between the meaning of the Constitution and the meaning

of the laws that are forthcoming from the legislature, then, according to Hamilton, preference should be given to the meaning of the Constitution. He equates the intention of the people with the meaning of the Constitution and indicates that both should be preferred to the intention of legislative agents.

Unfortunately, the people did not write the Constitution. Therefore, there is no reason why the intention of the people and the meaning of the Constitution should be considered to be synonymous with one another.

Of course, attempting to equate the intention of the people with the meaning of the Constitution might be an allusion to the resolution passed by the signatories to the Philadelphia Constitution that the people should ratify the Philadelphia Constitution rather than the Continental Congress and the state legislatures. If so, then the argument might be that the meaning of the Constitution gave expression to the intention of the people when they ratified it.

However, many segments of "We the People" – even among those who voted to ratify the Philadelphia Constitution – had reservations concerning the meaning of certain aspects of the Constitution. Consequently, one is not necessarily justified in equating the intention of the people with the meaning of the Constitution as Hamilton seeks to do in *Federalist*-Number 78.

According to Hamilton, the capacity of the judiciary to interpret the meaning of the Constitution did not make the judiciary superior to the legislature, but, rather, merely indicated that the will of the people was superior to either the judiciary or the legislature. When the judiciary determines the meaning of the Constitution, then, from Hamilton's perspective, the courts are merely acting in the service of the will and intention of the people and demonstrating that the will and intention of 'We the People' is superior to that of the legislature.

There seems to be a substantial amount of sophistry in Hamilton's foregoing argument. On the surface, his mode of reasoning seems attractive because it tries to reduce the meaning of the Constitution to the will and intention of 'We the People,', yet 'We the People' did not formulate the Constitution, and, more importantly, there were too many problems inherent in the ratification process to try to justifiably claim that the ratified Constitution gave expression to the intention,

will, and meanings of 'We the People' with respect to the issue of governance.

Moreover, Hamilton believes that only courts have the "peculiar province" to be able to interpret and understand the manifest tenor of the Constitution, and, therefore, the will and intention of 'We the People.' Consequently, one wonders why 'We the People' do not have the capacity to understand their intention and will independently of the judiciary … or, why 'We the People' need someone to adjudicate such matters if the manifest tenor of the Constitution is as manifest as Hamilton claims it is?

Hamilton goes on to argue that the exercise of judicial discretion will always be a matter of courts generating fair constructions -- "so far as they can" – with respect to, on the one hand, laws that are in apparent conflict with one another but are capable of being reconciled with each other or, on the other hand, laws that are not reconcilable with each other but one of which can be demonstrated to be consistent with the fundamental law of the Constitution. Hamilton doesn't specify: What the criteria are for determining what constitutes a 'fair construction' or how far courts will be able to generate such constructions, or why one should suppose that one of two conflicting laws will be capable of being demonstrate to be consistent with the Constitution – or how one accomplishes this -- when it is possible that neither law might be all that consistent with the Constitution … a lot depends on the criteria of 'consistency.'

All one gets from Hamilton's essay is the idea or possibility that 'somehow' the exercise of judicial discretion will lead to a decision or judgment that will serve the intention and will of the people. There is no proof of this … only the theoretical assertion.

Federalist-Number 78 does not disclose the structural character of the process of judicial discretion. *Federalist*-Number 78 does not disclose what constitutes a 'fair construction' or what the criteria of 'fairness' are for such a construction. *Federalist*-Number 78 does not disclose whether, or not, the exercise of judicial discretion really gives expression to the intention and will of the people. *Federalist*-Number 78 does not disclose what the criteria are for determining whether two laws are capable of being reconciled with one another in a way that is consistent with the fundamental law of the Constitution, or what the

criteria are for demonstrating that one law, rather than another, is consistent with the Constitution. *Federalist*-Number 78 does not disclose why -- if the "manifest tenor of the Constitution" is really manifest -- only judges are capable of understanding that tenor.

Hamilton attempts to claim that concerns about judges substituting their own will for the meaning of law carry no weight. However, his reasoning concerning this issue seems rather suspect.

In effect, Hamilton argues that if judges, like legislators, were to substitute their own likes and dislikes (i.e., will) in place of the actual requirements of the fundamental law of the Constitution (i.e., judgment), then this would be an argument against having judges at all since the latter individuals would be succumbing to the same sort of error as is committed by those legislators who follow their own likes and dislikes (will) rather than comply with the requirements of the Constitution. This argument is valid as far as it goes but doesn't explain why judges would not be vulnerable to preferring their own likes and dislikes (i.e., their will) in the same way that legislators are vulnerable.

Toward the latter part of *Federalist*-Number 78, Hamilton explores the issue of having to find candidates for the judiciary who have the requisite technical skills, as well individuals who will have the necessary integrity to overcome the natural tendency of many individuals to prefer their likes and dislikes to considered judgment, but the discussion is very general. Hamilton has almost nothing to say about how one identifies those kinds of individuals.

Hamilton indicates there is a difference between 'judicial will' and 'judicial judgment.' Unfortunately, he doesn't explain what the precise character of that difference is other than to suggest that judgment will comply with the requirements of the fundamental law of the Constitution, whereas will does not comply with that law.

Consequently, contrary to Hamilton's claims in *Federalist*-Number 78, the possibility of jurists substituting their will concerning the Constitution does carry weight. Although Article IV, Section 4 of the Constitution guarantees a republican form of government to every state, there is no way to determine whether any given exercise of judicial discretion is actually giving faithful expression to that kind of a guarantee.

Hamilton assumes – or hopes – the foregoing will be the case. Nonetheless, he can't prove that this is how things will actually turn out because he has failed to establish a clear set of criteria for demonstrating when 'judicial judgment' is being exercised rather than 'judicial will.'

Toward the latter part of Federalist-Number 78, Hamilton states: "It has been frequently remarked, with great propriety, that a voluminous code of laws is one of the inconveniences necessarily connected with the advantages of a free government. To avoid an arbitrary discretion in the courts, it is indispensable that they should be bound down by strict rules and precedents, which serve to define and point out their duty in every particular case that comes before them; and it will readily be conceived from the variety of controversies that grow out of the folly and wickedness of mankind, that the records of those precedents must unavoidably swell to a very considerable bulk, and must demand long and laborious study to acquire a competent knowledge of them. Hence it is that there can be but few men in the society who will have sufficient skill in the laws to qualify them for the stations of judges." However, Hamilton does not stipulate what it means to "be bound down by strict rules and precedents" or why the manner of being 'bound down' should be in accordance with some rules and precedents rather than others.

Moreover, if those sorts of "strict rules and precedents … serve to define and point out their [i.e., the courts] duty in every particular case that comes before them," then what need is there for the sort of judicial discretion that Hamilton claims is the "peculiar province" of courts? In addition, if a "long and laborious study" of precedents should be required in order "to acquire a competent knowledge of" those precedents in order to be able to come to know one's duty in any particular case, then what happened to the "manifest tenor of the Constitution?"

Hamilton argued earlier in *Federalist*-Number 78 that: "the prior act of a superior ought to be preferred to the subsequent act of an inferior and subordinate authority; and that accordingly, whenever a particular statute contravenes the Constitution, it will be the duty of the judicial tribunals to adhere to the latter and disregard the former." If this is the case, then what need is there of precedents since the

"manifest tenor" of the fundamental law of the Constitution should always have precedence over any other kind of secondary judgment – i.e., precedent – developed in accordance with this or that statute?

What function do precedents have if the Constitution is the mother of all precedents? If subsequent precedents draw out the meaning of the Constitution in greater detail or specificity, then, perhaps, Hamilton was wrong about the "manifest tenor" of the Constitution, and irrespective of whether he was right or wrong on this latter issue, one still doesn't really have any clear sense of what is meant by the idea of the Constitution's "manifest tenor" or how one goes about determining whether, or not, subsequent precedents are consistent with that tenor.

Many of the ideas that Hamilton introduced in *Federalist*-Number 78 were – as pointed out toward the beginning of this discussion -- directed toward supporting the argument that the tenure of jurists should be permanent as long as "good behavior" was in evidence. Hamilton believed that a judiciary which had tenured permanence would best serve the interests of the people against possible violations of Constitutional limits by the legislature and, in addition, would be independent of the executive branch as well.

Unfortunately, there are many questions that arise during the course of *Federalist*-Number 78 in relation to such ideas as: The manifest tenor of the Constitution; the meaning of the fundamental law of the Constitution; judicial discretion; fair construction; judicial will; and the role of precedents. Hamilton provides no way to answer the foregoing questions in a non-arbitrary way … and, yet, Hamilton was quite concerned with avoiding "arbitrary discretion in the courts."

Consequently, in view of the many unanswered questions and ambiguities that exist in conjunction with *Federalist*-Number 78, one can't help but feel a certain amount of discomfort with the thought that, according to Hamilton, members of the judiciary should have permanent tenure and, thereby, be in a position to – possibly -- impose arbitrary interpretations of the Constitution upon citizens (which is equivalent to the idea of "judicial will") rather than -- allegedly -- giving expression to the intention and will of 'We the People' by making proper judgments – whatever they are -- concerning the 'manifest tenor' of the Constitution. Instead of mounting an argument

in defense of the idea of permanent tenure for the judiciary, Hamilton's failure to clearly and adequately address certain issues concerning the judiciary in *Federalist*-Number 78 tends to bring the idea of permanent tenure into question.

In Federalist-Number 83 Hamilton refers to some general guidelines for interpreting the law while he addresses the question of whether, or not, the Philadelphia Constitution's provisions for trial by jury in criminal cases automatically excludes the idea of trials by jury in civil cases. At one point in the essay, Hamilton stipulates that the process of interpreting the law is just a matter of applying rules of common sense that have been adopted by the courts during the construction of laws.

One person's idea of common sense is often antithetical to the thinking of others who might consider that the former person's idea to be doing something other than making 'sense' … common or otherwise. Moreover, that which might have seemed commonsensical during the construction of certain laws might not be considered to be so commonsensical when subsequent jurists engage those laws and attempt to interpret the possible meanings of those laws.

Hamilton goes on to say, with respect to the issue of interpreting a constitution, that: "the natural and obvious sense of its provisions, apart from any technical rules, is the true criterion of construction." Like the issue of common sense, what one person considers to be: "the natural and obvious sense" of something (e.g., a law or constitution) will not necessarily reflect what another individual considers to be "the natural and obvious sense" of that 'same something' … and the history of judicial interpretation tends to support the foregoing contention.

What is considered to be commonsensical, natural, or obvious takes place in a certain context of understanding. Different frameworks of understanding often give expression to different ideas about what is commonsensical, natural, and obvious.

The relationship between Madison and Hamilton gives clear expression to the foregoing point. More specifically, during the drafting of the Philadelphia Constitution, as well as during the writing of the essays that collectively came to be known as *The Federalist Papers*, Madison and Hamilton were conceptual allies, and, yet, not

very long after ratification of that constitution had been completed, the two individuals became philosophical enemies with respect to what they each considered to be commonsensical, natural , and obvious with respect to the practical application of the Philadelphia Constitution in relation to the issue of governance -- for example, their radically different opinions concerning the constitutionality of a national bank in which Madison argued against that idea on the basis of, among other things, a narrow interpretation of the necessary and proper clause of the last paragraph of Article I, Section 8, while Hamilton argued in favor of such a bank on the basis of, among other things, a broader interpretation of that same clause.

Between 1789 and 1801, the Supreme Court made only a small number of decisions that might be considered to have some degree of importance. In fact, the role of the Court seemed to be so peripheral to the functioning of government that John Jay, the first Chief Justice of the Supreme Court, declined John Adams' offer to have Jay continue on as the head of the Court because Jay felt that the Court would never attain the sort of gravitas that would enable the Court to play an influential and effective role in governance.

Adams appointed John Marshall to become the new Chief Justice. Marshall held that position for 35 years, and over the course of those three and a half decades, Justice Marshall proceeded to construct a hermeneutical or interpretive perspective that gave expression to how he believed the Court ought to engage its constitutionally granted powers.

At the heart of Justice Marshall's philosophy is the belief that the judiciary should exercise its constitutionally granted authority in order to give effect to the will of the law rather than to the will of the judges. This is the same sort of point that Hamilton made in the previously discussed *Federalist*-Number 78 when he distinguished between the will and judgment of the court and indicated that only the latter process – that is, judgment – would be able to uncover the true meaning of a law or constitution.

Justice Marshall's approach to understanding the nature of law leaves one with the same kinds of problems with which Hamilton left us earlier on. What are the criteria – and how are those criteria or

their application to be justified – for determining what constitutes the 'will of the law' rather than the 'will of a jurist' or judge?

According to Justice Marshall in *Brown v. Maryland (1827)*, when a jurist seeks to construct the meaning of this or that clause of the Constitution: "it is proper to take a view of the literal meaning of the words to be expounded, of their connection with other words, and of the general objects to be accomplished by the prohibitory clause, or by the grant of power." Whose "literal meaning of the words to be expounded" is to be accepted? Whose understanding of "their connection with other words" is to be adopted? Whose interpretation of the "general objects to be accomplished" or powers to be granted is to govern how a jurist reaches his or her judgment concerning the alleged meaning of the Constitution? More importantly, how does one justify, beyond a reasonable doubt: Accepting one sense of the literal meaning of a set of words rather than some other sense of those words; or, the adopting of one understanding rather than some other understanding concerning the alleged relationship of those words to other words; or, the use of one interpretation rather than some other interpretation in relation to the nature of the "general objects to be accomplished" or powers to be granted?

Justice Marshall says that it is proper to proceed in the way he indicates, but he doesn't justify why such a methodology is "proper". Like Ronald Dworkin's fictional Hercules, Justice Marshall accepts the idea that the Constitution is, in part, settled law – for example, that the judiciary has been given power to engage the law, and Marshall is intent on mapping out the nature of that power, but the issue remains whether Justice Marshall was undertaking that project out of judicial will or judicial judgment.

The Philadelphia Constitution cannot serve as the source of its own authority without running into a circular argument that is entirely arbitrary. The source of authority for the Constitution – however it might be interpreted – lies beyond the horizons of that document, and this fact was recognized by the Founders/Framers when they sought to root the authority of the Constitution in the will of 'We the People' via the process of ratification.

However, if the ratification process was flawed in substantial, then one cannot automatically assume that the ratification process has the

capacity to provide the sort of authority that could justify or sanction the legitimacy of the Constitution. If this is the case, then granting jurists the power to establish the meaning of a document – i.e., the Constitution – through this or that methodology really might not be as "proper" as Justice Marshall supposes because the underlying authority for doing so is questionable.

Even if one were to grant – for the purposes of argument – that the Philadelphia Constitution gave expression to a legitimate source of authority via the process of ratification for those who participated in such a process, nonetheless, the issue of propriety concerning methodology does not end. However legitimate a given form of governance (e.g., the Philadelphia Constitution) might be for those who – we will assume – authorized it through the process of ratification, why should such an arrangement be binding on people living several hundred years later who had no role in either the drafting or ratification of that arrangement?

Will it still be "proper to take a view of the literal meaning of the words to be expounded, of their connection with other words, and of the general objects to be accomplished by the prohibitory clause, or by the grant of power"? What do: The literal meaning of such words, or their connections with other words, or the general objects to be accomplished, or the powers to be granted, have to do with people living more than two hundred years later -- even if the meanings of those words, their connections, the general objects, and powers could be determined without controversy?

Justice Marshall understood that the task of interpretation would be a challenge given that it took place within a context complicated by the existence of conflicting federal powers, as well as political/economic interests that varied from state to state. Nevertheless, as complicating as the foregoing factors might be, the most problematic complications were given expression through the Preamble to the Constitution that, supposedly, outlined the purposes for which the Constitution had been constructed.

More specifically, all the allegedly "literal" meanings of words and their connection with: Other words, prohibitory clauses, and grants of power, have to be filtered through the Preamble. Yet, without a clear understanding of what is meant by the idea of: 'establishing justice,'

'insuring domestic tranquility,' 'providing for the common defense,' 'promoting the general welfare,' or 'securing the blessings of liberty,' then irrespective of whatever legal methodology one judges to be "proper" to guide one's process of understanding or interpreting, among other things, "the literal meaning" of words in the Constitution, nevertheless, one is just arbitrarily engaging that document.

In *Gibbons v. Ogden (1824)*, Justice Marshall claimed that: "It is a well-settled rule that the objects for which it [a power] was given, especially when those objects are expressed in the instrument itself, should have great influence in the construction." Yet, even though the Preamble to the Constitution states the objects for which the various powers of the Constitution have been granted, one is uncertain what the nature of the influence of those objects is on the construction of the meaning of the Constitution because one doesn't necessarily know what is meant by words such as: 'justice,' 'defense, 'tranquility,' 'welfare', or 'liberty.'

In *Ogden v. Saunders* (1827), Justice Marshall stated that "the intention of the instrument must prevail." He went on to claim that one derived the nature of such intention from the words that are used in a given instrument and that those words were to be understood in the way in which those for whom the instrument had been constructed – i.e., the people – generally understood those words. Furthermore, Justice Marshall stipulated that the provisions of those instruments were: "Neither to be restricted into insignificance, nor extended to objects not comprehended in them, nor contemplated by its framers."

What does it mean to neither restrict the meaning of something into insignificance, nor to extend that meaning beyond what had been contemplated by those who constructed a given instrument of governance? How do we know that the instrument was constructed in accordance with the manner in which the generality of people understand the words employed in such an instrument? How does one determine what the generality of people understand the meaning of certain words to be within the context of a legal instrument such as a constitution? Who is to be considered a "Framer", and what if not everyone who helped frame an instrument necessarily spoke out about the nature of what they contemplated as they voted for that kind of an instrument? What if the intention of the framers – even if that

intention could be identified – did not accurately reflect the will of the people, and how would one set about determining whether, or not, the framer's intention properly reflected the will of the people?

When Justice Marshall issued his decision in *Marbury v. Madison* (1803), he maintained that the people had "an original right" to establish a form of governance that in their opinion likely would lead to their collective happiness. Moreover, he believed America had come into being with such a right and goal in mind.

However, according to Justice Marshall, exercising the "original right" required a great deal of effort and, therefore, he considered that sort of a process something that neither can -- nor ought to -- be done frequently. Consequently, he held that: "The principles … so established, are deemed fundamental. And as the authority from which they proceed is supreme, and can seldom act, they are deemed to be permanent."

There are several problems inherent in the foregoing perspective of Justice Marshall. First, to claim that the people have "an original right" with respect to developing a form of governance that is conducive to their happiness is one thing, but to claim that what took place in the Philadelphia Convention is an appropriate expression of that 'original right' might be quite another matter.

The 55 delegates who attended the Philadelphia Convention of 1787 were not a representative sample of the American people. With the exception of Alexander Hamilton, Roger Sherman, and, to a degree, Benjamin Franklin, the individuals who attended that convention were not self-made men but came from families that were fairly wealthy and influential in Colonial America.

Thomas Paine, who did not attend the convention, represented a radicalized part of society involving both sides of the ocean that regularly explored an array of political and economic issues in the taverns and teahouses of the Atlantic world. The perspective of those individuals concerning issues involving: freedom, rights, governance, property, and commercial fairness were -- relative to the ideas being considered by the delegates to the Philadelphia Convention -- quite different in many respects.

The Philadelphia Convention gave expression to one possibility concerning how the 'original right' to which Justice Marshall referred might be exercised. However, that effort was skewed by the backgrounds, interests, inclinations, and purposes of the people who participated in the aforementioned convention.

The Philadelphia Convention might have had a very different outcome if certain people who did not attend that assembly – namely, among other possibilities, Patrick Henry, Thomas Paine, Thomas Jefferson, William Findley, Samuel Adams, and Richard Henry Lee – had been able to collaborate with those individuals who did attend the Philadelphia Convention but were disgruntled, in one way or another, with the nature of that assembly … individuals such as: George Mason, Elbridge Gerry, Edmond Randolph, John Lansing, Jr., Robert Yates, and Luther Martin. Moreover, what about the many individuals in America who were never even considered as possible participants for the Philadelphia Convention?

Thomas Paine was not an isolated individual. Rather, he was just one of the participants in the radical discussions that had been taking place in Atlantic Europe before he even came to America, and he continued on with those tavern-based discussions when he arrived in America. Consequently, to suppose that people like James Madison and Alexander Hamilton – or other members from their social, educational, and economic background -- were the only individuals who were thinking about issues of governance, rights, liberty, and justice (or were even necessarily the best and wisest of those who did think about those topics) is a gross distortion of the historical reality of the Atlantic world of those times.

Paine came to people's attention in America because of *Common Sense* and other essays he wrote once he landed in America. However, there are likely to have been many other people on both sides of the Atlantic who understood the issues surrounding the "original right" to which Marshall referred in his Supreme Court decision even if they never gave written voice to their understanding concerning those issues.

Many people might consider James Madison to be the 'father of the Constitution'. Unfortunately, if this is the case, then this also means that the Constitution was framed or limited by Madison's

interpretation of the 'original right' to which all people -- according to Marshall -- were entitled.

Justice Marshall believed that it was the intent of the framers of the Constitution to generate "a fundamental and paramount law of the nation." Nonetheless, to claim -- as Justice Marshall did in the *Marbury v. Madison* decision – that the document constructed via the Philadelphia Convention should be deemed to be permanent, co-opts the opportunity of many other people to give expression to the 'original right' – a right that Marshall acknowledges all people have -- in a way that is different (perhaps substantially so) from that which was generated through the Philadelphia Convention.

According to Justice Marshall, the theory which those who frame constitutions rely on involves the idea that any act of a legislature that is considered "repugnant to the constitution, is void." Justice Marshall considers such a theory to be attached to every written constitution, and, as a result, he feels that his court – the Supreme Court – must treat that kind of a theory "as one of the fundamental principles of our society."

It is understandable that those who frame a constitution would wish their document to be the "fundamental and paramount law of the nation" and, therefore, they would be of the opinion that any act of the legislation which is repugnant to that constitution should be considered to be void. Less understandable is the idea: That those who are to be governed by this kind of a "fundament and paramount law" would necessarily agree that any act of the legislature – or the people – which runs contrary to that law should be considered to be repugnant and, therefore, void.

Why favor the ideas of those who frame constitutions over the ideas of those who do not frame constitutions? Why should those who frame constitutions have a greater claim on the "original right" to which Justice Marshall refers in the *Marbury v. Madison* decision than those who do not frame constitutions?

Conceivably, any written constitution that can be shown to violate the "original right" to which -- according to Chief Justice Marshall -- all people are entitled should be considered to be repugnant with respect to that "original right". Moreover, if those constitutions are found to be

repugnant in the foregoing sense, then perhaps those constitutions ought to be considered void.

The most "fundamental and paramount law of the nation" should be firmly rooted in the "original right" to which all people are entitled. Unfortunately, Justice Marshall is assuming that because the intent of the framers of the constitution was to accomplish such a goal – that is, to root the law of the land (the constitution) in the 'original right' – then the Supreme Court was obligated to honor that sort of an intention and, as a result, treat the Philadelphia Constitution as permanent.

Justice Marshall never seems to ask the following question: Notwithstanding the intention of the framers, did they get it right? That is, did the constitution framed by the delegates to the Philadelphia Convention give 'proper and adequate' expression to the 'original right' to which everyone is entitled?

Why treat anything as permanent until the foregoing questions can be answered in a way that is likely to be true beyond all reasonable doubt? Why honor or adopt the theory of the framers concerning the idea that any act of the legislature which is repugnant to the Constitution should be considered void unless one can demonstrate beyond a reasonable doubt that such a document is not repugnant to the 'original right' to which all people are entitled?

In *McCulloch v. Maryland* (1819), Justice Marshall argued that if a constitution were to give expression to a complete account of all the powers inherent in it as well as the means through which such powers might be realized, then, this kind of a document could not be grasped by the human mind and "would probably never be understood by the public." In the light of the foregoing practical realities, Justice Marshall went on to claim that, as a result, constitutions were written in such a way that only the outlines of the fundamental law were written, and the details of such a law would be deduced from that which was written with respect to the 'fundamental and paramount law of the nation.'

Let's assume, for the sake of argument, that Justice Marshall's foregoing account is correct. What happens if the outline provided by a given constitution does not properly reflect the 'original right" to which Justice Marshall believes that all people are entitled?

Furthermore, if the nature of a constitution distorts the 'original right', then what sense is to be made of the 'deductions' which are supposed to provide the details that are entailed by the general outline of the constitution? If one starts with a flawed document, then the deductions which are made in conjunction with that kind of document will also be flawed no matter how impeccable the logic of any given deduction might be.

The foregoing problem is compounded when one raises questions about whether, or not, this or that deduction is warranted and can be demonstrated -- beyond a reasonable doubt -- to be fully consistent with the purposes for which a given constitution has been written. For example, any deduction concerning the Constitution framed by the participants in the Philadelphia Convention must be capable of being shown to fully consistent with the principles/objects/purposes that are being advanced in the Preamble to the Constitution.

Thus, any given deduction of detail drawn from the general outline of the Philadelphia Constitution must be capable of demonstrating – beyond a reasonable doubt – how such a deduction gives expression to: 'perfecting the union,' 'establishing justice,' 'insuring tranquility,' 'providing for the common defense,' 'providing for the general welfare,' and 'securing the blessings of liberty.' Moreover, the foregoing sorts of deductions must advance all the goals and purposes of the Preamble simultaneously and to an equal degree (there is no 'either-or' in the Preamble). Otherwise, the reason for which the constitution purportedly was framed will not be served.

In addition, if, as Justice Marshall claimed earlier, the public would never be able to understand a constitution that contained a complete account of all the powers inherent in a constitution together with the variety of means for realizing those powers, why should one suppose that the public will understand the character of the deductions made by a given court concerning that kind of a document? Any deduction – even though it is nothing more than a detail – must be capable of being shown to be consonant with the constitution if it were written out in its full reality, or it is not a valid deduction

Like a chess player who sees the moves of a game to its conclusion (e.g., at a certain point in his career, Bobby Fischer claimed to be this sort of a player), presumably a jurist should be capable of seeing how a

given deduction is consistent with the meaning of the constitution if it were to be fully elaborated in terms of all its powers, means, goals, and objects. If a jurist could not do this, then one wonders about the validity of the deduction that such an individual is making with respect to the alleged meaning of the constitution.

In light of the foregoing considerations, one might question whether any jurist -- let alone the public -- has that sort of understanding of a constitution. However, if the public cannot understand the nature of the constitution – whether written in a complete form, or written in a manner in which certain deductions were said to be consistent with such a fully elaborated document – then, what is one to make of Justice Marshall's belief that the words of the constitution are to be understood as meaning what the general public understood by such words, as well as what the general public meant with respect to the relation of those words to one another?

One implication of Justice Marshall's foregoing argument is that constructions such as the "necessary and proper" clause allude to principles that are present implicitly in the constitution even if not explicitly mentioned in that document. In other words, because one could not possibly provide an explicit list of all the powers, means, and objects to which the "necessary and proper" clause is capable of giving expression, then the three word clause is the linguistic portal through which all sorts of implicit realities might emerge by means of an appropriate deduction.

Many people seem to be under the impression that the "necessary and proper" clause is about what government requires in order to be able to function effectively. However, that clause is embedded in a context – namely, the Preamble to the Constitution – and, therefore, the aforementioned clause is not, strictly speaking, just a matter of effective government without qualification, but, rather, the "necessary and proper" clause is about the exercise of effective governance with respect to the realization of: 'a more perfect union,' 'justice,' 'tranquility,' 'defense,' 'welfare,' and 'liberty.'

Even if one were to argue that the "necessary and proper" clause should be understood in terms of the enumerated powers of Article I, Section 8, whatever deductions were made would have to be filtered through the purposes set forth in the Preamble. Thus, the capacity of

the legislature to: "lay and collect taxes, duties, imposts, and excises" must be pursued not only to: "provide for the common defense and general welfare of the United States," but, as well, to: 'insure domestic tranquility,' 'establish justice,' 'secure the blessings of liberty,' and 'to form a more perfect union.' However, one cannot do any of the foregoing unless on can demonstrate, beyond a reasonable doubt, what is meant by: 'welfare,' 'tranquility,' 'defense', 'justice,' 'liberty,' and 'perfection' … words for which neither the general public, nor jurists, have any agreed upon understanding – either individually or in conjunction with one another.

The other powers that are enumerated in Article I, Section 8 – such as: borrowing money, regulating commerce, coining money, declaring war, raising and supporting armies – are subject to the same kinds of constraints as outlined above. In other words, all of the powers mentioned in Article I, Section 8 must be viewed through the lenses of the purposes and objects of the Preamble, as well as be reconciled with those purposes and objects.

Finally, having just any theory of what constitutes: 'a more perfect union,' 'justice,' 'tranquility,' 'defense,' 'welfare,' and 'liberty,' will not do. The standard against which those purposes must be measured will be a function of the 'original right' to which Justice Marshall referred in *Marbury v. Madison*.

If the relationship is flawed between, on the one hand, the "fundamental and paramount law of the nation" – i.e., the constitution – and, on the other hand, the 'original right' to which everyone is entitled, then, this will lead to a variety of problems. These problems range from: a failure to properly understand the meaning of the purposes and objects of the Preamble, to: making invalid deductions concerning the details of how such objects and purposes are to be translated into concrete actions via the procedural powers and means of the constitution.

Justice Marshall assumes that all of the foregoing issues have been properly resolved, and, as a result, he contends, as previously pointed out, that the courts have an obligation to treat the procedural provisions of the Philadelphia Constitution as permanent inhabitants of the legal landscape. In order to satisfy the indicated obligation, Justice Marshall believes the only thing that jurists must do to arrive at

the appropriate deductions is to juxtapose real world cases next to the "fundamental and paramount law of the nation."

Unfortunately, Justice Marshall offers no proof that his assumption concerning any of the foregoing is justified beyond a reasonable doubt. What Marshall takes to be settled law is not as settled as he supposes it to be, and, consequently, many, if not most, of Justice Marshall's decisions were skewed by the biases that were inherent in his assumption concerning the presumed legitimacy and settled character of the Philadelphia Constitution.

At the very least, there can be no obligation to treat a framed constitution as permanent unless one can demonstrate that such a document gives appropriate – and, therefore, justifiable – expression to the 'original right' from which such a document is supposedly derived. In the absence of that sort of proof, there can be no sense of obligation at all, and, therefore, Justice Marshall sought to impose on the courts an obligation which neither he nor the framers could demonstrate, beyond a reasonable doubt, necessarily reflected an accurate rendering of the 'original right' to which all people are entitled.

In *McCulloch v. Maryland*, Justice Marshall emphasized the importance that considerations involving intentions played in arriving at appropriate constructions concerning the meaning of the Constitution. For example, he indicated that, presumably, one of the intentions of the framers was to make appropriate provisions for linking the execution of certain powers with that which would enhance the national welfare.

The foregoing understanding might be true … that is, one could accept the idea – for the sake of argument -- that the framers did intend that whatever powers were contained in the Constitution were to be applied for purposes of promoting the general welfare. However, until one understands what the nature of the general welfare is and whether, or not, the exercise of a certain power in a particular way will bring about that kind of an enhancement in the general welfare without affecting other aspects of society in a problematic way – for example, in a way that undermines: justice, liberty, tranquility, and defense -- then the intentions of the framers are neither here nor there.

What is relevant, however, is that irrespective of what the intentions of the framers might have been, one needs to know the nature of the relationship between the exercise of a given power and what such an exercise has to do with the 'original right' to which, according to Justice Marshall, we are all entitled. One cannot use the intentions of the framers as a starting point for interpretive deliberations, but, instead, one needs to start from the nature of the 'original right' that – according to Justice Marshall -- has precedence over the intentions of the framers since the intentions of the framers are only relevant to the extent that their understanding gives proper expression to the 'original right.'

Justice Marshall argued in *Dartmouth College v. Woodward* (1819) that when a given rule is applied to a case, then, under normal circumstances, the words of that rule should control that application. The exception to the foregoing would be in those instances in which "the literal construction is so obviously absurd, or mischievous, or repugnant to the general spirit of the instrument, as to justify those who expound the constitution in making it an exception."

Dartmouth College v. Woodward is viewed by Justice Marshall through the lenses of the idea of a contract. In fact, several of Justice Marshall's fellow justices – Justice Story and Justice Washington -- devoted considerable effort in their concurring opinions attempting to demonstrate that the agreement between New Hampshire and Dartmouth College was contractual in nature.

Even the state government of New Hampshire considered the aforementioned agreement to be a contract. However, it wanted to construe the agreement in a way that placed the agreement outside of the purview of the contract clause of the Philadelphia Constitution … either in the sense that such agreements were not what the Founders/Framers had in mind when they introduced the contract clause into the Constitution, or in the sense that the idea of a charter fell beyond the horizons of the contract clause and, therefore, the latter did not apply to the issue of charters.

Justice Marshall argued: "Does public policy so imperiously demand their charter at issue remaining exposed to legislative alteration, as to compel us, or rather permit us, to say that these words [he is referring to the contract clause] that were introduced to give

stability to contract, and which in their plain import comprehend this contract, must be so construed as to exclude it?" A short while later, Justice Marshall adds: "Do such contracts so necessarily require new modeling by the authority of the legislature that the ordinary rules of construction must be disregarded…?"

There is an issue involving the meaning of words in *Dartmouth College v. Woodward*, but that issue is not necessarily what Justice Marshall (or Washington and Story) supposed it was – namely, one of contracts. The term "charter" appears in the foregoing extract from Justice Marshall's decision concerning *Dartmouth College v. Woodward (*as well in the New Hampshire arguments concerning the matter), and although a considerable segment of several of the judicial opinions concerning *Dartmouth College v. Woodward* are devoted to arguments that purport to demonstrate how the idea of contracts is relevant to the aforementioned case, one might raise the question of whether, or not, a charter actually constitutes a contract.

Charters might be sought by those wishing to be granted a charter, and the granters of charters might seek an appropriate recipient upon whom to bestow a given charter. However, charters are not offered in a contractual sense.

Charters are permissions with conditions. They are granted by an individual or individuals in power, not offered.

In order for the law of contracts to be applied, one must demonstrate that the three basic elements of a contract are present – that is, offer, acceptance, and consideration. Charters do not contain the element of 'offer', and, therefore, they are not contracts.

One can, of course, try to force-fit the idea of a charter into the language of contracts by claiming that whatever social and verbal interaction that take place between the one granting a charter and the recipient of that kind of a charter constitutes some form of offer and acceptance, or that there is an element of consideration present in the granting of a charter since both the one who grants a charter and the one who is granted a charter might enjoy benefits from that sort of a relationship. However, the foregoing way of rendering the idea of a charter is distortive because it completely overlooks the asymmetric character of the relationship between the one who grants a charter and the one who is granted a charter.

To be sure, the party that is granted a charter might become, in time, so powerful that it can leverage its position to change the nature of the relationship and, thereby, come to dominate, in various ways, the one who originally granted the charter. However, the foregoing possibility does not alter the fact that at its inception, a charter was granted by one in power and could, in time, be revoked by that same power.

There is no element of offer in a charter. It is either granted or it is not, and no one has a right to be the recipient of such a grant -- or continue to benefit from such a grant -- by virtue of either a form of acceptance or form of consideration.

To try to construe charters as contracts is – to use the language of Justice Marshall - - to generate a "construction so obviously absurd, or mischievous, or repugnant to the general spirit of the instrument" [that is, a charter] that one is justified in arguing that the contract clause of the Constitution is not an appropriate rule to apply to such an instrument … not because the idea of a charter is an exception to the rule in relation to the issue of contracts but because charters do not constitute contracts at all.

Charters can be granted and revoked at any time at the pleasure of the one who controls the ability to grant charters. Whatever problems arise from the granting or revoking of such a charter will be a matter to be sorted out through the laws governing torts and/or power politics and not through the laws of contracts.

While it might be true – as Justice Marshall claimed – that the contract clause was intended to give stability to contracts, this point is irrelevant to the issuing of charters. The fact that Justice Marshall construed charters as a form of contract merely indicates there were problems surrounding the meaning of words such as 'contract' and 'charter.'

A great deal of mischief has been introduced into society through the confusion that Justice Marshall – and those who concurred with him -- established as a precedent in the form of the Supreme Court decision concerning *Dartmouth College v. Woodward*. Like the erroneous claim involving the alleged personhood of corporations that was illegitimately associated with the 1886 Supreme Court decision involving *Santa Clara County v. The Southern Pacific Railroad*, the

Dartmouth College v. Woodward decision has been used by corporations to gain unjustified and unwarranted control over various aspects of social and economic life to the disadvantage of actual living human beings.

In Article I, Section 10, Paragraph 1, the Constitution stipulates that no state shall pass "any law impairing the obligation of contracts." Nevertheless, irrespective of whether one interprets the idea of charters in a contractual or a non-contractual sense, one cannot consider the idea of a contract as an entity unto itself.

The federal government cannot do anything that would interfere with certain kinds of obligation that are entailed by the idea of a contract within the context of a constitutional system. More specifically, the obligation of all contracts within the United States is to serve the purposes and objects for which the Philadelphia Constitution allegedly had been created.

If any given contract will not advance the purposes of tranquility, welfare, justice, defense, and liberty, then such a contract is not fulfilling the obligation that it has to the very document that makes that contract possible. The obligation of contracts cannot be limited to merely the issues involving offer, acceptance and consideration between, or among, a limited group of individuals, but, rather, there is a dimension of obligation entailed by contracts within the United States that must extend to the rest of society.

Whatever the intention of the framers might have been with respect to the meaning of the contract clause of Article I, Section 10, the deciding factor with respect to the legitimacy of any contract is rooted in the nature of the 'original right' to which, according to Justice Marshall, all people are entitled. The intention of the framers only becomes relevant if that intention reflects the structural character of the 'original right' since all contracts – as is also true with respect to every other aspect of governance -- must be evaluated in terms of the requirements of that 'right.'

One can impair the obligation of contracts in the limited sense (that is, in terms of the contract considered on its own) under certain circumstances. For instance, if the aforementioned 'lesser' sense of obligation impairs the purposes for which the Constitution was established (which are outlined in the Preamble), and/or if the lesser

sense of obligation impairs people's ability to realize the 'original right' to which Justice Marshall says everyone is entitled, then there is basis for interfering with contracts made under the foregoing sorts of conditions. In short, contracts – in the foregoing lesser sense -- must adhere to a larger obligation involving the purposes of the Constitution and/or the requirements of the 'original right' to which all people are entitled.

So, to answer what Justice Marshall seemed to consider a rhetorical question in his decision concerning *Dartmouth College v. Woodward* – namely: "Does public policy so imperiously demand their charter at issue remaining exposed to legislative alteration, as to compel us, or rather permit us, to say that these words [he is referring to the contract clause] that were introduced to give stability to contract, and that in their plain import comprehend this contract, must be so construed as to exclude it?" – the answer is: 'yes' … although one could dispense with Marshall's judgmental use of such words as: "imperiously."

The words of the contract clause might have been introduced in order to lend stability to contracts, but the Philadelphia Constitution was introduced – and, here, we will give the benefit of a doubt to the intentions of the participants in the Philadelphia Convention without necessarily supposing that what they did, or the way in which they did it, was legitimate – to stabilize the social/political/economic context in which contracts, among other things, are rooted. Therefore, if any given contract should entail ramifications that are likely to destabilize the purposes for which the Constitution was established or that will deny people access to the 'original right' to which they are entitled, then the lesser obligations of that kind of a contract are no longer tenable in the light of the greater obligation that all contracts have with respect to either the purposes for which the Philadelphia Constitution was instituted and/or the 'original right' to which all people are entitled.

In *McCulloch v. Maryland* (1819), Justice Marshall joined the 'necessary and proper' clause with the 'supremacy clause' to rule that: (a) the idea of a national bank was constitutional and (b) Maryland had no right to tax a branch of that bank in order to undermine the national bank's viability. More specifically, on the one hand, the

'necessary and proper' clause was used to indicate that even though the idea of a national bank had not been mentioned in the Constitution, Justice Marshall was of the opinion that such a bank was both a necessary and proper means through which to realize the purposes of governance, while, on the other hand, the supremacy clause was invoked to argue that since the idea of a national bank was perfectly constitutional, laws establishing it were part of the supreme law of the land and, therefore, states – in this case, Maryland – had to comply with those laws.

Although the general idea of a national bank might be constitutional, it does not necessarily follow that the particular way in which a given form of national bank might be envisioned to operate would also be constitutional. If the operating principles of that sort of bank: did not establish justice, and/or did not promote the general welfare, and/or did not secure the blessings of liberty, and/or did not insure domestic tranquility, and/or did not help provide for the common defense, and/or denied people access to the 'original right' to which everyone was entitled, then whatever the necessary and proper character of the general idea of a national bank might be with respect to the issue of governance, then nevertheless, the foregoing sort of a bank would be unconstitutional with respect to the purposes for which the Constitution was established and from which the Constitution supposedly derived its authority.

While the laws passed by the legislature might be interpreted to be constitutional and, as a result, understood to be part of the supreme law of the land with which individuals and states supposedly must comply, the Philadelphia Constitution really has never been proven – beyond a reasonable doubt – to be the supreme law for human beings and, therefore, such laws are entirely arbitrary. Making the claim of supremacy is not necessarily the same thing as being able to demonstrate, beyond a reasonable doubt, that those claims are likely to be an accurate reflection of the nature of reality.

The legitimacy of the origins of the Philadelphia Constitution is questionable (see: *Beyond Democracy* and the *Quest for Sovereignty*), and the legitimacy of the ratification process associated with that constitution is questionable, and the purposes and meanings of the Philadelphia Constitution are questionable and the claim of legitimacy

concerning the claim that such a constitution is obligatory upon those who did not draft it and did not authorize it is also questionable. In addition, the relation of the Philadelphia Constitution to the 'original right' to which all human beings are entitled is also questionable.

With so many issues of: Legitimacy, purposes, and meanings that are considered to be questionable, how can one claim that laws that are understood by some jurists to be constitutional should be considered the supreme law of the land? How do we know – beyond a reasonable doubt – that those jurists or judges have not been operating in accordance with judicial will rather than in accordance with the sorts of judicial judgments that, presumably, should be able to be justified beyond a reasonable doubt?

Justice Marshall deduced – in a very narrow sense -- that the general idea of a national bank was permissible as an expression of the 'necessary and proper clause. Justice Marshall did not consider – in a much broader sense -- whether, or not, the actual manner in which that bank operated could also be deduced to be necessary and proper.

In *McCulloch v. Maryland*, Justice Marshall failed to address an issue that was much more fundamental and in need of critical examination – namely, how the national bank actually works and affects – in practical terms -- the purposes for which the Constitution was instituted. Instead, Justice Marshall considered only superficial issues – for example, whether, or not, the general idea of a national bank could be considered to be necessary and proper.

By pursuing the superficial at the expense of the substantial, Justice Marshall established a precedent that has led to much mischief. In effect, Justice Marshall showed how one could engage the Constitution through, for instance, the "necessary and proper" clause or the "supremacy" clause without ever raising the question of how – or if -- such clauses were actually serving the purposes of the Preamble or whether, or not, any given interpretation of those clauses could be reconciled with the 'original right' to which he believed everyone was entitled.

To claim that the general idea of a national bank is consistent with, or deducible from, the "necessary and proper" clause is an extremely trivial matter. The existential impact of an operating national bank

upon the purposes set forth in the Preamble and upon the lives of 'We the People' is an entirely different matter.

Without necessarily wishing to take Maryland's side in the dispute with McCulloch (a cashier in the Baltimore branch of the 2nd National Bank who issued bank notes contrary to laws of the state of Maryland), one could raise the question of whose actions – if either -- best served the purposes of the Constitution. Justice Marshall might not have wanted to deal with this sort of a question, but by addressing only the superficial issue about whether, or not, the general idea of a national bank was constitutional, he evaded one of the few issues of potentially substantive value in *McCulloch v. Maryland*.

Furthermore, Justice Marshall also evaded the question of whether, or not, it was possible for one party – e.g., Maryland – to violate what were considered to be constitutionally valid laws and, therefore, part of the supreme law of the land, and yet nonetheless, in so doing, serve the purposes of the Preamble in a more defensible manner than the actions, policies and programs of the federal government did. This kind of question has implications for, among other things, the issue of civil disobedience and, in the process, raises the question of whose actions best serve the purposes for which the Constitution was supposedly instituted or whose actions best serve the 'original right' to which all people are entitled.

Two of the grounds for the decision in the *McCulloch v. Maryland* case revolved about: (1) whether the potential for the power to tax entailed the power to destroy, and (2) the commonsensical precept that the people considered as a whole could not be presumed to have ceded the sort of power indicated in (1) above to a part of the whole – namely, a state. However, one legitimately could apply the same sort of logic to almost every aspect of governance.

In other words, every power – and not just the power to tax – entails the possibility of being used in such a way that it becomes destructive. This includes the powers that are enumerated in the Constitution.

Surely, as Justice Marshall's commonsensical logic stipulates, no one should be able to suppose in any justifiable manner that the people considered as a whole have ceded such power (that is, destructive power) to the part – the state government – so that the

latter can adversely affect the opportunity of the whole to realize the purposes set forth in the Preamble to the Constitution. The point that Justice Marshall is making in relation to the state of Maryland and its manner of wielding power can be justifiably applied to the federal government and its manner of wielding power, but Justice Marshall does not permit himself to venture into that sort of territory because he believes – quite unjustifiably – that those matters have, in some vague sense, been settled via the ratification of the Philadelphia Constitution.

What is meant by: "necessary and proper," or "the supreme law of the land," or "impairing the obligation of contracts," cannot be known until one understands what is meant by: 'establishing justice,' 'insuring domestic tranquility,' 'providing for the common defense,' 'promoting the general welfare,' 'securing the blessings of liberty' – for ourselves and our posterity – and having access to the 'original right" to which everyone is entitled. No part of the Philadelphia Constitution has a non-arbitrary sense until one can – if one can -- resolve the hermeneutical issues surrounding the foregoing phrases in a way that can be shown, beyond a reasonable doubt, to be accurately reflective of the nature of reality.

The way in which Justice Marshall framed the legal issues during his 35 years of adjudicating matters are largely arbitrary … and this is a trend that has continued in the United States among Supreme Court jurists for nearly two hundred more years. Those ways are arbitrary because they never address the underlying, substantive issues of meaning that need to be engaged in those matters … issues that have the capacity to color, shape, and orient not only every aspect of the Constitution but every deduction that might be made in relation to that document.

For example, consider the commerce clause – namely, Congress shall have the power to: "regulate commerce with foreign nations, and among the several states, and with the Indian tribes." In *Gibbons v. Ogden* (1825) Justice Marshall described the power to regulate commerce as being fairly comprehensive, involving the capacity: "To prescribe the rule by which commerce is to be governed." Furthermore, Marshall defined commerce broadly to encompass all

facets of the dynamics among nations, the states, and Indian tribes involving the selling, buying and transporting of goods.

There were, however, several limits to the power of the federal government with respect to the regulation of commerce. One limit concerned the right of states to regulate whatever commerce took place entirely within a given state and, therefore, did not spill over into, or become entangled with the commercial activity of other states.

The other limit on federal authority to regulate commerce was a function of those police powers within a state that might have incidental -- but, nonetheless significant -- impact on commercial activity. For example, laws touching upon matters involving health, inspection, and the like in relation to commercial activity were considered to be under the purview of the states … although Marshall was inclined to place limits on just how much of this sort of incidental impact would be permitted.

While Justice Marshall dealt with the definition of commerce, as well as with what the idea of regulation involved, he was largely silent about the purpose of such regulation – other than that it was one of the powers granted to Congress by the Constitution. However, like every other aspect of Constitution, the lens through which the words of that document should be considered are the purposes set forth in the Preamble for which the Constitution was supposedly ordained and established.

Just as the states must operate within a commercial framework that is determined through the federal government's power to regulate the rules governing the operation of that framework, so too, the federal government must exercise its powers within a framework that is regulated by the purposes for which the Constitution came into being. Unfortunately, if the nature of those purposes is indeterminate, then so too, is the nature of the commercial regulatory power that is to be exercised by the federal government.

One cannot deduce very much with respect to the nature of the regulatory power of the federal government until one understands the logical or structural character of the purposes set forth in the Preamble. Until one understands what the regulation of commerce has to do with issues such as: justice, liberty, tranquility, defense, and the general welfare, then without being entirely arbitrary, one is not in a

position to proceed very far beyond the very general idea that, in some unknown sense, the federal government has the right – for the sake of argument this is being presumed -- to regulate commerce involving foreign nations, states, and the Indian tribes.

A little over a hundred years after Justice Marshall wrote his last opinion for the Supreme Court, Justice Harland Stone issued a decision concerning *Southern Pacific v. Arizona* (1945). In the opinion for that case, Justice Stone sought to establish a 'balancing test' for deciding cases involving the commerce clause. Justice Stone's notion of a 'balancing test' departed – in certain respects -- from what had been up to that time the standard through which many kinds of commerce clause cases were often decided.

More specifically, one of the standard precedents for commerce clause-related cases was set forth in *Cooley v. Board of Wardens* (1852). At the heart of this case – which occurred during the tenure of Chief Justice Taney -- is the issue of whether, or not, the precedent that had been established by Chief Justice Marshall – namely, that the federal government had a largely exclusive right (with a few exceptions) to regulate matters of commerce in the United States – precluded the possibility of states having control over the regulation of commerce in certain cases … e.g., those involving pilotage laws.

The *Cooley v. Board of Wardens* case involved a law in Pennsylvania that required vessels coming into the Port of Philadelphia to use local pilots. If incoming ships did not use local pilots, then the owners of those vessels would be required to pay half the cost of pilotage … a fee that went into a fund intended to help pilots through difficult economic times, as well as to assist them after they retired.

The Supreme Court ruled that the foregoing law was constitutional despite the fact it intruded into the area of regulating commerce … an area that was, for the most part, under the purview of the federal government. Just as Justice Marshall previously had indicated that there were exceptions to the commerce clause – e.g., commercial activity taking place wholly within the confines of a given state -- so too, Justice Curtis ruled in the *Cooley v. Board of Wardens* decision that while, generally speaking, the federal government did

have the authority to regulate commerce, there were various anomalous situations – such as in the case of pilotage – in which states shared a legitimate, concurrent power with the federal government with respect to the regulation of commerce.

Justice Curtis indicated in his decision that when it came to establishing national rules of uniformity concerning certain facets of commerce, the federal government should have the preeminent authority to regulate commerce. However, some aspects of commerce reflected local conditions, and in the latter cases, state governments had a valid standing with respect to certain claims concerning the regulation of commerce according to the requirements of those local circumstances.

The foregoing decision was not really a departure from what Justice Marshall had established in, for example, *Gibbons v. Ogden* (1825). In fact, in the latter decision, Justice Marshall had specifically referred to pilots operating within the "bays, inlets, rivers, harbors, and ports" of certain states and how the regulating of such commercial activity fell within the purview of states.

According to Justice Stone's opinion in the 1945 *Southern Pacific v. Arizona* case his reading of the earlier 1852 *Cooley v. Board of Wardens* decision was that the Supreme Court was the final arbiter when it came to adjudicating conflicting demands involving national and state interests in those cases where Congress had not passed any relevant legislation. Justice Stone, then, sought to establish a 'balancing test' through which the Court would seek to weigh the relative impact of state and national interests upon the "free flow of interstate commerce" in those sorts of cases.

The opinions in: *Southern Pacific v. Arizona*, *Cooley v. Board of Wardens* and *Gibbons v. Ogden* – spanning a period of 125 years – were all off the mark. The Supreme Court, as well as the federal and state governments, did not have any authority to arbitrate issues of commercial activity independently of either the purposes and objects of the Preamble to the Constitution, or the 'original right' noted by Justice Marshall in *Marbury v. Madison*.

The issue of commercial activity is not one of weighing the impact of state and national interests upon the 'free flow of interstate commerce.' The issue of commercial activity is not a matter of when

the Court could arbitrate cases involving commercial activity (e.g., when Congress had not passed any relevant legislation). The issue of commercial activity is not a function of divvying up the spheres of influence over which the federal and state governments should have preeminent regulatory authority.

Instead, the issue is -- and should have been -- entirely a matter of when, or if, commercial activity serves the principles inherent in the Preamble to the Constitution and/or the 'original right' to which Justice Marshall referred … principles and purposes that, supposedly, were the means through which the United States of America was to become established as a democratic nation on the world stage in the first place. If, for example, commercial activity does not simultaneously further – in a way that is demonstrable beyond a reasonable doubt -- the principles of justice, tranquility, welfare, and liberty for all of the people in the United States, then neither the Court, the federal government, the states, nor anyone else has a legitimate – that is, justifiable – constitutional right to regulate commerce for any other purposes.

Alternatively, if commercial activity does not instantiate Justice Marshall's notion of an 'original right' in a manner that is capable of being demonstrated beyond a reasonable doubt as likely to reflect the actual 'original right' that is inherent in all human existence, then neither the Court, the federal government, the states, nor anyone else has a legitimate – that is, justifiable – right to regulate commercial activity. The foregoing does not mean that individuals have the right to do whatever they like with respect to commercial activity, for such individuals -- like the judicial, executive, and legislative branches of the federal government, as well as the members of state and local governments – must be able to demonstrate, beyond a reasonable doubt, that they have the right to act commercially in one way rather than another, or the arguments of those individuals are as arbitrary as the ones that are employed by governments … whether national, state, or local.

As noted previously, in *Marbury v. Madison* Justice Marshall had referred to an 'original right" to which all people were entitled. He assumed – unjustifiably (i.e., he did not demonstrate that his assumption was capable of being proven beyond a reasonable doubt) –

that such a right was necessarily embodied in, and expressed through, the Philadelphia Constitution.

In their respective decisions, Justice Curtis and Justice Stone (each in his own way) assumed -- unjustifiably (i.e., they did not demonstrate that their assumptions concerning the supposed authority, and, therefore, source of obligation of the Constitution were true beyond a reasonable doubt) -- that their judicial opinions should be incumbent upon, or binding on, others (the executive, the legislature, the state governments, and citizens). In other words, neither of the two justices was able to successfully show that the Supreme Court had the authority to determine what the meaning of the Philadelphia Constitution was with respect to, on the one hand, the general principles and purposes set forth in the Preamble, or in relation to the 'original right' to which Justice Marshall alluded in *Marbury v. Madison*, and, on the other hand, commercial activity.

The executive, legislative, and judicial branches of the federal government, as well as the state governments all assume that they have the requisite authority to interpret the meaning of the Philadelphia Constitution, the Preamble, and the 'original right' in ways that are binding on citizens. None of them, however, have been able to demonstrate the legitimacy of those claims to authority beyond a reasonable doubt.

The source of legitimate authority is not a function of superficial issues of procedural jurisdiction – irrespective of whether those deliberations are the result of interpretive efforts by the executive, legislative, and judicial branches, or state and local governments – in relation to some given constitutional document. The source of legitimate – that is, non-arbitrary – authority is a function of substantive issues concerning what is, and what is not, demonstrable beyond a reasonable doubt with respect to the nature of reality.

Justices legislate – and, therefore, exercise judicial will rather than judgment – whenever their decisions cannot be shown, beyond a reasonable doubt, to be capable of demonstrating that those opinions reflect the nature of reality with respect to issues such as: rights, liberty, justice, and welfare, or with respect to 'the meanings' of any of the crucial clauses of the Philadelphia Constitution -- e.g., commerce clause, contract clause, supremacy clause, due process clause, or the

necessary and proper clause – relative to the 'original right' to which we all are entitled

When justices legislate from the bench – that is, exercise judicial will -- their decisions are arbitrary. In other words, their claims concerning those decisions cannot be justified as giving expression to defensible interpretations of various fundamental principles, meanings, and purposes of democracy … i.e., interpretations that can demonstrate, beyond a reasonable doubt, that their claims to authority -- with respect to placing obligations on the citizenry in relation to expectations concerning compliance with the 'rule of law' that is alleged to be inherent in a given constitution -- are legitimate.

Unfortunately, for more than 225 years, Supreme Court justices in the United States have been engaged in one arbitrary exercise of judicial review after another when it comes to their engagement of the Philadelphia Constitution, along with the amendments that, in subsequent years, were added to that document. As a result, we are governed by the arbitrary conventions of men, and, now, women – that is, individuals exercising judicial will -- rather than by the rule of law in any non-arbitrary sense.

None of the foregoing considerations should be construed to mean that judges don't employ reasoned arguments in order to arrive at their conclusions in relation to this or that case. As they construct their judicial position, they cite precedents – many of which have a questionable pedigree as far as the purposes and principles of the Preamble and/or Marshall's 'original right' are concerned -- and refer, approvingly or disapprovingly, to the arguments of this or that jurist, as well as parse the language of the case before them in terms of those facets of the Constitution that they consider to be relevant to the case before them

In addition, over time, their arguments often exhibit consistency and coherency. As a result, one can see that many jurists have a style of arguing and an inclination to go in certain judicial directions rather than others.

However, being able to put forth reasoned arguments of a coherent, consistent, and logical nature does not guarantee that those arguments will give expression to truths concerning the ultimate nature of liberty, rights, justice, and welfare in a way that can be

demonstrated beyond a reasonable doubt. People deserve more than arbitrary theories, perspectives, and ideas when those possibilities are likely to have a major impact on their basic sovereignty.

The role of citizens should not be one of serving as experimental subjects for the theoreticians of governance. If it is unethical: To perform psychological experiments on people without their fully informed consent, or to perform experiments on citizens that could be injurious to their physical, emotional, psychological, economic, and/or spiritual health, then why should the standards of ethical activity be any different in the realm of governance where the stakes are likely to be much higher, as well as likely to be much more permanently debilitating, in one way or another, with respect to citizens.

Consequently -- as previously indicated -- the reason for setting the judicial bar so high (that is, requiring jurists to be able to demonstrate that their opinions are likely to be true beyond a reasonable doubt) is to hold the courts accountable in the same way that constitutionally mandated criminal trials hold the justice system accountable. In other words, in criminal cases, the possible consequences for a defendant who is found guilty are fairly severe with respect to the manner in which liberty, welfare, and tranquility might be adversely affected, and, therefore, the standard for convicting someone requires that all twelve jurors must find, "beyond a reasonable doubt," that the state has met its burden of proof concerning the issue of guilt.

Similarly, with respect to judicial opinions that allegedly give expression to the meaning of the Philadelphia Constitution, having nine jurists all agree that such-and-such is the proper interpretation of that document is not enough. Such agreement must be established beyond a reasonable doubt, and, as pointed out previously, the idea of: 'beyond a reasonable doubt' means that the 'facts' of a case must be shown to have a demonstrably significant relationship with the actual nature of liberty, justice, welfare, rights, and the like … not in a theoretical, possible, practical, utilitarian, majoritarian, or plausible manner but in an existentially substantive way that shows how one's interpretation of the facts of a given judicial case reflect the actual character of the universe.

If jurists cannot meet the foregoing standard, then they have no non-arbitrary basis through which to justify their claims of legitimacy with respect to their judicial perspective and, consequently, they have no business engaging in judicial review. The 'original right' to which John Marshall alluded in *Marbury v. Madison* – a right that I equate with my notion of 'basic sovereignty' (that is, the right to have a fair opportunity to push back the horizons of ignorance) -- demands a much higher standard of protection than the Supreme Court has been prepared to offer – or, in truth, has been capable of offering -- for the last several hundred years.

Chapter 6: The Tenth Amendment

To claim, as many have, that the states' rights perspective was the position that was most favored in the burgeoning democracy known as America is to make an assertion that is both somewhat misleading and possibly even incorrect. The misleading aspect of such a claim is rooted in the fact that the idea of 'states' rights' is ambiguous because the phrase is unclear as to whether it means that one champions the rights of those officials who govern a state or that one is championing the rights of the people who live in that state.

The two are not necessarily coextensive as all too many people have discovered over the years. This point alludes to the nature of the possibly incorrect dimension of those claims that suggest that the states' rights position was the perspective that enjoyed the most support among the people of young America.

More specifically, the people who gathered on a 'continental' level to discuss, draft, and formalize documents that would come to constitute the rule of law for the new country [and this was usually between 50 and 100 people] were but a small percentage of the people who lived in the thirteen states. To be sure, each of the thirteen colonies/states supplied more participants for the constitutional forging process, but only a few of the overall total of individuals served as representatives to the national assemblies. Moreover, the discussions that occurred in the states not only took place among a relatively limited number of people, but, as well, many, if not most, of these individuals consisted of lawyers, landowners, rich merchants, and other categories of an elite who presumed that they had the right to form governments that would control the lives of people who were not rich, or who were not landowners, or who were not part of the 'power elite' that had begun to form from the earliest days of America.

There were many people among both the power elite and the disenfranchised settlers who were distrustful of government – any kind of government. Indeed, many people came to America for an opportunity to escape the oppressive systems of monarchal governments in Europe, and they were not interested in replacing the old form of monarchy with a new form of monarchy in which some people got to tell others what the latter could and could not do.

Consequently, when one is talking about the championing of states' rights, different things are understood by this phrase depending on who one is considering. For example, even though Patrick Henry had been invited to attend the Philadelphia sessions where the Articles of Confederation were only supposed to be amended -- but, were instead, thrown out and a new document, called the Constitution, was drawn up through the politicking of such people as Madison and Hamilton -- Patrick Henry declined the invitation because he smelled the rat of a 'new monarchy' being established through such proceedings and did not want to be a part of the process, and, Patrick Henry was not alone in his critical rejection of what was transpiring in the different Continental and Constitutional conventions.

Some people view the 1798 confrontation between President Adams and Thomas Jefferson as being about differences over the exact nature of the sort of federalism that would exist in the United States. Would there be a form of federalism in which the central, federal government would have supremacy relative to the powers of the states, or would there be a kind of federalism in which the central, federal government would be constrained by, and subject to, the interests of the respective states?

When President Adams was able to successfully persuade enough people in Congress that it was necessary to pass a law on sedition that would empower the President to have people thrown into prison for criticizing his government's abuses of power, Jefferson clashed with President Adams over this issue. Many commentators have labeled this conflict as one of states' rights versus federal rights and believed that states' rights won the day when, eventually, President Adams' Federalist Party lost the 1800 election to the so-called Jeffersonian revolution.

However, it was not states that were thrown into prison by President Adams for criticizing his government and officials. Individuals were the ones who were being oppressed by the new law of the land, and, consequently, the imprisoning of those who were allied with Jefferson was not just an attempt to deny the rights of states, it also was an attempt to suppress the rights of individuals ... rights that already had been guaranteed – theoretically – through the Bill of Rights.

During the period of opposition to President Adams, Jefferson ghost-wrote the Kentucky Resolutions of 1798 and stated that:

"The several States composing the United States of America are not united on the principle of unlimited submission to their General Government."

One could conjecture that the reason Jefferson ghost-wrote the documents might have been because he feared being imprisoned if he were to author the resolutions under his own name or because, in a bit of political maneuvering, he wished to give the impression that there were untold others who agreed with his position on states' rights and who might be responsible for issuing the Kentucky resolutions, or perhaps, it was a combination of both such motivations.

In any event, once again, there is an ambiguity implicit in what Jefferson is actually saying when he wrote that:

"The several States composing the United States of America are not united on the principle of unlimited submission to their General Government."

Is Jefferson saying that the 'ruling elites' of the several states do not agree with the idea that there should be unlimited submission to the federal government by the various ruling elites in the different states, or is he saying that the people who live in the "several states", and quite independently of the ruling elite of those states, do not agree to the idea of "unlimited submission to their General Government", or is he saying a bit of both?

It is clear that not all three possibilities are necessarily synonymous with one another. Indeed, for many, a state government is just another version of the federal government in which centralized government seeks to gain control over the lives of the people, and, therefore, when someone champions states' rights one cannot be sure whether the latter person is seeking to secure rights for all the individuals living in those states or whether a so-called 'champion of states' rights' is seeking to secure rights for just members of the ruling elite within those states and uses the cry of 'states' rights' to induce the general population to believe that the rights of the little people are

being fought for when, in truth, it is only the rights of the ruling elite that are being defended. This kind of duplicity has been in the politician's bag of tricks for centuries.

One would hope that Jefferson intended to include all the people of the several states into his notion of states' rights and that he was not simply fighting for the power elite of those states. But, if the foregoing is not what Jefferson meant, this is what he should have meant if he had thought about the matter correctly.

Whatever Jefferson's real position might have been, there were all too many individuals who treated states' rights as a license for the power elites to do whatever they liked in their respective states. If this meant supporting the slave trade, or stealing the lands of Native peoples, or denying women equal rights, or exploiting the general population in order to further their agendas, or running roughshod over labor movements, or despoiling the environment, then, this is what was entailed by states' rights.

People who thought in this manner never really understood the nature of the Bill of Rights except to the extent that those ten amendments were supposed to protect their interests quite irrespective of whether they secured the rights of anyone outside of the circles of power in which these noble champions of states' rights existed.

Apparently, "We the people" only meant some of the people. "We the people" only referred to those who were the chosen ones of God to discuss, draft, formalize, and ratify such rights and liberties.

In theory, these rights and liberties could be extended to everyone. However, in practice, such rights and liberties were often considered to belong properly only to members of the power elite.

Like President Adams in 1798, the champions of states' rights who thought in this fashion considered anyone who was not willing to go along with the idea of "unlimited submission to the general government" (in this case the state central government) were considered to be guilty of sedition and treason to the vested interests of the power elite. As such, the idea of states' rights meant the capacity of states to use the force of law – and, if necessary, physical force -- to compel and intimidate people into complying with certain arrangements of life that were drawn up by the power elite to be

imposed upon the citizens of a given state whether those citizens liked such arrangements or not.

When the 1787 draft of the Constitution was circulated among the various states, the different state conventions that were called to consider ratifying that document had numerous concerns about what kind of power the central government would be able to exert over the people of a given state. In fact, following the lead of Massachusetts, every state convention proposed a list of possible amendments to give expression to their concerns about the abuses of power, and every one of these lists contained some form of what is now known as the Tenth Amendment.

Federalists – such as James Madison, Alexander Hamilton, and James Wilson – argued that there wasn't any need for an amendment that addressed the issue of reserving powers to the states or to the people. For example, in entry 45 of *The Federalist*, Madison argued that under the Constitution a federal government would actually possess only a few powers and that these were focused primarily on issues such as war, negotiation of treaties, and foreign commerce, whereas a vast array of powers were reserved to the states that encompassed practical issues of significance to the everyday concerns of people involving life, liberty and property, as well as matters focusing on the internal order and enhancement of a state's welfare. Moreover, during entry 46 of *The Federalist,* Madison, once again, gave emphasis to the separation of powers doctrine when he argued that state and federal governments were actually merely different modalities of trustees or agents for the people who were invested with different powers that were intended to serve the people in complementary ways.

While it might be true from the perspective of federalist political philosophy that state and federal governments were intended to serve as various kinds of trustees for the people, provided with different powers that were designed for an array of complementary purposes, this is not the same thing as saying that the people could have an independent standing within the Constitution that cannot be reduced down to what the two levels of government do, or do not do, as trustees and agents of the people. In fact, the people should have rights and powers – beyond that of voting -- which protect them against the failure of governments to competently or morally

exercise their fiduciary responsibility and position of trust in relation to the people, and this is precisely what the Ninth and Tenth Amendment are intended to accomplish.

The Ninth Amendment states:

"The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

The Tenth Amendment indicates that:

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people."

Although some people are mystified about why the Ninth and Tenth Amendments should even be considered to be necessary, there is a logic underlying their presence in the amended Constitution. More specifically, when the idea of a Bill of Rights first arose as a subject of discussion, one of the primary objections to enshrining specific protections in the Constitution was that by itemizing a specific list of rights against which governments could not transgress, some individuals felt that this would leave open the possibility that any number of other rights that had not been so itemized would not be protected. The Ninth Amendment was introduced in order to close the door on such a possibility.

When the idea of the Ninth Amendment was introduced, a method had not, yet, been developed that actually was capable of enforcing either the Ninth Amendment or any of the other amendments making up the Bill of Rights. Indeed, before the Supreme Court had come up with the idea of a right to strike down legislation as being unconstitutional, the Bill of Rights -- including the Ninth and Tenth Amendments – seemed to be little more than a promissory note on the part of centralized government indicating that it would not trespass in the areas specified by the Bill of Rights.

In reality, however, even before and notwithstanding the aforementioned epiphany at the Supreme Court, the power of enforcement with respect to the Bill of Rights has always belonged to

the people. The people were not, and are not, dependent on the Supreme Court to enforce their rights, although the authority of the Supreme Court in supporting the people's rights obviously is an asset ... just as the Supreme Court's opposition to the aspirations of the people to be able to exercise their Ninth and Tenth Amendment rights is an impediment to the enjoyment of such alleged powers.

The Declaration of Independence has clearly drawn the line in the sand when it comes to the struggle between people and governments. If governments seek to oppress their people, then the people have the right to make their grievances known, and if these grievances are not acted upon and redressed, then, the people have the right – nay, the duty -- to abolish those governments that are intent upon oppression of the people.

Although the Federalists believed adding amendments to the Constitution that protected the rights of people was largely unnecessary, they finally came to a position that was willing to accede to the presence of such amendments in the Constitution as something that appeared to be relatively benign, even if unnecessary, in order to be able to attain ratification of the Constitution from the various states. Consequently, Madison included the idea of a reserved powers clause among the amendments he proposed in 1789.

Alexander Hamilton, another Federalist, was of the opinion that the idea of having to specify some kind of reserved powers clause within an amendment to the Constitution was something of a tautology because such a reserved clause concerned a principle that he believed was already inherent in the very idea of republican government. In other words, he maintained that the very essence of republican government entailed the right of states to be free of Congressional interference in matters such as education, securing the general welfare of the people, morality, and health. Consequently, he was not so much opposed to the principles inherent in what would become the Tenth Amendment as he was resistant to the perception of those who believed it was necessary to specify such a principle either within the Constitution or in an amendment to the Constitution.

One wonders, however, why either Madison or Hamilton – or any of the other Federalists -- would have assumed that everyone else

would have understood or pursued the idea of republican government in the same way they did. More importantly, one wonders why even after all of the state conventions expressed concerns about the matter, the Federalists continued to argue for the idea that there was no need to specify such protections either within the Constitution or in amendments to the Constitution. Why were they so resistant to the idea that part of what constituted republican government should be spelled out?

The Federalists were in favor of abolishing the Articles of Confederation and replacing them with a new Constitution. The Federalists disliked the Articles of Confederation because the document was written in a way that permitted power to be largely distributed among the thirteen states of the Confederation.

By contrast, the new constitution that they sought would considerably enhance the power of the national government over the states. For instance, under the Articles of Confederation, the federal government could not levy and collect taxes in order to be able to fund its programs.

In any event, despite the fact that members of the various state ratifying conventions were informing the Federalists that the former individuals did not see the issue of a "reserved clause" as a tautology, and despite the fact that the members of the various state ratifying conventions were warning the Federalists about a potential for abuse of power in the Constitution as drafted, and despite the fact that members of the various state ratifying conventions were insisting there was a necessity for the introduction of specific additional protections against the powers of a central government, the Federalists continued to resist and argue against what they were being told by the members of the different state ratifying conventions. One suspects that something more was involved than just the Federalist perception that such protections were tautological or unnecessary.

A number of draft amendments were proposed by different individuals and put forward for consideration. Significantly, one of the drafts of what became known as the Tenth Amendment and that was discussed in the House of Representatives on August 18, 1789 stated:

"The powers not delegated by the constitution, nor prohibited by it to the States, are reserved to the States respectively."

The phrase “or to the people” did not appear in this draft of the Tenth Amendment (which, at the time, was referred to as the Twelfth Amendment). Moreover, a great deal of the discussion over the proposed amendment revolved about a suggestion from George Tucker to add the word "expressly" to the text of the amendment so that it would read:

"powers not expressly delegated by the Constitution."

Madison was adamantly opposed to the idea of introducing the word “expressly” into the amendment. During the discussion, one of the first amendments proposed by Madison had been to suggest that the statement:

“… all power is originally vested in, and consequently derived from, the people,”

should be added as a prefix to the Constitution.

George Tucker countered by suggesting a variation on Madison’s idea – namely, that “all powers being derived from the people” should be added. Furthermore, Tucker suggested that this be introduced at the beginning of what was to become the Tenth Amendment.

The Committee of the Whole House rejected both of these proposals. Eventually, Roger Sherman of Connecticut suggested that the phrase “or to the people” be added to the text of what would become the Tenth Amendment, and his proposal was adopted without objection or debate although one can’t help but wonder what sorts of understanding might have been dancing around inside the heads of the participants to the Philadelphia Convention that would have permitted such a suggestion to be adopted without discussion or debate.

Roger Sherman also was the individual who brokered what came to be known as ‘The Great Compromise” in which the House of Representatives would serve the general population while the

Senate would represent the States, and the President would be elected through a body of elite electors. Why Senators should serve the States rather than the people, and why the people, rather than a body of elite electors, should select the President, and why the people couldn't represent themselves through some form of nonelected republican self-governance, were all unanswered questions that were left to sink in the wake of 'The Great Compromise.'

Whatever the ultimate motivations, beliefs, and ideas of the Federalists might have been, one fact is very clear. The Federalists were completely wrong in their belief that there was no need for the specification of a reserve clause or other protections in conjunction with the Constitution. Indeed, as American history has shown again and again, even with the presence of the provisions of the Bill of Rights, there has been considerable inclination on the part of successive federal governments to encroach upon the rights and powers of the people by means of imperially expansive ideological agendas that are pursued through the power of centralized government.

Thomas Jefferson had once described the Tenth Amendment as the very foundation of the Constitution. Jefferson further maintained that

"… to take a single step beyond the boundaries thus specially drawn [by the Tenth Amendment] is to take possession of a boundless field of power, no longer susceptible of any definition."

The problem with the foregoing is that Jefferson only seemed to have in mind a concern about the potential for abuses of power by the federal government. However, precisely the same kind of concern ought to be directed toward any kind of centralized form of government, including state and local government.

If one single step is permitted to governments beyond the boundaries and limits that are drawn up to protect the rights and powers of people, apart from government, then governments – on whatever level -- will seek to take possession of a boundless field of power that is no longer susceptible to any definition that protects the rights of individuals. The Tenth Amendment is not the foundation of the Constitution because it champions states' rights. It is the

foundation of the Constitution because it extends to people rights that cannot be circumscribed by any government – local, state, or federal – and because the Tenth Amendment establishes Constitutional standing for the people independent of government activities and, indeed, sometimes in contradistinction to those activities.

There is another dimension to the foregoing set of issues. The state conventions that met to consider ratifying the Constitution of 1787 consisted almost exclusively of landowners, people of wealth, lawyers, and those who already possessed considerable power in their respective communities.

Women, Blacks, Native Peoples, and the poor were already disenfranchised from the whole process. When people like Madison, Hamilton, and Wilson claimed that there was no need for protections to be specified within the Constitution and that all of this was tautologically present in the idea of republican government, they apparently did not believe that the disenfranchised had any place in such a republican government or that such people needed any protections even as those people were being abused by the power elites who were so nobly participating in their various state conventions, making sure that their own interests were to be protected ... although there were, in fact, some truly noble men among such participants because such individuals were concerned with protecting the rights of more than just the power elites.

All too frequently the elected representatives of the people became corrupted, co-opted, or outflanked by the power elites of centralized government – whether at the federal, state or local level. Like ancient Greece, only some of the people in America were entitled to the rights, powers, privileges, and immunities of citizenship, and America soon became – if it wasn't so from the very beginning – the best democracy money could buy.

What had transpired – that is, the differences in understanding that arose with respect to the idea of "We the people" -- is what the Federalists (e.g., Madison, Hamilton, and Jay) claimed would never happen ... namely, centralized governments on both the federal and state levels oppressed people and usurped their rights ... the very rights that, for instance, the Ninth and Tenth Amendments were intended to secure and that were hardly truisms and tautologies (as some jurists and government officials have referred to these two

amendments, and therefore, were considered by such individuals to be coextensive with the meaning of republicanism, and, therefore, quite unnecessary). The Bill of Rights – including the Ninth and Tenth Amendments – constituted substantive realities that had been betrayed by those seeking to gain control over the people through elected office to state and federal government positions.

To some extent, the Fourteenth Amendment (especially the section reading: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.") helped to place constraints on the idea of unlimited states' rights (the foregoing amendment came into being following the Civil War). Moreover, even though the states still possessed various degrees of authority, in theory at least, such authority could not be used to extinguish or diminish the rights of individuals residing within the borders of their respective states.

Through the Fourteenth Amendment, the federal government took on something of a fiduciary responsibility with respect to protecting the rights of the citizens of the different states when those state governments sought to oppress their citizens and prevent the latter from enjoying the rights promised to the people in the provisions and principles inherent in the Constitution. Nevertheless, while it is true that the Fourteenth Amendment did help to close a loophole in some of the more tyrannical thinking concerning the extent of states' rights – the fact of the matter is that this constraint on states' rights (as well as the rights of the federal government) already existed in both the Ninth and Tenth Amendments … but those constraints were not being observed or enforced.

Securing the rights of the people is not the exclusive right of the federal government. After all, the people have their own rights, powers, privileges, and immunities under the Ninth and Tenth amendments.

While both the federal and state governments can act in a fiduciary capacity with respect to protecting the rights of people against the unjust incursion of government into the lives of citizens,

the people, quite independently of the fiduciary activity of government, have the right, under the provisions of the Constitution, to act in their own self-interest in such matters at which time the people have the right to abolish, amplify, or modulate whatever fiduciary acts might have been taken on their behalf by one government or another. Citizens are not wards of the state or the federal government.

By permitting a government to work on the behalf of the people in areas that are governed by, or entailed by, the Ninth and Tenth Amendments, citizens do not abdicate and forego those rights. They can reassert those rights at any time, and both the federal government and state government must step aside in such matters except to the extent of assisting the people, or serving as something of a catalytic agent, or helping the people to exercise their various powers and rights that have been established through the principles set forth in the Ninth and Tenth Amendments, or helping to make sure that the exercise of such Ninth and Tenth amendment rights by an individual does not compromise the like rights and powers of other individual citizens.

There are some individuals (among them libertarians) who believe that the federal government does not possess the authority to police such activities as -- to name but a few -- drug-related activity, marriage, abortion, gambling, prostitution, and who also believe that the federal government does not possess the authority to prosecute crimes such as tax evasion (the latter is based on the idea that in Article I, Section 8, and in Article III, Section 3 of the Constitution, the federal government only gives express permission to prosecute crimes of piracy, counterfeiting and treason not tax-evasion). According to such individuals, all powers not specifically relegated to the central government by the Constitution or specifically prohibited to the states, is retained by the states.

Such a position does not accurately reflect what the Constitution actually states. More specifically, the Tenth Amendment says:

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved for the States respectively, or to the people."

While one might agree that the federal government might not have the Constitutional authority to establish policing powers over a variety of individual activities – and more on this in a moment -- nevertheless, it does not necessarily follow that whatever powers that are left over belong to the states. The phrase "or to the people" is not necessarily synonymous with the idea of states.

Here again, we meet with an ambiguity. Is the foregoing phrase just another way of referring to the states – that is, are the words "or to the people" an alternative manner of speaking about states' rights or is something else meant … something extra-governmental and not necessarily reducible to the institution of the state as a legal entity?

There are many who would prefer to interpret the Tenth Amendment as referring exclusively to the rights of states as established bodies of government. Yet, a prima facie case can be advanced that is not supportive of such an interpretation, and this argument rests on the fact that the Bill of Rights is about protecting the interests of individuals with respect to the oppressive potential of governments of any kind.

As such, what is meant by the idea of the states in the Tenth Amendment is – contrary to the opinion of many people -- actually another way of talking about the rights of the people who live in those states as opposed to the institutions that comprise the governments in those states. The purpose of the Tenth Amendment is not to secure the rights of centers of power or ruling elites but, rather, to secure the rights of individual citizens.

In a democracy, ultimate rights and powers belong to the people and not to the government, and the latter are formed and operate only through the permission of, and in accordance with, the complete consent of the people. One would not have a democracy if the powers not delegated to the federal government nor prohibited to the state governments were reserved for anyone else but the people.

The Tenth Amendment confirms this idea of democracy in two ways. The first way is to refer to states meant in the sense of the powers of a collectivity of individuals residing within a given geographical area rather than meant in the sense of a set of

governing institutions. The second way of confirming the aforementioned idea of democracy is by reiterating that the recipients of the reserved powers mentioned in the Tenth Amendment are "the people."

As such, the terms "states" and "or to the people" are not different ways of referring to the formally instituted bodies known as state governments, that many commentators have supposed to be the case. Instead, the two foregoing terms are different ways of referring to citizens as free individuals who are not mere thralls and subservient appendages of state governments and ruling elites. The Bill of Rights establishes the protections of individuals – not state governments per se.

It is individuals who are being given Constitutional standing through the Ninth and Tenth Amendments. At best, state governments – as is true of the federal government – are only entitled to seek to borrow authority from the people in order to serve the legitimate interests of the people as opposed to the agendas of ruling elites. State and federal governments have constitutional standing only at the pleasure of the people although one would never recognize this principle at work in the way governments now, as well as in the past, often have conducted themselves in a manner that has sought to abolish, diminish, undermine, circumscribe, and constrain the rights and powers of the people under the Ninth and Tenth Amendments.

Some commentators have sought to argue that champions of states' rights have taken the Tenth Amendment to its logical conclusion by arguing for the supremacy of state governments in all matters not either specifically relegated to the federal authority or prohibited to the states. I tend to disagree with such commentators because if one wishes to take the Tenth Amendment to its true logical summit, then, the powers that are being reserved in the Tenth Amendment belong to the people and not to state governments or ruling elites.

It is states that are derivative from the people and not the other way around. The Tenth Amendment is not about states' rights versus federal rights, but, rather is about the right of individuals to be free from the tendency of governments, at all levels, to encroach upon the rights of individuals. The Tenth Amendment guarantees that governments have not been empowered by the Constitution to

encroach upon the rights of people and, thereby, do whatever such governments like in relation to the people, nor do governments have the right to seek to curtail the active expression of an individual's Tenth Amendment rights as long as such an exercise of rights does not infringe on the capacity of other individuals to seek to express their similar Tenth Amendment rights.

Governments – whether federal, state or local – cannot take away the powers, privileges, rights, or immunities of the people. The authority of the federal and state governments are both curtailed and limited by the powers given to the people under the Ninth and Tenth amendments.

Some might wish to argue that a clause – sometimes referred to as the 'Supremacy Clause -- in Article VI of the Constitution is the straw that stirs the drink of democracy. This clause states:

"This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding."

Article I, Section 8 stipulates the areas where central government might make laws. This section begins with:

"The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States."

The foregoing clause – which is sometimes referred to as the 'elastic clause' due to its apparent ability to permit the federal government to expand into a whole host of unanticipated areas that concern issues of either providing for the common defense or the general welfare – is followed by a whole lest of areas where the Constitution has authorized Congress to make laws, including, but not exhausted by, the ability:

- To borrow money on the credit of the United States;

- To regulate commerce with foreign nations, and among the several states, and with the Indian tribes;
- To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;
- To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;
- To provide for the punishment of counterfeiting the securities and current coin of the United States;
- To establish post offices and post roads;
- To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;
- To constitute tribunals inferior to the Supreme Court;
- To define and punish piracies and felonies committed on the high seas and offenses against the law of nations;
- To declare war, grant letters of marquee and reprisal, and make rules concerning captures on land and water;
- To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years.

The foregoing list of permissions ends with the stipulation that in addition to all the powers that have been relegated to Congress with respect to various specified areas of law-making, Congress shall also be entitled:

"to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof."

An advocate of strong central government might take all of the foregoing powers or directives and – over against those who claim to champion states' rights – assert that the federal government is entitled to govern people in just about any way it wishes. An argument also might be made by advocates of strong central government that suggests that all manner of legislation might be "necessary and proper for carrying into execution the foregoing

powers" or that all manner of legislation might be enacted in order to "provide for the common defense and general welfare."

'Public policy' is the term that is often used to refer to the different kinds of philosophical, political, economic, and legal theories that are developed by government officials – elected and otherwise – as the means through which to actualize the powers granted to the federal government under the provisions of the Constitution. Public policy encompasses the guiding principles that are deemed "necessary and proper" in the way of legislation "for carrying into execution" the powers that allegedly have been delegated to the government as specified by Article I, Section 8.

Public policy encompasses all that government officials consider to be a means of providing "for the common defense and general welfare of the United States" as allegedly required by Article I, Section 8. Public policy is the avenue through which the Supremacy Clause of Article VI – namely, that "This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land" -- is brought to life as the law of the land.

However, there might be a few bumps along the road to democratic paradise as envisioned by the sort of centralized, federal government outlined in the Constitution. First of all, in Article IV, Section 4 one finds:

"The United States shall guarantee to every state in this union a republican form of government, and shall protect each of them against invasion."

There are at least two different senses of the idea of what constitutes a republican form of government. One sense has to do with the idea of providing a means through which the people are able to elect or appoint representatives in government to work on the behalf of the citizens.

The other sense of republicanism involves the right of people to govern themselves independently of representational government – in other words, it alludes to the possibility that people can self-govern according to negotiated agreements drawn

up directly among themselves and without needing to be filtered through a system of representative government. In this form of republicanism, the people, considered as a whole, are the government and there is no layered bifurcation between, on the one hand, a body of government and, on the other hand, the people such that there is a coterie of bureaucrats and officials who serve as a protective buffer between the people and the government with the vast majority of the protections being in the favor of the government and not the people.

Obviously, those who aspire to power over others and who have a desire to control the lives of others (or their resources) are inclined to believe that republicanism means some form of representative government in which the elected officials get to assume power and exercise that authority as their consciences, interests, and ambitions dictate – even if this means that the people do not necessarily get represented with much, if any, moral integrity. This form of republicanism represents, for those so inclined, the best opportunity to acquire power and, then, either use it for one's own purposes and agendas or use it to impose one's own ideas about the general welfare on others even while claiming to represent the people.

Sometimes, there are even a few individuals who actually do employ representational government to try to sincerely represent the interests of the people. But, if this were the norm, then, this country would not be in the mess it is because, unfortunately, the modality of republicanism known as representational government has been so egregiously abused for centuries now, that, in many ways government does not function very well and has been infected with so many forms of corruption. As Tom Paine noted in a slightly different but related context, truly: "these are the times that try men's souls" ... and the souls of women and children as well.

The foregoing sense of representative republican government – via elected representatives -- is the modality of governance that is most compatible with a centralized government seeking to assert its control over the people. Individuals whose ambition is the acquisition of power recognize themselves in the others who mirror their motivations and aspirations.

They recognize one another as those with whom one can do 'business' in conjunction with the divvying up of power and its concomitant rewards. The only matter that has to be settled among these partners in power is to decide how such power shall be apportioned among the ambitious, and, consequently, the conflicts such individuals will experience concern matters of who acquires what power to be able to fulfill their own purposes and/or to regulate the lives of others.

The Constitution does not specify the nature of republicanism that is to be pursued. Consequently, the task of doing so is left to possibilities inherent in the Ninth and Tenth Amendments that -- with respect to all powers and rights not specifically relegated to the government or that have not been prohibited to the states – have been reserved for "the states or to the people."

Once again, this time in conjunction with the idea of republicanism, the Constitution has left a trail of ambiguity. Do states – considered as established bureaucracies and entrenched centers of power elites – have the right to determine what constitutes the republican form of government that has been promised to the states by Article IV, Section 4 of the Constitution, or, do the people -- quite independently of government and as the very source from which states, as institutional bodies, derive their authority -- have the right to determine what constitutes a republican form of government?

Since the Bill of Rights is about protecting the interests of people over against the tyranny of government of any kind, there is a prima facie case that can be built in support of the idea that it is not governments – even that of a state – which gets to determine what republicanism shall mean to the people. Congress has no say in this matter, and the President has no say in this matter, nor does the Supreme Court have any justifiable, non-arbitrary grounds (whether through judicial construction, or through some mystical theory of original intent, or via some other form of adjudicating philosophy) through which to objectively and fairly dictate what the people must understand by the idea of republicanism. Furthermore, as previously noted, this matter of republicanism is not within the purview of states to decide whey states are considered as established governments that rule over

people rather than entities that are totally dependent for their existence on the people.

Obviously, there might be many who will find the possible ramifications of the foregoing position to be rather disquieting. This is so because making the meaning of republicanism independent of government control also means that those who have vested interests secured through irresponsible representative government might no longer be able to use democracy as their personal playpen through which to satisfy their largely self-serving appetites.

So, what are some of the possibilities with respect to how people might develop the idea of a true republicanism in which the people and not governments were the determiners of that word's meaning within the context of Constitutional arrangements? A few areas that come to mind are the following: campaign finance reforms such that elections are completely funded by the public; the requirement that television and radio must, as part of their privilege of using public airwaves, provide free and qualitatively equal time to all candidates for public office; the elimination of any form of paid lobbying ... which does nothing to interfere with the rights of people, as individuals, to petition their government; the removal of the status of personhood from corporations; altering the form of becoming chartered as a corporation such that corporations must serve the public interests [which was, actually, the original nature of corporations in America] and not just the private interests of stockholders; abolishing the artificial obstacles that the existing two-party system has placed in the way of independent parties; non-compulsory education; establish the right of citizen grand juries to investigate whether, or not, elected representatives have upheld their oath of office; promote the ability of the people, through citizen grand juries, to independently investigate, with full subpoena power, whether, or not, crimes have been perpetrated against the people and whether or not the people have been deprived of their Ninth and Tenth Amendment rights (The idea of citizen grand juries will be developed and delineated in the latter part of this essay).

How does the foregoing fit in with the alleged right of Congress to do whatever is "necessary and proper" in the way of legislation "for carrying into execution" the powers that allegedly have been delegated to the government as specified by Article I,

Section 8? How does the foregoing possibilities fit in with the federal government's alleged responsibility to "provide for the common defense and general welfare of the United States" as stipulated by Article I, Section 8, or, in accordance with Article VI, that "This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land"?

The federal government is not free to do whatever it likes. There are constraints on what the federal government can and can't do.

One set of constraints is the Bill of Rights -- especially, but not restricted to, the Ninth and Tenth Amendments. Another set of constraints is entailed by the republican form of government to which the people within the various states are guaranteed by the Constitution. Another set of constraints is expressed through the other Constitutional amendments that exist beyond the Bill of Rights. A further set of constraints comes in the form of the Preamble to the Constitution.

The Preamble states:

"We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America."

Consequently, whatever the President, Congress, and the judicial system do, they must act in accordance with the principles of the Preamble that are intended to serve people, not governments.

Nowhere in the Preamble is either the term government or state specifically mentioned. The idea of a 'union' has an array of possible meanings, but whatever the nature of the meaning with which one invests the term "union", clearly, the constitutional intent of the Preamble is to ensure a process that serves the people as well as their posterity with respect to securing: justice, domestic tranquility, the common defense, the general welfare, and the blessings of liberty.

Indeed, the whole idea of the Preamble is to establish the purposes and functions of the Constitution and subsequent derivative forms of government. The formation of "a more perfect union" is one that serves the interests of the people rather than governments. Unions, in the form of governments, come into being in order to meet the needs of people, and such unions are sought only to the extent that they will assist people to realize the principles inherent in that Preamble.

Furthermore, the idea of union need not be restricted to some form of elected, representative government. As noted previously, the republican form of government that is guaranteed to the people by the Constitution might extend to extra-governmental arrangements agreed upon by the people among themselves and as such give expression to a non-governmental but fully constitutional and, therefore, legal modality of union mentioned in the Preamble.

Democratic government comes into being in order to assist the people and their posterity to realize the principles set forth in the Preamble. Democratic governments have no raison d'être independently of what is set in motion through the Preamble – or through words of a similar nature -- as a service to the people.

Many government officials – elected or appointed – interpret what is meant by the various principles of the Preamble (namely, justice, liberty, domestic tranquility, the general welfare, or the common defense)? Many governments proceed to require people to adhere to what the federal or state governments determine is the practical or political or legal meaning of such words. Notwithstanding the foregoing considerations, one still might raise the following question: does the Constitution demand that citizens follow a given government's theory of public policy as the means through which the principles of the Preamble are to be implemented on behalf of the people?

I believe the answer to the foregoing questions is 'no'. I believe that the reasons why the answer to the foregoing question is 'no' has to do with the principle of republican government that has been promised to the people by the Constitution, but it has to do, as well, with not only the Ninth and Tenth Amendments discussed previously but also the First Amendment which, among other things,

is interpreted to mean that there must be a separation between church and state.

More specifically,

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof,"

And the effective meaning of this clause was to address the fears of the people concerning the possibility that government might be hijacked by forces of religious tyranny, and, as a result, people might be become enslaved by the whims and purposes of such a government. After all, many of the people who came to America were attempting to escape the various forms of religious tyranny that were being perpetrated, aided and abetted by governments elsewhere in the world, so, why wouldn't there be fears among the people in America that government in the United States might be so corrupted?

One problem with the foregoing is that nothing has been said about what constitutes a religion. However, religion, broadly construed, need not refer to just a theistic based form of worship, but could include any system of activity that entails, among other things, a perspective concerning the meaning and purpose of life; a code of conduct concerning how life should be lived; a set of practices that are claimed to help an individual get the most out of life; an array of warnings about what will happen to people who do not adhere to such a perspective, code of conduct, or set of practices. Moreover, all of the foregoing is often done in a context of compulsion and oppression rather than through free-will offerings.

In light of the foregoing, it seems clear that most forms of government public policy constitute a religion -- in the sense of a philosophy concerning the nature, meaning, and purpose of life -- which is being imposed upon people, often against the will of the latter and without their consent. Government public policy seeks to establish a religion in the form of the arbitrary economic, political, and philosophical theories that underwrite any given instance of public policy concerning what government officials (both elected and appointed) believe the purpose of life should be, and how people should conduct themselves, and what practices are necessary to

achieve the purposes of such theories, and what the consequences will be for those who do not abide by the teachings of such a religion.

Those who worship power, money, possessions, property, and wealth often see government as the means for pursuing the objects of their worship. They often lobby government to favor and promote their form of worship, and they often pay big sums of money to political action committees to ensure that government public policy will favor, establish, and impose their form of religion upon the people of the land.

However, even if governments were not subject to the constant evangelical fervor of money-worshipers and power-worshipers, the fact of the matter is that when governments advance public policy they are, in point of fact, seeking to establish a religion in the foregoing sense. In effect, public policy programs involve the establishing of a certain kind of economic and philosophical framework that is used as a proposed vehicle to transport the populace toward someone's arbitrary and artificial notion of political and economic salvation, and in accordance with which, citizens must live their lives on penalty of chastisement for disobeying the delusional self-aggrandizement of governmental officials who consider themselves to be the high priests and priestesses of the religion of public policy.

The foregoing scenarios are forms of religious abuse that have been transpiring almost from the inception of the United States as a legal entity. Consequently, when the Constitution says that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof", I take the document at its word and wonder why so many people within Congress, the executive office, and the judiciary have failed to understand what is going on through the agency of public policy as a religious-like activity.

I also wonder why the federal government has so consistently failed to live up to its responsibilities under Article IV, Section 4 of the Constitution which says that:

"The United States shall guarantee to every state in this union a republican form of government, and shall protect each of them against invasion."

In other words, why has the central government of the United States failed to protect various centers of population against the invasion of religious fanatics -- in the form of public policy advocates -- who seek to force upon the people forms of government that the Constitution prohibits because neither are those forms of government republican in any essential sense of this word, nor are they in accordance with the establishment clause of the First Amendment.

The Constitution does guarantee -- and cannot interfere with the free exercise thereof -- the right of people to pursue their respective individual ideas about religion, whether these are economically, philosophically and/or theologically based. However, the freedom to pursue such religious beliefs and practices is permissible only so long as such pursuits are commensurate with, and do not interfere with, the ability of other individuals to pursue -- or not -- similar principles.

Some might wish to argue that the foregoing discussion concerning public policy and religion is a bunch of nonsense because public policy is an expression of purely secular concerns. Unfortunately, secularism has been fashioned into a religious system by many who believe that once one eliminates the usual bunch of religious suspects, the constitutional field should be clear for whatever brand of secularism one wishes to advance.

Secular positions are just as much faith-based sets of initiatives as are the traditional perspectives that have been labeled as 'religious'. This is because secular philosophies cannot prove any of their contentions as being either non-problematic or anything other than being arbitrary, artificial, or lacking in a justification and validity with which all might agree. Ultimately, the attractiveness of secular based philosophies are a matter of personal likes, dislikes, and what one is willing to place faith in as a way to proceed in life.

Secular philosophies are not value free. Furthermore, they rest on assumptions that often are not provable, and, as such, constitute little more than conjectures that are faith-based systems.

Why anyone supposes that, somehow, philosophy, of whatever variety, is somehow 'better' than, more rational than, less problematic than, or more acceptable than religion in the

narrow sense of the term, is a mystery. Whether one is talking about religious oppression or philosophical oppression, one is still talking about tyranny.

In years leading up to the formation of the United States, most of the people had one concern – the specter of tyranny. Sometimes this reared its head in the form of religious oppression, and sometimes this was manifested in the form of political oppression, but the result in each case was the same ... the loss of control in one's own life.

Secularism gives expression to an individual's decision concerning the problems of life. However, when one seeks to impose such belief systems on people in general, then, there is problem, and, as such, the secular perspective becomes an attempt to establish a religion to which citizens must adhere as a matter of public policy.

Some might wish to argue that if one cannot use some form of religion or secularism to govern people, then, how will government be possible? Whatever the answer(s) to this dilemma might be, it cannot involve tyranny, and the problem should be reflected upon a lot more insightfully than has been the case, for the most part, for the last several centuries.

Neither religion, in the normal sense of this word, nor religion in the extended sense of this word (which includes secularism) has any constitutional basis to be established by Congress as the supreme law of the land. Faith-based initiatives of either kind ought to be off-limits as a way of seeking to govern people, although people should be perfectly free to enter into whatever arrangements they like in the form of truly republican modes of non-representative self-governance that permit them to negotiate boundaries of life that respect, as much as is reciprocally possible, one another's personal predilections, interests, purposes, and orientations. Governments should assist people to explore, negotiate, and mediate these boundaries rather than insist on what those boundaries must be based on some arbitrary grounds of public policy that is imposed on the people and to which the people are compelled to adhere.

If people are uncomfortable with the fact that secularism has all the earmarks of an established religion, then, there are other constitutional issues to consider that also argue against using

secularism to serve as a template on which to base the affairs of governance. For example, consider Section 1 of the Thirteenth Amendment:

"Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."

Public policy often locks the citizenry into one, or another, form of involuntary servitude even though such people have committed no crime. As if in prison, people are required, under threat of punishment, to follow a set of rules inherent in some piece of congressional legislation, judicial review, Presidential executive orders and signing statements, or state governance that is based on arbitrary and artificial philosophical/religious musings about what constitutes justice, domestic tranquility, the common defense, general welfare, liberty, or republican government.

For instance, although Article I, Section 8 of the Constitution gives the Congress the power to borrow money on the credit of the United States, nevertheless, when the Congress does this irresponsibly and, as a result, saddles the public, both now and in future, with a rapidly increasing national debt that is so huge and unmanageable that the interest payments alone destroy the capacity of the country to properly address issues such as hunger, homelessness, poverty, health care, and environmental degradation, then, Congress has imposed a form of involuntary servitude upon the people because the people – through the ineptitude and/or corruption in government – have involuntarily been forced into serving the agendas of the national government. Moreover, when the elected officials pursue public policy agendas that borrow money on the credit of the United States – money that is not paid back – then this can affect the international credit rating of the country and once again place people in a form of involuntary servitude that affects what the people can, and cannot do, for years to come. If this is not involuntary servitude, I don't know what is.

Although under Article I, Section 8 of the Constitution, Congress does have the power to regulate commerce, both internationally and among the states, this does not entitle Congress to pursue

public policy agendas that place people into involuntary servitude as a result of balance of payment issues or as a result of domestic employment losses through permitting the outsourcing of jobs to foreign countries, or as a result of giving corporations a pass on taxes, environmental pollution, and a lack of concern about the wages, health, and safety of workers.

According to Article I, Section 8 of the Constitution, Congress does "have power to lay and collect taxes." However, this does not entitle Congress to force the people into involuntary servitude by forcing people to subsidize those companies with public monies in the form of corporate welfare consisting of tax concessions, government subsidies, and lackadaisical regulatory oversight that allows such corporations to diminish the quality of life of citizens so that such companies can acquire ever greater profit margins.

Inequitable rights have been extended to corporations in the form of legal personhood – a status that enjoys limited liability, and, therefore, little or no accountability. Inequitable rights have been given to corporations in the form of charters that allow companies to pursue the interests of the few – i.e., stockholders -- rather than the interests of the many – i.e., citizens considered as a whole.

These inequities exist to such an extent that corporations have filed more legal actions in an attempt to protect their alleged Fourteenth Amendment rights as 'persons' than have actual people. As such, Congress has placed real living people into various forms of involuntary servitude to corporations in order to accommodate the insatiable appetites of corporations and, in the process, have permitted the latter to gain a vice-like grip and control over large portions of the lives of citizens.

Even though Article I, Section 8, of the Constitution does empower Congress:

"to declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water; to raise and support armies, but no appropriation of money to that use shall be for a longer term than two years; to provide and maintain a navy; to make rules for the government and regulation of the land and naval forces …."

And, even though under Article 2, Section 2 of the Constitution,

"the President shall be commander in chief of the Army and Navy of the United States, and of the militia of the several states, when called into the actual service of the United States",

none of the foregoing powers entitles either of these branches of the government to invade other countries without a rigorously provable "clear and present danger" to the United States, nor do such powers entitle one to slaughter civilian populations in the countries that are being invaded, nor do such powers permit one to wage war on children or to torture the citizens of other countries, nor do such powers entitle one to issue warrant-less wiretaps that invade the privacy of American citizens. In addition, and most relevant to the present discussion, just because the Constitution cites certain powers belonging to Congress and the Executive Branch, these powers might not be employed in such a manner so as to force the citizens of the United States into a form of involuntary servitude that requires that the American people be inextricably tied to policies of terror, mass murder, or economic rape and enslavement that might be promulgated by either Congress or a given Commander in Chief with respect to the people or resources of another country. In fact, those who abuse their powers in any of the foregoing ways should be relieved of their duties.

The powers of the Congress and the Executive Branch are circumscribed and constrained in a number of ways. They are circumscribed and constrained by: The principles inherent in the Preamble to the Constitution, as well as by the constitutional guarantee of a republican government for the people of the various states, and by the Bill of Rights and the remaining amendments – and by common decency, morality, and civilized behavior.

Having power does not entitle one to be an international criminal. Furthermore, if one cannot act in accordance with the principles of democracy on the home front, then, seeking to export democracy to other countries – even if and when this might be done in internationally acceptable ways – is nothing less than a crude hypocrisy that forces upon all citizens an involuntary servitude to a form of existence characterized by shame, embarrassment, and a general loss in quality of life.

When citizens are not free to pursue whatever forms of republican government they choose, then, such citizens exist in a state of involuntary servitude. When citizens are not free to tell corporations what the latter can and cannot do but, instead, are forced into being at the mercy of the whims and interests of corporations, then, such citizens exist in a state of involuntary servitude. When the citizens are virtually powerless to prevent Congress, the executive branch, the judiciary or state governments from behaving irresponsibly, corruptly, or foolishly, then, the citizens exist in a state of involuntary servitude with respect to government public policy agendas.

Voting someone into office does not mean that anything and everything that an elected official might do while in office has been voluntarily agreed to, beforehand, by the electorate – especially the ones who did not vote for that person. Electing someone to office is an exercise in trust on the part of a citizenry that hopes that such an individual will exercise the power of office judiciously and wisely in order to help the people to solve problems, rather than create them, and to not betray the trust that has been extended to that elected official.

When an elected official abuses the power of office, one of two things is likely to ensue. On the one hand, the official might vote for legislation or support public policy agendas that place the electorate into one form, or another, of involuntary servitude – such as: a form of national indebtedness that allows foreign countries to own a considerable amount of the future wealth of the American people; disadvantageous credit ratings; problematic balance of trade deficits; dysfunctional tax policies; inequitable treatment of actual people relative to artificial persons, sometimes referred to as limited liability corporations, and so on. Or, on the other hand, the official who abuses the power of office will fail to vote for legislation or pursue programs that actually would secure and advance the principles outlined in the Preamble to the Constitution or secure and advance the cause of true republican government – both of which the elected official has taken an oath of office to secure, protect, and enhance.

In either of the foregoing cases, liberties, domestic tranquility, justice, the general welfare, and the common defense (and defense

is not at all the same thing as offensive wars) are diminished. In either case people are drawn into various forms of involuntary servitude as a result of the slings and arrows of outrageous government that enslaves people against their will and, therefore, constitutes involuntary servitude.

When governments (through their peremptory notion of democracy) force citizens into various forms of involuntary servitude, then, the former bodies give expression to the fact that those governments are the ones that constitute a clear and present danger to the people. When governments insist on presuming that they have unlimited and unassailable powers through which to twist citizens in whatever way the delusional pathologies of such governments are inclined, then, one begins to have a very clear understanding of why Patrick Henry referred to the Philadelphia Convention as having the "stink of monarchy" about it, and one also begins to understand why it is that one must be ready to retain a healthy sense of skepticism with respect to virtually all forms of government.

To be sure, "in order to form a more perfect union" it is necessary for people to willingly give up certain expressions of liberty. However, such a sacrifice is willingly done only to the extent that governments do not seek to exploit or leverage the situation by forcing people into involuntary forms of servitude that are neither necessary nor can be justified as being an inherent part of the 'deal' through which certain forms of liberty are willingly foregone in exchange for a set of compensations in the way of liberties, rights, privileges, immunities, and powers that would not be possible if people were not willing to impose certain constraints upon themselves.

During its infancy, the Supreme Court tended to rule in ways that supported the belief that so-called 'police powers' (the right to make laws governing the internal order of a given geographical area usually in the form of a state) were reserved for the states and did not belong to the federal government. In fact, so much was this belief part of the zeitgeist that subsequent to a Supreme Court judgment that upheld the constitutionality of the Second Bank in *McCulloch v.*

Maryland (1819), Chief Justice John Marshall vigorously sought to rebuff critics of his ruling by arguing that the decision did not in any way expand the powers of Congress, and, instead, claimed that his ruling was only about the propriety of the means through which a constitutionally delegated power might be implemented.

Chief Justice Marshall can argue as vehemently as he likes about the nature of what he claims to have done in *McCulloch v. Maryland*, but the one thing he did not appear to do is to fully consider or protect the rights of the people under the Ninth and Tenth Amendments. In short, he did not appear to ask himself or the other Justices the following question: Independently of the question of federal versus states rights, what are the rights and powers of the people in the matter of the establishing of the Second Bank of the United States?

The people had Constitutional standing in the case under the Ninth and Tenth Amendments. Neither Congress, state legislatures, nor the judiciary can presume that they serve the interests of the people if their activities entail conditions that adversely affect what happens to the people as a result of the actions of the government or of the judiciary. Only the people have the right to say what is in their best interests, and neither the different levels of federalist government nor the judiciary might usurp such rights.

If the formation of a federally chartered bank leads to the devaluation of money, or if banking practices lead to various forms of financial speculation that injure the economy, or if lending practices are pursued that favor some patrons over others, or if the bank subsequently fails and, as a result, depositors lose their life's savings, then all of this has ramifications for the generality of people and not just for state governments. Chief Justice Marshall might have thought that he was only focusing on determining what were permissible means for enabling Congress to exercise powers that he believed to have been delegated to it through the provisions of the Constitution, but he was doing so without rigorously asking the question of whether the principles of the Preamble, or the guarantee of republican government, or the Bill of Rights actually entitled Congress to sanction the formation of banks if that action did not serve the interests of the people quite independently of what the act did in relation to various state governments.

Up until the time of Lincoln's presidency, Jefferson's belief that the Tenth Amendment was at the heart of a constitutional union of state and federal governments seemed to be borne out. Indeed, state governments were so frisky in asserting the independence to which they believed they were entitled that many states openly defied the federal government on a variety of occasions.

For example, many of the New England states threatened to secede from the Union following the Louisiana Purchase of 1803 and did so again during the War of 1812. In addition, many of the same New England States actively sought to undermine and oppose federal actions during the Mexican War that occurred between 1846 and 1848.

A number of southern states resisted the enforcement of a variety of federal laws in 1799 and again during the 1830s. And, of course, eleven southern states did not just threaten to defy the federal government in 1860-1861 but actually seceded from the Union.

Other states also engaged in a variety of on-going confrontations with the central government concerning the implementation of federal laws. Among these states were Wisconsin, Illinois, and Ohio.

One might note in passing that when states thwart the federal government, they are said to be exercising their Tenth Amendment rights, but when individuals assert their Tenth Amendment rights this is labeled as illegal acts of civil disobedience. This difference in stating the matter is merely a reflection of a belief propagated by both federal and state governments that notwithstanding the actual wording of the Tenth Amendment, nonetheless, as far as governments are concerned, the people have no independent standing when it comes to seeking to assess the meaning and significance of the Tenth Amendment.

When Lincoln sought to prevent Southern States from seceding from the Union, he not only denied both states and people their Tenth Amendment rights, but, as well, Lincoln also denied to the states and the people of those states their constitutionally guaranteed right to a republican form of government. In short,

Lincoln exceeded his authority under the Constitution, and, as such, his actions were unconstitutional and it speaks to the shame of the Supreme Court of the time that they did not confirm these facts.

The foregoing contention does not mean that I believe governments or anyone has a right to enslave others. In fact, most, if not all, of the Southern state governments were also seeking – just as the federal government was doing -- to deprive many people of their Tenth Amendment rights as well as to deny to various individuals their constitutionally guaranteed right to realize the constitutional promise of republican government. Apparently both federal government and southern government officials read the text of the Tenth Amendment only as far as the term "states" and, then, stopped reading.

Indeed, both the state governments and the federal government have been conspiring before, during, and after the Civil War to deprive the people of their Ninth and Tenth Amendment rights. The governments of both the North and the South cared little about human beings – and there were over 500,000 deaths and millions of more devastating, life-altering injuries that occurred as a result of the War Between the States that gives expression to the proof of the truth of what is being said here.

Instead, the American Civil War was a tussle between governments each -- in its own inimical and reprehensible style -- seeking to assert supremacy over the people. In the process the people were denied many of the rights that had been allegedly vouchsafed to them in the amended Constitution.

In short, the states have made the same mistake as the federal government has made. They each suffer from the delusion that only governments should have power, and, yet, the republican form of democracy is intended to return power to the people rather than take power away from the latter.

Following the Civil War – e.g., during the period of Reconstruction -- there was a substantial transformation in the way in which the federal government and the justice system thought about the Tenth Amendment. During the War, the federal government expanded its powers considerably, and even though, once the war was over, some of the air was gradually let out of the expanded

sphere of centralized, federal power, nevertheless, the constitutional landscape was never quite the same again.

For all intents purposes, the Tenth Amendment became largely inoperative for a number of years during Reconstruction. This was especially true with respect to many of the southern states who had lost the war and became occupied by Union soldiers, northern Carpetbaggers, and the like.

However, looked at from a different perspective – namely, that of the individual -- the Tenth Amendment, up to and including the period of Reconstruction, actually had been suspended for virtually the entire duration of the American republic. After all, the rights and powers of the people under the Tenth Amendment consistently were ignored and undermined while different branches of government fought for control over the people and, in the process, frequently denied that people, per se, had any Tenth Amendment rights.

To be sure, following the war, Congress did create a series of Freedmen's Bureaus. These Bureaus were responsible for constructing and implementing a variety of police powers with respect to the former slaves.

If the former slaves – or any other individuals for that matter – actually had any governmentally recognized Tenth Amendment rights, they could have gathered together to construct and implement their own police powers with respect to education, health, safety, and the like, as long as what was agreed upon did not affect the right of other individuals to exercise similar rights. If this had been done, there would not have been any need to create the Freedmen's Bureaus.

In Congressional terms, the slaves had been freed. However, in constitutional terms, the people who were freed were still enslaved by governments who believed that governments had the right to rule over the lives of individuals in a whole array of areas entailed by the idea of policing powers.

An imperial expansion of federal incursions into state governance was made possible through the passing of the Fourteenth Amendment:

"Section 1 – All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and

of the state wherein they reside. No state shall make or enforce any law that shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

As a result of this amendment, the federal government began to encroach upon areas of governance that previously had been assumed to be reserved for the states.

Ironically, within a hundred years after the passage of the Fourteenth Amendment, the three branches of federal government, along with the states began to act in collusion with one another to extend the protections of the Fourteenth Amendment to corporations who were required -- through the arbitrary, artificial, and unjustified invention of a legal fiction -- to be treated as 'persons' by the law and by governments. Over time, this legal fiction came to demand that all constitutional provisions -- including those of the Fourteenth Amendment -- be extended to corporations due to their alleged dimension of 'personhood'.

As a result, corporations are often extended a variety of powers, rights, immunities, and privileges by state and federal governments to which actual human beings are not even entitled. Meanwhile, actual human beings are still not considered to have any Tenth Amendment rights independent of a government's trusteeship or agency.

In 1883, the Supreme Court ruled that the Civil Rights Act of 1875 was unconstitutional. The ground for striking down the statute was because it was repugnant to the Tenth Amendment.

Of course, what was actually meant by this sense of 'repugnance' was that it was perceived by the Supreme Court Justices of that time to be encroaching upon the rights of states. What is truly repugnant, however, is the manner in which the Supreme Court decided that the rights of states should have priority over the rights of people and that the Tenth Amendment rights of the people should be abolished once again and ceded to the states.

Despite a few judicial bones -- such as the foregoing decision -- which were thrown here and there by the Supreme Court to the states concerning the latter's alleged Tenth Amendment rights -- albeit with no real, discernible, intelligible pattern to the process of throwing – the general tendency of the Supreme Courts over the next several decades was toward diminishing support for state claims argued on the basis of the Tenth Amendment. Thus, in 1895 Congress created a statute that restricted the transporting of lottery tickets as a permissible activity in interstate commerce, and the act was upheld as constitutional in *Champion v. Ames* (1903).

On the surface, the purpose of the act was to exercise Congress' constitutionally delegated authority to regulate commerce among the states. However, the real motivation underlying the statute's creation was to police gambling ... an activity that usually had been assumed by many to be reserved to the states.

While I don't condone gambling and believe that much harm comes into people's lives as a result of it, under the Tenth Amendment, people – not states -- should have a right to exercise their own authority in this area unless the exercise thereof can be shown to be harmful to the rights of others – such as one's family or children or one's emotional and psychological stability or one's ability to look after one's responsibilities and, then, one loses the right to use the Tenth Amendment as an argument for choosing as one would like to. The Ninth and Tenth Amendments do not give one license to act irresponsibly or to act in a way that undermines the capacity of other individuals to enjoy their Ninth and Tenth Amendment rights.

Policing the morality of individuals is not necessarily the prerogative of either the state or the federal government. If individuals transgress the boundaries of community or neighborhood or family propriety through their choices and actions, then there are ways of handling such issues -- such as mediation, arbitration, group intervention and the like – other than through law enforcement.

Legally punitive methods of seeking to regulate people's behavior should only be a very last resort after all other non-punitive measures have been explored and exhausted. More often than not, all that governmental intervention into the realm of

morality brings about is: An increase in crime; the establishment of self-serving and self-perpetuating forms of governmental bureaucracy; ineffective and inefficient methods of dealing with the problem; an increase of expenditures to the taxpayer, and a lot of lives that are ruined through the lowering of government-created legal hammers that often fail to address the underlying causes of pathological or problematic behavior.

In *McCray v. United States* (1904), the Supreme Court ruled in favor of a congressional law that placed a substantial excise tax on oleomargarine. In effect, using the rationale that Congress was merely exercising its constitutionally granted power to levy taxes for the purposes of providing for the general welfare, Congress was actually seeking to leverage its power in order to be able to police the general populace in relation to health issues.

Even if one were to agree that by placing a high tax on oleomargarine in order to discourage its purchase while, simultaneously, encouraging people to choose, say, butter, and that, thereby, Congress accomplished something that we will assume for the purposes of discussion could be shown to be medically and scientifically of benefit to the general welfare of the people, this, in and of itself, does not justify Congress passing such an act. It is not the duty or right of Congress to take it upon itself and seek to unnecessarily constrain how people live their lives or to penalize them if the people do not choose to live in accordance with what Congress deems to be best for them.

The general welfare is not necessarily a matter of what Congress says such welfare is or would like it to be. The general welfare is a function of a complex set of variables that give expression to the choices that people make as they seek to maximize their quality of life choices that consist of a series of trade-offs between that which is potentially beneficial and that which is potentially injurious … choices that constitute so many explorations (whether thoroughly done or superficially done) into the area of risk-assessment amidst the circumstances of life.

Congress doesn't have the right to take away the Ninth and Tenth Amendment powers of the people with respect to the manner in which citizens, each in her or his own individual way, go about making choices concerning: the character of life they would like to live, the risks that they are willing to run, or the overall shape of the welfare package that results from the many trade-offs of life. The people don't elect representatives so that the latter can establish a dictatorship about how the people must live their lives, but, rather, the people elect representatives to constructively assist the citizenry in ways that most people can agree upon as being good things to do without simultaneously oppressing the people or undermining the people's basic rights, powers, privileges, immunities and liberties.

The general welfare is a balancing act among three things: (1) enabling people to be able to take advantage of their basic rights, powers, and freedoms so that they might gain control over their own lives; (2) putting into motion programs (e.g., universal health care; livable wages for workers; the removal of all corporate influence from the running of government; elections that are free of the corrupting influence of donations from vested interests and free from the artificial barriers that are placed in the way of establishing a level playing field with respect to acquiring public office) that are designed to constructively benefit everyone in a manner with which the vast majority of people (and not just a simple majority) agree and to which they consent; (3) placing only the sort of minimal constraints on the people as are necessary to achieve points (1) and (2). A shorter way of saying the foregoing is that:

"We hold these truths to be self-evident, that all [humans] are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness"

... and even if someone chooses not to believe in a Creator Who has endowed all humans with such rights, I believe they will agree that from whatever the source such rights might come, all human beings are entitled to certain inalienable rights that include -- but need not be restricted to -- life, liberty and the pursuit of happiness.

As pointed out earlier, the Ninth Amendment was originally introduced to specifically repel the possibility that Congress might seek to pass legislation that would undermine and abridge freedoms and rights that were not specifically mentioned in the first eight amendments of the Bill of Rights. When Congress begins to wave about the principle of the general welfare and attempts to use this principle as a rationalization for why it does what it does, Congress is moving into areas that were specifically prohibited to it by the Ninth Amendment.

When elected representatives of the people begin seeking to entangle the people in various ideological theories about what constitutes the general welfare, the members of Congress are exceeding the authority that has been given to them by the amended Constitution. Congress has only as much power as is consistent with, among other things, the principles inherent in the Preamble, the guarantee of a republican government to the people of the various states, the Bill of Rights, and the protection against "involuntary servitude" inherent in the Thirteenth Amendment ... or, said in another way, the actions of the Congress are completely delimited by the rights, powers, liberties, privileges, and immunities of the people.

It is not the right of Congress to tell the people what to do. Rather, it is the right of the people to tell Congress (as well as other elected or appointed officials) what to do.

Some commentators note that the Supreme Court was not very consistent in its rulings concerning the Tenth Amendment during most of the first several decades of the Twentieth Century. For example, although the Supreme Court upheld the right of Congress to regulate interstate commerce and to provide for the general welfare through such statutes as the 1906 Pure Food and Drug Act, the Meat Inspection Acts of 1906- 1907, the 1910 White Slave Traffic Act, the Phosphorous Match Act of 1912, and the 1914 Harrison Anti-Narcotics Act (despite the fact that Tenth Amendment arguments frequently were voiced in opposition to such statutes), nonetheless, the Supreme Court also ruled in *Keller v. United States*

that it was a violation of a state's Tenth Amendment rights for the federal government to seek to place restraints on the trafficking of women for immoral purposes.

A distinction needs to be made between, on the one hand, (1) acts of Congress that seek to institute laws that are constructively designed to enhance the general welfare in ways with which the vast majority of people might agree – such as ensuring that foods and drugs are unadulterated, or that meat is fit for consumption and not likely to be injurious to those who purchase it, or that the construction of matches do not pose a threat to public safety, or that human beings (of whatever color) should not be enslaved or treated as commodities to be trafficked to the highest bidder – and, on the other hand, (2) acts of Congress that are intended to police morality and, potentially, violate the Ninth and Tenth Amendment rights of individuals or that potentially violate a person's right to be free from "involuntary servitude."

For example, rather than having Congress just pass laws that seek to abolish any form of the slave trade, and rather than having members of the Supreme Court enter into philosophical debates about whether the federal or state government should have the right to pass laws concerning the trafficking of women for immoral purposes, perhaps, Congress and the Supreme Court should busy themselves with enacting provisions that assist women – or anyone -- to never have to be in a position of becoming vulnerable to various forms of 'involuntary servitude' – whether in the form of slave trade or prostitution. If the tax money that is levied on citizens were used, among things, to directly assist women to improve their lives through education, starting a business, gaining stable employment, acquiring housing, having access to counseling services, and being protected from predators rather than having tax money just being used to fund the bureaucratic, law enforcement, court, and prison/jail systems that are perceived to be necessary to regulate the constitutional and the unconstitutional, then, perhaps, Congress and the Supreme Court might find more effective and efficient ways of helping people without simultaneously undermining the basic rights, liberties, and powers of the latter.

In many cases, the solutions that Congress poses in an attempt to fix what are perceived to be moral problems affecting

the general welfare often turn out to be more onerous than are the problems that supposedly are being addressed. Rather than using tax monies to subsidize bureaucracies in an attempt to control and police issues of morality, maybe public money should be spent directly on helping people learn how to solve their own moral issues in a way that is beneficial to them but does not spill over into adversely affecting the rights and liberties and powers of others.

Furthermore, one of the reasons why the Supreme Court might not be consistent with respect to its various rulings on, for example, the Tenth Amendment is because the Justices who sit on the Court tend to use completely arbitrary and artificial theories of judicial review in order to generate judgments concerning the alleged meaning of the Constitution. Irrespective of whether a given Supreme Court Justice is a champion of some form of constructivism (e.g., seeking to balance competing interests) or a champion of some kind of 'originalism' (e.g., the original intent of the framers of the Constitution) they are seeking to impose their legal philosophy onto the people … legal philosophies that have potentially destructive ramifications for the Ninth and Tenth Amendment rights of the people … legal philosophies that have potentially destructive ramifications for the right of people to be free of religions being established by the state (and, as indicated previously, many forms of legal philosophy amount to the establishment of a religion-like process to which people must bow down and submit on penalty of hell fire and damnation -- i.e., state sponsored forms of punishment) … legal philosophies that have potentially destructive ramifications for the right of people to be free of all forms of "involuntary servitude" other than what is minimally necessary to live in peace with one another and secure domestic tranquility and, thereby, legal philosophies that have potentially destructive ramifications for the right of people to establish forms of republican governance that are not oppressively dependent on some Justice's theory of legal philosophy concerning what such republican governance must mean to the generality of people who would like to be able to negotiate with one another and establish their own mutually agreeable arrangements for giving expression to republican governance.

There is not one Supreme Court Justice -- living either in the present or in the past -- who can start from first principles of justice, powers, rights, and liberties concerning individuals and, then, go on to justifiably demonstrate (except to themselves perhaps) how or why the people should give up those principles, powers, rights, and liberties so that governments might make permanent wards of the people through centralized forms of power (whether local, state, or federal) that mysteriously become entitled to tell those individuals how they must live their lives. People existed before governments, and, therefore, unless governments oppress the people, then, everything that a government can and cannot do is derivative from the consent of the people rather than from government.

The foregoing is especially important to keep in mind when one considers the following fact. Jurists tend to be agents of the government because it is the Executive Branch that selects Supreme Court Justices, and it's the Senate that confirms Supreme Court Justices and, as such, all of this gives very clear indication that the judiciary process is heavily influenced, if not controlled, by a centralized power structure from beginning to end … although, from time to time, there are jurists who run counter to what centralized centers of power wish them to do.

In many ways, Supreme Court Justices are not neutral moral entities who are umpiring the game of life in an impartial and fair manner for all concerned based on a rule book that everyone agrees upon. Supreme Court Justices are biased individuals who invent the rule book as they go along based on a variety of legal fictions – such as that corporations are 'persons' – which are rooted in their own personal legal philosophies of life complete with assumptions, interests, likes, dislikes, vested interests, conjectures, hypotheticals, and artificial forms of legal logic.

Shamelessly -- and in a rather preemptory, imperialistic manner -- Supreme Court Justices hand down their edicts from on high as if they were dispensing indisputable wisdom and truth. But, like the individual hidden behind the curtain in the Wizard of Oz, the Justices fear (or, at least they would if they weren't so mesmerized and impressed with their own legal slights of hand, mind, heart, and soul) that the people will discover how the bells and whistles of

democracy are being manipulated from behind a curtain and are little more than a dog and pony show of individuals who, unfortunately, all too frequently have a pathological-like ambition to control others in order to satisfy their own self-serving ideas about legal philosophy, and this is true irrespective of whether these Justices are liberal, conservative, libertarian, independent, or something else.

It would be one thing if the members of the Supreme Court were to serve as consultants for the people in order to try to assist the people to devise constructive methods of republican governance in which ultimate control belonged with the people rather than with centralized structures of power such as Congress, the Executive Branch, or the Supreme Court. However, the foregoing is not the sort of service that the Supreme Court is interested in providing for the people.

Instead, the Supreme Court is interested in engaging in an oppressive wielding authority over the people power … a power that has been usurped surreptitiously, and sometimes not so surreptitiously, from the people. Then said power is used against the very same people from whom it has been 'borrowed' in order to abolish, undermine, constrain, diminish, regulate, and control citizens to such a degree that the people no longer understand that the mysterious legerdemain performed by the Supreme Court is itself, largely, unconstitutional because what they do frequently violates, at a minimum: the establishment clause of the First Amendment (legal philosophy as naturalized religion); the provisions of the Ninth and Tenth Amendments; the "involuntary servitude" clause of the Thirteenth Amendment, and the guarantee of republican government to the people of the various states that is stated in Article IV Section 4 of the Constitution.

Republican governance is not what the Supreme Court says it means. Rather, republican governance is what the people say it means.

Moreover, the judgments made by the Supreme Court often do violence to the principles inherent in the Preamble to the Constitution. This is so because their decisions do not form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, or secure the blessings of liberty for ourselves and our posterity in any way

except in accordance with their own self-serving systems of arbitrary legal assessment that they feel justified in imposing on hundreds of millions of people. The extent of hubris inherent in such activity is so excessive as to defy calculation.

In 1918, the Supreme Court seemed to give indication that perhaps the tide had turned with respect to cases bearing upon the claims of states concerning their alleged Tenth Amendment rights. More specifically, two years earlier, Congress had passed a statute that prohibited the interstate shipping of any products arising from factories or mines that entailed the labor of children under the age of fourteen. However, in ruling on *Hammer v. Dagenhart* in 1918, the Supreme Court judged the congressional act of 1916 to be unconstitutional.

The majority opinion read in part:

"It must never be forgotten that the nation is made up of states, to which are entrusted the powers of local government. And to them and to the people the powers that are not expressly delegated to the national government are reserved."

The word "expressly" had been inserted before the word "delegated" by Justice William R. Day.

Once again, the term "people" assumes a largely cosmetic role in judicial reasoning. Clearly, according to the majority decision, powers are entrusted to governments – whether local or federal. Yet, nothing is said about what is involved in the dynamics of the entrusting process with respect to the permissions, conditions, duties, responsibilities, and constraints that circumscribe such a process, nor is anything said with respect to what constitutes a betrayal of that trust by government.

Although there are some commentators who believe that the 1918 Supreme Court decision in *Hammer v. Dagenhart* sent a shot across the bow of congressional presumptions concerning the reach of its powers, nevertheless, in truth, the 1918 ruling was just another round in the ping pong match that had been going

on between different levels of a federalist form of government. Either the federal government was entitled to win a point or the state governments were entitled to win the point, but individuals outside the government were not even permitted to step up to the table and take a swing, let alone win any constitutional points.

The role of the people was reduced to being one of a spectator in relation to the grand democratic game played among governments and branches of government. If the people wished, they (or, at least, some of them) were extended the privilege of being able to vote for their favorite players on the All-Star ballot ... sometimes referred to as a general election. Moreover, if any of the people wanted to be able to be invited to the 'big show' they had to come up with a lot of money and a covey of power patrons capable of convincing the owners of the two team league that other teams should be permitted to play in the game in an official capacity.

The Supreme Court continued on with its Tenth Amendment ping pong game by upholding a substantial federal tax on the use of narcotics in 1919, thereby awarding a point to Congress. However, three years later, in *Bailey v. Drexel Furniture,* the Supreme Court ruled unconstitutional Congress' attempt to introduce a second child labor law that Congress sought to leverage through the government's taxing power and the allegedly companion right to that taxing power to provide for the general welfare through such taxation.

The people, Congress, and the states were often left to assume the tasks of a reader of fortunes who studies the written dregs left by the Supreme Court in the bottom of its cup of power in an attempt to figure out what the future portended. The one thing that everyone could be sure of in all of this is that the fate of the people was largely sealed and, to all intents purposes, the people had no Tenth Amendment rights independent of government … the people were treated as eternal wards of the state who were incompetent to look after their own affairs and who could only survive if their alleged interests were looked after through the fiduciary role of government.

In the early 1920s, Congress began to pass legislation that sent various kinds of aid grants to the states to assist with an array of issues ranging from certain kinds of medical care to fire-prevention

in state forests. On occasion, this form of aid was challenged by some sates as a violation of Tenth Amendment rights.

The Supreme Court tended to rebuff such challenges (for example, see *Massachusetts v. Mellon*, 1923) by arguing that grants in aid do not undermine the Tenth Amendment rights of states because such grant programs are optional and, consequently, the states might reject or accept them. However, eventually, over a period of some 30-40 years, the federal grant programs became so ubiquitous that state governments were often reduced to merely serving in a subsidiary and largely silent role in relation to the relentless power of federal bureaucracies.

In the beginning, states might have been completely free to reject or accept such grant programs. Nonetheless, over time, those programs were capable of distorting the political landscape and place constraints on how, or whether, states would approach different problems, as well as affect the degree of control that a state might have in seeking to come up with solutions to problems that occurred in a political environment that was, in many ways, landscaped in accordance with federal wishes.

In one sense, the congressional advocates of federal grant programs are like so many dope dealers who seem rather innocuous in the beginning, and, yet, before one knows it, states have become locked into a pattern of addiction to grants in aid. Once hooked, federal pushers tend to exact various kinds of political prices as a means of shaping the behavior of states in accordance with the public policy agendas of different branches of federal government.

One can say to the states that they are free to accept or reject the aid, just as one can say to an addict that she or he is free not to accept the drugs that are being offered to the addict. However, once the behavior of a state has been shaped in certain ways through the receipt of federal aid, the capacity of states to be able to freely exercise their Tenth Amendment rights often becomes adversely affected and undermined.

In addition, as with any distribution network of addictive substances – and both money and power can be extremely addictive – once federal grant money begins to flow into a state, the money and concomitant power (or the power and concomitant money) has a way of co-opting state officials. Instead of working on

behalf of the people whom they are supposed to represent, those state officials who are co-opted by federal grant programs begin to serve the agenda and interests of the federal government rather than the needs and interests of the people within the state.

Quite frankly, I don't think the Supreme Court Justices thought their aforementioned decision all the way through. Although on the surface it seems as if the federal grant in aid leaves states with all their options on the table, the truth of the matter is that the presence of power and money has a way of undermining actual freedom of choice – both for government officials and for ordinary everyday people.

In a 1931 Supreme Court decision involving the *United States v. Sprague,* the Court stated:

"The Tenth Amendment was intended to confirm the understanding of the people at the time the Constitution was adopted, that powers not granted to the United States were reserved to the States or to the people. It added nothing to the instrument as originally ratified."

I tend to disagree. In fact, I would maintain that the foregoing statement is a very good illustration of how many Supreme Court jurists live a life of delusion and fantasy far removed from the realities of life.

More specifically, if the Tenth Amendment added nothing to the Constitution, then, why was it added? Given that the Constitution was signed in 1787 – four years before the ten amendments were officially added to the Constitution in 1791 – then, if anything, the Tenth Amendment made manifest the concerns of those (such as George Mason of Virginia) who were reluctant to ratify the Constitution until the rights and powers of people had been adequately secured against the encroachment of governments ... whether state or federal.

The Ninth and Tenth Amendments gave expression to the concern of many people at the time the Constitution was written and that had not been specifically addressed by the Constitution as

originally drafted. Although the idea of 'republican government' had been mentioned in the Constitution, its meaning, as was noted earlier, was vague and somewhat ambiguous.

While some might have felt that the protections entailed by the ten amendments were somehow inherent or implicit in the meaning of republicanism, nonetheless, the fact that many people insisted on adding the ten amendments to the Constitution as their price for ratifying the Constitution tends to indicate there was considerable distrust among the general population in relation to the likelihood that government would secure, protect, or promote the rights of the people over against the government. Indeed, if there is one common theme running throughout the history of man it is that governments and/or rulers often seek to oppress people.

Some people might wish to argue that the founding fathers had good reason to introduce the Tenth Amendment into the Constitutional mix because of an anticipation that various modalities of power struggle were likely to take place in the future between a central government and various state governments. Apparently, the logic of such an argument is that in the light of past experience with the central, monarchical governments of Europe, in general, and England, in particular, the people needed some sort of protection against a central government that might, over time, seek to gain authoritative ascendancy in relation to the states.

However, there is a problem inherent in the foregoing sort of thinking. Relative to the people, any government – federal, state, or local -- is a body of centralized power whose tendency is to seek to extend its authority and control over the lives of individuals who are decentralized and, therefore, relative to established government, likely to be less powerful.

To be sure, because most of the thirteen colonies that were vying to become independent states were already run by power elites consisting of wealthy, propertied, and influential individuals within their respective geographical boundaries, the various members of those elite circles had vested interests that they wished to protect against the encroachment of a central, federal government. Consequently, arguing for some sort of constitutional safeguards concerning their vested interests would be to their advantage.

Nevertheless, none of the ten amendments is an exercise in protecting the rights of those who are among the elite power movers within a given state – although their rights as ordinary individuals (as opposed to wealthy or propertied individuals) would be entailed by the Bill of Rights. None of the ten amendments is a study in protecting the rights of power elites who were, or would become, entrenched in the institutional business of state government.

The first ten amendments were intended to secure the rights of individual citizens apart from governmental bodies. Indeed, the first ten amendments were necessary to protect the people against the encroachment of all forms and levels of government ... federal, state, and local.

So contrary to the beliefs of the jurist who wrote, in relation to the 1931 decision on *United States v. Sprague*, that the Tenth Amendment "added nothing to the instrument as originally ratified", the jurist in question seems to have failed to understand that the only reason many people were willing to ratify the Constitution was because -- and only because -- something akin to the ten amendments were to be added to secure the rights of individuals over against government. It was the rights of states conceived of as being made up of extra-governmental individuals – that is, the people – that were being protected and not the rights of states conceived as centralized bodies of power that often sought control over the very people that were to be protected by the Tenth Amendment and, indeed, the states – in the form of centralized bodies of power -- often sought to use the Tenth Amendment to impose their will on the people of a given state.

The Tenth Amendment was not written just to emphasize the limited character of powers delegated to the federal government. The Tenth Amendment was written to indicate that any form of government deserved powers of only a limited nature.

The states – as governmental bodies -- were not the ones to whom the Constitution was primarily bequeathing whatever was left over after eliminating what had not been specifically assigned to the federal government nor prohibited to the states. The Tenth Amendment was a way of enshrining the fact that people were the ones for whom such powers were being reserved, not governments. The Bill of Rights – from beginning to end – is about securing,

protecting, and advancing the rights, powers, privileges and immunities of people as opposed to institutions or bodies of government.

The Tenth Amendment is not, and was not, about ensuring that the people – through their local state representatives -- have much more ready access to government policymakers. The Tenth Amendment is about the decentralization of power ... not in terms of what is being reserved by the Constitution on behalf of state governments but, rather, in terms of what is being reserved for the people independent of elected governments. In fact, elected government is but one of the tools among a whole set of possibilities through which people might exercise their right to republican government.

There were many people besides George Mason who opposed ratifying the Constitution of 1787 unless, among other things, provisions were added that protected the people against the incursion of government. Among these were Patrick Henry, Tom Paine, Samuel Adams, Thomas Jefferson, Richard Henry Lee, George Clinton, Elbridge Gerry, Samuel Spencer and Robert Yates.

Interestingly enough, when Tom Paine came to feel that a power elite was hijacking the American Revolution, he wrote a letter to George Washington. Among other things, the letter said:

"The world will be puzzled to decide whether you are an apostate or an impostor; whether you have abandoned good principles or whether you ever had any."

In any event, each of the foregoing individuals, along with others, maintained that if appropriate protections were not added to the Constitution as originally drafted in 1787, there was a great risk that a powerful form of centralized government would emerge that would seek to undermine, curtail, limit, or abolish the individual liberties of the people. Collectively, such people were often referred to as anti-Federalists to distinguish them from individuals such as James Madison, Alexander Hamilton, James Wilson, and John Jay who were advocates of a strong, central government.

The terms are somewhat misleading. Some of the so-called anti-Federalists were actually federalists.

More specifically, federalism is a system of government that seeks to coordinate the activities of several levels of governance – for example, states and a national, central government. There were individuals among the so-called anti-Federalists who believed in federalism but championed a form of federalism in which state governments possessed significant powers that could not be usurped by the federal government. On the other hand, there were other individuals among the so-called anti-Federalists who accepted the idea of state governments but believed that the central government ought to have a degree or two of primacy beyond the powers of state and, as such, could constitute a strong modulating influence with respect to the direction that government took in the United States.

Nonetheless, there were also individuals who were classified as anti-Federalists who were not necessarily primarily interested in just the power struggles between federal and state governments but who also wanted to secure rights and protections for the people against government in general. When Patrick Henry said that he smelled the stench of monarchy in conjunction with the Philadelphia Convention -- during which the Articles of Confederation were thrown out and a new Constitution was drafted -- he was alluding to the fact that federalism of any species smacked of monarchical-like power that, quite correctly as it turns out, he feared would, sooner or later, be wielded against the common people to the tremendous disadvantage of the latter, and he wanted no part of it.

These latter sorts of individuals were the authentic anti-Federalists -- although, rather ironically, a number of years later, Patrick Henry joined the Federalists and seemed to abandon some of his earlier ideas concerning anti-Federalism. However, such anti-Federalists might more appropriately have been described as proponents of profound skepticism with respect to centralized sources of power because they tended to distrust government of any kind -- local, state, or federal.

Their fears were not just about a strong, federal government gaining ascendancy over state governments. They were concerned about any form of centralized power – local, state, or federal – which would seek to oppress the people, or to deny the people a true republican form of government, or which would seek to nullify and abolish the liberties of the people, or which would try to impose its

own ideas onto the people with respect to what might be meant by ideas such as 'justice', 'domestic tranquility', 'general welfare', and 'the common defense'.

Indeed, Article I, Section 8 of the Constitution specifies that:

"The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States."

As previously noted, this portion of the Constitution is sometimes referred to as the 'Elastic Clause' because Congress -- as well as the Executive Branch with the advice and consent of Congress -- and, as well, the judiciary -- through its frequently arbitrary, interpretive renderings of alleged Constitutional meaning that are generated during the judicial review process – all these branches of the federal government seek to use the aforementioned section of the Constitution to make incursions into, and encroach upon, a vast array of areas that are claimed to "provide for the common defense and general welfare of the United States."

In doing so, all of the branches of central government, either knowingly or unknowingly, conspire with one another to deny, undermine, restrict, obstruct, and effectively abolish basic rights that belong to the people. These include – as noted earlier – the 'establishment' clause of the First Amendment; the Ninth and Tenth Amendments that are intended to preserve and reserve an extensive reservoir of rights, powers, privileges, and immunities to the people; the provisions of the Thirteenth Amendment concerning involuntary servitude; the constitutional promise of republican government, and the principles of the Preamble of the Constitution that concern people and not governments.

Who should get to determine what is meant by the idea of providing for the common defense and general welfare of the people? While elected and appointed officials do give expression to one kind of republican government, this need not exhaust what is entailed by the notion of republicanism.

When non-governmental organizations gather together, why should these sorts of collective be considered to have less Constitutional standing than do elected officials with respect to the

issue of determining what it means to provide for the common defense and general welfare? Or, when individuals assemble among themselves to discuss the problems of the day and seek to have some kind of influence on the decision process in relation to the members of Congress or with respect to the Executive Branch in conjunction with matters of common defense and general welfare, why should such individuals have any less Constitutional standing in these matters than do the elected and appointed members of Congress, the Executive Branch, or the Judiciary?

The Constitution guarantees to the people that they will have a republican form of government. It is not up to the government to place limits on what is meant by such a republican form of government.

Moreover, it is not the prerogative of federal authorities (whether from Congress, the Executive Branch, or the Judiciary) to stipulate that the only form of republican government that will be allowed is one involving elected officials. In fact, there are several other forms of republican government that have been operating within American for hundreds of years – forms of governance that have been enshrined in the Constitution.

More specifically, both the idea of a trial by a jury of one's peers (Article III, Section 2, Clause 3), as well as the institution of a grand jury (Fifth Amendment), are republican forms of governance that do not involve having elected representatives controlling the decision-making process of the members of those different kinds of jury. Determining what constitutes the common defense and general welfare of the people is, to a very substantial degree and on a daily basis, left up to the members of these two non-elected, but fully representational, forms of republican government.

The issue of republican government cannot be reduced down to being a matter of how close the people are to government such that local government is likely to be held more accountable to the people than is a distant federal government. The issue of truly republican governance is that no form of centralized power can be trusted not to seek to oppress, abolish, or curtail the rights of people. The principle implicit in the Bill of Rights is that all forms of government are to be distrusted ... whether local, state, or federal.

The purpose of democracy is not to empower government to have control over the lives of people but to empower people to have control over their own lives, provided this does not prevent other people from possessing similar autonomy, and, as well, to empower people to have control over the life of government. The ultimate form of decentralization is when people, rather than governments, have the kind of power that cannot be usurped or taken back by any form of centralized power at whatever level.

According to some ways of thinking, the Tenth Amendment constitutes little more than a truism which stipulates that "all is retained which has not been surrendered" (cf. *United States v Darby,* 1941). Underlying this mode of thought is the belief that if one examines the history surrounding the adoption of the Tenth Amendment, then one will discover (or so it is argued) that the purpose of the Tenth Amendment was only to allay the concerns of people in the various states in relation to the possibility that, sooner or later, a centralized government would try to exercise powers not explicitly granted in the Constitution and, as a result, the states might not be permitted to fully exercise the powers that had been reserved to them.

I do not believe such a perspective is tenable. To begin with, there is considerable ambiguity surrounding the idea that "all is retained that has not been surrendered," and, as a result, the question immediately arises: retained by whom and surrendered by whom? Furthermore, as more than two hundred years of judicial review have demonstrated, there seems to be considerable controversy swirling about the issues of just what has been retained and just what has been surrendered.

If the Tenth Amendment was nothing but a truism, then individuals such as George Mason, Samuel Adams, Tom Paine, Patrick Henry, and Thomas Jefferson would not – each in his own way -- have pursued a rearguard action to ensure that the rights of people – rather than governments of whatever kind – were protected. If it was only a matter of federal versus states rights, the phrase "or to the people" never would have been added to the amendment.

The purpose of the Tenth Amendment was to give people a constitutional standing. This sort of standing had not been given in the original pre-Bill of Rights version of the Constitution, and, in fact a very strong argument can be made that although the first eight amendments of the Bill of Rights did afford a variety of protections to individuals, none of those first eight amendments firmly established the people with full Constitutional standing.

Prior to the forging of the Bill of Rights, the Constitution that had been drafted tended to talk exclusively in terms of the powers of different branches of federalist governmental institutions. Article I was about Congress. Article II was about the Executive Branch. Article III was about the Judiciary. Article IV was about the States. Article V outlined the means through which Congress and State Legislatures might amend the Constitution. Article VI established the Constitution and the laws made pursuant to the ratification of the Constitution as being the supreme law of the land that all courts and elected representatives were obliged to uphold. And Article VII indicated that nine out of thirteen states would be enough to ratify the Constitution, although this last article said nothing about what would happen if the other four states chose to stay with the Articles of Confederation.

Considered apart from the various levels of federalist government and considered apart from the Preamble -- which many advocates of federalism merely interpret as being rhetorical window dressing that gives expression to literary style rather than constitutionally substantive issues – the people are hardly even mentioned in the Constitution except in little ways, almost in passing, when, for example, the vote of the people was seen as the means through which ambitious, frequently self-serving people acquired the power of elected office. Even here, the drafters of the Constitution exhibited their distrust of the people by establishing the convoluted and totally unnecessary procedures for operating an electoral college in clauses 2, 3, and 4 of Section 2 in Article II that dealt with the Executive Branch.

If people could be trusted to vote directly for Senators and members of the House, then, why could they not be trusted to vote directly for the President and Vice President? Is the creation of an electoral college not an indication that the framers of the

Constitution believed that the head of state should be selected by a 'power elite' rather than the people?

One can seek to try to justify the existence of an electoral college in any way one likes, and one can even argue that in most cases (but not in all) the popular vote and the vote of an electoral college tend to coincide. However, in the end, an electoral college exists as a buffering layer of centralized government that is intended to serve as a constraint upon the will of the people.

For example, there are some who argue that an electoral college is necessary because it serves to balance the interests of relatively unpopulated states with the interests of heavily populated states and, in the process, seeks to serve as a bulwark against heavily populated areas dominating the election process. Aside from the fact that one might say similar things in relation to Congressional elections in which heavily populated areas tend to have domination over rural areas within any given state, and, yet, no one felt a need to establish an electoral college for the states with respect to campaign races for Congressional seats, the fact of the matter is that even under the electoral system, if one carries 10-12 of the right states, then how people in the rest of country vote is largely irrelevant.

Of course, the people – but only by implication – were alluded to in the Constitution with respect to the Congressional power to levy and collect taxes. Like the existence of voting, so too, in the matter of taxes, the people were seen as a means to an end – in this case, the acquiring of money.

Alternatively, the people – but, once again, only by implication rather than through specific mentioning – were alluded to by the Constitution as being the official source for cannon fodder in time of war. After all, what good is achieved if Congress can declare war and the President can serve as Commander in Chief if there are no people to fill the ranks of the military and the militias?

The people were also indirectly referred to in the Constitution when Section 9, Clause 2 of Article I indicated that:

"The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety might require it."

Consequently, the fate of people was left in the hands of centralized government with respect to whether or not evidence would have to be presented to prevent the possibility of unwarranted imprisonments by autocratic governments who were in a position to label almost any kind of dissent as constituting rebellion.

Citizens were much more explicitly mentioned in Section 2 of Article III of the Constitution. Here the document stipulated that the people were subject to the jurisdiction and powers of the Judicial Branch.

In Article IV, the people are mentioned, more or less, in passing. More specifically, the Constitution indicates in Section 2 of this article that:

"The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states."

What this means in practical terms appears to be left to the discretionary powers that have been extended to the federal government and states by the Constitution.

In summary, according to the Constitution, without a Bill of Rights, people could vote (although in the case of the President, not directly or even definitively), pay taxes, die during war, be subject to the dictates of the judiciary, and enjoy "all privileges and immunities of citizens of the several states." These latter privileges seemed to consist of voting, paying taxes, dying, or being ruled over by the courts, while the immunities enjoyed by the citizens appeared to be a matter of being promised that the privilege of habeas corpus would not be suspended unless, of course, the government deemed this to be necessary.

Given all of the foregoing, is it any wonder that the first eight amendments of the Bill of Rights would be insisted upon by many as a promissory note for ratifying a Constitution in an attempt to counterbalance governments that often cared little for the citizenry except as a means to the various ends, purposes, and ambitions of those individuals who sought power through holding office – whether elected or appointed – in centralized government? Given the stark nature of the Constitution absent a Bill of Rights, is it any surprise

that there were people who insisted on the last two amendments of the Bill of Rights to ensure that the people had a Constitutional standing independent of the different branches of federalist or layered government?

If by 'states' one understands the term to mean the kinds of institutional centers of power that were outlined in Article IV of the Constitution, then, one might well suppose that the Tenth Amendment is a truism in which "all is retained that has not been surrendered." In other words, since the Constitution without the Bill of Rights is largely about centralized forms of power (i.e., Congress, the Executive, the Judiciary, and the States) rather than people, then, it follows from such logic that because democracy is, or should be, according to advocates of this position, about centralized control (i.e., government power) over people, then for such a person, whatever powers have not been given to one level of government belongs to the other level of government and the people be damned.

However, if by 'states' one understands this term to refer to the collectivities of people in certain geographical regions, then, just who (the people or the government) is retaining or surrendering powers, and just what powers are being retained or surrendered becomes a much more complex issue. The fact that the first nine amendments of the Bill of Rights are about the rights of people and not of government, and the fact that the Tenth Amendment ends with "or to the people" demonstrates that the use of the term 'states' in the Tenth Amendment was not necessarily just about bodies of centralized power and, instead, is likely to have referred to the people from whom states, as a federalist entity outlined in Article IV, derived their various powers.

In a 1975 decision by the Supreme Court concerning *Fry v. United States*, reference was made to a 1941 Supreme Court case involving *United States v. Darby* that characterized the Tenth Amendment as a 'truism' asserting that 'all is retained that has not been surrendered." The jurist writing the decision in 1975

stipulated that notwithstanding the aforementioned words in the 1941 judgment, nonetheless, the Tenth Amendment:

"is not without significance. The Amendment expressly declares the constitutional policy that Congress might not exercise power in a fashion that impairs the States' integrity or their ability to function effectively in a federal system."

As the main character of the movie entitled 'The Shawshank Redemption' says to the warden of the prison: "How can you be so obtuse?" Indeed, totally absent from the foregoing legal cases is any mention of the people as opposed to either the federal or state governments.

Unfortunately, the people in a system of federalism are often treated by the different levels of government in a way that is reminiscent of the manner in which so-called adults treat their children when engaged in a divorce involving bitter custody disputes. In other words, the people in relation to governments are, like children in all too many divorce cases, treated as if they were chattel to be disposed of in accordance with the likes and dislikes of those who presume themselves to be all that really matters in the grand scheme of things.

However, as modern family law has established, children have rights and entitlements quite independently of the wishes and desires of the parents. Just as the rights and entitlements of children need to be protected against the irresponsibility of parents who are engaged in self-serving power struggles with one another, so too, the rights and entitlements of the people need to be protected against the self-serving power struggles that take place between different levels of government.

Supreme Court jurists in *Fry v. United States* (1975), as well as in *United States v. Darby* (1941), are committing errors that are variations on a theme. They each, in their own way, are seeking to frame the Tenth Amendment as purely a function of a power struggle between two levels of government.

The Tenth Amendment is truly revolutionary, and the courts have been eager to sidestep the ramifications of this fact in as many ways as possible. Through this amendment, people have been given

full constitutional standing alongside the different levels of government.

Truly republican forms of governance (and not all forms of governance need be a function of government power) is when the people have as much, if not more, say in determining what constitutes the principles of justice, domestic tranquility, the common defense, general welfare, and liberty as do the federal and state forms of government.

For obvious reasons, acknowledging the foregoing point is not in the interests of governmental bodies that are founded upon the idea of wielding control over others, because once the underlying principle is fully admitted, recognized, and accepted, activities that are directed toward acquiring power and, then, employing such power to impose, by force if necessary, various programs of public policy onto the people becomes very much harder to accomplish.

When different levels of government engage one another in a power struggle, everyone understands what is transpiring. The goal of the game is to establish who has power and how much power, as well as to establish what kinds of power belong to the victor in the tussle.

Why do governments seek power? The answer to this question is obvious.

The only reason why governments seek power is in order to be able to control, regulate, use, or exploit not only other human beings but, as well, existing resources. A person does not seek power to do good for others because if that were the goal, this could be accomplished without the need to either seek or acquire power.

One seeks power because, knowingly or unknowingly, one wishes to impose one's perspective, ideology, vision, theology, or agenda on others. Empowering citizens with the ability and means to counter such self-aggrandizing ambitions constitutes a fly in the democratic ointment ... at least from the perspective of those who wish to use that ointment as a means to advance their own purposes rather than the purposes and needs of the people.

A person might wish to argue that people, with the best of intentions, might seek office not due to self-serving motivations but in order to leverage the power, resources, and money of Congress or the Executive Branch in order to accomplish good for others – a

good that individuals operating through their own limited resources, money, and power could not possibly hope to accomplish. The reality of the political situation is such, however, that even when elected representatives sincerely struggle with the weighty questions swirling about the problem of trying to do what is best, nevertheless, what is considered to be the best choice is often only an expression of what such individuals deem to be best according to their own philosophy of life, and, as a result, the general populace often is held hostage to someone else's notion of what constitutes the common good, or citizens are the recipients of one form, or another, of political abuse when power is leveraged irresponsibly or ill-advisedly even with the best of intentions.

Some might wish to respond to the foregoing and contend that however problematic our system of elected representatives might be, this is all that can be done. Democracy cannot be better – or so the argument goes -- than the quality of the representatives who are elected, and if such elected officials prove themselves unworthy of the responsibilities of elected office, then, the people can vote to throw them out during the next round of voting.

I believe such arguments are incorrect. I believe there is a better form of republican government than simply voting for representatives to serve as would-be surrogates of the people, and toward the latter part of this essay, I will outline what the nature of that better form of republican governance is although a number of hints already have been given in what has been said previously.

In the meantime, let it be said that the entire Bill of Rights does empower citizens to resist the incursions and encroachments of power-hungry centralized governments (whether local, state, or federal). However, the Ninth and Tenth Amendments are particularly significant in this respect because those two amendments indicate that it is the people who have the right and power to determine the meaning of the form of republican government that has been promised to the people in Article IV, Section 4, of the Constitution.

No one in her or his right mind or heart would be willing to give up their unfettered liberty so that Congress, the Executive Branch, the Judiciary, and the various states would have the power to arbitrarily dictate to people concerning what powers, rights,

privileges, or immunities citizens should have, or so that different levels of government could have the right to oppressively regulate what form republican government might assume. Such a state of affairs would have been no better than the various forms of monarchy from which people were seeking to escape when they came to America. In fact, it might have been worse because the people would have been swapping one monarch for a multiplicity of ego-driven power mongers, many of whom were deluded to believe that they possessed something akin to a Divinely-sanctioned mandate to rule over the lives of others as they saw fit.

If all democracy signifies is the right to vote on who gets to usurp one's rights, liberties, and powers, or if democracy only means one has the right to vote on who gets to control, regulate, oppress, and exploit the voters, then, democracy is not really a revolutionary step forward. Rather, it is just the exercise of monarchy and autocracy by another name.

If one is to give up the right of unfettered freedom, then, one must be offered something of value in return for that which is being sacrificed. Since all of us consider our freedom to be precious, then whatever is to be offered in exchange for giving up the unbridled exercise of such freedoms must also be very precious.

The only medium of exchange that is fair to those who are willing to sacrifice certain dimensions of freedom for the collective good would be to have an opportunity for self-regulation through the mediated negotiations that take place by means of some form of republican governance that seeks to establish, as much as is humanly possible, principles of justice, liberty, domestic tranquility, the common defense, and general welfare for all citizens and not just for those who possess governmental power who are favored by such power. While -- when functioning properly -- Congress, the Executive, the Judiciary, and the states could all play substantial roles in helping the people to secure, protect, promote and realize the fruits of such mediated republican negotiations, one cannot deny to the people their own right to seek solutions to such negotiations through non-governmental means, nor can one insist that it is the peremptory duty and right of governments to seek to thwart, undermine, or constrain such non-governmental republican efforts (and one should not necessarily read into what is being said here as

being an expression of advocacy or preference for private market solutions to such negotiations).

Governments are being empowered by people who are sacrificing their (the people's) ability to exercise freedom in unbridled ways. What is it that governments are sacrificing on behalf of the people in order to be able to come into existence?

Presumably, governments, like people, must be willing to sacrifice their capacity to act in oppressive ways toward those from whom they derive their existence and with respect to whom governments have a fiduciary responsibility that has been entrusted to them. Presumably, people must be empowered by the act of empowering governments, and one cannot necessarily guarantee this will be the case unless one can develop a means of establishing oversight (which extends beyond the capacity to vote people into and out of office) with respect to those who have been elected to serve as representatives of the people.

There are two streams of republicanism inherent in the foregoing. One republican stream flows from the electoral process, and when this stream flows in a non-pathological manner, then, the representatives will assist the people to realize the principles inherent in the Preamble to the Constitution. The other republican stream flows directly from the people in a manner that is unmediated by elected representatives and that bears the responsibility of, among other things, ensuring that elected officials are faithful to their oaths of office.

The Constitution without the Bill of Rights is an invitation to abuse of power and oppression. The Constitution without a Preamble is an invitation to arbitrariness and lack of purpose.

If the Constitution does not exist to seek to assist people to secure liberties, justice, domestic tranquility, the common defense, and the general welfare, then, why should anyone bother with such a document at all? If the Constitution does not provide the people with the capacity to gain ultimate control over what transpires within government, then, by ratifying a constitution without such assurances, then the people are not empowering themselves, but, instead, they are empowering government over against the people, and in the process the people would have sacrificed their freedoms for nothing.

In *McCulloch v. Maryland*, Supreme Court Justice Marshall rejected the claim put forth by the State of Maryland that attempted to introduce an argument in support of the state's position based on a Tenth Amendment argument. More specifically, the State of Maryland noted in its legal argument that one of the fears of those who originally resisted ratification of the Constitution revolved around the concern that the rights of states might be abolished or diminished by a powerful central government.

The counsel for Maryland asserted that the Tenth Amendment had been added to the Bill of Rights in order to assuage such concerns and fears. The State of Maryland proceeded to argue that, under the Tenth Amendment, the power to create corporations was reserved for the states.

In response, Justice Marshall advanced a position that was rooted in the Constitution's 'necessary and proper' clause (Article I, Section 8) as a counter to the legal position of Maryland. In effect, Justice Marshall was indicating that the Constitution entitled Congress to make whatever laws it believed to be required in order to be able to execute the powers that had been given to Congress under Section 8 of Article I.

Moreover, Justice Marshall argued that in contrast to the Articles of Confederation, the Tenth Amendment was missing the word "expressly" with respect to the qualifying of powers being granted in relation to that amendment. As a result, he maintained that the absence of the term "expressly" in the text of the Tenth Amendment left open the issue of "whether the particular power that might become the subject of contest has been delegated to the one government, or prohibited to the other" and that in order to be able to determine this one needs to "depend upon a fair construction of the whole instrument."

Aside from failing to spell out what might be entailed by a "fair construction of the whole instrument" (other than to express the presumption that what Justice Marshall was stating was the appropriately fair construction), and aside from failing, as well, to establish the criteria and means of evaluation through which the idea of "fairness" would be established for everyone to understand, Justice Marshall committed several errors in the construction of his argument. To begin with, contrary to what Justice Marshall says, the

issue is not whether the term "expressly" does, or does not, appear before the word "delegated" in the Tenth Amendment, nor can the issue before the Court be reduced down to a matter of what powers have been either delegated to one government or another or what powers might have been prohibited to one government or another.

Justice Marshall erred by failing to take the Constitutional standing of people – apart from government -- into account during his deliberations. It is as if the Constitutional standing of people never even entered his mind and as if the Constitution only were limited to matters of which level of government should be assigned which powers.

Under the Tenth Amendment, "a fair construction of the whole instrument" would include the involvement of the people independently of state and federal governments. Marshall did not cite this, and, therefore, he has misread and misunderstood the nature of the Tenth Amendment.

Justice Marshall's judicial 'take' on things is quite surprising and somewhat self-serving. After all, although Justice Marshall was prepared to note that the term "expressly" had been left out of the text of the Tenth Amendment, and, consequently, he seemed to believe that the term's absence was very significant, and, yet, he apparently failed to take into account the fact that the phrase "or to the people" did appear in the text of the Tenth Amendment and seemed to treat that phase as being completely insignificant ... as if there were no difference between states and the people.

On the other hand, the State of Maryland's argument was also self-serving in as much as it was only concerned about whether the rights of states might be swallowed up by a centralized federal government. The State of Maryland did not appear to be at all concerned with the possibility that the rights of people might be swallowed up by the centralized government of states, just as the rights of states could be swallowed up by the federal government.

Contrary to the argument put forth by the State of Maryland in *McCulloch v. Maryland,* power to create corporations was not necessarily reserved to the states by the Tenth Amendment. Like Justice Marshall, Maryland's lawyer conveniently forgot the fact that the people – independently of government -- should have had a say

in the matter of whether corporations ought to be created at all, and that if the people – independently of government -- were agreed that corporations might, under certain circumstances, be a good thing, then, the people should have had some degree of significant influence in determining the kind of structure or powers to which corporations should be entitled, as well as a substantial degree of influence in determining what kind of control the people were entitled to have over such created entities.

Finally, if it is appropriate for Justice Marshall to take into account what the Articles of Confederation did, or did not, say with respect to the problem of how to understand the principle inherent in the Tenth Amendment, then, presumably, it should also be okay to take into account such documents as the Declaration of Independence during one's attempt to seek an understanding of that same amendment. The Declaration of Independence was an advocate for people and an opponent of government – especially tyrannical and unjust government.

The Declaration of Independence alluded to the need for a form of government that would serve the interests of people rather than a form of government that must be served by the people and that was entitled to oppress them. Consequently, in reaching his decision, Justice Marshall engaged in a certain amount of 'cherry picking' in relation to the arguments that he advanced. More specifically, although he cited the Articles of Confederation because he felt that supported his legal position, nonetheless, he simultaneously seemed to ignore whatever might have contradicted the argument (e.g., the Declaration of Independence and the Tenth Amendment phrase "or to the people") he was putting forth.

Finally, Justice Marshall's citing of the 'necessary and proper' clause of Article I, Section 8, in his decision with respect to the *McCulloch versus Maryland* case might be incomplete as it stands. While the Constitution does entitle Congress to "make all laws as shall be necessary and proper for carrying into execution" its Constitutional powers, nonetheless, the enactment of those Congressional laws must be measured against whether, or not, they would help advance, or diminish, the principles inherent in the Preamble, and such laws must be measured against whether or not they could be passed in a manner that would not undermine the

constitutional guarantee of republican government to the people and without infringing on any of the provisions of the Bill of Rights -- such as the establishment clause of the First Amendment as previously discussed – and/or without transgressing any of the other constraints upon the laws of government -- such as the involuntary servitude clause of the Thirteenth Amendment.

During the period between 1934 and 1935, the Supreme Court issued a number of rulings that rendered unconstitutional several facets of Roosevelt's New Deal policy that had been intended to provide economic recovery for states and individuals hit hard by the Great Depression. The National Industrial Recovery Act -- which enabled the President to negotiate directly with industry with respect to trying to come up with legally enforceable principles of fair economic practice – was one of the measures that were ruled to be unconstitutional.

Typical of these judgments against federal public policy programs was the argument of Chief Justice Charles Evans, writing on behalf of a unanimous Court in the 1935 case of *Schechter Poultry v. United States.* He indicated that such programs were in direct conflict with the Tenth Amendment.

Beginning around 1937, however, Roosevelt was able to stack the Supreme Court with jurists who were likely to be favorable to his public policy programs. This led to a series of decisions that effectively rendered Tenth Amendment arguments to be largely null and void.

For instance, in a Supreme Court judgment concerning *New York v. United States* (early to mid 1940s), the Court upheld (by a vote of six to two) the federal right to tax mineral waters obtained from state-owned property and sold to the public. Chief Justice Harlan Stone defended the majority ruling by arguing that:

"The national taxing power would be unduly curtailed if the State, by extending its activities, could withdraw from it subjects of taxation traditionally within it."

The foregoing remarks raise the following question: What, precisely, is meant by the Chief Justice's use of the phrase "unduly curtailed" in relation to the power of Congress to levy and collect taxes? What are the criteria for weighing and determining what constitutes a process of unduly curtailing the activities of the federal government with respect to taxation?

How much money does the federal government get to collect in the way of taxes? Are we to suppose that no matter how inordinate the appetites of the federal (or state) government might be with respect to its desire for money that the people operate under an obligation to supply tax monies that is without conditions, boundaries, or a need to be rigorously justified or empirically demonstrated?

Chief Justice Stone frets over the manner in which Congress' power of taxation might be "unduly curtailed" should states be able to become immune to the traditional practice of imposing taxes through which, in part, the federal government raises money. The Chief Justice seems far less concerned about the possibility that the actual needs of the people might be "unduly curtailed" through excessive, inappropriate, or injudiciously used forms of taxation.

There is something peculiar about the logic of an argument that claims a right to acquire money, via taxation of the people, in order to pay government debt or to provide for the general welfare while simultaneously placing obstacles, via the same taxation, in the way of the people's ability to pay their own debts or to contribute to the general welfare in their own manner. There is something peculiar about the logic of an argument that expects people to not live beyond their means while simultaneously enabling government to constantly push the envelope of living beyond its means – that is, the reasonable ability of the people to fund government agendas and ambitions.

How does one measure the idea of being "unduly curtailed" with respect to the government's desire to tax the people? Why should priority automatically be given to the government's right to tax over the people's right to have control over their own lives by, among other things, determining for themselves what constitutes the meaning of being "unduly curtailed."

It is not the place of Supreme Court Justices to determine that governments have a right not to be "unduly curtailed" independently of examining the same issue with respect to the people's right not to be "unduly curtailed". To do so is to render people vulnerable to a form of involuntary servitude in relation to the desires, whims, and agendas of government. This is especially the case when such Justices do not provide a detailed and rigorous exploration into the structural character of the idea of being "unduly curtailed" with respect to the complex task of weighing the rights and duties of government over against the rights and duties of people.

According to Article I, Section 8, of the Constitution, the purpose for levying and collecting taxes is:

"To pay the debts and provide for the common defense and general welfare of the United States."

If the taxes that are collected are not used to pay down the national debt, or if they are not used to provide for the general welfare (and pork barrel gratuities at taxpayer's expense for federal or state projects that benefit the few rather than the majority of people do not necessarily constitute providing for the general welfare), or if such taxes are not used to provide for the common defense in an efficient, reasonable, and collectively agreed upon manner, then, the taxes are being used for purposes other than those specified in the Constitution.

Now, who gets to decide whether, or not, the money collected for taxes is being judiciously and appropriately allocated with respect to the specified purposes of paying debts, providing for the common defense, and promoting the general welfare? Who gets to decide the priorities in such matters? Who gets to decide whether, or not, there are limits that should be placed on how much money the government has a right to raise through taxation and using the credit of the United States to borrow money that must be paid back primarily through the assessment of taxes on the people?

If the answer to all of the foregoing questions is that it is the government that should decide such matters or that it is the judiciary that should decide such matters, then, where does this leave the

people? Or, if the only tool that the people possess is the ballot box, then, the way is open for tremendous destruction to be done to the people by the government and the judiciary in the years between the people's few opportunities to try to use the vote to change the direction of government.

Democracy should be about the people and not about governments. Unfortunately, this idea has been largely corrupted by a countless succession of governments and power elites who believe that democracy should serve the interests, ambitions and agendas of the power elite rather than the needs of the people.

Frankenstein (the framers of the Constitution) has created his monster (government), and the monster has been let loose in the land to wreak havoc upon the countryside (the people). The villagers are rightfully upset and wondering how they might go about marching on the castle in order to bring under control the monster that is preying upon them, while the judiciary speaks in terms of its concern that the activities of the monster should not be "unduly curtailed".

Furthermore, with respect to the majority opinion penned by Chief Justice Stone in the aforementioned case of *New York v. United States*, Justices Rutledge and Frankfurter added that the Tenth Amendment entailed:

"No restriction upon Congress to include the States in levying a tax exacted equally from private persons upon the same subject matter."

Both the Justices who were arguing for the majority opinion in *New York v. United States* as well as those who were dissenting from that position have muddied the democratic waters.

Contrary to what the majority opinion of the foregoing Court judgment states, I am of the opinion that the Tenth Amendment does place restrictions upon the ability of Congress to tax the people because the capacity of government to tax people is contingent upon the people's willingness to be taxed. If the people believe that Congress is exceeding the judicious exercise of its power to tax, then, Congress is seeking to exercise a power that the people did not give it, and in

doing so, government is encroaching upon powers that have been reserved for the people.

In other words, in possessing the power to tax, Congress does not enjoy an absolute power. The scope of that power is to be determined by the people, and the people did not cast off the oppressive taxing powers of monarchies in order to become subservient to the oppressive taxing powers of the federal or state governments.

Congress has been given the power to tax contingent on the conditions that such taxes can be shown to be fair, reasonable, and judicious in the service of principles inherent in the Preamble, the promise of republican government, the Bill of Rights, and the remaining Amendments to the Constitution. The proper boundaries of governmental taxation are to be determined in accordance with the rights of the people and, as such, are derivative from, and not independent of, those rights.

The members of Congress (even though they might be representatives of the people) do not have, thereby, the authority to cede away the rights of the people. However Congress might desire to go about its business, its alleged supremacy in generating statutes cannot abolish, undermine, constrain, deny, or regulate the fundamental rights to which the people are entitled, and, consequently, when Congress encroaches on the rights of the people, it ought to recuse itself from deliberations because a conflict of interest exists between, on the one hand, Congress's activities as a body of government and, on the other hand, the rights of the people whom the members of Congress are supposed to be faithfully serving through upholding the provisions of all dimensions of the Constitution and not just the provisions of Article I, Section 8.

Justices Black and Douglas disagreed with the majority opinion in *New York v. United States* by arguing that:

"If the power of the federal government to tax the States is conceded, the reserved power of the States guaranteed by the Tenth Amendment does not give them the independence that they have always been assumed to have."

The operative phrase here is "assumed to have."

To be sure, most, if not all, states have assumed that they had certain rights and powers under the Tenth Amendment. It is in the very nature of governments – whether local, state, or federal – to seek to enhance the perimeters marking their sphere of influence with respect to the wielding of power.

Governments don't like giving up power or being informed that there are determinate limits to their power. They fear that if others have power then those others will seek to do unto them what they have sought to do unto others – namely, control, regulate, restrict, enslave, use, oppress, harm, and exploit.

States, in the sense of governmental bodies, have long assumed that the Tenth Amendment is referring to them. The power elites who run state governments wish to leverage the Tenth Amendment in order to gain control over the people.

The states, in the sense of governmental bodies, try to argue that the agendas of state governments and the wishes of the people are one and the same. Consequently, they assume there really is no need to entertain the idea that the people, independent of government, might have powers that cannot be usurped by government ... whether local, state, or federal.

Apparently, Justices Black and Douglas in their dissenting opinion were assuming that the Tenth Amendment was about state governments. Indeed, when one ignores the phrase "or to the people" it is easy to see how Supreme Court justices and state governments come to assume what they do. Or, when one has been conditioned by years of constant lobbying on the part of the power elite to believe that it is not possible to speak about "the people" unless they have been properly constituted into some form of government, then one understands why governments and jurists have difficulty in dealing with a concept such as 'the people' that existed long before such governments and courts came into being.

Even if the phrase "or to the people" did not appear in the text of the Tenth Amendment, it would be presumptuous of Justices Black and Douglas to suppose that the idea of a state refers only to a governmental body instituted in a given geographical location rather than refer to the people from whom the process of institution derives it authority and purposes. However, given that the phrase "or

to the people" is embedded in the Tenth Amendment, one can only argue that what was allegedly meant by such a phrase is a function of states' rights rather than the rights of the people independent of such states if one becomes entangled in a rather pathological and tortured attempt to distort what is clearly stated and intended in a Bill of Rights that was added as a protection for people and not governments per se.

A 1941 unanimous decision of the Supreme Court upheld the Fair Labor Standards Act in *United States v. Darby.* Voicing the opinion of the entire Court, Chief Justice Stone stated:

"The power of Congress over interstate commerce 'is complete in itself, might be exercised to its utmost extent, and acknowledges no limitations other than are prescribed in the Constitution.' . . . That power can neither be enlarged nor diminished by the exercise or non–exercise of state power. . . . It is no objection to the assertion of the power to regulate interstate commerce that its exercise is attended by the same incidents that attended the exercise of the police power of the states . . . . Our conclusion is unaffected by the Tenth Amendment that . . . states but a truism that all is retained which has not been surrendered."

The foregoing reasoning reflected the opinion voiced by Justice John Marshall more than a century earlier. Another way of stating the same thing is to say that the Court led by Chief Justice Stone continued to perpetuate a tradition of more than a century that not only failed to provide a logically and historically defensible understanding concerning the meaning of 'or to the people', but seemed not to be able to grasp the idea that in a social compact between those, on the one hand, who wish to institute government (i.e., the framers of the Constitution) and, on the other hand, those who were skeptical of government and wary about the uses to which a formalized government would put the powers that it gained through becoming institutionalized by means of a Constitution, those who were skeptical toward, and wary of,

government would never cede to government the right to do whatever it pleased.

The nature of the foregoing social compact means that -- the assertions of Chief Justice Stone to the contrary -- the power of Congress over interstate commerce is not necessarily "complete". The nature of the social compact underlying the institution of the Constitution means that the power that Congress has over interstate commerce might not necessarily be "exercised to its utmost extent".

Furthermore, while it might, or might not, be the case that the power that Congress enjoys over interstate commerce might not "be enlarged nor diminished by the exercise or non–exercise of state power," the power of Congress – not only with respect to interstate congress but in relation to every single power that is listed in Article I, Section 8, might be enlarged or diminished in accordance with the powers that have been reserved for the people through the Ninth and Tenth Amendments. Moreover, those powers might be enlarged or diminished in accordance with the principles inherent in the Preamble to the Constitution and that are entailed by the constitutional promise of a republican form of government for the people of the various states, and that are expressed through the "involuntary servitude" clause of the Thirteenth Amendment.

People who have spent too much time in the toxic atmosphere of power (and this tends to refer to almost all, if not all, Presidents, Supreme Court Justices, members of Congress, state governors, and state legislators that have served in public office over the years) such people are inclined to misunderstand what the actual relationship of the Tenth Amendment is to the rest of the Constitution. Most of the aforementioned individuals are likely to suppose that it is the federal government that has priority in determining the meaning and scope of its powers, when, in truth, it is the people who have priority in all such determinations – and not just in terms of their capacity to vote.

If a person were skeptical toward government and wary about the possible – if not likely -- abuses of power by such a government (as were many people back in the middle to late 1700s, as are many people today), why would such an individual (and this is likely to be the stance of the vast majority of people who are not employed by government) agree to the idea that it is the government that

should have first right of refusal when it comes to dispensing with the right to exercise or determine the scope of any given power? The true democratic logic of the Constitution plus amendments is not to claim that whatever the government does not want in the way of power has been reserved for the people. Rather, the true revolutionary and democratic logic of the Constitution plus amendments and Preamble is to stipulate that the powers of the Congress begin only when, where, and to the extent to which the people knowingly consent.

By exercising the powers of their Ninth and Tenth Amendment rights, it is the people who will tell the government what is to be reserved for the people above and beyond what the people have ceded to the government as trustees of the people's collective needs and wishes. The direction of the constitutional dynamic is from: The people through the Ninth and Tenth Amendments, to the federal and state governments and, then, back to the people again in the form of the right to exercise whatever powers are not being actively ceded to the federal government and that, consequently, are actively reserved for the people to use.

To say that "all is retained which has not been surrendered" is not a truism. It is an expression of the fact that before the federal government can act, the people must first engage in an act of trust by surrendering a certain amount of power to the government so that the government might serve the people as the people wish to be served and not as the government wishes to serve them. To say that "all is retained which has not been surrendered" is to refer to the fact that the Ninth and Tenth Amendments are about the right and power of the people to determine what will be surrendered, and how – or if -- it will be surrendered, and the conditions under which it will be surrendered, and for what period of time it will be surrendered, and why it will be surrendered.

A loan of power is made by the people to the government through the Ninth and Tenth Amendments. As the issuers of the loan, the people are the ones who own the right to determine the conditions of that loan not the government. Not only must the government use the loan for the stated purposes stipulated by the people, but the people have as many rights and powers reserved for them as they do not cede -- on a temporary and conditional basis -- to the government, including the right to revoke or call in the

loan, as well as the right to change the conditions of such a loan as the people deem necessary in order to protect their fundamental rights, liberties, and republican way of self-governance.

The judiciary cannot tell the people what loans of power to make, or how to do this, or when to do this, or why they should do this. Moreover, the judiciary cannot tell the people what powers have been reserved for the people once the people have made a loan of power to the federal government.

This is all a matter of collective, negotiated settlement among the people. And, by collective, negotiated settlement, I am not necessarily referring to what elected representatives do while in office. There are non-governmental republican ways of negotiating collective settlements that give expression to the will of the people other than through elected office (and more on this in the last part of the present book).

The loaning of power is not a legal matter, although the Supreme Court might have an opinion about whether such loaned power is being abused by the recipients of the loan. The loaning of power is not a function of government activity, although governments do come into being as a result of such a loan. The loaning of power is rooted in the qualitative nature of the willingness of a people to invest some degree of trust in individuals and/or institutions to serve as fiduciary agents on behalf of such people within certain prescribed limits that must not disadvantage the people with respect to the realization of the principles inherent in the Preamble to the Constitution and the promise of republican government.

According to Chief Justice Stone the powers enjoyed by Congress are such that Congress "acknowledges no limitations other than are prescribed in the Constitution." However, as previously indicated, the Constitution provides for manifold forms of limitation upon the Congress in the form of the Preamble, the guarantee of republican government, the Bill of Rights – especially in the form of Ninth and Tenth Amendments -- along with other protections afforded to the people such as in the form of the Thirteenth Amendment.

Congress is not entitled to pass laws that deny justice and fairness to the people. Congress is not entitled to pass laws that exploit the people. Congress is not entitled to pass laws that favor

corporations over people. Congress is not entitled to pass laws that generate homelessness and poverty. Congress is not entitled to pass laws that place obstacles in the way of all people having access to affordable and accessible health care. Congress is not entitled to pass laws that degrade the environment. Congress is not entitled to pass laws that permit unhealthy and unsafe working conditions. Congress is not entitled to pass laws that favor owners over workers or that favor workers over owners -- rather than passing laws that promote the welfare of both. Congress is not entitled to pass laws that are injurious to the consumer or that place consumers in harm's way. Congress is not entitled to regulate commerce in a manner that does not provide -- in a rigorously and empirically demonstrable manner that is acceptable to the people -- for the common defense and the general welfare. Congress is not entitled to pass laws that permit the rights of the people to be lobbied away by vested, corporate interests. Congress is not entitled to pass laws that create uneven playing fields with respect to any individual, rich or poor, being able to run for office and to freely communicate with all the people about representative government. Congress is not entitled to pass laws that provide tax breaks, subsidies, and handouts to corporations that will – collectively or individually -- undermine the rights, liberties, powers, or immunities of the people. Congress is not entitled to entangle the people in wars that are fought to defend and advance corporate interests or ideologically-driven hidden political interests rather than the demonstrable interests of the people. Congress is not entitled to propose budgets that so excessively and disproportionately promote defense spending that many other needs of the people – such as health care, a reliable and safe national infrastructure (e.g., highways, overpasses, bridges, and dams), education, paying down the national debt, livable wages, and similar quality of life issues – are sacrificed to the no bid, cost-plus extravaganzas that are bestowed upon defense contractors.

In *United States v. Lopez* (1995) the Supreme Court struck down a federal statute that prohibited possession of a gun either at or near to a school. In the process of striking down the statute as being

unconstitutional, the Court rejected the federal government's contention that the Commerce Clause could be used to penalize individuals who possessed guns at, or near, schools because the possession of such guns was likely to undermine the ability of the national economy to function properly.

According to the judgment of the Court, if one were to accept the federal government's perspective concerning *United States v. Lopez*, this would effectively abolish any "distinction between what is truly national and what is truly local." Furthermore, to accept the government's position was tantamount to transforming Congress' power to regulate commerce into "a general police power of the sort retained by the States." In addition, the federal government's position would undermine a "first principle" of the Constitution that Congress is entitled to only certain enumerated and limited powers.

If the first principle of constitutional dynamics is that the Federal Government is an entity of enumerated and limited powers, then, the second principle of constitutional dynamics should be to affirm – if one wishes to be consistent -- that state and local governments are political structures that also are limited in power. Like their federal cousins, local (i.e., state, county, city, and town) governments should be equally limited by the principles that have been conferred to the people through the Preamble to the Constitution, as well as being limited by the guarantee of republican government to the people of any given state (which extends beyond the issue of elected representation), as well as being limited by the First, Ninth and Tenth Amendments, as well as being limited by the "involuntary servitude" clause of the Thirteenth Amendment.

Furthermore, although the Court's central concern appeared to be that by accepting the rationale of the Federal Government – that is, to regulate the possession of firearms by means of the Commerce Clause of the Constitution -- would, in effect, eliminate any "distinction between what is truly national and what is truly local", nevertheless, a more fundamental principle of democracy in America is that treating the Tenth Amendment as a bipolar divvying up of powers between federal and local governments entirely ignores the fact that the first ten amendments are primarily about protecting, securing, establishing, and promoting the rights of individuals – not governments … whether federal or local.

Why is it that so many politicians and jurists understand the Tenth Amendment to be about securing states' rights with nary a mention of 'the people' – despite the fact that "the people" are specifically mentioned in that amendment? Perhaps, this is because inherent in every form of government, no matter how well intentioned, is an inordinate inclination to encroach upon the rights, liberties, privileges, immunities, and powers that inherently belong to the people.

Governments of whatever kind don't like to talk about the rights and powers of the people. This makes them very nervous because when people start speaking about their inherent rights and powers, such talk threatens to shrink the sphere of power enjoyed by government.

Governments prefer to be preoccupied with what they believe, in an often delusional manner, to be the rights and powers that are reserved only to governments and through which the people might be subdued, regulated, exploited, and oppressed before the latter take it upon themselves to do that most dangerous of activities (from a politician's perspective) – namely, to seek to assert and defend rights, powers, privileges and immunities that have been acknowledged as belonging to the people by the Constitution when that document is taken in its entirety from Preamble to Amendments rather than just being engaged through the self-serving perspective of those who are ensconced in elected or appointed office.

All in all, since the early to mid-1970s, the Supreme Court has been closely divided with respect to, among other things, the degree and manner to which the Tenth Amendment does, or does not, constrain congressional authority in relation to the governmental activities of the state and local governments. When the Supreme Court has been in the mood, it has permitted Congress to stretch the elasticity parameters of the commerce clause, as well as to stretch the meaning of the taxation for the general welfare section of Article I, Section 8 toward the beginning of that section, along with expanding the sphere of influence of the "necessary and proper" clause that appears

toward the end of Article I, Section 8. When the Supreme Court has not been in the mood, it has stonewalled attempts by Congress to have its way with state governments.

There appears to be no discernible pattern linking first principles of justice or fundamental concepts of liberty, rights, and powers with Supreme Court judgments other than ideological ones. Before they begin deliberating, the Justices all have their individual, philosophical orientations and predispositions, and, then, once a case comes before them, they go in search of a defensible (at least in their own minds) pathway of legal logic that will enable them to link that case with, on the one hand, some part or parts of the Constitution in a manner that, on the other hand, is in accordance with their underlying philosophical ideologies.

Judicial review is not independent. It is not science. It is not an art form. Rather, judicial review is about ideology and, more importantly, about having the power to impose that ideology on the citizenry.

Judicial review is about the shifting elements that lead to philosophical mood swings among jurists. Judicial review is about justice based upon mood swings that are driven by ideological considerations. The people deserve better than this ... much better.

In 1985, the Supreme Court ruled in *Garcia v. San Antonio Metropolitan Transit Authority,* that Congress has the power, via the Commerce Clause, to expand the scope of the Fair Labor Standards Act to include the employees of state and local governments. Among the original provisions of that act is the requirement for private businesses to provide their employees with both minimum wage and overtime pay, and the 1985 Supreme Court ruling was extending these provisions to those who were employed by state and local governments.

The *Garcia* decision overruled a 1976 judgment of the Supreme Court in relation to *National League of Cities v. Usery*. In the earlier, 1976 decision, the Supreme Court maintained that Congress' desire to regulate the activities of state and local governments "in areas of traditional governmental functions" is unconstitutional because it violates the Tenth Amendment rights of states.

Here we have essentially the same set of issues yielding two diametrically opposed judgments within a period of ten years of one another. There is no underlying, unified theory of jurisprudence governing these decisions, but, rather, one has two more expressions of judicial review by ideological mood swings.

People who have to live with people suffering from some sort of mood disorders can testify to how difficult, frustrating, unpredictable, dangerous, and heartbreaking this can be. How much more difficult is it for citizens to have nine people running around in robes imposing their changing, ideological mood swings onto millions of people who feel entirely powerless with respect to ensuring that those individuals receive the sort of professional help they so desperately need.

What is being said in the foregoing is perfectly sane. What the Supreme Court Justices have been doing over the years is frequently delusional if not downright pathological or worse.

Unfortunately, if one takes the idiosyncrasies of judicial review according to ideological mood swing as one's standard of normalcy, then, whatever critical comments are said against such a process are, by definition, insane. In sociological and psychological circles, this is known as 'framing' an issue so that people's perceptions concerning the truth of a matter might be skewed in an ideologically favorable direction.

Whether one is speaking in terms of the Supreme Court's handing of *Garcia v. San Antonio Metropolitan Transit Authority* (in which Congress was considered to have the right to regulate what states do in certain respects) or one is considering the Supreme Court's judgment in *National League of Cities v. Usery* (in which Congress was considered to be violating the Tenth Amendment rights of states), neither decision was in terms of the rights of the people per se. Rights were defined entirely in terms of governmental powers over one another and in terms of such powers over the people.

The justification cited by the Supreme Court in the *Garcia* case was that under the Commerce Clause, Congress had a right to regulate states with respect to how the latter paid their employees. The principle cited by the Supreme Court in *National League of Cities v. Usery* was the Tenth Amendment rights of states. In neither instance does the Supreme Court cite a principle involving the

rights of the people over against government, whether federal or state.

The more fundamental principle for deciding the Garcia case might have been stated not in terms of the congressional powers that are given through the Commerce Clause, but, rather, the right of the people in a state to have a republican form of government in which the Tenth Amendment rights of people are recognized and the people might be free of various forms of "involuntary servitude. When the elected and appointed officials of state government oppress their employees, this is not really a republican form of government. When the employees of state government are not given a constitutional standing through which to assert their Tenth Amendment rights to be given fair compensation for their labor and overtime, this is not a republican form of government nor are the provisions of the Bill of Rights being upheld.

Moreover, while most of us do not relish the idea of having to work for someone else in order to survive and, as such, there is an element of involuntariness to what we do, we all tend to recognize and accept this as a necessary form of involuntary servitude. However, what is not a justifiable or acceptable form of "involuntary servitude" is when employers – whether in the private or public domain – seek to exploit the indigent circumstances of those who are in the general labor pool by claiming that people are free, or not, to accept the sort of compensation package offered by an employer however much such a package might render those workers vulnerable to the numerous problems and dangers inherent in lived contingencies.

In both *Garcia v. San Antonio Metropolitan Transit* and *National League of Cities v. Usery,* the discussion is entirely in terms of states' versus federal rights. The people are not much more than an afterthought.

The constitutional issues in these cases are all about vying for power to control, regulate, subdue, restrict, and constrain the activities of the people, as well as about which branch of government gets to call the shots in this respect. Like two selfish, self-serving, arrogant, mindless parents who are fighting one another about the issues of divorce and almost totally oblivious to the fact that what they are doing has adverse ramifications for others –

namely, the children – state and federal governments go about their quarreling, bickering, whining, and self-serving power grabs with hardly a passing nod in the direction to the negative character of the impact their activities are having on the emotional, mental, physical, or spiritual well-being of the very ones to whom they have duties of care ... as if people should be so presumptuous as to suppose that democracy is about them and not governments.

When overruling the 1976 Supreme Court decision in *National League of Cities v. Usery,* Justice Harry Blackmun stated in the 1985 Supreme Court decision in *Garcia v. San Antonio Metropolitan Transit Authority* that the *National League of Cities* test for:

"integral operations in areas of traditional governmental functions"

were

"both impractical and doctrinally barren."

Furthermore, Justice Blackmun argued that the Court in 1976 had "tried to repair what did not need repair." Moreover, according to Justice Blackmun, not only is it the case that states retain their sovereign authority:

"Only to the extent that the Constitution has not divested them of their original powers and transferred those powers to the Federal Government,"

but, as well:

"Freestanding conceptions of state sovereignty" like those to which expression was given in the Supreme Court's *National League of Cities* decision tend to undermine the federalist system of governance by depending on:

"An unelected federal judiciary to make decisions about which state policies it favors and which ones it dislikes."

Justice Blackmun went on to tiptoe his way through the states' rights versus federal rights issue by claiming that although the Court must acknowledge "Congress' authority under the Commerce Clause", nevertheless, the Supreme Court must also acknowledge:

"That the States occupy a special and specific position in our constitutional system."

Notwithstanding such dual acknowledgements, the Supreme Court proceeded to uphold the constitutionality of applying the minimum wage and overtime provisions of the Fair Labor Standards Act to state employers, and, in doing so, the Court held that it was not necessary to require identification of what the "affirmative limits" of Congress are with respect to the alleged status of state sovereignty.

There is a whole list of ambiguities inherent in Justice Blackmun's position. For example, what did he mean when he said that the *National League of Cities* test for "integral operations in areas of traditional governmental functions" was "both impractical and doctrinally barren"? What are the criteria for identifying what is "impractical and doctrinally barren"? What is the methodology through which this is determined? What value systems are to be applied in weighing the nature of the impracticalities and doctrinal barrenness?

What did Justice Blackmun mean when he argued that the Court in 1976 had "tried to repair what did not need repair"? What were the motivations for seeking to repair things in *National League of Cities v. Usery* case? Why was this unnecessary? What are the criteria, methods, and values through which one arrives at the conclusion that it was unnecessary? What makes the latter modality of judicial assessment any more valid or correct than the earlier modality of judicial assessment? What does it mean to claim that states retain their sovereign authority:

"Only to the extent that the Constitution has not divested them of their original powers and transferred those powers to the Federal Government"?

The foregoing statement is made as if the Constitution -- in and of itself and without judicial interpretive interference – specifically stipulates that the surrender of a state's sovereignty to the wishes of the federal government is all done in accordance with an identifiable calculus of political transfer of power. Heck, apparently, this process of transfer is apparently so automatically transparent that one shouldn't even have to rely on the Supreme Court to point this out.

In fact, according to Justice Blackmun: "Freestanding conceptions of state sovereignty" such as those to which expression was given in the Supreme Court's *National League of Cities* decision tend to undermine the federalist system of governance by depending on:

"An unelected federal judiciary to make decisions about which state policies it favors and which ones it dislikes."

So, in effect, Justice Blackmun seems to be saying that the federal and state governments should leave the Supreme Court out of such matters and that these issues need to be settled on the playing field of politics.

Yet, despite having intimated the foregoing, Justice Blackmun, along with the other Justices on the Supreme Court at the time, seem to be compelled by an irresistible urge to issue a ruling anyway. Except this time – in *Garcia v. San Antonio Metropolitan Transit Authority* – the Supreme Court favored the rights and powers of the federal government over those of state sovereignty. Around and around the wheel of judicial review goes, and where it stops, nobody knows.

One might point out that when Justice Blackmun stated that while it was necessary for the Court to acknowledge:

"Congress' authority under the Commerce Clause",

nevertheless, the Supreme Court must also acknowledge:

"That the States occupy a special and specific position in our constitutional system,"

However, not only was Justice Blackmun not really saying much of anything in the foregoing except in a wishy-washy, non-committal manner, but what he said is totally devoid of any mention of the need to acknowledge the rather special and indispensable position of the people quite apart from governments. After all, without people, then neither an amended Constitution nor the governments that are made possible through such an amended Constitution would be possible.

The federal government does not illegally infringe upon the sovereign power of states when it acts to secure the rights and powers of the people that are protected by the Bill of Rights or that are provided for through the constitutional guarantee of republican government, or that are guarded by the "involuntary servitude" clause of the Thirteenth Amendment. As long as the actions of the federal government are directed toward protecting and advancing the rights of the people, then, the rights and powers of state governments are not being infringed upon.

Moreover, contrary to what Justice Blackmun claims in *Garcia*, the Tenth Amendment rights of states are not limited by what the Constitution entitles Congress to take in the way of surrendered powers, but, rather, first and foremost, the Tenth Amendment rights of states are limited by what the Constitution guarantees to the people. As long as state governments use their sovereignty to establish, secure, protect, and advance the rights, powers, liberties, privileges, and immunities of all of its resident citizens and does not seek to show favor to the rights, powers and liberties of some citizens to the disadvantage of the rights, powers, and liberties of other citizens, then states, under the Tenth Amendment, have a right to be defended against the incursions of federal government into the internal activities of state governance – especially when such incursions are motivated by public policies of the federal government that are intended to undermine, diminish, exploit, or abolish such individual rights and powers.

The duties of care owed to the people by the federal government are similar to the duties of care that are owed to the people by the state and local governments. Federal government has only as much power and state governments have only as much sovereignty as is needed in securing, protecting, promoting and

providing for the rights, liberties, and powers of the people over against government encroachment in relation to such rights, liberties, and powers of the people.

The people have the right to be protected against the unwarranted incursions upon their powers and liberties from all levels of government. Consequently, when federal, state, or local governments do anything to undermine the rights and powers of the people, then, the activities of such governing bodies are unconstitutional. The rights and entitlements of the people have prior standing to the power and sovereignty of any given level of government.

Alternatively, whenever any level of government seeks to secure, protect or promote the rights, powers, and liberties of the people, then such a level of government has greater constitutional standing than any other level of government that is in opposition to the former level of government. The determining principle here is a function of the rights, powers, and liberties of the people rather than being a function of the powers or sovereignty of a given level of government.

In 1988, with respect to its ruling in *South Carolina v. Baker,* the Supreme Court expanded the scope of its decision in *Garcia v. San Antonio Metropolitan Transit Authority.* More specifically, the Supreme Court stated in *South Carolina v. Baker* that there should be compelling evidence to indicate "some extraordinary defects in the national political process" before the Supreme Court would be inclined to use the process of judicial review to place limits on the manner in which Congress was allegedly encroaching upon the Tenth Amendment rights of states.

The Tax Equity and Fiscal Responsibility Act (TEFRA) were passed into law by Congress in 1982. The Act specified that unless publicly offered long-term bonds offered by state and local governments were issued in a registered form, then, a federal income tax exemption would be withdrawn that previously had been extended to states with respect to interest earned on such publicly offered long-term bonds.

In *South Carolina v. Baker,* the state argued that since the 1895 decision of *Pollock v. Farmer's Loan and Trust Co.,* both the bearer, as well as the registered bonds issued by states and municipalities, had

been free from taxation. The federal government countered with the argument that the Act in question did not abolish the state's power to issue bonds that were tax-exempt but, instead, was merely specifying the kind of bonds that might continue to enjoy such an exemption.

According to the Supreme Court's judgment in *South Carolina v. Baker,* the operative principle at work was that:

"Limits on Congress' authority to regulate state activities"

are:

"Structural, not substantive -- i.e., that States must find their protection from congressional regulation through the national political process, not through judicially defined spheres"

with respect to state activities that the Supreme Court considered 'unregulatable'. In effect, the Supreme Court was permitting the default value for the constitutional dynamic to be set by what the federal government wished to do in the way of regulation rather than be a function of the interests of states per se.

One wonders what basic principle of justice or human rights permits the Supreme Court to presume that central government has the preeminent authority when it comes to the regulation of human life. In the foregoing bias concerning the power of Congress, there seems to be an implicit allusion to an argument that states that since central government gives expression to the will of the people, then, perhaps such central governments are entitled to set the regulatory standards that are to govern the country. If such an allusion is being made in the aforementioned words of the Supreme Court decision in *South Carolina v. Baker* (and, if it is not, then, I really don't know what the basis is for the Court's giving preferential treatment to the federal government over that of either the states or the people), then, one might just as easily argue that because, in theory at least, the state governments represent the will of the people, then, they should be the ones to establish regulatory control over things.

Whatever the Supreme Court might have meant in the previously quoted excerpt, I tend to disagree with the Court's

contention that the "limits on Congress' authority to regulate state activities" are "structural, not substantive". In fact, the reality of the situation is quite the opposite – that is, the "limits on Congress' authority to regulate" activities in general – and not just those of the states – is entirely substantive and not structural.

The meaning, significance, character, scope, and potential associated with constitutional structure is entirely derivative from the substantive understanding of those who are engaging that structure and reflecting on its possibilities against a backdrop of a large array of philosophies, ideologies, interests, assumptions, beliefs, values, purposes, needs, desires, prejudices, and historical events that have expressed through a variety of individuals of very different hermeneutical orientations. To try to argue – as the Supreme Court appears to be doing in *South Carolina v. Baker* -- that one might perceive amidst all of this historical diversity a notion of constitutional structure that is capable of taking the many human variables that are present and synthesize these down to an essential structure of determinate limits and character that favors central government is, to say the least, rather naïve. Indeed, in practical terms, such a contention is unlikely to be capable of being rigorously demonstrated to the satisfaction of all or even a substantial majority of the people.

In fact, the amended Constitution places a considerable variety of constraints and limits on Congress's authority to regulate either states or the people. This is true irrespective of what portion of the un-amended Constitution might be selected by a purveyor of the interests of centralized government in an attempt to justify what Congress seeks to do in the way of regulating the affairs of its citizens. Moreover, the amended Constitution places an equal number of constraints and limits on the rights of states to regulate the affairs of people.

The structure of the amended Constitution is entirely dependent on the substantive decisions of the people. Unfortunately, federal, state, and local governments often try to induce amnesia in the people with respect to the actual rights of the people concerning the republican dynamics inherent in the amended Constitution. If there is any default bias structurally present in the amended Constitution, that bias is pointed heavily in the direction of people rather than

governments, and it is too bad that in all too many instances the Justices of the Supreme Court do not seem to understand this.

Interestingly enough, in the 1992 case of *New York v. United States,* the Supreme Court held that Congress did not have the right to "commandeer" state regulatory machinery to administratively implement federal programs. This ruling not only placed a limitation on congressional power, but did so in a manner that seemed to have greater resonance with the Supreme Court judgment in *National League of Cities v. Usery* than it did to the Court's ruling in *Garcia v. San Antonio Metropolitan Transit Authority* that, in fact, had actually overturned the constitutionality of the judgment in the *National League of Cities* case.

In the Supreme Court ruling in *New York v. United States*, Justice Sandra Day O'Connor argued that:

"The Tenth Amendment thus directs us to determine . . . whether an incident of state sovereignty is protected by a limitation on an Article I power."

In addition, without specifically mentioning the *Garcia* case, the Court rejected the structure versus substantive argument contained within the *Garcia* ruling that counseled states to look for the protection of their rights in the political process rather than in the Tenth Amendment.

Finally, the Supreme Court's opinion in *New York v. United States* rejected the federal government's position that New York's sovereignty could not have been violated since its representatives had fully participated in the process through which a compromise had been achieved and, as well, consented to the statutory implementation of that compromise. In rejecting the foregoing argument, Justice O'Connor noted that the:

"Constitution does not protect the sovereignty of States for the benefit of the States or State governments, [but instead] for the protection of individuals."

Therefore:

"State officials cannot consent to the enlargement of the powers of Congress beyond those enumerated in the Constitution."

Wow, it only took a little over two hundred years for the Supreme Court to state that in matters relating to the Tenth Amendment the sovereignty of the state is not the primary issue but, instead, that amendment is primarily about protecting the rights of individuals -- rights that neither state governments nor their representatives have the constitutional authority to surrender to the federal government in a manner that is above and beyond what already are enumerated as congressional powers in the Constitution.

Of course, there still is a great deal of ambiguity inherent in the Court's *New York v. United States* admission concerning the Tenth Amendment since the question of whether, or not, Congress actually even has the authority to regulate by means of the powers that are enumerated in the Constitution without being constrained by the rights of the people to republican government, as well as by the provisions of Bill or Rights and by the 'involuntary servitude' clause of the Thirteenth Amendment is not really being addressed in the foregoing Supreme Court's decision. And, of course, conceivably, while the Supreme Court acknowledged that the:

"Constitution does not protect the sovereignty of States for the benefit of the States or State governments, [but instead] for the protection of individuals,"

nevertheless, it might be that what the Supreme Court might have had in mind by what it said is not that private individuals should have any form of constitutional standing under the Tenth Amendment but only that elected representatives had a fiduciary responsibility and duty of care to citizens that should be fulfilled, and, as such, the foregoing statement merely represented a reprimand to government officials for not having served the people.

In *Reno v. Cordon* (2000) the Supreme Court upheld the Driver's Privacy Protection Act of 1994 (DPPA). DPPA is a federal law that

placed limits on the disclosure and/or resale of personal information contained in the drivers' records of the motor vehicles departments of the various states.

The Supreme Court's position in *Reno v. Cordon* reiterated a principle given expression in the Court's decision concerning South *Carolina v. Baker.* More specifically, the Court distinguished between, on the one hand, congressional laws that seek to control the manner in which States go about regulating private parties within those states – laws that the Court considers to be unconstitutional – and, on the other hand, congressional statutes that merely regulate state activities directly.

In *Reno v. Cordon* the Supreme Court argued that DPPA:

"Does not require the States in their sovereign capacities to regulate their own citizens,"

but, instead:

"Regulates the States as the owners of databases."

In other words, the Supreme Court considered DPPA to be a matter of regulating and controlling the manner in which databases might be used rather than interfering with how states went about regulating their own residents.

The Court saw no need to decide whether a federal law might regulate the states exclusively. This is because DPPA was considered to be a law of general applicability that regulates private individuals as well as states with respect to the reselling of such information.

Whether one is talking about the principle articulated in *South Carolina v. Baker* or the principle given expression in *Reno v. Cordon* (each of which, in its own way, seeks to distinguish between congressional laws that attempt to regulate the manner in which States regulate their own citizens [which, from the perspective of the Supreme Court, are improper or unconstitutional] and congressional laws that seek to place constraints on the structural form of some of the processes used by states as the latter goes about its various activities [which, from the perspective of the Supreme Court, are

entirely permissible]), there seems to be a certain assumption present in the deliberations and decisions of the Supreme Court in such cases. This assumption revolves about the idea that Congress and the States have a constitutional right to regulate the activities of the people.

I would argue – as has been clear throughout the previous 98 pages -- that neither Congress nor the States have the right to regulate the people if such a process either undermines, interferes with, restricts, compromises, or abolishes the Ninth and Tenth Amendment rights of the people to regulate their own affairs independent of government intrusion, or if such a regulatory process involves the establishment of a religious-like ideology of public policy, or pushes the people into some form of "involuntary servitude" in relation to government policies. When any of the branches of centralized power (federal, state, or local) seek to enlarge their sphere of control on the basis of an authority that they do not have under the Constitution, there are problems, and these problems have been a blind spot throughout the entire history of the Supreme Court as well as throughout the history of the American republic.

Furthermore, the fact that some people – even a majority of the people in a state – have consented to cede over their First, Ninth, Tenth, and Thirteenth rights to centralized power does not deprive the remaining people from re-asserting such rights and powers. No individual or group of individuals can cede away the rights of other individuals that have been secured for the latter under the amended Constitution – irrespective of what compact the former individual or individuals might have made with local, state, or federal governments -- any more than state governments might extend powers to the federal government that exceed the latter's Constitutional entitlements even though the state governments or its representatives might have consented to such enlargement of federal authority. All of these acts are unconstitutional because to do so would be to abolish the rights of the people as provided under the First, Ninth, Tenth, and Thirteenth amendments, as well as to deny them a truly republican form of government in which people gain direct control over their own lives rather than being mediated by elected representatives who appear to be unwilling to protect the basic rights, powers, liberties, privileges, and immunities of the people.

In 1787, when Thomas Jefferson was representing the United States in France, he received a letter from James Madison that provided an overview of how the Constitution, as Madison envisioned it, would work:

"In the American Constitution the general authority [of the central government] will be derived entirely from the subordinate authorities [the States]. The Senate will represent the States in their political capacity; the other House will represent the people of the States in their individual capacity. ... The President also derives his appointment from the States [that is, through the system of the Electoral College through which the States elect the President], and is periodically accountable to them. This dependence of the General [central] on the local authorities seems effectually to guard the latter against any dangerous encroachments of the former; whilst the latter, within their respective limits, will be continually sensible of the abridgment of their power, and be stimulated by ambition to resume the surrendered portion of it."

The people are mentioned only once in the foregoing federalist perspective. Moreover, this single reference is in a context in which the people are to be represented by those with power … and how the authorities came to derive their power – namely, from the people -- is only alluded to in passing.

As has been pointed out earlier in this book, Madison was a believer in a federalist system that consisted of two levels of government. It was a plan for divvying up power among governments, not people. The people were merely a means to an end through which power was to be taken by governments from the people with a promissory note that supposedly obligated governments to "represent" the people, with the meaning of 'representation' being filled with unending nuances of ambiguity and betrayal.

The Declaration of Independence does not propose a federalist system. The Preamble to the Constitution does not propose a federalist system. The Ninth and Tenth Amendments do not propose

a federalist system although the interpretation of the Ninth and Tenth Amendments by many proponents of federalism as well by many federalist-oriented jurists is to presume that such amendments are but mere truisms and tautologies following from the idea of a republic that – theoretically – through "representatives," would serve the people faithfully, selflessly, and honestly that is often not, and sometimes not even usually, the case.

As noted earlier, the idea of an electoral college mentioned in Madison's letter to Jefferson was introduced into the Constitution as a way of protecting the interests of those who sought centralized power ... to buffer the authorities against the common people whom seekers of power did not trust even though the most dynamic aspect of democratic governance comes in the form of grand juries and trial juries that consists of nothing but the common people. The people, on the other hand and with considerable good reason, did not trust government of any kind – federal, state, or local.

There were some people such as Tom Paine, Samuel Adams, Patrick Henry, George Mason and others who wanted to have protections in place that would serve the interests of the people over against the interests of the state. Indeed, as also has been indicated previously, the first ten amendments are not about protecting states' rights but about protecting the rights of people, and the Tenth amendment, especially, is not – contrary to the opinion of many -- primarily about securing states' rights but, rather, about ensuring that the people have constitutional standing.

The question that Madison did not address in his letter to Jefferson is the following. If the powers of the general government are dependent on the local authorities and, therefore, this arrangement supposedly would protect the latter from the encroachment of the former, then, who would protect the people from the encroachment of either of these forms of government? If central government is to be constrained and distrusted, then, centralized government in any form -- including state and local government – needs to be included among the objects toward which citizens ought to exhibit a healthy and plentiful skepticism.

It was the amended Constitution -- including the Tenth Amendment -- which would help put into active form the foregoing element of skepticism -- an active form that is not

primarily intended to take away power from the people but to secure it in two different manners – (1) through the activities of the states (if they perform their duties honorably and properly) and (2) through the activities of the people in maintaining constant vigilance against the encroachment of any form of government on the rights, powers, privileges, and immunities of the people with respect to government. As the orator and columnist Wendell Phillips declared in 1852:

"Eternal vigilance is the price of liberty."

As of 1997, a number of states, including: Hawaii, Illinois, Missouri, Colorado, and California have passed resolutions that call upon Congress to honor the provisions of the Tenth Amendment, and other states are in the process of doing so. However, there is considerable doubt as to whether any of these states would recognize resolutions authored by the people -- independent of government – requesting that both Congress and the state governments honor the Tenth Amendment rights of the people.

During the 1840s a crisis occurred in Rhode Island that is known as the Dorr Rebellion. At the time of the rebellion, the state constitution consisted of a royal charter that originally had been issued in the 17th century.

According to the Rhode Island constitution, that was based on the earlier royal charter, the vast majority of free, white males in the state existed in an officially sanctioned condition of disenfranchisement (i.e., among other things, they had no right to vote). As a result, there was an attempt on the part of those who were disenfranchised to bring about some form of popular convention so that a new constitution might be written in which at least some of those who had been disenfranchised (namely, free white males) would gain some degree of control over their lives.

The Rhode Island charter government declared the activities of the disenfranchised protesters to be acts of insurrection, and, as a result, those who were actively seeking to establish a new

constitutional convention were arrested as rebels. One of the leaders of the disenfranchised group – namely, Martin Luther -- filed a legal action in federal court that argued that because the Rhode Island state government was not "republican" in nature [i.e., Article IV of the Constitution -- Section 4: “The United States shall guarantee to every State in this Union a Republican Form of Government”], therefore, the arrest of the so-called rebels, as well as all of the other acts of the charter-based government of Rhode Island, were not, according to Luther, constitutionally valid.

In *Luther v. Borden* (1849) – Borden was the state official who had entered the house of Luther and allegedly damaged the property of the latter during a search -- the Supreme Court rejected the idea that the issue of whether a state government was, or was not, republican fell within the jurisdiction of the Supreme Court, maintaining that:

"It rests with Congress to decide what government is the established one in a State ... as well as its republican character."

If the meaning of what it means to have a republican government is not something that can be adjudicated by the courts, then this issue certainly is not something that can be adjudicated by Congress alone without taking into consideration the rights of the people under the amended Constitution. In theory, the amended Constitution was supposed to be a negotiated agreement among a federal government, state governments, and the people, and, consequently, Congress, acting on its own, does not have exclusive jurisdiction in the matter of determining the meaning of what constitutes being a republican government.

On the other hand, states, acting on their own, do not have exclusive jurisdiction with respect to determining the meaning of what constitutes being a republican government because states derive their authority from the people. Moreover, the rights and powers of the people to have authority over their own lives has been guaranteed by, among other things, the Ninth and Tenth Amendments provided that the exercise of such rights does not interfere with the expression of similar rights by other individuals.

There are only two general forms of republican government. One form is via the electing or appointing of representatives to

work on behalf of the people. The other form of republicanism is via the people representing themselves on their own behalf and largely independently of government.

Not everything that is constitutional is a function of government. Not everything that is legal is a function of government. It is possible for people to act both legally and constitutionally without this being a function of what governments do, or do not, permit ... and the Ninth and Tenth Amendments allude to such constitutional, legal, and nongovernmental activities.

The fact that in the 1840s there were disenfranchised people in Rhode Island who sought to gather together in a convention to establish a republican form of government is important because, in effect, almost all Americans have been disenfranchised through the persistent denial of their Ninth and Tenth Amendment rights by all branches of government. People have the right to establish a republican form of government that is responsive to their needs, circumstances, and aspirations, and the elected, representative form of republicanism has shown itself to be frequently incapable of serving the people faithfully or with integrity.

Perhaps, among other things, there is a need for a new round of citizen constitutional conventions through which a form of republicanism might be established that secures, protects, and advances all the rights, powers, privileges, immunities, and liberties belonging to the people that are promised by the amended Constitution. Such a form of republicanism would serve as a buffer against the encroachments of governments into the lives of individuals.

Chapter 7: Taking Rights Seriously

Rights are, in essence, epistemological – rather than moral -- in character, although obviously there still might be much grist for the moral mill to grind when rights are considered from the foregoing perspective. More specifically, rights either reflect what is known, beyond a reasonable doubt, concerning the nature of the universe, or rights reflect what is not known with respect to the nature of reality.

What is collectively known beyond a reasonable doubt -- and, therefore, agreed upon -- concerning the ultimate nature of reality or how human beings fit into that reality is fairly limited if not miniscule. Consequently, all legal, political, social, and moral considerations reside deep within epistemological shadows … although interstitial pieces of information do poke through here and there.

As a result, we are left with ignorance as our existential companion. Whatever certain individuals might know beyond a reasonable doubt (be they saints or savants or both), such understanding does not necessarily transfer well to the collective level where many kinds of reasonable doubts might be advanced to lower the credibility rating of some given idea or insight from: 'knowledge' and 'truth', to: 'information' and 'belief'.

The natural law of ignorance suggests that our collective epistemological relationship with the universe is such that we cannot demonstrate, beyond a reasonable doubt, that human beings are entitled to anything except having a fair opportunity to push back the horizons of ignorance. Acquiring knowledge is of significance because of its potential for shedding light on the question: Which choices will best serve us amidst the many possibilities with which we are confronted – both individually and collectively? Therefore, everyone has a right to seek such knowledge.

In fact, even if it were the case that the foregoing sorts of knowledge were never -- or could never be -- acquired, people still would have a basic entitlement to try, as best they could, to uncover such knowledge. The underlying right is one of seeking … not necessarily of finding.

Given the foregoing considerations, what does it mean to have a fair opportunity to push back the horizons of ignorance? One

dimension of fairness that already has been touched upon concerns the issue of reciprocity.

If my right to push back the horizons of ignorance is not matched by the reciprocal right of others to do the same sort of thing, then such an arrangement would appear to be inherently unfair. Another way of expressing this idea is to say that unless one can demonstrate beyond a reasonable doubt why there should be departures from the condition of reciprocity, fairness would seem to indicate that everyone's opportunity to push back the horizons of ignorance should be relatively equal to each other.

The efficacy with which various individuals take advantage of the aforementioned opportunity is something that is not likely to be capable of being equalized to any appreciable degree. Nonetheless, however effectively a given individual might be able to engage such an opportunity, this sort of productivity does not entitle an individual to leverage such 'progress' in a way that would adversely affect, undermine, or interfere with other people continuing to have a fair opportunity to push back the horizons of ignorance.

One could, of course, put forth arguments of reasoned meaningfulness with respect to why the aforementioned sort of effectiveness or productivity should justify departures from the initial condition of permitting everyone to have a fair opportunity to push back the horizons of ignorance. However, such arguments are likely to be fairly arbitrary in the sense that they could not demonstrate beyond a reasonable doubt that such departures would be considered justifiable by a randomly drawn group of people who had no vested interests in such considerations … the burden of proof rests with those who would wish to depart from the default setting given expression through the law of ignorance.

Therefore, whatever 'progress' an individual might make with respect to the issue of pushing back the horizons of ignorance, this cannot be used to disadvantage other people from continuing to have a fair opportunity with respect to that same project. This is part of what is entailed by the idea of reciprocity.

On the other hand, there does not appear to be any kind of argument that could be put forth that would demonstrate, beyond a reasonable doubt, why someone could not share what she or he has

learned with others to assist them, if they accepted such assistance, with respect to their attempts to push back the horizons of ignorance. The foregoing point does not necessarily mean that someone would be obligated to share the fruits of his or her efforts with others in relation to the challenge of ignorance … only that nothing would seem to stand in the way of someone doing so if this is what that individual wanted to do.

Does the right to basic sovereignty – that is, having a fair opportunity to push back the horizons of ignorance – entitle people to anything beyond the kind of primitive sense of reciprocity that has been outlined above in which everyone has a chance to chip away at the frontiers of ignorance in his or her own way? I believe the answer to the foregoing question is: "Yes."

If people do not have, in some minimal fashion, access to the requisite food, clothing, shelter, health care, education, and other resources that might play a central role in being able to struggle toward pushing back the horizons of ignorance, then one might legitimately question whether such people actually are being given a fair opportunity to engage the existential project at issue. A person who is hungry, homeless, sick, illiterate, and cold is likely to have a difficult time trying to push back the horizons of ignorance.

Similarly, if people do not have, in some minimal fashion, protection against the sort of oppression, exploitation, coercion, duress, undue influence, abuse, and interference that could not be demonstrated to be – beyond a reasonable doubt – justifiable (and one wonders whether any of the foregoing activities could ever be justified), then, again, one might legitimately question whether, or not, those individuals who were subject to such arbitrary constraints on their attempts to push back the horizons of ignorance could still be considered to have a fair opportunity with respect to constructively engaging the ignorance in which most of us are rooted. While being oppressed or abused does not necessarily prevent a person from trying to push back the horizons of ignorance, such forces are likely to create an unfair playing field with respect to the 'game' of life.

Quite a few of the basic rights and freedoms that are given expression through the first ten amendments to the Philadelphia Constitution can be understood as conditions that are necessary to

ensure that people will have a fair opportunity to engage, if not solve, the challenges of life with a minimum degree of interference by, or obstruction from, others. For example, rights to freely assemble and exchange information/ideas (whether through speech or the press) with other individuals are important resources through which people might be able to push back the horizons of ignorance … as is the right to be free of unreasonable – that is, arbitrary and, therefore, unjustifiable – searches and seizures.

A right to freely exercise one's religious beliefs – providing this does not undermine the reciprocal right of others to do likewise – or a right to be entitled to 'due process' in the presence of an impartial jury with respect to issues that involve a potential loss of life, liberty, or property only after sufficient evidence has been presented to, and accepted by, a non-governmental agency (i.e., a grand jury) are important considerations with respect to ensuring that people will have a fair opportunity to push back the horizons of ignorance.

If one cannot show, beyond a reasonable doubt, that departures from such rights and freedoms are justified – and, again, the burden of proof is on those who would wish to depart from the default position of basic sovereignty -- then any transgression against those sorts of rights is an attempt to prevent a person from having a fair opportunity to push back the horizons of ignorance. As long as an individual must spend her or his time struggling against attempts to oppress or constrain one with respect to such rights, then a theft of time has taken place because one does not have access to such lost time so that it can be invested in engaging the issue of ignorance in a manner that a person feels might be most constructive, and, in the process, one is being denied one's entitlement to basic sovereignty.

No right entitles someone to deny the same right to another individual. If rights are not reciprocal, then they are not rights because such non-reciprocal 'rights' are unlikely to be justified beyond a reasonable doubt among any group of impartial individuals (i.e., those who are: objective, unbiased, and without a vested interest) who might consider such an issue.

However, as the foregoing comments suggest, the network of reciprocity tends to be fairly complicated. Being entitled to have a fair – that is reciprocal – opportunity to push back the horizons of

ignorance extends into many areas that involve various kinds of social, political, material, institutional, and legal resources.

How a person uses the available network of reciprocity that is established through the law of ignorance is up to the individual. Choice is the manner through which a person engages the degrees of freedoms or liberty that are entailed by the principle of reciprocity that lies at the heart of the sort of basic sovereignty to which everyone is entitled.

None of the foregoing should be construed to mean that everyone must have exactly the same package of material goods or that whatever goods are possessed by one individual must be equivalent to those possessed by other people. Instead, what is being advanced is the idea that everyone is entitled to whatever is considered to be minimally necessary for having a fair opportunity to push back the horizons of ignorance.

One person might have a better house, nicer clothes, more variety in food, or a more extensive health care plan, but whatever differences exist in the foregoing respects cannot be used to deny, prevent, interfere with, undermine, or obstruct anyone else from having a fair opportunity to push back the horizons of ignorance. Moreover, whatever differences exist with respect to those material goods cannot be such that those with what is considered to be the minimally necessary package of goods are not in a position to have a full – and, therefore, fair -- opportunity to push back the horizons of ignorance.

For example, one might not need caviar to have a fair opportunity in the game of life, but one needs some minimal level of calories and varieties of food to not just survive but, if so desired, to be able to tackle the issue of ignorance with considerable energy. Similarly, shelter need not be in the form of a mansion to serve the basic purpose of keeping someone out of the elements and providing enough space so that a person has what she or he needs to comfortably – although perhaps not elegantly -- engage life.

Moreover, while having health care coverage that deals with every possible contingency of life without regard to cost might be nice thing to have, that sort of coverage is not needed to be able to ensure that the vast majority of people (and, here, I have in mind at least 95 % -- if not 100% -- of the people) will have access to the sort of basic health

care that will look after most of the common health problems of life and, thereby, enable those individuals to have a fair opportunity to push back the horizons of ignorance. Where one draws the line of practical, affordable limits for such basic care should be done in accordance with rational standards such as: being beyond a reasonable doubt, or being consistent with a preponderance of the evidence, but within those limits everyone is entitled to the same standard of care … although such a standard might not be capable of meeting everyone's medical needs.

If the medical problems of a given individual – or an array of such individuals -- were so extensive that the entitlement of other people to have the sort of health care that is necessary to provide the latter people with what is considered a fair opportunity with respect to life were compromised, then, to be sure, one faces a very difficult problem. However, fairness is not necessarily a matter of ensuring that every problem will be solved for every individual … only that everyone – as far as is practically possible – should be protected by the requirement that whatever departures from the default position of basic sovereignty need to be justified by arguments that take such issues beyond a reasonable doubt among those who have no vested interest in the matter except with respect to upholding the epistemological standards that govern the evaluation of those issues.

Questions concerning the extent and kind of: food, shelter, clothing, and education, that are considered to be minimally necessary to provide people with a fair opportunity to push back the horizons of ignorance are, for the most part, a lot easier to address than are matters of health. This is because matters of health sometimes encompass anomalies that cannot be resolved – to the extent they can be resolved -- without generating a lot of difficult problems for the issue of fairness … both with respect to those individuals with certain kinds of health problems, as well as in relation to the collective who do not have such problems.

Notwithstanding the foregoing considerations, there is one observation that might be of relevance here. More specifically, if the economic, legal, and political system through which goods and services are distributed in a given society or set of societies permits excesses that disadvantage people with certain kinds of health problems (that

is, resources are distributed in a way that is weighted toward, or favors, excess accumulation of goods and services rather than being channeled in such a way as to render a fairer – and, therefore, ever more inclusive set of arrangements – for distributing goods/services, including medical goods and services), then such a economic, legal, and political system would seem to be fundamentally unfair and, therefore, stands in need of being justified beyond a reasonable doubt if it is not to be considered a largely, if not completely, arbitrary system.

Ensuring that people are provided with the minimum levels of goods and services that are considered necessary to give those people a fair opportunity to push back the horizons of ignorance should not be construed to mean that people do not have to work, in some way, to attain those minimum levels of sustainability. At the same time, work should not leave a person so tired and depleted that they are unable to have a fair opportunity to push back the horizons of ignorance, and, in addition, the compensation for that work must be fair – that is, capable of permitting a person to have what is considered to be at least minimally necessary to exercise her or his basic sovereignty as human beings.

There is nothing that has been said up to this point to indicate that any given person will necessarily wish to push back the horizons of ignorance concerning the nature of the universe and the manner in which human beings might fit into that nature. Irrespective of whether, or not, any given person wishes to engage such a challenge, every person is governed by the law of ignorance that entails at least three principles: firstly, every person has a right to basic sovereignty even if such a right is not exercised to any appreciable degree; secondly, departures from that condition of basic sovereignty must be capable of being demonstrated as being viable beyond a reasonable doubt, and, thirdly, irrespective of whether a person wishes to try to push back the horizons of ignorance, that individual has no right to interfere with the basic sovereignty of other human beings who do have such a wish.

As indicated previously, the element of reciprocity inherent in the foregoing principles is not a moral obligation. It is a practical

dimension inherent in our elemental epistemological condition of ignorance.

If one does not want other people to arbitrarily interfere with one's basic sovereignty, then it is in everyone's interest to ensure that departures from the epistemological default condition of basic sovereignty need to be demonstrated beyond a reasonable doubt. The Golden Rule gives expression to a similar sentiment -- as does Rawls' 'Original Position' – each in its own way.

For more than a hundred and fifty years, one of the most influential approaches to addressing questions concerning the nature of law has been given expression through a philosophical framework known as 'legal positivism.' While there are a variety of ways of describing that approach to legal philosophy, and although that framework went through a major overhaul – via the writings of H.L.A. Hart (especially his: The Concept of Law) in relation to, among others, the ideas of John Austin (who is generally considered to be the founder of legal positivism) -- there are a number of core elements present in any given version of this system of thought.

For instance, one of the central elements within the foregoing perspective indicates that morality has no role to play with respect to the process of describing the nature of law. There are at least two ways of construing what is meant by the idea that morality has no role to play in relation to the issue of describing law.

One approach contends that law is nothing more, or less, than a certain set of social conventions regulating the public space through which individuals are inter-subjectively linked. As such, law is about social practices understood quite independently of considerations of whether, or not, those practices ought to be done or ought to be obeyed.

There are laws, and there are ramifications ensuing from such laws. A person conforms, or not, to those laws knowing that actions have consequences.

Under those sorts of circumstances, punishment need not be considered to give expression to a moral judgment. It is a consequence that follows from non-compliance with established conventions.

From the foregoing perspective of legal positivism, the way in which such a system of conventions came into being, or whether that system should have come into being, tends to be a peripheral matter. The important consideration for legal positivism is the manner in which certain kinds of current conventions give expression to on-going practices with respect to the legal regulation of public space (and one should note that there are some social conventions – for example, rules of etiquette -- that help regulate the public space but that are not legal in character).

There is at least one other conceptual approach to the legal positivist's idea that morality plays no role in describing the nature of law. This perspective holds that law involves the process of making a fairly clear distinction between private morality and the rule of law as an expression of the manner in which a state/nation regulates the public space of inter-subjective behavior.

From the foregoing perspective, what moral conscience requires of an individual is different than what a state/nation requires of an individual. The law establishes those criteria that can be used for, among other purposes, navigating the boundary conditions that separate the demands of a state/nation from the demands of morality.

Whatever a person's moral orientation might require of him or her, a state's or a nation's legal orientation requires something else … although there could be points held in common by the two. However, within the context of legal positivism, there is tendency to treat legal considerations as having an element of priority relative to moral considerations.

For those who subscribe to the foregoing notion of legal positivism, law is intended to settle legal issues not moral ones. Morality either has no legal standing in legal positivism or, at best, it has a derivative, subordinate standing that is dependent on what the basic source or authority for law permits with respect to those issues.

Laws are enacted by a ruler or legislature. The actions of people are evaluated in accordance with whether, or not -- or the degree to which -- such actions are considered to be compatible with, or consistent with, those enacted laws.

Legal positivism doesn't seek to justify itself except in its own terms. In other words, it is only concerned with what the existing conventions are that govern public space and whether, or not, various sorts of actions – e.g., those of citizens, the legislature, or the ruler -- comply with those conventions.

Irrespective of which of the two former general approaches one engages, legal positivism tends to be rooted in the notion of 'positive freedom' that is discussed in Chapter 10 of the present book. Legal positivism describes and analyzes what results from the process through which a given source or authority for regulating public space generates and implements regulatory injunctions.

Once such a source or authority is identified, the role of legal positivism is to describe the legal character of the injunctions and principles that are issued through that source or authority. The legitimacy of such a source or authority is never questioned … merely presumed.

Since I believe that rights are an epistemological issue and not a moral one, then a perspective that holds that morality plays no role in a proper description of the law – as is true in the case of legal positivism – will share, to a very limited degree, a certain resonance with the perspective being advanced in this book. However, to claim – as legal positivism does -- that once the source or authority for law is identified, then the only thing that matters – legally speaking – is the structural character of the process through which public space is regulated by means of that source or authority, is an entirely different matter.

More specifically, law – considered as a function of the dictates of a given source or authority with respect to the regulation of public space -- does not have priority over the basic sovereignty of an individual. In fact, in order to be able to successfully claim priority for the right of a given source or authority to regulate public space rather than assign priority to the basic sovereignty of an individual, one would have to be able to demonstrate, beyond a reasonable doubt, that a given source or authority had the right to do whatever it was doing with respect to such regulatory activity.

To be preoccupied with merely the logic of a process of regulating things is quite compatible with the 'way of power'. Power never

questions its own legitimacy … it only questions the legitimacy of anything that challenges the exercise of power.

On the other hand, the way of sovereignty is continuously asking for persuasive evidence – that is, evidence which is considered to be true beyond a reasonable doubt or, at a minimum, in accordance with the preponderance of evidence – for departing from the default position with respect to the basic sovereignty of individuals. Epistemologically speaking, legal positivism has little, or no, standing because it tends to avoid questions about whether, or not, a given source or authority for regulating the public space can be justified.

The idea of revolution presents problems for the legal positivist's perspective because revolution tends to call into question whether, or not, a given source or authority has the right to regulate public space in one way rather than another. As such, revolution has no legal standing from the perspective of legal positivism since revolution raises questions that fall beyond the horizons of what a given source or authority recognizes as a legal issue, and, as such, revolution (no matter how peaceably it might be pursued) is extra-legal in character as far as legal positivism is concerned and, therefore, impermissible.

To understand the Philadelphia Constitution from the perspective of logical positivism, one merely identifies that document as the source or authority for regulating public space. The issue then becomes a matter of determining the structural character of the process that is set in motion by that constitutional document with respect to the generation and implementation of regulating the public space as a function of the dynamics among the three branches of government, together with the state governments and citizens.

If, on the other hand, one identifies the people as the source and authority for the Philadelphia Constitution – as the Founders/Framers suggested through their resolutions concerning the process of ratification – then determining the nature of the source or authority for regulating public space becomes somewhat more complicated. This is the case because one can no longer restrict attention merely to a constitutional document but, rather, one must place that document in the context of a ratification process out of which it allegedly arose.

Considered from either of the foregoing two perspectives, legal positivism would not question the legitimacy of either the Philadelphia

Constitution or the ratification process. Instead, legal positivism would merely describe the way in which the regulation of public space ensued from those starting points.

To question the legitimacy of those starting points is to bring into doubt the very project with which legal positivism is concerned. To question the legitimacy of such starting points is to raise questions about whether or not the Founders/Framers were entitled to do what they did with respect to the Philadelphia Convention, as well as with respect to what they did in relation to the document that issued forth from that assembly. To question the legitimacy of the foregoing starting points is to raise questions about whether, or not, the ratification process that led to the adoption of the Philadelphia Constitution was justified in proceeding in the way it did and whether, or not, such a process has any right to claim that subsequent generations are bound by that sort of process.

Just as legal positivism is confronted with an irresolvable problem in the context of a document – namely, the Declaration of Independence – that called into question the legitimacy of the British legal conventions as a justifiable source or authority for regulating the lives of people, so too, legal positivism is faced with an irresolvable problem if anyone were to question the legitimacy of the Philadelphia Constitution once it had been identified as the source and authority for regulating public space via the ratification process. From the perspective of legal positivism, such challenges would be considered extra-legal and, therefore, irrelevant and immaterial to the character of law as, for example, established through the Philadelphia Constitution and the ratification process.

Legal positivism is incapable of examining the issue of legitimacy concerning its own foundations. In other words, that perspective does not permit the legitimacy of a given source or authority to be questioned with respect to whether, or not, such a source or authority has a justifiable right to regulate public space.

This aforementioned notion of 'justifiable right' is not a moral issue. It is an epistemological question.

The problem with which we are confronted is the following one. What argument can be put forth that justifies claiming, beyond a

reasonable doubt, that a given source or authority has a right to regulate the public space?

For example, claims concerning a 'Divine Right' to rule are epistemological in nature. If the truth of such a claim is demonstrated, then the process of ceding authority to the truth of such a claim is leveraged so that the public space can be regulated in one way (the way of Divinity) rather than another.

However, the actual basis for legitimizing a given source or authority through which, or from which, law should issue (i.e., the person claiming the Divine Right to rule) is an epistemological matter for which different 'signs' and arguments might, or might not, be considered as evidence in support of that sort of a claim. The argument from Divine Right is not a moral appeal but an epistemological one from which moral authority might be derived … e.g., if God has been demonstrated (and this is an epistemological issue) to be the source and authority for my right to rule, then others have a moral obligation to follow my rulings because (or so it is being argued) the warrant for such obligation is the epistemological truth of the basic premise concerning my alleged relationship with God.

The claim of the Founders/Framers that a ratification process involving the people of America would be sufficient to authorize the Philadelphia Constitution as the appropriate source and authority for regulating public space was an epistemological argument not a moral one … although moral principles might have been used as pieces of evidence that were considered to evidentially support such an argument. Among the questions that the foregoing proposal of the Founders/Framers raises are: Did the people have the right to authorize the Philadelphia Constitution as the law of the land? And, if so, what justifies that right?

The issue of justification is a request for evidence as to why one perspective rather than another constitutes a correct reflection of the nature of things. Evaluating the reliability or credibility or soundness of evidence is an epistemological project, not a moral one. That which one believes one knows concerning the character of the universe is being used to sanction whatever subsequent notion of obligation or duty might be claimed on the basis of the alleged epistemological character of the universe.

If one does not know, beyond a reasonable doubt, what the moral character, if any, of the universe is, then evaluating evidence is still an epistemological project since the methodological engagement of data to differentiate between what can be known and what is not known is all we have to work with. Moreover, even if we did know what the moral character of the universe is, evaluating evidence remains an epistemological process during which one assesses the strength of a given argument or set of experiential data in the light of what is known – and not known -- about the nature of the universe.

Legal positivism often distinguishes between primary and secondary rules. Primary rules are those ways of regulating public space that are largely a function of stated purposes, commands, orders, proclamations, and edicts that specify what a person can, and can't do, whereas secondary rules refer to the processes through which power is institutionalized and distributed in society and, thereby, permits the basic legal commands and/or purposes of society to be channeled, altered, implemented, and extinguished.

For example, the Preamble to the Philadelphia Constitution gives expression to a set of primary rules since they constitute – in very general terms – what can (and by implication can't) be done. The Preamble outlines what the basic purposes of legal governance in America are supposed to be … namely, to: form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty.

Presumably, what goes on with respect to law in America reflects the purposes of the Preamble. If criminal, tort, or contract laws were shown to transgress conditions necessary for justice, liberty, tranquility, welfare, and the common defense to be realized, then such laws would be changed or eliminated, and if such laws were demonstrated to enhance the likelihood of justice, liberty, tranquility, welfare, and the common defense being realized, then such laws would continue on and, possibly, serve as templates or precedents for further legal enactments.

The seven articles and concomitant subsections of the Philadelphia Constitution give expression to both primary and

secondary rules. Those rules are concerned with outlining how power -- which is supposed to have been derived from the people via the ratification process -- is to be conferred, organized and distributed so as to realize the purposes of governance set out in the Preamble.

When one considers the aforementioned primary rules – that is, the purposes set out in the Preamble – one encounters a variety of problems. For example, what is meant by: 'forming a more perfect union,' 'establishing justice,' 'insuring domestic tranquility,' 'providing for the common defense,' 'promoting the general welfare,' and 'securing the blessings of liberty?'

What is the rule for 'forming a more perfect union?' What is the rule for 'establishing justice?' What is the rule for 'promoting the general welfare?'

One could, of course, take a look at what the Founders/Framers thought about such matters and try to determine what rules might be derived from their thoughts on those issues. However, as was suggested in Chapter 3 ("Perspectives on Framing"), there is no consensus concerning those matters among the Founders/Framers.

They all had different ideas about what would constitute: a more perfect union, justice, the general welfare, and so on. These differences were reflected in the problems that are inherent in the structural character of the Philadelphia Constitution since, to a large extent, those problems exist precisely because the participants in the Philadelphia Convention couldn't agree about a wide variety of issues involving slavery, representation, taxation, rights, presidential power, legislative power, judicial power, and the power of either states or individual citizens.

In essence, the Philadelphia Constitution constitutes a set of problematic secondary rules with a capacity to change itself through processes of legislation and amendments. This capacity for change is able to take into account the views of a certain notion of majority opinion (e.g., two-thirds of both houses and three-fourths of the state legislatures in the case of amendments) but such a capacity does not necessarily solve the ambiguities that are present in the primary rules of the Preamble.

Secondary rules have no authority for doing anything other than serving the agenda that is identified through the primary rule or rules. If we don't know what the nature of justice or the general welfare is, then secondary rules merely serve as ways to institutionalize the confusion that is inherent in the primary rules for American society.

Alternatively, one might refer to the will of 'We the People' as being a primary rule of American law. Even if one were able to identify the character of such a will – and opinion polls are likely to be far too simplistic, superficial and limited to be able to capture the complex dynamics of such a multi-faceted phenomenon as 'will' – there are other kinds of problems that arise in conjunction with the will of 'We the People.'.

For example, what justifies claiming that the will of 'We the People' is a legitimate source or authority for regulating the public space? I know of no argument that can be demonstrated beyond a reasonable doubt which indicates that the will – whatever it is – of 'We the People' constitutes a form of sovereignty that takes priority over the basic sovereignty of individuals.

One could refer to maxims such as: 'majority rules,' but this sort of maxim isn't really all that helpful because it stands in need of justification as well. Those sorts of maxims are not self-evidently true.

In fact, if one cannot justifiably link the foregoing sort of quantitative consideration (i.e., majority rules) to qualitative considerations that are persuasively tied to the character of the universe, the idea of 'majority rules' makes little sense. To claim that an idea which is either wrong or that cannot be shown to be right, must be adhered to just because some form of majority supports that idea is nonsensical.

Furthermore, even if one were to accept the idea of 'majority rules,' one still would have to sort out what kind of majority one means – e.g., 51%, two-thirds, three-fourths, or greater – and, then, one would have to be able to justify such a choice in terms of some standard that could be agreed upon … and, therefore, a standard that also would be in need of justification.

The tenability of the idea of the basic sovereignty of an individual – in the sense of having a fair opportunity to push back the horizons of

ignorance – is far, far easier to demonstrate beyond a reasonable doubt than is any idea involving the 'will' of 'We the People'. In fact, the foregoing right serves as a defensible protection (that is, one which can be justified beyond a reasonable doubt) for every single individual against the will of 'We the People' since such a will – irrespective of how it is characterized – is not likely to be able to satisfy the standard that requires that departures from the default position of basic sovereignty should be capable of being demonstrated as likely being true beyond a reasonable doubt.

Every conception of the will of 'We the People' concerning the nature of: 'a more perfect union,' 'justice,' 'tranquility,' 'defense,' 'general welfare,' and 'liberty' is subject to the same sort of challenge. In other words, whatever framework of understanding one generates with respect to the foregoing terms, one has to be able to justify that sort of a framework beyond a reasonable doubt … otherwise those perspectives are arbitrary.

If the primary rules of a given society are indeterminate, then this ambiguity will carry over into the secondary rules of such a society. Since the meanings of many of the primary principles given expression through the Preamble and Constitution are not well-articulated, these same kinds of problems permeate the secondary rules that govern the American legal system.

Naturally, if one adopts the perspective of legal positivism, then one doesn't have to worry about such matters. Once one identifies the source or authority for primary rules -- for example, the will of 'We the People' -- and once one identifies the kind of majority rule that governs such a will (that is, once one settles on the sort of percentage that can be said to properly represent the will of 'We the People'), then as far as legal positivism is concerned this brings the discussion to a close because one is not entitled to question the legitimacy of that which has been identified as the source or authority for the primary rules or secondary rules that are to govern the regulation of public space … from the perspective of legal positivism, we are only permitted to describe what ensues from that kind of an identification.

Why should one accept the limits that legal positivism places on what does, and does not, constitute a permissible question concerning the nature of law? What is there about legal positivism that would

convince one beyond a reasonable doubt that questions concerning the legitimacy of a given source or authority for primary rules should not be asked … that justifications that can be demonstrated as being likely or true beyond a reasonable doubt should not be expected with respect to the foundations of a legal system?

Legal positivism is a methodology for descriptively engaging issues of legal governance. Aside from its capacity to offer a way (and, as will soon be explored, not necessarily the best way) to outline what goes on within this or that system for legally regulating public space, why should one adopt legal positivism as a preferred way of engaging those issues?

In fact, if an individual's basic sovereignty will be impacted by the nature of primary and secondary rules, then the foregoing kinds of questions need to be asked. More specifically, what is the justification for establishing any given set of primary and secondary rules for purposes of regulating the public space in relation to individuals who have a basic sovereignty with respect to the right to have a fair opportunity to push back the horizons of ignorance?

There is another problem entailed by the manner in which legal positivism divides things up according to a classification process involving primary and secondary rules. If one wishes to claim that the idea of 'rules' describes or accounts for what goes on within any given society, there are problems inherent in such a claim.

One way of explicating such difficulties is to point out the difference between rules and principles. For instance, consider the idea of what constitutes an 'out' in baseball.

A player is considered to be 'out' if the individual: (a) fails to hit a baseball on three occasions while attempting to make contact with a ball that is thrown to the batter in an appropriate manner by a pitcher before: ball four is called during a given at bat, or a hit is made, or an out is made in some other way; (b) bunts a ball into foul territory on a third strike; (c) hits the ball to a defensive player that is either caught in the air – before it touches the ground -- or that first makes contact with the ground in fair territory before a defensive player catches the ball and manages to either tag first base or throws to another

defensive player who has contact with that bag before the batter reaches first; (d) runs outside the designated base paths or runs those base paths in the wrong sequence; (e) interferes with a defensive player's ability to play a given defensive position; (f) is caught trying to steal a base; (g) is picked off a base by a pitcher; (h) is forced out at second, third, or home when a batter fails to advance such a base runner; (i) misses a third strike that eludes the catcher but is thrown out at first by the catcher before the batter reaches that base; (j) while running the bases is struck by a ball that is hit by a batter; (k)is called out by an umpire even if replays indicate that the player was safe or did not strike out.

There are other possibilities concerning the 'out-rule' that could be added to the foregoing itemized list. However, enough has been said to indicate that while the idea of an 'out' can be fairly complex, the conditions governing it are fairly straightforward.

Of course, what constitutes an 'out' according to the official rule book of baseball is not written in the manner indicated above. The multi-faceted rule governing an out that was stated earlier is broken down into a lot of mini-rules concerning the issue of 'outs'.

A person is considered to be out if any of the many mini-rules are judged to be applicable in a given instance. If anyone questions whether or not an 'out' was committed, then the appropriate mini-rule of the official list of rules is cited as justification for making that sort of a call.

Obviously, all of the foregoing facets of the 'out rule' are subject to the judgment of the umpires. That is, whether, or not, a player is considered: to have missed the ball during a swing, or to have run outside of a base path, or to have reached a base before being tagged, or to have interfered with a defensive player, and so on, these are all subject to the decisions made by one or more umpires with respect to any given play.

As complicated as the set of mini-rules might be with respect to what constitutes an 'out' in baseball, the degrees of freedom for what is considered to satisfy such a rule are fairly limited. Once a given event occurs during a game, then the appropriate aspect or degree of freedom of a rule is applied to the circumstances at hand … for

example, did the batter: miss the ball, reach base safely, run out of the base path, bunt a ball foul on a third strike, and so on?

Similarly, the rule governing an umpire's conduct in such circumstances is fairly straight forward. Did he or she see such-and-such?

If he/she did see such-and-such, then a given aspect of the 'out-rule' is applicable. If she/he did not see such-and-such, then another aspect of the 'out-rule' is applicable.

Theoretically, there should be no circumstance in baseball in which a given batter or base runner is not subject to one or another facet of the' out-rule'. The rules of application tend to be clear and consistent across changing circumstances of the game.

Things become a little fuzzier when it comes to the issue of calling balls and strikes. Although the rule book specifies the precise conditions under which a pitch is to be considered a ball or a strike, umpires don't always follow the specifications of the rule book with respect to those matters … although umpires do use those rules as a general set of guidelines for shaping – not determining – what will be called a ball or strike.

Generally speaking, almost every umpire has his or her own way of determining what will be called a ball or strike. In effect, umpires establish their own strike zone as a variation on what is called for by the rule book.

Some umpires call 'low strikes' or 'high strikes' – that is, pitches which are below or above the height that the rule book states should be a strike. Some umpires shrink the strike zone, while others expand it, and in both cases, what is identified as a strike or ball does not necessarily reflect what the rule book says should be a strike or a ball.

Under the foregoing sorts of circumstances, batters and pitchers must adjust the way they hit and pitch the ball according to the nature of the strike zone that is established by an umpire. All players can hope for is that an umpire will be consistent during the course of a game so that once players learn the characteristics of a given umpire's strike zone they will make the necessary adjustments.

There is not likely to be any set of rules that accounts for why a given umpire establishes a strike zone in one way rather than another.

Judgments are made as a function of a variety of considerations that interact with one another in complex ways rather than being functions of a process in which one consults a set of rules that specify what should be done on any given occasion.

Judgments of the foregoing kind might be the result of the interaction of a complex set of factors that cannot necessarily be reduced down to rule-governed behavior. Such a set of factors might give expression to non-linear themes that are rooted in various principles, or that set of factors might give expression to themes that are non-linear but unprincipled.

For instance, an umpire might become annoyed with the criticism that is being directed his/her way from the players, coaches, and fans of a given team. As a result, the umpire – consciously or unconsciously -- might adjust the strike zone to make it harder for both hitters and pitchers from that team to be able to play successfully.

This would be an example of a non-linear process that is emotion and ego driven. It is neither rule-governed nor is it necessarily rooted in principles … unless the principle was about getting satisfaction in some way by frustrating the players, coaches, and fans of the team that had been frustrating the umpire with their criticisms.

The umpire might not resort to such tactics on every occasion – or even on most occasions -- that he was verbally criticized by the players, coaches, and fans, and, therefore, such behavior is not really rule-governed. However, on occasion, when certain game conditions, moods, emotions, attitudes, and other factors came into alignment, such an umpire might alter the strike zone in response to the verbal criticisms.

On the other hand, there could be constructive principles of some kind that were involved with respect to an umpire's manner of establishing a strike zone. For instance, if an umpire wanted to challenge both hitters and pitchers to alter their game to make things more 'interesting' for the players and for the fans, then this sort of thinking might lead some umpires to alter the strike-zone.

Nonetheless, such principles, to whatever extent they exist, follow the subjective inclinations of a given umpire. Therefore, they involve

degrees of freedom that cannot necessarily be determined in any linear, rule-governed fashion.

Umpires often receive training of some kind that requires those individuals to become familiar with the rules governing the game of baseball. In addition, umpires might be taught how to place themselves in the best position to make accurate calls of one sort or another. Moreover, umpires might receive training with respect to how to deal with criticism, arguments, and other possibilities that might arise within the context of any given game.

Although much of the foregoing training might involve coming to understand all the general rules for managing a game, the judgments made by umpires during a game are not necessarily rule governed. For instance, suppose a batter asks for a time out while waiting for a pitcher to deliver a pitch.

Is there any rule that governs what an umpire should do under these sorts of circumstances? Actually, there is no such rule or set of rules governing this situation.

An umpire might take a variety of things into consideration when making the foregoing kind of a call. Is the pitcher taking too long to deliver pitches and, therefore, placing the batter at something of a disadvantage since the latter individual might have to wait so long that he gets tired and cannot swing effectively? Is the batter trying to play mind games with the pitcher and interrupt the pitcher's rhythm? Have there been too many attempts to slow things down in one way or another during the course of the game? What is the possible impact of such slowdowns on the fans in attendance or watching the game on television? Has the pitcher given any indication that a pitch is imminently forthcoming? Could calling a last second time out lead to an injury to the pitcher if he were to suddenly alter his delivery? Could the batter's vision be impaired in some way (e.g., rain, sweat, dust) that might prevent the batter from getting out of the way of a forthcoming pitch or having a fair opportunity to hit the ball? Did the batter injure himself/herself on a previous swing and is asking for additional time to recover? Have both sides been given equal opportunities to call for such time outs? Have such requests been made too frequently?

Umpires make a judgment and either grant or disallow such a request. However, the judgment is not necessarily rule-governed.

Instead, those calls are often made in accordance with an umpire's sense of how to manage a game and/or in accordance with an umpire's sense of fairness and/or concerns about ensuring that players are not unnecessarily exposed to possible injury or that the tempo of the game is not adversely affected. None of the foregoing considerations is to be found in the rule book governing baseball or in a book of rules that governs an umpire's general conduct in conjunction with any given game of baseball.

Moreover, every umpire is likely to have a different sense of how to manage a game, or what constitutes fairness, or how to exercise appropriate caution with respect to the possibility of injury. Such a sense of things might be the result of a combination of: training, experience, likes, dislikes, insights, personality, strengths, weaknesses, and/or habits.

In whatever way the foregoing sense of things arises, a framework for invoking principles rather than rules is created through which to reach certain kinds of judgments. Principles do not have to be applied in the same way on every occasion but rely on an engagement of the available data that is interpreted, according to a complex dynamic of interacting considerations, which seem to point in one direction rather than another with respect to the call that is made by an umpire.

Principles – unlike rules – tend to be non-linear in character. In other words, there tend to be many factors that might shape and orient how such principles are exercised, and, as well, those factors tend to have positive and negative feedback relationships with one another.

For instance, consider the principle of fairness. What does fairness require with respect to whether or not someone is thrown out of the game?

Some umpires are unwilling to permit any sign of disrespect or perceived disrespect by players in relation to the way such umpires make calls. Those sorts of individuals might believe that displays of disrespect are unfair to: the game, other players, fans, umpires … and, perhaps, such signs of disrespect are not even in the best interests of

the person doing the complaining. Or, maybe, those kinds of umpires don't enjoy confrontation and won't tolerate it.

Other umpires are much more tolerant when players, coaches, or managers complain about one or more calls. They are willing to let arguments go on for some time before reaching a point when they believe that enough is enough.

Some umpires give warnings. If such an incident, or a similar event, occurs again, someone – no matter how minor or borderline a provocation might be --is going to get tossed.

There are no rules governing these sorts of judgments. Emotions, experience, past history, expectations, concerns, beliefs, values, understandings, temperament, personality, mood, and interpretations all factor in to how any given umpire gives expression to judgment calls concerning the issue of fairness.

If fairness is defined as attempting to ensure that neither side in a baseball game is given an unwarranted advantage and that all decisions are made for the purpose of providing an unbiased environment within which a given game is to be played, then there are any number of routes to judgment that could be followed and still serve the underlying principle of fairness. This is the nature of a principle … there is a multiplicity of possible avenues for satisfying the thematic orientation of that sort of an idea.

In the case of rules – say those concerning being out or safe – a batter or runner is either out or safe according to specified conditions. There are no other possibilities, and whether, or not, a person is considered to be out or safe must be in accordance with the list of stated rules that establish the guidelines for determining those matters.

In the case of principles – say the ones concerning fairness or other kinds of discretionary judgment – there are a variety of factors that could be taken into consideration while reaching a judgment. Different people might weigh these kinds of factors in different ways without abandoning the requirement of not biasing the outcome of a game in an unjustifiable direction.

The judgment of umpires is rarely, if ever, overturned once they have been issued in a final form (that is, after consulting with one

another or after looking at a permitted replay of a game event). Nonetheless, umpires are subject to oversight by individuals and committees that review the performance of umpires … a review process that could determine whether, or not, those umpires will be permitted to continue umpiring or whether, or not, they will be assigned to important playoff games.

The rules of the game of baseball tend to be primary rules. Those rules indicate what one can and can't do on, or around, the playing field during a game.

Whoever was the source or authority for such rules (and there is some debate over how the game of baseball actually came into being), the reasons or motivations for inventing the game of baseball have led to the construction of a set of primary rules that specify the do's and don'ts of baseball. Beyond the basic rules of baseball, there is a further set of considerations that shape the general social and administrative framework within which games of baseball are played.

For example, the notion of the 'best interests' of baseball occur in a social/legal context that extends beyond both the rules of baseball, per se, as well as the purposes for which the game of baseball was invented. What is considered to be in the 'best interests' of baseball becomes a function of what is considered to be 'best' by those individuals who have been given, or acquired, oversight with respect to the social/legal/administrative context within which games are played … professionally, recreationally, educationally, or within some other organized forum (such as little league).

The individuals who are the source or authority for what transpires in such contexts issue a combination of primary and secondary rules that govern the broader, administrative and regulatory framework within which actual baseball games are played. Such individuals are the ones who decide: how the structural character of the general administrative framework surrounding baseball games will be regulated; who will get assigned to which committees and offices; when games will be played; what rule changes will be considered, implemented, or interpreted, and so on.

However, the manner in which this latter group of individuals conduct themselves might be rule-governed only in part. Aside from the rule-like by-laws that establish the general framework within

which such individuals make administrative decisions, many of the judgments of those people tend to operate in accordance with various kinds of principles – rather than rules … principles that are not easy to define, if they can be defined at all.

For example, what is the rule for deciding what is in the 'best interests' of baseball? Who gets to determine what such "interests' are, and according to what criteria does one establish what constitutes the appropriate measure for being "best"?

Are the 'best interests of baseball' primarily a matter of commercial considerations? If so, are commercial considerations restricted only to owners but not the players, coaches, managers, and umpires? Could certain kinds of trades not be in the best interests of baseball? What if records are set using performance-enhancing drugs? What if players, coaches, managers, umpires, and/or owners conduct themselves in problematic ways outside of games? Should spitting be permitted on the playing field or in the dugouts/bullpens?

If one tries to analyze baseball – both the game as well as the social and administrative contexts within which the game is played – one cannot properly understand what is going on if one restricts oneself to a framework that is limited to considering issues involving only primary and secondary rules. The game of baseball spills beyond the realm of rules and enters into the territory of judgments, understandings, and interpretations that often are principle-based and not just rule-based.

To say that the judgment/interpretation of a player, manager, coach, umpire, owner, administrator or official is a matter of discretion indicates that there is no rule or set of rules that determine the precise character of those decisions … even as rules – both primary and secondary – might limit the degrees of freedom within which those individuals operate as far as playing or overseeing the game of baseball is concerned.

None of the foregoing touches on the issue of skills and strategies that are employed by players, coaches, and managers with respect to participating in the game of baseball. While there might be rule-like tendencies that govern some of what those participants do during a game, there are many judgments made during a game that are not necessarily rule-governed but are rooted in principles of one kind or

another that involve issues of fairness, as well as theories about how to win, lose, and comport oneself on and off the field.

For instance, good hitting is about timing, and good pitching tries to disrupt that timing. Batters try to figure out the sequence of pitches that might be thrown during a given at bat in order to improve their timing, while pitchers/catchers try to come up with a pitch-sequence that will lower the likelihood that a batter will be able to exercise a timing strategy to his/her advantage.

What about stealing bases? Managers and base runners try to gauge the character of a pitcher's delivery style, along with the ability of a catcher to compensate for any weaknesses in a pitcher's movement toward the plate. Should a pitch-out be thrown? Does worrying about the runner take a pitcher's focus away from the batter? Who is the potential base stealer? Who is batting? How have they been doing lately? Who is up next? How many outs are there? What is the count? What inning is it? What is the score? Is the game being played at home or on the road? Should one call for a hit-and-run rather than merely a steal?

The foregoing game/strategy issues are not necessarily rule-governed. Some managers are better than others in making judgments concerning what to do in any given game-situation, and if those sorts of decisions were merely rule-governed, then one likely would not see many, if any, differences in what managers do under similar circumstances.

Moreover, how managers interact with players outside of actual games is also likely to be quite variable. While there are some rules that might govern how a manager treats players, some mangers might be better than other managers with respect to navigating the shifting shoals that characterize the lives of players both on and off the field, and the reason for that differential success might be because some managers have a better grasp of the complex principles (not rules) of personality, mood, ambition, emotion, talents, confidence, and motivations that shape human behavior.

The primary rules that define the game of baseball are just that – rules and nothing more. People participate in that game with many different intentions, motivations, goals, histories, attitudes, skill-sets, and interests.

Issues of enjoyment, money, careers, poverty, education, history, recognition, fame, power, sex, influence, camaraderie, challenges, and competition can become entangled with the relatively simple rules of baseball in a wide variety of complex ways. Neither the rules of baseball as a game, nor the rules of baseball as a social/legal phenomenon are capable of properly describing or explicating what goes on within the world of baseball.

Much of what goes on with respect to any given set of legal rules or rules of governance are similar to what goes on in the world of baseball where the actual rules of baseball play a limited role. In both instances, there is no defensible linear – that is, rule-governed -- formula for determining what source or authority should regulate those activities or how many of the secondary rules -- for example a constitution or set of by-laws -- are to be interpreted.

The manner in which legislative, executive, and judicial branches of government attempt to realize the purposes of the Preamble is not rule-governed even though the Philadelphia Constitution does contain certain procedural rules for shaping and orienting those determinations and judgments. Furthermore, the seven articles of the Philadelphia Constitution provide no criteria for determining how ideas such as: "a more perfect union," "justice," "tranquility," "the general welfare," "the common defense," or "the blessings of liberty," are to be understood except in a procedural sense … that is, from the perspective of legal positivism, the purposes set forth in the Preamble are whatever the procedural features of the Constitution permit them to be.

The purposes, goals, intentions, motivations and understandings that induce legislators, executives, and the judiciary to combine and apply the procedural possibilities of the Constitution in one way rather than another are not part of the Constitution. While the Preamble is supposed to serve as a set of general guidelines with respect to those purposes and intentions, nonetheless, because those guidelines are effectively devoid of any specific meaning, there is nothing but procedural issues that place limits or create possibilities with respect to the purposes and intentions of legislators, executives, and jurists concerning the general principles that are articulated in the Preamble.

Moreover, aside from broadly worded ethical considerations that are supposed to regulate the behavior of the members of the three branches of government – and those ethical considerations are, ultimately, likely to be principle-based rather than rule-based (that is, they are interpretive judgment calls and not an exercise in applying rules … although rules, of some kind, might be part of the process) – there is nothing in the Constitution that clearly indicates what the intentions and purposes of the three branches should be. Within certain general procedural limits, legislators, executives, and jurists are free to have their intentions and purposes engage the Constitution in any way those individuals wish.

The Philadelphia Constitution might involve both primary and secondary rules. However, the real dynamic of governance is a matter of the principles that are rooted in the intentions, purposes, and ideologies of those who seek to leverage the procedural machinery of governance that are provided by the seven articles of the Philadelphia Constitution in order to realize those intentions, purposes and ideologies, just as the real dynamic of baseball rests not with the primary rules of the game but, rather, rests with the intentions, purposes, skills, histories, and so on of players, coaches, managers, umpires, owners, agents, and administrators.

As such, legal positivism has little of value to say with respect to the factors – i.e., the principles inherent in intentions, purposes, and ideologies – that actually determine what transpires in governance. Eventually, and at very critical junctures, the idea of primary and secondary rules breaks down as an effective way of describing and explaining the dynamics of law because that kind of an idea is incapable of handling the notion of a principle, and, yet, principles are, in many ways, as important, if not more so, than rules are with respect to understanding the dynamics of legal governance.

One implication of the foregoing point is that the meaning of a 'right' is entirely dependent on what the intentions, purposes, and ideologies of legislators, executives, and jurists say the meaning of that term can be … subject to certain procedural degrees of freedom that are set forth in the seven articles of the Philadelphia Constitution, along with the very general set of ideas mentioned in the Preamble. From the perspective of legal positivism, rather than treating a 'right'

as an entitlement that has priority over the dynamics of governance, a 'right' becomes subject to the intentions, purposes, and ideologies of those who are the regulators of the primary and secondary rules governing the construction of public space.

According to legal positivism, the foregoing sort of an arrangement is what it is. From the perspective of the natural law of ignorance, as well as the basic right to sovereignty that follows from it, the foregoing arrangement is entirely arbitrary and stands in need of justification.

Describing what a given system of procedural rules (e.g., the Philadelphia Constitution) permits legislators, executives, and jurists to do is incapable of justifying – except procedurally -- the intentions, purposes, and ideologies that seek to leverage those rules. Legal positivism avoids asking all of the questions that need to be raised with respect to whether, or not, any given set of primary and secondary rules can be justified in any ultimate sense and whether, or not, such a set of rules actually even properly describes what is transpiring within the context of governance (as is the case when the issue of principles enters the picture).

To whatever extent principles, rather than rules, characterize a legal dynamic, then legal positivism is a problematic way of describing such a system. Even in the relatively simple context of baseball, there are many principles that are present that transcend whatever primary and secondary rules might be relevant to playing the game of baseball. Yet, those principles are very important to how players, coaches, managers, umpires, and fans engage the game of baseball.

The foregoing sorts of issues are only multiplied when it comes to complex matters of legal governance in which a vast array of principles -- that are rooted in networks of intentions, purposes, and ideologies -- engage whatever primary and secondary rules that do exist to generate the 'legal' regulation of public space. No matter how extensive the set of primary and secondary rules are, such a set of laws can never adequately account for the way in which individuals (whether, citizens, lawyers, government officials, or jurists) hermeneutically parse those laws, nor can such a set of rules ever adequately account or explain why those laws ought to be interpreted in one way rather than another.

Legal positivism is an epistemologically incomplete system of description and analysis because law involves much more than just a set of primary and secondary rules. Law also entails issues of principles, intentions, purposes, and ideologies that push rules beyond their limits and into conceptual territory where considerations other than primary and secondary rules – e.g., principles -- are of critical importance.

Legal positivism is also an epistemologically incomplete system of explication because it fails to question its own foundations. Describing a legal system as a function of the interaction of certain kinds of primary and secondary rules really doesn't adequately address a person's desire to know what, if anything, those rules have to do with the ultimate nature of reality and if one cannot justifiably demonstrate the character of that kind of a connection, then there is absolutely no reason to feel obligated to observe the requirements of those primary and secondary rules ... although one might be forced to do so in one way or another.

Obligation, duty, and rights -- to whatever extent they can be said to be viable concepts -- arise out of an epistemological understanding concerning the nature of reality. If one cannot demonstrate beyond a reasonable doubt that a certain characterization of obligation, duty and/or right reflects the nature of the universe, then those characterizations are entirely arbitrary and, as such, really have no moral authority in a collective sense … although that kind of a sense of obligation, duty, or right might have relevance to an individual's way of proceeding through life.

The presence of force in a legal system is a reflection of the fact that, for whatever reasons, citizens do not have a sense of obligation or duty concerning the issue of compliance and, as a result, must be coerced to do certain kinds of things. The presence of force within such a system might also be considered to be an index of the incongruity – either actual or perceived -- between what that legal system is capable of justifying in some persuasive manner and what continues to stand in need of that kind of justification.

To whatever extent, primary and secondary rules cannot be demonstrated to be justifiable relative to what is understood about the nature of the universe, then there is likely to be a need for the use of

force in relation to inducing people to comply with those rules. This was certainly the case with respect to the British response to the Declaration of Independence (and concomitant events), and it also has been true with respect to any number of events in post-Constitutional America in which federal and state governmental officials have used force to coerce certain kinds of behavior because those governments were unable to successfully justify to the people beyond a reasonable doubt the relationship between, on the one hand, certain primary or secondary laws, and, on the other hand, the nature of reality.

The idea that: force is an inherent feature of civilization because of the unruly nature of human beings, might be incomplete. While it is certainly true that all human beings have their weaknesses from which their neighbors are entitled to be protected, one must also critically explore the way in which rules – whether primary or secondary – that cannot be adequately justified are likely to lead to problems that would not otherwise exist if it were not for the presence of those rules and a government's expectation that people must comply with those rules.

Sometimes people act in a way that is not compatible with existing primary and secondary rules due to their own, internal demons. Sometimes people act in a way that is not compatible with existing primary and secondary rules due to the demons that are inherent in the legal system that advocates such rules … and the latter sorts of demons are often the cause of riots and societal breakdown, as well as civil disobedience and revolution.

Part of the idea that people are entitled to have a fair opportunity to push back the horizons of ignorance – that is, they have a right to basic sovereignty – involves the entitlement to not be entangled in the interpretive and discretionary acts of government officials that cannot be demonstrated as likely being true beyond a reasonable doubt. In other words, whatever the intentions, purposes, histories, and ideologies of government officials might be, those intentions and so on are not entitled to spill over into the realm of basic sovereignty unless those officials can show why departures from the default value of basic sovereignty are warranted -- not merely in accordance with a preponderance of the available evidence but beyond a reasonable doubt.

In baseball, there is not a great deal of discussion about: the idea of 'outs', what is meant by the idea of being safe, how runs are scored, how many players are allowed on the field at a time, and so on. From time to time, there are rule changes in baseball involving things such as: the 'designated hitter,' the use of performance enhancing drugs, and so on, but none of these changes -- or any of the original rules -- need to be defended beyond a reasonable doubt with respect to the ultimate nature of reality.

People come together, construct a system within which the rules of baseball are permitted to unfold, and games are played for whatever motivations and reasons those individuals have for participating in that system. While judgments involving the game of baseball should not be arbitrary, justifying such decisions is usually done in accordance with a preponderance of the available evidence concerning the nature of baseball and people's reasons for participating in the processes within and around that game.

Furthermore, there usually is a great deal more latitude given for making errors with respect to those discretionary judgments/decisions. Those sorts of errors will be tolerated until some non-rule governed threshold is reached and people get fired, traded, optioned, and the like.

Unlike the game of baseball, the nature of the 'game of life' is largely unknown. We each might have our own ideas about the character and purpose of the latter 'game', but those ideas cannot be demonstrated to everyone's collective satisfaction beyond a reasonable doubt.

The reason why a different standard of rationality is applied to baseball is because, ultimately, that game has little to do with the issue of basic sovereignty. Whether baseball is played or not, life outside of baseball goes on.

Naturally if one is a player, umpire, coach, manager, administrator, or owner who is betting on the outcome of games, then one might stand to gain or lose a great deal beyond the issue of money. Moreover, if one's baseball contract is not renewed, then one might face financial or career hardships.

Nonetheless, despite the possibility of those difficulties, nothing that happens in baseball is capable of depriving people of their right to push back the horizons of ignorance. If, somehow, baseball were suddenly constructed in such a way that the outcomes of games directly affected everyone's basic sovereignty, then requiring baseball players, coaches, managers, administrators, and owners to make decisions that were capable of being shown as likely to be true beyond a reasonable doubt might well come into play.

Why should government officials be entitled to make discretionary decisions that affect a person's basic sovereignty without being required to demonstrate the likelihood that those judgments are correct or true beyond a reasonable doubt? Why would anyone rationally agree to cede her or his basic sovereignty to anything less than a decision that was based on considerations that were, beyond a reasonable doubt, likely to be true?

The primary rules inherent in the Preamble to the Philadelphia Constitution do not offer a justification that is likely to be true beyond a reasonable doubt with respect to the meanings of the rules that are given expression through that Preamble. The primary and secondary rules that are contained in the Philadelphia Constitution do not offer a justification that is likely to be true beyond a reasonable doubt with respect to how ambiguities inherent in the primary and secondary rules of the Preamble and Constitution should be interpreted or understood, and even if there were complete agreement concerning how those ambiguities should be understood, none of this necessarily justifies, beyond a reasonable doubt, that those primary and secondary rules should be permitted to undermine, limit, interfere with, oppress, or extinguish the basic sovereignty to which, according to the law of ignorance, everyone is, beyond a reasonable doubt, entitled.

The intensions, purposes, and ideologies of government officials – including jurists – have not been demonstrated as likely to be true beyond a reasonable doubt with respect to their claims of having pre-eminence over the issue of the basic right of people to have a fair opportunity to push back the horizons of ignorance in life. There is a major disconnect between what government officials can demonstrate beyond a reasonable doubt as likely to be true and what they claim to

have the 'right' to do on the basis of a given set of primary and secondary rules.

Rights are an epistemological issue. Even when moral arguments are presented those arguments are couched in terms of epistemological theories concerning the nature of reality such that if certain things concerning the nature of reality are true, then people are obligated to act in compliance with that truth.

It is not enough to advance primary and secondary rules concerning the nature of law. Law must be justified beyond a reasonable doubt with respect to its alleged demonstrable capacity to enhance the right of people to have a fair opportunity to push back the horizons of ignorance.

Governments have no rights or entitlements. Instead, governments have a responsibility (an epistemological one) to ensure – within the limits of their capacity to do so -- that the basic sovereignty of citizens is protected, preserved, enhanced, and, to the extent that is possible, realized.

The power that governments derive from the people has only one purpose that can be demonstrated beyond a reasonable doubt. That purpose is to serve the interests of every individual's basic sovereignty … that is, the right to have a fair opportunity to push back the horizons of ignorance concerning the process of life.

As stated earlier in this chapter, the foregoing right entails a variety of services – such as food, shelter, clothing, education, defense, legal protections with respect to arbitrary search, seizure, and detention, as well as health care in some minimally acceptable form – that are necessary for a 'fair' opportunity to be afforded to people through which they can exercise their basic sovereignty. One is not entitled to resources except to the extent that the arrangements through which those resources are distributed do not disadvantage anyone's opportunity (whether in the present or in the future) to pursue their right to basic sovereignty.

In addition and also as previously noted, the right to basic sovereignty entails an array of degrees of freedom that are likely to enhance the realization of that right. These degrees of freedom would involve such things as: speech, peaceful assembly, the exploration,

distribution, and critical discussion of ideas, conscience, travel, and so on.

When any, given, possible decision of a government can be shown to be likely to affect the basic sovereignty of people in one way or another with respect to the foregoing considerations, then the issue is not whether that kind of a decision can be shown to offer the best moral interpretation of the existing primary and secondary laws (as Dworkin might claim). After all, trying to figure out what constitutes the best moral interpretation of such laws is a perspective that is, itself, in need of justification with respect to its ideas concerning the criteria and standards for evaluating what constitutes the 'best' sort of moral argument.

Government decisions have but one standard to meet. Can those decisions be demonstrated beyond a reasonable doubt as being likely to enhance the basic sovereignty of everyone … and not the sovereignty of just some of the people?

Those decisions are epistemologically based, not morally based. The important consideration is not whether one can come up with a good moral argument for interpreting certain primary and secondary rules in one way rather than another, but whether those rules and interpretations can meet the epistemological standards with which any jury is faced in a criminal trial when the life or freedom of a person on trial is being threatened.

The potential loss of basic sovereignty with respect to each and every human being is on trial whenever a government seeks to make decisions that have the potential for affecting that sovereignty. Why would one suppose that the epistemological standards that need to be satisfied in such cases should not reflect the structural character of the epistemological standards that must be met in every criminal trial?

The legal positivist's approach to interpreting law holds that judges – like umpires in baseball – have a certain amount of discretion with respect to interpreting the meaning (or application) of primary and secondary rules with respect to a given set of circumstances. According to that perspective, reasoned arguments can be given that purport to justify the exercise of discretion in those cases, but, whether, or not, a judge can offer an argument that is likely to be true beyond a reasonable doubt with respect to the manner in which a

given act of discretion -- along with the primary and secondary rules that are being interpreted -- is capable, on either level, of reflecting the nature of reality is quite another matter.

The idea of 'hard cases' refers to those situations in which judges encounter difficulty in trying to put forth a reasoned argument that shows how: a given set of social circumstances, together with primary and secondary rules, as well as precedents, can be brought together in a persuasive fashion. 'Hard cases' are contrasted with allegedly simple legal cases in which judges are supposedly easily able to identify the logical circuitry that is believed to tie together: A given set of social circumstances, primary and secondary laws, as well as various precedents, in a persuasive and straightforward fashion without any need to call upon the exercise of discretion or interpretation with respect to those cases.

From the perspective of the present book, both the 'hard cases,' as well as the 'simple' cases of legal positivism constitute epistemological distortions that prevent people from understanding that unless primary and secondary rules can be justified beyond a reasonable doubt with respect to their capacity to enhance everyone's basic sovereignty or right, then the attempts to combine: precedents, 'facts,' reasoning, and interpretations that are used to construct persuasive arguments with respect to the application of various primary and secondary rules in a given social context are misguided from the beginning.

Moreover, to try to argue that there is a best moral sense that can discovered with respect to the interpretation of 'hard cases' is also an epistemological distortion of the actual existential character of the situation with which human beings are faced – a situation that is described via the law of ignorance. The idea that there is a 'best moral sense' that can be discovered in 'hard cases' gives expression to a perspective that lends tacit approval to the underlying existence of certain primary and secondary rules by arguing that there is some best moral sense that can be made of those primary and secondary rules without addressing the issue of whether, or not, those rules can be justified themselves.

Even if it were true that there was some best moral sense that could be made of how to interpret a given set of primary and

secondary rules, unless one can justify those primary and secondary rules in some manner that demonstrates how those rules serve the interests of the basic sovereignty of every human being beyond a reasonable doubt, then discovering a 'best moral sense' is irrelevant to the fundamental right of human beings with respect to the issue of having a fair opportunity to push back the horizons of ignorance. Moreover, as history has clearly shown, no one has been able to successively demonstrate why everyone should collectively accept, beyond a reasonable doubt, the idea that one set of criteria concerning the notion of what constitutes a 'best moral sense' -- as opposed to other such possibilities – is likely to be true.

Can someone put forth reasoned arguments of why one notion might be better than another sort of argument with respect to the idea of a 'best moral sense' in relation to the application of a given set of primary and secondary rules to a certain set of social circumstances? Yes, people can do – and have done – this.

However, being able to offer those sorts of reasoned arguments doesn't make them 'better', 'best', or 'right' in anything but a completely arbitrary way. Furthermore, if someone can't demonstrate to me why arguments that are supposedly capable of making the best moral sense of certain primary and secondary rules cannot be shown as likely to be true beyond a reasonable doubt, then why should anyone bother with the former sorts of arguments at all?

Making the best moral sense of a situation that is actually untenable because of problems inherent in a given set of primary and secondary rules seems to be rather a quixotic project. Judges, government officials, and academics might be able to rationalize taking the time to construct those kinds of arguments, but those individuals tend to miss, if not avoid, the only issue that should be addressed – namely, establishing, preserving, and enhancing every person's right to basic sovereignty with respect to having a fair opportunity to push back the horizons of ignorance concerning the nature of reality.

Some individuals (e.g., Dworkin) make a distinction between 'justice' and 'fairness'. Justice is characterized as giving expression to whatever is considered to constitute the correct functioning of a system of governance with respect to the distribution of goods, services, resources, and opportunities. Fairness, on the other hand,

supposedly refers to the character of the social or political process through which the foregoing sense of justice is realized.

As such, fairness and justice would seem to have a 'means-ends' relationship. The right outcome – i.e., justice – cannot be realized if the right process for achieving that kind of an outcome – i.e., fairness -- is not utilized.

How does one determine what the right outcome is with respect to the distribution of resources? Can that sort of a question be answered without knowing what the ultimate nature of the universe is and what the truth concerning that nature has to say, if anything, with respect to the idea of what would constitute the correct outcome for distributing resources and opportunities?

What if justice were about acting in accordance with the requirements of truth and not just about distributing resources? What if justice were about the process of treating every facet of the universe with what is due to it as a function of the truth of that facet of things?

Do the Earth and its ecology – of which human beings are but one aspect -- have nothing to say about the issue of the correct distribution of goods and services? Do future generations have nothing to say about what might constitute the 'correct' distribution of goods, services and resources.

Does the Earth's place in the universe have nothing to say about those sorts of issues? Are the realms of Being beyond humans – whatever that might be -- not deserving of justice in some sense?

Collectively speaking, we do not know the answer to any of the foregoing questions. Consequently, the idea that justice is about the correct distribution of goods seems rather arbitrary. In other words, that sort of a view of justice is not capable of being demonstrated, beyond a reasonable doubt, to be a perspective that is likely to be true.

Consequently, if 'fairness' is allegedly a matter of identifying the right way to bring about the right outcomes with respect to the distribution of resources, yet the nature of justice cannot necessarily be restricted to just certain kinds of material distribution outcomes but must first take into consideration the issue of trying to establish what the truth requires of us, then such a notion of fairness is problematic as well.

Justice and fairness, like morality and rights, are epistemological issues. Any attempt to make claims concerning those matters will be arbitrary to the extent those claims cannot be demonstrated as being likely to be true beyond a reasonable doubt.

Given the nature of our collective ignorance concerning those matters, talking about the ideas of justice and fairness as if we knew the truth concerning their relationship with one another seems premature. On the other hand, quite independently of the ultimate nature – if any -- of justice, finding some rational ways to act in the midst of this sort of ignorance might be a possibility worth exploring.

If the key to so many issues – for example, purpose, potential, morality, identity, and justice – is having access to the truth of those things, and, yet, if our current situation is permeated with many kinds of collective ignorance that bear on those same issues, then what is needed is a way to move forward that does not disadvantage anyone with respect to having an opportunity to push back the horizons of ignorance concerning, among other things, the aforementioned themes that are of critical importance with respect to having a chance to realize the potential of being human in a constructive fashion. Fairness within a context of ignorance is to recognize the right to sovereignty that emerges – via the law of ignorance -- from such a context in relation to the challenge of trying to push back the horizons of the unknown.

There is no guarantee concerning the likelihood of anyone discovering the truth of things. There is no guarantee concerning the likelihood of anyone discovering the nature – if any -- of ultimate justice.

Nevertheless, there needs to be a guarantee that everyone should have a fair opportunity to address those issues. This is what the right of basic sovereignty is about and without it all matters of law, justice, fairness, morality, and governance become arbitrary, and, therefore, cannot be justified beyond a reasonable doubt.

'Hercules' is the name given by Ronald Dworkin to an allegedly ideal lawyer or judge who makes legal decisions that are intended to serve – at least in generalized terms – as the standard of thinking

against which legal arguments are to be evaluated with respect to how jurists should proceed in 'hard cases' … that is, legal cases requiring interpretation since the manner in which the primary and secondary rules of a legal system should be applied to a given set of social circumstances is not readily apparent. In short, Hercules is a rationalized fiction that gives expression to a model that allegedly provides a method that is intended to guide thinking with respect to engaging the 'hard cases' of law.

The style of argument to which Hercules is intended to give expression is complex, involving a variety of considerations. It involves principles of thinking concerning the application of legal rules (both primary and secondary) to social situations.

According to Dworkin, if a judge – say, Hercules – accepts the settled practices of the legal system within which he operates, then, such an individual must also accept some theory of political understanding that is capable of justifying those practices. Without some sort of underlying theory that is capable of justifying legal practice, then a judge could not possibly make sense either of current legal practice or how to legally proceed into the future in the matter of cases that constitute challenges for those sorts of established practices (i.e., hard cases).

The question that Hercules never seems to ask himself is: Why should one accept any legal practice as being settled? The fact that a group of people – judges for instance – consider a legal issue to be settled does not necessarily mean anything more than that a convention of some kind has arisen among a certain group of people in relation to a given issue of law.

Conventions are not self-justifying … although they might appear to be self-evident to those who accept those conventions. Consequently, given that the idea of being able to justify legal decisions in the matter of 'hard cases' is important to Dworkin, one wonders why the idea of being able to justify the underlying, 'settled' legal practices with which decisions concerning 'hard cases' are to fit does not seem to be equally – if not more -- important to Dworkin.

If there are problems inherent in settled legal practices, these sorts of difficulties cannot help but spill over into, and affect whatever decisions are made with respect to 'hard cases'. To be concerned with

the issue of justification in relation to arguments involving 'hard cases without simultaneously being concerned with the issue of justification with respect to the framework into which decisions concerning hard cases are to fit seems rather inconsistent.

Who gets to determine if a legal practice is settled and with what justification? For example, who gets to determine who should adjudicate legal issues and in accordance with what methods?

If one responds to the foregoing question by claiming that a constitution settles those matters, this sort of a response does not necessarily resolve the issue. One must be able to justify – beyond a reasonable doubt -- the process through which such a constitution came into being if that document is not to be considered as an arbitrary set of arrangements instituted through the way of power rather than the way of sovereignty.

One also might respond to the foregoing question by arguing that: if 'judges' do not adjudicate legal issues, then who will? However, this sort of response will not necessarily solve the underlying issue either.

Who is to be identified – if anybody -- as the individuals to whom the responsibility for adjudicating legal cases is to be given stands in need of a kind of justification that transcends what is intended as a self-referential, rhetorical question. Possibly, the best individuals for adjudicating legal cases are not necessarily individual judges but a group of individuals in the form of grand juries or regular juries

In the legal system, one often hears that juries are the determiner of facts and judges are the determiners of the law. Nonetheless, one wonders about the nature of the argument that would be able to demonstrate, beyond a reasonable doubt, how juries have nothing of value to offer concerning the nature of law.

If self-governance is about individuals regulating themselves, then the role of judges in such a system of self-governance is not without elements of perplexing controversy. If judges are the ones who make decisions concerning the nature of self-governance, then to what extent can one say that individuals who aren't judges are, nonetheless, actually involved in an exercise of self-governance?

'Hercules' is a judge who accepts certain aspects of legal practice as settled – such as who or what has the authority and power to enable

judges to adjudicate legal matters. As a result, Hercules is already biased concerning various aspects of the structural character of the system out of which he operates … for instance, those features that empower judges to do what they do.

According to Dworkin, Hercules possesses a political theory that is capable of justifying those settled practices. However, what is the character of the justification for those practices – that is, why should anyone accept such a form of justification?

Hercules might have a political theory that justifies, in his own mind and in the minds of other judges, why certain legal practices are settled. This is not enough.

He must be able to justify to the generality of citizens why those practices should be considered settled and why judges should be permitted to adjudicate in hard cases that fall into the interstitial spaces in and around those settled practices.

For example, let us suppose that Hercules holds some theory of democracy that allegedly justifies both settled practices as well as the practice of judges making decisions in 'hard cases.' What is the structural character of that theory of democracy, and how does it justify what it claims to justify?

The foregoing theory might be coherent in terms of its own logical structure, and it might also be consistent in the sense that legal decisions across cases and across time give expression to the same set of legal connections (e.g., precedents) and modes of reasoning. Nevertheless, neither coherence not consistency are sufficient to demonstrate that the sort of theory of democracy being alluded to is necessarily capable of justifying itself to those who do not operate from within that sort of framework.

Something is justified when it can be shown to give expression to a form of argument that has persuasive properties beyond a single, self-referential context. The idea of inter-subjective agreement suggests that a variety of people from different contexts are able to come together in agreement on the value of a given argument and, to this extent, it constitutes a stronger – more justifiable -- form of argument than an argument that is not considered to be very persuasive or

convincing beyond the group of people who are advocating that kind of theory or idea.

Hercules might hold a theory of political understanding that is interesting, coherent, consistent and capable of handling 'hard cases' in what is considered -- by 'some' of those who operate from within the framework of that understanding -- to be heuristically valuable in some sense. However, I would be more impressed if a variety of other individuals from contexts that are independent of Hercules were able to demonstrate, beyond a reasonable doubt, that his ideas were likely true in a multiplicity of separate contexts.

To accept various sorts of problematic (in the sense of not having been justified beyond a reasonable doubt) primary and secondary rules or legal practices as being settled and, then, seek, to judicially administer those laws fairly across a given population through the exercise of discretion in relation to 'hard cases' seems to be a project steeped in folly. However fairly those laws might be judicially administered, this sort of process seems to miss the obvious – perhaps those laws ought not to be administered at all … fairly or otherwise.

To poison everybody in a group is, in a sense, to have exercised fairness. Nonetheless, the quality of fairness cannot adequately address the issue of whether the people in that group should have been poisoned in the first place.

Imposing policies on a group of people without being able to demonstrate the likelihood that those policies are true beyond a reasonable doubt is like poisoning that group without first demonstrating that the act of poisoning those individuals is justifiable. The issue is not how fairly one has been in carrying out the policy in question, but, rather, the crux of the matter concerns the justifiability of the policy that is being carried out.

Similarly, the issue is not how smart Hercules is and whether, or not, he can come up with all manner of arguments concerning: coherency, consistency, fairness, political theories, the best moral sense, hard cases, or ideas about contracts and torts in the context of a given system of primary and secondary rules. The issue is whether, or not, that kind of a system of primary and secondary rules should be impacting the lives of people at all.

To make the best moral sense of a given system of primary and secondary rules – assuming one could do this -- says absolutely nothing about the justifiability of that system. To come up with a method for deciding hard cases in that sort of a system does not serve to justify such a framework but, instead, only gives expression to some of the logical possibilities inherent in any dynamic involving the interaction of those primary and secondary rules.

Dworkin employs the idea of a chain novel to help explicate his notion of how the discretionary/interpretive acts of judges 'fit' in with a given substantive framework of settled law. More specifically, Dworkin asks readers to imagine a literary project in which a number of authors collaborate to complete a novel by being assigned the task of writing individual chapters.

According to Dworkin, as the first chapter of the proposed novel is written, subsequent chapters will be constrained in certain ways by the elements which structure that opening chapter. For instance, considerations of: plot, language, geographical setting, temporal period, character names, and so on that are established in the first chapter must be carried over into subsequent chapters if one is to be able to make sense of the novel.

As is supposedly the case with respect to the foregoing, literary example, so too – or so the argument goes -- one observes the same sort of process in legal systems. Subsequent judges are constrained in certain ways by the structural elements and themes that have been established in previous chapters of the law by earlier judges.

However, there are some questions that might be raised with respect to Dworkin's literary analogy … questions that have implications for the alleged analogical relationship between the writing of a novel and the exercise of judicial discretion. For example, whose decision was it for the idea of writing a novel to become the focus of such a project?

Why wasn't a decision not made to write an epic poem of some kind rather than a novel? Or why not choose a musical or artistic form of collaboration rather than a literary one?

Furthermore, who decided, and with what justification, to select certain authors for the project rather than others? In addition, what justified one writer going first and setting the structural character of the novel for everyone else?

What if those writing later chapters were not happy with what the first writer had done? Why should they continue on with that kind of a project and what would prevent them from treating the opening chapter as nothing more than a preface, introduction, or merely a mysterious beginning point for a radically different set of events in subsequent chapters?

Is the novel meant to just give expression to a straightforward narrative of some sort, or could it be a mystery in which the reader is challenged to make sense of how – or if -- the chapters are related to one another? What if the initial writer was a realist of some sort, but the later writers were fantasists … or vice versa?

What if subsequent writers were much more interested in giving expression to dynamic, funny, interesting, poignant dialogue than they were in continuing on with some given plot and the like? What if subsequent writers were of the opinion that life had no plot, and, therefore, neither should the novel?

What obligation, if any, do subsequent writers have to: earlier writers, or to possible readers of the novel, or to the novel's publisher, or to the individual or individuals who dreamed up the project in the first place? What justifies that kind of an obligation?

What if someone came along and asked why so much time and resources were being spent on that sort of literary project? Conceivably, such time and resources might be of more value if those who were in need of help were to become the beneficiaries of the time and resources that otherwise were going to be devoted to the novel project?

Finally, not much rests on what does, or doesn't, happen with respect to the novel project. Whether the novel is: good or bad, makes sense or doesn't make sense, is consistent or inconsistent, coherent or incoherent is largely irrelevant to the problems of life. However, if someone made a proclamation that people would have to live their lives in accordance with the ideas, rules, maxims, principles, purposes,

theories, and values of the forthcoming novel, then all of the foregoing questions – along with many others -- become very relevant.

Dworkin never really explores the issue of whether, or not, his collaborative novel-writing project can be justified. Similarly, Dworkin never really explores whether, or not, his approach to law involving: primary and secondary rules, settled law, discretionary judgments, principles, making the best moral sense of such a system, as well as various ideas about justice, fairness, and integrity can be justified.

Dworkin believes that subsequent writers in the novel project will interpret what has gone on before them with respect to earlier chapters of the novel. Dworkin maintains that those interpretations will shape, in part, how any given chapter unfolds.

How does one demonstrate that those sorts of interpretations concerning earlier chapters are justified? What are the criteria for determining this? What are the methods for determining this? What if subsequent writers could care less about what earlier writers were up to or merely paid them lip-service as the subsequent writers went about constructing their own chapters that were intended to serve quite different purposes and intentions?

Furthermore, in many ways, the process of interpretation falls beyond the horizons of any given chapter. Even if a particular chapter of the novel were to lay out rules and principles for how it should be interpreted by writers of subsequent chapters, there is nothing in that sort of chapter that demonstrates why later writers should be obligated to accept those rules and principles of interpretation rather than question them or ignore them, and, therefore, the process of evaluating what has gone on before takes place in a hermeneutical space that is external -- although related -- to the actual novel itself.

The novel project does not justify the aforementioned interpretive process … although the novel might serve as one of the reasons for why that sort of process takes place. In other words, while the novel project might serve to stimulate some sort of interpretive activity, that project has no demonstrated authority for controlling the character of that interpretive activity in any justifiable fashion.

Given the foregoing considerations, one might ask similar questions with respect to the role that interpretation or discretion

plays in the context of how a judge proceeds in relation to some given legal system. What does the interpretive process of one judge have to do with the interpretive process of another judge, and, more importantly, what logically links those interpretations in a way that generates obligations or duties in relation to either other judges or those who are not judges?

If one of the participants in the novel project were to write a chapter and expect that subsequent writers should not only follow her or his lead but, as well, feel obligated to do so, one might wonder about the arrogance and foolishness of that sort of a writer. Why is the issue any different when it comes to the matter of law?

According to Dworkin, the principle that ties together legal judgments and interpretations across circumstances and time is the principle of 'integrity'. Whatever the philosophical and hermeneutical differences of judges might be, they belong to a brotherhood and sisterhood in which they are honor-bound to attempt to make the best moral sense of a given set of primary and secondary rules when considered in the context of social/life problems.

If one applies the idea of 'integrity' to the issue of participating in the aforementioned novel project, then what is one to make of that principle? Presumably, the writers in the project are members of a guild of some sort who supposedly are obligated to try to make the best moral sense of the chapters written previously in the on-going novel project.

Why are the writers duty-bound to act in accordance with the foregoing sort of principle? Who is the duty owed to? – Themselves? -- The other writers? -- The person, or persons, responsible for that project? -- The publisher? – The critics? – The readers? – Academics?

Moreover, one wonders how the writers will address the issue of: What constitutes making the best moral sense of the novel project … 'best' in what sense, and according to what criteria, and in accordance with what justifications? In what sense are they "moral," and according to what criteria, and in accordance with what justifications?

Even if one could answer the foregoing questions intelligibly and coherently, how does the fact that the writers who are participating in the novel project feel bound to one another through the principle of

integrity, obligate, say, the readers of that novel to engage the finished, literary project with the same sort of 'integrity' as the writers did?

Just because a group of writers believe that they have exercised integrity, in some sense, across the various chapters of the project, why should readers feel bound to adhere to that sense of integrity? Possibly, despite the best efforts of the writers to observe the principle of integrity during the process of completing the novel project, their ideas about what constitutes the best moral sense concerning that project is misguided, or erroneous, or flawed in various ways. Maybe the novel that is produced in the foregoing fashion is not very interesting, satisfying, enjoyable, insightful, instructive, or just doesn't have a lot of resonance -- and, therefore, traction -- with the sort of lives that are experienced by many readers.

Similarly, irrespective of how a group of judges might feel about the issue of integrity and how that principle supposedly relates to the exercise of discretion with respect to 'hard cases', what has any of this got to do with those who exist outside the community of integrity through which judges allegedly engage a given legal system of primary and secondary rules? Why should I, or anyone else, feel obligated to concede authority to judgments made in accordance with the principle of integrity as understood by judges? If I -- or others -- do not agree with what those judges consider to be the best moral sense that can be made of a given set of primary and secondary rules in the context of a given hard case, then although those judges might be acting in compliance with the requirements of their sense of integrity – we will assume -- how does any of this obligate me or others to follow along with the perspective of those judges?

One, of course, might respond to the foregoing questions with something along the lines of: Judges are acting in the best interests of people. Nonetheless, one might repost with: While judges might sincerely believe that they are acting in the best interests of people by exercising their understanding of integrity in relation to their discretionary judgments concerning 'hard cases', where is the proof – beyond a reasonable doubt – that such a system of legal hermeneutics actually is in the best interests of myself and others?

Dworkin believes that 'integrity', 'fairness' and 'justice' are all related to one another. If one is committed to any one of the three,

then one must be committed to the other two as well, or one will not be able to make sense of the exercise of discretion/interpretation in 'hard cases' (that is, those cases which fall into the interstitial spaces in and around a given set of settled primary and secondary rules that must be resolved through the exercise of discretion) in a way that provides the best moral fit with such a set of rules.

One of the problems with the foregoing scenario is that all three of the foregoing ideas (integrity, fairness, and justice) are filled with ambiguities and unsettled themes. Consequently, the possible ways in which those ideas might interact with one another are also filled with issues that might only be capable of being resolved in arbitrary – and, therefore, unjustifiable – ways.

Another problem with the foregoing approach to legal theory is that while one might understand what 'taking rights seriously' means to Dworkin within such a context, nonetheless, I don't think that Dworkin takes rights seriously enough. This is because he wants to fit his notion of rights into a framework of integrity, fairness, and justices that cannot justify itself, and, in the process, holds rights hostage to an allegedly settled set of primary and secondary rules that is not actually settled in any fundamental sense.

There is only kind of right that can be demonstrated as being established beyond a reasonable doubt and that is the form of basic sovereignty through which people are entitled to have a fair opportunity – in the expanded sense of fairness that was explored in the opening pages of the current chapter -- to push back the horizons of ignorance. Dworkin's starting point denies this sort of a right because he wants to situate rights within the framework of a system of settled primary and secondary rules that authorize judges to exercise discretion to adjudicate hard cases without questioning whether any part of that system should be considered to be settled in any justifiable sense.

The Philadelphia Constitution did not give rise to the rule of law in any non-arbitrary sense – that is, in a sense which can be shown to be justifiable beyond a reasonable doubt. Moreover, the ratification process did not give rise to the rule of law in any non-arbitrary sense (see: *Beyond Democracy*). As the third chapter of this book indicated, the diverse views of the Founders/Framers did not give rise to the rule

of law in any non-arbitrary sense. In addition, Constitutional federalism did not give rise to the rule of law in any non-arbitrary sense. As the next chapter of this book will demonstrate, the way of power did not give rise to the rule of law in any non-arbitrary sense.

There is no non-arbitrary sense through which to understand the 'rule of law' concept unless that law is rooted in the way of sovereignty … a way that is established in accordance with the law of ignorance. Basic sovereignty is a right that precedes legal systems.

Basic sovereignty is a right that should shape the entire structural character of any legal system. The officers of governance – whether legislators, executives, jurists, or administrators – can only observe the requirements of the principle of integrity in Dworkin's sense when they honor, protect, and enhance the basic sovereignty of every human being for whom they have such responsibility … and this includes future generations as well.

Chapter 8: Natural Law

When I was an undergraduate I explored a number of possibilities while trying to find a major to which I might become committed. I started out with the intention of becoming a religious minister, but after my first year, I began to look in other directions.

Subsequently, I cycled through a number of programs. For a short time I flirted with physical sciences and, then, transitioned into philosophy, before ending up in 'Social Relations' which was an interdisciplinary program that consisted of courses in anthropology, sociology, and psychology … although I was largely interested in the psychological component.

As indicated earlier, prior to the time when I settled on Social Relations, I took a number of courses in philosophy. One of these latter offerings involved an exploration into the idea of justice.

The professor who taught the course was John Rawls. His lecture material consisted of a preliminary draft of what would later become a very influential book entitled: *A Theory of Justice* that was published in 1971 … a few years after I took the course.

Through the mists of time, I seem to recall that the enrollment for the course was much larger than most of the other courses that I took in philosophy. If memory serves me correctly – and it might not -- there could have been as many as 100, or more, students taking the course.

Normally speaking, with such a large number of people enrolled in a course, the chances of the professor teaching the course actually reading one's term paper tends to be fairly slim. That task is frequently handed over to graduate assistants … although, perhaps, Professor Rawls was the sort of teacher who felt he had an educational responsibility to read the term papers of all his students.

In any case, my paper was read and graded by Professor Rawls. At the time – and it became, for better or worse, a life-long inclination of mine -- I wrote a very long paper, and, perhaps, out of a concern about doing injustice to his graduate assistants, Professor Rawls sacrificed himself and engaged my essay.

The paper received a grade of 'B' of some kind. Scattered throughout the paper were brief two or three word comments and a

number of question marks, and on the last page of my essay was a summary statement of evaluation. The primary criticism seemed to be that the paper was too long.

In these final comments Professor Rawls indicated that length, in and of itself, was not necessarily problematic. Nonetheless, the gist of his concerns seemed to be that I had not used the length effectively with respect to the central thesis of my essay.

At the time I had no insight concerning who John Rawls was or who he was about to become. Consequently, it is somewhat strange how I recall that he read my paper and what he thought of it … especially in light of the fact that I have absolutely no recollection concerning the actual contents of that essay … obviously, the term paper consisted of ideas that were eminently forgettable even though Professor Rawls was kind enough to award me a 'B' of some kind for my efforts.

There were a few other themes that lived on in my memory with respect to that course. One of these themes had to do with Professor Rawls' notion of the 'original position'.

The foregoing term gives expression to a hypothetical methodology through which one is to assume that each of us enjoys degrees of freedom and equality that, roughly speaking, are equivalent to one another. Furthermore, Professor Rawls stipulates that although in the 'original position' everyone possesses an awareness of their general interests, along with an understanding of various ideas involving natural and social sciences, nevertheless, the conditions of the hypothetical 'original position' require everyone to be ignorant about one's personal history and abilities/talents.

This latter facet of the 'original position' is referred to as a 'veil of ignorance.' The purpose of that aspect of the hypothetical set-up is an attempt to induce people to reflect on the issue of justice without engaging the problem through an awareness of those sorts of life circumstances or one's personal strengths and weaknesses that might incline one to evaluate the idea of justice through the biased filters of what would be advantageous or disadvantageous to one in the light of one's life circumstances and talents (or lack of them).

A further property of the 'original position' involves the assumption that everyone is committed to a process that is intended to lead to conditions of social and political justice. The question or challenge facing people in the 'original position' is to try to determine which of the possible theories of justice might constitute the most viable or defensible approach to the issue of justice.

According to Professor Rawls, if one starts from the conditions described by the 'original position' – including its 'veil of ignorance' – reason will lead one to the conclusion that two principles of justice should be adopted. The first principle concerns those freedoms and rights that are deemed necessary to have if the people in the 'original position' are to be able to work toward realizing various notions of 'the good' that they might hold. The second principle of justice in Professor's theory entails not only the idea that employment and educational opportunities should be made equally available to all, but, as well, everyone should be given some minimum share in the wealth of society that would enable such people to pursue their individual interests with dignity as free and equal members of their community.

Nearly 600 pages are used by Professor Rawls to delineate the details of the arguments that give expression to the foregoing overview. While, in general, there is a phenomenological orientation within me that resonates with the aforementioned two principles of justice, I am less interested in how Professor Rawls arrived at such conclusions, than I am interested in the structural character of the 'original position' with its 'veil of ignorance' from which he launched his project.

More specifically, Professor Rawls treats the 'original position' as a sort of contrafactual hypothetical construct. In other words, since everyone is, to a degree, supposedly aware of her or his personal history and many of one's talents/abilities, then assuming otherwise runs contrary to the facts of what is known.

However, if one erases such knowledge through the 'veil of ignorance' that lies at the heart of the 'original position', then one is free to critically examine issues of justice without such an understanding biasing one's deliberations … or so, the theory goes. Such an assumption, of course, requires one to remind oneself from time to time that one cannot permit anything that one knows about

one's life and abilities to prejudice one's reflections concerning the issue of justice.

In a sense, Professor Rawls is asking readers of his book to behave as jurors do – hopefully -- when the latter individuals are told by the judge that that such and such a statement must be disregarded by them and cannot play any role in their final decision. Whether, or not, jurors are able to comply with the instructions of the judge under such circumstances is another matter.

Some lawyers will say things during a trial that they know will be objected to by opposing counsel, sustained by the judge, and withdrawn by the lawyers themselves just to be able to place certain possibilities and ideas before the jury. The hope of those who use the foregoing sorts of tactics is that once something is known, it can't be unknown, and, consequently, one might be able to help shape the final verdict through the introduction of those pieces of illicit information.

When the process of voir dire (to speak the truth) is undertaken in the legal system, a judge or prosecutor (depending on the rules in a given location) seeks to determine whether, or not, a juror or witness will, among other things, be able to put aside whatever ideas and attitudes he or she has concerning a given matter to a degree that is sufficient to ensure that information will be processed or reported impartially. Professor Rawls does not take his readers through the process of voir dire, but his expectations of readers is that they would be willing to put aside any knowledge they have concerning their own personal history and circumstances and engage the arguments in *A Theory of Justice* as if such individuals had successfully negotiated an inquiry into their own ideas, feelings, attitudes, or understanding and, as a result, were prepared to listen to the arguments in the aforementioned book in an unbiased fashion.

The notion of the 'original position' with its concomitant aspect of a 'veil of ignorance' is, for Professor Rawls, a hypothetical construct. According to him we do not exist in such a condition, but, he is asking us to reflect on issues of justice as if this were the case.

Perhaps, however, Professor Rawls is incorrect with respect to his understanding of the existential situation in which human beings find themselves. Although it might be true that a knowledge of personal history and abilities could skew how someone might construct a

theory of justice such that the latter theory would reflect -- in an advantageous way – the particulars of a person's life circumstances, nonetheless, the fact of the matter is that while an individual might be able to figure out how a theory of justice could be exploited in an advantageous manner if such a theory were shaped to enhance one's circumstances rather than inhibit them, one still doesn't know in any absolute sense whether one's theory of justice is really to one's advantage even if it permits one to gain from events in ways that other people could not.

For instance, let us suppose that the foregoing individual makes his money through stock transactions. Let us further suppose that the theory of justice proposed by that person is one that permits him or her to benefit from information coming from stock trading 'insiders.'

Finally, let us assume that in times gone by our individual of interest has made millions through such transactions while other people have lost millions. Presumably, the insider information to which our subject has access is better, in some way, than the insider information to which other people have access … and the underlying principle of justice developed by our hypothetical individual indicates that everyone should be able to have access to such information.

At some point in the future, our subject sets in motion a transaction that has a potential for making him or her hundreds of millions of dollars … maybe through some sort of derivatives-based strategy. Unfortunately, events do not unfold in the way in which the individual was led to believe would occur, and she or he loses everything.

Apparently, the insider trading information relied on by the star of this exercise contained some errors. Other people who had better information in this respect acquired the millions that our person of interest believed were going to be his or hers.

In effect, our subject had a faulty system of epistemology concerning how the world works. For whatever reason, in the past that epistemological system had permitted the person in question to accurately predict what would happen in certain cases but not others.

Was the foregoing person conned? Did that individual pick the wrong people to supply the inside trading information? Was the model

used to forecast the future with respect to certain stock transactions flawed in some way? Did unforeseen factors involving politics, weather, or technological breakthroughs adversely affect that person's method for estimating risks associated with any given set of trades?

The questions one asks in this respect can extend beyond the surface of methodological considerations and touch upon more basic issues of epistemology. For example, a person might: Know one's life circumstances, know how to use such circumstances to his or her advantage, develop a theory of justice that will reflect this sort of arrangement, and, yet, one could still ask: Is this really what justice entails – a utilitarian link between means and ends that brings some sort of advantage … financial, material, political, or otherwise?

Knowing one's life circumstances and abilities doesn't necessarily guarantee one will understand what is in one's best interests with respect to the use of such circumstances and abilities. One could generate any number of possible scenarios about how to exploit such known circumstances and abilities, but none of these scenarios necessarily reflects the nature of Being and whether, or not, there is some set of factors woven into the fabric of reality that determines principles of justice quite independently of our constructs and that give expression to the truth of things and, thereby, become the standard against which one's actions and choices are to be evaluated.

The real 'veil of ignorance' that confronts human beings has little to do with understanding one's life history or how such a history might materially work to our advantage or disadvantage. Rather, the essential veil of ignorance concerns the significance of such circumstances vis-à-vis the nature of reality.

We each might know the events of our individual lives. However, do we understand what those events actually mean in the overall scheme of the universe?

Furthermore, Professor Rawls indicates that in the 'original position' we assume ourselves to be free and equal. One might query such an assumption and ask: In what way are we free and equal?

Do we all have an equal capacity for reasoning and insight concerning the process of exploring the possible nature of justice? Even if everyone possessed the same abilities in this respect, are we

necessarily free to choose to follow what is deemed to be a correct theory of justice?

Professor Rawls stipulates that the people in the 'original position' do have a general understanding of the principles of psychology even if those individuals are assumed not to possess specific knowledge about their own life circumstances. If so, then such general principles probably indicate that people are not always free (due to different emotional motivational forces) to do that which they believe to be right or appropriate.

The 'original position' also requires one to assume that everyone is equally committed to pursuing principles of economic, social, and political justice. Again, general principles of psychology indicate that not everyone is motivated to do things in the same way, and, as a result, it is very unlikely that everyone will be equally committed to pursuing such a project … and even if they were equally committed, this level of commitment might not be enough to sustain, or bring to fruition, such a pursuit.

Being committed to social, economic and political justice implies there also will have to be an underlying commitment to determining the truth of things. If people were committed to principles of justice without a concomitant commitment to determining the truth concerning such principles, then the commitment to principles of justice might be relatively pointless … one wants people to be committed to principles of justice that, in some sense, give expression to the nature of reality rather than just being committed to principles of justice in some arbitrary sense.

In addition, Professor Rawls claims that starting from the 'original position', one can reason one's way to the two principles of justice for which he argues in *A Theory of Justice*. Such a claim is contentious in several senses.

For instance, what if reason by itself is not sufficient to determine the nature of justice? Alternatively, what is the nature of the proof that is capable of demonstrating that reason can generate what Professor Rawls claims it can? Finally, how does one know that the character of the argument employed by Professor Rawls is rational?

In other words, what are the criteria for determining when something is, or is not, rational? Moreover, how does one justify the choice and use of those criteria?

There is nothing hypothetical about the veil of ignorance that cloaks our lives. We are theory-rich and knowledge-poor with respect to all manner of things.

We don't necessarily know who we are … although we might believe that we do. We don't necessarily know the significance of our life circumstances … although we might believe that we do. We don't necessarily understand the nature of reason and what makes it possible … although we might believe that we do. We don't necessarily know whether, or not, principles of justice are discoverable through the exercise of reason … although we might believe that we do.

Are the foregoing sorts of beliefs delusional? We're not sure.

The veil of ignorance is a fact of life. There is no need to treat it as a hypothetical construct.

Given the reality of such a veil of ignorance, one might raise the following question. What justifies anyone imposing a system of governance on other human beings?

Some people have proposed – and I have touched on this previously -- that the justification for a system of governance is the manner in which it gives expression to 'the rule of law'. The problem with such a proposal is that not only is one uncertain about the precise nature of such a rule of law, but one is uncertain about how one might go about justifying the claim that is being made concerning such a conception of 'the rule of law'.

For example, what is the rule of law that is inherent in a process of constitution-making (i.e., the Philadelphia Constitution) that was not done in compliance with the framework of legalisms that surrounded such a process (the Articles of Confederation) and that used a ratification process that was not only a violation of the aforementioned framework, but, as well, was conducted in an unethical manner that, among other things, involved less than 10-15% of the population upon whom that constitution was to be imposed? Moreover, what is the rule of law that connects such a set of unauthorized, illegal, unethical, and unrepresentative set of

procedures with the people of more than two hundred years later who had no say in such a process?

Unfortunately, as I believe foregoing chapters of this book tend to indicate, there is no rule of law that defensibly links the America of more than two hundred years ago to the America of today. Such a rule of law is entirely mythological in character.

Consequently, we still are faced with the challenge of trying to come to terms with the question of legitimacy in relation to the matter of governance. Furthermore, this issue of legitimacy might be intimately tied to the veil of ignorance that is our constant companion.

For more than two thousand years, the idea of 'natural law' has, in one form or another, been an important part of the discussion revolving about the hub of governance. Quite frequently, references to 'natural law' involve the belief that the principles inherent in such law are, in some sense, self-evident.

In the second paragraph of the Declaration of Independence, for example, one finds the following words: "We find these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable rights that among these are Life, Liberty, and the Pursuit of Happiness." One can legitimately ask, however, in what sense are such truths self-evident?

Empirically speaking, for instance, it seems rather self-evident that people do not appear to be created equally. People possess different physical gifts, degrees of intelligence, and talents, so in what manner of speaking are 'men' not only equal but equal in some self-evident way?

Does this sort of equality extend to women, Indians, and slaves? Apparently, such possibilities were not as self-evident to the Founders/Framers as were those truths concerning "all men" who were white.

Presumably, the sense in which 'all men' are equal to one another has to do with the inalienable rights that are granted to every 'man'. In other words, every man has been granted the same set of inalienable rights by 'his' Creator.

However, leaving aside, for the moment, the manner in which the idea that all men are equal excludes all those who are not considered to be men – whether women, Indians, Blacks or others of a non-white orientation -- if a person does not believe in a Creator, is the same set of rights still inalienable? Under such circumstances, do such 'truths' remain self-evident?

Some people have argued that 'natural law' has nothing to do with the structural character of the universe. Instead, such individuals believe the foregoing term should be restricted to the ethical and political realm of human behavior.

Viewed through the foregoing sort of a perspective, natural law is not considered to be a proper subject for the natural sciences. Instead, natural law concerns issues that supposedly fall beyond the purview of those sciences.

If natural law does not give expression to phenomena that are capable of being studied through the natural sciences, then how does one establish the "truths" to which such laws supposedly give expression? Doesn't the claim that certain "truths" are self-evident constitute an artful dodge with respect to the problem of having to determine, in a demonstrable fashion, the nature of the relationship among data, methodology, and the 'truth' of a matter? Doesn't the notion of something being 'self-evident' run the risk of giving expression to a process of 'reasoning' that assumes its own conclusions?

Quite irrespective of whether, or not, the natural sciences – as presently constituted -- are up to the task of discovering those laws of nature, if any, that concern matters of ethics and politics, one might suppose that something more than the quality of "self-evidence" will be required for claims concerning the nature of 'natural law' with respect to issues of rights, freedoms, and the issue of governance to be given much credence. Moreover, one also might suppose that what is considered to be 'self-evident' should not depend on whether, or not, someone believes in a Creator who endows 'men' with such inalienable rights.

For something to be considered as self-evident in a more persuasive sense, one might hope that anyone – regardless of beliefs concerning the existence of a Creator – should be willing to

acknowledge the truth of a matter. In fact, if both believers and non-believers (concerning the issue of a Creator), were to agree to the truth of a certain claim, then such agreement might be treated as being somewhat akin to a form of independent confirmation with respect to the aforementioned sort of claim and, thereby, possibly constitute evidence for the 'self-evident' character of the 'truth' underlying such a claim.

If the natural laws that are said to be associated with ethical and political issues are not material or physical in the sense in which natural sciences are interested, then what are they? There have been several responses that have been given in relation to the foregoing question.

One response suggests that such 'natural laws' are, in some sense, historical in character. Thus, if one goes back to the writings of the Stoics (e.g., Zeno) in the third century B.C, one will come across a vocabulary concerning natural law that has been revisited, in various ways, across thousands of years and many different geographical localities.

Considered from the foregoing sort of historical perspective, natural law entails the body of discussions that have taken place over the years in relation to the topic of natural law. As such, natural law is said to give expression to a set of themes and terms that have been critically addressed in what is said to be a fairly consistent fashion by individuals in different periods of history.

Presumably, if a lot of people in different historical periods and locations critically engage the idea of natural law, then, perhaps, there is something underlying such seemingly independent investigations that reflects a commonality concerning the nature of reality that speaks to a certain kind of 'truth' with respect to such ideas. Whatever the merits might be with respect to the foregoing kind of approach, there is a question lurking in the background that needs to be addressed.

More specifically, despite the possible existence of a certain family resemblance that exists among the themes and terms that are entailed by such an historical account of the idea of 'natural law', one can still ask the following question. To what extent does the foregoing sort of account reflect the character of reality?

The historical approach to natural law might be nothing more than a litany of ideas that have been explored by this or that person in this or that period of history for this or that reason. One is still uncertain what any of those ideas have to do with truth … let alone self-evident truths.

The fact that, historically speaking, various people might have addressed the issue of natural law in a similar – possibly even consistent -- manner (although this notion of 'consistency' is often a contentious matter), this might not mean anything more than that a variety of people have pursued the same sort of line of inquiry at different times. Similarity in thought is not necessarily an indication that truth is being reflected in, or through, any commonalities that might tie a set of terms together … even if one were to leave aside the question of whether, or not, such commonalities were actually present.

What people have thought historically – no matter how similar and consistent such thought might be – does not carry any necessary implications for the nature of truth. The foregoing realization has led to a second way of thinking about the idea of 'natural law'.

This second avenue of inquiry is sometimes referred to as a philosophical exploration. The philosophical manner of engaging natural law seeks to discover something universal in the nature of things … some truth that applies to everyone and, therefore, a 'truth' to which everyone is bound.

Philosophically speaking, something is "natural" to the extent that it accurately reflects some facet of the realm of nature. Moreover, something is a function of law to the extent that it gives expression to a process through which a given phenomenon in nature manifests itself across a variety of circumstances in a, more or less, regular, consistent fashion.

Whether, or not, the philosophical approach to natural law is anything more than a snipe hunt -- in which one becomes caught up in chasing after an imaginary creature of some kind -- is unknown. Consequently, one might be no better off pursing a philosophical approach to natural law than one would be if one were to pursue an historical approach to the same concept.

Irrespective of the path one chooses in order to try to explore the topic of natural law, the stakes are very high. For instance, who, if anyone, possesses inalienable rights … the sort of rights that, presumably, cannot be trumped by any set of circumstances?

If such rights exist, do they belong to individuals or to the collective? Alternatively, if such rights exist, could they belong to both individuals and the collective, and if so, on the basis of what principles should one seek to balance such claims on rights?

Are collective rights and individual rights necessarily in conflict with one another? If not, then how can they be reconciled?

If a natural law exists concerning the rights of human beings, to what extent do such laws govern both the relation of the individual and the State, as well as the relationship among States? If natural law is an expression of the nature of the universe in some sense, then one might suppose that arbitrary arrangements of governance – that is, arrangements that do not reflect the principles of natural law inherent in the universe -- are likely to generate problems of one kind or another, and, if so, could one use natural law as a tool for explicating how such difficulties arise?

Natural law – to whatever extent it exists – must adequately address all of the foregoing issues. If natural law exists as a part of the reality of the universe, then its truths are only self-evident to the extent that one correctly grasps the character of those truths … and, as such, this might take the issue of natural law beyond either historical or philosophical considerations and push that concept into the realm of epistemology.

What, if anything, can be known about the nature of natural law? What are the limits, if any, that exist with respect to such a notion, and if such limits exist concerning our capacity to know or understand the way in which the natural law of ethics and politics operates in the universe, what implications do these sorts of limits have for the issue of rights and governance?

According to Cicero (a Roman political theorist and philosopher who lived between 106 B.C. and 43 B.C.), natural law gives expression to the manner in which reason, when correctly exercised, accurately reflects the character of Nature. Furthermore, when reason enjoys the

foregoing sort of relationship with Nature, then reason has grasped something that is eternal, unchanging, and universal.

Obviously, if one's reasoning has correctly grasped the character of nature concerning ethical and political themes, then one has no justifiable reason for altering anything concerning such an understanding of natural law. Moreover, if one assumes that such an understanding is manifested through the laws of the State, then any attempt to overthrow or reject such natural law would be foolish, if not treasonous, in nature.

On the other hand, if one's reasoning has not correctly grasped the character of natural law with respect to issues of ethics and politics, then there might be many perspectives that are capable of lending support to one's desire to change such arrangements … although the matter of justifying the system to which one wishes to switch is a separate issue. Furthermore, if the given laws of a State/Nation do not reflect the actual character of the natural law of ethics and politics that govern the universe, then it would be prudent to reject such an arbitrary system of laws.

The problem, of course, is that quite frequently we do not know what the status of things is, ethically and politically, relative to the actual nature of the universe. Those who occupy positions of power tend to argue that the status quo reflects the truth of things concerning the natural laws of the universe and, therefore, ought not to be changed or abolished, while those who are out of power tend to argue in a contrary fashion.

Separating the issues of power – with all of its advantages – from the issues that surround coming to understand the possible character of the natural law of the universe can be a tricky matter. Many people confuse, if not conflate, the former with the latter, and, presumably, this is the sort of thing Professor Rawls was attempting to induce people to put aside via his hypothetical construct known as 'the original position'.

Much rests on how the foregoing matters are decided. One's understanding of notions such as: 'duty', 'obligation', 'legitimate authority', 'freedoms', and 'rights' are all informed – for better or worse – by the choices that are made concerning the manner in which the aforementioned notions fit into the idea of natural law.

An antonym for ‘natural law’ is ‘conventional law.’ Conventional law consists of a set of legal arrangements (conventions) that are arbitrary in the sense that those arrangements are not a reflection of, or called for, by the natural order of things but are, instead, a way of organizing political, legal, and/or ethical issues to accommodate a given interpretation of social processes.

Even if considered to be arbitrary in the foregoing sense, such a set of legal conventions might still be able to serve various practical functions within a society or community. On the other hand, the presence of the quality of arbitrariness in a conventional system means that other sets of legal arrangements might be able to address various problems and needs in an equally effective, if not better, fashion … although how one defines what it means to be “equally effective” or “better” tends to be contentious .

Evaluating, in some sort of comparative manner, two, or more, conventional systems becomes a matter of the kind of system of critical methodology one uses to decide such matters. This, in turn, leads to the problem of having to justify the use of such a system of evaluation rather than some other methodological system with respect to the judgments one makes about political and ethical issues, and unless one can viably root one’s choice of systems in something beyond conventions, then these sorts of evaluative methodology are arbitrary as well.

For example, consider the principle: ‘majority rules’. Is such a principle a reflection of the natural order of things or is it a convention, and, therefore, arbitrary.

There is nothing to which one can point in the natural order of things that convincingly indicates that the idea of ‘majority rules’ should govern political and ethical considerations. As such, ‘majority rules’ is an arbitrary idea.

Historically, there might have been instances in which such a principle was adopted and had practical or utilitarian value. However, the character of this kind of value can always be questioned in relation to its arbitrary nature.

In other words, if one supposes that a given convention is valuable because of its practical and/or utilitarian consequences, one could ask:

Practical for whom and utilitarian with respect to which purposes? In addition, one could ask: Does one mean utilitarian in a quantitative and/or a qualitative sense and, in either case, what justifies choosing such an approach with respect to evaluating issues of politics and ethics?

Even if one could demonstrate quantitatively that a majority of the people would benefit from a certain policy, one could not only question the criteria being used to determine the nature of what constitutes a 'benefit', but, as well, one could raise questions about whether, or not, the character of the qualitative harm caused to the minority – who, for example, might be needed to subsidize such a benefit for the majority -- could be justified. How does one evaluate quantitative versus qualitative issues of benefit and harm, and according to whose conception of benefit and harm, and how does one justify such a conception?

Why should the wishes, interests, and needs of a majority take precedence over the wishes, interests, and needs of minorities? What requires one to accept such a conclusion?

What if it turns out that the majority is wrong about what it considers to be in its interests? What if it turns out than a given minority is correct about what it considers to be in its interests? Should the principle that "majority rules" still prevail under such circumstances, and, if so, how does one justify this sort of insistence?

There is no body of evidence to which one can point indicating that one is justified in claiming that the majority is always right. In fact, scientifically speaking, one quite easily can demonstrate that with respect to almost all major breakthroughs in science, the understanding of the majority has tended to be faulty… in part or in its entirety.

Even if one were to accept the notion that "majority rules", what does one mean by the idea of "majority"? Does one mean 50.000001 % of the people? Does one mean 50.000001 of the adults over a certain age? … or, 50.000001 of the adult males over the age of 18? … or, 50.000001% of the adult, white males over the age of 18? … or, 50.000001% of the adult white males over the age of 18 who own property of a certain value? Furthermore, how does one justify any of the foregoing qualifiers?

Alternatively, does one mean by the idea of 'majority rules' that two-thirds of a given group should decide an issue or that three-fourths of a given group should decide a matter? What justifies using one standard of 'majority' rather than another?

What justified the Founders/Framers of the Constitution to fix one set of standards for the number of states that are considered necessary for the passing of amendments (three-fourths) but fix another, lesser standard (69%) for the number of states that are necessary to ratify the Philadelphia Constitution?

Moreover, why didn't the Founders/Framers specify that the ratification vote in each state must carry by a majority vote of three-fourths or 69% or two–thirds of the delegates? Why did they permit the standard for ratification votes to be so minimal a form of a majority?

Why weren't the people permitted to decide their own standard of what constitutes a majority? Why weren't the people permitted to decide whether, or not, the minority should be bound by what a majority decides?

Even if one were to accept the idea – and the evidence indicates otherwise -- that all of the eligible voters in post-Philadelphia Convention America had agreed independently to make a simple majority the voting standard in the state ratification conventions rather than have such a standard imposed on them with a 'take-it-or-leave-it' choice, one still could ask, with considerable justification, the following question: Why should anyone born several hundred years later (or even 50 years later) be bound by an agreement concerning such standards in relation to the ratification conventions and the Philadelphia Constitution?

People might be able offer all kinds of rationalizations for why things were done in one way rather than another. However, rationalizations do not necessarily constitute a justification for having done things in a given manner?

Similarly, the principle: "Might makes right" is as arbitrary as is the idea of "majority rules". There is no connection between power and that which is right (whatever this might turn out to be) that can be established that is not arbitrary – that is, which would not have

difficulty being justified, in any broadly convincing fashion, to be a necessary link between power and that which is 'right' ... assuming, of course, we know what the latter term means.

The fact that a majority of people or some minority have the power to coerce, force, exploit, or control some other group of people – whether a minority or majority – means nothing more, in and of itself, than that someone has acquired (through means that might not be capable of being justified in a non-arbitrary way) the requisite array of resources to impose its will on others. In short, having the foregoing sort of power says absolutely nothing about whether, or not, such power or its application can be justified in non-arbitrary terms.

To argue: If either "majority rules" and/or "might makes right" were not the ruling principle in society, then there are many things that could not be done or accomplished by society, is a conventional – and, therefore, arbitrary -- position. One must not only be able to justify the purposes or activities that are to be pursued through such principles, but, as well, one must be able to demonstrate that those means are the only justifiable way of doing the activities and purposes that are to be pursued.

Otherwise everything about such an argument is entirely arbitrary … depending on rationalizations rather than demonstrable justifications. Unfortunately, many people treat the shallowness of rationalizations as if this were equivalent to the much more rigorously demanding conditions necessary to establish justification.

Moreover, there are problems surrounding the idea of what constitutes a "demonstrable justification" … Demonstrable justification to whom and on the basis of what criteria? If a minority of people (for instance, a group of: scientists, religious scholars, jurists, or political representatives) decide that some given argument constitutes a 'demonstrable justification', why should what those sorts of people say be considered a definitive criterion for the 'truth' of something, and why should other people be considered to be under some sort of obligation to cede their authority to that sort of group of individuals?

To say that such and such is the way things are done in a given society, or that such and such is the way our forerunners did things, or that such and such is the way a number of societies/communities – perhaps a majority of them --do things, does not alter the manner in

which all of the foregoing possibilities allude to a conventional approach to political and ethical considerations. As such, all of the previous forms of arguments are arbitrary as they stand and, consequently, all of those arguments are in need of being justified in some non-circular way … that is, one cannot cite a way of doing something as its own justification. One needs some method that is independent of such a way in order to be able to have an argument that might be a plausible candidate for determining the 'truth' or 'rightness' of some given convention.

Moreover, even if one were to suppose that some form of demonstrable justification were forthcoming with respect to a certain practice or principle being considered to be 'true' or 'right' in some sense, does it necessarily follow that everyone is 'obligated' to observe the requirements of such a 'truth' or expression of 'the right'? Or, if obligated, that people should be forced to comply with the requirements of such a 'truth' or manifestation of 'the right'?

How many degrees of freedom, if any, should be given to people to depart from what seems to be 'true' or 'right'? Will society face more problems trying to enforce a given 'truth' or expression of 'the right' than if society were to establish degrees of freedom for various, limited departures from 'the true' and 'the right'?

How does one measure the liabilities of force/compulsion concerning compliance with the 'true' and 'the right' against the liabilities entailed by extending degrees of freedom to such compliance? How does one measure the harm that might accrue to an individual for non-compliance with 'the true' or 'the right' against the harm that might accrue to an individual through being forced to comply with that which – we are assuming – is true or right?

Who gets to say what criteria of measurement are to be used in any of the foregoing? What justifies the use of those criteria?

There are many kinds of natural norms that are given expression through human existence. An array of criteria – ranging from: height, to: weight, race, ethnicity, religion, hair color, yearly earnings, illness, marriage, divorce, and suicide – can be used for classifying people.

However, the existence of those norms do not, in and of themselves, demonstrate whether, or not, any of the foregoing

normative values should be used to construct political and ethical judgments. Of course, there have been those – for example, Hitler and the eugenics movement – which have tried to argue that the presence or absence of one, or more, of the foregoing criteria should shape the character of our political and ethical decisions.

Once one accepts – for good or bad reasons – the presuppositions of a political and ethical perspective, then the ideas that seem to be entailed by those presuppositions might make sense, but understanding how a political or ethical system works -- given the presuppositions of that system -- does not mean that those 'givens' have been justified. Something can be meaningful without necessarily being true or right, but, unfortunately, people – without justification -- often confuse and conflate whatever seems to be meaningful in some sense with that which is true or right or suppose that because something is meaningful, then it also must be true and right.

Delusions are meaningful. However, they are not reflections of what is true or right independent of their own frame of reference.

One might wish to argue that if some perspective could be shown to give expression to natural law – i.e., it constitutes the natural way of things with respect to political and/or ethical considerations – then such natural law is superior to any conventional system one might invent since the former is non-arbitrary, whereas the latter is arbitrary. The problem, however, is that we often have difficulty distinguishing between what is natural from that which is conventional … frequently assuming that because a given convention has become the 'norm', then this means that what is just a set of arbitrary conventions actually reflects the natural order of the universe.

The way one would like the universe to be is not necessarily the way the universe actually is. Conventions tend to be a convenience for those who are engaging the universe to accommodate personal preferences quite apart from what the truth of things might be.

If one cannot establish the character of natural law in any demonstrably justifiable manner, and if one is only left with conventional systems that are, by their nature, arbitrary, then one is faced with the problem of having to decide between arbitrary systems that are inherently resistant to being shown to be more true or more

right than some other arbitrary system. How does one go about determining that one conventional system is, in some manner, less arbitrary than some other system, and does the quality of being less arbitrary than other systems thereby necessarily transform such a system into an obligatory framework of some kind?

A Christian writer of the seventh century – St. Isidore of Seville – maintained that laws are capable of being divided into two classes … those that are man-made and those that are Divine. According to St. Isidore, the laws of God reflect the natural order of things, whereas the laws of man, based as they are on custom or conventions, vary from one nation to another.

A careful observer of history might notice that there is considerable variability amongst the ways in which the 'natural law' of God is given expression in different historical periods and geographical places. Indeed, one might easily suppose that there is as much variability with respect to the character of such natural or divine law as there is amongst the customs and conventions of different societies … in fact, the variability within one and the 'same' religion can sometimes be as great as the variability between different religions.

In addition, one might question whether, or not, what some people consider the natural law of God is nothing more than the custom, habit, or convention of those people. Making a classification or distinction does not necessarily mean that one correctly understands the nature of the classification or distinction one has made.

On the other hand, some people suppose that the foregoing variability within and between religions serves as a sort of a priori argument in favor of the idea that there is no God. Aside, however, from committing a logical error that assumes that the mistaken understanding of human beings carries any necessary implications for the nature of reality, individuals who argue in the manner outlined in the first sentence of this paragraph also are not in any better position than those who might, or might not, have beliefs concerning the divine nature of natural law.

After, all, there is a tremendous variability in the philosophical and hermeneutical character of non-divine conceptions of the universe. Unfortunately, one has no universally agreed upon means to

demonstrably justify why the adoption of any given custom or convention would be superior to what is done by those who are working out of some other philosophical or religious orientation.

Proponents of both religious and secular approaches to legal, political and ethical problems maintain that human beings have a capacity for reason that permits them to evaluate the value of different arguments with respect to the degree, if any, to which those arguments give expression to what is 'true' or 'right'. However, the proponents of both religious and secular approaches to those issues often make the same mistake and assume that the way they think about something is 'rational' and anything which departs from that manner of 'reasoning' is in error or irrational.

The nature of reason and logic tend to be very difficult to pin down. We all sense the elusive presence of reason and logic permeating the fabric of experience – both individual and collective -- but, quite frequently, we tend to become preoccupied with trying to demonstrate what reason and logic are not (e.g., attempting to point out the flaws in someone's arguments) than what reason and logic are in and of themselves … if this is even possible.

We often do that which we do not understand how it is done (e.g., creativity, invention, insight, awareness, language). Perhaps understanding and reasoning are among the things we do that we do not understand … and might never understand.

Once again, we are confronted by the same sort of problem as noted earlier concerning the 'natural' and the 'conventional'. More specifically, how does one distinguish between, on the one hand, the natural laws, if any, of reason or logic (their 'reality') and, on the other hand, those man-made conventions concerning logic and reason that are little more than customs adopted for this or that purpose and that derive their apparently compelling force from habit rather than anything more essential and universal in character?

We tend to use conventions to distinguish between the real and the customary. However, those methodological conventions are not always reliable indicators of what is true or what is right because those conventions cannot always separate what we bring to a situation and what is brought to that situation by a reality considered

independent of us … or even successfully determine whether, or not, there is any reality independent of the phenomenology of experience.

To say that: Reason is what we use to grasp the nature of reality, might only be an exercise in circular reasoning such that 'reason' is merely looking into the mirror of conventions that have been constructed by imagination for the purpose of generating something that is considered to be meaningful for our viewing pleasure. Reason can be used to try to understand the nature of our own thinking about something (i.e., the manner in which we create meaningfulness), or it can be used to grasp the nature of the reality that makes our experience possible, and we are not always sure which is which in any given instance.

The term: 'self-evident,' might mean nothing more than that which reflects our own way of thinking about things. Alternatively, 'self-evident' might refer to the manner in which reason grasps some dimension of reality and, thereby, gives expression to one facet, or another, of 'the true' or 'the right.'

The Founders/Framers of the Philadelphia Constitution believed that the truths which they considered to be self-evident were reflections of the nature of reality. Yet, given the way in which women, Indians, and Blacks – to name but a few – were excluded from such truths, one suspects that -- at least in part -- the Founders/Framers were more entangled in their own arbitrary conventions than they were in possession of any clear understanding concerning the ethical or political character of reality with respect to human beings.

The British did not agree that such truths were self-evident. Perhaps the reason why they did not share the same understanding concerning the allegedly self-evident character of such "truths" as did many Americans is that the British worked out of a different arrangement of conventions than the Americans did … or, maybe, one side or the other – or neither – was actually understanding the character of reality, while the other side was (or, maybe, both sides were) ensconced in delusional thinking.

The belief of many people concerning the greatness of Aristotelian theories about the relationship between the individual and the State was that they were based entirely on reason. The belief of many people concerning the greatness of the Roman law was that it was

based entirely on reason. The belief of many people with respect to the greatness of the systems of Augustine and Aquinas was the way in which reason played a substantial role in the respective frameworks of the latter two individuals and, thereby, appropriately complemented faith.

In each case natural law refers to the capacity of human beings to use reason to grasp the nature of the relationship between human beings and the universe. Unfortunately, Aristotle, the Romans, as well as Aquinas and Augustine all had somewhat different – although at points overlapping -- approaches to explicating the details that reason generated concerning the nature of the relationship between human beings and the universe as expressed through natural law.

All of the foregoing perspectives were immersed in the conviction that one is given insight into the nature of the universal and eternal truths of reality through the use of reason. All of the foregoing individuals were convinced that, in a sense, their orientations – or portions thereof -- were self-evident in the light of reason, but like light, reason seems to be radiating at different wave lengths in each of the foregoing frameworks and, therefore, is only capable of illuminating what such wave lengths are capable of disclosing according to their nature … perhaps much as is the case when one uses: microwave, infrared, or ultraviolet light to 'see' different dimensions of being.

If there are eternal, universal laws, and if one engages such laws through the proper exercise of reason, then the results of that sort of engagement give expression to an understanding of the way in which natural law is manifested in the universe. However, what is missing from the foregoing sort of a hypothetical (i.e., an 'if-then' form of statement) is a demonstrably justified account of what constitutes such eternal, universal laws as well as what constitutes a "proper" exercise of reason with respect to those laws so that their presence and nature might be understood as giving expression to natural law.

One can speak about the 'light' of reason or the self-evident truths which are illumined through that light all one likes. Nevertheless, until one knows that what is being manifested through reason is true rather than merely being meaningful -- but delusional – in character, one

starts at no justifiable beginning and one works to no justifiable end via a means (a process of reasoning) that has not been justified.

When Archimedes claimed that if someone would give him a place to stand, he would be able to move the Earth, he might have been correct in principle. However, one still is left with the unresolved problem of finding the appropriate place upon which to stand and from which one will leverage movement of the world.

Similarly, one can make all kinds of claims on behalf of the 'light of reason' and how it can leverage this or that truth when used in conjunction with the fulcrum of eternal and universal laws. Yet, one still is left with the problem of having to locate the 'space' through which 'proper reason' (the right sort of lever) can be exercised, just as Archimedes was left with the problem of having to find the appropriate portion of 'space' from which to undertake his attempt to move the Earth.

Through the use of the light of reason, one might be able to differentiate between 'good' and 'evil'. However, one's conception of what is 'good' or 'evil' is likely to be affected by whether, or not, such light is naturally or artificially generated since conventional, or man-made light, might not illumine reality in the same way that natural light does.

One might wish to define "sin" as those acts that interfere with the capacity of the light of reason to grasp the nature of eternal, universal laws. Given such a perspective, sinning is the process through which one cuts oneself off from both the proper function of reason as well as from the universal, eternal laws that reason – when operating properly – is designed to be capable of understanding.

Nevertheless, one still needs to know which acts undermine reason in the foregoing fashion. Moreover, one needs to know what is necessary to counter the alleged toxic effect of such acts.

Theologies of all different kinds purport to provide answers to the foregoing questions. Nonetheless, providing an answer that is meaningful in some sense does not necessarily make such a response an accurate reflection of some aspect of the universe or Being … one still needs a demonstrable justification for why one should accept such

'answers' as being not only plausible possibilities, but also ones that are highly likely to be true.

Notions such as: 'good and evil', 'sin', 'self-evident', and the 'light of reason', are all entangled in conundrums that require us to separate out the wheat from the chaff … or the conventional from the natural -- to whatever extent such separation is possible. This is not to say that there are no realities corresponding to terms such as: 'sin', 'good and evil' or the 'light of reason', but it does indicate that there are many challenges surrounding our attempts to differentiate the true and the false in those matters.

'Justice' has been described as that which is in accord with the exercise of reason. Anything that deviates from such reasoning is said to give expression to injustice in some sense.

The first act of justice is to affirm the truth of a matter. One does justice to the nature of reality and to the exercise of reason when the latter reflects the former.

If reason is that aspect of a human being which is capable of grasping the character of natural, eternal, universal laws, then one understands how someone operating out of such a framework conceives of justice as giving expression to that aspect of natural law that is grasped by reason. However, if this is not to become an exercise in tautological or circular reasoning, one has to be able to demonstrably justify claims concerning the existence of such laws as well as reason's role in accurately capturing the structural character of those laws.

If a State/Nation rules in accordance with the requirements of justice and, thereby, correctly uses reason to engage the natural, eternal, universal laws of the universe/Being, then failure to comply with the requirements of such governance would not be justifiable? Whether, or not, such an 'if-then' claim is demonstrably defensible in some non-arbitrary way is another matter.

Moreover, if the relationship among: justice, reason, State/Nation, and natural law cannot be demonstrably justified in some non-arbitrary fashion, then one can ask: What is the basis for claiming that citizens are obligated to comply with the manner in which a given State/Nation governs the people who live in a certain geographical

location? Unless one can demonstrate that the way in which a State/Nation governs people reflects the natural laws of the universe, then such governance is a function of man-made conventions that are entirely arbitrary, and, consequently, any concomitant notions of duty and obligation are equally arbitrary and incapable of being justified independently of the system of conventions that is governing things with respect to such a State/Nation.

Is the relationship of an individual with other individuals a matter of a social contract? If so, then one not only needs to know the nature of how the three basic components of a contract – namely, offer, acceptance, and consideration -- come together under such circumstances, but, as well, one needs to know what justifies any given arrangement involving: offer, acceptance and consideration since arrangements that are shaped by: coercion, duress, fraud, undue influence, exploitation, and disinformation, or that prevent a person from taking an active role in the forging of such a contract tends to invalidate contracts and, thereby, suggests that arrangements involving these sorts of tactics cannot be justified.

If one were to suppose that the origins of political association are rooted in some notion of social contract, what is one to make of those people who do not want to participate in such a contract? Can one really suppose that because some people wish to be governed by a particular form of social contract, then everyone should be bound by the same contract? How does one justify the introduction of 'ought' into such circumstances in a non-arbitrary manner?

Is there some 'standard' social contract to which everyone must commit herself or himself? How does one justify either the meaning of 'standard' or the force of 'ought' that is present in such an arrangement?

The 'rights' that are entailed by such contracts are necessarily reciprocal in nature since otherwise those arrangements would be seen as being inherently unfair. On the other hand, the fact that everyone is entitled to the same set of rights does not, in and of itself, necessarily mean that such rights will be in the best interests of the people involved.

The relationship between rights and welfare is not necessarily straightforward and automatic. Some rights might be more conducive

to realizing what is in the interests of one's welfare, whereas other rights might not be so conducive.

For example, the right to consume any and all drugs is not necessarily in one's best interests simply because, empirically speaking, there are many drugs that have been demonstrated to have problematic dimensions to them … including qualities of being lethal or injurious to health. On the other hand, having the right to explore the pros and cons of whether, or not, in any given instance, the consumption of drugs is in one's best interests might be a reciprocal right that is worth having.

Some people (e.g., Hobbes) wish to make a distinction between natural law and natural rights. According to such individuals, natural law concerns that which binds one to a certain course of action, whereas natural rights involve the degrees of freedom that one has to either do or not to do some given activity.

However, what such people seem to overlook is that any claims concerning natural rights either do, or do not, reflect the nature of reality. If such claims do reflect some facet of reality, then the structural character of the rights at issue is a function of the way in which natural law operates in the universe … that is, one has the right to do, or not to do, certain things only to the extent that the natural laws of the universe permit or delineate such a right.

If, on the other hand, claims concerning the existence of natural rights do not reflect specific principles inherent in the universe that give expression to such entitlements, then claims concerning 'natural rights' are a matter of arbitrary conventions. Considered from this perspective, those sorts of rights are not 'natural' and might not even necessarily be the sorts of activities to which one is entitled … and, therefore, they are not necessarily something to which the label "rights" applies.

Claiming that one is entitled to perform, or not perform, a given sort of activity must rest on something more than one's claim to entitlement. Entitlement must be rooted in an argument that is capable of demonstrably justifying such claims in a non-arbitrary fashion.

If rights arise out of the nature of a given form of social contract, then those rights are dependent on the structural character of that contract for the source of authority that lends a sense of entitlement to such rights. If rights arise out of the nature of the universe, then those rights are dependent on the structural character of the universe to justify their claims concerning entitlement.

Rights do not exist independently of a context – whether natural or man-made. Moreover, irrespective of whether that context is rooted in the way of universal laws or rooted in the way of a man-made social contract/legal system, one cannot separate the idea of rights from a surrounding framework of law, natural or otherwise, which spells out the character of the entitlement that is said to be involved with the exercise of those rights.

Rights constitute a certain kind of political and ethical manifestation that gives expression to the dynamics of law-like principles. This is true whether those dynamics are man-made or reflect the nature of the universe in some inherent sense.

Nowadays, the term "natural rights" tends to be much more in vogue than the idea of "natural law". Nevertheless, one cannot focus on the issue of 'natural rights' unless one understands that 'law', in some sense, forms both the environment as well as the root system through which the general meaning and specific details of that idea are nourished and shaped.

What is true with respect to 'natural rights' is also true in relation to the notion of: 'civil rights'. However, whereas use of the qualifier 'natural' is intended to allude to the idea that such rights are somehow inherent in the nature of existence (self-evidently or otherwise), the qualifier 'civil' is intended to allude to a context of conventions that authorize the associated rights.

Nonetheless, in both cases (natural and civil) the source of authority for such rights comes from the surrounding system of either natural or man-made laws. Civil rights are supposed to reflect the structural character of the underlying system of conventional laws just as natural rights are supposed to reflect the structural character of the underlying nature of the universe

In the Declaration of Independence, the relationship between rights and power is different than is the nature of that relationship in the Philadelphia Constitution. In the former document, governments exist purely for the sake of securing rights for the people, whereas in the Philadelphia Constitution, powers are not vested in government for the purpose of securing the rights of citizens.

The Bill of Rights outlines what governments supposedly cannot do. The Constitution, on the other hand, is about the procedural uses of power that can be used for any purposes whatsoever as long as such uses can be reconciled – broadly speaking and in an almost completely amorphous sense -- with the purposes set forth in the Preamble to the Constitution, and as long as such powers do not impinge on the rights of people.

The Declaration of Independence was about empowering the people through the presence of rights. The Philadelphia Constitution was about empowering government quite independently of rights.

In fact, the nature of the Philadelphia Constitution was geared to prevent rights from interfering with the so-called 'explicit' powers of federalized governance. Moreover, according to the Philadelphia Constitution, whatever rights existed would have to be filtered through the process of governance … people did not have rights independent of that process.

The power to govern might be derived from the people. However, once such power was derived, the rights of people became secondary to the exercise of power. National interests (that is, the process of exercising power through federal offices) often tended to trump claims concerning individual rights.

Although Madison was the person who initiated a congressional discussion about the issue of amendments – some of which had to do with the rights of citizens – nevertheless, he previously had been resistant to the idea of any kind of amendments. If one leaves aside Madison's pragmatic beliefs that introducing amendments into the constitutional conversation was inherently messy, problematic and would lead to critical delays in the establishment of a national government, Madison had been of the opinion that amendments were unnecessary for several reasons -- and some of the following

considerations have been touched upon earlier but are being reintroduced here for purposes of clarity, context, and emphasis.

First, Madison insisted that the powers of government that were outlined in the Philadelphia Constitution were explicit and, therefore, strictly limited. Consequently, he believed that the likelihood of such powers encroaching on the 'natural' rights of people was very unlikely.

Secondly, because the Philadelphia Constitution guaranteed each state a republican form of government, Madison believed that those in government would never transgress beyond the limits of the explicit powers that had been granted through the Constitution. For Madison, the philosophy of republicanism served as an ethical restraint on the way the government interacted with the people and, as a result, would be the means through which the natural rights of the people were protected.

Madison was quite wrong in a number of ways with respect to his understanding of how the theory of governance would be translated into actual practice. For example, almost from the very beginning, the federal government began to push the envelope in relation to the meaning of "explicit" or enumerated powers via the notion of the implicit dimensions that were said to be inherent in the allegedly limited nature of such enumerated powers … and the "necessary and proper" clause frequently played a crucial role in this respect. In addition, almost from the very beginning, the administrators of the federal government failed to live in accordance with the requirements of the guarantee of republican governance.

In any event, 'rights', 'justice', 'governance', 'obligation', 'duty', 'social contract', and 'reason' form a cluster of related ideas. One can wire that cluster together through conventional – and, therefore, arbitrary … although meaningful – means, or one can try to come to understand how (of if) such phenomena are wired together by reality.

In general, the notion of 'sovereignty' alludes to the capacity of an individual, State/Nation, and/or ruler to determine one's own fate within the limits permitted by the natural and/or conventional framework that serves as the source of such sovereignty. The nature of sovereignty tends to be a child of the source that engenders it.

For instance, if one considers sovereignty to be an act of will, then sovereignty becomes a matter of one's ability to translate personal interests, purposes, and inclinations into some sort of a realized status. If, on the other hand, one considers sovereignty to be a function of intellect, then sovereignty becomes a matter of one's ability to think one's own thoughts without interference from others … although such a notion of sovereignty does not necessarily entail a right to act on such thoughts.

Alternatively, if one considers sovereignty to be about one's essential potential, then sovereignty becomes a matter of having control over how – and to what extent – such a potential unfolds over time. Finally, if one considers sovereignty to be a matter of weaving together components of will, intellect, and essential potential, then one will be concerned with being able to weave the complete tapestry of one's life via choice.

Questions arise, however, when one begins to reflect on the possible limits of sovereignty in those instances when one's mode of determining one's own fate interferes with the ability of other individuals, States/Nations, and rulers to give expression to their respective inclinations for determining their fates. Moreover, questions begin to arise when one reflects on whether, or not, some given expression of sovereignty (individual, State/Nation, or ruler) should be given priority over the sovereignty of others and under what conditions, if any, and to what extent.

Once again, some sort of non-arbitrary form of justification must be given in relation to one's claims. This is so not only in the matter of demonstrating why one sense of sovereignty might be preferable to another, but, as well, one must show how the attempt of one individual, State/Nation, and/or ruler to give expression to sovereignty fits in with the attempt of others to give expression to their own sense of sovereignty.

Is sovereignty a right – natural or civil? Is sovereignty a matter of a social contract? Is the issue of sovereignty related to our essential nature, if any, and, if so, what is the nature of that relationship? Does the search for sovereignty necessarily entail conflict with others, and, if so, how does one go about trying to manage that conflict? Does the search for sovereignty require cooperative efforts, and if so, what sort

of efforts are indicated? Do human beings actually have sovereignty in any of the foregoing senses?

As previously indicated, there are two broad approaches to the foregoing sorts of questions. One approach is rooted in natural law, while the other approach is rooted in conventional or man-made systems.

Irrespective of one's approach, there is a need to be able to demonstrably justify what one is doing. This is certainly the case when one is dealing just with oneself, but this becomes especially necessary when what one decides in this regard has ramifications for the lives of other people.

There are a further set of questions that arise when those who take different approaches to the issues of sovereignty rub up against one another. For example, should conventional accounts be given preference over those accounts that are rooted in natural law? ... or, vice versa and -- if so -- why? Is it possible for natural law and conventional accounts to co-exist with one another, and, if so, how and why should this be done?

Some people might wish to argue that the idea of natural law is static because it gives expression to unchanging, eternal, universal principles. If this is true, then according to such individuals, the idea of natural law provides no room for evolution or development to occur with respect to matters of: 'justice', 'rights', 'governance', 'sovereignty' and so on as historical circumstances change.

Such an argument is flawed. Just as one might argue that even though the principles through which the material/physical world operates remain the same throughout history, nevertheless, over time, scientists dynamically enrich their understanding of those principles, so too, one might argue that even though the natural laws of the universe concerning political and ethical issues might remain the same (or, so, it is being assumed for the moment), the manner in which those issues are understood could still be enriched with the passage of time.

Moreover, the same sorts of problems that confront scientists with respect to the material/physical world also confront human beings with respect to the political/ethical world. That is, in both instances

individuals must search for those sorts of understanding that can be demonstrably justified in non-arbitrary ways … in ways that are independent of one's assumptions concerning the nature of reality.

Epistemologically speaking, to claim: Reality is, ultimately, a function of material/physical principles, provides no inherent advantage relative to those who claim: Reality is, ultimately, a function of divine principles … and vice versa. This is because, epistemologically speaking, we really don't know what it means to say that reality is a function of material/physical principles since – despite considerable advances in, among other things, quantum physics, astrophysics, and biochemistry -- we don't understand how such principles made the universe possible, or how they naturally led to a set of some 19 physical constants (e.g., the speed of light, the gravitational constant, and the charge of an electron … to name but a few) having the precise character they do, or how such material/physical principles led to the emergence of life, consciousness, intellect, language, or creative talent. Correlatively, we really don't know what it means to say that reality is a function of divine principles because we don't necessarily understand how or why the universe came into being in the way it did or what any of this means with respect to human beings.

We all have are theories that we consider useful and meaningful concerning the relationship of science and/or religion to the nature of reality. However, what we find to be useful and meaningful in that regard doesn't necessarily make such things true or right.

Science rushes to discover the nature of the universe, and religion rushes to discover the nature of the universe, and philosophy rushes to discover the nature of the universe, and mathematics rushes to discover the nature of the universe. Yet, meanwhile we are immersed in ignorance with respect to so many things, even as we are awash in emotions of certitude concerning our alleged understanding of life and the universe … emotions that stand in need of having to be demonstrably justified in some rigorously non-arbitrary, non-circular, non-tautological, and non-presumptive manner.

Whether one is seeking the laws of the natural world or one is seeking the laws of a world of conventions, one's search is enveloped in ignorance. In fact, one might argue that the very first reality that

both approaches encounter involves the struggle to realize the presence, nature, and scope of our ignorance.

Understanding is shaped as much by what we don't know as by what we do know. Moreover, both individually and collectively, what we don't know far outweighs what we do know.

The first challenge to both natural and conventional approaches to seeking the nature and character of the political and ethical laws that are to govern is, in part, a function of our ignorance concerning those matters. We are theory-rich and knowledge-poor with respect to all of the foregoing issues … and wisdom concerning what little we do know is even rarer.

Consequently, the very first theme of commonality that links the perspectives of the proponents of both natural and conventional approaches to understanding the manner in which political and ethical themes might be given expression through the idea of law is the need to overcome the ignorance that currently 'informs' their respective understandings concerning the nature of experience. To the extent that ignorance colors and shapes the nature of one's understanding, then to that same extent does one stand in need of an opportunity to shrink the ignorance with which one is confronted.

Every human being is in need of the opportunity to push back the horizons of ignorance. Without the opportunity to dissolve the filters of ignorance that color our perception of experience, one cannot take any viable steps with respect to generating demonstrable forms of justification that indicate why, and how, pursuing existence through one means rather than another, or for one purpose rather than another, are potentially more heuristically valuable, relative to other possibilities, in one's search for truth.

In the foregoing sense, one might speak of a palimpsest theory of natural law. The surface 'artwork of the phenomenology of experience concerns the pattern of our existential ignorance concerning the nature of reality, whereas the actual 'artwork' of Being is what would be understood if all ignorance – which currently obstructs our view of reality -- were removed.

Whether, or not, one will ever be capable of removing such ignorance, in part or in its entirety, is not the point of the foregoing

palimpsest approach to such issues. Rather, the thrust of this manner of engaging our existential dilemma is that we all are in need of a fair opportunity to be able to explore those possibilities.

Given the foregoing, the challenge then becomes one of determining how to proceed in the face of the aforementioned facets of ignorance and need in relation to our existential condition. However, one cannot suppose that just any mode of proceeding will be acceptable or satisfactory.

More specifically, one would like to avoid – as much as possible – anything that smacks of being arbitrary. In other words, there should be some degree of demonstrable justification – that is, independently generated and defensible critical assessments -- associated with our choices … especially, if such choices have ramifications for other people's opportunity to explore the possible palimpsest character of natural law.

Therefore, one important limit concerning any given person's opportunity to push back the horizons of ignorance concerns the manner in which an individual's choices adversely impinge on, or undermine, the opportunity of other people to seek to push back the horizons of ignorance in their own way. This is a reciprocal limit in the sense that the activities of any given individual concerning the issue of ignorance must harmonize with the activities of other individuals in relation to a similar sort of project … harmonize in the sense of not actively interfering with other such projects even though the details of these reciprocal pursuits might be quite dissimilar in character.

In short, no one has a demonstrably justifiable right to impede, obstruct, undermine, terminate, or constrain another person's attempt to push back the horizons of ignorance. This state of affairs remains in effect as long as the activities of the latter individual do not impede, obstruct, undermine, terminate, or constrain the reciprocal opportunities of other individuals concerning this same issue of ignorance.

Irrespective of whether one believes that political and ethical considerations are inherent in the natural order of the universe or one believes that all such considerations are generated by arbitrary conventions, the challenge of ignorance is the same. As such, one could argue that despite their differences, the two aforementioned

approaches for determining the political and ethical character of issues concerning matters of governance tend to arrive at the same sort of conclusion independently of one another.

Independent confirmation is an important consideration in assessing whether, or not, a given perspective is justifiable in some non-arbitrary way. When two individuals have different interests, inclinations and purposes and, yet, they arrive at the same conclusion, this tends to point to something of potential significance, and this would seem to be the case in the matter of the first principle of the possible palimpsest character of natural law.

A person begins with an acknowledgement of her or his relative ignorance concerning the nature of reality. Such an individual recognizes that he or she needs to have an opportunity to be able to search for a way to push back the horizons of ignorance in order to have a chance to be able to proceed in life in a non-arbitrary fashion. Finally, this person understands that the most harmonious -- and, therefore presumably, the least problematic way -- in which to proceed is to ensure that a condition of reciprocity is extended to other individuals with respect to their engagement concerning the same challenge of ignorance – that is, others are in need of the same opportunity to push back the horizons of ignorance as one has recognized with respect to oneself.

One might refer to the foregoing set of conditions as giving expression to the natural law of ignorance. This would be the first step in trying to determine, if possible, the underlying nature of the 'artwork' in the possible palimpsest character of natural law.

The natural law of ignorance is not a reflection of the ultimate nature of the universe. Rather, it is a reflection of a facet of the structural character of the sort of methodology one requires in order to be able to engage such issues within a context that is populated by other individuals who have similar needs.

The natural law of ignorance gives expression to a project in moral epistemology. It is the first step in a journey to struggle toward trying to grasp the character of the political and ethical principles that are necessary to permit everyone to have a fair opportunity to push back the horizons of ignorance that permeate our lives.

The natural law of ignorance is 'natural' because it does not reflect a man-made convention. Instead, this law reflects the actual character of our existential condition that can be grasped through the exercise of reason … something that most of us intuit as being a naturally rooted capacity through which to engage and assess the nature of experience even as we simultaneously understand that reason can be 'captured' by man-made conventions and, thereby, serve the interests inherent in the latter.

Sovereignty is rooted in the natural law of ignorance. We are sovereign to the extent that we have a fair opportunity to explore the possible palimpsest character of reality, and any departure from such a standard of fairness constitutes an arbitrary – therefore non-justifiable -- exercise of power by other individuals or the collective.

The natural default state of existence is ignorance. In order to be able to legitimately depart from such a default state – especially in the context of circumstances in which such a departure would disrupt or problematically affect the opportunity of others to explore the possible palimpsest character of reality in a reciprocal fashion -- one must be able to demonstrate in a non-arbitrary manner that departing in such a manner is justified.

The standard for epistemologically justifying such a departure is set fairly high in the case of individuals. After all, demonstrating the likely truth or rightness of something in a non-arbitrary fashion is fairly difficult even when restricted to one individual acting on his or her own.

When it comes to groups, communities, or societies, the standard for epistemologically justifying such a departure is set even higher. This is due to the manner in which any political and ethical departure from the default condition of inter-subjective ignorance is likely to create problems with respect to everyone continuing to have an equally fair opportunity to explore the possible palimpsest character of their existential condition.

The foregoing difference is comparable to the manner in which civil and criminal cases are settled in the court system. In civil cases, verdicts are built around the idea of a preponderance of evidence, and when individuals act in a manner that does not interfere with the opportunity of others to explore the possible palimpsest character of

reality, then being able to satisfy the standard of a preponderance of the evidence seems, at least on the surface, to be a defensible way of doing things.

In criminal cases, however, the standard for verdicts involves the idea of 'beyond a reasonable doubt'. If someone is going to act in a way that affects the opportunity of others to be able to fairly explore the possible palimpsest character of reality without interference or difficulty, then one really needs to justify such an action in a way that is beyond all reasonable doubt.

Of course, the foregoing outline leaves one in the dark about what constitutes either: a 'preponderance of evidence' or being 'beyond a reasonable doubt'. Nevertheless, what the above distinction does indicate is that there are two very different standards of justification concerning, on the one hand, those individual acts that are done in a way that does not adversely affect others continuing to have a fair opportunity to explore the possible palimpsest character of reality, and, on the other hand, those acts that carry serious ramifications for the ability of others to continue having a fair opportunity with respect to pushing back the horizons of ignorance.

Chapter 9: Echoes of Revolution

The ratification of the Philadelphia Constitution was not a victory for democracy even though more people had been permitted to participate in such a process than had ever been the case with any previous proposal for self-governance. Aside from the illegalities and irregularities that permeated: (1) the Philadelphia Convention, (2) the actions of the Continental Congress subsequent to its receiving that document, as well as (3) the ratification process (e.g., the states had no authority under the Articles of Confederation to authorize and organize such ratification conventions), there were other anti-democratic considerations entailed by the Philadelphia Constitution.

For instance, with respect to the four main components of the newly ratified constitution (the Executive, the House, the Senate, and the Judiciary), the only component that: 'We the People,' had some degree of control over involved electing representatives to the House. The President would be elected through The Electoral College; the members of the Senate would be chosen through the state legislatures, and the members of the Judiciary would be nominated by the President through the advice and consent of the Senate.

The Philadelphia Constitution provided 'We the People' almost no control over their alleged form of self-governance. Moreover, there also had been criticisms of the Philadelphia Constitution's provisions for apportioning representatives to the House… criticisms that had been advanced during: the Philadelphia Convention, the Continental Congress in New York, within many state legislatures prior to the establishing of ratification conventions, as well as, at least, ten of the ratification conventions.

More specifically, throughout deliberations ranging from Philadelphia to the ratification conventions, the apportionment process that linked the number of representatives to the size of population had been continuously criticized as not being sufficiently representative of: 'We the People.' More representatives were considered to be necessary to properly represent the diverse views and communities that existed in America, and, therefore, there was a general consensus that the ratio of representatives to population should be altered in some way.

In addition, there was the problem of representation itself. How does a given elected congressperson represent the views and interests of both the majority and the minority … especially when neither segment of the electorate was likely to be uniform in its perspectives?

No person can properly represent the soul of another human being. Consequently, how could one individual possibly represent the souls of thousands of individuals?

Some individuals might have their interests represented, but many more individuals stood an excellent chance of not having their interests represented. So, the question arises: In what sense can one speak of self-governance if millions of people have little, or no, control over the issue of governance … even with respect to the one facet of the Philadelphia Constitution – namely, choosing representatives to serve in the House -- that did throw a small democratic bone to the public? Therefore, for the most part, the Philadelphia Constitution was largely antithetical to democratic issues because, by and large, 'We the People' were pretty much left out of the process.

The Preamble to the Philadelphia Convention did mention the idea of securing "the blessings of liberty to ourselves and our posterity." However, it was anyone's guess what this actually meant … especially, in view of the fact that the Philadelphia Convention, the Continental Congress, the state legislatures, and the ratification conventions had made self-governance almost entirely dependent on the whims of those who were in power.

The individuals who held elected or appointed office might, in some sense, be said to have a potential for self-governance. Unfortunately, this potential belonged to virtually no one who fell beyond the horizons of such a power elite.

As the new federal government was being put together through, among other things, the processes of appointing senators and holding elections for Congress, Patrick Henry – who despite losing the ratification vote remained a force with which to be reckoned in the Virginia state legislature – took steps to ensure that James Madison would not be one of the next senators from Virginia. Henry was opposed to Madison because during the state ratification convention,

Madison had made it clear that he was firmly committed to the position that there should be absolutely no changes to the Philadelphia Constitution prior to its ratification.

Once the new Congress went into session, Henry had no faith in Madison's willingness – if the latter were a Senator -- to sincerely work to bring about the sorts of amendments to the Philadelphia Constitution that were considered of importance. Consequently, Henry helped to arrange for the Virginia state legislature to appoint William Grayson and Richard Henry Lee to the United States Senate – both of whom had been resistant to the adoption of the Philadelphia Constitution-as-written and who could be trusted to work toward helping to institute the requisite kinds of amendments when the Senate began its deliberations about a variety of issues – including, hopefully, amendments -- in the near future.

Shut out of the Senate, Madison decided to run for the position of Congressman. His opponent was James Monroe.

Monroe had a position with respect to the issue of amendments that was somewhere in between the perspectives of Madison and Henry. In other words Monroe was not as radical as Henry was on that matter, but neither was he as conservative concerning that topic as Madison appeared to be … at least based on the latter's statements during the ratification convention.

The issue of amendments was critical to the congressional race between Monroe and Madison. The people wanted amendments.

Therefore, one of the first obstacles confronting Madison was to explain why people should elect him to congress if he was as opposed to amendments as his performance in the state ratification convention had made him seem to be. Despite Madison's professed dislike of the whole business of electioneering, he demonstrated his talent for nimbleness in such matters when he became, possibly, one of the first flip-floppers in American political history.

Madison explained – mostly in the form of letters rather than speeches --that, originally, he was against the idea of amendments because he believed that ratifying the Philadelphia Constitution-as-written took precedence since he was trying to prevent the dissolution of the country that he believed the subject of amendments might help

to bring about. Now, however – meaning in the context of an election – he felt it would be appropriate for amendments to be incorporated, in some fashion, into the fabric of the Constitution.

Moreover, Madison felt that the most effective way to tackle the matter would be through Congress rather than by means of a Constitutional Convention that might be organized for this kind of purpose. Although the newly ratified Constitution made provisions for calling such a convention in order to discuss the issue of amendments, this sort of convention could not be initiated until two-thirds of the states had asked for this to be done – and, then, there would be further delays while discussions and the passing of relevant resolutions took place during such a convention, whereas the newly organized Congress would soon be in session and could deal with the matter much more quickly and efficiently.

Madison was in favor of a variety of amendments – especially ones that resonated with his earlier efforts in the state of Virginia that sought to ensure freedom of religion and conscience for everyone. On the other hand, the one amendment that he opposed was any attempt to interfere with the Constitution's ability to directly tax the states even though many people wanted to change that provision and make it necessary for the federal government to petition the states for such funds.

For a number of reasons, Madison was against the idea of the federal government having to make requisitions to the states in relation to taxation. He felt such a process of requisitioning would become entangled in a host of inequities in which some states would pay their taxes, while other states either would not pay their taxes at all or would pay less than the requisitioned amount … and such inequities would, in turn, lead to hostilities amongst the states.

Furthermore, Madison believed that those sorts of potentially inequitable arrangements might make America vulnerable to attack. For example, if other countries sensed that the United States would have trouble raising money through such a requisitioning process, those countries might attack the United States believing that America would not be able to raise the money that would be necessary to fight a war.

Madison won his political contest against Monroe by a little over 300 votes. Only about 40% of the nearly 5,200 eligible voters turned out for the election, and although the conditions on election day (cold and snowy) might have kept some people away from the polls, the fact is that even under the best of conditions, those participating in elections tended to run between 20 and 40% of eligible voters ... with the majority of elections hovering toward the lower registers in many contested elections.

During the election, Madison indicated that with the exception of the direct tax issue, he was receptive to any sort of amendment that might alleviate the concerns of the people as long as he did not consider such amendments to be dangerous. During the ratification convention, however, Madison also had indicated that he considered any set of amendments directed toward the securing of fundamental rights to be dangerous, if not unnecessary.

Madison might have believed that such a set of rights was not necessary because, on the one hand, many states (but not all) did have declarations of rights connected with their states and, therefore, doing the same thing on the federal level could be considered to be somewhat inefficient, if not problematic. On the other hand, Madison might have felt that Section 4 in Article IV of the Constitution also made such concerns about essential rights unnecessary because the federal government guaranteed every state a republican form of government, and, surely – or, so, the theory went -- republicanism would protect people against the sort of tyrannical governance that might lead to the abuses of essential civil liberties.

The reason why Madison considered such rights to be “dangerous” might – as noted earlier -- have had something to do with his experiences in the Virginia legislature. After all, that state did have a declaration of rights associated with its constitution, and in Madison’s opinion the people – in the form of this or that kind of majority -- were running amok, and, consequently, he didn’t want the same sort of problem occurring on the federal level.

In addition, Madison believed that the limited character of the enumerated powers of Congress – none of which Madison believed were capable of transgressing against the basic rights of individuals – would not undermine civil liberties. However, as pointed out

previously, the limited authority of the Philadelphia Convention had not prevented its members from running roughshod over the rights of Americans when it ignored the Articles of Confederation and the Continental Congress.

In an exchange of communications between Jefferson and Madison that occurred between July and October 1788, Jefferson had criticized the Philadelphia Constitution because of its lack of a bill or declaration of rights. Madison responded by pointing out that there had only been two states – North Carolina and Virginia – which specifically sought some sort of bill or declaration of rights in the realm of civil liberties … although a number of other states had alluded to such rights among their criticisms of the Philadelphia Constitution that were put forward during their respective ratification conventions.

While Jefferson tended to agree with Madison – although many other individuals did not share the opinion of the two individuals on this matter -- that the issue of direct taxation did not violate any basic rights of the people, nonetheless, Jefferson believed some sort of bill of rights or declaration of rights was important and necessary. Moreover, Jefferson was not only interested in freedoms involving the press and religion (or conscience), but, as well, he wanted to see rights instituted against monopolies and standing armies.

Jefferson believed that every individual deserved such protections from the possible excesses of any government, whether in America or elsewhere in the world. Madison, on the other hand, did not consider that the people needed protection from the federal government since he believed – based on his experiences in the Virginia State assembly – that people required protection from those majorities that thought little about abusing the rights of minorities.

Given that every election generates a majority and a minority, one had difficulty understanding how Madison seemed to miss the obvious connections among governments, majorities, and the abuse of rights. Of course, Madison was a true believer when it came to the idea that any government that practiced the philosophy of republicanism would never abuse anyone's rights, and, therefore, it never appeared to occur to him to wonder about what would happen in those instances in which the people in a federal government might not be committed to those republican principles.

For Madison, the problem was people not government. Yet, every government consists of people.

As long as a given bill of rights or declaration of rights did not interfere with the essential powers of the federal government, Madison claimed that he always had been open to the idea of amendments concerning basic rights. Nonetheless, every power granted to the government under, say, Article I, Section 8 of the Constitution enabled the federal government to institute public policies that were extra-constitutional in character and were, thereby, able to undermine, extinguish, diminish, and thwart the exercise of individual rights.

For example, the federal government had the power to raise and support armies, as well as to provide and maintain a navy, and to make provisions for calling forth the militia. However, what if the purposes for which: Armies were raised, navies were maintained, and militias were called forth, was for purposes of conducting unjust wars that affected the rights of individuals – both in America and elsewhere?

The very federal powers that Madison did not want to be limited in any manner could be used in ways that were antithetical to the rights of 'We the People.' Consequently, there was a problem surrounding Madison's contention that he always had been open to the idea of rights as long as they did not impinge on the powers he believed were necessary to conduct effective governance.

Powers and rights were potentially antagonistic to one another Even though Jefferson seemed to understand this, Madison apparently did not share his friend's understanding of things.

Madison did champion the right of conscience. On the other hand, he felt that effective republican governance was more important than rights, and, as a result, when push came to shove, rights should take a back seat to the activities of government, and since he believed that there was negligible, if any, conflict between the government's exercise of power and an individual's claim to rights, then whatever abridgements to rights that occurred during the process in which the federal government implemented its strictly enumerated rights would be minimal, if not non-existent.

From Madison's perspective, the foregoing set of priorities made sense since he believed that a properly functioning republican government would act in the best interests of 'We the People' and, thereby, protect their rights. Unfortunately, the early Madison couldn't quite grasp the problems that could ensue when federal government was not republican in character or when that which the federal government considered to be in the best interests of the people was not conducive to enhancing the general welfare of the latter.

By arguing in the foregoing fashion, Madison became somewhat confused in his sense of priorities. More specifically, Madison believed that the people should be subservient to the national government's exercise of constitutionally authorized and enumerated powers, rather than supposing that the national government should be subservient to the rights of 'We the People'.

Given that: (1) The Philadelphia Convention, (2) the constitution which arose from that assembly, and (3) the ratification conventions that adopted such a document, were not really about 'We the People' but, instead, were entirely about a group of people – those who were proponents of the Philadelphia Constitution-as-written -- who were seeking a path through which the 'natural aristocracy' would be able to acquire the powers needed to govern according to their beliefs, Madison's foregoing position is not surprising. Before he had a certain limited epiphany in the late 1790s, Madison had been someone who was all about effective governance according to the manner in which the natural aristocracy understood things.

Who were: 'We the People,' that they should object to the manner in which such a 'natural aristocracy' sought to exercise its enumerated power? For the early Madison, the rights of the natural aristocracy with respect to being able to exercise enumerated powers were more important and necessary than were the rights of 'We the People' that might interfere with the public and private policies of the power elite.

Since the Virginia congressional election that Madison won had been fought around the issue of amendments, the newly elected representative from Virginia -- to his credit – tried, early on, to find ways of introducing the topic into the congressional docket. Yet, almost everyone in the House, including people who were in favor of

the idea of amendments, considered other matters to be far more important and pressing.

Among other things, the entire day-to-day machinery of government had to be established. While the Constitution had outlined some of the general activities of the House and Senate, the precise manner through which to accomplish such things required considerable work in order for those bodies to become viable modalities of governance.

Eventually, after a delay or two, Madison was able to capture the attention of his colleagues for a sufficiently long enough period of time to propose nine amendments. One of the reasons why Madison was persistence with respect to his attempts to advance the issue of amendments was because he was afraid that if the people saw Congress continuing to delay consideration of possible amendments, the people might begin to suspect that the talk of promised amendments during the ratification process had been nothing more than a subterfuge … which, in a way, actually had been the case.

Many – but not all -- of the rights that people have come to associate with the current Bill of Rights were part of the 4th amendment proposed by Madison. For example, the right to assembly, bear arms, along with freedoms concerning the press, speech, and conscience were present in his 4th amendment.

In addition, Madison proposed that people should be free from searches and seizures of an unreasonable nature. Moreover, those who stood accused of crimes should be afforded certain kinds of rights during judicial proceedings … such as 'due process.' This was a term that he borrowed from the New York ratification convention.

While Madison's first amendment indicated that the people had an inalienable right to change government or reform it, the language of that amendment excluded the more revolutionary language of both the Declaration of Independence and the Virginia Declaration of Rights (both written in 1776) which indicated that people not only had the right to change and reform government, but, if necessary, the people had the right to abolish such government as well. The republican biases at work in Madison rendered him resistant to the idea that any government being operated in accordance with republican philosophy should ever have to be abolished.

The first amendment proposed by Madison also contained a sentence indicating that government was instituted by the people and ought to be instituted on their behalf as well. While, undoubtedly, there was a great deal of sincerity underlying such a contention, there is also considerable evidence to indicate that Madison was saying this as a member of the natural aristocracy who believed they knew what the people needed with respect to the exercise of government.

In another amendment – the fifth -- Madison gave expression to this belief that the real source of potential danger to the rights of people was a function of the states rather than the federal government. This amendment held that no state could undermine the rights of conscience, freedom of the press, or the right to trial by jury in criminal cases.

In conjunction with this amendment, Madison noted that not every state constitution contained provisions to protect such rights. Consequently, Madison's fifth proposal for an amendment would serve as an extended form of protection (both with respect to those states that had incorporated protection of certain rights into their state constitutions, as well as those states that had no such protection) on behalf of the people against the possibility of abuses by state governments.

Again, there seems to be a blind spot present in Madison's thinking about governance. Due to his experiences with the Virginia state legislature, Madison felt that the majority in the states were not to be trusted with the reins of government.

Moreover, there also seemed to be problems of trust on the national level in relation to the Continental Congress. After all, if such were not the case, then, perhaps, Madison might have let the entire membership of Congress in on what he, and a few others, had in mind with respect to the Philadelphia Convention prior to the beginning of the latter assembly. Furthermore, if the element of trust had been present concerning government on the national level, the Philadelphia Convention would not have been conducted in secrecy.

Consequently, one wonders why Madison continued to believe that the greatest threat to the rights of the people was entirely a function of the manner in which state legislatures conducted themselves … that the people would have nothing to fear from the

activities of the newly conceived federalized government. There are several possibilities – both of which have been touched on previously -- which might account for Madison's thinking with respect to such matters.

To begin with, Madison believed he was a member of a natural aristocracy that was – well – better than everyone else. They considered themselves to be the smartest, most talented, most insightful, most politically astute people in any given room.

Secondly, Madison and his colleagues were true believers with respect to the philosophy of republicanism. This philosophy was supposed to be the moral backstop which ensured that such individuals would treat those whom they governed in an unbiased, disinterested, equitable, judicious, honest, truthful, and rational manner.

They were so full of their own hubris that they just couldn't conceive of themselves behaving like the self-interested mobs known as 'state legislatures' or the self-serving members of the Continental Congress. The members of the natural aristocracy were too intelligent, reasonable, and moral for such problems to be manifested through them.

According to Madison, if the republican, natural aristocracy were in charge, 'We the People' would have nothing to fear from the federal government. Consequently, Madison believed there was no need for amendments that protected the people against the federal government.

There was an essential disconnect present in Madison's understanding of such issues. Apparently, he saw nothing wrong with what had taken place in Philadelphia or with his leading role in those activities. Apparently, Madison saw nothing wrong with what took place in the Continental Congress following the Philadelphia Convention or with his leading role in that process. Apparently, he saw nothing wrong with the way various members of the Philadelphia Convention – including himself -- sought to manage what went on in the ratification conventions – both in their own states as well as other states – rather than recuse themselves and let 'We the People' decide their own fate.

Madison was part of a minority – the natural aristocracy – which told itself that it had a responsibility to 'We the People' to protect – via republican governance – the people against various self-interested majorities. In actuality, Madison was part of a minority that wanted to arrange governance in a manner that would leverage the power it acquired through elections to be able to have a shot of being masters of its own fate while rationalizing its activities as being conducted on behalf of the people.

'We the People' had a great deal to fear from such a deluded minority on the federal level … just as 'We the People' had a great deal to fear from the minorities on the state level who were seeking to do the very same thing that Madison was interested in doing on the federal level. Contrary to what Madison believed, the problem wasn't a matter of which level of governance one was engaging or being engaged by. The essential problem was a function of a belief system (whether held by a 'natural aristocracy' or some other similar self-serving idea) which assumed that any given group of people had a right to govern 'We the People.'

Madison's sixth and seventh amendments revolved around the judiciary. The former amendment concerned the issue of appeals in relation to the federal courts, while his seventh amendment sought to address concerns that had been raised in various ratification conventions … including the right to a trial by jury in civil cases.

A further proposed amendment from Madison is very similar to the 10th amendment of the current Bill of Rights. More specifically, Madison wanted to introduce a new article VII into the Constitution that read: "The powers not delegated by this constitution, nor prohibited by it to the states, are reserved to the States respectively." A potentially crucial difference between Madison's proposal and the actual wording of the 10th Amendment concerns the words: "or to the people" that were later added during the congressional debate concerning Madison's proposed amendments (according to some people this was done by Roger Sherman, while others maintain that the words were added by someone in the Senate) … an addition that, apparently, was accepted without comment by the other members of the congressional body through which the words arose -- somewhat arbitrarily, and mostly for the sake of convenience in the following

discussion, I will attribute the additional phrasing of: "or to the people," to Sherman)

What is one to make of the phrase: "or to the people"? Some individuals have argued that the phrase is just an alternative way of referring to the "states" … that whatever powers were not delegated to the federal government or prohibited to the states belonged to the states or the people of the states.

However, there is a – perhaps crucial -- difference between the states as forms of governance and the people who live in such geographical locations. If the other members of Congress believed that what Sherman meant by the phrase: "or to the people," was just another way of referring to state forms of governance, why didn't they object and point out that the added words were repetitious and added nothing to Madison's proposal?

One must also take into consideration the fact that the Bill of Rights is almost entirely about people considered quite apart from states. With the exception of a reference to the idea of a well-regulated militia being necessary to the security of a free state – which makes the state dependent on the right of the people to bear arms, and, therefore, is not really about the right of states, per se – the 10th Amendment is one of the few places in the Bill of Rights that mentions the states ... although a passing, indirect reference to the word "state" does appear in the 6th Amendment.

Consequently, those individuals who consider the 10th Amendment to be exclusively about states' rights have a considerable burden of proof with respect to the problem of showing why such an interpretation should be given preference over the idea that all those powers which have not been delegated to the federal government or prohibited to the states also belong to the people quite independently of the states. The 9th amendment stipulates that: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people," and the word "states" appears nowhere in this latter amendment.

Given the foregoing considerations, one might reasonably conclude that Sherman was not talking about states' rights when he suggested that the phrase "or to the people" be added and, therefore, the phrase was not just an alternative but repetitive way of referring

to states' rights. Given that the other nine amendments are exclusively about the rights of individuals, it does not seem reckless to suppose that Sherman's phraseology was trying to underline the fact that it was the rights of the people, apart from government, that were being endorsed, in the 10th Amendment … that it was the people in the states – not the form of governance in the states – to whom the rights in the 10th Amendment were being allocated.

However, for the sake of argument, let's suppose that Sherman really was using the phrase: "or to the people" as just another way of referring to the rights of states with respect to whatever powers had not been delegated to the federal government or been prohibited to the states. After all, the idea of: 'Powers,' are generally associated with the activity of governance rather than the activity of people apart from such apparatus.

In fact, the idea that the people had power quite independently of government might be considered to be 'dangerous'. Hadn't Madison been concerned about extending any rights to people that might impact in a problematic way upon the enumerated powers of the federal government?

On the other hand, the very first amendment proposed by Madison indicated that all power belongs to, and is derived from, the people. If Sherman intended – and the other members of Congress indicated their agreement with such an intention through the absence of any comment concerning Sherman's phrase of: "or to the people" – that only the states, and not the people, retained whatever powers were not delegated to the federal government or prohibited to the states, then the people were being denied powers and rights that were inherent not only in Madison's first proposed amendment, but, more importantly, the people were being denied powers and rights that were inherent in the strategy of the Philadelphia Convention to by-pass the Continental Congress, the Articles of Confederation, and the states legislatures through the process of ratification conventions that were elected by, and supposedly were representatives of, 'We the People' … so that the authority for the Philadelphia Constitution came from the people and not from existing forms of government, whether state or national in character.

If one were to suppose that Sherman intended his phrase: "or to the people" to be a synonym for state government, then Sherman really didn't understand what was going on with respect to the Philadelphia document he signed in September 1787, or in relation to the resolutions that were passed by the Philadelphia Convention indicating that ratification conventions should be organized so that 'We the People' could authorize the proposed constitution rather than be authorized by the Continental Congress and the state legislatures. The better, more consistent, and simpler assumption is to suppose that the phrase: "or to the people," referred to the people independent of state governments.

The added phrase was about the rights of people, not the right of states. States were mentioned in the 10th Amendment only as subsidiary beneficiaries of the power and rights that belonged, first and foremost, to the people.

The final component in Madison's proposed nine amendments was a suggestion that Article VII in the Philadelphia Constitution should be renumbered. It would now become Article VIII and follow Madison's proposal for the newly worded Article VII concerning the disposition of those powers that had not been delegated to the federal government or prohibited to the states.

One might ask why Madison had not included a phrase like: "or to the people" in his proposed amendment concerning the disposition of powers that were not specifically granted to the federal government or prohibited to the States. In fact, Madison said that such additional powers belonged to the "States respectively."

If one were to suppose that Madison's term "States respectively" was intended to refer to the form of governance in the different states, then this raises several questions. For example, given Madison's antipathy toward the tyrannical excesses of state legislatures, why would Madison want to reserve rights and powers to the very state legislatures that he felt were the source of many abuses in relation to civil liberties? Moreover, given the Philadelphia Convention's aforementioned strategy to call upon 'We the People' with respect to acquiring authorization for its constitutional proposal, why would Madison suddenly become an advocate for states' rights with respect to the disposition of whatever powers and rights that might be left

over after eliminating those powers that had been specifically delegated to the federal government or prohibited to the state governments?

One might answer the foregoing questions by claiming that Madison was playing politics when he phrased his 10th Amendment-like proposal in the way he did – that is, by referring to the "States respectively rather than adding a Sherman-like phrase of "or to the people". In other words, Madison left his proposal ambiguous so that the States and the people could fight it out among themselves about what Madison might have meant so that the federal government would be left in peace to activate its enumerated powers in the manner it saw fit.

If Madison was playing politics via his ambiguous wording of his proposed amendment concerning the disposition of powers not delegated to the federal government nor prohibited to the states, then Madison was guilty of acting in a way that was inconsistent with republican philosophy. Moreover, Madison would have been in conflict with his own proposal for a first amendment that indicated how all power belonged to, and was derived from, the people … not the "States respectively" – unless Madison meant by this latter phrase: "We the People."

One might further argue that it really doesn't matter whether, or not, the phraseology used by Sherman (or whoever it actually might have been) and Madison was only intended to allude to the powers and rights of the states as forms of governance rather than to the role of the states as the geographical location where 'We the People' lived. Through the resolutions that had been accompanied the Philadelphia Constitution to the Continental Congress and the respective state legislatures, the signatories to that document were acknowledging that all authority and power came from the people and not from governments.

To renege on such a basic acknowledgement by subsequently deciding to give priority to state governments over the rights and powers of the people independently of forms of governance, would be an essential violation of their alleged commitment to the philosophy of republicanism. Consequently, Sherman and Madison either meant what they said in terms of all rights and powers belonging to the

people -- and not to the states as forms of governance -- or they were seeking to perpetrate a mammoth defrauding of 'We the People.'

Whatever the case might be with respect to the foregoing considerations, Madison did not put all his proposed amendments together as presently is the case in relation to the Bill of Rights. Rather, he wanted to insert his amendments directly into various appropriate articles and sections of the Philadelphia Constitution.

The final form of the Bill of Rights – the one with which we are familiar -- came about as a result of the manner in which the House and Senate engaged Madison's proposed Amendments together with the nature of the ratifying votes by the states after receiving the set of proposed amendments. To begin with, a special committee – consisting of one delegate from each state -- was formed by the House to study Madison's suggestions … a committee to which Madison was appointed.

With certain changes in wording, the committee accepted some of Madison's proposed amendments. However, some of Madison's other, proposed suggestions were rejected.

In addition, the special committee went through a number of the amendments that had been proposed by various ratification conventions. Many of those suggestions were deemed to be inconsistent with one another and others were considered to be too dangerous … although the nature of that danger (or for whom) was never fully elaborated upon.

Once the special committee's report was released to the House, the report was debated. Eventually, a list of 17 amendments was forwarded to the Senate for consideration.

Moreover, the amendments being forwarded to the Senate were attached to the end of the Constitution rather than being incorporated into the body of the Constitution as Madison had wanted to do. During the House debates concerning the report of the special committee on amendments, Roger Sherman had argued that the proposed changes should be placed at the end of the Constitution because the people had ratified the Philadelphia Constitution-as-written (as if the people really had any choice in the matter), and, therefore, according to

Sherman, there was a certain quality of sacredness that permeated the original document.

Unlike the House, debates and discussions in the Senate were not open to the public. Consequently, an accurate record does not exist with respect to the Senate debates involving the proposed amendments that had been forwarded to that legislative body from the House.

The Senate made a variety of changes to the House proposals. Those changes were agreed to when a set of 12 amendments was returned to the House.

George Washington sent the congressionally approved set of amendments to the states for purposes of being ratified. This took place on October 2, 1789 approximately five months after Madison first broached the subject of amendments to the House … a timeline that tends to undermine the fears of those who were in favor of ratifying the Philadelphia Constitution-as-written because they believed that trying to add amendments would take too long and would be too complicated a process.

Many people, including Madison, were not entirely happy with the set of amendments that emerged from Congress. Madison was most perturbed by the fact that his attempt to protect some of the civil liberties of people from the actions of the states was removed from the final set of amendments.

However, Madison had honored the promise he made during the congressional race in Virginia concerning the idea of advancing the cause of amendments during the first session of Congress. Madison also had honored the understanding of the Virginia ratification convention that indicated that whoever was elected to Congress should introduce the issue of amendments into the business of Congress at the earliest time of convenience.

Aside from the issue of Madison's wanting to live in accordance with the republican principle to honor one's promises, perhaps the primary motivation underlying Madison's push for amendments was his desire to end the speculation that might be taking place among the people with respect to their concerns about the sincerity of the intentions of the new government in relation to the clamor for

amendments that had arisen during various ratification conventions. By advancing the cause of amendments, Madison felt he was removing any lingering resistance that might exist among the people with respect to the activities of the federal government, and the newly elected federal government would now be able to go about its business with relatively little opposition.

North Carolina still had not ratified the Constitution. Its earlier ratification convention had been adjourned.

The fact that Congress had passed a set of 12 amendments appeared to play a significant role in the North Carolina ratification vote. On the third day of its reconvened deliberations, the convention ordered 300 copies of the Philadelphia Constitution plus the recently added amendments, and a couple of days later, the North Carolina ratification convention adopted the Constitution with a vote of: 194 for and 77 against, in relation to the Philadelphia document.

However, the presence of the congressionally approved amendments did not prevent the North Carolina ratification convention from posing a further set of eight amendments that they wanted to be considered for possible inclusion in the amended Constitution. However, the presence of such additional amendments were not made a condition for North Carolina's acceptance of the Philadelphia Constitution, and, consequently, those amendments were never really seriously explored or debated by anyone in the new federal government.

Eventually, only ten amendments – what are, now, referred to as the Bill of Rights (although those amendments were not consistently referred to as a Bill of Rights until after the Civil War had ended) met the requisite standard in 10 of the 13 states called for by the Constitution. Two amendments of the original 12 (these were the first two amendments that involved, respectively, a proposal for increasing representation as population increased and a proposal concerning pay raises for members of Congress) that had been forwarded by Washington to the various states did not receive the necessary three-quarters vote from the states.

Although the amended Constitution went part of the way toward satisfying the criticisms that many people had concerning the Philadelphia Constitution, there still were a variety of sources of

dissatisfaction concerning that amended document and whether, or not, it gave expression to a viable and judicious means for realizing the idea of democratic self-governance. Madison might have helped mute, to a certain degree, the sound of such dissatisfaction, but there were many individuals on both sides of the Atlantic who continued to push the envelope in relation to the nature and meaning of democracy.

Roger Sherman was the only individual among the Founders/Framers to be a participant in all of the crucial assemblies that led to the formation of the United States – namely, the Continental Association (which had been authorized by the First Continental Congress in 1774 to implement a trade boycott against England), the Declaration of Independence (he was on the Committee of Five that drafted the Declaration), the Articles of Confederation, and the Philadelphia Constitution. Thomas Paine had not participated in any of the foregoing assemblies.

Paine did not help write, or sign, the Declaration of Independence. He did not help author the Articles of Confederation. Moreover he did not participate in the Philadelphia Convention in the summer of 1787 … although he had been invited to attend the latter assembly. Yet, Paine deserves to be included among the Founders/Framers of the United States.

His extended pamphlet – *Common Sense* – written anonymously under the name of "An Englishman" and first released in January 1776 played a fundamental role in helping to induce Americans to be willing to break with England and form a new country. George Washington encouraged his troops to read Paine's *Common Sense*, and John Adams once intimated that if had not been for the pen of Thomas Paine, George Washington's sword would have served no purpose.

'Officially', *Common Sense* sold more than 100,000 copies – a quantity that far exceeded what was usual for works of this kind in the 18th century. Unofficially, there might have been three or four hundred thousand more bootleg copies of his work that were distributed across America … meaning that a quarter, or more, of the people in the United States might have had access to his ideas.

How much of *Common Sense* was unique to Thomas Paine is difficult to determine. In one form or another, most of the ideas that appear in his booklet – as well as some of his other writings (e.g., The Rights of Man, *The Age of Reason*, and Agrarian Justice) were in the air on both sides of the Atlantic.

One could go into many taverns and tea houses within the Atlantic world (which includes countries on both sides of that ocean) and hear such topics being discussed. Before the 37-year old Paine – a man who liked to drink -- migrated to America in 1774, he probably participated in numerous discussions in some of the taverns of England where revolutionary ideas of different kinds were frequently explored, and when he arrived in America, the same sorts of discussions were going on in many of the taverns of America.

Aside from the issue of originality, Paine had a knack for being able to express ideas in a form that was understandable to the average person. His words stirred the hearts of common people and intellectuals alike.

35 years later, Paine was a forgotten, if not despised, man. John Adams, who once spoke of Paine in glowing terms, later referred to him as "a mongrel between pig and puppy begotten by a wild boar on a bitch wolf" who had led a life of mischief. Moreover, George Washington, who, as previously noted, once had recommended that his troops read *Common Sense*, wouldn't lift a finger during his presidency to help Paine get out of the French prison to which the latter individual had been condemned for resisting the bloodthirsty turn that occurred at a certain stage of the French Revolution … a revolution that Paine had helped to become a reality (among other things, Paine was appointed to a committee that had been given the responsibility of drafting a new constitution for France).

If not for the efforts of James Monroe -- who, at the time, was serving as the newly appointed American minister to France (Monroe succeeded Gouverneur Morris who, for whatever reason, failed to assist Paine) -- Paine might have been executed by the 'Reign of Terror' that had ascended to power in that country on the coattails of its revolution. Fortunately, Paine managed to stay alive while still in prison for the three or four months that were necessary for him to be rescued by Monroe following the fall of Robespierre in July of 1794.

Paine left the United States and returned to England shortly after being invited to join the 1787 assembly in Philadelphia out of which a proposed constitution eventually would emerge. Short of money, Paine had been attempting to right his financial ship and believed that an iron bridge design he had been working on might have commercial value in England.

Approximately three years after arriving back in England, Paine began to write another *Common Sense*-like book entitled: *The Rights of Man*. This book was a defense of the French Revolution that began in 1789.

In part, Paine's book (which was written in several installments) was a response to the arguments put forth in Edmund Burke's critique of the French Revolution in the latter's: *Reflections on the Revolution in France*. Although Burke previously had spoken in favor of America's fight for independence, he was against the French revolution.

However, *The Rights of Man* also was a critical examination of the monarchical form of government in England, France, and elsewhere in Europe. In addition, Paine's book provided an account of the principles of the American Revolution as an example of the sort of self-governance that stood in contrast to European tyrannies.

Because of Paine's anti-monarchist views, he was considered an enemy of the English political establishment. Consequently, the English government engaged in attempts to discredit Paine in various ways, as well as organized hate rallies that vilified Paine and hung him in effigy.

The Rights of Man sold out and was very popular among the 'common' people. On the other hand, Paine's work was very unpopular among the monarchical and aristocratic power elite.

Interestingly enough, it seemed that the English government was not necessarily opposed to Paine's book in and of itself. Paine, along with other authors of radical books, had been warned by the government that they should publish their works in expensive editions so that the radical ideas would be kept out of the hands of most of the population in England who might become 'agitated' by the ideas rather than examine them without passion and in a disinterested manner.

However, such works did get published in a form that was financially accessible to the general public. The establishment took exception to this and began to attack Paine in a number of ways.

Eventually, Paine was forced to leave England. Subsequently, he was tried in absentia by the English authorities on the charge of seditious libel. If Paine had not escaped to France, he would have been arrested and, quite possibly, executed in England.

Several years after fleeing to France – where he was made a citizen in 1792 and in the same year, despite not knowing the French language, was elected to a seat on the assembly that would bring the French monarchy to an end in the process of establishing a republic -- Paine was arrested for, among other things, refusing to endorse the execution of Louis XVI who had been tried for treason against the French people. During his ten months of imprisonment, Paine began to write *The Age of Reason* that was not only a critique of institutionalized religion and the corrupting influence it had on spiritual beliefs, but, as well, the book advocated the right of people to think for themselves and apply reason during their explorations of spiritual issues.

From the time when *Common Sense* was written to the time when the *Age of Reason* was completed, Paine consistently criticized all forms of tyranny and injustice – whether it involved the government or organized religion. Paine's three main works (*Common Sense*, *The Rights of Man*, and *The Age of Reason*) were among the most seminal writings of the 18th century, eclipsing the influence of any number of other writers of that time, including: Voltaire, Rousseau, Kant, and Burke.

Yet, Paine's stock had fallen so far by June 8, 1809 -- the day he passed away and approximately seven years after returning to the United States – only six people attended his funeral … two of whom were apparently freed slaves. Moreover, instead of eulogizing his role in the American Revolution, Paine was denigrated as a drunken infidel who might have done some good in his life but had, as well, done a great deal of harm.

28 years earlier, Sarah Franklin Bache, a daughter of Benjamin Franklin, had written in a letter (dated January 14, 1781) that if Paine had managed to die after writing *Common Sense,* this might have been the best thing for him to have done because in her opinion he never

again would be able to leave this world with such honor associated with his name. Given the nature of Paine's demise in 1809, there was an unknowing prescience to her observation.

Unfortunately, Paine made the mistake of remaining a revolutionary throughout his life. He was never content with the way things were but aspired, instead, to struggle toward how things might become in the future and sought to inspire other people to travel in a similar direction.

In the years when America was revolutionary in nature – and for the most part this refers to the America of pre-Philadelphia Convention days – Paine's perspective was appreciated. However, that point of view later became unwelcome in England, and after first being appreciated in France, that perspective was also rejected to some extent (Paine was not sufficiently bloodthirsty and revengeful as far as some French revolutionary leaders were concerned), and such rejection was also present when Paine returned to America just after the turn of the century in 1802.

Among other things, in the *Rights of Man*, Paine had argued that civil liberties existed prior to, and independently of, legal systems as well as political or social charters. Consequently, such rights were inalienable and could not be revoked through either political or legal proceedings.

Although Madison and the other participants in the Philadelphia Convention that took place in the summer of 1787 had passed a resolution indicating that all power was inherent in, and derived, from the people and, then, proceeded to use that resolution to justify its call for ratification conventions, the fact of the matter is that a very biased understanding of what such a resolution meant in practical political terms began to dominate America's form of governance. More specifically, the only power of the people that was of interest to most politicians was the capacity of the people to elect government officials, and once such a power was exercised, the people were encouraged not to take -- or prevented from taking -- a more active role in the oversight of their – according to Paine -- inalienable rights and powers.

Paine believed that any government which did not serve and protect the underlying sovereignty of human beings did not deserve to continue in power. In fact, as far as Paine was concerned, any social

institution – not just governance -- that did not assist human beings to realize their individual sovereignty was not serving a proper function in the community.

Unfortunately, beginning with the presidency of George Washington and going forward, Paine's perspective was considered to be largely irrelevant to the process of federalized governance. Although lip-service was paid to such ideas in the rhetorical flourishes that appeared in speeches and newspaper articles, the world of power politics had little use for Paine's ideas.

Paine's perspective was considered to be passé. In truth, the Founders/Framers had not only failed to catch up to Paine's progressive approach to governance, but those individuals sought – whether knowingly or unknowingly -- to ensure that Paine's ideas would never be seriously considered.

Such ideas were considered too dangerous for, and threatening to, the ambitions of those who, via elections, sought to leverage the power of the people to serve the interests and agendas of the elected officials. Paine's ideas were unwelcome because – shame on him – they were about real democracy rather than the sham democracy that had taken hold in the United States after the Philadelphia Constitution was ratified by a: very limited, exceedingly misinformed, and greatly managed segment of 'We the People.'

In *The Rights of Man* Paine criticized the aristocrat-friendly Edmund Burke who claimed that a strong, centralized source of authority (i.e., a monarchy) was necessary in order to be able to regulate the essential tendency of human beings to be inclined toward corruptibility. Furthermore, Burke maintained that the best people to oversee such a process were the nobility who possessed the wisdom to govern properly.

Paine argued that wisdom was not an inheritable trait. Consequently, there was no reason to suppose that the nobility possessed any more wisdom concerning matters of governance than the people did.

Government was an invention of certain minorities – for example, the nobility, military officers, and religious institutions. As such, according to Paine, government was an invention that was designed to

deny or dilute the sort of inalienable rights and powers that were available to human beings.

The Rights of Man has been cited by some as constituting one of the most powerfully cogent accounts of American revolutionary understanding that existed in the 18th century. For example, in his book Paine not only wrote about how the American Revolution had dispelled the idea that society must be governed by aristocracies and monarchies, but, as well, Paine described how the American Revolution demonstrated that people were individuals who came into this world with certain inalienable rights that entailed being treated as sovereign human beings.

Furthermore, Paine explained that the American Revolution paved the way for such sovereign individuals to be able to change the shape of government as necessary. In this regard Paine also outlined how the model of the American Revolution gave expression to the idea that the people were responsible for writing constitutions that regulated the manner in which governments could govern the people, and, as well, the people were the ones who could alter such arrangements.

According to the perspective being advanced in *The Rights of Man*, when one combined the natural or innate sovereignty of human beings with their moral and social sensibilities, one ended up with a system that was largely self-regulating. The purpose of government was to assist such self-regulation and, consequently, elected officials were nothing more than transient agents who had a fiduciary responsibility to help the people work toward realizing their individually oriented sense of well-being and happiness.

While the foregoing ideas might give expression to Paine's theoretical understanding of revolutionary America, something 'funny' happened on the way to translating theory into practice. In fact, all of the things about which Paine was trying to warn people in *The Rights of Man* were reflected in the actual practice of democracy – or what passed as such – in America.

In other words, the Philadelphia Convention, the Philadelphia Constitution, and the ratification conventions were all part of an illegal and unauthorized contrivance on the part of the so-called Framers/Founders in Philadelphia. The purpose of such a contrivance was to construct a means for the 'natural aristocracy' to be able to

acquire power so that the latter group could rule over 'We the People' who – except, perhaps, during elections – were, according to the members of the natural aristocracy, inclined toward corrupting self-interests and, therefore, needed to be saved from themselves by a power elite that had the wisdom – thanks to, among other things, the philosophy of republicanism -- to govern over the generality of people and do what would be in the best interests of such a collectivity.

Just as Paine questioned the premise that the genetic nobility of England – or any country – necessarily possessed the wisdom to rule over the 'common' people, so too, being a member of a "natural aristocracy" of self-made men who enjoyed natural gifts of intelligence and talent, did not guarantee that such individuals had a greater access to wisdom than did 'We the People.' The idea of government by a wise "aristocracy" was as much an unjustifiable contrivance in the United States as it was in Europe.

Conceivably, through the rosy colored glasses of republican philosophy, Paine might have given the Founders/Framers the benefit of a doubt with respect to what had transpired in Philadelphia and afterwards. That is, if one were to assume that people had acted, and would continue to act, in compliance with the principles of republicanism, then Paine might have supposed that the Philadelphia Constitution – whatever its flaws were -- could have led in the same direction as did Paine's hopes for revolutionary America.

In addition, Paine was viewing what was going on in America from the distant lands of Europe. At the time Paine wrote *The Rights of Man*, it is uncertain how detailed his understanding was of the circumstances surrounding the Philadelphia Convention or the ratification conventions, and to what extent the Founders/Framers were actually acting in accordance with the requirements of republican philosophy.

Whatever concessions Paine might have granted to the intentions of the revolutionary leaders in America when he wrote *The Rights of Man* in the early 1790s, nevertheless, many, if not most, of those concessions had dissipated considerably by the time Washington refused to help free Paine from prison. Furthermore, much of Paine's dissatisfaction concerning what had taken place in America during Washington's tenure as president surfaced in his July 30, 1796 letter to

George Washington that ended with Paine wondering whether Washington had lost sight of the principles that the President once espoused during revolutionary times or whether Washington ever possessed such principles.

The same wondering could have been directed toward many of the other Founders/Framers who participated in the Philadelphia Convention. Through the Philadelphia Constitution, the American people had been swindled out of their right to institute a form of self-governance that was in accordance with Paine's understanding of how he believed democracy should be.

Instead, American's birthright of inalienable liberties had been traded away. The Founders/Framers had settled for a form of government in which 'We the People': Could not directly choose their president; could not directly select their senators; could not directly choose members of the judiciary; and had only limited representation in the one congressional branch for which the people – or, at least, some of them -- could vote directly.

As noted earlier, Paine believed that inherent in every human being was a social and moral sensibility that made human beings receptive to engaging one another in reciprocally advantageous ways. If this innate sensibility were properly nurtured and permitted to flourish, people would develop the ability for self-governance … free of contrived, invented forms of governance that sought to suppress and deny such capacities among the generality of people.

For Paine, most, if not all of the inequities of society, were a function of the way in which society, commerce, the judiciary, and government were tied to centralized, tyrannical forms of governance such as monarchy. While Paine might not have believed that the foregoing conditions existed in America when he wrote *The Rights of Man*, nevertheless, the newly ratified form of governance in the United States resonated with many facets of Paine's critique of those governments that were dominated by aristocracies and monarchies since many of the inequities that were beginning to appear in America were increasingly becoming tied to whether, or not, one knew anyone in government who could further one's interests.

In *The Rights of Man*, Paine argued that war was the direct result of the manner in which aristocracies connived against, or conspired

with, one another through an array of secret machinations by governing classes that were primarily interested in promoting their own selfish interests. Paine felt that if the nations of the world were freed from such corrupting influences, they would develop means for peacefully engaging in the sort of commerce that would be of benefit to everyone.

Without war, the need for taxes would lessen. With fewer tax revenues available, the likelihood of there being a perceived need to fight wars might dissipate.

Yet, Madison, Hamilton, and Washington – along with the rest of America's 'natural aristocracy' – wanted the power to be able to directly tax the states in order to, among other things, be able to fight whatever wars they considered to be "necessary and proper." In fact, this issue was a persistent theme in a number of the ratification conventions where the proponents of ratification used scare tactics to induce anxieties in those who were left to wonder whether, or not, such advocates of federalism were correct when they claimed that America would invite invasions by foreign countries if the federal government were not given the power to directly tax the states.

The implications of Paine's arguments in *The Rights of Man* were that the availability of such tax revenues merely increased the likelihood of wars being waged. For Paine, this was a sign of the manner in which 'Old Government' operated – taxes were used to pave the road to war, and the spoils of war were considered a means through which to subsidize the luxuries, social standing, and ambitions of the members of those governments.

Wars were also the means through which empires were expanded. Without wars, the ambition for empire-building might lessen.

According to Paine – and this was given expression through *Common Sense* – commerce was the way to enhance ties within a country. Countries should busy themselves with building ties of affection among their citizens via commercial transactions rather than becoming entangled in the affairs of other countries via wars and related conflicts.

Paine's vision – as was true of many of the radical thinkers within the Atlantic world – extended beyond what was going on within the

United States. In a series of essays that were entitled: '*American Crisis*' -- and that began on December 19, 1776 and were written throughout the war between America and England -- Paine maintained that the American Revolution was but a foretaste of events to come around the world … events through which people everywhere would be able to realize their inalienable sovereignty as individuals.

Furthermore, at certain points in the aforementioned '*American Crisis*' essays, Paine stipulated that he was not writing primarily for the American Revolution. His concern was with the world -- with the people of the world -- and his words were intended to articulate universal principles of sovereignty … not just American ones.

While it might be the case – as Paine famously wrote as he opened his initial entry in the *American Crisis* set of essays – that: "These are the times that try men's souls," he believed that better times were ahead. However, the times that would enliven the souls of human beings – rather than try them -- were not primarily an allusion to constitutional governments run by a natural aristocracy but were, instead, a reference to the potential for self-governance that was rooted in the moral and social sensibilities within the generality of human beings.

Some people believe that the reason why Paine died in relative obscurity was due to his religious beliefs. In his book *The Age of Reason*, Paine attacked the theology of Christianity with considerable rigor and in a fashion that many Christians might find objectionable.

In doing so, Paine sought to point out what he considered to be contradictions in various biblical accounts and the manner in which he felt that reason was offended by such conflicts. However, Paine was not an atheist.

He was a deist (which has its own theology) who believed in God, the Creator of Reality. Paine believed that God had created a universe filled with signs that were capable of demonstrating to any careful observer that material reality came from divine origins and that human beings had been bequeathed an inherent capacity for reasoning about such matters without any need of assistance from institutionalized religion … just as human beings also had been granted the capacity to reason about the issue of self-governance without needing the assistance of contrived forms of governance.

Whatever role might have been played by the religious controversies that were stirred up by *The Age of Reason* with respect to Paine's allegedly ignoble and obscure departure from life, Paine was cast into the wilderness by the Founders/Framers long before *The Age of Reason* was written and quite independently of such topics – and, one might note at this point that quite a few of the Founders were not all that committed to organized religion … even if they believed in God. In other words, Paine was cast into the wilderness because of the radical nature of his political views rather than the radical nature of his religious views – although the latter ideas might have been used to camouflage what many of the Founders/Framers considered to be the real problem entailed by Paine's perspective.

Paine believed in the spirit that he felt underlay the American Revolution … as did many other individuals, both then and now. However, when Paine returned to America in the early 1800s, politically speaking, he was a stranger in a strange land.

Paine didn't recognize America, and America didn't recognize him. The spirit of the revolution had been betrayed, and something else had replaced what Paine considered to be the essence of the American Revolution … an essence that Paine had attempted to allude to in *The Rights of Man*.

From the time that he returned to the United States in 1802 until his death seven years later, Paine was subjected to the same sort of vilification process and attempts to discredit him – and, therefore, his ideas – as he had encountered in England after the publication of *The Rights of Man*. In both instances, the underlying problem was the same – namely, the stark differences between, on the one hand, what Paine – and other radical writers of the Atlantic world – had been writing with respect to the issue of democracy, and, on the other hand, the nature of actual governance on both sides of the Atlantic.

In the United States and England, democracy was a riddle wrapped in an enigma that had been packaged by the crafty hands of those (i.e., the aristocrats, natural or otherwise) who sought to control the lives of other people. The radical writers of the Atlantic world had been attempting to unravel the true nature of this enigmatic riddle and, thereby, to expose to the world the nature of the problem that

they believed to be hidden within the manner in which governance was practiced in England and America.

The verbal and written attacks against Paine that surfaced after his return to the United States were a continuation of similar tactics that had been used from the time that the Philadelphia Constitution had been released in September 1787. Indeed, almost from the very day that the Philadelphia Convention adjourned, newspapers owned by those who were proponents of ratification (and such owners formed the vast majority of publishers in pre- and post-constitutional America) began a blitz of propaganda that sought to suppress or drown out criticisms of the proposed Constitution, and this barrage of words continued throughout the year and a half period during which ratification conventions were taking place.

Neither the introduction of possible amendments by Madison nor the ratification of a set of ten amendments by the requisite number of states brought the controversies to an end. While the ten amendments to the Philadelphia Constitution offered a certain amount of relief in relation to the concerns of a variety of people, those amendments did not solve the many problems that were still inherent in the recently ratified Constitution.

The running account of the Philadelphia Convention that was recorded by James Madison indicated how many, if not most, of the participants in that assembly made a distinction between a 'republic' and 'democracy'. Democracy was the sort of thing that had been happening in places like the Virginia state legislature and was, in part, the reason why Madison, and others, had set about trying to find a different route to governance … indeed, in the opinion of Madison and others who thought like him, America suffered from an excess of democracy.

Upon exiting the final session of the Philadelphia Convention, a woman supposedly asked Benjamin Franklin: "Well Doctor, what have we got: A republic or a monarchy?" Franklin is reported to have replied: "A republic … if you can keep it."

The Philadelphia Convention had not constructed a democracy. It had created a republic.

Over the next decade, or so, a battle took place concerning the nature and meaning of the term: "democracy". At the beginning of this struggle, the word 'democracy' was a term of opprobrium, and was considered to be antithetical to the possibility of good governance, and, as well, the term was considered to be something associated with radicalism, foreign intrigues, and atheism.

By the turn of the nineteenth century, if not before, the meaning of the word 'democracy' had been reconstituted. By then, the idea of 'democracy' had become something of a synonym for the manner in which things were done in the United States.

How were things done in the United States? They were done in accordance with a document that had arisen out of an unauthorized process in Philadelphia and was adopted through an illegal ratification process that, as well, had been managed and manipulated by proponents of an illicit document that supposedly gave expression to the creation of a republic through which citizens governed themselves via the election of representatives … even though the executive, the senate, and the judiciary were not actually elected by the people, and even though the members of the House could not possibly represent the interests of all people – perhaps not even the majority of such individuals.

In the process, democracy was weaned from its origins as a radical aspiration for real self-governance in which people regulated themselves through their moral and social sensibilities … sensibilities that were pursued in accordance with reciprocally advantageous purposes and that involved minimal assistance from government. Democracy became whatever the institutionalized agents of governance said it was and irrespective of whatever collateral damage might accrue to the people as a result of such tyrannical behavior.

In short, democracy was co-opted by the way of power. The idea of democracy had been corrupted and, in the process, it was transformed into something that was entirely alien to people like Thomas Paine.

The denotation of the reformulated notion of 'democracy' leveraged the connotation that people tended to associate with that term. In other words, whereas the connotation of 'democracy' was rooted in the spirit of revolution and breaking free from all forms of tyranny, nonetheless, over the course of the 1790s, the denotation of

that word changed into something that was antagonistic to its original connotation even as the latter emotional sense of the word was used in speeches and writings to promote the reconstituted denotative sense of 'democracy'.

George Orwell's *1984* came to America in the 18th century. 'Newspeak' was not a future, literary invention but something that had been taking place in America, and elsewhere, for quite some time.

Indeed, since the very beginning of the formation of the United States as a republic, 'tyranny' and 'democracy' had been fashioned into synonyms. Yet, connotatively speaking, people were led to believe that 'democracy' was other than what it had denotatively become – that is, a means of acquiring power through the process of elections … and such power was subsequently used to strip people of their sovereignty and re-deposit that sovereignty into the accounts of the state/nation so that only the latter could be fully sovereign.

A republic run by a natural aristocracy in accordance with whatever activities – republican or otherwise -- are considered to be "necessary and proper" is not necessarily a democracy. Democracies are about the capacity of people for self-regulation apart from, or with minimal assistance from, institutionalized forms of governance.

If elected 'representatives' are organizing the lives of citizens according to the ideas of those agents, and if such ideas destroy the capacity of citizens to regulate their own lives in mutually beneficial ways, then one might have a republic. However, such an arrangement is not very democratic in character.

Democracy is about the way of sovereignty that involves equals working in constructive co-operation with one another. Republics, on the other hand, are rooted in the way of power in which one set of individuals (the aristocrats, natural or otherwise) seeks to control other groups of individuals for purposes of advancing agendas that are, by and large, imposed on citizens irrespective of how the latter might feel about such impositions.

One could ask a variety of questions concerning the precise nature of the aforementioned notion of: 'constructive co-operation of equals'. In fact, the process of querying what might be entailed by such an arrangement is part of the democratic process.

However, within the context of the political form of 'democracy' that began to dominate America in the 1790s, the foregoing sort of critical approach to democracy was discouraged. Instead, what became important was the acquisition of power through an electoral process that was used to lend an aura of legitimacy with respect to a variety of tyrannical activities that were enabled through the application of power so acquired.

There are those who might wish to take issue with the foregoing characterization of things. After all, such individuals might argue, the government is merely acting as agents of the people … isn't this what is going on? The will of the people is made manifest through the derived power of government … isn't it?

If anyone questioned the uses to which such power was put, then surely (??), those people were being undemocratic. They were seeking to undermine the business of the people (??). They were threatening the viability of democracy (??).

Criticisms of the way of power were transformed into being the equivalent of an attack upon the sacred sovereignty of 'We the People.' Yet, in reality, the way of power was entirely about removing sovereignty from the people and allocating that sovereignty entirely within the state or nation that was to be considered as entity unto itself quite independent of the people and with rights and powers superior to those of the people.

National interests are not necessarily the same thing as what would be in the interests of sovereign individuals. National interests are about preserving the way of power, whereas the actual democratic interests of individuals is about preserving their sovereignty quite apart from the interests of the way of power constituted as a sovereign 'nation' or 'state'.

States and nations arose from, and usurped, the sovereignty of individuals, just as corporations did later on. Indeed, treating states/nations as sovereign entities independent of the people from whom such sovereignty was taken, is the model through which corporations came to be considered as sovereign entities independent of the people whose sovereignty was adversely affected by the creation of such legal fictions.

One of the primary obstacles facing those seeking to implement the amended Philadelphia Constitution -- and, thereby, assume undisputed political and legal dominance in America -- involved the writings of Atlantic radicals (consisting largely of individuals from England, Ireland, Scotland, France, and America) – who took exception to the whole process through which tyranny or the way of power sought to: eradicate, abuse, undermine, or corrupt the sovereignty of people considered independently of the institutional machinery of states/nations.

The foregoing sorts of individuals had been publishing books, pamphlets, and newspapers concerning such issues throughout the American struggle for independence, as well as during the process of ratification. Their concerns about the issues of sovereignty and self-governance were bolstered considerably when, starting in 1789, the French Revolution began to unfold and, as a result – at least until the French Revolution went sour -- those events provided considerable food for thought concerning what was transpiring in the United States and whether, or not, the latter set of events were democratic in any significant way or whether, perhaps, the birth of constitutional America had betrayed such ideals.

Rather than writing for the so-called intelligentsia of society, the Atlantic radicals directed their appeals to the people. In this regard, Thomas Paine had shown the way through his work, *Common Sense*, which had an appeal for people that extended far beyond the intellectual elite.

The foregoing trend was continued when Paine published *The Rights of Man* early in 1789 since the book also was directed toward the generality of people – as *Common Sense* had been -- rather than the upper classes. In fact, as previously noted, this attempt to reach the common people rather than the elite is what got Paine in trouble in England in relation to his work: *The Rights of Man*.

Those who owned the majority of newspapers in America were true believers in the newly instituted constitutional system in the United States … or, if not true believers, then they understood how such a system of governance might advance their interests. Consequently, such publishers (which constituted about three-fourths of all newspaper publishers at that time) took exception with anyone

who sought to criticize the form of governance that had arisen in America following the Philadelphia Convention.

Like their counterparts in England, the publishers of most of the papers in the United States recognized the potential dangers that were being given expression through the attempts of the radical Atlantic writers to appeal to the common people in America via books, pamphlets, lectures, and newspaper articles (although the newspapers that would print such radical ideas were relatively few in number) in relation to issues of rights, liberty, sovereignty, and the like. Such writings had stoked the fires of revolution in France, and the interests being represented through the vast majority of newspapers in America did not want the same sort of turmoil visiting America.

America had had its revolution. All relevant matters had been settled hadn't they? There was no need for any further revolution in America … at least this is the perspective through which the proponents of the way of power saw things.

Further revolution would be a threat to the manner in which the way of power had ascended to the realm of governance in America. Therefore, just as had occurred during the process of ratification, a fierce war of words broke out in America between those publishers (a small minority) who were trying to reach the common people in the United States in order to inform the latter individuals about the many issues that had not been resolved by the revolution in America, and, on the other hand, those publishers (the vast majority) who were trying to defend the way of power that had assumed control in America through the Philadelphia Constitution.

Both sets of publishers – that is the majority and the minority – understood that revolutions were, for the most part, the result of the collective action of the generality of people. Consequently, each set of publishers attempted to 'educate' the public in accordance with their respective understandings of the set of historical events that were occurring at that time in the Atlantic world – especially America and France.

The activities of the publishers were augmented by pamphleteers and public lectures on both sides of the hermeneutical divide. In addition, the discussions taking place in taverns, as well as tea and coffee houses, within the Atlantic world, also played a significant role

as the patrons of those establishments often explored the writings of the day whether in the form of books, pamphlets, or newspapers.

For a variety of reasons, the 1790s were especially auspicious times for the distribution of newspapers and books in America. For instance, in 1792, the relatively newly minted Congress had passed the Post Office Act that permitted newspaper publishers to exchange their publications with one another free of charge and, as well, enabled them to mail their newspapers to locations within a hundred miles for just a penny. In addition, as the credit crisis of the 1780s dissipated, booksellers were able to gain access to the sort of credit arrangements that enabled them to purchase, stock, and trade a wide variety of titles that gave expression to an array of ideas.

In addition, whereas in colonial America, most newspapers, printers, and booksellers were confined to the major urban areas along coastal America, during the 1790s there was an explosion of outlets through which to distribute various forms of media. Increasingly, the interior parts of America were gaining access to the news and ideas of the day in – for that age – a relatively timely fashion.

One could throw libraries into the foregoing mix of taverns, newspapers, booksellers, as well as coffee and tea houses that served as outlets for news and views. Hundreds of libraries were opening their doors during the early part of the 1790s, and, as a result, more and more people were able to read about the issues of the day in a convenient and financially affordable manner.

The foregoing establishments, however, were not just a means for gaining access to reading materials. They also served as centers for acquiring, among other things, a political education concerning such materials since books and newspapers were not only printed at, or distributed through, such centers, but those materials were also discussed and critiqued at those locations.

The two aforementioned sets of publishers – namely, on the one hand, those who felt the political revolution and been brought to a close through the ratification of the Philadelphia Constitution, and, on the other hand, those who believed the political revolution was unfinished and that the Philadelphia Constitution constituted an obstacle to the realization of real democracy –were seeking to orient the public in quite divergent ways. Libraries, taverns, public lectures,

bookstores, printing shops, as well as coffee and tea houses were the battlefields where such divergent ideas were engaged, struggled with, and interpreted.

How someone might come to understand the nature of community, sovereignty, democracy, rights, and governance depended a great deal on the character of the battlefields to which one was exposed. How someone might come to think about the political process and what participation in such a process meant would be shaped by one's encounters with various ideas on the foregoing sorts of political battlefields of the 1790s.

The aforementioned battles were not fought along party lines. Although there were political alliances and allegiances in the 1790s, there were no major political parties in America until the latter part of that decade.

Instead, the hermeneutical battles being waged were about the meaning of words and their relevance, if any, to the practice of governance in America. Those battles were about what it meant to be a citizen – both of America and in the world. Such battles were about the nature and purpose of sovereignty.

During the 1790s, there were approximately 35 to 40 newspapers in America that were committed, in different ways and to different degrees, to the idea of 'democracy' to which Paine had given expression in his 1789 work: *The Rights of Man*. Half a dozen of those papers had a presence in major urban areas such as New York City, Boston, and Philadelphia, while most of the other papers in this group of publications were printed in less populated areas.

Many of the remaining papers – which totaled around 120-130 publications -- were sympathetic toward, and supportive of, the form of constitutional government that had been set in motion by the convention that had taken place in Philadelphia during the summer of 1787. Some of these papers were republican in nature -- in the sense that they gave voice to the principles and values associated with the philosophy of republicanism -- while other papers amongst this majority group of publications were proponents of constitutionalism and the manner in which that concept was unfolding in America even if this process was not necessarily republican in character.

Irrespective of which of the foregoing publications one might consider, there often was a sense among the publishers and editors of those publications that they were part of an enlightened elite whose task was to educate and civilize the unenlightened masses. However, if Paine and other radical Atlantic writers were correct, every human being had the capacity to understand the issues that were at the heart of ideas such as democracy, sovereignty, rights, and so on, and if this were the case, then the responsibility of such publications should have been limited to providing accurate information and permitting their readers to struggle toward arriving at an appropriate understanding of that material.

Consequently, however well-intended their respective editorial decisions might have been, nevertheless, the newspapers on all sides of the issues during the 1790s were – each in their own way -- seeking to shape the opinions of Americans. This was true whether, or not, one was talking about those publications that were inclined toward Paine-like ideas, or one was talking about those publications that were inclined toward federalism, republicanism, and/or constitutionalism.

The irony inherent in the former sort of publications – i.e., those that considered themselves to be Paine-like in outlook – is that the author of *Common Sense* and *The Rights of Man* had insisted on being able to form his own opinions quite apart from the so-called 'leaders' of society. Yet, in the 1790s there were many Paine-oriented publications that were seeking to serve as 'leaders' who were attempting to shape the opinions of their readers with respect to all manner of things – especially the French Revolution … an issue that, eventually, would lead to the demise of such publications as an influential source of ideas concerning the nature of democracy and sovereignty.

The publishers and editors of those newspapers who filtered political and social issues through a Paine-like set of lenses believed that change in America could be brought about quickly – i.e., in a revolutionary manner – and, consequently, they sought to provide the ideational sparks that might light a sustained fire of change in America. The publishers and editors of those newspapers that filtered political and social issues through a federalist or constitutional-like set of lenses viewed the events in France (along with Shay's Rebellion in

Massachusetts and the Whiskey Rebellion in western Pennsylvania) as being inherently dangerous and, therefore, sought to prevent such events from taking hold in America, and in the process, they sought to be 'leaders' who shaped the opinions of Americans in a different manner than did the Paine-like publishers and editors.

One side wanted Americans to become more deeply immersed in the political process (i.e., beyond merely voting) and bring about revolutionary change. The other side wanted Americans to disengage from the political process (other than voting that is) and let the 'professionals' or natural aristocracy handle such matters.

Neither side of the ideological divide appeared interested in having an open, rigorous, sincere dialog with Americans. Instead, both sides seemed to have a vested interest in pushing Americans in one direction or another.

Eventually, details about how the 'reign of terror' had taken control of the French Revolution began to reach America. Tens of thousands of people had been summarily executed in France – whether by firing squads, the guillotine, or spontaneous massacres – between September 1793 and July 1794. The 'crime' of those who were executed was that they were perceived -- usually without evidence or on the unsubstantiated testimony of people with vested interests -- to be enemies of the people or enemies of the revolution.

Those American publications that were oriented, in one way or another, around the idea of federalism, constitutionalism, and/or republicanism used the 'reign of terror' like a mace to bludgeon those who were proponents of revolutionary 'democracy'. Surely, such newspapers intimated, America would have its own 'reign of terror' if the proponents of a Paine-like approach to issues of governance and sovereignty were permitted to gain any sort of ascendency in society.

Those publishers and editors who had tied their hoped-for influence in American society to news items, articles, and essays about the 'glorious' example of the French Revolution now discovered that they had a sizable, ugly, toxic albatross strung around their ideas. The previously 'courageous citizen rebels' of France were now being cast as lawless, bloodthirsty, murderers.

Within a fairly short period of time, those publishers and editors who were inclined to a revolutionary agenda lost the propaganda battle in America. If 'democracy' was an allusion to the Paine-like ideas of sovereignty in which citizens assumed control of their lives – ideas that *The Rights of Man* claimed were reflected in the events of the French Revolution – then, surely, such ideas must be rejected. If, on the other hand, the idea of 'democracy' was intended to allude to the process of governance that was being observed in American, then perhaps, 'democracy' was not such a bad idea … it certainly was a far, far better thing than what had taken place in France for nearly a year between 1793 and 1794.

The foregoing nasty turn in a propaganda war that had been going on in America during the early to mid-1790s was, as is usually the case, not really fair. Paine had written *The Rights of Man* some four years before 'the reign of terror' occurred in France. Moreover, there was nothing in *The Rights of Man* that could be construed as advocating a process of mass executions as an acceptable tool to use during the struggle for sovereignty … indeed, Paine was against the death penalty for any offense.

Furthermore, Paine, himself, had been imprisoned during 'the reign of terror' because he refused to endorse the execution of Louis XVI … an execution that was emblematic of 'the reign of terror'. Nevertheless, Paine's name, along with his ideas, were affixed to 'the reign of terror' by those publishers and editors in America who feared the potential in Paine's perspective for undermining the way of power that had been permitted to enter American society via the Philadelphia Constitution.

The same sort of propaganda techniques -- which played fast and loose with the truth in any given matter -- had been used during the ratification process a few years earlier. At that time, most of the newspapers in America – but not all -- were in favor of the new constitution and, as a result, they sought to demonize those, along with their ideas, who were resistant to adopting the Philadelphia Constitution -- whether with or without amendments.

If many of the 35 or 40 Paine-oriented newspapers that were published during the 1790s in America had not been so interested in trying to use the French Revolution as a tool for motivating the

generality of people to stage a new French-like revolution in America, and if the publishers and editors of those same newspapers had limited their focus to what was taking place with respect to governance in America -- as a function of implementing the Philadelphia Convention – and how the reality of governance in America was vastly different than the principles of democracy that were being espoused by Paine -- along with many other radical Atlantic writers -- and if such papers had been more willing to engage Americans in dialogue rather than treat the latter as individuals who must be converted to a revolutionary cause, then such newspapers might have survived the debacle of 'the reign of terror'. Unfortunately, all too many of the Paine-inclined papers handed the opposition newspapers all the ammunition the latter would need by 'virtue' of the former's constant citing of the French Revolution as being the sort of example that should be followed in America.

The fact that the newspapers that were oriented toward republicanism, federalism, and/or constitutionalism won the propaganda war of the 1790s concerning the issue of sovereignty was not a vindication of the ideas and perspective that were being given expression through the pages of their various publications. They did not win that war due to the strength of their arguments concerning the legitimacy of the Philadelphia Convention, the Philadelphia Constitution, or the process of ratification … all of which were done in an illegal and problematic fashion) but, rather, they won that war because of the mistakes made by a side whose fortunes were too closely hitched to the soon-to-fall star of the French Revolution … mistakes that those who were opposed to democracy in Paine's sense of the word took full advantage of when they demonized everything associated with Paine's approach to sovereignty due to something – i.e., 'the reign of terror' – for which Paine was not responsible … in fact, with respect to which he did his best to resist 'the terror' before being imprisoned for his opposition to it.

Just as Paine's ideas in *Common Sense* were not causally responsible for what happened in the Philadelphia Convention or the many problems that have ensued from that assembly, so too, Paine's ideas in *The Rights of Man* were not causally responsible for 'the reign' of terror or the many problems that were entailed by those events.

However, because the ideas contained in *Common Sense* were consonant with the ambitions of the Founders/Framers, they were lauded, whereas since the ideas that were contained in *The Rights of Man* were problematic with respect to the ambitions of the Founders/Framers, those ideas were discredited through a process of guilt by association … an association that many of the political 'leaders' and government officials in America must have known was not an accurate reflection of events, and, yet, one that they persisted in mirroring to the public through the pages of like-minded newspapers.

The Rights of Man is reported to have sold as many copies in America as *Common Sense* did – both of which are estimated to have been purchased by a hundred thousand, or more, people. At a time when such books rarely sold more than a few thousand copies, those levels of sales are truly remarkable.

Although Paine enjoyed a variety of financial and political benefits from the sale of *Common Sense*, eventually, he disappeared from public prominence. This disappearance was so complete that few people took notice when, for financial reasons, Paine left America and returned to England in 1787.

Two years later, Paine's reputation as a political commentator was resurrected with the publication of *The Rights of Man*. Once again, Paine became a person worth reading.

The fraudulent, disingenuous association that was forged between Paine and 'the reign of terror' in France by his ideological opponents, as well as his book, *The Age of Reason* -- which he began during his imprisonment as a victim of that reign – once again pushed Paine to the sideline as an active participant in the political arena … a status from which, this time, there would be no subsequent resurrection. However, as much as some people cite *The Age of Reason* as a major factor for why Paine supposedly fell out of disfavor in America, there was another publication of Paine that appeared in 1797 that might have been perceived as more of a threat to the way of power in America than anything contained in *The Age of Reason*.

More specifically, in 1797 Paine released a pamphlet with the title: *Agrarian Justice*. In this tract, Paine argued that the earth and all its resources did not belong to anyone but were part of the commons to which everyone was entitled.

Paine did not believe that the divide between rich and poor was a reflection of a Divine Plan … as some religious leaders were claiming at the time. Instead, he felt that the necessities of life already had been provided by God, and, therefore, any inequities in the distribution of God's generosity were due to human interference rather than Divine wishes.

While Paine maintained that it might be necessary to continue to recognize the idea of 'private property' in order to properly reflect the labor that was expended to improve upon the state of nature, nevertheless, such property needed to be utilized in a fashion that benefitted the welfare of people. Consequently, Paine devised a tax scheme that was intended to subsidize not only pensions for the elderly but, as well, to provide a sort of guaranteed minimum income for those who were 21 years of age or older.

Irrespective of whether, or not, the particulars of Paine's tax plan were, or are, viable, what is revolutionary in *Agrarian Justice* is the manner in which private property is constrained by, and must provide for, the welfare of everyone. This idea was not unique to Paine but extended back -- at least in one form -- to The Great Charter of the Forests in 1217 (this charter was intended to complement the provisions of the Magna Carta that had been drawn up two years earlier). The Great Charter of the Forests recognized that the generality of people had rights concerning the use of land that should not be infringed upon by either aristocracies or monarchies … both agreements initially became law in 1225 and, then, were reintroduced into law through subsequent modified versions of those agreements.

Moreover, the general themes of *Agrarian Justice* were also on the minds and hearts of many other members of the radical Atlantic writers. One might say that such ideas were very much part of the Atlantic zeitgeist during the 1790s.

However, the idea of private property was very important to the Founders/Framers of the Philadelphia Constitution … unless, of course, one was an Indian, a Negro, or poor. Any principle that called such an idea into question – as Paine's *Agrarian Justice* pamphlet did -- would be considered not just revolutionary but heretical in character.

Pretty much all, if not all, of the Founders/Framers were proponents of The Enlightenment that, among other things, called for

the power of reason to be applied to all manner of problems, questions, and issues. Consequently, the fact that Paine applied reason to the topic of religion should not have offended any of the Founders/Framers.

Was Paine too harsh, or did he cross some line of propriety, when he criticized Christianity in the *Age of Religion*? Perhaps!

However, there were quite a few other Founders/Framers who were not deeply committed to any particular form of organized religion. Although such individuals might have disagreed with Paine's antagonistic style of argument, they might not necessarily have disagreed with some of his conclusions concerning organized religion.

In addition, there were those among the Founders/Framers who might have been committed to this or that form of institutionalized religion and, as a result, had their own particular brand of Christianity to which they subscribed and which entailed theological principles that were at variance with the religious perspective of other members of the Founders/Framers. However, these were individuals who also understood the importance of religious tolerance and the right of conscience and would not have begrudged Paine his religious point of view even if they were to have found his way of going about things to be, possibly, disagreeable and excessive.

However, almost to a man, I believe the Founders/Framers probably would have had difficulty dealing with the principles that were being elucidated in Paine's *Agrarian Justice.* The latter pamphlet constituted a frontal assault on the idea of property … an idea that was considered to be sacrosanct and central to the ambitions of the Founders/Framers – both with respect to the country and themselves.

The implications of *The Rights of Man* and *Agrarian Justice* pointed in a much different direction with respect to issues of sovereignty than did the Philadelphia Constitution … even when the latter is amended. The ideas in *The Age of Reason* might have greased the skids of disapproval among certain segments of the general public, but the implication inherent in *The Rights of Man* and *Agrarian Justice* were far more disquieting to those who walked the halls of power within American governance – whether considered from the perspective of the federal government or states – and, therefore, the latter two publications were far more likely to motivate members of the 'natural

aristocracy' and power elite to want to send Paine into obscurity than anything Paine said in *The Age of Reason*.

Chapter 10: Freedom/Liberty

Most of this chapter was written in response to Isaiah Berlin's essay: 'Two Concepts of Liberty.' Those who are familiar with that essay will have a context for the sort of philosophical journey that is undertaken during the following set of critical reflections.

Some have argued that to coerce a person is to deprive the latter individual of freedom. Whether, or not, this sort of coercion or the correlative freedom are 'bad' or 'good' things tends to be a more complex issue.

To some extent, the foregoing perspective seems to assume that the natural, default condition of a human being is freedom. If so, then that sort of an assumption is, I feel, something that is very difficult to demonstrate, beyond a reasonable doubt, in any sort of a: Non-arbitrary, non-circular, non-tautological and evidentially-based manner

Nonetheless, coercion might deprive an individual of his or her sovereignty – that is, deprive an individual from having a fair opportunity to explore the possible palimpsest character of reality. For instance, depending on circumstances, coercion could have the potential to remove the condition of fairness from one's need to push back the horizons of ignorance, and stating things in this way, tends to leave room for the possibility that some degree of coercion might be justified in those circumstances in which a person's exercise of sovereignty interfered with the reciprocal need of other individuals to have a fair opportunity to push back the horizons of ignorance and, thereby, exercise their own sense of sovereignty.

One can derive the foregoing sense of sovereignty from the law of ignorance that governs the starting point of our existential condition. However, one has considerably more difficulty trying to derive the notion of freedom from the default position of ignorance – both individual and collective.

The idea of freedom has been analytically broken down by some individuals to suggest that there are both "positive" and "negative" senses of freedom. Positive freedom concerns those conditions that allegedly give expression to the nature or source of authority for

determining what can and can't be done in any given set of circumstances, whereas negative freedom supposedly refers to the character or shape of the 'space' within which people should be permitted to pursue their interests without interference from others.

While the foregoing senses of "freedom" might lead to overlapping considerations, some have argued that 'positive' and 'negative' senses of freedom point toward very different sorts of questions and issues. That kind of an argument seems problematic.

More specifically, if one identifies the source or authority for establishing who gets to do what when (i.e., the positive sense of freedom), then one also will probably have considerable insight into the character of the 'space' (i.e., the negative sense of freedom) that is likely to be generated through, or permitted by, the exercise of the positive sense of freedom. Similarly, if one understands the shape of the character of the space within which people are considered to be free to pursue their interests without interference (i.e., the negative sense of freedom), then one also is probably going to have insight into the character of the source or authority (i.e., the positive sense of freedom) that is structuring the space of the negative sense of freedom in one way rather than another.

In addition, irrespective of whether one is considering the positive or negative sense of freedom, one will be engaging issues that entail questions concerning what justifies either sense of freedom in any given set of circumstances. In other words, if someone identifies a given 'what' (e.g., principle) or 'who' (e.g., ruler) as the source of authority for setting the conditions of negative freedoms, then one is justified in asking: 'How so?' … that is, what justifies identifying a given 'what' or 'who' as the source or authority for shaping the space of negative freedom in one way rather than another? Similarly, if someone outlines the shape of the space within which negative freedom is to be manifested, then one is justified in asking the same: 'How so?' … that is, what justifies structuring the shape of political/legal/ethical space (i.e., the negative sense of freedom) in one way rather than another?

The epistemological considerations that justifiably establish someone or something as being the source or authority for regulating the affairs of others are also likely to be the epistemological

considerations that justifiably establish how and why the affairs of people are to be regulated in one fashion rather than another. To claim that someone could settle issues concerning the source or authority for the exercise of positive freedom without simultaneously settling what that sort of a source or authority can permit in the way of negative freedom seems to be a rather curious claim.

If one understands how and why someone or something constitutes the source or authority for regulating the affairs of others (i.e., the positive sense of freedom), then one also will have at least a general understanding concerning the shape of the political space within which people should be left alone to pursue their respective interests (i.e., the negative sense of freedom). Otherwise, everything will be completely arbitrary and, as a result, making the distinction between positive and negative freedom seems rather pointless.

If there is no justifiable reason or set of reasons that can be established beyond a reasonable doubt as to why one should identify a particular 'what' or 'who as the source or authority for regulating the affairs of others, then what purpose is served by talking about those matters? If there is no justifiable reason or set of reasons that can be established beyond a reasonable doubt as to why the shape of negative space should be one thing rather than another – that is, why the source or authority for positive freedom should regulate such space in one way rather than another – then one has difficulty understanding what the point is of that discussion.

To claim that: the nature of positive and negative freedoms are separate issues, one has to be able to put forth a justifiable framework that demonstrates, in a non-arbitrary manner, how the two notions of freedom aren't inherently connected. One has to show how the issue of identifying the 'what' or 'who' of positive freedom is independent of the shape of the space within which people will be permitted to pursue their respective interests according to the character of negative freedom.

Suppose, for example, that the principle for identifying the source or authority for regulating society is hereditary succession. One must be able to justify that principle.

Justifying the foregoing principle will necessarily involve considerations about why people should accept such a source or

authority for regulating their lives. Advancing that sort of a principle will also involve considerations about whether, or not, there are any conditions or qualifiers concerning those regulations, as well as why those conditions or qualifiers are, or aren't, necessary.

If a ruler can do whatever she or he likes, then the entire shape of the space that gives expression to negative freedoms will be settled through the likes and dislikes of the source or authority for regulating the lives of others. If a ruler cannot do whatever he or she likes with respect to the lives of others, then such a consideration is likely to be an intrinsic part of the process through which one chooses the source or authority for regulating the lives of others.

Positive and negative freedoms are not independent of one another. They have a yin/yang sort of relationship such that the manner through which one engages either sort of freedom in a non-arbitrary way has ramifications for how one engages the complementary notion of freedom.

Freedoms – whether considered in a positive or negative sense -- and rights are not necessarily coextensive terms. Rights give expression to entitlements that are capable of being justified beyond a reasonable doubt, whereas freedoms give expression to the set of choices from which a person might select a possible course of action without such a choice necessarily being capable of being justified -- either in terms of: a preponderance of the evidence (in the case of an isolated individual or an individual whose acts do not adversely affect the sovereignty of another human being), or in terms of being: beyond a reasonable doubt (in those instances where the exercise of sovereignty of one individual interferes with the like sovereignty of another person).

We are free to do as many things as our abilities and circumstances permit. That freedom lies at the very heart of what it means to be able to choose … to whatever extent we possess that kind of a capacity.

However, not all those manifestations of freedom are capable of being justified in the sense that one can be said to have a right to realize such freedoms in the realm of action. Rights are those freedoms

that are capable of being justified under the appropriate circumstances … either according to the standard of constituting a preponderance of available evidence (in the case of individuals acting in ways that do not undermine the basic sovereignty of others) or according to the standard of being beyond a reasonable doubt (in the case of individuals acting in ways that do affect the basic sovereignty of others).

Sovereignty – in the sense of being entitled to a fair opportunity to explore the possible palimpsest character of reality -- is a right that can be justified in terms of what follows from our condition of existential ignorance. However, that sovereignty is not without limits since it gives expression to various degrees of freedom that must be capable of being justified in the context of a similar right of sovereignty that belongs to other people with a correlative set of degrees of freedom.

Not all degrees of freedom are necessarily capable of helping someone to realize the fullness of sovereignty or even to partially realize the potential of such sovereignty. For example, one is free to make selections from amongst the degrees of freedom that are available to one that might lead in the direction of alcoholism and/or drug addiction, but those choices and the degrees of freedom to which they correspond will not necessarily advance the moral project of sovereignty in a justifiable way – either with respect to oneself or in relation to others.

Implementing this or that degree of freedom from amongst those that might be available to one will not necessarily enhance sovereignty. Freedoms that are exercised have the capacity to adversely or constructively affect the process of sovereignty.

Consequently, one cannot address the issue of the shape of the space within which people should have the ability to pursues their interests (i.e., the negative sense of freedom) without taking into consideration the nature of sovereignty and what can, and cannot, be justified, depending on circumstances, either through a preponderance of the evidence or through being beyond a reasonable doubt. Stated in a slightly different manner, that which can be determined -- either through a preponderance of the evidence or through being demonstrated beyond a reasonable doubt -- concerning the nature of

sovereignty is the source and authority for determining how the space of negative freedom should be shaped or regulated.

Freedom, considered in its own terms – that is, as the capacity to choose – is not necessarily the goal or purpose of sovereignty. Freedoms – of the right kind – are the means through which the potential of sovereignty is to be explored, and one cannot speak about freedom as being a – or the -- sought for end unless one can justify, in some non-arbitrary sense, that the idea of sovereignty necessarily reduces down to nothing more, or less, than the capacity to exercise choice.

Therefore, considered from the perspective of the law of ignorance, the challenge of sovereignty is not a matter of trying to maximize freedom per se. Rather, the task with which one is confronted concerns one's need to determine the character of the freedoms that are necessary to be able to explore the possible palimpsest character of reality in a constructive fashion – that is, in a way which does not interfere -- in an unjustifiable manner – with the process of exploring the potential of sovereignty ... either with respect to oneself or others.

How we conceive of: 'justice,' 'duty,' 'obligation,' 'right,' 'purpose,' 'equality,' 'governance,' and 'reason' are all a function of the process of moral epistemology that is set in motion through the sovereignty project that arises out of the law of ignorance … the most basic modality of our existential condition – both individually and collectively. Freedom per se – that is, the capacity to choose – doesn't necessarily inform the sovereignty project except as the experience generated through the exercise of that freedom leads to a 'better' (whatever this might mean) understanding of what is entailed by the notion of sovereignty.

The process of leading to a "better understanding" is an exercise in learning how to choose wisely (that is, constructively in relation to realizing the full potential of sovereignty … or as much of this as we are able to realize) rather than merely being able to choose irrespective of the consequences of those choices. Therefore, while freedom, of a sort, might be a necessary condition, nonetheless, freedom, per se, is not a sufficient condition for realizing the potential

of sovereignty since not any and all choices will help that potential to unfold in a viable and constructive fashion.

Sovereignty stands at the cross road between, on the one hand, identifying those freedoms that are conducive to the process of sovereignty -- along with its concomitant project of moral epistemology -- and, on the other hand, identifying those freedoms that have problematic ramifications for realizing the potential of sovereignty. This is not a matter of differentiating between positive and negative freedoms but, rather, it is a matter of being able to justify – on both an individual and collective level – the sorts of freedoms that will assist the process of unfolding the potential of sovereignty in relation to the task of determining the possible palimpsest character of reality.

If one is incapable, for whatever reason, of doing justice – that is, of exhibiting fairness – with respect to engaging one's essential rootedness in the phenomenology of sovereignty, then one is unlikely to be capable of doing justice to anything else in the universe … or beyond. Justice begins with the issue of sovereignty, and our understanding of justice is shaped according to the manner in which we proceed from our existential default mode of ignorance in conjunction with the project of moral epistemology that is inherent in the challenge that is posed by sovereignty.

The basic freedom is a "freedom to", not a "freedom from". The basic freedom – which is rooted in the sovereignty that is justified through the law of ignorance -- involves the right to push back the horizons of ignorance as long as the act of 'pushing' does not adversely affect the like sovereignty of others.

Reciprocity is a duty of care that is entailed by the basic existential condition of sovereignty. Reciprocity is what permits a person to continue– within limits -- the project of moral epistemology that is inherent in the process of sovereignty.

Reciprocity is rooted in an understanding that develops as an individual probes the character of experience and acquires a sense of that which is, and is not, capable of being justified with respect to giving expression to the process of sovereignty. Therefore, reciprocity also primarily involves a "freedom to", not a "freedom from," since

reciprocity marks the boundaries of the former in a justifiable manner … it is affirmative rather than restrictive.

Interference arises as an issue only when previously justified boundaries concerning sovereignty are transgressed from within (i.e., the individual) or from without (i.e., the collective). Until that kind of a breach point is reached, everything is a matter of the 'freedom to' act in accordance with the basic sovereignty that gives expression to one's existential condition.

Reciprocity is a matter of extending to others the sort of non-interfering assistance that one has come to understand might enhance another person's attempt to push back the horizons of ignorance just as similar sorts of support have played a constructive role in one's own struggle with engaging sovereignty. As such, reciprocity constitutes an appreciation of the difficulties that surround the problem of trying to establish a balance between those acts that would adversely affect another person's basic sovereignty and those acts that might constructively enhance another person's process of exercising sovereignty.

We are "free – within limits – to" help others with their process of sovereignty. The aforementioned "limits" concern those acts that would undermine another person's sovereignty in a way that could not be justified beyond a reasonable doubt.

People do have a right to be 'free from' the latter sort of acts. However, this 'freedom from' is measured against, and derived from, a person's basic 'freedom to' -- or right to -- pursue sovereignty.

Given the foregoing considerations, there seems to be an inversion of priorities in the positive/negative freedom distinction. Apparently, the idea of being "free from" tends to imply that the 'what' (e.g., principle, constitution, or legal system) or 'who' (e.g., ruler or leader) which are said to possess positive freedom – that is, the 'what' or 'who' that has been identified, for whatever reasons (arbitrary or otherwise), as being the source and authority for regulating the lives of others -- needs to be restrained from interfering with or restricting, the 'space' within which people should be free from interference (i.e., negative freedom) by the former form of positive freedom.

As such, positive freedom seems to be given a certain priority over negative freedom. More specifically, from the perspective of the positive/negative sense of freedom perspective, only positive freedom entitles a 'what' (e.g., constitutional system) or 'who' (ruler) to be free to act, whereas those who operate within the space defined by 'negative freedom' should be free from certain kinds of interference from the means through which positive freedom is exercised.

However, from the perspective being given expression in this book, the sovereignty of the individual is more basic than any other kind of freedom. To whatever extent some 'what' (e.g., legal system) or 'who' (ruler) can be justified, that kind of a justification must start from the realization that only individuals are entitled to the basic sovereignty that arises in the context of the law of ignorance that prevails over our individual and collective existential condition.

The belief that 'all power of governance derives from the consent of the people' gives expression to the inherent priority that is entailed by the basic sovereignty to which everyone is entitled. The 'what' or 'who' that is the source of, or authority for, the power (freedom to) regulate the lives of others must be justified beyond a reasonable doubt in the context of the sovereignty of individuals that is capable of being justified beyond any reason in relation to the law of ignorance that prevails at the most basic level of existential conditions – both individually and collectively.

John Stuart Mill, among others, claims that unless individuals are free from interference, then truth will not be established and, therefore, society will not progress. 'Freedom from interference' is the 'space' through which individual genius, creativity, and inventiveness will be enabled.

What the 'truth' of any matter is, Mill doesn't say. Consequently, Mill is merely assuming that there is a necessary link between, on the one hand, 'freedom from interference' and, on the other hand, 'establishing the truth'.

Irrespective of what the truth of things might be and irrespective of whether, or not, anyone will come to understand the nature of that truth, everyone is entitled to the opportunity to try to push back the horizons of ignorance that envelop him or her. That kind of an opportunity is not necessarily the royal road to the land of truth, nor is

that sort of an opportunity required so that creativity, genius, and inventiveness will be manifested.

Sovereignty is not a means to an end. Sovereignty is merely a starting point that permits one to have an opportunity – within limits -- to explore one's existential condition … there are no guarantees concerning where the process of engaging such an opportunity might take one.

Mill maintains that from the perspective of 'liberty', "pagan self-assertion is as worthy as Christian self-denial." Without knowing the truth of things, one really is not in any position to evaluate the worthiness of either 'pagan self-assertion' or 'Christian self-denial.' Moreover, without knowing, or being able to justify, the criteria for determining the worthiness of any given activity, one cannot defensibly equate 'pagan self-assertion' with 'Christian self-denial'.

Ignorance does not make activities equally worthy. Ignorance cloaks the possible worthiness of those activities in the darkness of the unknown.

'Pagan self-assertion' and 'Christian self-denial' certainly are two of the many directions in which one might choose to journey with respect to trying to push back the horizons of ignorance. Whether: either of those two possibilities, or neither of them, or both of them, are, in some sense, worthy will depend on the truth of things … for there can be no non-arbitrary sense of worthiness apart from the truth.

A 'what' (e.g., constitutional system) or 'who' (e.g., ruler) interfering with the sovereignty of others is as much in need of being justified beyond a reasonable doubt as is the case when an individual that is exercising sovereignty interferes with the sovereignty of other individuals. The existential problem with which we are confronted is not a matter of positive and negative freedoms, but, rather, the aforementioned problem is a function of individual sovereignty and whether, or not, in any given instance, departures from that basic, existential standard can be justified.

Mill also argues that whatever errors an individual might commit despite the best efforts of others to persuade such a person that she or he is making a mistake are trivial compared to the evils of trying to

restrain that individual from committing those sorts of errors. Whether, or not, one would agree with Mill with respect to the foregoing contention might depend on the nature of the mistake being made by some given individual, as well as on the nature of the means of constraining an individual from committing such an error, as well as the nature of the method of evaluation used to make such judgments.

Apparently, Mill believes there is a moral calculus that has been proven beyond any reasonable doubt that is capable of demonstrating, to one and all, where the greater evil lies with respect to individual freedoms and collective constraints. Unfortunately, there are many such systems of moral calculus, and the problem confronting individual sovereignty is to determine which, if any, of them are true.

Individual sovereignty – at least in the sense being employed in this book – only entitles a person to have a fair opportunity to try to push back the horizons of ignorance. The degrees of freedom associated with the exercise of that sovereignty are subject to considerations involving, among other things, issues of justification either with respect to 'a preponderance of evidence' or 'beyond a reasonable doubt' … depending on the nature of one's mode of exercising one's basic sovereignty (that is, by oneself or in conjunction with others).

Unless one can show that a given departure from the basic standard of sovereignty (which is a fair opportunity to push back the horizons of ignorance and nothing more) can be justified beyond a reasonable doubt, then individual departures from the basic standard are as problematic as are collective departures from that standard. Individuals do not have priority over the collective with respect to the issue of sovereignty, and the collective does not have priority over the individual in that regard … instead, everything depends on how one chooses to exercise sovereignty and whether, or not, departures from the basic standard of sovereignty can be justified beyond a reasonable doubt in any given case.

Mill maintained that only individuals with certain qualities were capable of realizing the potential of freedom. In other words, individuals who manifested qualities of being: independent, critically inclined, non-conforming, creative, and original were, according to Mill, best situated to reap the fruits of freedom.

The foregoing qualities were either never defined by Mill or, where defined, not justified. Moreover, despite Mill's belief that those qualities could only thrive in the condition of being free from interference, there is considerable historical evidence to suggest that individuals (e.g., Socrates, Jesus, Spartacus, William Wallace, Tom Paine, Gandhi, Rosa Parks, Martin Luther King, Nelson Mandela) were often at their individualistic, non-conforming, critically inclined, creative, morally courageous best when those people were opposing authoritarian challenges to the sovereignty of the individual ... which is not a justification for the existence of those sorts of authoritarian challenges.

Indeed, Mill's perspective concerning liberty makes no sense unless it emerges out of the sort of context in which Mill believes that individuals have not been free from the sorts of interference about which he is concerned in his essay on liberty. If tyranny and authoritarianism of various kinds did not exist, Mill likely would have had no reason to say what he did … he would have had nothing against which to push.

Furthermore, someone could exercise the foregoing qualities (i.e., being non-conforming, critical, and so on) in relation to a given authoritarian attempt to constrain individual sovereignty or one could exercise such qualities in relation to Mill's perspective itself. However, neither case necessarily guarantees that one will be any nearer to the truth at the end of the day.

The fact of the matter is that we are not quite certain how to go about establishing the truth of things concerning the nature of the universe … even though we might have an idea concerning how to go about establishing the likely truth of this or that limited fact. The process through which anyone comes to the realization of the truth of something is, more often than not, clouded in mystery.

Qualities of independence, critical thought, originality, creativity, and non-conformity – even if we were able to define them in some non-arbitrary manner – might assist one in the search for truth. Yet, there are a lot of people who exhibit those qualities but who don't necessarily make the critical breakthroughs to important 'truths' of one kind or another.

Furthermore, there are a variety of historical instances involving conditions of apparent serendipity that have led to the discovery of important insights. This tends to suggest that factors other than the sort of personal qualities that Mill considered to be critical to civilization might play a role in the search for the truth of things.

Some have argued that Mill's notion of liberty is not inconsistent with some forms of tyranny or autocracy. In other words, one need not argue that such a notion of liberty can only be realized in the context of some form of democracy or self-governance.

According to that kind of a perspective, one could conceive of a ruler who simultaneously permitted his or her subjects freedom from interference in some areas while limiting freedom from interference in other areas. Some people have concluded from the foregoing possibility that this kind of a state of affairs indicates that the issue of who governs a person is distinct from the issue of the character of the degrees of freedom that are granted to individuals through the source of authority regulating the structural character of the space through which 'negative freedoms' – freedom from – are exercised.

While it might be true that Mill's conception of liberty is such that it permits one to differentiate between positive and negative senses of freedom, acknowledging this does not prevent one from asking: Why should one accept Mill's way of looking at things as the standard process for filtering those matters? Having a point of view and having a justifiable point of view are not necessarily the same things?

Why should one adopt a Mill-like framework concerning the issue of freedoms? For instance, historically speaking one might be able to point to this or that instance in which distinguishing between positive and negative senses of freedom helped to make sense of those sorts of historical circumstances, and, yet, one might still ask: Why should one accept that way of doing things – either historically or methodologically?

The fact something can be done in a certain way does not necessarily mean that things should be done in that manner. Mill is certainly free to look at history and his experience in the way he does, but why should I – or anyone -- do so as well?

Historically speaking, there might have been any number of rulers or systems of government that arranged things so that some areas of the activities of subjects/citizens were free from interference while other areas of activities were not free from that kind of interference. What gives that ruler or system of government the right to arrange things in one way or another? Such a 'right' stands in need of being justified … not just in terms of a preponderance of evidence but beyond a reasonable doubt with respect to that evidence.

The fact Mill's approach to the idea of liberty permits a certain kind of "freedom from interference' (the negative sense of freedom) to peacefully coexist with an otherwise authoritarian regulation of life (the positive sense of freedom) does not necessarily justify either the positive or negative facet of that kind of an arrangement. In fact, one might argue that under the foregoing set of circumstances, individuals who enjoy the fruits of being free from certain kinds of interference have been 'brought off' at the expense of those who will not be free from certain kinds of interference … for example, scientists who are given freedom from interference – a freedom that is leveraged for purposes of exploring the physical and material universe -- could be subsidized by those who will not have freedom from being interfered with and who will be forced to help certain 'elites' to benefit economically from the discoveries made by those same scientists.

Freedom from interference of a certain kind does not exist in isolation. The foregoing sort of freedom is part of a social system, and that system, considered as a whole, stands in need of being justified.

Mill's perspective concerning liberty provides one with a hermeneutical way of interpreting different contexts. Nonetheless, one legitimately can still ask: How does such a perspective enhance one's understanding of sovereignty understood as constituting the right to have a fair opportunity to push back the horizons of ignorance?

Any constraint on sovereignty that cannot be justified beyond a reasonable doubt is likely to lead to an unfair system of opportunity in relation to the project of moral epistemology that is entailed by the basic condition of sovereignty … a condition that can be justified beyond a reasonable doubt in a way that Mill's approach to liberty cannot be so justified. Permitting some degrees of freedom from interference (the negative sense of freedom), while not permitting

other sorts of freedom from interference (which has to do with the positive sense of freedom) is not self-justifying … even thought this sort of arrangement might be convenient for those who find those spaces -- being free from interference -- enjoyable or valuable.

To argue – as some have – that there is no necessary logical connection between Mill's notion of freedom and the nature of self-governance or democracy indicates that Mill's perspective is, at best, problematic. In other words, if one is seeking some form of political/legal arrangement that is, broadly construed, democratic in the sense that it permits individuals to govern themselves (i.e., to be their own source or authority for regulating the public space) then, presumably, one should be looking for a notion of freedom that does have a necessary logical connection to that form of self-governance.

The most basic form of freedom is the "freedom to" have an opportunity to push back the horizons of ignorance – within the limits of a reciprocity that establishes fairness with respect to such an opportunity. This freedom is a right because it can be justified beyond any reasonable doubt in the context of the existential conditions we find ourselves … conditions that give expression to the law of ignorance.

The foregoing "freedom to" is at the heart of the basic sovereignty to which every individual has a right. This sort of sovereignty, freedom, or right is logically linked to the issue of self-governance since the latter is not possible without, at a minimum, possessing the basic sovereignty that is being delineated here.

What does it mean to be master of oneself? Does it necessarily mean that all one's decisions are based on one's own ideas, thoughts, inclinations, purposes, reasoning processes, and will?

If so, then every 'junky' is a master of himself or herself. Obviously, there appears to be a fly in the foregoing brand of logical ointment concerning what is meant by the idea of mastery.

How does one distinguish between, on the one hand, delusional: ideas, thoughts, inclinations, purposes, or reasoning processes, and, on the other hand, those ideas, thoughts, purposes, and so on that give expression to the truth of a matter (or a greater degree of the truth of a

matter)? Isn't it possible that, on occasion, the ideas, thoughts, inclinations, purposes, reasoning processes, and behaviors of others (which might give expression to their wills) might be able to assist one to struggle toward the truth of a situation?

Certainly, we wish to be free from the ideas, purposes, and so on of others that are imposed on us independent of our concerns with respect to those issues. However, the dialectic between oneself and others can be both beneficial as well as problematic.

Being able to choose as one likes might, or might not, advance the cause of sovereignty. Being free from the interference of others, might, or might not, advance the search for truth.

To have responsibility for the choices one makes is a good thing … unless, of course, this sort of responsibility carries injurious ramifications with respect to one's capacity for making further choices. Every choice we make leads to an unknown future … a future for which one might wish not to be held responsible.

Everyone wants to have control over their decisions. Often times, however, when problems arise in conjunction with those choices, the first thing many people do is disavow responsibility for the decisions that have been made.

To be master of oneself requires a person to push back the horizons of ignorance concerning the nature of self and mastery. As long as one remains in ignorance, one is no position to know what will enhance one's mastery of oneself.

Some individuals have argued that "rationality" is what sets human beings apart from the rest of the universe. Even if, for the moment, one were to leave aside those questions that revolved about the issue of just what was meant by "rationality", one still would be left with questions about the possibility that other dimensions of being human might also might distinguish between human beings and the rest of the universe – for example, dimensions that involve to varying degrees: creativity, moral character, self-awareness, language, spirituality, and so on that are not necessarily reducible down to only considerations of "rationality' … however this latter term might be defined.

In any event, if one were to define self-mastery as the ability to use reason to explain one's decisions to others in terms of one's own thoughts and purposes, this assumes that this sort of explication can be justified. Using reason might not, in and of itself, guarantee that one's explanation concerning the relationship among thoughts, intentions and behaviors will give expression to a relationship that can be justified – either with respect to considerations involving the preponderance of evidence or in relation to considerations that carry one to a point of being beyond a reasonable doubt.

For example, while an individual might use 'reason' -- in some sense of the word -- to connect one's thoughts, intentions and behavior in a manner that seems to embrace a preponderance of the available evidence, that kind of an argument might not convince others of its truth, or likely truth, beyond a reasonable doubt. If one is merely providing an account of one's reasoning concerning some issue, the foregoing sort of an 'explanation' might be satisfactory, but if one is trying to justify the manner in which one's behavior interfered with the sovereignty of another individual, such an explanation -- while reasonable in some sense -- would not necessarily be fully satisfactory.

The notions of 'reason', 'reasonable', and 'reasoning' are very contentious issues. Some explications of 'reason', 'reasonable', and 'reasoning' might satisfy some standards of acceptability, and, yet, fail to meet other, more rigorous standards of critical exploration.

Does the expectation that someone's reasoning process should be capable of meeting a certain, rigorous standard of critical acceptance enslave that individual? If the latter standard is not justifiable, then one might be inclined to say that the foregoing sort of expectation is enslaving. However, if that standard is justifiable, then any failure to meet it carries the possible implication that the thinking of the person being examined does not necessarily give expression to 'rational' thought.

If standards of reasoning are arbitrary (that is, they cannot be shown as being likely to be true beyond a reasonable doubt), then to whatever extent those standards or conventions are imposed on others, then to that extent those standards have a potential for enslaving people. If, on the other hand, one can show beyond a reasonable doubt that a given set of standards is not arbitrary, then

that set of standards is not necessarily enslaving but, instead, constitutes one of the conditions that need to be met in order for someone to be considered as being rational.

The law of ignorance that justifies the basic sovereignty to which each individual is entitled (that is, a fair opportunity to push back the horizons of ignorance) entails a high standard with respect to transgressing against another individual's sovereignty. One must be able to show beyond a reasonable doubt that such a transgression is justified.

If one cannot meet the aforementioned standard, then although a person's argument might employ reasoning of one kind or another, nevertheless, that argument is not necessarily rational. In other words, this sort of an argument has failed to satisfy the standard that justifies someone's departing from the basic process of sovereignty to which ignorance concerning the truth of our existential conditions gives expression.

People are free to believe whatever they like about the nature of 'the self', 'reality', 'truth', 'mastery' and so on. However, not all of those beliefs are capable of being justified beyond a reasonable doubt – in fact, most of those beliefs cannot be so justified -- and, therefore, the right to invoke those beliefs as reasons for departing from the basic sovereignty to which we are all entitled has not been justified in a rational fashion.

Moreover, even when considering things in relation to those aspects of a person's life that do not spill over in a problematic way with respect to the basic sovereignty to which others are entitled, nevertheless, although people are free to believe whatever they like in such circumstances, not all such beliefs are capable of being justified in terms of even the lesser rational standard of a preponderance of the available evidence.

The basic sovereignty to which we each are entitled as a result of the law of ignorance permits an array of degrees of freedom for proceeding in this or that direction. However, not all of those choices are necessarily rational ones despite the fact that a reasoning process might have preceded the exercise of any given choice … that is, not all those choices will necessarily be able to help push back the horizons of

ignorance in a justifiable fashion even though those choices might arise in a context of reasoned meaningfulness.

We are all entitled to have a fair opportunity to push back the horizons of ignorance. Not all of us take constructive advantage of that kind of opportunity in a way that can be justified – depending on circumstances -- according to the rational standard of a preponderance of the available evidence or according to the rational standard of being beyond a reasonable doubt.

Desiring something is not the same thing as being able to justify -- according to some rational standard in the foregoing senses – that which is desired. Self-mastery is not necessarily what one supposes it to be.

Mastery is as an expression of the actual way of the universe. Mastery is something that having a fair opportunity to push back the horizons permits one to pursue, but having that kind of an opportunity doesn't guarantee anyone that the truth of things will be realized through the pursuit of that sort of opportunity … even when everything is done fairly or in a reciprocally appropriate fashion.

Some individuals (e.g., Kant) have argued that values are values only to the extent that they have been generated through the free choices of human beings. If so, then truth is not a value since the truth of something is not what one freely chooses it to be but is, instead, what reality requires it to be.

We grasp truth to the extent that our understanding reflects the character of the way things are. Values that do not conform to the truth of things have questionable value even though we might choose them.

Man is not the measure of all things. Truth is the measure of all things, and men adopt this or that metric as ways of attempting to plot the nature of that truth according to the capacity of chosen metric to do so.

Contrary to what Kant and others tend to maintain, self-mastery might not be a matter of resisting one's desires and emotional impulses. This is so for several reasons.

First, not all desires and emotions are necessarily injurious to the existential project of pushing back the horizons of ignorance. For example, sincerely yearning for the truth or sincerely desiring to do justice to the truth might be allies in the cause of enhancing sovereignty.

Emotions and desires are not inherently at odds with the issue of sovereignty. Much depends on whether, or not, those forces are capable of being harmonized with the task of trying to push back the horizons of ignorance.

Secondly, the belief that emotions and desires must be controlled by reason ignores the possibility that reason might be as much in need of being informed and shaped by certain emotions and desires, as certain emotions and desires are in need of being shaped by reason.

Having empathy for another human being -- or for life in general -- might be an important and appropriate way of orienting reason with respect to reality. A process of reasoning that sought to control empathy might not be an effective form of reasoning … although some sort of an 'appropriate' balance between reason and empathy might be considered prudent.

Love can both blind and cripple reason as well as set reason free. The dialectic between love and reason is not something that should always be settled in reason's favor and, therefore, this sort of dialectic is not something that should necessarily be controlled solely through considerations of reason.

Reason might argue that discretion is the better part of valor, but courage might counter with the possibility that discretion is reason's way of avoiding responsibility with respect to taking necessary action. Should reason control emotion, or should emotion inform reason?

Empathy, love, and courage – along with a number of other emotions – have as much right to shape the choices human beings make as reason does. A person must learn to distinguish among her or his emotions and desires with respect to those that are able to constructively enhance one's basic sovereignty with respect to pushing back the horizons of ignorance (including those horizons that surround one's attempt to understand the nature of emotions and desires).

Not all reasons are good ones. Not all emotions should necessarily be controlled or discarded.

One does not comply with reasons because they are inherently 'reasonable'. Rather, reasons are reasonable to the extent that they help one push back the horizons of ignorance.

Similarly, an individual does not admit emotions only to the extent that they are controlled by reason. Instead, emotions might have a constructive role to play to the extent that they assist reason to push back the horizons of ignorance.

One's ability to search for the truth can be hindered both by problematic reasons as well as problematic emotions. Alternatively, one's ability to search for the truth can be enhanced both by justifiable reasons and constructive emotions … that is, emotions which do not undermine a person's search for truth but, instead, assist that search in various ways.

The truth is not a law to be obeyed but, rather, truth is a reality to be recognized and used to further the project of moral epistemology that is entailed by the basic sovereignty that follows from the nature of our relationship to existence. We are not autonomous because we follow the rational laws that we impose upon ourselves but, rather, we are truly autonomous only when our choices are informed by the truth – to whatever extent this is possible – and, therefore, our behavior gives expression to the only form of autonomy that is defensible both rationally and emotionally … namely, to choose the way of truth since all other choices will lead to error and delusion.

The closer one is to the truth, the closer one is to having an opportunity to maximize one's autonomy. Autonomy means being free from all considerations other than the truth.

One does not become enslaved to the truth thereby. Rather, the truth actually does set one free to engage the universe or reality in the least problematic, most effectively functional manner possible.

The truth does not cause our choices. Rather, the truth is either accepted or rejected by our willingness to proceed in one direction rather than another.

The truth might not be recognized as such – that is, beyond a reasonable doubt and with something akin to certainty -- when it is

rejected. Similarly, the truth might not be recognized as such – that is, beyond a reasonable doubt and with something akin to certainty -- when it is accepted.

Many factors and forces might shape and color the circumstances of choice. However, no matter what those factors and forces might be, choice gives expression to the manner in which a person's will engages understanding such that some portion of the array of possibilities that are entailed by the foregoing sort of an understanding are selected by that within one which does the selecting from amongst those possibilities.

Circumstances and understanding propose possibilities. Will disposes – via choice – those proposed possibilities, and, therefore, the direction of causality extends from will to the indicated possibilities.

In other words, we cede authority to some aspect of those hermeneutical circumstances. Irrespective of the hermeneutical and behavioral direction in which one goes, the act of willing is the process of ceding authority, for good reasons or bad, to some aspect of reality that will shape and color the character of one's behavior. The ramifications of those choices will always come home to roost and help shape, color and orient the nature of one's sense of self through which choice is filtered.

Habit gives expression to one of the inertial forces of mental space. Life trends – such as attitudes, coping strategies, and motivational patterns -- are very difficult to alter once they have acquired inertial properties of their own.

Contrary to what Kant claims, human beings are not necessarily ends in themselves. The nature of human beings is a function of what the truth is concerning that nature.

The reason why we do not have a right to interfere with the basic sovereignty of another human being is not because of what we know – beyond a reasonable doubt -- about the nature of being human and how (as Kant believed) human beings are ends in themselves. Rather, we do not have a right to interfere with the basic sovereignty of another human being because of what we don't know – beyond a reasonable doubt -- about the nature of being human.

Contrary to what Kant claims, human beings are not necessarily transcendental beings who are beyond the realm of natural causality. Human beings are thoroughly entangled in natural causality, but we are ignorant about the precise character of that entanglement and concomitant causality.

To claim with some degree of justification that humans are transcendent beings, one must be able to demonstrate beyond a reasonable doubt what the nature of that transcendence is and how it is independent of considerations of causality on every level of nature. Kant didn't demonstrate the foregoing … merely assumed it.

Are human beings capable of making choices that are uncaused in some sense? We don't know, and what follows from this is that until one can demonstrate beyond a reasonable doubt that nothing within human beings is capable of such uncaused choices, the law of ignorance requires one to treat human beings – within certain limits -- as if they were so capable … that is, we have no compelling reason that can be substantiated beyond a reasonable doubt for doing otherwise.

Degrees of freedom are granted to the exercise of basic sovereignty by each individual in accordance with whatever does not interfere with the right of others (via the principle of reciprocity) to purse a similar set of degrees of freedom in accordance with their own decision processes, opinions, inclinations, choices, or the like. The more the degrees of freedom of basic sovereignty are shaped and informed by truth, then the more autonomous a person becomes in the sense of not having 'choices', decisions, and so on filtered through delusional systems of thinking and understanding … that is, human beings are free to be whatever it is they are rather than being something else (i.e., the product of delusional systems of thought).

Irrespective of whether, or not, there is some dimension of human beings that is entirely uncaused, nevertheless, to whatever extent falsehood directs the understanding through which: decisions, judgments, selections, and 'choices' are filtered, then human autonomy is compromised. We are only truly free to be human when one's sovereignty has embraced the truth of what it is to be human … everything else is slavery to falsehood.

Given the foregoing, Rousseau is wrong when he argues that a person is only free when she or he can actually realize that which is

desired. Desiring this or that, and acting on such desires, might, or might not, push back the horizons of ignorance. Freedom or autonomy is not about the desires – taken as a whole – which one can, or cannot, act upon.

Real freedom is to disentangle ourselves from everything within and without that distorts the truth about what it is to be human. Only when our desires reflect the essential potential of what it is to be a human being as a function of reality and only when we are able to realize those desires can a human being be said to be free.

Do we know what it means to be human? To whatever extent there are some people who might have correctly grasped what being human means, most of us – collectively speaking -- have no knowledge -- beyond a reasonable doubt -- concerning the nature of being human. Moreover, even if one assumes that there are some people who do grasp what being human means in the full context of the nature of things, nonetheless, unless those individuals can induce the rest of us to understand, beyond a reasonable doubt, how things are in that respect, then being correct doesn't entitle those individuals to impose their ideas on other human beings.

Two dimensions of the degrees of freedom that are inherent in the basic sovereignty of human beings concern the possibility of being right or wrong with respect to understanding human nature, in particular, and/or reality in general. No one should be deprived of those degrees of freedom unless one can demonstrate beyond a reasonable doubt why departures from that kind of a standard are justified.

Within limits, arguments that are capable of satisfying a standard that transcend reasonable doubt can be constructed for certain classes of individuals – for example, children – with respect to how far those degrees of freedom should be granted without various safeguards (which constitute forms of interference) being established to protect the continued viability of an individual. The nature of those limits can be quite complicated especially in view of the fact that one of the ways through which human beings learn some of the realities about being human is by means of exercising the degrees of freedom inherent in our basic sovereignty that have a potential to lead to either that which is false or that which is true.

To whatever extent it is possible – and I'm not sure what the precise character of that extent is – attempts should be made to minimize the manner in which the basic sovereignty of individuals (that is, having a fair opportunity to push back the horizons of ignorance) is constrained. Simultaneously, however, such minimal interference should not compromise the physical, emotional, psychological, or spiritual health of those individuals since the latter sort of problems will eventually be able to adversely affect an individual's ability to have a fair opportunity to push back the horizons of ignorance, and, consequently, the dynamic between the 'mini' and the 'maxi' sides of things can become quite complex.

The problems that political systems face in the foregoing respect are but family life writ large. The same sort of mini-maxi puzzle (i.e., the minimum levels of interference that can be justified beyond a reasonable doubt and that are compatible with a maximum set of degrees of freedom of basic sovereignty of individuals that is reciprocal in nature) awaits human beings at every level of social interaction.

Most people tend to agree that falsehood tends to enslave human beings, whereas truth tends to free human beings. The problem is that we are not necessarily always able to distinguish the two.

We continually commit what are referred to as Type I and Type II errors. In other words, we often accept as true that which has not been proven to be so beyond a reasonable doubt, or we reject something as being false when considerable evidence suggests that it might be true.

Delusions and illusions should be rejected. Reason and rationality should be accepted.

Sometimes, however, what we consider to be reasonable is delusional in character. At other times what we consider to be delusional in character might reflect more of the truth than what we believe is the case.

Hobbes, Rousseau, Kant, Marx, Hegel, and many others all advanced theories that purported to offer a means of permitting individuals to be able to distinguish the true from the false when it came to understanding the 'proper' relationship between individual and society. Whatever insights the foregoing individuals might have

had to offer concerning this or that aspect of our existential condition, none of them was able to establish a system that could be shown to be true beyond a reasonable doubt … or that was even capable of being shown to be true in terms of a preponderance of the available evidence – then or now.

In short, each of the foregoing individuals advanced ideas that were meaningfully reasoned without necessarily being rational. In other words, one often could make sense of what they were trying to say concerning the nature of the individual's relationship with society because each of the aforementioned theorists offered reasons, arguments, and a certain amount of experiential data to support their positions, and, yet, those reasoned positions were not capable of meeting the conditions of rationality in a way that showed how they were true beyond a reasonable doubt or even true with respect to a preponderance of the evidence.

Many people accept the ideas of one, or another, of the foregoing individuals (i.e., Kant and others) because those ideas are considered to have meaning and can be put to this or that purpose. However, demonstrating that those ideas are actually capable of reflecting the truth of things beyond a reasonable doubt is an entirely different matter.

Everything that is reasonable is not necessarily rational in the sense that the former can be shown to be likely to be true beyond a reasonable doubt or shown to be true even in accordance with a preponderance of the evidence. Everything that is rational in the foregoing sense will not necessarily reflect what one or another us considers as being reasonable.

We often make conventions out of what we consider to be reasonable or reasoned meaningfulness. However, those conventions might reflect only the logical nature of their own structural character and reflect little of the actual nature of reality.

The law of ignorance governs much of our relationship with reality. Being able to establish a viable path for departing from that ignorance is a very difficult epistemological problem to solve in any way that is capable of satisfying standards that require claims to be true beyond a reasonable doubt or to be true in accordance with 'a preponderance of the evidence' … and, here one might note that the

term “preponderance” in the foregoing phrase is problematically ambiguous.

The forces that lead to error and delusion might come from within or from without an individual … or from both. The means that lead to truth might come from within or from without … or from both.

Having reasons for proceeding in one direction rather than another is not enough to make an understanding true. To qualify as constituting more than just a reason or set of reasons, a given understanding must be capable of being shown as being likely to be true beyond a reasonable doubt.

We ‘choose’, but our choices often are not rational even as they seem reasonable. We choose from within the cloud of unknowing ignorance.

The law of ignorance lends credence to our right to choose as an expression of the basic sovereignty to which we are entitled – that is, having a fair opportunity to push back the horizons of ignorance – even as that same law points in the direction of a need for reciprocity when it comes to honoring the same right to others because of our inability to depart from ignorance in any fashion that can be shown to be true beyond a reasonable doubt.

In order to proceed individually and collectively, one doesn’t have to know what it means to be a human being; one doesn’t have to know what the nature of reality is; one doesn’t have to know what the purpose of life is. The law of ignorance lays out the path that should be pursued with respect to the possible palimpsest nature of reality since such a path can be shown to be methodologically defensible beyond a reasonable doubt under the circumstances of the existential condition in which we find ourselves.

What is it to have a reasonable doubt about the truth of something? If one’s doubt cannot be shown to be false, then that doubt is reasonable to the extent that it does not interfere with the basic sovereignty of other human beings.

Reasonable doubts are those that can be entertained as being possible without being self-contradictory. Reasonable doubts are those that can be entertained without being shown to be inconsistent

with experiential data considered as a whole … rather than considered from the perspective of this or that belief system.

Do reasonable doubts necessarily point in the direction of truth in some ultimate sense? No, they do not, but until proven otherwise, those doubts might be of value to the process of trying to push back the horizons of ignorance.

Reasonable doubts give expression to an informed understanding concerning the limits of knowledge in a given context. When ignorance prevails, it is reasonable to understand that ignorance is what it is and not something else.

Furthermore, in the 'light' of that ignorance, the path forward should be guided through a certain amount of prudent caution with respect to various proposals concerning what the character of that proposed path should be. In addition, reasonable doubt means that questions concerning the possible nature of the path forward should be engaged from the perspective of considering how those proposals affect the basic sovereignty of individuals and whether, or not, those proposals are likely to lead to unjustified departures with respect to all individuals continuing to have a fair opportunity to push back the horizons of ignorance.

In many respects, most of us do not really know what it means to be a rational human being. This is because most of us are not in a position to demonstrate that a variety of possibilities are likely to be true beyond a reasonable doubt and, thereby, satisfy a basic standard of rationality.

Instead, oftentimes, we tend to be rational only to the extent that our doubts are reasonable. If we engage our ignorance through reasonable doubts, we might come to understand that some conceptual possibilities are more tenable (e.g., they lead to fewer conceptual problems and/or leave fewer critical questions unanswered) than are others … although being more tenable doesn't necessarily make something true beyond a reasonable doubt.

If we choose wisely with respect to those possibilities, we might be able to push back the horizons of ignorance in limited ways. Reasonable doubt is a method through which to engage experience and try to determine whether, or not, some forms of doubt are more

reasonable than others … more reasonable in the sense that the doubts one has about how to proceed might push one more tenably in the direction of exploring ignorance from certain perspectives that might turn out to be more heuristically valuable than are other possible directions.

What is heuristically valuable is not necessarily what is true. Rather, something is heuristically valuable to the extent that it (whether this is in the form of a given: assumption, idea, way, method, or whatever) permits one to generate a variety of questions that lead in constructive – although not necessarily ultimately true – directions.

The experiences one gains from pursuing those heuristic possibilities might induce an individual to rule out some possibilities, while engaging others. Whether one is committing either a Type I or Type error during the process of pursuing those heuristic options is a separate matter.

There are many possibilities that can be shown to be reasonable in the foregoing sense. Each person must choose from among those sorts of possibilities with respect to which of them she or he will commit his moral and epistemological agency (i.e., will).

All of the considerations that are being alluded to above are among the degrees of freedom that might shape or orient the process through which an individual might orient his or her sovereignty – that is, having a fair opportunity to push back the horizons of ignorance. However, few, if any, of the foregoing possibilities are necessarily capable of being demonstrated as giving expression to what the truth is likely to be beyond a reasonable doubt when it comes to the collectivity of humanity.

As long as pursuing those possibilities does not interfere with the capacity of another person to exercise his or her basic sovereignty, then they are permissible degrees of freedom with respect to seeking to realize such sovereignty. Once the boundary to another individual's basic sovereignty is transgressed or violated, then it is reasonable to have doubts about the wisdom or propriety of pursuing the possibilities associated with that kind of a problematic degree of freedom.

Northing in the foregoing indicates that there is only one way to truth or that there can only be one understanding of truth. Nothing in the foregoing suggests that the understanding of everyone concerning the issue of truth must be the same or that everyone will understand truth to the same depth … to whatever extent such truth can be understood.

On the one hand, there is the truth of reality … whatever that might be. On the other hand, there is our relationship to that reality … a relationship that is frequently, if not largely, obscured by ignorance.

Reality will hold us responsible for the choices we make with respect to the foregoing relationship. In other words, there tend to be experiential ramifications, of one sort or another, associated with those choices … ramifications that frustrate, complicate, support, discourage, confirm, undermine, and/or bring those choices into question.

Other individuals will hold one responsible for the choices that impinge on or violate the basic sovereignty of those individuals. Social problems are resolved, to whatever extent they can be, by providing viable, constructive means for negotiating the dynamics of the boundary conditions with respect to the exercise of the basic sovereignty of different individuals.

A minimal sense of justice is linked to circumstances in which people's basic sovereignty is reciprocated in relation to one another. Departures from that kind of a standard indicate the degree to which injustice is present in a given society.

A maximal sense of justice is linked to a condition in which individuals become autonomous and, therefore, are free from all biases that distort the true nature of what it is to be a human being and prevent a person from acting in accordance with such a nature. Departures from that standard – to the extent that this can be known in a manner that is beyond all reasonable doubt – indicate a further degree to which injustice is likely to be present in a given society.

The latter maximal notion of justice and injustice is unknown and, possibly, unknowable and unrealizable -- except by, perhaps, a very few – although we all feel the presence of, as well as suffer from, the extent to which we collectively give expression to falsehoods rather

than truth. The former, minimal sense of justice and injustice seems to be – at least potentially -- both knowable and realizable.

According to Locke, true freedom does not exist without rational law. Rational law is that which assists human beings to work toward some sort of generalized good or toward their own best interests.

Furthermore, Kant maintains that authentic political freedom is a matter of willing what one ought to under certain conditions of rationality. In other words, by submitting to rational laws, we become as free as is possible in such a political/legal context.

As reasonable as the foregoing ideas sound, one really doesn't know what significance to assign to those ideas because they are devoid of important details. For instance, to say that rational law is that which leads humans to realize the general good or what is in their best interests doesn't say anything about what the nature of such a 'general good,' or one's 'best interests,' is.

If one knew what the 'general good' or one's 'best interests' were, then one might have some insight into what kinds of laws might help people realize those things and, thereby, qualify as being rational. However, as long as one doesn't know what the 'general good' or one's 'best interests' entail, then one has absolutely no idea what kind of a law would qualify as being rational.

Similarly, claiming that one becomes free by willing what one ought to, reveals absolutely nothing about what one ought to be willing. Moreover, one might also question the nature of the relationship, if any, between what a given law requires and that which one ought to be doing.

A commonality that is present in the perspectives of Locke and Kant, along with many others, concerning the relationship between individuals and society is that those laws are considered rational that enable people to do what they ought, and/or do that which is in their best interests, and/or do that which contributes to the general good. Therefore, claiming that a given law will assist people to do what they ought to do, or assist them to realize their best interests, or help them to contribute to the general good automatically renders that kind of a law to be a rational one … or so such thinking goes.

If someone needs a law or legal pronouncement to induce individual to do that which they ought to, then this is because those people have not, yet, found their way to understanding what they ought to do and, as a result, have not, yet, become willing to do what they ought to do on their own, quite independently of laws. Even if someone were right about what people ought to do, the step from that kind of an understanding to requiring people to comply with that sort of an understanding is not necessarily an exercise in political freedom or rationality.

To claim that: Someone ought to do something or that such a something is in a person's best interests or that this sort of something contributes to the common good, stands in need of justification beyond a reasonable doubt. Laws that are not rooted in that kind of a justification are not 'rational' in any sense but an arbitrarily constructed one.

From the perspective of Locke and Kant, rationality is a matter of understanding what the nature of truth is in relation to what people ought to do or what constitutes the general good or what involves someone's best interests. One implication of the foregoing perspective is that as long as one does not have that kind of an understanding, then what one thinks or does is not rational.

However, another implication of the foregoing perspective is that when one understands how one does not possess such an understanding, then whatever one proposes in the way of law cannot be rational in the sense that it is known – beyond a reasonable doubt -- to give expression: to that which one ought to do, or to that which is in one's best interests, or to that which contributes to the common good. In other words, if the relevant knowledge or understanding is not present, then no law can be considered rational in the sense alluded to by Locke and Kant … and we'll leave aside, for the moment, the issue of whether, or not, one has the right to legally or forcibly require people to do what someone believes – no matter how rationally – might be in the best interests of others or might be something that they ought to do.

According to Locke, rational laws – i.e., good laws – are what prevent people from wandering into problematic social landscapes. Consequently, those laws do not place human beings under

confinement since those sorts of laws only protect people from that which will lead to difficulty.

Nonetheless, one might well ask someone like Locke to not only explain, but justify, how restraining people's behavior is not an exercise in confinement in those instances where one cannot demonstrate that such an arrangement is the only way to avoid the pitfalls of social life. Locke's understanding of what he believes to be a rational way to avoid social problems might not be only way to engage those issues, and, therefore, one would like to know how restraining people in a possibly arbitrary manner is not an exercise in confinement.

In addition, one might wish to critically probe what Locke considers to be the sort of social pitfalls and hazards that people need to avoid. One person's judgment of a social hazard that should be avoided at all costs might well be another person's notion of what constitutes the best interests of people.

Locke believed in the almost sacred-like character of private property. Thomas Paine thought otherwise and felt that such an approach to the idea of property was one of the underlying causes of many of society's problems.

Why should one assume Locke necessarily got things right in the matter of property? Why shouldn't one consider the possibility that laws which prevent people from questioning the legitimacy of ownership and property rights are not justifiably restraining people from wandering into hazardous territory but are, instead, unjustly preventing issues of social justice from being addressed?

Kant argued that a person would only become truly free when that individual had abandoned her or his unjustifiable pursuit of wild, unrestrained freedom and come to understand that submitting to, or becoming dependent on, rational law was the essence of freedom. As indicated previously, Kant considered rationality to be equivalent to that which one ought to be willing.

According to Kant, wild, lawless expressions of freedom are not rational. Rationality is a matter of willing one's behavior to conform to, or comply with, that which one ought to will.

Given the foregoing, then, presumably, refraining from willing one's behavior to conform to what one does not recognize as being necessarily rational is also a rational act. Consequently, in the 'light' of our ignorance about so many things, one might be exercising reasonable – and, possibly, rational – doubt by distancing oneself from laws that claim, without rational justification, that one ought to be attempting to will behavior in one direction rather than another.

Recommending that people be dependent on laws that stipulate what one ought to be willing only makes sense if those individuals recognize that those laws give expression to that which has been shown to be true and , therefore, something that ought to be willed. Without the requisite recognition or understanding, then the aforementioned sense of dependency is unwarranted, and, consequently, the associated laws are not necessarily rational.

Kant is seeking to establish an equivalency of sorts between rationality and the authority of law. According to him, we should obey laws that are rational because those laws reflect the authority of our understanding concerning the requirements inherent in rationality (i.e., that one ought to will such things).

Under the foregoing circumstances, to obey law is to be rational. To be rational is to obey certain kinds of law.

However, if laws cannot be shown to be rational in the sense that we ought to be willing them, then there is no reason to obey them. If laws cannot be shown to be rational, then one really has a sort of obligation not to comply with those laws … seeking to will that which ought not to be willed does not seem to be a very rational thing to do.

What happens if someone recognizes a legal/social/political prescription to be rational because it gives expression to something that one believes ought to be willed, and, yet, the person disobeys that kind of a law? What if an individual chooses to do that which is not rational?

What is a rational response to the foregoing situation? Should a person be forced to comply with that sort of a law, and what would be the justification for the exercise of that kind of force or coercion?

Knowing what a person ought to do, does not necessarily determine what should be done when a person does not behave as he

or she ought to behave according to the requirements of rationality. This set of circumstances opens up a separate set of questions – namely, those concerned with determining what the rational thing to do in such a situation would be.

Even if one were to agree with Kant that one ought to will that which is rational, this does not necessarily settle the problem of what to do when a person is not rational and, therefore, does not conform his or her behavior to that which ought to be done. Presumably, there will have to be other laws governing that sort of situation that can be shown to be rational in the sense that one ought to comply with those kinds of laws.

Unfortunately, unless one has a complete understanding of the truth concerning the nature of reality and what such reality entails with respect to being human, then one would be at a loss to propose laws that reflect what should be done when human beings don't will what they ought to according to the requirements of rationality. More importantly, if one lacks the requisite understanding of reality to determine what ought to be done with those who don't do what they ought to do as required by rationality, then one wonders what the point is of having any laws in the first place.

In other words there are two problems here. One difficulty concerns the issue of what ought to be done – that is, what sorts of laws should there be that reflect the requirements of rationality, while the other difficulty involves the issue of what ought to be done if what 'ought' to be done (??) is not done.

Kant doesn't really adequately address either of the foregoing issues. He doesn't demonstrate beyond a reasonable doubt – except, perhaps, in a sort of tautological manner -- what ought to be done, and he fails to persuasively demonstrate what should be done if what he claims ought to be done is not done.

Kant wishes to argue that any restraint on my behavior that involves something that I might desire and, yet, which could not be shown to be rational, does not constitute a deprivation of freedom. Freedom only involves doing that which can be shown to give expression to what one ought to do – i.e., that which is rational.

While one might agree that real freedom is a function of doing only what – according to the nature of truth – one ought to do, I believe Kant is quite wrong to suppose that no deprivation of freedom is involved when one is required to do only that which the law says one ought to do in order to qualify as rational behavior. Freedom is a matter of having choice and, therefore, not necessarily a function of the kinds of choices – rational or irrational – one makes.

Certain kinds of choices – i.e., those that are rational – might lead to real freedom in the sense that one attains a station in which everything that one ought to do is rational and everything that is rational is done. Autonomy in this sense frees one from everything other than the rational.

Other kinds of choices – i.e., those that are irrational – might lead away from real freedom in the foregoing sense. Nonetheless, taking away someone's ability to pursue these latter sorts of choices still constitutes a deprivation of certain degrees of freedom even though the 'best' sense of freedom – i.e., that which is rational and, therefore, ought to be willed -- is not so restrained.

Whether, or not, someone should be deprived of those degrees of freedoms is a separate issue. Even if one were to know what ought to be done, it does not necessarily follow that people should be deprived of all those degrees of freedom that did not lead in the desired direction of that which was considered to be rational … a lot might depend on what ramifications, if any, those 'irrational' choices had on the ability of people (whether this refers to the one doing the choosing or it refers to other individuals who might be affected by such choices) to continue having a fair opportunity to push back the horizons of ignorance.

The problem with Kant – and Locke -- is that as soon as one raises questions concerning what actually can be demonstrated, beyond a reasonable doubt, with respect to the nature of the dynamic between reality and human beings – rather than assuming as Kant (and Locke) appears to do that he knows the nature of what is rational concerning that kind of a dynamic – one faces a rather sizable problem. If one doesn't know the degree to which any given law participates in the rational, then one is left in the dark concerning what one ought to do and whether, or not, one ought to will what such a law requires and

whether, or not, anyone should be deprived of the opportunity to exercise those choices.

It has been argued by some (e.g., Fichte) that the process of education should be pursued in such a fashion that the object of the exercise – i.e., the pupil – comes to understand why things were done in one way rather than another during that process. However, if the nature of the educational process were largely a matter of propaganda, then the person who went through such a process might very well come to understand why things were done in one way rather than another, but this sort of understanding would not necessarily justify that kind of a process … except, perhaps, in the minds of those who sought to propagandize their students and did so successfully.

One cannot automatically assume that the purpose of the State/Nation is to ensure that its citizens will come to know the truth of things. Therefore, one cannot suppose that by coming to understand the 'educational' system that has been set in place by the State/Nation from the perspective of those who have organized such a process that one will, thereby, necessarily arrive at the truth about how the notions of: justice, rights, fairness, justice, duty, obligation, governance, and knowledge are to be tied together in a fashion that is justifiable beyond a reasonable doubt.

Even if one were to assume that the State/Nation knew the truth about such matters – an assumption that stands in need of being justified beyond a reasonable doubt -- it doesn't necessarily follow that the State/Nation has the right to compel citizens to be educated in accordance with those truths. As important as having the opportunity to acquire truth might be, it is possible that what is equally as important is how a person comes to those truths and the quality of the struggle to which such a journey gives expression.

Being able to make a given truth one's own in the sense of being able to integrate that knowledge into one's life in a way that permits one to have mastery over that truth as it is applied to the problems of one's life is quite important. Compelling people to acquire truth in one way rather than another might interfere with, or undermine, a person's ability to develop and utilize that kind of mastery in a way

that was maximally effective for any given individual in relation to their life circumstances.

Alternatively, what if one goes through an educational process and one doesn't agree with why things were done in one way rather than another? It seems rather arrogant, narrow, and rigid to suppose that anyone who undergoes an educational process should come to understand and agree with that process in precisely the way in which it was intended by those who implemented that sort of program.

Moreover, the foregoing sort of approach tends to imply that there could be – or should be -- no improvements concerning a given educational system since under those circumstances the only perspective that would be recognized as being 'rational' would be one that understood the educational process as its designers originally intended. This seems a very arbitrary position to take … and, therefore, unjustifiable beyond a reasonable doubt or, perhaps, even with respect to a preponderance of the evidence.

If one assumes that the 'teachers' in a given educational system are all rational people, then one might maintain that by submitting to the teachings of those sorts of individuals, students are only being asked to recognize and submit to the rational authority within themselves. However, what justifies that sort of an assumption … even if one could specify what is meant by the idea that someone – i.e., a teacher – is considered to be a rational person.

If a given State/Nation is governed by rational laws, and if one of the purposes of the educational process is to induce students to come to understand the manner in which those laws are rational in the same way that the State/Nation understands those laws to be rational, and if teachers are rational agents who transmit principles of rational understanding to students, then one might come to understand how a person ought to will that which is rational and, as well, one might come to understand how that kind of compliance is nothing other than the process of a student coming to recognize and realize the presence of rational authority within themselves, and, therefore, how submitting to that rational authority constitutes a perfect expression of true freedom. However, one cannot merely assume one's way to the conclusions that one might like to achieve.

One must be able to justify, beyond a reasonable doubt, each and every step in the foregoing perspective. Otherwise that scenario is entirely arbitrary in the way it links what appear to be reasonable ideas together without having demonstrated how those links are capable of being justified.

Fichte argued that no one has rights against reason. In other words, once one understands the nature of the rational, then the issue of rights becomes a function of that which is rational.

Reason has priority over rights. For Fichte, discussion of rights only makes sense in the context of that which is rational.

In terms of the foregoing perspective, rights that cannot be reconciled with the rational can be stripped from people. People have no right to that which is not rational.

On the other hand, if one does not know the nature of the rational beyond a reasonable doubt, then what is the status of rights? Presumably, the law of ignorance establishes the way forward under those circumstances in the sense that people have a right to sovereignty … that is, a fair opportunity to push back the horizons of ignorance according to one's capacity to do so as long as the exercise of that sort of an opportunity does not interfere with a similar exercise of sovereignty by other people.

For Fichte – or anyone -- to be able to argue persuasively that the foregoing sort of right can be trumped by reason, he would have to be able to show, at a minimum, that his conception of reason or the rational was defensible beyond a reasonable doubt. If this cannot be done, then the foregoing right of sovereignty trumps what might be 'reasonable' (i.e., reason is present in some form) and meaningful (an understanding with a logical structure that doesn't necessarily reflect the truth) but that cannot be demonstrated to be rational in the sense of likely being true beyond a reasonable doubt.

What is it to be a sovereign individual? The idea of sovereignty suggests a right – that is, a justifiable entitlement that is more than merely a capacity to choose among degrees of freedom – to help determine the boundaries through which other people might engage one. Sovereignty suggests a right to help shape the limits within which interpersonal transactions take place. Sovereignty suggests a right to

pursue interests, purposes, goals, and inclinations that are not necessarily a function of the likes, dislikes, or wishes of others as long as those interests, purposes, and so on do not interfere with the similar rights of other individuals. Sovereignty suggests a right to help negotiate behavioral boundary conditions that are capable of preserving everyone's sovereignty in a reciprocally agreed upon fashion.

We might not be able to avoid the fact that as social creatures we tend to rub up against one another in a variety of ways. Nonetheless, the idea of sovereignty indicates that the structural character of that 'rubbing' process cannot be arbitrarily delineated … that the way in which such interaction takes place should be capable of meeting standards of fairness construed, at a minimum, through a sense of reciprocity in which everyone has the same kind of opportunity to proceed forward in life.

No one can realize the sovereignty of another. Sovereignty necessarily gives expression to the process through which an individual explores the potential of his or her own existential circumstances.

Each individual has duty of care with respect to realizing her or his own sovereignty. Each person has a duty of care to acknowledge, if not assist, the right of others to work toward realizing their own sense of sovereignty.

Sovereignty is not a matter of gender, race, ethnicity, religion, talent, beauty/handsomeness, sexual orientation, education, wealth, occupation, or social position. Sovereignty is that which lies beneath the surface of those considerations … sovereignty is what remains of an individual after all those peripheral factors have been discounted.

People have a tendency to confuse the peripheral with the essential. Sovereignty is essential and gives expression to the most basic of rights – the right to have a fair opportunity to push back the horizons of ignorance concerning the nature of sovereignty and its role, if any, in reality.

None of the aforementioned peripheral characteristics or qualities can be shown, beyond a reasonable doubt, to entitle people to rights. On the other hand, via the law of ignorance, sovereignty can be shown

to confer a basic right that can be demonstrated as being justifiable beyond a reasonable doubt in the context of our current existential condition.

Sovereignty is not a matter of freedoms and liberties per se. Sovereignty, however, is rooted in having a fair opportunity with respect to trying to push back the horizons of ignorance.

Liberty gives expression to the degrees of freedom that are engaged by choice for the purposes of exercising sovereignty. Not all those choices will necessarily lead to pushing back the horizons of ignorance, and, moreover, some of those choices might undermine one's ability to be able to continue on effectively with respect to the project of moral epistemology that is entailed by one's sovereignty.

The truth of our ignorance concerning the significance of those choices can be proven beyond a reasonable doubt. However, the truth of our knowledge claims concerning the same issues cannot be proven beyond a reasonable doubt.

Consequently, one does not necessarily have a right to freedom per se for the truth of that kind of a right cannot be proven beyond a reasonable doubt. One, instead, has a right to a fair opportunity with respect to pushing back the horizons of ignorance.

Ignorance is what prevents one from knowing the nature and purpose of one's sovereignty or individuality with respect to the rest of reality. Therefore, there is no more compelling problem confronting human beings – both individually and collectively – than the issue of sovereignty and its relationship with the rest of reality since coming to understand the nature of the truth of such things – to whatever extent this is possible -- is likely to depend on how one proceeds with respect to the foregoing problem.

No family, group, class, nation, state, institution, organization, corporation, community, or society is entitled to any kind of sovereignty that is not limited to, and proscribed by, the right of basic sovereignty to which any given individual is entitled. An alternative way of saying the same thing is that, in accordance with the law of ignorance which currently governs our understanding of things, there is no argument that is capable of demonstrating beyond a reasonable doubt that groups, classes, institutions, and so on are entitled to any

right that is not a function of the basic sovereignty of an individual in the sense of having a fair opportunity to push back the horizons of ignorance concerning the possible palimpsest nature of reality.

To return to an issue explored earlier in this chapter – namely, the matter of negative and positive freedom – the minimum and maximum space within which human beings should be free from interference (i.e., negative freedom) is a function of the basic sovereignty to which every individual is entitled with respect to having a fair opportunity to push back the horizons of ignorance. Furthermore, the answer to the question of what source or authority should be entitled to determine the manner in which public space is to be regulated (i.e., positive freedom) is also a function of sovereignty … in other words, no source or authority is entitled to regulate the lives of people (i.e., control their exercise of sovereignty) without being able to demonstrate, beyond a reasonable doubt, that this sort of entitlement gives expression to an accurate or true understanding concerning the nature of reality and what it is to be a human being in the context of that reality.

The essence of negative freedom is a reflection of the basic sovereignty to which all individuals are entitled as a right and not as a mere freedom. One might refer to such negative freedom as 'the way of sovereignty'.

The essence of positive freedom (in its sense as a process through which to identify the source or authority that allegedly entitles one to 'order' public space) is a reflection of the desire to regulate, control, or direct the way of sovereignty. One might refer to that kind of positive freedom as 'the way of power'.

The way of sovereignty can be demonstrated, beyond a reasonable doubt, to be a viable way of approaching our existential condition of ignorance. The way of power cannot be demonstrated, beyond a reasonable doubt – and, perhaps, not even in relation to a preponderance of the evidence – to be a defensible way of engaging our existential condition of ignorance.

The way of sovereignty and the way of power tend to be inherently opposed to one another. To the extent that sovereignty exists, power is likely to be attenuated, and to the extent that power exists, sovereignty is likely to be attenuated.

Many revolutions – but not all -- have been about attempts to either re-assert the way of sovereignty and/or to curb the way of power so that pathways might be opened up to establish the way of sovereignty. Most revolutions have failed to the extent that they either confused the way of power with the way of sovereignty or to the extent those ways have been conflated with one another.

The revolution that began in America in the late 1760s and continued throughout the 1770s (which increasingly gave expression to the longing for the way of sovereignty) was co-opted by the way of power that was instituted through the Philadelphia Constitution and the ratification process. In addition, the aforementioned revolution also was undermined by the manner in which the radical ideas of the Atlantic world that fueled the fight for independence were discredited in the 1790s by representatives of the way of power (whether in the form of state authorities, legislators, the judicial system, religious leaders, or newspapers) by tying – rather unfairly and untruthfully in many respects -- the albatross of 'The Terror' of the French Revolution around the neck of Atlantic radicalism with the latter's emphasis on the importance of the way of sovereignty to human beings considered both individually and collectively.

Revolution is a process not a destination. When one considers revolution to be a destination, revolution tends to slide into a way of power in which some particular purpose, goal, person, institution, and/or idea comes to be recognized as the 'legitimate' source or authority for regulating the public space in one way rather than another.

Sovereignty is also a process and not a destination. The task of pushing back the horizons of ignorance is unlikely to ever be fully realized.

A yearning for the way of sovereignty – which is currently frustrated by the current way of power – has the potential for leading to revolution in a constructive sense. In order for that sort of a revolution to be realized, the way of sovereignty needs to be made available to everyone – amongst both present and future generations -- and not just to the few.

Assisting individuals to engage the process of sovereignty is a revolutionary project because it constitutes a threat to the way of

power being able to continue on as it is inclined to do … and revolutions, of whatever character, have always been about disempowering a prevailing framework of control and oppression. This is why the way of power is dedicated to interfering with, suppressing, and/or undermining the revolutionary project of sovereignty.

My way of engaging sovereignty might not be your way of engaging sovereignty. My way of engaging sovereignty might not lead to pushing back the horizons of ignorance in the same way or to the same extent as your way of engaging sovereignty does. My way of engaging sovereignty might not lead to the same sort of understanding concerning the nature of being human or the nature of truth as your way of engaging sovereignty does.

Our respective purposes, interests, inclinations, commitments, and understanding do not have to be harmonious in any manner except to the extent that those purposes, interests, and so on should be capable of coexisting in such a way that our respective ways of engaging sovereignty do not undermine, interfere with, exploit, obstruct, or oppress one another with respect to having a fair opportunity to push back the horizons of ignorance. Generating the foregoing sort of compatibility in the midst of the complex dynamics of sovereignty is truly revolutionary in character because it enables all of us to continue on with the project of moral epistemology that is inherent in the exercise of sovereignty by limiting the extent to which the way of power intrudes into our lives and threatens to thwart such a project of reciprocity.

Chapter 11: Leadership

The following essay is a critical response to: "New Insights about Leadership," an article that can be found in the *Scientific American*'s magazine: *Mind*. That piece is authored by: Stephen D. Reicher, S. Alexander Haslam and Michael J. Platow.

Traditional theories of leadership center on issues such as charisma, intelligence, and other personality traits. According to such theories, 'leaders' utilize the inborn qualities that are believed to be at the heart of leadership – whatever one's theory of leadership might be -- in order to apply that quality of 'leadership' to an audience in order to induce the members of target-audience to pursue whatever behavior, ideas, or policies are desired by the leader .

The induction process occurs when a 'leader' instills the individual members of the target audience with a sense of: will power, dedication, motivation, and/or emotional orientation that the members of a given set of people would not have – according to the leader -- in the absence of such assistance. The justification for pursuing such an induction process is to: (a) help a given set of people to accomplish more than it would have without assistance from a leader; and/or (b) to assist a given set of people to realize what is believed to be in the best interests of those people.

Whether, or not, that which is to be accomplished by such a set of people is good thing is another matter. Similarly, whether, or not, that which is to be realized through the assistance of such a leader is truly in the best interests of the people being 'assisted' in such circumstances gives rise to another set of issues and questions other than that of the idea of leadership considered in and of itself.

New theories of leadership postulate that the 'leader' is someone who works to come to understand the beliefs, ideas, values, and interests of the followers in order to lay the groundwork for an effective dialogue through which one will be able to identify how the group should act.

The foregoing idea reminds me of the Communist dictum – 'From each according to his ability, to each according to his need.' I once asked a person who spouted the foregoing maxim about the problem

of who would be the one to determine 'ability' or 'need', and in accordance with what criteria would such determinations be made ... and we might just note in passing that the maxim is not gender neutral. The individual to whom my query was directed was unable to answer my question although he was reported to be quite knowledgeable about communism.

Just as questions can be asked about the identity of the members of a classless society who are supposed to give us 'objective' answers to the nature of 'ability' and 'need', so too, one might raise questions about the character of the dialogical means through which one will arrive at solutions to the question of what are to be the ways in which a given group should act. For example, who will be the one to determine what the beliefs, values, and interests of the 'followers' are or should be? What methods will be used? What theories will shape such considerations? How does one know that what the masses believe and value ought to be what is pursued en masse? How does one establish a dialogue between the one and the many, especially when the many are not likely to all believe the same things or value the same things? If the masses already have beliefs and values, then what need is there for leaders to identify those ideas and values in order to get people to act in certain ways? Aren't the people already acting on such beliefs and values independently of 'leaders', and if they are not, then doesn't this suggest that the beliefs and values that might actually be governing behavior are other than what was being professed? And, if so, in which direction should the leaders seek to influence the followers, and what justifies any of this?

The idea of having a real dialog between the one (the leader) and the many strikes me as odd. If a leader has the power or ability to determine which parts of the dialog will be enacted or dismissed, then I am not really sure that we are talking about the notion of dialog in, say, Martin Buber's sense of an 'I-thou' relationship in which the two facets of the dialog both enjoy an equal set of rights (with concomitant duties to respect the rights of the other) and are co-participants in the sacredness of life -- however one wishes to characterize such sacredness (that is, in spiritual terms or in humanistic terms).

It is possible to have leaderless groups who engage in a multi-log in order to reach a consensus about how to proceed in any given

matter. Within this sort of leaderless group, there might be "elders" who have earned the respect of the other members of the group because of the insight, skills, intelligence, talents, and/or abilities of those "elders', but the function of these elders is not to direct a discussion toward some predetermined goal, purpose, or outcome, but, rather, their function is the same as everyone else's function within the set of people engaging one another – namely, to enrich the discussion and, thereby, try to ensure that all aspects of a question, problem, or issue have been explored with due diligence.

Many indigenous peoples often operated through such leaderless groups. Westernized people – who tend to insist that any collective or group of people must have a leader or head person – frequently mischaracterized the elders of some indigenous peoples as being leaders in a Western sense and, therefore, as individuals who had characteristics and functions comparable to the leaders in non-indigenous groups or societies when this was not always so.

In such leaderless groups, the set of people as a whole decide actions through consensus. In other words, through an extended multi-log (which might take place in one setting or over a period of time) every member of the group either comes to see the wisdom of collectively moving in a certain way – a way to which all of the members of the group have contributed in and helped shape -- or the group as a whole does not reach a consensus and everyone has the right, without prejudice, to refrain from participating in any collective action that some lesser portion of the whole might take.

A central principle in some modern theories of leadership is, supposedly, to have leaders try to influence followers to do what the latter individuals really want to do rather than trying to impose things on the followers through the application of various forms of carrot-and-stick stratagems. However, one might raise the following question concerning such an alleged central principle: If someone really wants to do something, then why aren't they doing it? What is holding them back? Is that which is restraining them something that is constructive or destructive? Is that which the 'followers' allegedly really want to do something that is constructive or destructive? What are the criteria, methods, and processes of evaluation that are to be used in sorting this all out?

According to some the new theories of leadership, a leader needs to position himself or herself among the people to get the latter to believe that the leader is one of them. If, or when, a "leader" is able to become positioned in such a manner, the belief in such theories is that this will help the leader to gain credibility among the people. That credibility can be used to leverage group behavior.

However, it is an oxymoron to say that a leader is one of the people. After all, there is a reason why two different terms are being used to refer to the two sides of the equation.

The leader is not one of the people, but, rather, is just someone who is trying to induce people to believe that she or he is one of them. If the leader were truly one of the people, then that person would not be in a position to determine what course of action is to be pursued by the set of people being led.

Situations in which sincere multi-logs occur do not have leaders or followers. There are only participants, all of whom are equal with respect to rights and duties concerning such rights\ -- although there might be one, or more, elders within the set of people engaging one another whose ideas might be valued without making the following of such ideas obligatory or mandatory with respect to other participants. The contributions of such elders are valued without necessarily being determinate in relation to the outcome of any given discussion.

Let's return to the perspective of some of the newer theories of leadership in which one of the tasks of a would-be leader is become positioned so as to be viewed as one of the people so that credibility can be established in order to leverage the group in one direction rather than another. How does one know that the values and beliefs of a leader are really the same as those of the followers? What are the criteria, methods, and process of evaluation that are to be used in determining that the ideas and values of a leader and the 'followers' are coextensive?

Isn't it possible that a leader might profess to being committed to certain kinds of beliefs and values in order to garner the support from the people that will generate an apparent mandate to permit the so-called leader to do whatever he or she wishes and, then attempt to argue that whatever such leaders do is an expression of what the people really want? More importantly, how could any given leader

credibly claim that she or he shares the same beliefs and values as the followers when every group tends to be highly disparate in many ways when it comes to such beliefs and values?

Not all Blacks think in the same manner, or feel about issues in the same way, or share the same values. This feature of diversity also is true of Catholics, Protestants, Jews, Muslims, Democrats, Republicans, Socialists or any other group or collective one cares to mention.

At any given instance, a leader's values and beliefs might coincide with some of the beliefs and values of the 'followers", but the two sides will never be coextensive. This is why politicians often tend to speak to various groups in different ways in order to induce the latter individuals to believe that the 'leader' is one of them, and, then when the election is won, the leader can't possibly act in ways or advocate values with which everyone who 'followed' that person (by voting for them) might agree.

From the perspective of the most recent theories of leadership, being a leader is not a matter of possessing certain kinds of personality characteristics. Instead, being a leader is a matter of learning the art of how to be a chameleon and, thereby, seem to blend in with any given crowd. The fact of the matter is that a leader could even appear to act in ways that reflect the likes of the followers without any need to actually be the sort of individual that is being projected to the crowd.

Naturally, when, as a result of keeping track of the actual behavior of leaders, people begin to see that there is a distinct difference between, on the one hand, what they -- the general membership -- tend to believe or value and, on the other hand, what the leaders believe and value, then conflicts and tensions tend to proliferate. This is where press secretaries and the other spin-masters enter stage right in order to smooth over such differences and, perhaps, to even re-frame such differences as supposedly being what the people actually needed and wanted.

Drawing a distinction between a collective and a group, at this point, might be of some assistance. A collective is an aggregate of people that is operating within a diffuse or defined framework, and this aggregate of people might not all be operating within such a framework willingly or they might be 'participating' in ways that

generate friction, tension, or conflict within the collective as a reflection of such a dimension of unwillingness.

A group, on the other hand, is a segment of a collective that has come together willingly to serve or achieve a particular purpose or set of purposes. Oftentimes, although not necessarily, groups operate through consensus – that is, requiring unanimous agreement for action to take place – and when consensus is present, the group is a said to be coherent or unified in its purposes.

Because of the logistical problems surrounding the process of reaching a consensus, most groups tend to be small. However, the meaning of 'small' might vary with the character of conditions prevailing at a given point in time.

Groups, unlike collectives, often tend to be sensitive to temporal conditions. In other words, groups tend to come together for only a limited time and for limited purposes. When the time and/or the purpose(s) characterizing such a group expire, then, oftentimes, the group might expire as well. As such, groups tend to arise out of, and dissolve back into, a backdrop of collective dynamics involving various historical, social, economic, spiritual, ecological, psychological, philosophical, technical, scientific, legal, and political forces.

To the extent that a set of people is not unified, then that group is not coherent. Incoherent groups tend to be given to friction, conflict, tension, altercation, fragmentation, and dissolution.

Whether a set of people is considered to be a collective or an incoherent group might depend, in part, on the degree to which people are willing or unwilling participants in what is transpiring. Moreover, whether a set of people is considered to be a collective or an incoherent group might also depend on the extent to which such individuals have been induced to cede their moral and intellectual authority to other individuals within the set of people being considered (and there will be more on this issue of ceding moral and intellectual authority shortly).

Coherent groups usually do not need leaders … although there might be elders within the group whose ideas, values, and talents might be respected and utilized without making such a person a leader. Providing constructive contributions to a group that helps

enable a set of people to achieve their goals and purposes is not the same thing as being a leader.

Different circumstances, projects, problems, and so on might come to feature the expertise, wisdom, or abilities of different people within a social setting. It is the quality of contributions that are recognized by other members of the group that come to identify someone as an 'elder', and as various people within a set of people contribute across time, the identity of the elders who play influential roles in any given set of circumstances might change.

Some elders might have the capacity to identify talent and abilities in other people within a group. By advancing the names of other people so that the potential of these individuals can be drawn out to serve the purposes and goals of a group, the 'human resource elder' is not being a leader but is, instead, simply making constructive contributions in accordance with her or his abilities in order to help further a group's purposes.

The wisdom exhibited by any given group often is a direct function of the diversity inherent in that group. However, diversity, in and of itself, is not enough to generate wisdom with respect to any action that a group might take, and, therefore, one also must take into consideration the quality of the diversity that is present in any given set of circumstances.

Not all collectives constitute groups … even incoherent ones. A nation tends to be a collective that consists of a variety of coherent and incoherent groups, as well as any number of non-aligned individuals. A government tends to be a collective that consists of a variety of coherent and incoherent groups, along with any number of non-aligned individuals. A schooling system tends to consist of a variety of coherent and incoherent groups, together with any number of non-aligned individuals. An economy is a collective that consists of an array of coherent and incoherent groups, as well as any number of non-aligned individuals. Many corporations – especially publically traded entities – tend to consist of a variety of coherent and incoherent corporations, along with any number of non-aligned individuals, and, in addition, the bigger a company is, the more likely it is to be a collective rather than a group.

In addition, one should draw a distinction between, on the one hand, a goal or purpose, and, on the other hand, an agenda. A goal or purpose is self-contained and does not extend beyond the essential character of the goal or purpose being pursued, whereas, an agenda is a process that seeks to usurp the goals and purposes of another to serve some end that is independent of such a goal or purpose.

For example, seeking to feed the hungry is a goal or purpose. Using the former activity – that is, feeding the hungry -- to help bring a person to power constitutes an agenda.

Specific goals and purposes are what they are. They are not intended to extend beyond the character of a given purpose or goal – although, on occasion, the pursuing of one goal or purpose might have ramifications for other aspects of a social setting that were not originally intended when such a goal or purpose was originally envisioned.

Agendas, on the other hand, usually extend beyond the context of some given purpose or goal. Furthermore, agendas tend to involve techniques and strategies of undue influence that are intended to illicitly persuade – and, thereby, exploit -- someone with respect to the issue of ceding away an individual's moral and intellectual authority to another human being. As such, agendas are used to re-frame social settings to induce people into believing that they are striving for one thing when, in reality, those people are being manipulated into serving some other purpose or set of purposes. The more narrowly defined purpose is the 'Trojan Horse' through which a hidden agenda gains access to people's original intentions and destroys those people in the process.

The intellectual aspect of one's essential, existential authority gives expression to one's capacity to search for, and within certain limits, either find truth or to peel away that which is not true and, thereby, establish a closer, if rather complex, relationship with the nature of truth in a given set of circumstances. The moral facet of one's essential, existential authority entails an individual's sincere struggle to act in accordance with one's understanding of the nature of truth at any given point in time.

The way in which a person attempts to do due diligence with respect to her or his moral and intellectual authority might not always

be correct. Mistakes might be made and errors committed with respect to the exercise of either moral and/or intellectual authority.

However, if such mistakes and errors are the result of sincere efforts, an individual will continue to struggle to shape the exercise of moral and intellectual authority into a process of learning through which that person has the opportunity to develop a rich, experience-based wisdom. Ceding one's moral and intellectual authority to another short-circuits the learning process and prevents one from developing wisdom in relation to improving one exercise of one's moral and intellectual authority as one engages, and is engaged, by life's experiences.

Techniques and strategies of undue influence are designed to obstruct, undermine, or co-opt an individual's efforts to struggle toward realizing either one's intellectual authority and/or one's moral authority. In addition, techniques and strategies of undue influence seek to induce people to be willing to cede their moral and intellectual authority to another individual, group, organization, party, or government thereby enabling the latter 'entity' to draw upon the ceded authority to 'legitimize' or 'rationalize' some given action, policy or agenda.

The more people there are who can be induced to cede their moral and intellectual authority to such an individual, group, organization, party or government, then the more powerful does the latter become. In fact, such power becomes one more tool in the arsenal of undue influence to broaden its sphere of control over other individuals who might not have ceded their moral and intellectual authority but whose ability to resist the exercise of that power that is rooted in ceded authority because the former is often severely attenuated and out-flanked.

Acquiring power through collecting the ceded moral and intellectual authority of others can never be justified even when constructive results might ensue through the use of such ceded authority. Such acquired power can never be justified because it is predicated on usurping the most essential dimension of what it means to be a human being, and sooner or later, the continued use of the power acquired through ceded authority will destroy not only

individuals but the social setting as well, and history bears witness to this existential principle.

Working for a specific goal or purpose does not generally require anyone to cede his or her moral and intellectual authority to other human beings because the individual tends to be actively and directly involved with the goal or purpose being considered in a way in which that individual has full control over his or her moral and intellectual authority as they act. In other words, the goal or purpose gives expression to a person's moral and intellectual understanding of the way things should be, and, therefore, serves the given purpose or strives toward realizing a given goal in concert with that individual's direct exercise of his or her moral and intellectual authority.

One does not have to cede one's moral and intellectual authority in order to be able to work in co-operation with other people who also are operating in accordance with their own commitment to observing due diligence in relation to exercising their moral and intellectual authority as responsible agents in the world. Reciprocity is one of the key features of people who are in harmony with one another as they maintain control over their respective spheres of moral and intellectual authority while acting as independent agents in a social setting. The reciprocity is a reflection of the way in which the independent agents within the group or social setting tend to honor the right and responsibility of other people to exercise due diligence with respect to their respective capacities to serve as sources for moral and intellectual authority.

Agendas, on the other hand, are almost entirely devoid of considerations of reciprocity except in ways that have been reframed to make the relationship between a leader and the followers seem more equitable or appear more given to reciprocity than actually is the case. Those who push agendas rarely, if ever, are interested in working with people in order to ensure that the moral and intellectual authority of the latter is protected, preserved, and/or enhanced because doing this would tend to be counterproductive to and individual, organization, party, or government being able to push through an agenda.

To be able to successfully pursue an agenda, one needs: either raw power – in the form of brute force, or one needs the power that is

acquired through inducing people to cede their moral and intellectual authority. The latter form of power seems more civilized than the exercise of brute force – whether in the form of an individual enforcer, or in the form of militaristic, legal, or governmental enforcement – but using the power acquired through inducing people to cede their moral and intellectual authority is, in the long run, every bit as destructive and unjustifiable as is the exercise of brute force to realize some given agenda.

When a person is not willing to cede his or her moral and intellectual authority, then such an individual recognizes and understands that the authority for any action issues from, or is rooted in, the person and does not issue from, nor is it rooted in, anyone else. When a person cedes her or his moral and intellectual authority, then such an individual is vesting that authority in another human being, group, institution, organization, party, or government to enable the latter to make decisions on behalf of the person who is ceding that authority. Furthermore, the individual who is ceding moral and intellectual authority to another human being tends to feel and to believe that she or he is no longer required to be a guardian over, or exercise due diligence with respect to, how such authority is actually being used.

Having moral and intellectual authority is a birthright. This is true from a spiritual, as well as a humanistic, perspective.

To have such authority means that one is responsible for exercising due diligence both intellectually and morally to ensure, to the best of one's capabilities, that what one is doing does not harm, undermine, or compromise anyone else's capacity for exercising similar authority in relation to her or his own life. To cede such authority to others means that one has been induced to abdicate the throne, so to speak, of one's own individual kingdom -- together with the authority that is, by birthright, vested in such a kingdom – and, thereby, to turn over that authority to another human being to dispose of as the latter individual judges to be appropriate.

When ceded moral and intellectual authority leads to empowerment of some other individual, organization, party, or government, such empowerment will inevitably be turned back upon the source from which that power originally was derived (i.e., the one

who has been induced to cede moral and intellectual authority) in order to try to convince that source that she or he never had a right to such authority to begin with. Techniques of undue influence (involving the media, schooling, government policy, theories of jurisprudence, religious institutions, and various forms of social pressure) will be employed to keep individuals disengaged from their inherent right to observe due diligence with respect to the exercise of moral and intellectual authority.

Since the time of Max Weber, many people have been captivated by the idea of "charismatic leadership". A charismatic leader is someone who, supposedly, is to serve as a savior of some kind … an individual who will solve the maladies of a tribe, group, or collective … the one who will lead humanity to some mythical utopia.

When, historically speaking, so many 'charismatic leaders' turned out to be oppressive, self-aggrandizing, murdering, self-serving tyrants, then some people began to sour on the underlying traditional idea of leadership that was rooted in the notion that leadership is a function of personality traits of one kind or another that are inherent in the leader. Some of those who were dissatisfied with traditional approaches to the notion of leadership, went in search of some other, hopefully more fertile ground in which to plant the seed of leadership

For example, some people came up with the idea that the best leaders are those who give the impression that they are part of a set of people and, as leaders, are only really interested in helping people to get what they want and, as leaders, to act in ways that will allow people to realize that which the people actually desire. This is referred to as a "contingency model" because the concept of leadership is considered to be a function of the context in which a so-called leader operates.

Traditional models of leadership claimed that leaders were individuals who could overcome problematic circumstances through the manner in which they imposed their will on, or did their charismatic magic in relation to, such problems. Newer models of leadership maintain that it is the nature of the circumstances that will determine who will be a successful leader.

'Contingency model-approaches' to leadership maintain that every context involves one, or more, challenge for the exercise of appropriate leadership. Being able to successfully navigate such challenges suggests that there might be an optimum match between the nature of a contextually-based challenge and the qualities that a leader should exhibit in order for the latter for an individual to meet the challenge of leadership that is posed by a given set of circumstances. In other words, according to some of the newer theories of leadership, only a person with a certain kind of skill set will be able to succeed in any given set of circumstances involving a challenge of leadership.

To claim that every set of social or group circumstances poses challenges of leadership, is to frame discussion in a particular way. In other words, if one assumes that whatever problems arise in a group or social setting give expression to one, or more, challenges of leadership, then this is to automatically assume that all problems must be filtered through the idea of leadership in order to deal with those problems.

If, on the other hand, one were to argue that whatever problems arise within a social or group setting poses a challenge for the members of that setting, and in the process, one excluded any considerations of leadership from being part of possible proposed solutions, then one might begin to think about how to try to resolve such problems in ways that do not recognize the concept of a 'leader' in any traditional sense that requires one to make a distinction between leaders and followers with concomitant differences in assigned roles.

In the newer theories of leadership much depends on how one characterizes the nature of the leadership challenge that exists in a given set of circumstances. In addition, much will depend on how one believes those challenges might be best met … or, even what one believes the criteria are for determining what constitutes 'best meeting' such challenges … or, what one believes about whose perspective should be defining the criteria and methods for determining what might be meant by the idea of ' being best met'.

To say that circumstances or context provide the criteria for understanding the nature of leadership is to ignore the question of

who gets to 'frame' those circumstances in terms of what the latter supposedly are about, involve, or mean. More importantly, and as outlined earlier, the new approach to leadership is predicated on the unquestioned premise that leaders are either necessary or even desirable in any given situation.

The authors of the *Scientific American Mind* article on 'leadership' believe that there is a symbiotic relationship between a leader and the followers who make up a set of social circumstances. This presumes that the dynamic involving: leaders and followers, is necessarily symbiotic rather than, for example, possibly parasitic in character, and this is a questionable presumption.

Newer theories of leadership give emphasis to the importance of having insight into the dynamics of group psychology. In other words, every individual participates in groups from which facets of identity are derived – namely, social identity. This aspect of identity is part of what makes group behavior possible since as different individuals identify with a given group and such a group acts in certain ways, individual behavior will be shaped by what goes on in the group.

However, what if someone raises the question of whether identifying with a group or permitting a person's behavior to be shaped by a group are necessarily good things? What if the self-realization of a person -- and, quite irrespective of whether one construes the idea of self-realization in spiritual or humanistic terms – depends on establishing an individual's sense of self quite independently of groups? What if the requirements of morality require an individual to swim against the currents inherent in the flow of group dynamics?

To be sure, human beings have a social dimension to them. We need other human beings to develop physically or emotionally in a healthy way, and we need other human beings to be able to, for example, learn to speak a language, and we need other human beings to be able to learn how to navigate through, and survive in, waters that are populated by the presence of other people. Furthermore, there is no doubt that many, if not most people, tend to filter their sense of self through the lenses provided by various groups.

Nonetheless, none of the foregoing admissions require one to say that one's sense of identity should be a function of groups.

Furthermore, none of the foregoing admissions requires one to contend that group dynamics is always a constructive force, nor do any of the foregoing admissions demonstrate that one does not have an obligation to oneself -- and, perhaps, even to the truth of things -- to resist the tendency of groups to want to impose themselves on individuals in oppressive, destructive ways.

To claim that group behavior is only possible when everyone in the group shares the same goals, interests, values, and understandings is a contentious claim. In many societies and groups there are an array of negotiated, mediated, adjudicated, and electoral modes of settlement that are accepted not because everyone shares the same interests, values and understandings, but because the participants have some degree of, at least, minimal commitment to a framework of rules and procedures through which agreements will be reached that while not entirely satisfactory, nevertheless, such agreements do have enough points of attractiveness that will enable the collective to proceed to interact in somewhat cooperative ways, despite whatever dimensions of friction and disharmony might be present.

How different people understand the underlying framework of principles, rules, and procedures that are being alluded to above and that govern such processes might be quite varied. Disputes and conflicts might arise because of these sorts of hermeneutical differences, and, as a result, problems tend to proliferate. At that point, groups might come together and try to utilize the underlying procedural framework, once again, as a way to try to sort things out … not because everyone agrees on the meaning, value, or purpose of that framework but because they don't have an alternative to such a system … unless , of course, a given community, society, or nation reaches a tipping point in which the participants believe that revolution – whether peaceful or violent – is the only way of trying to find a more equitable, logical, practical, and effective way of doing social things.

Leaders tend to be the gate-keepers of the different modalities for: mediating, negotiating, or adjudicating settlements within a given framework of group-dynamics. The power and authority of these leaders tends to be derived, in some sense, from such a system, and, therefore, leaders have a vested interest in maintaining that kind of system quite independently of whether, or not, that system actually

serves the needs of the people whose behavior and ideas are being shaped, framed, and filtered by that system.

The reason why leaders often need to resort to an understanding of group psychology is so they can determine the fulcrum points in society that when leveraged will be capable of moving the members of a groups in directions that either will maintain the status quo or will advance the agenda of the leadership. If a leader can convince the 'followers' that he or she is one of them, and if the leader can identify the appropriate tipping points within such a group of followers, then the credibility that is derived from identifying oneself with the group's sense of self will permit a leader to leverage such credibility to move the group in a desired direction – not because this is what they group necessarily really needs but because the group is 'led' to believe that such a direction is what the group has wanted all along or is in the 'best interests' of the group.

Part of the process of the new approach to leadership involves techniques of persuasion that are designed to induce people to identify with particular groups and to induce such individuals to believe that the Interests, values, and beliefs of the group are their own interests, values and beliefs. These sorts of techniques permit leaders to gravitate away from using brute power to rule over people, and, instead, substitute's the willingness of someone to be led in various directions provided such a person can be persuaded that his or her interests, together with the interests of a given group, are co-extensive.

Thus, a person's desire for a sense of identity, together with that individual's desire not to be considered as an outsider relative to certain groups , become leverage points through which a person's life can be moved in certain directions. Moreover, once a person identifies with a group, the challenge becomes one of learning how to leverage the group, knowing that individuals within the group will simply follow along.

Leaders create a story line or mythology for the group. The people in that group follow the story line or give expression to the mythology, and in so doing enhance their own sense of identity.

In instances where there is a strong sense of group identity, those individuals within the group who best exemplify the sense of shared

identity of such a group will tend to be the ones who, according to the new theories of leadership, will become the most effective leaders. There are a variety of assumptions inherent in such a perspective.

First of all, human beings tend to have varying degrees of allegiance with a number of groups that populate the larger collective. Some of these allegiances might be more important than others.

People are members of political parties, religious groups, families, neighborhoods, cities, states/provinces, ethnic groups, unions, management associations, socio-economic classes, professional groups, and so on. Consequently, situations rarely are: 'black and white' or 'us' versus 'them'.

There are cross-currents that run through our group affiliations. As a result, there often are divided loyalties.

Depending on the individual, some groups might have a stronger hold on one's loyalty than do others. Depending on the individual, a person might have more of his or her need to belong met by some groups more than by others.

Therefore, official or unofficial membership in various groups might, or might not, not contribute all that much to a person's sense of identity. Moreover, a sense of shared identity might vary from circumstance to circumstance and from time to time.

For example, going to sporting event and rooting for the 'home' side might create a sense of shared identity with all those other people who are cheering for the same team. However, once one leaves the sporting arena, then: whatever socio-economic class, or whatever party, or whatever ethnicity, or whatever religion one belongs to, might become much more important than any shared identity involving a sports team. Or, going to a specific church, mosque, temple, or synagogue might give expression to one kind of shared identity, but once one leaves such a place of worship and goes home to a particular neighborhood or goes into the voting booth, another sort of shared identity might take over.

In addition, those who look at the world through the lenses of social psychology often can't see the individual. Individuals might be committed to ideals, principles, values, purposes, interests, and goals that are not necessarily a function of a shared identity with others but

are, rather, a function of the person's own search for truth, justice, morality, and life's purpose quite independently of what other people might believe or do.

Furthermore, even when there might be a certain similarity or overlap of interests, values, principles, and so on, between an individual and a given group, nonetheless, such overlap or similarity does not necessarily mean there is a consensus between the individual and group about what such interests, values, or principles might mean or how they should be translated into behavior. A group might not be a good fit for an individual or there might be fault lines of tension, friction, and disagreement that tend to color and shape a person's relationship with that group.

People might go from group to group looking for something that reflects or matches what is going on inside of those individuals. Such people might already have a vague or diffuse sense of identity and they are looking for other people who seem to share that same sense of things, so a group is not what gives the individual her or his sense of identity as much as it might confirm what already exists, and when people encounter such confirmation, then this is what makes them feel like they belong.

On the other hand, if a person feels that what is going on in a group no longer reflects or resonates with his or her sense of identity, then the person might withdraw from the group or move to its periphery, becoming relatively uninvolved in what is going on. Under such circumstances, it is not the group that provides the individual with her or his sense of identity but, instead, a group just serves as a means of validating that sense … a means that might no longer be performing its function.

Within almost all groups there often are differences of understanding about what the group stands for, or what its purpose is, or what role the group should play in a person's life, or what its core values and principles are, or how those values and principles should be translated into action or behavior. Different people frame the group in different ways and such framings generate allegiances, loyalties, and fault lines.

Groups are not entities unto themselves. Groups are dynamic structures whose shape, character, and orientation are a function of

what happens as different individuals and factions within the group play off against one another in order to determine whose perspective will tend to frame the group as being one set of things rather than some other set of things.

Therefore, to say that the person who best exemplifies a group's values and ideals is likely to become the most effective leader in such a group presupposes that the character of the group is clearly identifiable. Sometimes "leaders" from within a group are identified who exhibit certain qualities that, if correctly used, might be able to push the identity of a group in certain directions that are conducive to the agendas of people outside the group who wish to commandeer the group's energy and activity to serve the purposes of the external agency.

Finally, there is an unstated premised – something touched on earlier – that is running through virtually all of the talk about leadership. This premise maintains that leaders are necessary and, therefore, followers need to be created.

However, perhaps we should step back and ask a question. Why are leaders necessary?

A lot of answers might be given to the foregoing question. Leaders are necessary to keep society safe, or leaders are necessary to achieve human aspirations, or leaders are necessary to organize society, or leaders are necessary to ensure that resources are used wisely and properly, or leaders are necessary to help educate the unruly and unwashed masses, or leaders are necessary because human beings need moral guidance.

All of the foregoing ideas are predicated on the idea that only leaders know: how to keep society safe, or how to achieve their aspirations, or how to organize society, or how to use resources wisely, or how to educate people, or how to provide moral guidance. I have yet to see any proof of the foregoing contention that only leaders know how to do things or should be the ones who tell the 'followers' how to proceed in any given context.

Leaders tend to be individuals who are good at getting people to concede their moral and intellectual authority to such individuals in something akin to a process in which proxy votes are turned over to

another agent at, or prior to, a stockholders meeting so that the one with the proxy votes has more power and control over things than otherwise might be the case. Leaders tend to be individuals who are good at framing life as a process that demands leadership so that the followers can be assisted to move in the right directions by ceding their moral and intellectual authority to act as individuals to the group leader. Leaders tend to be individuals who are good at convincing others that the latter people have a duty or obligation to cede their moral and intellectual authority to the leader … that the leader has a sacred right to dispose of your intellectual and moral authority as the leader deems necessary

Even if one were to accept the foregoing idea – namely, that leaders are necessary – it doesn't automatically follow that every leader is capable of leading people in the right direction concerning the nature and purpose of life. So, there is a problem surrounding this issue of leadership – namely, even if one were to accept the basic premise that leaders are somehow necessary (which is, at best, debatable), one still would have to identify which leaders are actually capable of leading 'followers' in the appropriate direction with respect to truth, justice, moral qualities, purpose, education, security, economic activity, and the like.

According to some of the proponents of modern leadership theory, true leaders are those who are able to get people to act in concert with one another. This is done not through arranging for the people in a group to be watched by security forces or management groups or supervisors to ensure that the members stay true to the vision of the leaders, but, instead, it is accomplished by getting people to identify themselves with the values and purposes of a group, and, then, the members become their own watchdogs -- both individually and collectively.

Once a person has ceded his or her moral and intellectual authority to a group, then 'leaders' don't need anyone to oversee the behavior of the group members. The authority of the group, and, thereby, of the leader, has been internalized within individual members by the very act of ceding authority to another, and, therefore, those members will tend to operate in accordance with an internalized understanding which indicates that proper authority comes from

without and not from within. In whatever way the group moves, the members will follow because the internalized authority of the leader – which has been acquired through the ceding of intellectual and moral authority by individual members -- and the group – which expects other members to cede their intellectual and moral authority in the same way -- will require this. If one wishes to continue to be a part of the group and if one wishes to continue to derive one's sense of identity from the group, then one must continue to cede one's moral and intellectual authority to the group and/or its leader.

One of the challenges of 'leadership' is to identify those members of a group who are beginning to indicate that -- through their words and behavior -- such individuals no longer wish to continue to cede their intellectual and moral authority to the group or to the leader. Such individuals tend to disrupt the efforts of the leadership to get the people in the group to work in a concerted manner and, consequently, those wayward individuals must be handled in some manner.

Thus, a second challenge for leadership is to try to find ways that are designed to work with, or work on, individuals who are wavering in relation to their sense of group identity and seek to reintegrate those individuals back into the values and principles that the leadership has assigned to the group as constituting the best way to move forward to give expression to the alleged purposes of the group … at least, as envisioned by the leadership. If such efforts toward reintegration should fail, then this would seem to lead to a new, perhaps irresolvable, challenge to some of the newer theories of leadership – namely, what does one do when people don't want to be led.

Social psychologists such as Solomon Asch, Stanley Milgram, Philip Zimbardo and others have shown that even one defector can influence other members of a group to act in ways that run contrary to group expectations, norms, purposes, and actions. Therefore, when the forces of internalized authority within individuals begin to falter or weaken, steps might have to be taken to prevent the spread of the 'virus' or 'malignancy' to other members of the group. In one way or another, members of a group seemingly need to be persuaded that re-acquiring the moral and intellectual authority that they previously ceded to

leadership is not a morally, and/or spiritually, and/or religiously, and/or politically, and/or economically wise thing to do.

Thus, even in the context of newer theories of leadership, the indigenous leader of a group – that is, the one who supposedly best exemplifies the purpose, quality, or identity of a given group -- is still a watchdog who supervises group activity and looks for deviations from, or forces that run counter to, various group purposes, values, ideals, goals, and aims. As long as the leader's authority has been internalized by the other members of the group, then such members will carry the conscience of the group within them as they move about, but when such internalized authority begins to unravel, then the leader of such a group might have to begin to act just like leaders in traditional theories of leadership –that is, they might have to try to pursue tactics, techniques, and stratagems that will permit the leader to reassert his or her authority over, or impose her or his will upon, group behavior.

Authority comes in the form of at least two flavors. One variety occurs when an individual is competent – or more than competent – in relation to some ability, talent, skill, or form of expertise -- and, as a result, other people recognize the presence of such competence and are prepared, to varying degrees, to be influenced by such competence as long as being influenced does not require a person to cede his or her moral and intellectual authority in any way to the individual who is sharing her or his competence. This sort of authority helps to enhance everyone's potential, like tools enhance people's ability to do a variety of additional or extended tasks beyond the normal or usual abilities of such individuals.

A second species of authority involves the willingness of one or more people to cede their intellectual or moral authority to another human being. When such ceding occurs, the person(s) to whom such an important dimensions of being human is (are) ceded acquires authority over the ones who have ceded that dimension of being human. Under these circumstances, a leader can have no authority over anyone unless it is gained through such a process of ceding.

The first variety of authority is: co-operative, constructive, and is based on sharing experience and/or understanding, and/or abilities/talents. Most importantly, this mode of authority does not require the person who is benefitting through being influenced by

such competence to cede anything to the individual who is influencing them.

I refer to this form of authority as 'authoritative consultation'. This is what an 'elder' – that is, a person who manifests some degree of socially recognized competence with respect to one, or more, facets of life -- contributes to any social setting in which the elder participates.

The aforementioned second variety of authority is: imposed, problematic, and is not about sharing but, rather, exacts a price for maintaining the relationship. That price is paid in the form of being required to cede one's moral and intellectual authority to another individual (or other individuals) in exchange for the 'service' of leadership.

I refer to this form of authority as 'pathological authority'. Such authority is rooted in a delusional system concerning how people see themselves in relation to others.

More specifically, anyone who believes that he or she needs to induce others to cede their moral and intellectual authority to a 'leader' in order for the leader to be able to accomplish his or her purposes fails to understand an essential dimension of human nature – which, in part, involves the ability and right to freely pursue due diligence in conjunction with life in relation to the constructive exercise of one's moral and intellectual authority – then such an individual is operating out of a delusional system that can continue to exist only by negating or being inattentive to certain existential facts concerning the nature of being human. On the other hand, anyone who believes that he or she must cede his or her moral and intellectual authority to other human beings in order to achieve one's purposes in life is also operating through a delusional framework.

The two sides of the delusion dovetail with one another. Together they give expression to the pathological form of authority in which one creates a system of 'followers' and 'leaders' that is maintained by, respectively, the ceding and acquiring of moral and intellectual authority during which one side loses authority while the other side gains authority by virtue of which the former individuals – the ones who cede – are shaped, oriented, directed and manipulated by the ones to whom such authority is ceded and who, thereby, acquire power.

Of course, a person might use brute force, torture, or threats to gain power over others. However, exercising such power is not the same thing as having authority over someone.

Gaining authority requires the participation of people who have moral and intellectual authority to cede. Such people co-operate with or comply with or are obedient to leadership by means of the act of ceding their moral and intellectual authority to the leader. If this were not done, the 'leader' would have no authority, even if that leader did have the power to bring about their desired ends independently of matters of authority.

People who exercise brute force or power often mistake this for exercising authority. Pathological authority – of whatever vintage -- is based upon essential human rights that, rightly or wrongly, have been ceded away, whereas the exercise of brute power is not rooted in the ceding away of such essential human rights but involves forceful attempts to negate the existence of such rights altogether – as if they never existed and did not constitute anything of an inalienable nature with respect to which an individual had a choice about ceding away or not.

Constructive co-operation does not presuppose any form of power or authority in order for such co-operation to occur. Not only can a person co-operate with other human beings without ceding away any moral and intellectual authority, but an individual's ability to truly and sincerely co-operate with others demands due diligence with respect to the exercise of his or her moral and intellectual authority in order to pursue co-operation in a fair and mutually reciprocal manner. Such co-operation ends when other people start trying to undermine, negate, or usurp my moral and intellectual authority for the purposes of pursuing an agenda that falls beyond the horizons of such a process of mutually reciprocal co-operation of two, or more, spheres of interacting sources of moral and intellectual authority.

Leadership, for the most part, is designed to short-circuit natural forms of co-operation among independent sources of moral and intellectual authority. Leadership is designed to co-opt such co-operation and re-frame it in terms of group activities that, in reality, are merely projections of a leader's agenda or vision for a given group of people.

Framing collectives into 'in-groups' and 'out-groups' is an arbitrary, artificial, and, ultimately, a destructive process. The truth of the foregoing is demonstrated by the many battles, skirmishes, and wars that have been fought to assert the superiority or priority of claimed rights of one group over the sovereignty of someone else's right to exercise their own moral and intellectual authority as long as such exercise does not undermine the sovereignty of another to do likewise.

Groups are not born into this world. Individuals are born into the world, and, so, the creation of groups after the fact is something that often is being imposed on individuals and not something that is necessarily required by the basic facts of individual existence.

There are different ethnicities, linguistic populations, as well as different physiological and intellectual abilities. However, these differences do not have to be translated into differences with respect to issues involving equality or rights. All people are born with the same rights until some 'leader' decides to reframe existence in order to explain: why not everyone is entitled to such rights in the same way, and why 'followers' have a duty to cede their moral and intellectual authority to those who wish to control how the narrative of being human unfolds in a manner that is conducive to the purposes of those leaders.

Nations are artificial creations introduced by leaders to provide a reason for why individuals should be willing to cede their intellectual and moral authority to serve the purposes of that nation – which really means the purposes of the leaders of that nation. Nations could not exist if people had not been induced to cede their individual moral and intellectual authority to a collective that was to be supervised and molded by a leader of some kind.

From the perspective of some of the newer theories of leadership, there is a dynamic relationship between social identity and social reality. In other words, the kind of social identity that has pre-eminence in a given locality will shape and orient the sort of society that will arise in that locality. Alternatively, the sort of social reality that exists tends to affect the sort of social identities that that might be acquired by people.

The foregoing way of looking at things tends to remove individuals from the picture except to the extent that those individuals either serve a particular social identity or are shaped by a specific social reality. However, individuals are expressions of a prevalent social identity or are shaped by a particular social reality only to the extent they those individuals cede their moral and intellectual authority to that social identity or social reality.

Because human beings are hard-wired with a network of inclinations toward the realm of the social, we are vulnerable, in a variety of ways, to forces of social identity and social reality. These vulnerabilities tend to induce or seduce individuals to cede away their intellectual or moral authority so that they become dominated by the authority and/or power structures that leaders tend to wield in relation to those concessions.

Any attempt to induce or seduce an individual to cede away his or her moral and intellectual authority to another human being is an instance of exercising undue influence and is a form of moral and/or intellectual abuse of the individual who is the target of such an exercise. Trusting others to help one to develop, and bring to fruition, one's capacity for moral and intellectual authority is not the same thing as being manipulated into ceding away such a capacity – unless, of course, one's trust is betrayed.

Trust is rooted in a deep-rooted sense that, among other things, involves the idea that another person: values, is sensitive to, and wishes to protect one's essential, existential capacity for exercising, as well as one's right to exercise, one's moral and intellectual authority. All violations of such trust give expression to a form of abuse – whether: physical, parental, familial, political, spiritual, economic, organizational, institutional, social, and/or governmental in nature.

Rituals, symbols, practices, and myths can be used to induce people to cede their moral and intellectual authority. Or, on the other hand, rituals, symbols, and so on can be used to help people explore and enhance the ability of individuals to learn how to not cede such authority but, instead, find ways of utilizing an individual's inherent authority to co-operate with others in mutually satisfying and reciprocal ways.

A shared identity that arises from assisting individuals to exercise their individual moral and intellectual authority in: co-operative, constructive, just, compassionate, equitable, charitable and peaceful ways is not the goal of a group that divides members into 'leaders' and 'followers'. A shared identity that helps individuals to realize their birth right as sources of sovereign moral and intellectual authority is an expression of a principle to which people in the collective are equally committed as individuals and not as members of a group, and to the extent that a collective or group seeks to thwart such an individualized principle, to that extent is the collective engaged in tactics of undue influence and practices of moral and intellectual abuse.

As such, individuals become willing participants in a group to the extent that the group continues to foster or nurture the moral and intellectual authority of individuals as sovereign agents. When the group stops serving this essential dimension of being human, then the individual needs to struggle toward re-acquiring whatever aspect of one's essential sovereignty has been compromised or undermined and withdraw from such a group, if not actively begin to work against the interests of that sort of group that is antithetical to the very nature of what it is to be a human being.

The people within a collective who can assist individuals to develop their essential sovereignty in constructive and beneficial ways are not leaders. They are elders or 'authoritative consultants'.

The source of such authoritativeness begins and ends with the degree of competency possessed by such a consultant with respect to helping someone to gain control over the latter's individual capacity for constructively exercising moral and intellectual authority. For example, helping someone to read should be an activity that is designed to enhance the constructive sovereignty of an individual's capacity for exercising moral and intellectual authority.

Learning how to read in a way that is free from forces of undue influence with respect to a person's essential right of sovereignty is something that can be done in conjunction with an authoritative consultant who is competent in relation to helping someone to learn how to read in this manner. When an authoritative consultant seeks to have influence beyond the horizons of that person's competency, then

one begins to cross over into the realm of someone trying to be a leader for purposes of inducing someone to proceed in a direction that is not necessarily directed toward the healthy development of the latter individual's capacity to exercise moral and intellectual authority in a constructive fashion – both in relation to that latter individual and to the surrounding collective.

The individual who is learning to read does not have to cede any of his or her moral and intellectual authority in order to succeed. Rather, the task of the authoritative consultant is to find ways of co-operating with the sovereignty of the seeker after knowledge to help that individual to become competent with respect to being a reader who uses this competency to develop and enhance her or his own capacity for sovereignty.

Authoritative consultants can enter into dialogue with those who are seeking to benefit from such authoritativeness relative to some given activity. However, the moment when such dialogue seeks to induce the individual to cede his or her moral authority to the group, then such dialogue becomes a tool of undue influence, as well as moral and intellectual abuse.

Proponents of some of the newer theories of leadership maintain that if a person – a leader – can control how 'identity' or 'shared identity' is defined, then, one has a tool through which one can change the world. What such proponents say in this regard might be true to some extent.

However, anyone who seeks to control how others perceive or understand the idea of essential identity constitutes an exercise in undue influence and abusive behavior when it comes to the right of individuals to have control over their own sovereignty vis-à-vis the constructive exercise of one's moral and intellectual authority. Exploring such issues with another as a trusted equal in the process – that is, as someone who has the same rights of essential sovereignty – is not a matter of trying to control how the other comes to understand the character of that essential sovereignty, but, is, rather, an exercise in co-operative, reciprocal exploration concerning issues of mutual importance.

Based on the foregoing discussion, the following ten principles are intended as constructive axioms of leadership for anyone who is contemplating becoming a leader but who has not been successful in resisting such an inclination:

The first axiom of leadership is to resign. The rest of the axioms appearing below are contingent on someone choosing -- for whatever reason -- not to follow the first axiom.

The second axiom of leadership is to neither: seek control over others, nor to be controlled by them.

The third axiom of leadership is to always operate in accordance with principles of truth, justice, compassion, integrity, friendship, humility, nobility, honesty, patience, forgiveness, and charitableness;

The fourth axiom of leadership is to realize that true competence is authoritative not authoritarian;

The fifth axiom of leadership is to understand that actually helping: the poor, the hungry, the sick, the powerless, and the oppressed, tends to be antithetical to remaining a leader. Dialogue becomes a tool of undue influence, as well as moral and intellectual abuse.

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Chapter 12: Paradigm Shift

Rudyard Kipling is reported to have said:

"Words are the most powerful drugs used by mankind."

If he is correct, then education and learning are complex modes of delivery for introducing mind- and soul-altering entities into people of all ages ... modalities that both affect the efficacy of such drugs, and, as well, are affected by them.

Preamble

The reader should understand that because what ensues is an extended essay about the possibilities of education rather than a definitive treatment of that topic, there are many facets of the following material that are set forth in a somewhat compressed form, rather than in a fully delineated manner. Although I believe there are enough details inherent in this extended essay to provide an understandable map of the conceptual terrain that this chapter outlines, there are many issues that could have been developed more expansively in the present essay that have been left for another day and another discussion

Moreover, since this essay tends to deal with basic principles and since principles tend to be inherently complex, layered and given to nuance (more on this shortly), the task of unpacking the substantive character of any given principle tends to be something of a work in progress and, in effect, this means there is unfinished business that accompanies this extended essay. However, such unfinished business should not be confused with the issue of logical lacunae anymore than one should take exception to the fact that a child is, somehow, lacking as an individual simply because further maturation will occur at a later time.

The foregoing point leads to a third matter. Any time one proposes a paradigm shift, there will be those who will read such a proposal through the colors of the glasses with which they normally view experience and expect the former to conform with the latter and, as a result, might become agitated when this does not happen and, consequently, tend to dismiss what is being written as so much nonsense. Yet, the whole idea of proposing a paradigm shift is to

challenge the usual way of doing business.

We live in desperate times. There is considerable degradation of: the human spirit, community, politics, moral integrity, and the environment that is taking place currently and has been occurring for quite some time.

Change is necessary. The argument is no longer whether, or not, to undergo a transition in the way we think about and do things, but, instead, we are faced with task of identifying the sorts of change that might be most capable of stopping the present process of degradation and that might help lead in the direction of healing – on many, many levels. However, before one can get to the issues of education and learning, one needs to understand the structural character of the context in which these topics are currently embedded. Therefore, I will be exploring quite a few topics that, initially perhaps, might seem to have little to do with natters of education and learning. However, such preliminary adventures are very necessary in order to clear a viable path for journeying toward the intended destination.

Consequently, I request you to read the following material slowly, as well as with considerable reflection, equanimity, and patience. For a variety of reasons, the terrain of this extended essay is not always straightforward or easy to navigate, and I hope you will meditate on the themes being explored here rather than merely rush to judgment concerning the heuristic potential of the principles set forth.

Proposal

What if someone could offer a way to (a) substantially cut property, state, and federal taxes, while simultaneously: (b) revolutionizing the process of education so that the emphasis is on learning instead of accountability wars, political agendas, and self-serving means of generating money for those whose primary interest might be other than the welfare of learners; (c) bringing an end to the, till now, interminable wrangling over discrimination, reverse discrimination, and affirmative action debates by truly leveling the playing field for all concerned; (d) enabling citizens to gain complete control over their learning; (e) shifting the burden of responsibility for identifying competence to where it belongs and, thereby, ending a form of subsidization that has done nothing but undermine the

process of learning; (f) reducing the costs of both public and higher education by billions, if not trillions, of dollars; (g) re-thinking the meaning and purpose of the Constitution; (h) and, doing all of the foregoing by requiring only nominal expenditures for underwriting the transition entailed by such changes? Does this all sound like a Rube Goldberg device, a perpetual motion machine, a quixotic quest, and/or the ranting of someone whom, without proper monitoring of medication, has been dumped back into the community from a mental facility?

Read on. You might be surprised.

Rules and Principles

One of the keys to the possibilities noted above rests with the Constitution. Or, said, perhaps, more accurately, one of the keys lies in how one might approach the problems and challenges that are inherent in the Constitution.

The word "inherent" that appears in the previous paragraph is not used inadvisably. Almost by necessity, the Constitution is a hybrid of specific rules and general principles.

Principles are different from rules. Rules are linear and principles tend to be non-linear.

In other words, the very nature of a rule is that it should be understood, processed, and applied in roughly the same manner from one situation to the next. This is the essence of what is meant by something being linear.

A principle, on the other hand, has degrees of freedom within its structural character that provide opportunities for variations on whatever theme(s) is (are) at the heart of that principle. These degrees of freedom establish boundary conditions that cannot be transgressed without violating the principle while, at the same time, giving expression to the conceptual area within which the principle is intended to hold prominence, relevance, and applicability.

Being non-linear, principles have a capacity for flexibility that is not present in rules. Without transgressing its spirit, a principle is capable of responding to varying circumstances in ways that rules are unable to do without undermining the essence of the idea underlying

such a rule.

One should not suppose the foregoing suggests that principles can be anything one wishes to make them. Degrees of freedom are not the same thing as license.

For example, many people speak of the Golden Rule, which, sometimes, is expressed in the following fashion: 'Do unto others as you would have them do unto you'. First of all, referring to this maxim as a rule is a misnomer, for there is no clear, identifiable theme in this saying that can be applied under specifiable conditions in a determinate way, and, consequently, this moral precept is devoid of the very qualities that are necessary to establish it as a rule.

A general recommendation is being offered, not a hard and fast stipulation. The form of a rule frequently reflects an 'if/then-like' structure such that if certain conditions are met, then, certain behavior or procedures should come into effect or be pursued or applied, but this property is absent from the foregoing moral precept.

The Golden Rule is really a Golden Principle. There are degrees of freedom encompassed within this principle that permit one to go, simultaneously, in a variety of directions.

Can one say this Golden Principle is about kindness, compassion, empathy, love, forgiveness, tolerance, honesty, nobility, magnanimity, being charitable, friendship, and so on? Not necessarily, although all of these qualities are quite consistent with that principle.

If one wishes others to be honest with one, then, one should be honest with them. If a person wishes others to forgive her or him, then, the individual should forgive those other people. If one wishes someone else to be tolerant toward one, then, one should be tolerant with that person.

The Golden Principle neither explicitly mentions any of the foregoing possibilities, nor does it enjoin upon anyone that she or he must be kind, compassionate, loving, and so on. All it says, at least on the surface, is the following: However one wishes to be treated, then, one should not only treat others in a like manner, but the onus of responsibility for living in accordance with this principles begins with oneself and is not dependent on others treating one in a certain fashion, nor does the principle guarantee that even if one acts in a

certain way in relation to others that, therefore, one's mode of engaging people will be reciprocated.

If one looks at the life of the giver of the Golden Principle, one might say that, by implication, qualities of love, kindness, honesty, generosity, forgiveness, and so on are inherent in this principle. Such an understanding presupposes one knows what was in the mind and heart of the giver of the principle at the time the principle was issued. Consequently, such a presupposition is rooted in a theory of interpretation or a hermeneutical system about someone's intentions, mind-set, or purposes with respect to such a principle.

Moreover, even if one were to admit that qualities such as kindness, compassion, love, forgiveness, and so on, were, by implication, entailed by the Golden Principle, one is faced by, yet, another problem. What is meant by kindness, compassion, love, forgiveness, etc.?

All of the entries in the foregoing list of terms refer to principles not rules. There is not one way of being kind, or compassionate, loving, or forgiving. Furthermore, what one person considers kind or loving might not be seen as such by someone of a different understanding or might be engaged through an alternative modality for demonstrating kindness, compassion, love, forgiveness, and so on.

The spirit, or deep structure, of this Golden Principle tends to revolve about good, moral, just, constructive, or positive behaviors. Nonetheless, someone might want to say that, for example, a person with sadomasochistic inclinations might invoke this principle to justify pathological behavior, and while such an application is consistent with the surface character of the precept, such behavior might not be consonant with the underlying spirit of that principle -- at least as envisioned by the one who initially introduced this precept.

Whatever the deep structure of the Golden-Principle might be, its surface structure only says that if one has any hope of having someone else treat one in a certain way, then, everything begins with oneself and, as well, begins with what one does in relation to others. Everything else is mere theory, speculation, opinion, and interpretation … or, as one sometimes hears in the courts: ‘Objection, Your Honor, this calls for conclusions based on testimony that has not yet been entered into evidence.’

Constitutional Issues

There are some portions of the Constitution that are expressed as rules. Many of these rules are clear and straightforward, while others seem to contain language that is ambiguous, and, therefore, in such cases, one is not certain how to proceed even though one might be dealing with a rule rather than a principle. Other facets of the Constitution are in the form of principles. How one should understand those principles is both a huge problem and a challenge.

There were 39 people who signed the United States Constitution. Among this group there were no women, Native Peoples, Blacks, Asians, or poor people. The signatories were lawyers, bankers, financiers, physicians, landowners, businessmen, and high-ranking soldiers.

Those 39 individuals were selected by a larger sub-set of the population encompassed by the original thirteen states. This larger group is but a sub-set of a still larger group of people who had little, or no, role in the selection process that led to these 39 people being identified as signers of the Constitution.

Signing the Constitution is not necessarily synonymous with framing the Constitution. Furthermore, there is ample evidence to indicate that Native Peoples had a substantial hand in helping to frame a variety of substantive ideas that shaped the final form of the Constitution even though none of these indigenous individuals were signatories of that document.

All of the foregoing leads to five important questions. More specifically, when one speaks of the 'Framers of the Constitution': (1) To whom is one referring? (2) Did all of the ‘framers’ understand things in the same way with respect to the language of the Constitution? (3) Even assuming one could identify what such understanding(s) involved, why should one give precedence to what the participants meant over the understandings of those who did not participate in the selection process and/or whose views were not represented by the individuals who were selected? (4) Why should people of today be bound by a document that they had no role in framing or giving consent to? (5) Even assuming people are bound, in some way, to adhere to the Constitution, what is the precise nature of that obligation? … Is the character of such an obligation: moral, legal,

political, logical, or some combination thereof, and what is the structural character of the argument that demonstrates the undeniable truth of such a moral, legal, political, logical, or combinational binding authority?

Lest one forget too quickly, the Declaration of Independence, signed just 11 years, or so, prior to the Constitution, states:

"When in the Course of human events, it becomes necessary for one people to dissolve the political bands that have connected them with another, and to assume among the powers of the Earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation. –

"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness.

"That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, – "That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience has shown, that mankind are more disposed to suffer while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security."

Rights belong to people and not to governments. Rights that are

inalienable exist prior to the establishment of any form of government and those rights are not derived from the process of governing.

Governments are instituted to be the guardians of such rights. Governments are fiduciary agents for creating conditions that are conducive to people being able to access and secure such rights.

So says the Declaration of Independence. So says the Constitution. So says the Bill of Rights.

The Preamble to the Constitution stipulates:

"We the People of the United States, in Order to from a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America."

The Constitution establishes the framework of rules and principles within which Governments might be formed and operate. However, Governments are established to serve the people in securing rights, justice, liberty, domestic tranquility, common defense, and the general Welfare.

There is an interesting possibility associated with the fact that only six of the 39 individuals who were signers of the Constitution were also signatories of the Declaration of Independence. Four of the 56 signers of the latter document died prior to the gaining of independence, and several others retired due to ill health.

One of the interesting dimensions of the foregoing is that the spirit and language of the Declaration of Independence has not only been substantially toned down when some of its principles were included in the Constitution, but provisions have been etched into the Constitution that render the spirit of the Declaration moot – such as in relation to the idea that people should have the right, if not duty, to abolish Governments that do not serve the unalienable rights to which all human beings are entitled. In such a case, the revolutionary language of the Declaration of Independence has been transformed into an electoral process, and, unfortunately, the Constitution provides people few remedies in the event that many or most of the politicians turn out

to be either hawkers of conceptual snake-oil, self-serving proponents of vested interests, or the political version of the world's oldest profession.

One might say the difference in spirit and language between the two documents is the difference between revolutionary zeal and the practical business of politics. One also might say that the people who assumed control of the United States by means of the Constitution did not want something to be done unto to them that they had been willing to do unto others.

Or, one might say that since these politicians didn't want to run certain risks of real accountability or being dismissed summarily, they instituted provisions that placed some institutional restraints on what could be done to and with them, as well as on when and under which circumstances such things might be done. In short, these politicians would treat others in a certain fashion, if those others would treat them in such a fashion – a gentlemen's agreement, if you will, aimed at keeping certain gentlemen in control.

The individuals who crafted the Declaration of Independence said things correctly in a number of ways. For instance, "Governments long established should not be changed for light and transient causes." Moreover, human beings "are more disposed to suffer while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed."

Nonetheless, the people and Governments should both understand and take heed that "when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security." In other words, when the unalienable rights of human beings are placed at risk, then, "whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness."

When the signers of the Declaration spoke of the right of people to "alter and abolish" destructive forms of government, they were not speaking about voting in a new King of England or having a new round

of elections for the parliamentary system across the Pond. They were talking about a form of alteration and abolition that would totally disenfranchise the powers that, until then, had been interfering with the rights, liberties, and pursuit of happiness of people in the colonies.

If the foregoing process of alteration and abolition could have been accomplished through peaceful and diplomatic means, then this would have been the preferred method. But, if not, then, force would be used to defend that Declaration (and for those who might be worried that the following seeks to advocate any form of forceful overthrow of government, please rest easy, for this is not the intent or purpose of this extended essay).

Consent of the Governed

The South issued its own form of Declaration of Independence some four score and a few years later (and none of what follows should be construed as either an apologia for, or criticism of, pre-Civil War Southern politics – the following discussion points in an entirely different direction). The South found out that what is good for the goose, it not necessarily good for the gander.

Despite complying with the words, format, and spirit of the document of 1776 and stating the causes of their disaffection with the reigning federal government, and despite indicating that the people (or, at least, some of them) were not giving their consent to be governed, and despite indicating how the policies of the federal government were destructive of the rights of people (including women, native people, Blacks, and children -- although none of these groups or their problems were among the grievances listed by the leaders of the South ... at least not in any constructive or just sense), nonetheless, the alleged leaders of the South were told they didn't have the right to go their own way – whether those ways be good, bad, or indifferent. May the spirit of 1776 rest in peace!

The spirit of 1776 was not about saving governments or a country. It was about saving people.

When governments get in the way of how people wish to come together as a community, Union, state, or nation, then, governments, not people, should step aside. For the people are the ones who have

the right of way -- and, here, power is not synonymous with the issue of 'right'.

How quickly some people forget the road less traveled that had been taken in order to be able to get to where we are in relation to issues of freedom, choice, self-determination and democracy. Lincoln, playing King George to the upstarts of the Confederation, seemed to forget about the meaning of the Declaration of Independence, as well as the Constitution, for he, along with Jefferson Davis, decided that they had the right to force their respective views of the Constitution -- and what it, supposedly, meant -- upon others, and, as a result, hundreds of thousands of people died.

Apparently, Lincoln failed to recall that in 1854 he had said: "No man is good enough to govern another man without that other's consent." But, then, politicians often tend to be children of the moment believing, apparently, that 'consistency is the Hobgoblin of little minds'.

None of the foregoing should be construed as saying the causes of the South were justified, or that the Causes of the North were unjustified (or vice versa). This is not about territorial squabbles involving states' rights versus federal rights, or about one style of living versus another, or about who was exploiting whom economically and politically, or about the right to own slaves (and the Emancipation Proclamation was not declared until September 22, 1862 -- a year, or so, after the Civil War started and would not become law until January, 1863, and quite a lot more time passed before that law actually began to take effect through, among other avenues, the advent of the 13th Amendment in 1865.). Rather, both the South and the North seemed to have forgotten that the Declaration of Independence and the Constitution were about guarding and securing rights for people, not governments, and, consequently, both the North and the South failed in their fiduciary responsibilities to their respective constituents.

If Lincoln and Jefferson Davis had not been so intent on imposing their respective ways of interpreting how Governments might best secure rights, liberties, defense, happiness, tranquility, and welfare for people, then, maybe, in time, the North and South might have evolved in a socially integrated manner which actually could have served the

interests of everyone without hundreds of thousands of people having to die, and without the ensuing bitterness -- another legacy of the Civil War that is responsible for constantly poisoning the well of the Body Politic from which we all have had to drink so many scores of years down the line.

The Gettysburg Address gives expression to great literature but a rather distorted understanding of history. The "new nation that was brought forth on this Continent" was not only "conceived in liberty and dedicated to the proposition that all men are created equally". It was a new kind of nation that, supposedly, was being brought forth ... a nation in which people were to be the primary focus, and governments were merely the means through which those ends were to be served.

Lincoln ended his address with the famous sound bite that a nation which is a "government of the people, by the people, for the people shall not perish from the earth" -- language, by the way, which appears nowhere in either the Declaration of Independence or the Constitution. Be this as it may, apparently, from the perspective of the North, the people of the South were not among those whom government was of, by and for ... and, consequently, perhaps this set of circumstances was one of the many possible inspirations for George Orwell's idea in *Animal Farm* which stipulates that 'all animals are equal, but some are more equal than others.'

In any event, Lincoln gave priority to the wrong idea in his famous wartime speech. America was not intended to be a nation that is a government of, by and for the people. America was supposed to be a Union of people to which government had a fiduciary responsibility ... people came first and government was meant to offer a purely procedural means for serving those people.

Moreover, less anyone be too quick to store such issues in the attic of our collective unconscious, the Civil War did not free people of color. It merely redesigned the nature of the cage in which they were placed -- indeed, the northern ghettoes and slums did for black-skinned people what the reservation did for red-skinned individuals ... namely, provided white people with a 'workable' solution that was paid for by the misery of those who were forced to make that solution work and quite independently of the many injustices inherent in such a 'solution'.

All too quickly, the process of government became an end in itself, and the people about, and for whom the Declaration of Independence and the Constitution were allegedly written became the means to help public servants serve the latter. The people were conned into swapping one King George for thousands of them, and although many in the Colonies saw the necessity of the Declaration of Independence, nonetheless, the logic of that necessity was not permitted to extend to the way that politicians and so-called public servants abuse the intent and purpose of the Constitution, and, instead, used it for self-serving reasons that compel people to live in accordance with arbitrarily derived understandings of the Constitution -- with no small thanks to the role of the Supreme Court.

Judicial Tautologies and Non Sequiturs

Supreme Court justices can pontificate all they like about the nature and meaning of the Constitution, but the judicial curtain needs to be drawn back by some human counterpart to Toto. There is a need to expose the fact that the Supreme Court has created a judicial Wizard of Oz in relation to the Constitution -- lots of thunder and bellicose meanderings, signifying little or nothing, uttered by people pretending to be something that they are not and alluding to knowledge and wisdom that they do not necessarily have.

While the members -- both present and past -- might take umbrage with the following, in truth, there are two, and only, two differences between a Justice of the Supreme Court and the average person on the street – namely, (1) the former has power and the latter has none with respect to possessing any say about what the name of the game is in relation to Constitutional flimflam sleights of mind; (2) a Jurist has an education into the history of how other similarly empowered individuals have perpetrated the Wizard of Oz myth in order to hide the very real fact that most Jurists, whether current or past, do not have the slightest capacity to prove that any interpretation of the meaning and purpose of the Constitution which they wish to force on everyone else can be either: (a) fully reconciled with the principles of either the Declaration of Independence and/or the Constitution; or, (b) demonstrably justified as being 'the' interpretation that is most likely to secure and guard rights to: a more

perfect union, justice, tranquility, defense, welfare, or the blessings of liberty for all of the people of this country.

To say a given legal argument has plausibility is not the same thing as saying that such an argument gives expression to a valid proof. When the rights, liberty, tranquility, welfare, security, justice, and desire for a more perfect union are at stake for millions of people, one needs something more than an "I call them as I see them" sort of mentality from jurists.

The criterion of 'beyond a reasonable doubt' that weighs in at most criminal trials -- rather than the far less rigorous guideline of a 'preponderance of evidence' that holds sway in matters of civil litigation -- should be the principle governing the decisions of the Supreme Court. Any time one has judicial decisions that carry by a 5-4, 6-3, or even an 8-1 majority, one has prima facie indication that reasonable doubt might be present with respect to whatever issues are being deliberated upon.

When a Supreme Court justice cites a precedent in order to support his or her legal decision – and a precedent is really nothing more than an allusion to a form of logic used in some previous judicial opinion that a given jurist considers to be persuasive - then, the Supreme Court justice in question frequently has done nothing but given expression to a tautology. This is because the conclusions of such a jurist are often already contained in the premises that collectively encompass that jurist's biases and preferences with respect to approaching the meaning and purpose of the Constitution.

The highly heralded exploration for so-called 'legal principles' with which jurists occupy much of their time frequently tends to be a 'Snark' hunt. The fact of the matter is one has the language of the Constitution and one has the language of prominent authorities (now and over the years), but, unfortunately, the connection between, on the one hand, the foregoing two sets of language packages, and, on the other hand, reality, truth, justice, tranquility, welfare, security, liberty, and a more perfect union is, oftentimes, something of a will-o'-the-wisp.

More often than not, the nature of this will-o'-the-wisp is in the form of a non sequitur in which conclusions do not necessarily follow from a set of premises. Alternatively, the form of the argument,

euphemistically speaking, is, as previously indicated, in the form of a tautology in which the prefabricated biases of a jurist are forced -- sometimes violently so -- upon a set of legal facts and principles, and the only way the biases are made to fit with such facts is through the raw, brute power that stands behind those decisions and not through defensible logical argument.

Einstein, when he was engaged in his running, conceptual battles with some of the creators of quantum theory, once said that "God does not throw dice" in a reply to those who believed the universe operates as a random phenomenon. However one might feel about Einstein's foregoing position, the fact of the matter is, Supreme Court jurists ought not to treat the principles of democracy as if democracy should be regulated by the rules of a dice game – and all too frequently, unfortunately, such jurists do play dice with the lives of people ... and often in a very arbitrary manner.

Judicial precedents are selected by a jurist because the former tend to mirror the hermeneutical system employed by such a jurist and not because the precedent can be defended as true independently of what that jurist believes. Where jurists begin their deliberations is where they often end those deliberations because many jurists tend to end with the same legal assumptions and philosophy with which they began, and the only difference is that the ending is couched in slightly different language in order to give the impression there has been some sort of transitional bridge of logic that has been crossed over as one goes from the premises of a legal argument to a conclusion that is said to be entailed by those premises.

On occasion, the logical movement from premise to conclusion in such arguments might be impeccable, but this often is more reflective of the nature of a tautology forced upon an issue than it is reflective of any discovery of judicial truth with respect to a given constitutional issue. What requires questioning, however, is both the structural character of the legal premises, as well as the underlying assumptions and interpretations that have led to such a conclusion.

In addition, one should pay close attention to the legal sleights of mind that often are woven into the text of an argument. These are processes of conceptual prestidigitation that seek to give an appearance of logical validity when none actually exists.

Being able to loosely tie a legal argument to words or ideas in the Constitution does not necessarily justify or validate such an argument. Moreover, and for reasons that will be developed in the following discussion, a jurist (or a president or legislator) must not permit his or her personal philosophy of life to color a decision since, constitutionally speaking, doing this violates both the spirit and purpose of the Preamble to the Constitution as well as the opening salvo of the First Amendment.

This is because every jurist, on whatever level of review, has a philosophy of law that shapes, colors, and organizes how that individual approaches the interpretation of any legal document or legal circumstance -- both in terms of (a) whether law is a matter of rules and/or principles, and (b) how one should go about interpreting those rules and principles. This philosophy of law might be a function of: a theory about what the 'Framers of the Constitution (supposedly) meant', or such a judicial philosophy might involve a competing interests evaluation or a cost-benefit analysis of the Constitution in conjunction with some legal matter, or a given judicial hermeneutical system might revolve about an underlying theory of social welfare or distributive justice or fairness or moral imperative. Nevertheless, whatever might be at the heart of such a judicial philosophy, it violates -- for reasons to be outlined in the following discussion -- the very fabric and spirit of the Constitution.

One of the reasons why the Constitution has the ambiguity it has (both with respect to its rules and its principles) is because the 39 signatories of that document could not agree sufficiently on the hermeneutical specifics of the provisions inherent in the rules and principles of the Constitution in order to be able to map things out in more detail. Alternatively, or, perhaps, in addition, the aforementioned signatories did not have the foresight to understand that such ambiguity did exist in the Constitution and, therefore, grasp the scope of the problems that this would create for subsequent generations. Or, possibly, these signatories did have the foresight to understand the foregoing sort of difficulties, and just didn't know what to do about it, and, therefore, left those problems as an exercise for later generations to foul up in any way the latter wished, and, therefore, perhaps, like all would-be government officials, the framers of the Constitution were

very good at leaving messes for other people to try to clean up.

If one moves from the 39 people who shaped and signed the Constitution, to the larger set of people who selected those individuals, to the even larger set of individuals who were not represented in the selection process, and, then, one threw in all those people who were entirely disenfranchised by the process (women, Native Peoples, Blacks, and children), then, really, whose Constitution are we talking about here? Whose purposes? Whose meanings? Whose values? Whose ideas? Whose modes of logic? Whose needs? Whose interests? And, how does one justify selecting any sub-set of meanings from this array of possibilities as constituting that which should govern the lives of people and define what is meant by the rights of people to a more perfect union, justice, tranquility, defense, welfare and the blessings of liberty?

Undoubtedly, one would find themes of commonality among all these various sets of individuals – places of agreement about what was right and what was wrong. However, if the history of human kind has proven anything, the far more common thread of human events is about disagreement … not about agreement.

Problems usually don't arise when people agree about things. Problems arise when people disagree.

Yet, the one thing that the Constitution does not do is map out how to find just solutions in the context of disagreement – solutions that serve everyone's rights to a more perfect union, justice, tranquility, defense, welfare, and the blessings of liberty. The Preamble to the Constitution does not talk about a majority of the people, it alludes to 'all' people – "We the People".

Anyone who supposes one can, or should, water down the inclusive language of the Preamble, and, thereby, suggest that Constitutional democracy really only means one needs to satisfy just some simple majority of the population -- and which simple majority this might be is entirely arbitrary and a matter of the fortunes of politics -- doesn't have the slightest understanding of why the Declaration of Independence came into being in the first place. Or, maybe they do have such an understanding, and in order to protect their interests, they wish to ensure that no one else is in a position to follow the original logic(s) underlying that document … the very logic

that made the Constitution possible and that is inherent in the Constitution's Preamble.

Furthermore, anyone who wishes to reduce democracy to a simplistic and brain-dead form of majority rules doesn't understand the concept of a 'right'. Rights belong to all citizens of a democracy, but they are intended to prevail against a majority, if necessary, for the very idea of the protections afforded by rights is that such protection should stand even against the wishes of the majority. A right that cannot guarantee protection against the wishes of the majority is no right at all.

Similarly, when the Preamble to the Constitution talks about forming "a more perfect Union", establishing Justice, insuring domestic Tranquility, providing for the common defense, promoting the general Welfare, and securing the Blessings of Liberty to ourselves and our Posterity, then, the logical character of rights is in force here, and the underlying intention is that protections should be afforded to everyone to enable them to benefit from those processes of establishing, insuring, providing, promoting, and securing.

How to do this so that both minorities and majorities are equally protected and served is, of course, another matter. The Constitution represents a procedural blueprint for how to approach this problem, and the signatories of that document might not have known how to do it, and, currently, we might not know how to accomplish this, but the basic challenge is clear.

Consequently, one simply cannot ignore the Preamble as a nice-sounding piece of literary fluff that merely introduces the, supposedly, real business of the Constitution. Indeed, the whole purpose of forging the Constitution was to serve the integrity of the Preamble. In other words, the procedural rules and principles of the Constitution are intended to constructively assist the realization of the Preamble's purpose.

Unfortunately, many people have misunderstood the meaning and significance of those procedural measures entirely, interpreting them to mean that elected officials have the right to pass laws, via majority votes, to tell people what is meant by Justice, or Tranquility, or common defense, or the general welfare, or the Blessings of Liberty. Such an interpretive approach to the Constitution flies in the face of

everything that led up to the writing of the Declaration of Independence and the Constitution … to follow the former (rather than the latter) line of thinking is an exercise in revisionist history that serves the powers that be.

The separation of powers among the Executive Branch, the Legislature, and the Judiciary was intended as a system of procedural checks and balances to protect the integrity of the principles and purposes inherent in the Preamble. Unfortunately, the whole idea of a separation of powers has become a tug of war among little children squabbling to protect their territorial powers to impose themselves and their thinking upon others, and in doing so they have all demeaned their offices, the Constitution, and the people who have died so that the Constitution might be written and enacted.

The Constitution did do one thing, and it did this fairly well. The document provided a starting point that gave people a context around which to focus and to explore possibilities.

The document provided a way to get things going. However, there is a downside or dark side to such momentum, and that is the inertial forces which have come into play that resist -- blindly and obsessively -- moving in directions that might be much more conducive to securing and guarding the rights of citizens to a more perfect union, justice, tranquility, defense, welfare, and liberties than is presently the case.

What Does The First Amendment Mean?

Amendment 1 of the Constitution, passed some four years after the Constitution came into being and which was made possible by the procedural rules set forth in Article V of that document, stipulates:

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

Some people refer to the first part of this Amendment as the

'Separation Clause'. Such individuals maintain that the purpose and meaning of this portion of the Amendment is to demarcate the boundaries of governmental conduct so no form or process of religion will be instituted as a matter of public policy, and, simultaneously, to ensure that government will not interfere with anyone's right to exercise one's choice of religious practice -- including, by implication, the right not to make a choice concerning, or practice in accordance with, any particular religious doctrines or practice.

Procedural speaking, this part of the Amendment, as is also true of the remaining aspects of the Amendment, is an excellent way to create conditions through which the rights of the Preamble might be pursued by people without prejudice to what they believe, do, say, write, or the reasons for which they assemble. This is so as long as other principles inherent in the Preamble -- such as 'domestic Tranquility' Justice, common defense, the Blessings of Liberty, or the general Welfare -- are not disturbed, compromised, or undermined thereby.

However, a very important question to ask at this juncture is the following. What is religion and is religion a matter of rules or principles or both?

One can go to any number of dictionaries, look up the word "religion" and run down through the primary, secondary, or tertiary designations. Nonetheless, one should try to remember that a dictionary is not the word of God even though some lexicographers might like to think otherwise.

A dictionary is nothing more than a compilation of common and not so common usages of a word. Dictionaries presuppose the linguistic practices of people.

Dictionaries provide parameters of possibility in order to inform one how people do, and have, used such words in order to facilitate communication. Whether the meanings inherent in, or the basis of usage for, a word are right, wrong, true, or false with respect to the nature of reality is actually irrelevant to being able to come to understand what someone is saying by using words in certain ways.

In addition, etymologies provide a history of the evolution of usages and transitions in such usages across languages and cultures

with respect to various practices of usage. Again, recording this history or noting the changes in usage over time says nothing about the truth or falsity of those linguistic practices with respect to their capacity to reflect the structural character of reality in an accurate manner.

If one wishes to add n-dimensions of nuance to a dictionary's rendering of a word's meaning, then, one might read what various individuals have written about such a word as these people developed their respective theologies, philosophies, mythologies, sciences, sociology, anthropology, psychology, histories, moralities, or legal perspectives in relation to that word. Like the reiterated equations underlying a fractal, one can take almost any word and explore the possible meanings and significance of that word to an indefinite extent -- as many levels down, up, and in other dimensions, as one likes -- without necessarily coming any closer to the truth or end of the matter or issue.

The Constitution says nothing about whose usage is to be preferred concerning a word such as "religion". The Constitution gives no guidelines about what any of its words do mean or should mean or could mean.

The Preamble to the Constitution does provide some indication that our approach to these matters should be as broad as possible without being forced to drop off the edge of the world of intelligible meaning into nihilism, sophistry, or nonsense. Moreover, there is some indication in the Preamble that this broad-spectrum engagement of issues should be consistent with the preservation of the integrity of the several principles (for example, a more perfect union, justice, tranquility, common defense, general welfare, and liberties) that are mentioned in the Preamble.

As an exercise, let's consider some possible ways of reflecting upon the idea or concept of "religion". For instance, one prominent theme of religion is 'faith'.

Some people describe faith as being nothing more than beliefs, values, or opinions to which one is attached with considerable conviction and passion despite an absence of evidence. Other people characterize faith as either a faithful or heuristically valuable insight (productive or useful) into the way one's experience links up with, or connects to, the nature of reality, despite the possibility of error with

respect to such an insight.

Is there anyone who does not have faith in either of the foregoing senses? Is there anyone who does not hold her, his, or their beliefs with conviction or passion, or does not consider those beliefs and convictions to be constructive or heuristic leads for engaging and/or seeking the ultimate nature of truth or reality -- and, yet, simultaneously, realizes one could be wrong with respect to that which one believes one is right?

Another term used in conjunction with religion is "soul". Who amongst us does not believe human beings have a soul ... and possibly animals, plants, and the rest of the universe as well?

The issue has never been about the idea of soul. The controversy has been over its nature and purpose.

Does the soul transmigrate? Is the soul accountable, and, if so, to whom: God? … the community? … the judicial system? … ourselves? … our family? … the Universe … all of the above?

Is the soul the seat of the intellectual machine? Is the soul that which motivates and inspires creative activity? Is the soul the source of feeling of empathy for things? Is the soul really just a way of referring to the psyche by another name and, therefore, is merely a psychological construct or artifact? Is the soul destined for either eternal perdition or salvation? Is the soul a miracle of random, evolutionary forces? Is there an Over-soul to which we are all connected via the agency of our individual souls? Is the soul material, psychological, ethereal, spiritual, mythological, rational, irrational, illusory, permanent, or transitory?

Whether true or not, most of us believe the existence of a soul -- however it might be described – to be one of the things that distinguish human beings from other beings of the Universe. This is not because other beings (whether animate or seemingly inanimate) might not have a soul, but, rather, because the structural character or quality or nature of the human soul is somehow different and, consequently, defining of what being human entails – both in the way of possibilities, as well as in relation to responsibility and accountability.

Some people say that the notion of a 'conscientious devotion and

scrupulous care' to certain precepts is the hallmark of religion. This devotion or commitment to a set of ideals, values, principles, morals, and priorities that are intended to guide the living as well as the engagement of life through such devotion is said to characterize the essence of religion.

We all have ideals, beliefs, ethical precepts, codes, and so on to which we are devoted and to which we -- according to our capacities, inclinations, and circumstances -- seek to follow with some degree of scrupulous care. If we don't choose to call these things religious, does this make them any less consonant with some of the principles inherent in religious discourse? Isn't a rose by any other name still a rose?

Of course, some demand that religion must be about one's relationship with a Supreme Being. Numerous wars have been fought over what people believe the name of this Supreme Being is or should be.

One commits a logical fallacy when one confuses the name of something as having a greater claim on the nature of reality than the actual nature of the reality to which that name allegedly makes identifying reference. One is reifying language rather than understanding that language is nothing more than an elaborate way of pointing to, and describing, something that lies beyond the horizons of linguistic limits.

In the Old Testament, the Hebrew Tetragrammaton YHWH or JHVH -- unpronounceable amalgamations of four consonants -- is used to allude to the reality that the Supreme Being does not use any spoken name to identify the reality of "I Am That I Am". Unfortunately, the penchant of some people to invest language with more reality than it deserves has transformed the foregoing Tetragrammaton into a name, Yahweh or Jehovah when no such naming process ever was intended.

In this context, the very act of naming distorts that to which the Tetragrammaton is seeking to direct our attention through a modality of alluding. The process of naming tends to distort because we are projecting our way of coding experiences, understandings, interpretations, and values onto reality whenever we do this. In so doing, we tend to reduce the richness of the infinite -- or, at the very

least, the indefinite -- down to the names we invent in order to make reference to our experience … both individual and collective.

Oddly enough -- although not really -- the Buddhist inclination not to name ultimate reality is right in step with the aforementioned Tetragrammaton. The Void that is Fullness alludes to the presence of a Reality, but this Presence cannot be captured through the use of any name.

Some people speak of Buddhism as a godless religion. One would be more accurate to refer to Buddhism as an approach to the engagement of reality that shies away from naming That which cannot be named because doing so introduces substantial distortion into the conceptual and hermeneutical landscape.

Names imply 'thingness' or having the status of an object. The Buddhist and the Jewish scriptures, along with many mystical traditions, are trying to draw our attention to the idea that the ultimate nature of reality is not a function of thingness, nor objects, stuff, material, substance, or even spirit.

Some spiritual traditions of Native peoples use a term such as "the Great Mystery". Is this so different from the Christian idea of the Cloud of Unknowing about which some mystics have talked that alludes to the veils that stand between, on the one hand, human experience, language, or reason, and, on the other hand, the reality that transcends our experience, language, or reason, even while that Reality makes such experience, language and reason possible?

Einstein spoke about the 'Old Man'-- his way of alluding to the truths to which the ultimate nature of reality gave expression. Was he a religious man? Well, whatever the answer to this question might be, his writings do indicate, in many places, that he held truth and reality to be sacred trusts that were one's obligation to understand and respect.

"Supernatural" is another word one often hears in the context of religious discussions. What exactly, however, do we mean by this?

Someone once said words to the effect that one culture's magic is another culture's technology. Might one not suppose that one culture's notion of the supernatural is another culture's knowledge concerning the character of Nature?

Are the infinite dimensions of mathematical space supernatural? Even if one were to accept the idea of String Theory in physics to be true, does this mean there is, or can be, nothing beneath (beyond) such a truth? Is so-called 'dark matter' or the similar sounding, but very different notion, of 'dark energy' supernatural entities?

Currently, we do not have a defensible Grand Unified Theory capable of explaining all physical phenomena, since -- among other things -- we suffer from an absence of any way to reconcile the general theory of relativity with the other fundamental forces. And, this is just one of the obstacles to such a 'Theory of Everything', since we also suffer from the rather embarrassing fact that all of the important constants of science have to be arbitrarily introduced into such GUT discussions because, currently, there is no way to plausibly account for why, say, the Planck constant has the value it does or how that value arises from first principles of any such GUT framework, or why the electron has the precise charge it does, and so on.

Yet, even if we were to have a fully realizable Grand Unified Theory of all the known physical forces, is such a GUT framework really capable of providing an accurate and satisfying account of: consciousness, intelligence, creativity, soul, purpose, choice, personality, the search for meaning, faith, and trans-personal experiences, or Being? And, if we do not have such an account, then, how does one go about determining what might be meant by the idea of the 'supernatural'?

Astrophysicists claim they can trace events back to mere picoseconds from the Big Bang. However, they have absolutely no explanation for what would have brought this all about, and the plausibility of most cosmological models of the Big Bang depends on, among other things, an event known as "inflation" for which absolutely no one has the slightest idea of why or how such an event would have physically occurred -- although by assuming the existence of such events, the Big Bang model is saved -- theoretically, at least -- from a substantial embarrassment.

Was the Big Bang a supernatural event with material consequences? Is 'inflation' a sign of supernatural intervention?

Evolutionists love to claim they have nailed down, precisely, how life arose or, barring that, they purport to have the only

scientifically plausible account for the emergence of life. Any evolutionist who wishes to claim this is talking through his or her spectacles of faith and nothing more.

The key to trying to understand the possible nature of the transition from non-living to biological systems does not rest with the work of Darwin, neo-Darwinians or with the findings of those who have developed the field of population genetics, but, rather, lies hidden in the darkness of, as yet, undiscovered, scientific country. As someone who has looked at most of the so-called evidence bearing on this matter – from pre-biotic chemistry, to: molecular biology, cytology, membrane functioning, thermodynamics, as well as chaos and complexity theories, along with a number of other disciplines -- I have concluded that investigators really don't have a smoking gun with respect to providing a reasonable, evidenced-based account devoid of speculative assumptions concerning the issue of randomness for how biological systems evolved out of non-biological systems.

Evolutionists have a lot of technical data with no way to piece it together in an intelligible and defensible manner that would be acknowledged as such by any impartial, objective individual. Nevertheless, this state of affairs does not mean that any of the so-called 'Creationist' schools of thought are correct.

The reality of our present epistemological status is that we actually don't know how things came about. If we are honest with ourselves and with the available evidence, this is how and where things stand at the present time.

We have theories, opinions, paradigms, ideas, and world views. However, what we don't actually have is certain knowledge, or even reasonably certain knowledge, about the foregoing matters.

We have lots of speculation trying to parade itself as knowledge ... nothing more. And, those who claim otherwise – whether 'creationists' or scientists -- merely are confusing conceptual smoke and mirrors with the rigorous demands of demonstration and proof.

Proponents of both the evolutionary and creationist schools of thought have often brought more heat than substance to the problem of trying to understand, to whatever extent this is possible, how the origin(s) of life took place. (For those who might be interested in

reading further about this issue, please read my book: *Evolution Unredacted* -- which is a detailed, rigorous, scientific, examination of the available evidence that, allegedly, stands in support of an evolutionary account for the origins of life.)

When one doesn't have determinate answers to the central questions of life, one lacks knowledge about whether, or not, one is dealing with natural or supernatural events. In fact, when one doesn't have the necessary information, evidence, or proof about such questions, one doesn't even know how to establish a line of demarcation that clearly and definitively distinguishes the supernatural and the natural, and, therefore, everything remains open to further study.

Labeling things as being either one or the other really establishes nothing but the arbitrariness of the process used to linguistically identify various facets of experience. This state of affairs tends to obfuscate the relationship between language and reality.

"Worship" is another term one finds in a context of religious discussions. Talking, singing, dancing, writing, searching for truth, loving life, communing with nature, as well as serving friends, family, or community – the foregoing are all ways of engaging in worship. One doesn't have to confine worship to the home or a theologically sanctioned building.

Worship can be manifested through both vocation and avocation. Worship can be expressed through the way one interacts and treats other people.

Worship arises through the sacrifices we make for our families or the community, or friends, or the truth. Worship is in the heart when one hears music that moves one or sees a work of art that brings tears to one's eyes.

Worship is to treat with respect and reverence that which we hold to be sacred. Worship does not depend on language ... it is a state of being ... it is an attitude toward life ... it is a way of engaging our experience of Being.

We are all caught up in the sheer mystery, wonder, awe, inexplicability, beauty, enormity, indefiniteness, richness, possibilities, and terror of existence. We tend to treat these experiences as sacred

ground.

We engage those experiences through a combination of faith, doubt, knowledge, and questions. We might, or might not, be dealing with something supernatural -- although since we haven't figured out the physical side of things yet, we don't even know what is meant by saying that something is supernatural other than that such a dimension of existence operates by principles beyond what we know or understand to be 'natural'.

We have a passion about all of this. We commit ourselves to all of this in different, personalized ways that are manifested with varying degrees of being done conscientiously and with scrupulous care.

Some people refer to the foregoing in religious terms. Some people refer to the foregoing in non-religious terms.

The precise term that is used actually is irrelevant. The First Amendment is a principle, not a rule, that both prohibits the establishment of any way of engaging reality that is intended to serve as public policy to which everyone must adhere, bow down, or comply with. In addition, the First Amendment indicates that public policy cannot interfere with the way people choose to exercise this right to engage Being, existence, life, or the opportunities encompassed by reality -- as long as such exercise does not undermine or compromise the integrity of any of the principles inherent in the Preamble, and the reason for which the Constitution came into being as a procedural means of preserving.

Public Policy and the First Amendment

Whether politicians, government bureaucrats, or Supreme Court Jurists like it or not, almost invariably, public policy entails doing what the First Amendment prohibits. In other words, as the preceding discussion concerning the First Amendment indicates, public policy is a means for making laws respecting the establishment of a way to engage reality that satisfies the conditions of what religion, broadly construed, actually involves.

Public policy is really religion in secular drag, and such linguistic camouflage is actually intended to hide the underlying identity of the conceptual body that is being paraded before the public. Public policy

demands that everyone adhere to its tenets for engaging, analyzing, evaluating, and acting in relation to the nature of existence or reality, and, as such, this is really nothing less than a process of establishing a state-run religion hiding in secular-like garments.

The term used to identify a human activity -- in the present case, 'public policy' -- can be misleading and, therefore, one needs to look at the structural character and intent underlying the usage associated with a given term. If one looks at the intention and nature of the process to which much public policy gives expression, one would be hard pressed to differentiate that sort of activity from political and legal instances of making, or trying to make, "laws respecting an establishment of religion, or prohibiting the free exercise thereof" when one begins to reflect on the complexities, nuances, and breadth of activities that are encompassed by the term "religion".

The Preamble to the Constitution is about people, not governments. The Constitution is the set of procedural guidelines -- in the form of both rules and principles -- that establishes (on behalf of people, not governments) a framework for serving the principles inherent in the Preamble.

To whatever extent the public policies of government officials or jurists try to establish a set of values, beliefs, ideas, principles, philosophies, opinions, or theories to be incumbent on the people, then, government officials and jurists are engaging in practices that are not only in violation of the First Amendment, but, as well, are transgressing against the very spirit, purpose, and meaning inherent in the Preamble to the Constitution and all that led to the writing of a document (namely, the Constitution) that was intended to procedurally serve, secure, guard and protect the integrity of the principles introduced into the Preamble. Whether one calls such public policy: economics, judicial review, science, political philosophy, fiscal policy, or a distributive theory of justice, one is establishing a mandatory framework of values that is prohibited by the Constitution and inconsistent with the spirit of the Preamble to that document.

The whole idea of the Declaration of Independence, the Preamble, and the Constitution was to bring an end to tyranny, despotism, and arbitrary authoritarianism. The purpose and intent of writing those documents was to prevent anyone -- whether King George, or a

President, Governor, Congress, a state legislature, the judicial system, institutions, organizations, or corporations -- from exercising power in ways that would prevent people from having access to the right to the pursuit of happiness, a more perfect union, justice, domestic tranquility, common defense, general welfare, and the blessings of liberty, by creating obstacles to such principles through making personal philosophies of life (political, religious, scientific, or otherwise) the law of the land and, thereby, having established a religious framework.

The First Amendment says a government cannot interfere with the free exercise of religions by individuals. Such an Amendment says absolutely nothing – either explicitly or implicitly – about governments qua governments (as opposed to private citizens), being entitled to freely practice its form of religion, faith, worship, or beliefs concerning how anyone should engage truth or reality.

Just as the judicial system was in error when, on several occasions, it extended the quality of being a person to corporations, so, too, governments have surreptitiously, and through legal prestidigitation, assumed for themselves a right to the exercise of religious freedom that only was intended to be granted to the people. Just as the classifying of corporations as persons was a legal fiction with real, detrimental consequences that placed people in harm's way and at a considerable disadvantage, so, too, government officials and jurists who, in a very self-serving manner, accrue to themselves the right to establish public policy counterparts to the establishment of religion, have introduced a legal fiction that has destructive consequences that places people in harm's way and at a considerable disadvantage with respect to securing the rights to which the Preamble gives promise.

All too many politicians have interpreted the so-called 'Separation Clause' of the First Amendment as a green light for government officials and jurists to impose their philosophical beliefs upon citizens while, simultaneously, preventing mere citizens from having religious beliefs instituted as public policy. If the purpose of the latter exclusion is to protect the community from having to submit to the personal beliefs of individuals, the logic of this preclusion extends to government officials and jurists, as well, and, therefore, those officials and jurists should not have the right to establish personal philosophies

of any kind (economic, judicial, political, educational, or otherwise) as public policy.

The fact something is called 'public policy' rather than 'religion' does not alter the logical ramifications of the argument or the principle that is being violated. Both public policy and religion are personal visions for, and ways of, engaging reality, in accordance with issues of faith, commitment, passion, belief, and a moral system that treats certain principles as sacred and, therefore, allegedly, is worthy of our conscientious and scrupulous attention.

Public policy might not refer to a Supreme Being -- although, on occasion, it does. Nonetheless, the arrogance underlying public policy substitutes for, and plays the role of, a supreme being (although 'idol' might be a better term) to which all must bow down.

Submitting to truth and the nature of reality out of choice is one thing. Being compelled to submit to the arbitrary fiats and proclamations of would-be deities that have been invented and/or forcibly imposed by someone else is quite another matter.

One of the reasons why the federal government seeks not to become actively involved – at least in a primary fashion – with the process of education is in order to avoid even the appearance of impropriety with respect to the First Amendment. In its own way, this aspect of public policy tends to substantiate all that has been said in the previous discussion about religion and public policy, but selective attention has permitted government authorities and Constitutional experts to acknowledge the former point while failing to follow through on the logic of the underlying principle.

Notwithstanding the foregoing issue, most people suppose that whatever powers have not been: (a) Delegated to the three branches of the Federal government, nor (b) specifically prohibited to the States, belong to the States. After all, isn't that what the 10th Amendment, the last outpost of the Bill of Rights, guarantees?

Actually, the answer to the above question is: 'No!' Whatever the Constitution has not specifically delegated to the Federal Government nor prohibited to the States, "are", as the Constitution clearly indicates, "reserved to the States respectively, or to the people."

In addition, and not to put too fine a point on this matter, the 9th

Amendment paves the way for, as well as underscores, the provisions of the 10th Amendment. The 9th Amendment says: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people" ... this alludes to rights which are not a function of what is retained by government or states but, rather, by the 'people.

While the precise nature of these 'other rights' is not specified and only alluded to (especially, through the presence of the Preamble), nonetheless, how quaint and interesting! The Constitution actually indicates that people have potential powers reserved for them that might be entirely independent of government activities, and this tends to suggest that, contrary to what Lincoln thought, the United States is not a nation that is a government of, by, and for the people, but that the people are an entity all on their own, quite apart from government.

Before pushing on with this startling development, let's backpedal a bit. If the Federal Government is not supposed to become involved in the business of education for fear that, in so doing, it would violate the spirit of the Preamble and the letter of the First Amendment, then what business does any given state government have in regulating education?

What is the precise nature of the twist in logic that extends to state governments a power that transgresses both the spirit and letter of the Constitution? The Constitution does entitle every state government to have a Republican form of government (Section 4 of Article IV), but such a form of government does not entitle states to "make laws respecting an establishment of religion," for although the 1st Amendment specifically forbids Congress from doing so, the implication of this prohibition encompasses every level of government.

There is no legal argument that could make this fiduciary responsibility of every level of government other than this. To proceed in some other fashion would be to engage in a revisionist approach to history and the Constitution that seeks to make them something other than they were and are.

As argued previously, public policy -- which is a source of government intentions with respect to the people, and, therefore, the force behind the generation and establishment of many laws -- often tends to be another term for the "establishment of religion" since the

structural character of a great deal of public policy has some of the qualities of religious activity and merely uses a different lexicon in order to hide this fact. This is true for the public policy of the federal government, and this is true for the public policy of state governments.

One of the conclusions which follow from the foregoing is that compulsory education is unconstitutional. States have sought to rush into the vacuum left by the federal government's withdrawal from where angels fear to tread (for example, in the realm of education), but there is a word for those who seek to do what states have attempted to rush into in this respect.

Most forms of government tend to be imperialistic by inclination, seeking to extend the boundaries of their fiefdoms as far as possible. In giving expression to this inclination, state governments have usurped something from the people to which states are not entitled and, in accordance with the provisions of the 10th Amendment, something -- namely, education -- which actually is one of the powers that has been reserved for the people quite independently of government.

Passed in 1865 -- the year in which the Civil War ended -- the 13th Amendment states in Section 1: "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction." The citing of involuntary servitude as a separate, though not necessarily unrelated, concept from the institution of slavery is an important one, but there is a very strong case which can be made that compulsory education constitutes both a form of slavery and involuntary servitude.

Historically, public education began, on the one hand, as a method for removing children from the labor pool in order to bolster the bargaining power of older workers, and, on the other hand, public education began (through the writings of Horace Mann and others) as a means of trying to contain what many government officials and scions of social privilege perceived as the threat of Catholicism. Today, education has become, to a great extent, the minor league feeding system for the Big Dance known as 'economics'.

Whether one is talking about some form of indentured servitude (through, for example, education loans) or enslaving children to serve the interests of governments, corporations, or self-appointed

guardians of cultural heritage, compulsory education is a form of involuntary servitude. In many ways, education is a modern form of slavery.

A slave is someone without power, voice, or rights who must act in accordance with the arbitrarily derived whims and wishes of a master. A slave is someone who will be punished for doing other than what the master commands -- and the modalities of punishment are varied, subtle and gross – (e.g., truancy laws, suspension, expulsion, detention, poor grades, unfavorable recommendations, a miserable quality of life within the school system, or a school record that will haunt one to the grave).

A slave is someone over whom another person or persons has absolute control in relation to life, liberty, and pursuit of happiness. A slave is someone who, both mentally and morally, is in subjugation to another human being's whims. A slave is someone who involuntarily serves another person's economic and political agenda.

The 13th Amendment might have been written with people of color in mind, but there can be no question about the following fact: Students who are subject to compulsory education meet the criteria of what constitutes a slave. Furthermore, the very idea of 'compulsion' means, by definition, that a student's life consists of involuntary servitude. If there is no choice in the matter, or if the exercise of choice automatically results in punishment, to one degree or another, then, such servitude can be nothing other than involuntary.

Parents, governments, educators, and businesses might all claim that such an arrangement is in the best interests of the student. However, this was (and is) the form of argument used by slave owners (de facto or by proxy) with respect to that which they considered to be their chattel, and this was (and is) the form of argument used in controlling native peoples through the Bureau of Indian Affairs, and this was (and is) the form of argument used in denying women the full status of being considered a person until, at the very least, toward the middle of the last century, and this was (and is) the form of logic that is advanced by every colonial government that exists or has existed.

The 14th Amendment, passed in 1868, indicates in Section 1 that:

"No state shall make or enforce any law which shall abridge the

privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Children are citizens. Therefore, children inherit the promise of the Preamble, along with the protections afforded by the 1st Amendment in relation to governments making laws respecting an establishment of religion (i.e., the imposing of a public policy that dictates how one should engage, think about, or evaluate the nature, meaning, purpose, and significance of reality).

In addition, the provisions of the both the 13th and 14th Amendments are applicable to the treatment of children in conjunction with issues of: (a) slavery, (b) involuntary servitude, (c) the abridging of those privileges (among which are the right to life and liberty, as well as intellectual, emotional and spiritual property) which are consonant with the promise of the Preamble -- and in order for a process of law to be considered "due" that process cannot be unconstitutional -- as well as, (d) equal protection of the law. Parents no more have the right to aid and abet governments in depriving children of these rights, than do governments.

Children are not the chattel of parents. Ownership is not logically implied by the existence of biological kinship.

Parents have an even greater fiduciary responsibility with respect to children than do governments. Moreover, part of the job of governments is to establish procedural forms of assistance and regulation that will enable parents to observe the fiduciary responsibilities that parents have toward their children so that, together, both parents and government can help children to realize the promise of the Preamble according to the assisted choices of the child and not as a result of the fiats or forced impositions of parents and/or governments.

The framers of the Constitution might not have had children primarily in mind when they spoke about the rights, privileges, powers, and protections of people or when the framers set down any number of the rules and principles that are given expression through

the Preamble, Articles, Sections, or Amendments of that document (although the age requirements needed to hold certain public offices is an oblique reference to the existence of people who fall below a certain number of years lived). Nevertheless, one might add to the foregoing considerations that no prima facie case can be advanced demonstrating that the powers that are protected and reserved for the people through the 9th and 10th Amendments should not encompass children.

Furthermore, one has good reason to suppose that at the top of this list of powers that should be extended to children as well as adults are powers that involve control over the process of learning. Dictating to children what they should learn, or how they should learn it, or when they should learn it, or why they should learn it, or where they should learn it, is antithetical to the whole spirit of the revolution in thought and political arrangements that led to the signing of the Declaration of Independence as well as to the framing the Preamble and the principles and rules of the Constitution that were intended to be subservient to that Preamble. More specifically, trying to control how, what, why, when, and where students learn is in direct violation of the 1st, 13th, and 14th Amendments, and, consequently, this causes one to take a very long, reflective pause in relation to the potential for transgression of fundamental rights with respect to both the 9th and 10th Amendments.

Unreasonable Search and Seizure

One might also throw in the 4th Amendment to the foregoing discussion. This Amendment stipulates:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized."

Part and parcel of what constitutes a person is the emotional, ideational, spiritual, creative, moral, experiential,

motivational, and intellectual contents that reside in that person. This is as true for children as it is for adults.

Children have as much right to be secure in their persons from "unreasonable searches and seizures" as do adults. Schooling, testing, and grading all constitute – at least potentially -- unreasonable instances of search and seizure because the agency doing that searching and seizing has no authority to do so under the Constitution, and the nature of the underlying argument for this contention has been stated in the foregoing pages.

Can "probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized" be given in relation to beliefs, ideas, values, opinions, thoughts, intellectual systems, frameworks, paradigms, world views, creations, and so on of a student? Well, let's reflect on this matter a little.

What would constitute probable cause for the search and seizure of a person's cognitive life? Can one demonstrate that such search and seizure would lead to a more perfect Union? Absent a lot of contentious point-counterpoint -- and, probably, not even then -- this does not seem likely.

Can one show that such search and seizure would be consonant with the demands of justice? Whose theory of justice is one going to cite and why should anyone, let alone a child, be required to allow his or her cognitive domain to be the subject of search and seizure in order to serve such a notion of justice?

Undoubtedly, arguments can be made in this regard. However, the one who is giving an ‘oath and affirmation’ in support of such probable cause has a steep slope to climb in order to be able justify negating, undermining, compromising, and ignoring so many dimensions of the Constitution.

Can one demonstrate that one would enhance and secure domestic tranquility through such a process of search and seizure? Parents might think so, but anyone who has been in all too many modern schools with their propensity for violence, fear, shootings, the presence of weapons that terrorize through their mere presence, gangs, antagonistic cliques, drugs, extortions, dehumanizing practices,

stresses, depression-inducing formats, anxieties, sources of humiliation, alienation, arbitrariness, and oppression -- all of which are directly tied to the compulsory nature of the process -- knows otherwise.

Can one prove that the 'Blessings of Liberty' will be preserved through such a process of search and seizure? The whole concept is something of an oxymoron unless one can show that depriving people of the blessings of liberty in such a compulsory fashion will, in all probability, lead to an enhancement of the Blessings of Liberty for all concerned -- not just for the majority, but for the minority as well ... the ones for whom rights are primarily intended to protect, even as such rights also serve the needs of the majority.

Can one establish, with sufficient rigor, that underlying the search and seizure of cognitive contents of a student via schooling, testing, and grading, there exists a probable cause with respect to the enhancement of the 'General Welfare'? Welfare is a term laden with conflicts arising from differing opinions, beliefs, ideas, values, priorities, interests, commitments, agendas, and worldviews. As such, these are precisely the kinds of issue from which a government ought to recuse itself because those issues tend to infringe upon, among other things, 1st Amendment rights.

Aside from the issue of laws respecting the establishing of religion, or the exercise thereof -- both of which are jeopardized by the search and seizure of the cognitive content's of a student's person – nevertheless, compulsory schooling (and the concomitant practices of testing and grading), seeking to search and seize the cognitive contents of a person's mind through compulsory education also interferes with the right to free speech (if one will be penalized for what one says, the speech is not free), as well as the right to peacefully assemble. With respect to this latter right, the process of peaceful assembly is double edged.

On the one hand, the aforementioned right permits assemblage for peaceful purposes (and learning according to one's own capacity, interests, needs and circumstances is a peaceful purpose), and, on the other hand, this right protects one against being compelled to assemble for purposes that, even if peaceful, are not consonant with one's way of engaging life. Moreover, the very act of compelling

attendance in any assembly is inherently not peaceful, and, therefore, does not satisfy the conditions of probable cause with respect to either enhancing domestic tranquility or promoting the general welfare, not to mention failing to secure the Blessings of Liberty.

Native peoples have a way of approaching the idea of the general welfare. Mystics have a way of engaging this issue. Religious frameworks offer a variety of modalities for deliberating upon this issue -- involving both some commonalities and numerous differences. Scientists, philosophers, psychologists, historians, anthropologists, sociologists, poets, novelists, political scientists, newspaper columnists, educators, movie directors, mathematicians, statisticians, bankers, economists, corporate executives, and jurists all have their own take on this issue of the general welfare.

Currently, we have no means of constructing a multidimensional regression line that is capable of linking all the foregoing points of view together into a consistent, common expression of what is, or should be, meant by the idea of the 'general welfare'. Whatever subset of themes, topics, contents, issues, and ideas that is selected from amidst the overwhelming mass of data concerning the problems surrounding and permeating the issue of the 'general welfare' and is proclaimed to be 'the' material that a person needs in order to be a cultured, educated, happy, moral, socially aware, well-adjusted, independent, critically thinking, contributing member of society who is ready for whatever the future might bring – all of this is entirely arbitrary and cannot possibly be proven to be true prior to the unfolding of history. This is why the choices concerning those issues should be left in the hands of individuals subject to the normal constraints that are needed to secure and protect, for one and all, the Blessings of Liberty, Domestic Tranquility, Justice, and the common defense.

Presumably, with an appropriate approach to preserving and securing the rights of both minorities and majorities, one would have gone a great distance toward forming a more perfect Union. However, notwithstanding such a hope, no one in America can establish probable cause as to why the search and seizure of the cognitive contents of a person (say, a student) through a forced process of schooling will establish the general welfare without simultaneously

transgressing the requirements of many other provisions of the Constitution.

Learning, Understanding, and Testing

Furthermore, even if one were able to create such an impossible dream concerning a legal or public policy argument to cover the foregoing issues, one faces another daunting task. More specifically, one cannot show probable cause that testing, grading, and degrees/certificates are the best means to attain such an end.

There is considerable documented evidence that has accumulated concerning the essential importance of not only intrinsic (rather than extrinsic) motivation as one of the key elements in how people learn, but, as well, the central role that is played by an absence of stress in relation to the successful formation of long-term memory. All such findings are at odds with the idea of compulsory, arbitrary schooling.

Moreover, the only long-term, well-constructed, valid study involving high school students who went on to college -- and is, therefore, known as the 'Eight year Study' -- demonstrates that students who, among other things, learn while attending high school in the absence of any system of grading either do better, or no worse, in college/university than do students who are graded. Once again, such evidence that has been available to us for quite some time (at least since the 1930s), all suggests that learners do quite well in environments that are non-compulsory and un-regimented in nature, and that are rooted in intrinsic forms of natural motivation rather than externally imposed, arbitrary systems of motivation.

The fact of the matter is, tests (whether standardized or not), are fairly worthless as indicators of determining what a student might have learned. There are a variety of reasons for the absence of reliability and heuristic value with respect to testing as an indicator of what is learned. The present essay only will outline and allude to some of these reasons in passing, for such empirical findings are all extensively documented in an array of books, articles, and papers (some of which are cited in the bibliography at the end of this book).

First, for reasons alluded to previously, the very act of selecting what items, topics, ideas, themes, problems, values, judgments,

methods, and so on should appear on a test is inherently arbitrary, argumentative, biased, and an infringement upon basic Constitutional rights -- especially when those tests are of a compulsory nature. Nonetheless, even if one were to waive this not inconsiderable difficulty, there are a number of other fundamental problems entailed by the process of testing.

For example, most tests revolve around the issue of memory recognition rather than independent recall. If one is given a standardized test and asked to select which choice best reflects the most appropriate answer for a stated question, then, one doesn't have to necessarily recall any information … one only has to recognize one possibility as being more correct than the other alternatives.

Being asked to recall who first proposed a general theory of relativity in the absence of any clues tends to probe the issue of potential learning in a different, more rigorous way of testing what might have been learned than if one only had to choose among already supplied names such as: Ptolemy, Galileo, Copernicus, Newton, Einstein and Hawking. Moreover, usually speaking, being required to recall something in the absence of hints is very resistant to guessing, whereas such is not the case in instances involving mere recognition.

However, tests of recall rather than mere recognition also tend to be much more difficult to assess. Due to a variation of the user-interface problem, people who are given space and an opportunity to write down whatever they want, often do, and trying to figure out if, under such circumstances, an answer is correct is not always easy, and, therefore, to make things as easy as possible on the person correcting the test, as well as to avoid as many arguments as conceivable (by the teacher, the student, or his/her parents) with respect to the degree of correctness in any given answer, much testing in high school is restricted to tests of recognition -- the most rudimentary, least meaningful, most nebulous index of what someone might know.

The term "might" is used above because getting something correct on a test of recognition does not necessarily mean an individual understands much about what has been recognized. Aside from the issue of pure guess-work, and returning to the example noted above, knowing who first proposed a general theory of relativity does not

necessarily mean one knows anything more about general relativity than a name.

Of course, one could augment the section of a test dealing with general relativity by asking other questions of a related nature. However, even if one did this, and even if a person did relatively well, none of this guarantees three further important indicators of learning.

Descriptive information concerning a theory is not the same as having critical understanding of the theory being described. In addition, having critical understanding concerning certain aspects of a given theory is not always the same as being able to solve problems using such a theory.

Furthermore, being able to apply the theory in the world beyond the horizons of a school setting does not necessarily follow upon good test scores. Lots of people test well only to fail in the non-school world because the nature of the tests and challenges often are constructed differently in the world outside of school than they are within an environment of schooling.

Finally, even if one has recognition, recall, critical understanding, and problem-solving capabilities with a transfer of learning to a non-school context, no test can determine how long one is going to remember what has been learned. Unless one has eidetic memory like the subject 'S' in the case studies compiled by the Russian psychologist Luria, the vast majority of us tend to forget most of what we learn – this often is as true for very bright students as it is for less-gifted individuals.

Medical doctors, engineers, lawyers, doctoral candidates, and so on all appear a lot smarter shortly after completing a test for which they have studied than they do as little as 6 months later, let alone years after. So, what is the point of a test that focuses on tasks of recognition, while ignoring issues of recall, critical understanding, problem solving, transfer of learning to non-school environments, and the fact that much of what is learned is relatively short-term?

The more complex and rigorous a test, the more complicated is the process of evaluation. Most teachers either don't have the time or will not take the time to probe these various dimensions of learning.

Universities are filled with scholars who are at odds about many of

the 'facts' and issues concerning any given topic. Journals, conferences, symposia, and libraries are filled with more of the same.

Does this mean there is no such thing as an undisputed fact or no such thing as the truth? No, not necessarily, but it does mean that what a teacher believes to be true is not always the same thing as such a belief being true.

Students tend to be held hostage by the paradigms through which teachers, school systems, governments, and scholars understand the latter's experience of the world. Teachers, school systems, governments, and scholars all tend to believe students should be held hostage to such paradigms because these world-views are the cultural heritage that is being passed on to them, but I believe the Constitution says otherwise.

Introducing learners to various ideas and sharing those ideas with learners is one thing. Compelling students to learn those ideas, under threat of penalty, is, constitutionally speaking, quite another matter.

However, even if the Constitution did not preclude such compulsory forms of imposition, there is a tremendous injustice done to students when they are forced to rub their faces in the arbitrary and personal conceptual meanderings of other people due to fear of being punished via grades, permanent notations in one's school record, suspensions, expulsions, letters of complaint to one's parents, or having a degree withheld, simply because out of a prudent cautiousness, a student resists such an onslaught or has not given her, his, or their consent to this sort of gross violation of the security of one's person that infringes on matters of personal conscience, meaning, belief, identity, purpose, and choice.

All the noble principles encompassed by the Declaration of Independence are paraded before students as a wonderful part of history but, of course, these students should not ever get the idea that those principles, documents, and history have any relevance to what goes on in classrooms and schools today. All that stuff about rights, liberty, the pursuit of happiness, despotism, oppression, involuntary servitude, why, that's all inapplicable to the current circumstances of students … isn’t it?

Students live in a brave new world where the foregoing sorts of

principles no longer apply -- except to the extent that teachers and schools, like King George, believe these sorts of principles ought to be applied in order to advance the purposes of the educational rulers. The need of students to become mature, free, self-aware, critically thinking, responsible, moral, independent constructive, co-operative participants in a community of like-minded and like-hearted individuals become sacrificial lambs upon the altars of educational orthodoxy.

The purpose of a test should be to determine strengths and weaknesses in order to shape subsequent learning -- nothing more ... unless, that is, there is a demand arising from someone's agenda (the teacher, principle, school board, superintendent, union, Department of Education, media, higher education, and/or business) which "must" be satisfied. Grading adds nothing but arbitrariness, stress, oppression, persecution, compulsion, meanness, ego-games (on the part of both teacher and student), inequitable standards, bias, prejudice, resentment, anger, as well as cruel and unusual punishment to a testing situation -- and all of these listed factors have been proven, time and again, to undermine a person's potential for learning.

None of the foregoing is rocket science. The fact that testing persists for reasons other than the only valid one noted above -- namely, to point out strengths and weaknesses -- indicates the underlying issues are not about learning, per se, but, rather, those issues are about what and how someone demands that someone else learn under considerable penalty for failure to do so.

From a pedagogical perspective, using testing as other than a transitory and very problematic means of assessing strengths and weaknesses is never justified. From a pedagogical perspective, using grading as an incentive for learning is almost invariably counterproductive except in relation to those individuals whose self-esteem is highly dependent on such forms of recognition – a condition that is not necessarily emotionally or psychologically healthy for those individuals.

From a constitutional perspective, compulsory schooling, testing, and grading are all antithetical to the principles that are inherent in the Preamble and Amendments of that document. Among other things, states have entwined themselves in the dubious process of

making "laws respecting an establishment of religion" as well as passing laws that "prohibit the free exercise thereof" by imposing a system of compulsory education upon people as a matter of public policy -- public policy that has all of the characteristics of an established religion to which children must pay obeisance at the risk of grave consequences for expressing resistance to such a demand for submission. In addition, there are all the other, previously mentioned amendments that are violated through the process of compulsory education.

Is Compulsory Education Necessary?

Finally, one should ask whether one can demonstrate that the notion of 'common defense' is capable of providing probable cause for the sort of search and seizure of cognitive contents that compulsory education (or its two ugly step-sisters -- testing and grading) tends to require -- Defense against what? ... Defense against whose version of reality? ... Defense in support of what vested interests or what agendas? ... Defense in support of which principles and at what costs to the future viability of our 'common defense'?

Moreover, even if one could agree on that against which we should be defending ourselves, in a common way, there is the very thorny issue of how best to do this without destroying, undermining, compromising, or prostituting the other principles that are at play within the Preamble to the Constitution.

Governments that try to assign priority to common defense above all other principles are very rarely democratic in spirit -- even though the appearances of form might suggest otherwise. The idea of commonality entails a community of people, not a community of government officials or jurists.

If only some groups benefit from a certain mode of defense, then, the whole idea of commonality has been lost. If only some individuals give their consent to a certain kind of defense, then, the thread of commonality is missing.

In the 'real world', one might never attain unanimity with respect to the issue of commonality. Nevertheless, at the very least, commonality implies that people should have a choice of opting out of

a proposed solution for common defense and to be able to do so without penalty or prejudice.

Therefore, to cite 'common defense' as the basis of probable cause for a government's authority to search and seize the cognitive contents of students via the agency of compulsory schooling, testing, and grading is suspect on a number of grounds. Most importantly, the alleged bridge that connects 'common defense' of a particular variety with a compulsory process of education of students that operates along arbitrarily chosen lines is a figment of the very active, self-serving imagination of government officials and jurists -- not to mention, once again, that it is a violation of the 1st Amendment.

Is there a need for learning? Yes, there is.

Is there a need for compulsory learning? Not only is the answer to this question no, the Constitution forbids it.

So, the question becomes: how do we proceed? How will children learn if someone doesn't force them to do so?

Very nearly every child learns one, or more, languages without ever being forced to do so. If given an opportunity, and left alone to proceed at his or her pace -- free from pressure, stress, and the expectations of others -- children will learn a great many things. If children are given help as they ask for it and in the way they ask for it and in accordance with their capacities and circumstances, they will fill in conceptual holes that they haven't been able to fill in for themselves with respect to the manner through which they engage and try to understand life.

Children never tire of asking questions about life, reality, and the world. Adults are the ones who almost invariably pull the plug on such generators of 'infernal' question.

Whether out of ignorance, or impatience, or preoccupation with other things, or low self-esteem, or too much pressure from too many sources, or personal unhappiness, or intolerance, or jealousy, or defensiveness, or lack of empathy and compassion, adults are the one who oppress and curtail a child's learning. Sometimes these adults are parents; sometimes they are neighbors; sometimes these adults are government officials, and sometimes they are teachers or so-called educators.

Kids will learn about cars, planes, trains, electronics, relationships, money, computers, games, sports, emotions, comic books, current events, jobs, their community, DVDs, movies, music, and pretty much everything else if they have an interest in those things. However, if they don't have an interest in such things, well, the truth of the matter is, they will tend to learn very little, and they will tend to learn even less if they are forced to do so.

Learning does not begin on the outside and have to be force-fed to a person. Learning begins on the inside, via intrinsic motivation (curiosity is part of this) and reaches outward toward the world.

Some people might worry that if there were no compulsory schooling, then, how would children learn? Children would learn through: parents, experience, libraries, clubs, community centers, mentor relationships (both friends and other adults), apprenticeship programs (whether technical, craft, scientific, or entrepreneurial), home schooling, the Internet, organized sports, lifelong learning courses, in-house education programs through their place of employment or volunteering, community service projects, and the list goes on.

The modern world has been made possible by people who learned because they wanted to and not because they had to. Adults have never taught children anything that the latter individuals didn't want to learn except when it comes to learning about the unpleasantness and problems that are entangled with issues of compulsion, force, and oppression.

For every hundred things for which force and compulsion are used as the wings on which learning is to take flight, the average child might not remember more than a few, and, only then, because such morsels of information are rooted in a context of resentment, anger, hurt, and sense of betrayal that tends to serve as the more dominant flavoring, coloring, and focus of what has been learned. Is the value of the former -- in terms of the costs of the latter -- ever, really worth it?

The Costs of Education

There are three keys to improving learning in America and, in the process, placing ourselves in a position to constructively address a

number of other overwhelming educational, social, economic, financial, and political problems. The first key is to end compulsory education, and the arguments for why this should be done have been outlined earlier.

By shifting the locus of control for learning from compulsory education to the individual, one will be establishing conditions that are conducive to, rather than antagonistic toward, learning. Equally important, by eliminating compulsory education, one will have provided a means for substantially reducing tax-related problems for individuals, communities, states and the federal government.

Almost all of the fifty states have huge budget difficulties. One of the major reasons for those problems is the inordinate, and quite unnecessary, high cost of public education.

Many communities are overwhelmed with the costs -- both financial and otherwise -- associated with trying to provide what is hoped to be a quality education in the midst of an onslaught of forces that often are antithetical to one another. Parents, students, teachers, principles, superintendents, school boards, media, tax payers, higher education, businesses, and government officials all tend to have very different goals, purposes, problems, stresses, and needs.

Consequently, one of the very first casualties of this on-going war tends to be learning. Like the Paris peace talks during the Vietnam War, everybody is so consumed with the politics and implications that surround the shape of the table, negotiations that might bring an end to death and destruction often come as an afterthought, if they come at all.

When one multiplies the number of participants, interests, perspectives, needs, and concerns present in the process of education, the result tends to be chaos. Education has become a modern tower of Babel in which everyone is speaking different languages of purpose, meaning, value, significance, goals, and means.

One wag has said that a camel is a horse designed by committee. One might also say that modern education is a toxic soup cooked up by too many chefs insisting they have the right to control the process of creating the broth of learning that is to nourish the development of children.

As outlined previously, control is not a right that any of them have. Once people understand only individuals have the right to control the character of their own learning -- as long as such control is consonant with preserving the integrity of the principles inherent in the Preamble for others – then, the idea of compulsory education disappears and with it the turf wars that have been vying for control of the monetary pie that compulsory education has generated also disappears.

The turf-wars will come to an end because, like all wars, once the money disappears that subsidizes those kinds of battles, then, the ones who have been living off the subsidization will have to move on to other well-watered pastures in the search for food and lodging. Furthermore, the way in which to make much of this money disappear is to not force people to have to underwrite the expense of compulsory education through their property, state, and federal taxes.

Although there would be substantial reductions in the amount of taxes that might have to be gathered to finance learning, one cannot suppose that with the demise of compulsory education, all community-sponsored learning-related activities would come to an end. Newer, better, cheaper, more learner-friendly, and more effectively flexible ways of education would have to be found through which to assist students to struggle toward taking control of, and having responsibility for, their own learning, but once one removes the dimension of compulsion one frees up the engines of ingenuity -- both individually and collectively -- to fire on all cylinders in a far more dynamic and constructive manner. However, the bottleneck for lowering the tax burden is to jettison the compulsory aspect of education.

As overwhelming and staggering as the monetary costs of trying to dredge the quick-sands of modern education are, the real costs associated with schooling and compulsory education are embedded in the lost opportunities for individuals to gain meaningful control over their own learning and, in the process, acquire the conceptual and methodological tools that are necessary for constructive forms of self-determination that would be heuristically valuable sources of contribution to the larger community or union of communities. By trying to forcibly control what forms such potential for contributing to

the larger community will assume, everyone loses.

Degrees Are Not About Learning

The second key to improving learning is to end the privilege of degree-granting status to all institutions of higher learning. Closely aligned with this second key is a third step which is intended to help improve conditions that are conducive to learning, and this third, key component requires a shifting of responsibility from schools to corporations, businesses, technical trades, industry, the healing professions, and so on, with respect to the process of finding, identifying, selecting, and, if necessary, training people who will be capable of performing in competent ways within a given job, career, or professional environment.

By rescinding the privilege of institutions, schools, colleges, and universities to grant degrees one opens up a number of possibilities, none of which serves to restrain commerce and trade or impede the free exchange of ideas. A degree is not about the quality of what has been learned, but, rather, is a statement that someone, somehow has managed to navigate -- through happenstance, hard work, good fortune, and/or social connections -- her or his way through a process of socialization that is, sometimes, associated with learning. However, what has been learned is often not what has been taught or what is needed for a young person to become a mature, productive member of society whose potential for learning has been enhanced in a way that is conducive to the mental, physical, or spiritual health of either the community or the individual.

Whatever grades a person receives pursuant to such a degree are virtually meaningless because the larger community does not know the circumstances of the testing, grading, or learning process surrounding those grades. More importantly, the community has no way of knowing what has been effectively retained from that process as opposed to what has been picked up independently of such a process.

Degrees, as also is true of grades, constitute tools of control. Degrees are the means through which one group of people manages to

leap frog over other groups of people -- not necessarily because of superior intelligence, learning, competence, ability, talent, or potential, but because a degree is a ticket of admission that has been paid for and, in accordance with a sort of cult-like mind-set, is expected to be able to transport one through the door of social, economic, and career opportunity.

Although particular universities and institutions of so-called higher learning might argue otherwise, the difference in quality of the learning experience from one place to the next is often negligible. Universities or colleges often like to think that it is the clothes that make the person, but, in truth, it is the person who makes the person, and the role that universities and colleges play is purely ancillary.

Undoubtedly, there are a small group of teachers in existence doing their version of Mr. Chips and who, as a result, touch a student's life in an essential, transformational manner that lasts a lifetime. In all likelihood, the vast majority of students never encounter such individuals -- although students might come across this or that teacher whom they find to be interesting.

This is so because the sheer logistics of resource allocation are at odds with such a possibility. There are simply too many students matched up against too few teachers (with too little time available) for teachers to be able to spend much quality time with students.

The vast majority of what is taught in universities can be picked up through methods that have nothing to do with the granting of degrees. Give someone access to a library and/or a bookstore, along with a computer with an ISP (Internet Service Provider), and that person has pretty much everything a university or college has to offer except, maybe, an arrogance which assumes that learning is not possible without the alchemical elixir that can only (so it is assumed) come through the occult understanding of a teacher or place of 'higher' learning.

There are very few professors who teach something other than what they have written in dissertations, books, essays, papers, or journals. If one can access the latter, one doesn't need to attend a class in order to be exposed to the same material one could read on one's own.

Of course, being able to question someone about what she or he has written is always nice, but most students never do (although they do discuss and argue such issues with friends) Furthermore, not all professors or teachers know what they are talking about so answering questions under such circumstances doesn't necessarily lead to enlightenment, understanding, clarity, insight, or truth. Finally, as far as those teachers are concerned that actually are knowledgeable and accessible (and the former group aren't always synonymous with the latter group), then, lots of luck trying to get much time with teachers beyond the largely impersonal confines of the classroom.

Degrees are, largely, about control, privilege, ego, status, money, appearances, expectations, careers, and jobs (those of the teacher as well as that of the student). Degrees are not primarily about learning, realization of human potential, self-determination, or freedom – even though such things might occur despite the presence of institutionalized, degree-granting processes.

If one were to take away the privilege to grant degrees from institutions of so-called 'higher' learning, one would not interfere with the process of learning in the least. In fact, quite the opposite would be the case.

With no issue of degrees and grades to murky the waters, then, the people who wanted to attend these institutions would be doing so for the purposes of learning and nothing else. If such institutions no longer become a mere ends to a degree, then, a degree is no longer a commodity in short supply, and, as a result, the price of a degree-less education will begin to fall -- perhaps, precipitously so -- because the focus switches from: politics, appearances, hype, egos, status, as well as a scarcity of resources and spaces as alleged gateways for success, to: learning.

If one were to deregulate the process of education so that individuals were free to pursue learning in the most cost-effective, expeditious, and personally satisfying manner, then, universities and colleges would have to do one of three things: (1) They would have to change to accommodate the transformations of the learning landscape; (2) they would have to cater only to the very wealthy; or, (3) they would have to cease to exist.

Despite the fact both public schools and higher education pay

considerable lip service to ideas such as the free flow of information and an open-ended search for truth, neither public schools nor higher education are committed to anything but their own take on these issues. They both fear a really free market of learning because in their heart of hearts they know that there are numerous avenues to quality learning that need not ever pass through their hallowed halls.

The ace in the hole of such institutions has always been the degree. Even if there are other qualitatively superior ways of learning, nonetheless, if people are required to have a piece of paper or parchment, then, such an entity becomes a sought after commodity that is quite independent of the issue of learning.

The existence of degrees – not learning -- is (along with other forces of compulsion) what forces people to the doorsteps of public schools, private academies, universities and colleges. One could have the requisite learning, but if one doesn't have the credentials or degrees, then, one is fighting an uphill, often unwinnable, battle, and schools/universities/colleges know this very well.

The whole move toward professionalization of so many disciplines is to institutionalize the need of people to seek officially sanctioned credentials, such as degrees, that require an individual to run through whatever idiotic hoops the ring masters of those academic circuses deem to be necessary. Professionalization has been central to the hegemony of higher education because the former enables arbitrarily selected individuals to set the rules of the game by which everyone must play, and whoever controls the writing and enforcing of the rule book exerts tremendous control over not only what can be learned, but how this can be learned, or even whether something is deemed worthy of learning.

Professionalization also has been a crucial force behind the narrowness, rigidity, controversy, politics, oppression, stagnation, and resistance to an unfettered examination of a great many issues that has entered into many circles of so-called learning. At the heart of any professional organization is the issue of control, and the nature of the degrees of freedom and constraints entailed by that control is given expression through the paradigm that dominates that process of control.

Changing paradigms is always a very difficult, controversial, and,

often, a very messy business. Those in control tend to resist such transitions, otherwise they lose control, and avoiding the loss of control often is considered more important to such individuals than truth, rights, justice, the general welfare, liberty or learning.

If one takes away the privilege of granting degrees, then, lack of access to higher education, issues of discrimination, reverse discrimination, and affirmative action are largely removed from the domain of learning. If learning is the only issue, and degrees have been retired to museums of unnatural history, and, therefore, are no longer a necessary ticket to opportunity, then, there are lots of very cost-effective, diverse, effective, and engaging ways of gaining access to the process of learning -- ways that, with a little bit of effort on the part of all of us, can put a set of quality learning experiences within striking distance of nearly everyone.

A Necessary Shift in Responsibility

However, in order to have a realistic chance of deregulating the whole industry of degree-granting privileges, one needs to have the world of business, careers, jobs, corporations, economics, and the rest of the so-called 'real' world take charge of, as well as assume financial responsibility for, the human resource methods that are used to identify and select competent candidates for available positions. Until now, the work-a-day world appears to have had a symbiotic relationship with the educational process. However, on closer examination, that relationship actually has been destructive both to the world of business as well as to the world of learning.

More specifically, whenever the world of jobs depends on public schools and institutions of higher education to sort out competence, learning, knowledge, and understanding, almost invariably this form of dependence leads to the institutionalizing of methods for not only differentially streaming, labeling, and grading students, but setting in motion an educational accountability version of three card Monte. All of this -- the streaming, labeling, grading, and accountability issues -- gets in the way of, and effectively compromises, the whole enterprise of learning.

Among other things, the foregoing methods unnecessarily put

critical emotional and pedagogical distance between a student and someone who is supposedly trying to help that individual learn. Most students, when they realize they are being evaluated for purposes other than determination of strengths and weaknesses concerning the facilitation of learning, tend to withdraw from environments in which critical evaluation constitutes a major sub-text of the relationship.

A teacher cannot help someone learn who has disappeared emotionally and conceptually from a learning relationship even if the body of the latter remains visible. Requiring teachers to differentially grade, label, and stream students adversely affects learning because it constitutes an inherent conflict of interest for both the teacher and the learner.

Moreover, placing pressure on teachers, students and school systems to kowtow to arbitrary measures of accountability also gets in the way of learning either by taking time, resources, and focus away from the process of learning, or by restricting learning to what is to be tested. Besides, what could be dumber than requiring students to take, say, a standardized test and, yet, not allowing students to be able to see what they did -- either correctly or incorrectly? How does a student learn from such an exercise except in some Kafka-like sense in which nothing makes sense, and nothing is supposed to make sense, and one is not permitted to ask questions, and, yet, one always stands accused of some unknown sin or crime?

If employers were to become fully responsible for assessing – and, possibly, educating their own candidates -- the locus of control would shift to where it belongs on a number of levels. Students would gain control over their learning, and employers would be able to devise their own criteria for what is going to best serve the needs of a given work environment.

However, in devising such criteria there needs to be at least one condition to which employers would have to adhere. Namely, while the human resource people of a place of employment would have the right to examine candidates for work-relevant kinds of learning, knowledge, and competence, they would not be entitled to inquire into where or how a candidate acquired such competence unless that acquisition was directly related to some previous form of work experience.

Probing for the nature and extent of a prospective employee's

knowledge, learning, and competence is directly relevant to issues of suitability for employment. Probing to discover how those capabilities were developed is not relevant to the issue of hiring -- other than to the extent that such capabilities have been gained through other work environments.

Similarly, licensing for jobs involving health, engineering, psychology, insurance, real estate, law, automobile mechanic, and any number of other job designations is entirely independent of how one came to know what one knows. All that is important is whether or not a candidate has that knowledge or competence and not how one obtained that knowledge.

An employer might wish to contract out this task of identifying and selecting potential candidates. Nonetheless, whoever performs this task should be constrained to focus only on what is known and what a person can do, and not on whether there are certain kinds of status-oriented processes associated with that learning.

Part of the methodology associated with any reliable and valid empirical activity is to eliminate as much bias from the selection process as possible. If one were to require employers to assess job-competence or suitability independently of the means through which such capabilities were acquired, then, this would be somewhat comparable to what, methodologically, is called a 'single-blind' experiment in which certain factors are removed from an experimental context in order to avoid tainting our understanding of any experimental results that might be forthcoming.

If one were to retain the privacy issues revolving about the source and means of one's learning, and, as well, if one were to use human resource facilities that were entirely independent (as far as its methods of assessment were concerned) from a given employer, then, this would be comparable to what is known as a 'double-blind' experiment in which an employer is not directly responsible for identifying suitable candidates but, rather, the process of selection is left to independent, objective, and unbiased third parties. Moreover, inherent in this kind of evaluation independence would be an absence of any reference to the color, gender, religion, ethnicity, socio-economic status, sexual orientation, or politics of a given candidate.

The more a place of employment reflects some of the qualities of a

double-blind experiment, the less likelihood there is for discrimination to enter into the selection process. The less likelihood there is for discrimination to be present in such a process of evaluation, then, the more level the playing field of life becomes and, therefore, the more likely that all candidates for any given position will be perceived through one and the same set of evaluative lenses that are relatively undistorted by irrelevant and prejudicial considerations.

In addition to the foregoing considerations, by taking the funding of the costs associated with assessing -- and, possibly, educating -- potential employees and shifting those costs from the community to the businesses that seek to make a profit through the use of such individuals, one could stop a form of public subsidization of businesses and corporations that has been going on for far too long – a cost that tends to be borne unfairly, for the most part, by those who are seeking employment rather than those who wish to make a profit from such a situation. There is nothing wrong with wanting to earn a profit from entrepreneurial activity, but this should not be subsidized by the public at large, and when such subsidization does take place, it distorts the actual cost and value of goods and, in the process, both warps and undermines the integrity of the market process through which those goods are released by putting the vast majority of the public at tremendous disadvantage – both as employees and as consumers.

A market that is rigged in favor of the owners of business is not guided by an impartial, invisible hand of competition but rather, is guided by the hidden hand of an unenlightened brand of self-serving interests that, ultimately, will prove destructive – economically, politically, and socially. Asking future employees to subsidize business by requiring the former to underwrite the lion's share of their own educational expenditures (whether considered in terms of money, time, intellectual effort, and/or material resources) in order to better serve the interests of businesses establishes an unjustifiable inequity between employer and employee. If a business needs a certain kind of resource – say, an educated worker – then that business ought to pay for such a resource just like it pays for all of the other resources it uses to generate its products and services … this is just part of the cost of doing business for which employees ought not be expected to pay, and, thereby, subsidize business owners.

A Few Possibilities

Only a few of the possibilities that might be generated as ways of dealing with the paradigm shift that is being proposed in this extended essay have been touched upon, or alluded to, in the foregoing discussion. A few additional possibilities are the following.

Public schools could be converted into community resource centers. Libraries could evolve in similar ways.

Businesses could offer in-house learning opportunities for employees and their children as one of the perks of, attractions for, working for a given company or business. Teaching could be deregulated so that the quality of a teacher was measured by how well she, he, or they taught and not by whether such an individual had certain degrees or was the member of a union or had been certified by a state or professional agency.

Improving learning in America is not a matter of better public schools, a more diverse array of charter schools, or creative voucher plans. Improving learning begins with: (a) the abandonment of compulsory education; (b) the elimination of degree-granting privileges by institutions of higher learning (a step that has nothing to do with the capacity of such an institution to deliver a set of quality learning experiences or to compete for learners who are seeking such experiences, as opposed to a status-drenched piece of paper that has had a great deal to do with the devaluation of the process of learning); (c) and, finally, a shifting of the responsibility for determining job-competency from schools to places of employment that are permitted to probe for purposes of determining the extent and nature of a prospective candidate's learning and knowledge but would not be permitted to try to discover the means through which such learning and knowledge were acquired. If one were to follow the foregoing three-part prescription, perhaps, a lot of what ails the learning process in America would begin to both heal and improve.

Among other things, such a prescription would have a major leveling effect on the playing field on which people compete for learning, career and job opportunities. If compulsory education is deregulated, and if degree-granting privileges are rescinded, and if

employers are required to look only at what has been learned and not seek to discover where or how this has been done, then, to a very large extent, issues of money, social-status, geographical location, and inequitable distribution of resources are attenuated -- perhaps completely in many cases – with respect to the way such practices distort the fairness of playing conditions with respect to learning and employment opportunities.

A person who, for example, buys a book on Kant's *Critique of Pure Reason* and sincerely engages this text need not be at any disadvantage with respect to understanding what is read than a person who goes to an upper-tier university and takes a course on Kant. One doesn't need money, social position, the right family lineage, power, or a university education to understand Kant. All one needs is the curiosity, intrinsic motivation, and perseverance to see the process through -- the same set of qualities that anyone who wishes to understand Kant needs no matter where she or he undertakes such a task.

The same logic extends to encompass much of what goes on within a school or university environment. The rigor and quality of an individual's search for learning has absolutely nothing to do with whether, or not, that quest takes place inside, or outside, a school environment -- the challenges and problems are largely the same irrespective of the venue used for learning.

There is, of course, one potential difference between someone doing studies independently of school and someone pursuing such activities within a schooling environment. This involves the element of free time.

In other words, whether through loans, scholarships, term-time work, and/or parental financial assistance, people who attend schools usually are able to do so because they, through one means or another, have the financial wherewithal to buy the time necessary to engage learning in a serious manner. The luxury of having such time for learning is something that might not be available to individuals from financially impoverished backgrounds.

Voucher programs usually have been thought of in terms of a process in which students, or their families, are given certificates that can be given to a school of their choice. The selected school, then, redeems that certificate from whoever is footing the bill for education.

Perhaps, the time has come to think about paying our youth for the work of learning. Naturally, some set of checks and balances probably will have to be set in place in order to ensure that such a direct system of payment would not be abusively exploited. This might include possibilities like directly paying a student's rent, phone, and other basic expenses. Or, perhaps, accounts of various kinds could be set up at particular bookstores, internet providers, supermarkets, clothing stores, and so on to look after relevant expenses through some sort of debit card program.

Ideally, whatever payment structure or framework is selected, the administration of that structure should be done as near to a student's normal living environment as possible. If schools, teachers, and other personnel can be paid through a given school district or municipal level of government, then, there is no reason why the same cannot be done for students in order to afford the latter the free time needed to pursue learning in a serious fashion while by-passing the tremendous expenses and problems entailed by maintaining multiple levels of bureaucracy.

Quite frankly, a system involving some sort of direct payment system to students that would look after their basic living expenses while such students go about the process of learning, probably would be a lot cheaper to fund, while, simultaneously, producing qualitatively better results than underwriting the costs of a full-blown system of schooling would be. After all, individual programs of learning need not be subject to the same sort of costs as are associated with the bureaucratic wastes, gridlock politics, and self-serving agendas to which public and higher education seem to be inherently predisposed.

Summing-up and Some Lingering Issues

Near the beginning of the present essay, one encountered the following words:

"What if someone could offer a way to (a) substantially cut property, state, and federal taxes, while simultaneously: (b) revolutionizing the process of education so that the emphasis is on learning instead of accountability wars, political agendas, and a self-serving means for generating money for those whose primary

interest is other than the welfare of learners; (c) bringing an end to the, till now, interminable wrangling over discrimination-reverse discrimination and affirmative action debates by truly leveling the playing field for all concerned; (d) enabling citizens to gain complete control over their learning; (e) shifting the burden of responsibility for identifying learning competence to where it belongs and, thereby, ending a form of subsidization that has done nothing but undermine the process of learning; (f) reducing the costs of both public and higher education by billions, if not trillions, of dollars; (g) re-thinking the meaning and purpose of the Constitution; (h) and, doing all of the foregoing by requiring only nominal expenditures for underwriting the transition entailed by such changes? Does this all sound like a Rube Goldberg device, a perpetual motion machine, a quixotic quest, and/or the ranting of someone who, without proper monitoring of medication, has been dumped back into the community from a mental facility?

Read on. You might be surprised."

Well, now that you have read on, are you surprised? If you are, hopefully this is in a pleasant way.

Not much has been said with respect to the details concerning the "nominal expenditures for underwriting the transition entailed by such changes." The primary reason for this is because the financial bottom line really depends on how creative, committed, co-operative, and entrepreneurial a given community might be, as well as what kinds of resources (in human terms, as well as material and financial) are available to a community.

There is no question the transition costs associated with such a paradigm change will not be zero. There is, on the other hand, considerable likelihood that those costs might be fairly nominal -- at least relative to the soaring costs of education today as well as related cost projections into the future.

Instead of continuing to fund schooling and school systems, we might begin to rethink the role of libraries and other similar resource centers with respect to the process of learning. Instead of continuing to hire teachers and become tied into long-term financial commitments that might not be conducive to enhancing the quality and flexibility of learning that individuals, society and the future might require, we could begin to explore alternative approaches to the way

in which learners engage the process of learning, discovery, critical understanding, problem-solving, and transfer of knowledge.

Obviously, there will be costs associated with any such choices. But, the issue is not about eliminating costs altogether but, rather, the issue is a matter of learning how to spend money more wisely, justly, and efficaciously in order to enhance the quality of what is learned and, therefore, potentially, enhance the quality of life for both the individual and the surrounding community. With respect to those vested interests that might feel threatened by, and therefore, resistant to, what is being proposed within the pages of this chapter, there is only one word to say: "Adapt!" This capacity is part of the wonderful set of tools with which human beings have been endowed, and this has been the watchword throughout history.

Furthermore, at the heart of adaptation is the capacity to learn. Educators have been preaching this lesson to students more and more as modern society enters into rapidly changing conditions, environments, needs, and problems. Perhaps, educators need to listen to what they are preaching and apply the underlying lesson to their own lives.

If the foregoing considerations were taken seriously, then, everyone in America would have to adapt in one way or another. Hopefully, the collective set of adaptations would form a constructive synergy that is conducive to enhancing the process of learning and giving each of us greater control over her or her life without necessarily compromising, or infringing upon, anyone else's opportunity to do so as well.

There is another thought that might be added to the foregoing. One question that well-intentioned, and not-so-well intentioned, people are likely to ask is the following. What happens if we permit our youth to seek out their own way and own style of learning according to their own timetable, and as they approach their late teens are still not doing well … What then?

Perhaps the most crucial facet of being able to gain control over the locus of learning is through being able to read. Through enriched library programs, schools that have been converted into community resource centers, the establishing of literacy volunteer programs, as well as mentor-learner relationships being forged with business and

corporation participation, one has the potential for helping every child in a community to develop reading and literacy proficiency.

Much of this literacy work would take place when an individual is young -- before society has had an opportunity to compromise, if not destroy, the natural curiosity, wonder, openness, and excitement that most children have in relation to life. During this period of life, perhaps more so than any other, the natural tendency of a child is to want to co-operate with someone who is perceived as willing to assist a child -- in a warm, supportive, encouraging, non-judgmental manner -- to learn, and therefore, during this stage of life, a child has more teachable moments than do most people who are older. A child's natural curiosity, together with the forces of intrinsic motivation that vary from person to person, plus a learning environment that offers stress-free, grade-free, labeling-free support is likely to significantly enhance learning for most, if not all, of the children in any given community.

Once a solid foundation of literacy has been established, a child has been given many of the tools that are necessary for her or him to be able to gradually struggle toward assuming greater responsibility for, and control of, the process of learning. The obligation that educators -- whether parents, professional, volunteer, or otherwise -- have is to do whatever is possible to bring a child to this stage where they can begin to fly solo in their own ship of learning.

From time to time, a child or youngster might need to get additional help, of one kind or another, as he or she encounters new challenges for, and problems associated with, learning. Nevertheless, once a child learns how to fly in the foregoing sense, this is like riding a bike, a person never forgets how to do it -- although people, as they grow older, often stop themselves, for one reason or another, from continuing on with the learning process.

However, if after all is said and done, there are still individuals who have not taken advantage of the opportunities given to them and, as a result, have resisted developing even minimally acceptable levels of literacy competence, then, the door is open for exploratory discussions directed toward, on the one hand, the responsibilities that accompany rights, and on the other hand, the right of the majority to

not have to shoulder the burden of another person's irresponsibility. Where such exploratory discussions might lead is uncertain, but wherever they go, the principles inherent in the Preamble to the Constitution apply to everyone -- both with respect to the implied rights and the concomitant responsibilities.

When some Native communities are at an impasse with respect to certain, seemingly, irresolvable problems that are confronting them, the idea of a 'Healing Circle' comes into play. If issues of child molestation, sexual abuse, domestic violence, rape, and murder can be resolved through the qualities and properties of such Circles -- and they have been, and there is documented evidence to this effect -- then, surely, similar Circles could be established to resolve problems surrounding the issue of the right to have control over what one learns and the responsibilities to oneself and the community that are attendant to such a right.

A Possible Source of Constitutional Obligation

There are, at least, two questions that remain. These questions were raised fairly early in this essay -- namely, (1) why should one feel obligated to comply with a document (i.e., the Constitution) which was written over two hundred years ago, and (2) assuming there is such an obligation, what kind of an obligation is it?

Most people might tend to agree that no one should feel obligated to honor a contract or covenant that someone else entered into several hundred years ago. Whatever arrangements people made then is their affair -- that was then, and this is now.

On the other hand, the themes, issues, and problems that are addressed by the Constitution (and, especially, the Bill of Rights and certain other Amendments … such as, the 13th and Section 1 of the 14th Amendment) are not restricted to what went on more than two hundred years ago. The same political and social challenges are still with us.

The same human needs remain in effect. The same kind of oppressive, authoritarian, anti-democratic dangers to freedom of choice with respect to the pursuit of life-quality are threatening our existence, both individually and collectively.

Whatever the structural faults and shortcomings of the Constitution might be, the essential idea of the Constitution (especially in the form of the Bill of Rights and several other Amendments such as the 13th Amendment and Section 1 of the 14th Amendment) gives expression to universal themes that resonate with all of us. Which person isn't interested in issues of justice, tranquility, security, welfare, liberty, and struggling to establish a more perfect Union ... a better place in which to live? Which individual is indifferent to matters involving procedural fairness? Which person doesn't see the benefits that might accrue from a system regulated through a set of checks and balances that are intended to serve the community? Which individual can afford to be blasé about the threat of oppression, tyranny, and involuntary servitude? Which person does not have an abiding interest in a procedural framework that considers the concept of a right, that buffers the individual against the changing tides of majority whims, something to which everyone is entitled consistent with due care for the protection of other democratic principles?

Those who crafted the Declaration of Independence were dead-on when they said: "Governments long established should not be changed for light and transient causes; and accordingly all experience has shown, that mankind is more disposed to suffer while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed." The one change that might be made in the foregoing is to substitute "Constitutions" for the word "Governments", because, in truth, what makes any form of government worthwhile is the quality of the rules and principles to which such governments give expression.

The Constitution is a working arrangement that, when successful, permits a collective to get rid of governments that bring suffering to the people whom are to be served without, necessarily, being forced to throw the baby out with the bath water. The baby in this case is the Constitution -- especially, the Bill of Rights and certain amendments -- and this is what is most precious, not any particular form of dirty bath water ... i.e., this or that politician, or this or that government administration.

Nonetheless, even in the matter of the Constitution and even though changes to that document should not be made too easily, there

should be an understanding that the original framers of the Constitution and framers of the subsequent amendments, were not gods. They were fallible, limited human beings … as we all are.

One's moral obligation is not to those individuals or to the words that they wrote. Rather, one's moral obligation is to the process to which those individuals were committed – namely, to critically reflect on what is, in order to discover ways of improving on the principles of justice, rights, and freedoms that might enhance the general welfare of everyone and not just for the benefit of a few or even for a simple majority of the people.

The obligation a citizen has to the Constitution -- especially the Bill of Rights -- is a commitment to the universal themes of existence. The nature of this commitment is not derived from the past, but is at the heart of what being human entails, no matter when one might live and no matter where one might live.

Consequently, the obligation a citizen has to the Constitution -- especially the Bill of Rights and certain other amendments -- is an on-going one. In our hearts, both collectively and individually, there is a plea for justice, liberty, rights, peace, security, and welfare. The Constitution -- especially, the Bill of Rights along with other addendums such as the 13th, 14th – Section 1, 15th, and 19th Amendments -- offers us all a means of seeking and struggling toward the deepest yearnings of our being.

The obligation a person has to the Constitution -- especially the Bill of Rights and the aforementioned amendments -- is the obligation a person has to oneself and others as human beings who have a constructive potential and intrinsic integrity that should not be denigrated. The obligation we have to the set of principles that underlie and give direction, meaning and value to the Constitution -- and that are given better expression through the Bill of Rights and related amendments than through the Constitution per se -- is the obligation we have to want the same sort of rights, freedoms and justice for others that we wish for ourselves.

None of the foregoing essay should be construed as grounds for advocating violent revolution or the violent overthrow of governments. Nevertheless, the fact of the matter is, everything that has been discussed in this essay can be accomplished through a

peaceable shift in the paradigm that is used to actively pursue the general welfare provided we begin to look at the Constitution through the lenses of the Bill of Rights and associated amendments rather than look at the Bill of Rights and associated amendments through the lenses of the Constitution. For, of the two – that is, on the one hand, the Constitution considered independently of the amendments, and, on the other hand, the Bill of Rights (and affiliated amendments) considered independently of the Constitution – the Bill of Rights goes much more to the heart of the sort of inspirations, aspirations, concerns, values, and interests that shaped the historical context out of which the Constitution emerged than do any of the Articles that form the body of the Constitution sans amendments.

The Constitution was ratified because a 'Bill of Rights' had been in the air, so to speak, and promised before the former – that is, the Constitution --had become a concrete reality. In other words, the idea of a 'Bill of Rights' – at least in terms of the kind of general principles that were believed necessary to protect and promote the general welfare of the people quite independently of the Constitution – permitted the Constitution to be ratified, and if such an idea as a 'Bill of Rights' had not been present to nurture the birth of the Constitution, the latter might have been stillborn or died in infancy. As such, it is the spirit and honoring of a 'Bill of Rights' that makes democracy possible, not this or that set of constitutional articles.

The paradigm shift that is being suggested here is one that can save lives, money, and the integrity of the democratic principles inherent in the Constitutional protections directed toward preserving and helping to realize the promise of the Preamble -- especially as expressed through the Bill of Rights and other critical additions to the Constitution such as the 13th, 14th – Section 1, 15th, and 19th Amendments). The paradigm shift being advanced is one that could permit people to regain control of the leaning process while, simultaneously, enhancing everyone's opportunity to participate in the rights, privileges, powers, liberty, justice, tranquility, security, and welfare that has been set forth, as principles, in the Preamble to the Constitution as we collectively, and, hopefully, cooperatively, strive for a more perfect union of people.

There is a peaceful way to accomplish all of the foregoing. The question is: do we, as a people, have the will to realize such a potential?

If we do not have such a will, then, unfortunately, the only option that is left points in the direction of violence – a possibility to which all of us might be condemning ourselves as, individually and collectively, we help to construct what are known in psychology as 'social traps' – that is, situations which arise when everyone fights for what they believe are just ends but which involve ends and means that are at odds with one another and, as such, lead to gridlock and endless, mutual misery.

Oppression, exploitation, injustice, and abuse in relation to others are not inalienable rights – either of individuals or governments. In our hearts, we all know this, but, of course, we tend to always consider others -- rarely ourselves -- as the source of such oppression, exploitation, injustice and abuse … and time is running out for us to come to understand the nature of the problems to which we all have contributed and that we all have helped construct.

The 'other' is not the one who generates social traps. We – individually and collectively -- are the architects of our own problems when we engage in a relentless pursuit of that which does not secure the rights of everyone and which does not seek to secure a general welfare, tranquility, and defense for all facets of society – whether in relation to justice, politics, economics, ecology, or education.

Chapter 13: Evolution and the Establishment Clause

In the preface to *But is it Science? : The Philosophical Question in the Creation/Evolution Controversy* edited by Robert T. Pennock and Michael Ruse, the two editors indicate that while the U.S. Constitution prohibits the teaching of religion – since doing so gives expression to a form of establishing a system of religious belief and, thereby, contravenes the 1st Amendment – nevertheless, that same fundamental document does not prohibit the teaching of science, even if the quality of the latter should be bad. Over a period of several decades, at least three cases wormed their way through various facets of the legal system and each of those cases led to judicial decisions that, apparently, verified the perspective that was being advanced by Pennock and Ruse.

Among the cases that seem to confirm the foregoing claim of Pennock and Ruse are: *McLean v. Arkansas,* 1982, as well as the 1987 *Edwards v. Aguillard* decision that took place in Louisiana and, eventually, went to the U.S. Supreme Court. In addition, the *Kitzmiller et al v. Dover Area School Board* judgment was rendered in Pennsylvania around 2005.

However, upon examination, the idea that science does not violate provisions of the U.S. Constitution seems fraught with difficulties. Indeed, the title of the book of readings edited by Pennock and Ruse might be focusing on the wrong philosophical question.

More specifically, instead of asking whether or not creationist science or the doctrine of intelligent design qualify as science – even bad science – perhaps the philosophical question that needs to be asked is: 'But is it true?' In this instance, the "it" that is being questioned with respect to some degree of truth could either be, on the one hand, creation science and the thesis of intelligent design, or, on the other hand, evolution … or, perhaps, both sides of that controversy need to be engaged in a critically reflective manner.

Let us suppose that one accepts the collective conclusions of the aforementioned three legal proceedings. In other words, let us assume that creation science and the thesis of intelligent design do not qualify as science but give expression – each in its own way -- to the teaching of religion and, as well, that the theory of evolution does qualify as being scientific in nature. Does this end the matter?

Not necessarily! The theory of evolution might satisfy the conditions of being scientific, but if essential features of that theory cannot be shown to be true, then one might wonder why students should be required to learn its details.

Of course, an obvious response to the foregoing issue would be to point out that science is a methodological process that historically can be shown to have assisted human beings to establish better and better understandings concerning the nature of certain aspects of reality. Consequently, a student should be exposed to scientific methods, together with the results arising from those methods, so that an individual can gain facility and competence with respect to being able to critically engage both scientific methods and results, thereby, enhancing a person's chances of being able to deal with various facets of life in a constructive, rational, informed, and insightful fashion.

Nonetheless, even though there is plenty of historical evidence to indicate that a great many truths have been established through the process of science, there is considerable historical evidence to demonstrate that an array of false ideas also has populated the annals of science. Among the false theories that were accepted by a majority of the scientific community – sometimes for substantial periods of time – were: Ptolemaic astronomy; phlogiston theory; Caloric theory of chemistry; spontaneous generation; Lamarckian evolution; the blank slate (tabula rasa) model of mind; Phrenology; steady state theory of the universe (or, possibly, the Big Bang … depending on which cosmological version of the universe turns out to be correct); and various editions of string theory.

Moreover, even if we leave aside issues concerning the manner in which certain false theories have dominated the practice of science from time to time, and even though scientific methodology offers a means through which to constantly seek to improve one's understanding of some given phenomenon, the fact of the matter is that scientists tend to be wrong more often than they are right. Indeed, the history of science provides an account of how researchers – both individually and collectively – struggle to escape from a condition of ignorance concerning various physical phenomena and work their way through resolving an array of problems that – hopefully – eventually puts them in a position to fashion a tenable understanding concerning

such phenomena that, in time, gets modified or overthrown to better reflect empirical observations, both old and new.

Over the years, human understanding concerning quantum physics, chemistry, gravitation, thermodynamics, materials science, biology, astrophysics, mathematics and a host of other disciplines have all gone through a series of changes – some small and some quite considerable. Our current grasp of the foregoing areas – and many others -- is built on a multiplicity of mistaken ideas that were reshaped or replaced by a series of insights and discoveries that appeared to bring us closer to certain truths than previous ways of understanding were able to do that were, in turn, replaced and reshaped by an array of subsequent insights, discoveries, and observations.

An essential part of science revolves about becoming involved in a rigorous process of discernment in which that which is true or truer must be differentiated from that which is false. This is accomplished through observation, measurement, experimentation, analysis, critical reflection and so on.

Given the foregoing considerations, one might ask: Is evolutionary theory an example of a science that leads to a true or a false understanding of reality? Although the vast majority of scientists in the world today accept one version, or another, of a neo-Darwinian evolutionary model, I believe that enough problematic features have been put forth in my book: *Evolution Unredacted* to, at the very least, call into question the tenability of many facets of evolutionary theory, and, as a result, lend some degree of legitimacy to the idea that a student might have a right to resist, and not be subjected to, the doctrinaire teachings of evolutionary theory.

Among other things, the theory of evolution cannot provide a step-by-step account concerning: The emergence of the first protocell; the origins of the genetic code; the transition from: Chemotrophs to cyanobacteria and/or Archaea organisms (many of the latter life forms are extremophiles) – or vice versa; the transition from: Anaerobic to aerobic organisms; the transition from: Prokaryotic to Eukaryotic life forms; the origins of metabolic systems specializing in, for example, respiration, endocrine activity, immune responses, nervous functioning, sexual reproduction, consciousness, memory, reason, intelligence, language, and creativity.

Does the theory of evolution offer accounts that purport to explain all of the above sorts of transitions? Yes, it does.

However, none of those accounts has been proven to be true. All of those accounts are missing key pieces of evidence that are capable of substantiating that those models, hypotheses, and ideas are unquestionably true.

On the one hand, evidence exists that supports the possibility that in certain cases, species might have been formed through a process of, say, isolating different portions of a population that, over time, leads to the appearance of new variations that are no longer able to produce viable offspring with members of the original population. Nonetheless, one cannot demonstrate with real scientific rigor that the sorts of processes be alluded to above are responsible for the origins of all species.

The theory of evolution encompasses a great many factual observations and discoveries. Yet, at the same time, it gives expression to a model in which speculation and assumption continue to play a major role, and, as a result, despite all of the propaganda being issued by various evolutionary scientists, many facets of the theory of evolution are a long way from having been verified and, quite frankly, might never be capable of being verified.

Moreover, even if one puts aside all of the scientific inadequacies of the theory of evolution, there are a variety of constitutional issues that need to be explored. In other words, although evolutionary theory might be classified as a science, nevertheless, there might be a partisan quality to its framework that could be at odds with the requirements of Article IV, Section 4 of the United States Constitution (more on this shortly). In addition, one could raise the possibility that there also is a religious dimension to the theory of evolution (more on this shortly) and, if so, then, science, or not, such a theory might well be in contravention of the establishment clause of the 1st Amendment.

Article IV, Section 4 of the U.S. Constitution indicates that the federal government "shall guarantee to every state a republican form of government, and shall protect each of them against invasion;" Republicanism is a moral philosophy of the Enlightenment that generated a great deal of interest within colonial America and helped shape the fabric of the Constitutional process.

In order to qualify as being republican in nature, judgments and actions had to exhibit a variety of qualities. More specifically, to be considered republican in nature, actions and judgments had to exhibit: Integrity, objectivity, independence, non-partisanship, equitability, fairness, disinterestedness, nobility, and be devoid of elements that served the individual interests of the person performing a given action or making a particular judgment rather than serving the collective interests of society.

The collective interests of society are summed up in the Preamble to the Constitution. Those collective interests include: Forming a more perfect union; establishing justice; insuring domestic tranquility; providing for the common defense, promoting the general welfare, and securing the blessings of liberty for ourselves and our posterity.

The theory of evolution fails to be objective, independent, and non-partisan in a variety of ways. More specifically, that theory is being advanced as a true account concerning the random, material origins of species despite the fact that: (1) no one has been able to prove that all species (as opposed to some species) are the result of neo-Darwinian dynamics; (2) no one has been able to demonstrate that reality is inherently random, and (3) no one has been able to prove that consciousness, reason, memory, logic, intelligence, understanding, language, creativity, talent (e.g., musical, artistic, mathematical, etc.), and spirituality are purely material phenomena.

Furthermore, the theory of evolution is replete with elements having to do with notions of randomness and the material basis of reality that might be serving the hermeneutical and political interests of those who are propagating the theory of evolution rather than the collective interests of society, and, therefore, are not necessarily promoting the general welfare of the country … especially if the aforementioned elements involving randomness turn out to be wrong. While such ideational elements have not, yet, been proven to be incorrect, they also have not, yet, been demonstrated to be a correct description of reality, and, therefore, requiring students to learn the theory of evolution would appear to undermine principles of equitability and fairness that constitute integral dimensions of the principle of republicanism that has been guaranteed to each state of

the union, and, therefore, under the provisions of the 9th and 10th Amendments, to all the people of those states.

As noted previously, Article IV, Section 4 of the Constitution not only guarantees a republican form of government to every state but, as well, promises to "… protect each of" the states from invasion. Presumably, the protections to which the Constitution might be alluding do not involve just physical threats but could also be extended to protections against certain kinds of philosophical, hermeneutical, and conceptual systems that seek to invade the minds and hearts of the people of the United States through institutions of learning and, thereby, acquire political and legal control of the citizenry and, in the process, undermine the guarantee of a republican form of government.

Notwithstanding the foregoing considerations, teaching the theory of evolution in public schools might also be in contravention of the establishment clause of the 1st Amendment. After all, some individuals have traced the etymological roots of the word religion back to a Latin word – re-li-gare -- that conveys a process of binding or tying.

Any conceptual system constitutes a way of binding or tying a person's understanding to one, or another, understanding of reality. Consequently, the theory of evolution is a conceptual system that tends to tie and bind a person's understanding to various kinds of assumptions, ideas, beliefs, and values in an organized fashion.

Other individuals feel that the notion of religion might also be etymologically linked to another Latin word: "re-li-gi-o-nem". This latter term gives expression to a sense of reverence toward whatever might be considered to be sacred in nature – E.g., the truth, or qualities of compassion, love, forgiveness, meaning, purpose, and so on.

The sacred need not be tied to the notion of Divinity. For instance, Buddhism is considered to be a religion, yet that spiritual tradition often is understood to be based on teachings that tend not to be God-centric in character but, instead, embrace an array of methods, principles, and values that are engaged in a reverential, and, therefore, sacred fashion.

Those who are proponents of evolutionary theory tend to defend their perspective as being inviolable, true, sacrosanct, as well as being worthy of commitment and deep respect. Moreover, such individuals

tend to treat the principles, values, and ideas of evolution with attitudes and behaviors that appear to be indistinguishable from individuals who have reverence toward certain religious ideas, principles, or values and consider those themes to be sacred and inviolable.

Referring to the theory of evolution in terms of science does not extinguish the qualities of: Reverence, sacredness, commitment, binding, and tying that are present in the understanding of many of those who are advocates for that theory. Placing the theory of evolution under the rubric of science does not remove the properties of assumption, speculation, belief, interpretation, faith (sometimes referred to as a degree of confidence), and philosophy that tend to flow through that theory.

Given the foregoing considerations, then, surely, teaching the theory of evolution would seem to qualify as an attempt to establish a religious-like belief system. All of the elements of religion – namely, a sense of: Reverence, sacredness, faith, interpretation, inviolability, the sacrosanct, commitment, binding, universality, essentialness, and so on – are present in those who are proponents of, and advocates for, the theory of evolution.

There are several other possible etymological dimensions in the notion of religion that potentially tie that word to the theory of evolution. One of these dimensions is linked to Cicero's way of using the term 're-le-gere', while another etymological derivation of religion gives emphasis to an Old French sense in which the notion of religion refers to a process through which a community exhibits collective devotion to certain ideas.

Cicero's aforementioned manner of engaging the idea of "re-le-gere" involves a methodology through which an individual goes over a given text on a number of different occasions. Presumably, the process of reading and re-reading a given text is a way of exercising due diligence with respect to trying to determine, among other things, the truth concerning the meaning of that text.

Similarly, proponents of evolutionary theory also tend to go over, again and again, the observations, measurements, experiments, and so on associated with that theory in order to try to determine the meaning and truth that might be entailed by those activities. Whether

the text being studied is a book or the language of nature seems irrelevant.

Furthermore, Cicero's manner of approaching the process of "re-le-gere" tends to imply that the process of critically reflecting on the meaning of a given text – whether written or having to do with the nature of reality -- is intended to serve as a way of providing one with an opportunity to work toward distinguishing between, on the one hand, the actual meaning of something and, on the other hand, meanings that might be arbitrarily imposed on a text by the individual engaging that material. If so, then, this also reflects the tendency of science to go over something again and again in order to try to discern the difference between, on the one hand, the actual truth of something and, on the other hand, false beliefs concerning the nature of some aspect of experience and, consequently, appears to bind the theory of evolution to religion in, yet, another way.

Moreover, just as religious communities tend to be devoted to the principles, values, and practices which bind the members of that community together in relation to what they believe constitutes the truth of Being, so too, the members of those communities that accept the theory of evolution reflect many of the qualities that characterize the Old French etymological derivation of the term religion. In other words, members of a community of believers involving evolutionary theory are tied together by a common sense of purpose, meaning, valuation, understanding, belief, and truth concerning the principles, ideas, values, and practices entailed by the theory of evolution in ways that parallel what goes on within so-called religious communities.

Therefore, one cannot automatically assume that just because the theory of evolution is referred to as being, or categorized as being, scientific, then, this kind of classification prevents that theory from also giving expression to a variety of religious-like qualities. To whatever extent the theory of evolution entails the foregoing sorts of religious elements, then, that theory also would appear to contravene the establishment clause of the 1st Amendment.

Thus, there seems to be a conflict between the theory of evolution and the U.S. Constitution not only in relation to the 1st Amendment, but, as well, in relation to Article IV, Section 4 of that document. As a result, the editors of: *But Is It Science? -- The Philosophical Question In*

the Creation/Evolution Controversy – have put things in a misleading manner since the issue is not whether one can consider the theory of evolution to be scientific in nature – which, in certain ways, it might be – but, instead, the issue is whether, or not, a person recognizes the religious and non-republican elements that are present in the theory of evolution and, as a result, one is prepared to remain consistent by seeking to ensure that such a theory – along with other religious-like systems of thought – are prevented from being taught in public schools because that theory is in contravention of various provisions of the U.S. Constitution.

The previously mentioned *McLean v. Arkansas Board of Education* legal proceeding arose in conjunction with Act 590 that the governor of Arkansas had signed into law on March 19, 1981. The title of that act was: "Balanced Treatment for Creation Science and Evolution Science," and as the act's name suggests, the law required public schools in Arkansas to offer programs that provided balanced treatments of creation science and evolutionary science.

A number of individuals and organizations joined together to bring suit against: (1) the Arkansas Board of Education, (2) the director for the Arkansas Department of Education, and (3) the State Textbooks and Instructional Materials Selecting Committee that, collectively, were responsible for translating Act 590 into active educational policy. Among the individuals and organizations that are being represented through the plaintiff side of the case were: The National Association of Biology Teachers, the Arkansas Education Association, the American Jewish Congress, various churches in Arkansas from different denominational backgrounds, as well as a biology teacher from Arkansas and an array of individuals who were parents or friends of students in Arkansas public schools.

The *McLean v. Arkansas Board of Education* trial took place from December 7, 1981 to December 17, 1981. Judge William R. Overton presided over the proceedings and issued his decision on January 5, 1982.

The suit was first filed on May 27, 1981. The complaint maintained that Act 590 was in contravention of the U.S. Constitution because, among other things, that law violated the establishment clause of the First Amendment – which, according to Judge Overton, is made

applicable to the states by the way of the 14th Amendment, but, one should point out that the Amendments extend to the people of any given state independently of the 14th Amendment due to the guarantee of a republican form of government in Article IV, Section 4 of the Constitution.

The aforementioned complaint filed by the plaintiffs contained two other charges as well. More specifically, Act 590 denies teachers and students their right to academic freedom by undermining the Free Speech Clause of the 1st Amendment and, in addition, Act 590 is excessively vague and, therefore, violates the Due Process Clause of the 14th Amendment.

In his January 5, 1982 decision, Judge Overton provides a certain amount of legal background to help frame some of the issues in the *McLean v. Arkansas Board of Education dispute*. For instance, he quotes from Justice Black's 1947 decision concerning the *Everson v. Board of Education* case:

"The 'establishment of religion' clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion … No tax, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adapt to teach or practice religion."

The notion of "church" in Justice Black's foregoing statement is used as a representative term that applies to a wide variety of religious institutions that, presumably, is intended to include (despite not being specifically mentioned): Temples, synagogues, mosques, abbeys, cathedrals, meeting halls, houses of worship, spiritual sanctuaries, and the like. The foregoing presumption is strengthened when Justice Black subsequently indicates that the underlying principle extends to: "… religious activities or institutions, whatever they may be called, or whatever form they may adapt to teach or practice religion."

However, although Justice Black seems to assume that everyone will understand what is meant by the idea of a religion or church (including its extended sense noted above), nonetheless, there is

considerable vagueness that surrounds and permeates his foregoing statement. As pointed out earlier, the notion of religion might be applicable to almost any conceptual system that involves qualities of: Tying or binding someone to a set of values, teachings, ideas, values, practices, purposes, meanings, methods, understandings, theories, and/or attitudes that are engaged repetitively because they generate a sense of reverence, sacredness, and commitment that orients individuals and/or communities concerning the nature of the truth about an individual's or a community's relation with Being.

Therefore, if a church – irrespective of whatever it might be called or whatever form it might assume – revolves around, in part or in whole, the foregoing set of qualities, properties, and activities, then, Justice Black – possibly without fully understanding the implications of his words -- might be referring to a great deal more than he – or Judge Overton – believes is being claimed in the *Everson v. Board of Education* case. Indeed, any set of practices, ideas, beliefs, values, theories, principles, methods, and so on that one considers to be inviolable, sacrosanct, sacred, and worthy of reverence -- but which cannot necessarily be demonstrated to be true – begins to be indistinguishable from the usual senses associated with terms such as "church" or "religion".

Thomas Jefferson maintained that the "Establishment Clause" of the First Amendment erected a wall of separation between church and State. Yet, depending on what the State holds to be true, one might contend that the policies of the State could give expression to a set of values, ideas, beliefs, principles, methods, and practices that are difficult, if not impossible, to distinguish from religious activities when construed in the broader sense outlined above. If so, then, the so-called wall of separation that, supposedly, was put in place through the "Establishment Clause" of the First Amendment and which was intended to differentiate between church and state tends to dissolve before our eyes.

Judge Overton's decision in *McLean v. Arkansas Board of Education* also cites the words of Justice Felix Frankfurter with respect to the latter's 1948 judgment concerning *McCollum v. Board of Education*. According to Justice Frankfurter:

"Designed to serve as perhaps the most powerful agency for promoting cohesion among a heterogeneous democratic people, the public school must keep scrupulously free from entanglements in the strife of sects. The preservation of the community from divisive conflicts, of Government from irreconcilable pressures by religious groups, of religion from censorship and coercion however subtly exercised, requires strict confinement of the State to instructions other than religious …"

The idea that public schools should be an agency "for promoting cohesion among heterogeneous democratic people" is put forward as a truism in the foregoing decision. Consequently, Justice Frankfurter does not explore whether, or not, public schools should be an agency "for promoting cohesion", nor does he critically reflect on what might be meant by the notion of cohesion.

Justice Frankfurter wants the instruction that takes place in public schools to be "other than religious," but he doesn't explain precisely what he means by this allusion. Furthermore, although he is clear that public schools should remove themselves "from entanglements in the strife of sects," and although Justice Frankfurter is clear that he is referring to the strife that tends to arise in conjunction with religious sects, he, apparently, fails to consider the possibility that strife also arises in conjunction with all manner of philosophical, scientific, and political sectarian thought and activity, and, as a result, one is thrown deeper into uncertainty concerning the manner of the instruction that is "other than religious" and, therefore, should be adopted by public schools to promote the sort of cohesion he seems to have in mind (at least in a vague sense) for "a heterogeneous democratic people."

During the course of rendering his decision for *McLean v. Arkansas School Board*, Judge Overton makes reference to the opinion of Justice Clark that was issued in conjunction with the 1963 case of *Abbington School District v. Schempp*. In the latter case, Justice Clark maintained that in order to be able to comply with the requirements of the Establishment Clause of the First Amendment, "… there must be a secular legislative purposed and a primary effect that neither advances nor inhibits religion."

The secular constraint upon legislative activity was again affirmed in the 1973 decision concerning *Lemon v. Kurtzman*. In that case, a

tripartite set of conditions was established to serve as guidance for trying to parse such matters – namely, (1) the legislation must serve a secular purpose; (2) the primary effect of the legislation must be to neither inhibit nor advance religion, and, finally, (3) such legislation should not encourage or generate excessive government entanglement in religious matters.

Notwithstanding the rather amorphous cloud of meaning in which condition (3) tends to be enveloped as a result of the presence of the term "excessive" (and, therefore, becomes a possible focus for future objections under the Due Process provisions of the 14th Amendment), one might question the requirement that legislation must serve a secular purpose since those purposes not only are fraught with all manner of strife (and, according to Justice Frankfurter, isn't one of the reasons for pursuing secular rather than religious systems of thought is to be able to avoid sectarian strife?) but, perhaps, more importantly, despite the lack of religious vocabulary associated with various notions of secularism, nonetheless, that sort of approach to governance tends to promote views of reality that cannot be proven to be true – anymore than religious models can be proven to be true to everyone's satisfaction – and secular approaches to governance also require citizens to treat legislation as being: Inviolable, sacrosanct, sacred, deserving of reverence, and capable of binding or tying individuals and the community to sectarian theories (of a philosophical kind) concerning the nature of reality?

Is secularism really any less sectarian than overtly religious systems of thought are? Is secularism really any less entangled in issues of strife than are religious sects with respect to disputes about what values, beliefs, ideas, practices, principles, and so on should be treated reverentially and considered to be inviolable, sacrosanct, or sacred and, therefore, worthy of obligating individuals and the community in one way rather than another?

The foregoing considerations are not an attempt to put forth some post-modernist, relativistic deconstruction of the legal system. Rather, an attempt is being made to indicate that there is considerable amorphousness at the heart of the U.S. Constitution as well as in many subsequent judicial decisions concerning the supposed nature of that document.

For instance, if the republican form of government that is guaranteed in Article IV, Section 4 of the U.S. Constitution requires federal government officials – including justices -- to act and make decisions in accordance with republican qualities of: Objectivity, integrity, impartiality, equitability, fairness, independence, disinterestedness, and not being judges in their own affairs, then, why are secular theories of reality being given preference to religious theories of reality? Moreover, displaying a differential preference for secular ideas very likely will not only serve to inhibit the observance, practice, and pursuit of religious values, ideas, practices and so on, but, as well, encourages and promotes secular ideas as if they were religious in nature … that is, the sort of ultimate views of reality that should be taught in schools and toward which students should develop the requisite reverence and learn how to treat such ideas as being sacred, inviolable, and sacrosanct in nature?

After running through a few relevant aspects of legal history (noted previously in this chapter) in order to provide a context for his decision, Judge Overton's ruling in *McLean v. Arkansas Board of Education* proceeds to offer an extended historical analysis of religious fundamentalism and its decades-long conflict with the theory of evolution. However, Judge Overton does not make any comparable effort to put forth a critical review concerning the theory of evolution and whether, or not, there is a form of fundamentalism to which the theory of evolution might give expression.

Judge Overton does indicate – with a hint of approval -- that the Biological Sciences Curriculum Study (BSCS), which is a non-profit organization that works with scientists and teachers, has developed a series of biology texts that give emphasis to the theory of evolution. He also notes that those texts are being used by 50 percent of the children in American public school systems.

However, Judge Overton, apparently, has nothing to say about whether, or not, requiring school children to use the BSCS books might constitute a contravention of either the Establishment Clause of the First Amendment or the Guarantee Clause of Article IV, Section 4 in the Constitution. After all, the sectarian nature of the theory of evolution and its claim to constitute a scientific portrait concerning the nature of

reality has not been proven to be true and, perhaps, can never be shown to be true.

Judge Overton's ruling also makes reference to the history of fundamentalist opposition toward the theory of evolution when he notes that such a history is documented in Justice Fortas' Supreme Court opinion in *Epperson v. Arkansas*. This latter legal decision rescinded the Arkansas legislative Act 1 of 1929 that prohibited the teaching of evolution in public schools.

In each of the foregoing decisions, reasons are given about why fundamentalist views concerning the issue of origins should not be taught in public schools. However, none of those legal decisions explores whether, or not, there might be reasons why the theory of evolution also should not be taught to public school children, and one can't help but wonder whether any of the jurists who were (or are) making decisions concerning the teaching of evolution know much, if anything, about what they are advocating … or whether their rulings are in compliance with the republican qualities of impartiality, objectivity, integrity, independence, equitability, disinterestedness, and fairness that are guaranteed through Article IV, Section 4 of the Constitution.

After providing an overview of religious fundamentalism and its history of conflict with the theory of evolution, Judge Overton's decision in *McLean v. Arkansas Board of Education* cites some of the evidence that he feels demonstrates the religious intent underlying Act 590 that, supposedly, calls for a balanced treatment of Creation Science and the theory of evolution in the classrooms of public schools. While one is inclined to agree with Judge Overton's assessment of the foregoing evidence, nonetheless, one should keep in mind that there doesn't seem to be any comparable effort on the part of Judge Overton to critically reflect on the possibility that many facets of the theory of evolution also give expression to a religious-like, fundamentalist orientation.

A distinction is made in Judge Overton's decision between, on the one hand, some of the scientific elements that are present in the theory of evolution and, on the other hand, the relative absence of – or the presence of problematic facets of -- scientific rigor in creation science. However, such a distinction tends to obscure the issue that should

have been at the heart of the *McLean v. Arkansas Board of Education* case.

In other words, rather than drawing a distinction between what is science and what is not science, Judge Overton should have better delineated the full nature of the Establishment Clause as well as explored the relevance of Article IV, Section 4 to the matter before his court. As a result, Judge Overton does not appear to issue a ruling that complies with the requirements that are entailed by the guarantee of a republican form of government that is given in the U.S. Constitution.

On the one hand, there is nothing in the Constitution that is functionally dependent on being able to make a distinction between science and non-science. On the other hand, there is a great deal – constitutionally speaking -- that rests on the issue of what constitutes a religion and that rests on the issue of what constitutes establishing a religion.

When the pursuit of scientific methodology leads to the rise of a hermeneutical system like the theory of evolution that has not – and, perhaps, cannot -- be proven to be true (i.e., that the origin of all species is a function of neo-Darwinian dynamics) and which claims that the ultimate nature of reality is both random and material in nature (again, neither of which has been proven to be true, and, perhaps, cannot be proven to be true), then, such a system of hermeneutics becomes indistinguishable from religious systems that seek to impose a sectarian way of thinking on citizens. Consequently, the presence of the foregoing elements in the theory of evolution contravenes both the Establishment Clause of the 1st Amendment, as well as the requirements of Article IV, Section 4 of the Constitution.

According to Judge Overton – and he is basing the following criteria on the testimony of witnesses who participated in the *McLean v. Arkansas Board of Education* trial proceedings – science has five essential properties. (1) Science seeks to discover the nature of the natural laws that govern phenomena; (2) the explanations offered by science are couched in terms of natural laws; (3) the tenets of science can be empirically tested; (4) its conclusions are provisional and, as a result, might change over time; and, (5) the principles of science are capable of being falsified.

Shortly after stating the foregoing characteristics of science, Judge Overton proceeds to point out that Section 4(a) of Act 590 fails to qualify as being scientific because that section depends on the idea that the origin of life arose as a sudden creation "from nothing." Judge Overton claims that such a contention is not scientific because it requires some form of "supernatural intervention that is not guided by natural law", and, consequently, entails an explanation that is not an expression of natural laws, and, in addition, such a thesis is not testable, and cannot be falsified.

In 2012, Lawrence M. Krauss released a book entitled: *A Universe from Nothing*. The author is an atheist, and, therefore, he is not trying to sneak the realm of the supernatural into the discussion by introducing the possibility of something arising from nothing.

The foregoing book is considered to be a book of science. The contents of his book weave together elements from quantum physics, particle physics, astrophysics, thermodynamics, and cosmology to support the idea that the singularity out of which our universe might have arisen could have been an unstable quantum state that spontaneously gave expression to the universe we have inherited and which made life possible.

Of course, whether the foregoing ideas of Lawrence Krauss are correct, or not, is a separate issue. Nonetheless, irrespective of whether his thesis is, or is not, true, the fact that such ideas are considered to be scientific indicates that, contrary to the claim of Judge Overton, the possibility that something might arise out of nothing does not necessarily depend on supernatural intervention.

In any event, insisting on a distinction between natural and supernatural might be something of a snipe hunt. There is nothing that we know of that precludes the possibility that the so-called natural laws of the universe give expression to God's presence in the operations and dynamics that govern that universe, and, as such, God is free to maintain or make exceptions with respect to how those laws unfold in any given case.

If God maintains (or conserves) natural law, this is not supernatural intervention in a natural phenomenon, but, rather, natural law merely becomes a way of marking God's presence in the process of directing physical phenomena. If God makes an exception in

the manner in which natural laws are manifested in any given set of circumstances, then, this also would not constitute a supernatural intervention in a natural process but, instead, would merely reflect that God, by virtue of Divine Presence, was modulating the way in which natural law was being manifested in such events.

Judge Overton's perspective concerning the foregoing issues suggests he believes that supernatural events are neither testable nor falsifiable. Notwithstanding the potentially false dichotomy between the natural and the supernatural that is present in Judge Overton's perspective, for thousands of years, mystics from a variety of spiritual traditions have indicated otherwise.

One can elect to dismiss, out of hand, the foregoing claims of the mystics, but doing so seems to exhibit a considerable resonance with the actions of religious clerics who refused to look through Galileo's telescope when given the opportunity to do so. After all, the mystics contend that mysticism is an empirical science in which one is constantly engaged in a process of testing and falsifying various ideas concerning the nature of the mystical path.

One might also point out in passing that, at the present time, the heart of Lawrence Krauss's perspective concerning the possibility of a universe arising from nothing is neither testable nor falsifiable. Yet, he is considered to be a scientist and his ideas are considered to be scientific even as his colleagues understand that the ideas of Lawrence Krauss concerning the possibility of the universe arising from nothing might not be correct.

Also, one might want to keep in mind that like many claims in science, the statements of mystics (as opposed to theologians) also often tend to be tentative in nature. For example, the dissertation that my spiritual guide wrote to satisfy one of the conditions of his doctorate program was considered by A.J. Arberry – an eminent scholar of Islam and the Sufi mystical tradition – to be one of the best treatises on the Sufi path to have been written in the English language.

Early on in his academic career, my spiritual guide would update the foregoing dissertation so that it would better reflect what he experienced and discovered during one, or another, of his 40-day periods of seclusion. However, after a while, he gave up on the idea of modifying the contents of his dissertation because the lived experience

generated through his many periods of seclusion were constantly outstripping the written words of his dissertation in too dynamic, rigorous, and ineffable a manner.

The foregoing considerations tend to muddy the waters a little as far as the issue of distinguishing between science and religion is concerned (especially in conjunction with religion's mystical dimension). However, irrespective of whether, or not, one accepts Judge Overton's manner of bringing specific criteria to bear on the problem of distinguishing between science and non-science, none of this is germane to the real issue at the center of *McLean v. Arkansas Board of Education* – namely, whether creation science and the theory of evolution (each in its own way) are, among other things, in contravention of the Establishment Clause of the First Amendment, or the Guarantee Clause of Article IV, Section 4 of the basic Constitution.

Judge Overton provided evidence in his ruling (for example, among, other things, he quoted a statement to this effect from the writing of Duane Gish, a prominent proponent of creation science) that the judge was aware of the claim that the theory of evolution was religious in nature. Yet, he did not seem to pursue this issue and, instead, appeared to accept, at face value, the idea that the theory of evolution was scientific in nature while creation science was not scientific in character.

Conceivably, defense counsel might have done an inadequate job of inducing various witnesses to develop, and elaborate on, the religious-like features that are present in the theory of evolution. Nevertheless, there was enough evidence presented in the *McLean v. Arkansas Board of Education* case to indicate that Judge Overton might not have exercised due diligence with respect to pursuing this facet of the proceedings – especially given that the foregoing issue is far more relevant to the central legal themes of the case (e.g., the Establishment Clause of the First Amendment and Article I, Section 4 of the Constitution) than is the process of trying to differentiate between what is science and what is not science.

Judge Overton was justified in striking down Act 590 of the Arkansas legal code because that piece of legislation clearly violates the prohibitions inherent in the Establishment Clause of the First Amendment, as well as being in contravention of the provisions

inherent in Article IV, Section 4 of the Constitution. However, Judge Overton's ruling missed the opportunity to truly deliver a balanced decision (and, therefore, one done in accordance with republican principles) when he failed to overturn the 1968 Supreme Court decision in *Epperson v. Arkansas* that vitiated the Initiated Act of 1929 prohibiting the theory of evolution from being taught in public schools because irrespective of however scientific the theory of evolution might be considered to be, nonetheless, that theory contains an array of elements that render it sectarian in a manner that is indistinguishable from religious theories and, therefore, constitutes a violation of the Establishment Clause of the First Amendment and, in addition, is in contravention of Article IV, Section 4.

Finally, toward the end of his ruling for *McLean v. Arkansas Board of Education*, Judge Overton states:

"Implementation of Act 590 will have serious and untoward consequences for students, particularly those planning to attend college. Evolution is the cornerstone of modern biology … Any student who is deprived of instruction as to the prevailing scientific thought on these topics will be denied a significant part of science education."

The foregoing warning sounds an awful lot like it is alluding to some sort of a religious-like litmus test for higher education. In other words, Judge Overton's foregoing words seem to be suggesting that unless a person can demonstrate that one is a true believer in the theory of evolution and, as a result, has been thorough indoctrinated into the catechism of evolutionary principles concerning the nature of reality, then that individual risks being thrown into the higher education equivalent of hell or purgatory where such an individual will have to endure boiling in mental anguish for an eternity or, at least, for the duration of one's college career … and, possibly, longer.

I remember reading Theodosius Dobzhansky's 1973 essay from the *American Biology Teacher* entitled: "Nothing in Biology Makes Sense Except in the Light of Evolution." I thought at the time when I read the foregoing essay that it was an exercise in hyperbole since a great deal of – if not most of – the material in biology makes considerable sense independently of the theory of evolution.

To be sure, the theory of evolution does provide one with a hermeneutical way to tie the phenomena of biology together in a tidy

little package that lends more sense to those phenomena than they might have if the theory of evolution is not true. Nevertheless, one can easily jettison the theory of evolution (but not population genetics) and still understand a great deal about the marvelous phenomena to which the study of biology gives expression.

Contrary to what Judge Overton claims in the foregoing quote, evolution is not the cornerstone of biology. The cornerstone of biology is biology.

One doesn't need evolution to understand the principles of photosynthesis, the Krebs cycle, nervous functioning, metabolic pathways, cellular physiology, membrane dynamics, motility, molecular genetics, or a litany of other biological functions and principles. The theory of evolution might tell one – correctly or incorrectly – what purposes and functions are served through various biological processes, but that theory contributes little, or nothing, toward the process of revealing the nuts and bolts of how cells and organisms operate.

At best, the theory of evolution enables biologists to speculate about why cells and organisms might operate in the way they do or why, in certain limited cases, new species might form due to factors such as isolation. But, if someone were to wave a wand that erased the ideas of evolutionary theory from our collective memory banks, human beings would still have discovered a great deal that makes sense with respect to biological processes under a variety of different circumstances.

Nearly a quarter century later, many of the foregoing issues resurfaced again in the 2004-2005 legal proceedings known as *Tammy Kitzmiller, Et Al. v. Dover Area School District Et Al*. The basis for the Pennsylvania case was rooted in an October 18, 2004 memorandum issued by the Dover Area School Board of Directors which announced that students would be required to not only learn about various problems that were entailed by Darwin's theory of evolution, but, as well, students would be required to learn about "other theories of evolution including, but not limited to, intelligent design."

The forgoing resolution was followed a month later by a November 19, 2004 press release from the Dover Area School District stipulating that teachers at Dover High School would be required to

read a statement to 9th grade biology students that identified a number of principles. Included in the press release were statements claiming that: There were gaps in the theory of evolution; the theory of evolution was not a fact; the idea of intelligent design provides an account for the origin of life that is different from the theory of evolution, and the book – *Of Pandas and People* – was a resource that students might use in order to learn more about the intelligent design perspective.

A little less than a month later, a suit was filed in U.S. District Court on December 14, 2004. The suit alleged that both the October 18, 2004 resolution of the Dover Area School Board of Directors as well as the November 19, 2004 press release of the Dover Area School District contravened the Establishment Clause of the First Amendment.

The trial began on September 26, 2005. It concluded a little over a month later on November 4, 2005.

The judge presiding over the case was John E. Jones II. He concluded that it was: "…unconstitutional to teach ID [i.e., Intelligent Design] as an alternative to evolution in a public school science classroom."

Like the legal decision in the McLean v. Arkansas Board of Education that was handed down in the 1980s, Judge Jones' judicial decision in the *Kitzmiller, et al v. Dover Area School District et al* case engages in a lengthy discussion that explores a variety of both legal and scientific issues concerning the attempt of Christian fundamentalists to oppose the teaching of the theory of evolution. Such opposition assumed the form of either trying to ban the teaching of the theory of evolution or seeking to have creationist or intelligent design alternatives to the theory of evolution be given equal time in public school classrooms.

During his historical review, Judge Jones II refers to the 1975 Tennessee case of *Daniel v. Waters*. In that dispute, the Sixth Circuit Court of Appeals concluded the legislation at issue gave a "…preferential position for the Biblical version of creation 'over' any account of the development of man based on scientific research and reasoning " and, therefore, was in contravention of the Establishment Clause of the First Amendment.

Although the Sixth Circuit Court of Appeals rightly pointed out that the Tennessee statute that was being explored in the *Daniel v. Waters* case violated the Establishment Clause, the Court failed to indicate that the Tennessee statute also constituted a violation of Article IV, Section 4 of the Constitution because the disputed legislation undermined the principle of republican government that had been guaranteed to each of the states. Extending a preferred position to a Biblical version of creation relative to other non-Biblical accounts concerning the development of human beings that were based on scientific research and reasoning demonstrates that the Tennessee statute was not drawn up in an: Objective, impartial, disinterested, non-partisan, equitable, or fair manner, and, as a result, is inconsistent with the qualities of republicanism.

The Sixth Circuit Court of Appeals does not raise questions in its judicial decision about whether, or not, the theory of evolution should be given a preferred position in public schools. Although the members of the Sixth Circuit Court of Appeals might have felt – if they even considered the matter – that such issues were irrelevant to determining the Constitutional status of the Tennessee statute that was being called into question, the case offered an opportunity for the Court to explore the nature of the Establishment Clause, the Preamble to the Constitution, and Article IV, Section 4 of the Constitution in an equitable, fair, non-partisan, independent, and disinterested fashion, but they failed to do so.

If it is unconstitutional to assign a preferred position to the teaching in public schools of a Biblical account concerning the origins of life or the development of human beings, is it also unconstitutional to assign a preferred position to the teaching of a scientific researched and reasoned theory concerning the evolution of life or the evolution of human beings? Identifying the theory of evolution as being a function of science does not automatically serve to justify why such a theory should be considered to be incumbent on students to learn.

Naturally, those who consider the theory of evolution to be a true account concerning the origins of species believe it is in the best interests of students to be exposed to the research and reasoning that they feel substantiates their evolutionary perspective. However, those who consider the Biblical account concerning the origins of life and the

nature of human development also believe the best interests of students are served by exposing students to the research and reasoning that the advocates of creationism feel substantiate their Biblical perspective.

Both the theory of evolution and the creationist approach to origins and human development are sectarian in nature. Why should one suppose that a sectarian position that is claimed to be scientific will be any less likely to violate the Establishment Clause of the First Amendment or to be in contravention of Article IV, Section 4 than is a Biblical approach to those same issues?

By failing to raise the foregoing sort of questions, the Sixth Circuit Court of Appeals is, itself, not only guilty of violating the requirements of Article IV, Section 4 of the Constitution, but, as well, the Court is helping to establish a sectarian framework. As pointed out earlier in this chapter -- and notwithstanding the fact that the theory of evolution does not employ an overtly religious lexicon -- one encounters considerable difficulty avoiding the conclusion that the theory of evolution is, in many ways, virtually indistinguishable from a religious-like framework because the "facts" that it cites are not capable of demonstrating that the theory of evolution is a correct explanation for the origin of all species.

While stating his judicial opinion in the *Kitzmiller et al v. Dover Area School District et al* case, Judge Jones II cites the findings of Judge Overton in *McLean v. Arkansas Board of Education*. More specifically, Judge Jones II summarizes the legal opinion of the earlier case by stating:

"… the United States District Court of Arkansas deemed creation science as merely biblical creationism in a new guise and held that Arkansas's balanced-treatment statute could have no valid secular purpose or effect, served only to advance religion, and violated the First Amendment."

How does one determine what constitutes a "valid secular purpose"? What are the criteria that determine what constitutes a "valid secular purpose"?

More importantly, perhaps, one wonders why secular ideas should be accorded preferential consideration to non-secular ideas in the

legal opinion of Judge Jones II. Even if one were to ignore all of the considerations explored earlier in this chapter concerning the religious-like nature of the theory of evolution, as well as ignore the possibility that the theory of evolution might violate the Establishment Cause of the First Amendment when considered from the perspective of a deeper analysis involving a more inclusive notion of religion, nonetheless, the theory of evolution tends to violate the principles inherent in Article IV, Section 4 of the Constitution because that theory cannot necessarily be shown to be true in an objective, impartial, non-partisan, disinterested, equitable, and fair manner by individuals who are not already committed to that theory.

In addition, the District Court of Arkansas seemed to be immune to the irony inherent in their previous quoted words since the theory of evolution serves only to advance the philosophy of evolutionism. This might constitute a secular purpose, but it is not a valid secular purpose because the sectarian nature of the theory of evolution tends to violate the Establishment Clause of the First Amendment as well as contravene the requirements of Article IV, Section 4.

If a person would like to ask whether, or not, the theory of evolution is a scientific theory, then, by all means, ask scientists – and such questions were asked in *McLean v. Arkansas Board of Education* as well as in *Kitzmiller et al v. Dover School District et al*. However, scientists are not necessarily the people who should be consulted if one is trying to determine the extent to which the theory of evolution constitutes an objective, equitable, fair, independent, impartial, non-partisan, disinterested account of the nature of reality or our relationship to Being and, thereby, is capable of serving a "valid secular purpose" … that is, one that is capable of satisfying the degrees of freedom and constraints that are set forth in the Constitution (including: The Preamble; the Establishment Clause of the First Amendment; the 9th and 10th Amendment, as well as Article IV, Section 4 of the Constitution).

Judge Jones II commits the same error in his decision concerning *Kitzmiller et al v. Dover Area School District* legal proceedings that Judge Overton committed in the latter's judgment in the *McLean v. Arkansas Board of Education* case. More specifically, each of the foregoing justices spends a great deal of time in their respective

decisions making distinctions between science and non-science but spend relatively little time on exploring the nature of the Establishment Clause of the First Amendment, or on analyzing the nature of Article IV, Section 4 of the Constitution, or reflecting on whether, or not -- under the 9th and 10th Amendment -- either secular or non-secular agencies (or neither) should have control of the educational process, or whether, or not, either Federal or State agencies (or neither) should assume control of the educational process.

Both Judge Overton and Judge Jones II make the same point in their respective legal proceedings – namely, that finding fault with the theory of evolution does not necessarily constitute evidence in favor of some edition of creation science or intelligent design. Consequently, each of those judges should have understand that there is a similar logical error present when the two jurists find fault with creationist science or intelligent design and, then proceed to conclude that some form of a secular conceptual system – such as the theory of evolution or science – must, necessarily, constitute the de facto default system that should govern citizens or be taught in public schools.

If Judge Jones II is going to spend an extended period of time pointing out the many problems that permeate the notion of intelligent design and how that notion gives expression to a religious point of view, then, Article IV, Section of the Constitution demands that Judge Jones II also spend an extended period of time exploring the many problems that permeate the theory of evolution and how that theory tends to violate the Establishment Clause of the First Amendment, as well as tends to be in contravention of the 9th and 10th Amendments along with Article IV, Section 4 of the Constitution. By failing to pursue the foregoing sorts of issues in his judicial decision, Judge Jones II was not exhibiting the necessary qualities of: Objectivity, disinterestedness, impartiality, independence, equitability, and fairness that are required by Article IV, Section 4 of the Constitution and which, supposedly, are guaranteed to the people of each of the states.

Judge Jones II describes how five years after the *McLean v. Arkansas Board of Education* decision vacated Act 590 in Arkansas, the Supreme Court of the United States struck down a similar law in Louisiana. The majority opinion in the 1987 decision for *Edwards v.*

Aguillard stipulated that Louisiana's Creationism Act" contravened the Establishment Clause of the First Amendment because the aforementioned Act amounted to "…restructuring the science curriculum to conform with a particular religious viewpoint."

Yet, if one were to retain the logic inherent in the foregoing way of describing the conflict between creationism and evolutionism in *Edwards v. Aguillard*, a person could easily – and justifiably – argue in parallel fashion that the theory of evolution constitutes a restructuring of the science curriculum to conform with a particular sectarian – if not religious-like – viewpoint that seeks to promote an evolutionary philosophy that is dressed up in scientific language. Referring to the theory of evolution as being scientific does not make it any less sectarian, or religious-like in the manner in which it seeks to impose a certain way of thinking on students and, in the process, attempts to induce the latter individuals to consider such a theory to be inviolable, sacrosanct, sacred, and deserving of a reverential-like commitment that should shape a person's understanding and engagement of reality.

Both Judge Overton in *McLean v. Arkansas Board of Education*, as well as Judge Jones II in *Kitzmiller et al v. Dover Area School District et al* seem to be oblivious to the manner in which they each tend to filter the information in their respective cases through the presumptive lenses of science and the theory of evolution rather than filter information through a process of reflecting on that information in a truly objective, impartial, independent, non-partisan, fair, and equitable fashion that tends to lead to the conclusion that, on the one hand, neither creation science or its update counterpart, intelligent design should be taught in public schools, nor, on the other hand, should the theory of evolution be taught in public schools. In fact, the extent to which each of the aforementioned judges seems to be blind to the conceptual dynamic through which their respective cases are being framed and filtered in a manner that give unquestioned priority to science and the theory of evolution indicates just how problematic the issue of establishing a "valid secular purpose" can be if one is going to, simultaneously, try to reconcile such purposes with, say, the requirements of Article IV, Section 4.

Secular purposes are not necessarily the de facto solution for avoiding violations of the Establishment Clause of the First

Amendment or transgressions against the requirements of Article IV, Section 4 of the Constitution. Purposes that are neither secular nor non-secular should be sought … purposes that require an on-going process of critical reflection intended to ascertain that neither secular nor non-secular perspectives that have sectarian, religious-like features are permitted to be imposed on citizens, and, in addition, to ascertain that the actions and decisions of government officials are in compliance with the requirements of a republican form of government.

During his decision for *Kitzmiller et al v. Dover Area School District et al*, Judge Jones II states:

"We are in agreement with plaintiff's lead expert, Dr. Miller, that from a practical perspective, attributing unsolved problems about nature to causes and forces that lie outside the natural world is a 'science stopper'. As Dr. Miller explained, once you attribute a cause to an untestable supernatural force, a proposition that cannot be disproven, there is no reason to continue seeking natural explanations as we have our answer."

Although the term "natural world" is used in the foregoing excerpt from the legal decision of Judge Jones II, no definition is given for that phrase.

How does one determine what forces and causes lay within, or beyond, the purview of the natural world? How does one prove what forces and causes lay within the boundaries of the natural world?

Just because one has methods at one's disposal that are capable of detecting certain kinds of forces or causal relations in observed phenomena does not mean that other kinds of forces and causes aren't also present that fall beyond the capacity of one's methods for detecting phenomena, forces, and causes. Moreover, forces and causes that cannot be engaged or measured by our current methodology are not necessarily supernatural.

The neutrino is calculated to measure 10^{-24} meters (.000000000000000000000001) or 10 yoctometers. The Planck length is 10^{-35} meters or in the vicinity of .0000000001 yoctometers.

The Planck length tends to mark a boundary for classical ideas concerning the nature of space-time and gravity. Consequently, we

have no idea what, if anything, lies on the other side of that boundary marker or how what transpires in that realm of the Universe affects what transpires on the level of the Planck length or larger.

For example, we don't know why constants -- e.g., the mass of an electron which is $9.10938356 \times 10^{-31}$ kilograms -- have the values they do. The Higgs field might have something to do with the mass value of an electron, but if so, at the present time, we do not know what the nature of the dynamics are between the structural properties of the electron and the structural properties of the Higgs field that would result in electrons having such a constant value.

We know that the Higgs field exists because CERN has been able to detect that field through the presence of the Higgs boson. However, we do not know what -- if anything -- makes the Higgs field possible, but irrespective of whatever might make the Higgs field possible and even though we do not, yet, fully understand the properties of that field, we assume that those dynamics are natural in character.

Natural forces and causes are whatever makes observable phenomena possible irrespective of whether, or not, we can detect them, measure them, or understand them. Advances in methodology, measurement, and instrumentation often expand the horizons of the observable and detectible, but, currently, we do not know whether, or not, we will reach a point in the future when we might encounter some sort of inherent limitation to what can be observed or measured through our physical methods and instruments.

If such a limit should be reached, this does not mean that we have exhausted what the natural world has to offer. Instead, what it means is that we will have reached a terminal point for what our methods and instruments can reveal about the character of the natural world.

Conceivably, God operates in the interstitial spaces that cannot be accessed by our methods and instruments. This would not make such dynamics supernatural but, rather, those dynamics would merely give expression to a species of natural phenomena that are beyond our ability to observe, detect, or measure.

Judge Jones II – as well as Dr. Miller, the lead witness for the plaintiff – maintains that: "once you attribute a cause to an untestable supernatural force, a proposition that cannot be disproven, there is no

reason to continue seeking natural explanations as we have our answer." Yet, the theory of evolution constantly makes reference to the idea of random, chance events that cannot be proven to be truly – that is, ontologically, rather than just methodologically -- random, chance phenomena, and, as a result, the foregoing perspective has tended to stop scientists from looking for natural explanations that transcend the idea of randomness but still fall within the realm of the natural world even though the properties and characteristics of that natural world might fall beyond the capacity of our present (and, possibly, future) methods, measurements, and instruments to be able to detect.

Neither Judge Jones II nor Dr. Kenneth Miller (the lead witness for the plaintiff) – nor anyone else -- knows how the first protocells came into existence or how the genetic code came into existence. Neither of those individuals knows how consciousness, intelligence, memory, reason, language, or creativity came into being or what made them possible.

They assume that the aforementioned sorts of phenomena are part and parcel of the natural world. Nonetheless, they know almost nothing about the underlying dynamics or causal forces that give expression to those sorts of qualities or properties and, quite possibly, they will never be able to prove or test what, ultimately, is responsible for those phenomena.

In short, neither Judge Jones II nor Dr. Kenneth Miller has defensible grounds for claiming that the natural world is a realm that necessarily excludes the presence of God. Indeed, the nature of God's activity in the natural world might just be among those phenomena that are beyond the capacity of our physical methods and instruments to be able to detect or measure.

When Judge Jones II and Dr. Miller refer to the idea of the supernatural as being a "science stopper", they seem to be blind to the parallel possibility that approaching reality in the way they do could be something of a "soul or spirit stopper". By insisting that: Public schools, their teachers, and their students must adopt a scientific approach to reality that promotes the theory of evolution, they are advocating a policy that, in many respects, cannot be tested or proven to be true, and, therefore, is as much a sectarian system as any religion and, as such, becomes an oppressive force that interferes with the

opportunity of individuals to freely seek natural explanations for phenomena – such as life – that fall beyond the limitations of the theory of evolution.

Judge Jones II indicated in his decision that during Dr. Miller's testimony the professor maintained that just because researchers cannot explain all the details of evolutionary theory, this, in and of itself, does not necessarily invalidate the theory of evolution. Perhaps this is true, but, nonetheless, such a claim does tend to lead to the emergence of questions about where and how one should draw the line that enables one to differentiate between problematic speculations and substantiated theories.

The foregoing contention takes place during a section in the judicial decision of Judge Jones II that critically analyzes some of the ideas of Professor Michael Behe concerning the issue of 'irreducible complexity'. Dr. Behe is of the opinion that there are many processes within organisms involving phenomena such as motility, blood clotting, and the immune response that exhibit structural properties of sufficient complexity whose origins, or way of coming together, cannot be explained adequately by the theory of evolution.

Taking issue with the foregoing position of Professor Behe, Judge Jones II cites the testimony of Dr. Miller and Dr. Padian indicating that Dr. Behe's perspective fails to take into consideration well known mechanisms of evolutionary dynamics. For example, Judge Jones II states:

"In fact, the theory of evolution proffers exaptation as a well-recognized, well-documented explanation for how systems with multiple parts could have evolved through natural means."

Exaptation is a process in which biological systems acquire functions that those systems did not originally possess. To illustrate the foregoing issue, Judge Jones II refers to an example provided by Dr. Padian during the latter's testimony indicating that the middle ear bones of mammals arose, over time, from the mammalian jawbone.

Judge Jones II proceeds to claim that the foregoing evidence demonstrates that Professor Behe's notion of 'irreducible complexity' excludes such data from consideration and, therefore, refutes the professor's argument. Yet, Judge Jones II fails to indicate what the set

of step-by-step processes was that led the middle ear bones of mammals to arise from and become differentiated from mammalian jawbones.

Consequently, neither Judge Jones II nor Dr. Padian have provided a step-by-step map that plots out how one goes from mammalian jawbones to the emergence of mammalian middle ear bones. Apparently, this is one of the evolutionary details that – according to Judge Jones II and Dr. Kenneth Miller – evolutionary theory is not required to explain but which – quite incredibly -- does not cause the theory of evolution to lose any sense of validity.

Yet, if one were to say that God were responsible for the transition from mammalian jawbones to mammalian middle ear bones, evolutionary scientists would demand that the proponents of that kind of a theory to provide a step-by-step account of how God made such a transition possible. However, if the proponents of that kind of a theory could not provide evidence capable of substantiating their claim, then, evolutionary scientists would very likely argue that the absence of such evidence undermines the validity of a creationist theory of origins.

None of the examples of exaptation that Judge Jones II mentioned in his decision or that Dr. Miller ran through during his testimony provide the step-by-step evidence that is needed to demonstrate that their claims are warranted. They both allude to the possibility of exaptation with respect to the emergence of complex systems of motility, blood clotting, and the immune system, but, apparently, those possibilities are supposed to be accepted without having to present any detailed evidence capable of demonstrating that exaptation correctly (and not just possibly or theoretically) accounts for the emergence of complex systems over time.

Judge Jones writes in his decision that:

"… Dr. Miller presented peer-reviewed studies refuting Professor Behe's claim that the immune system was irreducibly complex. Between 1996 and 2002, various studies confirmed each element of the evolutionary hypothesis explaining the origin of the immune system"

Moreover, on cross-examination Dr. Behe was presented with 58 publications that had been peer-reviewed, along with nine books and a number of chapters from several textbooks on immunology that explored the evolution of the immune system.

To begin with, one might ask if any of the people who were among the peers who reviewed the aforementioned studies on the evolution of the immune system were, or were not, individuals who accepted the theory of evolution. If all of them were proponents of the theory of evolution, then, perhaps, one should not be too surprised that the studies being alluded to might have been acceptable to the peers who reviewed them as long as those studies exhibited the sort of characteristics that would have resonated – to varying degrees -- with the sensibilities of the individuals who were reviewing that material.

Consequently, the foregoing alliance of studies and peers might only indicate that the peers, along with the people who conducted the studies, operated out of a similar world-view. If so, then, the evidence being cited by Judge Jones II or Dr. Miller does not necessarily constitute evidence that the theory of evolution has been shown to be true in some independent fashion.

Secondly, what does it mean to say that a study confirms a given theory? What are the criteria of confirmation? What justifies such criteria?

Since none of the individuals who wrote: Those 58 studies, or nine books, or several textbooks on immunology were present when immune systems began to emerge in various organisms and also were not present when new wrinkles might have been introduced to those systems, I can pretty much guarantee that none of the individuals to whom Judge Jones II or Professor Miller are referring would be able to specify the precise set of steps that led to the appearance of those systems or to their development. Unfortunately, Judge Jones II seems to exhibit little common sense and ask: How do either the authors of those studies and books or the peers who are reviewing that material know that things happened in the way that is being claimed in their studies.

Judge Jones II seems to be treating informed speculation concerning the possible emergence of immune systems as if it were established truth. Furthermore, rather inexplicably, he appears to be

claiming that such informed speculation is capable of disproving Dr. Behe's ideas concerning irreducible complexity.

Professor Behe's notion of irreducible complexity might, or might not, be true. However, speculation about what could have happened in the past is not necessarily the same thing as being able to produce step-by-step, verifiable evidence indicating what actually did happen in the past. Therefore, even if all of those 58 studies, 9 books, and assorted chapters that allegedly were considered to confirm the theory of evolution's account concerning the development of immune systems, nevertheless, until one closely and critically examines what is meant by the notion of 'confirmation' and reflects on the criteria that are being used to establish that supposed confirmation (and whether such criteria are justified), one can't really be sure what, if anything, has been demonstrated by the studies and books to which Judge Jones II is alluding.

I'm pretty sure that Judge Jones II did not review the 58 studies, nine books, and chapters in several textbooks of immunology that are being referred to in his legal decision. Instead, he seemed to merely accept, at face value, the testimony of Dr. Miller and several other witnesses for the plaintiff that the foregoing material proved what they claimed it did.

Throughout his decision, Judge Jones II seems to exhibit the same sort of inclination that is being noted above with respect to appearing to be positively deposed toward the idea of the theory of evolution without exhibiting any sort of countering critical reservation concerning that theory. As such, he seems to be in contravention of Article IV, Section 4 of the Constitution because he has failed to act in an: Objective, impartial, non-partisan, independent, equitable, and fair fashion, and, as a result, he is helping to establish the theory of evolution as a sectarian system that is difficult, if not impossible, to differentiate from religious-like systems and, as such, violates the Establishment Clause of the First Amendment.

The way to resolve the issues that arise in *McLean v. Arkansas Board of Education* or in *Kitzmiller et al v. Dover Area School District et al* (or any of the other legal proceedings that have dealt with those issues) is neither to accept the theory of evolution while rejecting some variation on creationist theory, nor should one attempt to

resolve the foregoing matters by accepting creation science or intelligent design while rejecting the theory of evolution, nor should one try to resolve those problems by trying to provide a balanced treatment of the two competing visions. Rather, one should proceed with the understanding that creation science, intelligent design, and the theory of evolution all violate the Establishment Clause of the First Amendment, as well as Article IV, Section 4 of the Constitution, and, therefore, should not be permitted to shape educational policy in the public school system.

Chapter 14: Returning to the Teachings

Approximately 30 years ago I was writing something for a group to which I belonged. As was often the case when I was writing, I had the television on in the background so that I could feel connected to the world even while being isolated from it ... a psychological trick designed to help me cope with the loneliness of being a long-distance writer.

The television was tuned to a Canadian station. The program was a morning program similar, in format, to the *Today Show*.

The person being interviewed had just written a book and was making the rounds to promote his work. The title of his book was: *Returning to the Teachings*.

The author's name was Rupert Ross. He was an Assistant Crown Attorney for Canada.

During the interview, he provided some background that attempted to place his book in context. In 1992 he had been assigned to fly to a small Aboriginal village in northwestern Ontario.

Among the cases awaiting him were 20 Aboriginal youth who were charged with having consumed intoxicants in contravention of by-laws. The children had been discovered at three o'clock in the morning, waist-high in lake water, screaming, and sniffing gas fumes.

The children constituted 1/20th of the entire Aboriginal population for the community that was situated by the lake. Whatever decisions were made concerning those youngsters might substantially impact the future of that community.

Substance abuse has been a significant problem within many Aboriginal communities – not just among the youth, but among adults as well. The homes of many Aboriginal families have been devastated by substance abuse and its ramifications ... violence, rape, sexual molestation, and murder.

Ross indicated that from the perspective of many western systems of law, the commission of a crime is an indication that the person who has committed a crime is, in a sense, 'bad' and, as a result, punishment of some kind is an appropriate response. However, from the perspective of many Aboriginal systems of understanding, a person's misbehavior indicates that some sort of appropriate moral teaching is

needed or some form of pathology is present and requires a process of healing.

At the time, the Canadian legal system's solution for dealing with the behavior of the youngsters would be to label it criminal and, then either send the individuals to jail, or fine them, or require them to perform so many hours of community service. The Aboriginal suggestions concerning the matter were much more comprehensive and inclusive.

First, rather than structure the legal proceedings in an adversarial manner with a judge, crown attorney, police officers, and probation officers on one side of a table, while the accused sat on the other side of a table, three elders of the Aboriginal community made an alternative suggestion. Why not include anyone who might have something to contribute to the proceedings and form a circle with no particular order to the seating arrangements.

Presumably, the purpose of those proceedings should be about collectively finding a way to make life better for both present and future generations. People in the circle should be committed, as equals, to find a lasting solution to the problem confronting them and not merely be preoccupied with issues of judgment and punishment that might deal with symptoms but not necessarily their underlying cause (s).

All misbehavior occurs in a context. If one does not understand the dynamics of that context, then one will not understand the character of the misbehavior.

With and without the presence of substance abuse, all too many people in Aboriginal communities have done terrible things to one another in the form of dysfunctional coping strategies intended to deal with a lifetime filled with abuses of one kind or another. Those actions were a destructive and ineffective form of communication.

The Aboriginal elders indicated that, perhaps, parents needed to be taught better ways of communicating with one another about why they were together and how the pain and suffering they were feeling in relation to a life of difficulties was feeding their abuse of one another. Teaching circles and healing circles were ways to begin that kind of a process.

Aboriginal children were often traumatized and confused by the violence that they witnessed in their homes. If the elders of the community did not intervene and help the children to understand what was taking place, the children and youth might well grow up to become just like their parents, and, once again, teaching and healing circles were ways to engage those issues.

The problem was not just the behavior of an individual. The problem was a manifestation of something much broader involving parental relationships, family relationships, and community relationships.

For years, the Western approach to justice had imposed itself on the Aboriginal peoples and insisted on doing things in a way that tried to make sense of things – to whatever extent this was possible from such a perspective -- within the context of a certain kind of arbitrary worldview. In doing so, the Western approach to justice had been violating the natural law systems of native peoples.

For Aboriginals, misbehavior is not a matter of crime and punishment. Instead, misbehavior is a sign of disharmony and calls for appropriate steps to be taken that are capable of restoring harmony within an individual, marriage, family, and/or community.

Punishment would not necessarily make things better. Teaching and healing circles often were able to achieve what punishment could not accomplish.

From the perspective of Aboriginal peoples, jails or prisons remove those who have committed some form of misbehavior from the very people who are not only the victims of such behavior, but who, as well, are the key to healing, forgiveness, and reconciliation. Putting people in prison or jail removes the one who has committed some form of misbehavior from having the opportunity to be held accountable by, learn from, and be healed through, the process of interacting with the person or people she or he has affected in some problematic way.

Rupert Ross indicated that one of the things that he discovered was that under the Aboriginal way of dealing with disharmony in the community, people who had committed some form of misbehavior – for example, sexually molesting a minor – would often voluntarily

come forth and seek assistance from the elders. However, in all his years of working as a Crown Attorney, Ross had never known of anyone who voluntarily came in and indicated that he or she wanted to be prosecuted for sexually molesting someone.

Rather than being hierarchically organized – e.g., government, judge, Crown Attorney, misbehaving person – such that the way of power is disseminated along certain authorized pathways for purposes of implementing judgment and punishment, Aboriginal approaches are often centered on the dynamics of consensus involving the whole community. The dynamics of consensus-making entails struggling with issues involving the restoration of whatever community harmonies have been disturbed.

The Aboriginal approach to justice requires people in a community to establish a balance between two things. On the one hand, misbehavior must be publically acknowledged and condemned for what it is – a disruptor of harmony – while, on the other hand the person who has misbehaved must continue to be accepted as a person of value who is worthy of reclamation, teaching, and healing.

Society is an ecological system. When that system exhibits disharmonious disequilibrium, the dynamics need to be restored to an appropriate form of harmonious functioning ... and dynamics are always about more than judging and punishing one individual.

In a community – as is true in all ecological systems -- everything we do affects other people. This network of interactions can be conducted in a constructive, synergistic, and symbiotic manner, or it can be carried out in problematic, parasitic, and pathological ways.

A person who has misbehaved has ceded away his personal agency to forces of disharmony (whether internal and/or external in nature). If that individual is to undergo a process of ecological restoration through teaching and/or healing, then that individual must be helped to reclaim his or her moral and intellectual capacity for constructive agency.

The ecology of western society is in shambles. Despite a surface that seems to reflect order and prosperity, disharmonies manifest themselves everywhere through the cracks that are present in the

glossy surface in the form of: Poverty, prisons, substance abuse, rape, murder, exploitation, infidelity, suicide, manipulation, corruption, wars, greed, oppression, cruelty, indifference, abuse, violence, depression, dishonesty, injustice, delusions, and dysfunctional systems of governance.

Although individuals are the ones through whom those disharmonies often are manifested, the underlying causes are systemic. More specifically, the form of governance within which we operate has induced us to cede away our moral and intellectual agency to an array of pathological forces that control the current dynamics of our communities.

To have a realistic chance of healing, we must all begin to reclaim what we have been induced to cede over to the way of power – that is, our basic sovereignty ... the right to have a fair opportunity to push back the horizons of ignorance concerning the nature of existence, along with our relationship to ourselves and the rest of Being. A properly functioning human ecology is rooted in basic sovereignty and not in the way of power ... in fact, the exercise of power always gives expression to disharmony in one way or another.

The way of power is about arbitrary forms of: hierarchy, authority, control, logic, and oppression. The way of sovereignty is about what can be demonstrated beyond a reasonable doubt through: decentralization, consensus, reciprocity, and the realization of the constructive dimensions of human capacity.

The way of power leads to, and gives expression to, ideological psychopathy, or disharmony, in one form or another. The way of sovereignty leads to, and has the potential to give expression to: healing, essential learning, reconciliation, and restoration of harmony.

The existence of Ideological psychopaths is nature's way of telling us that our system is in serious disequilibrium. The ideological psychopath is -- in his or her own way -- also a victim of the pathology that besets our social/political/economic ecology even as that individual also bears responsibility for having ceded her or his agency to various pathological forces.

225 years ago, the Framers/Founders made some bad choices. Their decisions put America on a path that would lead to a way of power rather than to a way of sovereignty.

Giving the Framers/Founders the benefit of a doubt, they probably thought they were realizing the latter (that is, a way of sovereignty), when, unfortunately, they actually were busily engaged in establishing the former (that is, a way of power). In many respects, things could not have turned out other than they did – at least, in general terms – because the whole idea of the Philadelphia Constitution was about inducing people to cede their agency to a central, hierarchical, powerful source of governance.

The Philadelphia Constitution was described as an experiment in self-governance, and, indeed, there were a few – very few – indications that this idea had formed some part of the intention of the participants in the Philadelphia Convention. For example, the Preamble to the Constitution suggested as much, and, to a certain extent, so did Article IV, Section 4, that guaranteed a republican form of governance to every state such that qualities of: disinterestedness, fairness, honesty, integrity, compassion, nobility, and generosity of spirit were supposed to guide the decisions of governance that were to help: form a more perfect union; establish justice; ensure domestic tranquility, provide for the common defense; promote the general welfare, and secure liberties in such a way that people would be able to realize the promise of the Declaration of Independence – namely, the inalienable rights of: Life, Liberty, and the pursuit of Happiness.

In addition, the first ten amendments – which were ratified several years, or so, after the ratification of the Philadelphia Constitution – also suggested the formation of a framework through which people might establish some form of self-government. However, less than twenty years later, the meanings of: the Preamble, the Constitution, and the amendments were held hostage to the hermeneutical activities of the representatives of the way of power – in the form of: the Executive, Congress, the Judiciary, and the state branches of governance.

For more than 200 years, there has been a battle taking place for the soul of America. On one side of the tug-of-war is the way of power,

while on the other side of the line of demarcation that determines the winner or loser of the struggle is the way of sovereignty.

The unfinished revolution concerns the struggle to fully realize the way of sovereignty. The foregoing revolution was started by individuals prior to the convening of the Philadelphia Convention or prior the writing of the Articles of Confederation, but that revolution, unfortunately, was usurped by a way of power or governance that began to be instituted through: The Continental Congress, the Philadelphia Constitution, the ratification process, and the ensuing history of federalist government that gradually induced people to cede more and more of their agency to serve the way of power rather than retaining such agency in order to journey along the path of sovereignty.

Just as the law of ignorance indicates that the only human right that can be demonstrated beyond a reasonable doubt is the idea of basic sovereignty – that is, the right to have a fair opportunity to push back the horizons of ignorance concerning the nature of reality and our place within that reality – so too, there is just one set of teachings to which virtually all spiritual, humanistic, and atheistic traditions subscribe and consider to be valid beyond a reasonable doubt. This set of teachings concerns what might be referred to as the natural law of character.

There is no one who can bring forth a non-arbitrary argument – that is, one which can be proven beyond a reasonable doubt – which demonstrates that: honesty, patience, compassion, empathy, fairness, balance, gratitude, reciprocity, nobility, integrity, sincerity, forgiveness, courage, tolerance, humility, friendship, and charitableness are not desirable qualities to realize during the events of everyday life. Similarly, there is no one who can bring forth a non-arbitrary argument – that is, one which can be proven beyond a reasonable doubt – which demonstrates that: dishonesty, impatience, callousness, indifference, unfairness, imbalance, thanklessness, selfishness, ignobility, untrustworthiness, insincerity, holding grudges, cowardice, intolerance, arrogance, hostility, and lack of charitableness are desirable qualities to apply to the events of everyday life.

Furthermore, if one were to engage people in conversation about the issue of character, I believe there would be considerable agreement concerning the meaning of most, if not all, of the foregoing terms. For example, we all have a sense – and I believe this remains true across many cultures -- of what friendship, honesty, sincerity, gratitude, humility, courage, tolerance, and so on entail, just as we all have a sense of what selfishness, greed, hostility, cruelty, and so on look like.

Some of the social conventions that are used to express the foregoing dimensions of being human might vary from culture to culture, but, nonetheless, the underlying phenomenology of character issues remains pretty much the same from location to location. The positive and negative dimensions of character are all principles that might be variable in the way they are manifested but tend to be constant with respect to the way in which people are able to recognize the presence of this or that facet of character.

Character in the foregoing two-dimensional mode of properties (that is, in a positive and negative, or constructive and destructive sense) is antithetical to the way of power. Or, said in another way, the way of power reverses the polarity of the two dimensions of character, and that which most people, cultures, and traditions acknowledge to be desirable qualities are considered to be undesirable from the perspective of the way of power, while that which most people, cultures, and traditions consider to be undesirable are treated as being desirable by the way of power.

However, character – in the sense in which the vast majority of people, cultures, and traditions consider to be desirable – is integral to the way of sovereignty. In fact, to whatever extent an individual is dominated by, or has ceded his or her agency to what most people, cultures, and traditions consider the undesirable dimension of the character issue to be, then, sovereignty is not likely to be realized.

When the way of power is in ascension within a given individual, family, community, or society, then under those circumstances, the dynamics of human ecology will tend to place the positive or constructive dimension of character under siege, while creating opportunities for the negative or destructive dimension of character to be manifested. When, on the other hand, the way of sovereignty is in

ascension within a given individual, family, community, or society, then under those conditions, the dynamics of human ecology will tend to place the negative or destructive dimensions of character under siege, while creating opportunities for the positive or constructive dimension of character will tend to be manifested.

For the last several hundred years, the growing ascendency of the way of power within the American form of governance has placed the constructive sense of character under increasing stress. The way of sovereignty can only be reclaimed by refusing to cede our agency to the way of power and, instead, use our agency to give expression to the constructive or positive dimension of character that, in turn, will lead toward the realization of the way of sovereignty.

To achieve the foregoing sort of transformation in orientation we must return to the teachings of natural law – both with respect to sovereignty and character -- which are the principles underlying all great humanist traditions ... whether secular or spiritual in nature. We must gather together in teaching and healing circles to work out principles of consensus, reciprocity, decentralization, and co-operation that will serve the way of sovereignty and not the way of power and that will provide constructive character qualities with an opportunity to develop rather than nurture problematic qualities of character.

If societies and communities ignore the natural laws of character, no manner of governance will function to the advantage of those societies and communities. This is especially true in relation to the issue of self-governance.

If societies and communities ignore the natural law of ignorance -- from which the idea of basic sovereignty is derived -- then all forms of governance will be inherently oppressive and ruled by the way of power. Moreover, the idea of having a form of self-governance that is rooted in something other than basic sovereignty is oxymoronic.

Despite media, educational, and governmental hype to the contrary, the American system of government does not, for the most part, give expression to a form of self-governance. Instead, the way of power has devised a way to induce people to believe they are participating in self-governance through the process of elections that

is nothing more than an exercise in changing, or confirming, the face of power that will rule over society.

There is, however, one dimension of the American way of doing things that has nothing to do with the electoral process but has everything to do with the issue of self-governance. The dimension being alluded to in the foregoing sentence is the jury system.

Juries have as much, if not more, to do with regulating order and justice within society than, perhaps, any other facet of governance. All across America, five days a week, ordinary people, who are not elected officials and are paid very little money, gather together, listen to evidence/testimony/arguments, evaluate that material, discuss it, and struggle to reach a consensus about that material in relation to a given case – whether criminal or civil and on both a state and federal level.

Those jurors are independent of the government and are free to arrive at whatever conclusions they feel are justified. The only principles that are intended to guide their deliberations are those of impartiality and common sense.

Although, on occasion there might be problems here and there, nevertheless, on the whole, the unelected, poorly paid, ordinary jury participants using nothing more than common sense do a far better job in the exercise of self-governance than do all the various branches of state and federal government. Moreover, their decisions affect the quality of our daily lives in countless ways – mostly in an unseen and unappreciated -- or underappreciated -- manner.

Given the foregoing, let's undertake a thought experiment of sorts. What if we were to wed three ideas together – namely, the trial jury, the grand jury, and the Aboriginal healing/teaching circles – and utilize this combination as a real system of self-governance.

Forget about elections with all their attendant corruption, inequities, abuses, negativity, and money. Elections have become a tool of the way of power, and as long as there are elections, people will never be permitted to exercise self-governance.

Instead, perhaps, there should be a series of – let's call them – 'grand jury oversight committees' whose task would be do deal with the disharmonies that are manifested in a given social ecology. The purpose of such committees would not be to determine, say, the

criminality of actions or to make public policy but, rather, to use their collective experience and common sense to help people re-establish harmony within a given community.

The committees would be a resource in the process of self-governance ... not a director of self-governance. That is, the proposed committees would not be able to tell people what to do but would only be able to assist them to make the journey from misbehavior to the restoration of lost character and sovereignty.

The issue of misbehavior covers a lot of possibilities – from: family life, to: social, economic, and financial matters. In fact, there really are no aspects of community life that might not be considered in relation to the issue of misbehavior and/or the emergence of disharmony.

As is the case with grand juries, trial juries, and healing circles, members of the proposed committees would be selected from the community at large. In part this is a 'random' process – for example, the means through which names are arbitrarily selected from a pool of possibilities. However, once the general pool of candidates had been identified, one could use a nominal culling process of sorts – as occurs with trial juries -- to eliminate either hardship cases or potential problem selectees – in order to arrive at the final number of committee members.

Unlike grand juries that are conducted by a prosecuting attorney or unlike trial juries that – until their turn arrives -- are largely observers in a trial that is conducted by opposing attorneys and a judge, the proposed 'grand jury oversight committee' would be more like the healing/teaching circles of Aboriginal peoples. Participants in the committee would determine what cases, ideas, evidence, and testimony would be considered ... as well as in what order or at what length and with what ramifications.

The proposed committee would be free to bring in consultants to help the members of that committee gain the most balanced and objective understanding of various testimony and evidence. However, the final authority would rest with the committee.

The length of service could last anywhere from one to two years. Moreover, although the participants might have to be paid more than jurors are currently paid – a lot would depend on the nature of the

social ecology in which such committees are embedded -- participation would be a matter of civic duty just as is the case with respect to grand juries, trial juries, and the healing/teaching circles.

The size of the committees would be open to community debate. The Goldilocks principle might be of assistance in relation to those considerations – neither too big, nor too small, but something that was: 'just right.'

Grand juries often consist of 23-30 people. This might be an appropriate size through which to permit a diversity of perspectives to be exercised.

Those committees would be appropriate for neighborhoods, communities, towns, cities, counties, states and nationally. The number and size of those committees would depend on the dynamics of the social ecology at any given location.

I believe that some sort of security system – whether policing in nature or some other kind of arrangement – would be necessary. However, whatever security arrangement was chosen, that system would be working in conjunction with the proposed grand jury oversight committees, rather than have some sort of power relationship over those committees ... in other words, security arrangements or policing should be servants for the way of sovereignty and not for the way of power.

In many ways, lower courts are concerned with issues of epistemology. That is, they are preoccupied with issues of fairness concerning the presentation of evidence.

As such, I think the epistemological aspect of the court system is, in some form, an important process to retain in relation to the proposed grand jury oversight committees. On the other hand, epistemology does not have to be handled through an adversarial system that tends to reduce down to a zero sum game in which only one side can be victorious and with respect to which winning often becomes more important than truth, justice, or actually resolving a problem.

As noted earlier, the grand jury oversight committees that I have in mind would not be responsible for generating public policy or establishing laws – indeed, no one would. Those committees would be

focused entirely on issues of: disharmony, character, sovereignty, consensus, reconciliation, fair opportunity, and a re-establishing of harmony ... issues with which public policy and laws are supposed to deal but often do so in self-defeating, dogmatic, linear, inflexible, and polarizing ways.

Public policy is the secular version of religious dogma. No one should be required to submit to someone else's ideology – whether secular or religious in nature.

Moreover, the previous chapters of this book should have made it quite clear that there are a number of facets of governance as currently practiced that I consider inherently problematic. For instance, although I believe that under the right circumstances (ones that serve sovereignty and are done in accordance with the qualities of positive character) commerce can be a good thing, capitalism is a theory of commerce that is no more capable of being demonstrated as being true beyond a reasonable doubt than communism or socialism can be so demonstrated.

Similarly, corporations – unless they are controlled by the qualities of constructive character, help to establish and enhance basic sovereignty, and are closely regulated by various grand jury oversight committees – tend to be antithetical to the best interests of society. More often than not, in the absence of conditions of restraint and control, corporations exhibit the symptoms of ideological psychopathy, and, therefore, are likely to create disharmony rather than restore harmony.

In addition, banks should not be privately owned. Everything that private banks allegedly do for society can be done more constructively and cheaply by local communities themselves.

Most forms of currency are about the perceived value of arbitrary characteristics. Real currency, however, is about the intrinsic value of characteristics that are often not appropriately perceived.

Character, labor, and sovereignty have intrinsic values that tend to be de-valued in many, if not most, modern, commercial systems. On the other hand gold, silver and paper money, have arbitrary characteristics that are perceived to be of intrinsic worth and, as a

result, are confused and conflated with matters of intrinsic value, resulting in cycles of inflation and deflation.

Although markets are hyped as the means through which financial capital is set free to move the invisible hand of the market in ways that serve everyone's interests, this simply cannot be demonstrated to be true, beyond a reasonable doubt. By and large, financial markets are merely legalized, and in many cases unregulated (e.g., derivatives), forms of gambling that often have devastating consequences for maintaining harmony within neighborhoods, communities, towns, cities, states, and nations.

Similarly, stock markets are, for the most part, just legalized forms of gambling that have destructive consequences for labor, businesses, the environment, justice, and society. In fact, almost all markets are inherently unfair because one, or more, of the participants in those markets are participating under some form of duress (for instance, consider labor) or playing on an unfair playing field in a game that often is refereed by people with vested interests.

Supposedly, stock markets are, in part, a method for valuing what businesses have to offer. However, more often than not, those valuations are shaped by individuals who are engaged in the manipulation of perceptions concerning that kind of a process of valuation.

National defense should be just that ... national defense. The United States has no business setting up more than 700 military bases world-wide (at a cost of hundreds of billions of dollars a year) or engaging in military adventures whenever and wherever vested financial and economic interests need to have their bottom line protected ... and Smedley Butler was emphatically correct when, based on his own experience, he proclaimed that 'war is a racket.'

More than fifty years ago, Dwight Eisenhower warned us against the military-industrial complex and the problematic impact it had on democracy. All too many people and businesses in the United States earn their living by making the death of others a horrible reality.

If one got rid of elections, corporations, private banks, stock markets (and other markets that are vehicles for gambling, manipulation, and exploitation), the military-industrial complex, most

facets of governance (with the exception of the proposed grand jury oversight committees and associated minimally necessary security apparatus), as well as capitalism, socialism, and communism (but not commerce), one would eliminate a great many of the sources of disharmony in society. Of course, people being people, one would not create a utopia, but maybe – just maybe – the problems of disharmony that remain after all of the foregoing considerations have been eliminated might be become far more manageable.

The ecological system known as America is dying. When it runs down to a final state of stagnant, putrid equilibrium, most of the people who presently populate it will also die ... as will character and sovereignty.

I am not a utopian idealist. The struggle to bring the positive sense of character into ascendency, as well as to establish, protect, and enhance basic sovereignty is a very difficult one.

On some days, I am not hopeful with respect to the prospects for America's future with respect to either the issue of sovereignty or character. I fear for America and its people, as I fear for the people of all countries.

On the one hand, the aforementioned fear is rooted in the way in which negative character seems to be ascendency in all too many places – federal, state, and local governments, commerce, education, legal systems, and religious institutions. On the other hand, the foregoing fear is rooted in manner in which the way of power, with its tendency toward ideological psychopathy, is making the planet uninhabitable for every manner of ecology.

The present system of governance will not be able to avert the human tragedy that is not only heading our way, but is, in all too many ways, already here. A substantial change must be made in the manner through which we go about governance for us to have any chance to save either present or future generations ... we must move in the direction of a true form of self-governance that is rooted in the natural laws of ignorance and character.

There will be many people who will dismiss what is being said in this book. Their rejection of this material will not be because they can bring forth arguments and evidence that are capable of disproving,

beyond a reasonable doubt, what has been said here but because their vested interests are being threatened by what has been discussed across the pages of this work.

The 1% versus 99% issue is not a matter of class warfare or the financial version of penis-envy. Rather, the real issue in the foregoing divide is that the 1% (and, maybe, one should refer here to the 10% rather than the 1%) is responsible for 99% of the problems that plague society, and, yet they want the other 90-99% of the people to subsidize the way of power that has been instituted by the 1% (10%) and that has led to the current condition of extreme disharmony.

The part that the 90-99% has played in the present crisis is, for a variety of reasons, to have become vulnerable -- through the presence of an array of forces of undue influence – to ceding our moral and intellectual agency to the way of power that, in turn, has leveraged that process of ceding to fashion a cult of democracy. The revolution that was started more than 230 years remains unfinished and will continue on in that condition unless we – individually and collectively -- reclaim our basic sovereignty ... the most fundamental of rights for all human beings.

However, if the process of reclamation is not filtered through the qualities of positive character, then we will run the risk of becoming ideological psychopaths. By all means, reclaim the basic sovereignty that has been ceded away ... but in doing so choose wisely and by means of the potential for constructive character – rather than the destructive capacities – which are within each of us.

Everyone wants change, but few people are willing to change themselves or the way in which they go about life with respect to the activities that are necessary to truly enhance the health of the social/political/economic/moral ecology in which we live. Change is going to come whether we like it or not ... the only choice we have is whether we will reclaim the agency that we have ceded to the way of power and establish a viable form of self-governance through the way of sovereignty ... or continue to permit ourselves to slide ever closer to the abyss that is being fashioned by the ideological psychopaths of the world.

This book has focused on the United States ... its history, form of governance, problems, and the challenges that populate the existential

horizons of the near and distant future. However, the underlying principles that have been delineated here are applicable to every nation and every person on the face of the Earth, and in this sense, the United States is but a case study concerning the manner in which the way of power and the way of sovereignty are involved in a battle for the souls of both nations and individuals everywhere.

More, perhaps, might have been said about how the proposed grand jury oversight committees work or what they would do. However, I feel those issues are best left to the people who are on those committees ... after all it is their future – and the future of their families, friends, neighbors, and posterity -- that is at stake.

Chapter 15: Sovereignty

Many people – on all sides of the issue – have been consumed with the: 'Who', 'why', and 'how' of the events on 9/11, but some twenty years later those questions – however important they continue to be -- are not foremost on my mind. Instead, I am concerned with what the events of 9/11 have set in motion with respect to the systematic stripping of rights, freedoms, and sovereignty that occurred in relation to American citizens, not to mention the millions of individuals who were adversely affected elsewhere in the world due to the unjustifiable collateral damage that ensued due to the political, economic, and militaristic forces that were set loose as a result of the events surrounding 9/11.

Due to a variety of factors, Americans – as well as individuals and communities elsewhere in the world -- have been swindled out of sovereignty by an array of scoundrels both known and unknown. For example, in many respects – and despite claims to the contrary -- America has become a failed nation because none of its essential institutions -- such as the three branches of federal government, the military, the Federal Reserve Bank, the media, or academia -- have, for the most part, done anything to prevent tyranny, oppression, and injustice from conducting a blitzkrieg of America and much of the rest of the world.

While the events of 9/11 helped pave the road to the foregoing sort of dissolution, the problem actually began more than 225 years ago with the coup d'état that was set in motion in the summer of 1787 in Philadelphia when a group of people -- sometimes referred to as the 'Founding Fathers' or 'Framers' -- decided to deprive Americans of an opportunity to work toward establishing something that was far better than what ensued. Those venerated historical figures – who, in my opinion, are largely undeserving of that veneration -- helped to establish a republic, and, unfortunately, from the very beginning they betrayed the idea of a republic by failing to live in accordance with the moral principles of republicanism that are at the heart of the form of governance that was allegedly brought into existence by means of a manipulated process of ratification that was set in motion by an array of Machiavellian partisans who referred to themselves as Federalists (For details concerning the foregoing claims, please refer to: *The*

Unfinished Revolution: The Battle for America's Soul as well as: *Democracy: Lost and Regained*).

The so-called 'Founding Fathers' -- especially James Madison who came up with the Virginia Plan that, to a considerable degree, served as the template for the Constitution – were appalled by the idea of democracy. Among other things, the latter mode of government often tended to oppress minorities (consisting of people from among the ranks of the Founding Fathers and their colleagues) in order to appease majorities who -- from the perspective of individuals such as Madison -- were inclined to operate out of arbitrary, volatile perspectives.

One should keep in mind that the mode of government known as a republic is not necessarily synonymous with the notion of a democracy ... representative or otherwise. A republic is supposed to be grounded in principles of morality that govern the actions of those in authority, while democracy, for the most part, is about determining – quite apart from any issues of morality -- who gets to control what goes on within any given context.

By the mid-to-late 1790s, democracy had overrun republicanism as the form of governance that became dominant in America. One of the signs of that transition revolves about the formation of political parties within America during the last years of the eighteenth century.

More specifically, the whole notion of political parties tends to be inconsistent with the moral principles of republicanism that is given concrete expression in the guarantee present in Article IV, Section 4 of the Constitution. The republican form of government that is guaranteed in the aforementioned section of the Constitution (and it is the only guarantee that is present in the foregoing document) requires people in government to be impartial, objective, and unbiased in their deliberations and, therefore, such a moral philosophy indicates that belonging to political parties – which are inherently partisan in nature -- constitutes a conflict of interest with respect to the ethical duties that are expected of members of the federal government who are supposed to operate in accordance with republican principles of political morality.

Relevant to the foregoing considerations is something that might be referred to as: The *Anaconda Principle*. This notion refers to the way

in which most, if not all, governments – federal, state, and local -- engage in a process of increasingly and progressively squeezing the political, emotional, spiritual, social, educational, economic, and physical life out of citizens over a period of time. More specifically, each time the citizenry exhales in relief from having survived some arbitrary, unjustified, problematic exercise in public policy that was imposed on those citizens by government – and before those individuals can fill their lungs back up with the oxygen of self-determination -- the coils of power become wrapped even more tightly about the people through the next round of arbitrary and unjustified policies that are leashed upon the citizenry.

Since 9/11, we have witnessed the introduction of: The Patriot Act (2001 – plus its reauthorization in 2005 that made many of its provisions permanent); The John Warner Authorization Act (2006); the Military Commissions Act (2006); as well as the National Defense Authorization Acts of 2010, 2011, 2012, 2013 and continuing on. In addition, there have been a slew of Executive Orders (e.g., 10990, 10995, 10997, 10998, 10999, 11000, 11001, 11002, 11003, 11004, 11005, 11921, and more) that authorize the government to control virtually every aspect of American society whenever the government deems this to be appropriate.

The Anaconda Principle is being applied ever more rigorously and persistently to the American people. In the process whatever constructive elements of republicanism and democracy that might still be hanging on for dear life after several hundred years of abuse have been squeezed, for the most part, from political existence.

The following set of principles outline a possible social/political framework of self-governance that goes beyond the possibilities inherent in tyrannies, republics, and democracies. The time for change is upon us, and I believe that the kind of change to which I am alluding – monumental though it might be – can be accomplished peacefully and without violence.

Implementing the idea of sovereignty does not require force. However, that process does require individuals to broaden and deepen their understanding concerning the human condition, and when properly understood, sovereignty has a natural appeal to human

beings because it reflects something that is integral to their own identity and sense of being human.

There is a significant difference between, on the one hand, the ways of power, republicanism, and democracy and, on the other hand, the way of sovereignty. We each have a duty of care to carefully and critically reflect on the nature of the choices we might make with respect to the foregoing possibilities.

The following principles are in response to a question that someone once asked me – namely, "What is sovereignty?"

(1) Sovereignty is indigenous to, and inherent in, the potential of human beings. It is not derived from society or governments but, in fact, exists prior to, and independently of, the formation of society and governments.

Sovereignty is not a destination. Rather, sovereignty constitutes a form of negotiated social space that is necessary for human beings to be able to have the best opportunity through which to come to terms with what it means to be a human being.

(2) Sovereignty is the right to realize essential identity and constructive potential in ways that are free from techniques of undue influence (which seek to push or pull individuals in directions that are antithetical to the realization of sovereignty). At the same time, sovereignty requires individuals to conduct themselves in ways that do not infringe on, or undermine, the right of other human beings to make full use of the opportunities that sovereignty makes possible.

(3) Sovereignty entails the human capacity (and corresponding duties of care) to be able to push back the horizons of ignorance concerning the nature of reality.

(4) Sovereignty encompasses the right of each human being to have ready access to a quality of food, shelter, clothing, education, and medical care that is minimally necessary to seek and, if possible, realize identity and constructive potential through the process of pushing back the horizons of ignorance.

(5) Sovereignty is rooted in the duties of care that are owed to others to ensure that the sovereignty rights of those individuals are established, protected, and nurtured.

(6) Sovereignty is the right to choose how to engage the complex boundary dynamics entailed by the idea of: 'Neither control, nor be controlled' that is at the heart of sovereignty.

(7) Sovereignty entails establishing local councils that constructively establish, promote, develop, and protect principles of sovereignty. When and where necessary, those councils would help mediate disputes that arise along the boundary dynamics involving the principle of: 'Neither control nor be controlled'.

The composition, selection, and nature of the council would be similar to that of a grand jury. In other words, council members would not be elected but chosen through an agreed-upon random-like selection process and, then, those selected individuals would be subject to a vetting process (conducted by the community) to determine the suitability of a given individual for taking on the responsibilities of the aforementioned council … much like prospective jurors go through a voir dire process.

The length of service would be for a limited time (e.g., 6 months to a year) before new members would be selected through the same sort of non-manipulated manner and vetting process that was noted earlier. Like a grand jury, the members of a local sovereignty council would be empowered to investigate whatever issues and problems seem relevant to the issue of sovereignty, but, unlike a grand jury, that council would have the authority to research issues, subpoena witnesses, and present their results directly to the community for further deliberation without having to go through the office of a prosecutor, attorney general, or judge.

(8) Sovereignty is the responsibility of individuals to work toward collective sovereignty, and collective sovereignty is nothing but individual sovereignty writ large.

(9) Sovereignty is rooted in economic activity that serves the principles of sovereignty, not vice versa. Consequently, among other things, this means that corporations should be permitted to exist only as temporary charter arrangements devoid of any claims of personhood, and they should be designed to serve specific purposes that can be demonstrated to be of value with respect to both individual and collective sovereignty. Whatever profits accrue from corporate

activity should be shared with the communities that are affected by corporate activity.

The idea that corporations are persons is nothing but a legal fiction. Yet, this fiction is being advanced as something that should have legitimate standing in the real world.

Legal fictions are stratagems invented by lawyers and judges for dealing with certain legal issues. However, neither the lawyers nor the judges can put forth tenable arguments for why the rest of society should accept, and subordinate itself, to those sorts of fictions.

Sovereignty existed before law came into existence. Law is only constructively effective when it serves the principles of sovereignty, and when law is permitted to enthrall sovereignty – as is done when corporations are treated as persons -- then, sovereignty becomes diminished if not extinguished.

Nowhere do: Congress, Supreme Court Justices, federal courts, corporations and, most importantly, the Constitution, ever put forth defensible arguments about why corporations should be considered to be people. There is no underlying set of principles that justifiably and reasonably demonstrates how such a position – i.e., corporations are people – could be defended in a way that clearly demonstrates, beyond a reasonable doubt, why that sort of a position should be accepted and why sovereignty should become subordinate to the idea of a system of law that is independent of, and not guided by, the principles of sovereignty.

(10) The constructive value of money is a function of its role in advancing the principles of sovereignty for everyone. The destructive value of money is a function of the way it can be used to undermine, corrupt, and obstruct the principles of sovereignty.

Money acquires its value through the service it provides in relation to the establishment, enhancement, and protection of sovereignty. The money-generating capacity of banks should serve the purposes of sovereignty both individually and collectively.

Banks should be owned and regulated by local communities as public utilities. Moreover, whatever profits are earned in conjunction with bank activities should be reinvested in the community.

(11) Capital refers primarily to the constructive potential inherent in human beings and only secondarily to financial resources. The flow of capital (in both human and financial terms) should serve the interests of sovereignty for individuals and the collective.

(12) Sovereignty is not a zero-sum game. It is about co-operation, not competition.

(13) Sovereignty is rooted in the acquisition of personal character traits involving: Honesty, compassion, charitableness, benevolence, friendship, objectivity, equitability, tolerance, forgiveness, patience, perseverance, nobility, courage, kindness, humility, integrity, independence and judiciousness.

(14) Sovereignty is not imposed from the outside in but is realized from the inside out by means of an individual's (and the collective's) struggle to come to grips with the meaning of the idea of: 'Neither control nor be controlled'.

(15) Sovereignty is rooted in struggling against: Dishonesty, bias, hatred, jealousy, greed, anger, selfishness, intolerance, arrogance, apathy, cowardice, egocentrism, duplicity, exploitation, and cruelty.

(16) Sovereignty is the process of struggling to learn how not to cede one's moral and intellectual agency to anything but: Truth, justice and character in the service of realizing one's identity, and constructive potential, as well as in the service of assisting others to realize their identity and constructive potential.

(17) Sovereignty can never be defended, protected, or enhanced by diminishing, corrupting, co-opting, or suspending the conditions necessary for the pursuit, practice, and realization of sovereignty. Sovereignty should not be subject to the politics of fear.

(18) Sovereignty is rooted in the principle that no person can represent the sovereign interests of another individual unless the sovereign interests of everybody are equally served at the same time.

(19) The activities and purposes of: Governments, nations, institutions, and corporations should always be capable of being demonstrated -- beyond a reasonable doubt – to be in the service of the sovereignty of the people, taken both collectively and individually. This requires transparency of process on a variety of levels.

(20) Centralization should not be the default position through which individuals interact with one another. Whenever doing so can be demonstrated to serve the interests of sovereignty, de-centralization should be given priority, and only in very limited, temporary instances – if at all -- should some form of centralization be given preference over the idea of decentralization.

(21) Efficiency and wealth should be measured in metrics that are a function of sovereignty and not ways of power.

(22) The principles of sovereignty should be rooted in the notion of sustainability. Therefore, those principles should not be pursued or realized at the expense of endangering or destroying the environment ... either with respect to either the short term or the long term ecological health of the environment … both for human beings as well as in conjunction with other species of life.

(23) Sovereignty is rooted in the cautionary principle. In other words, if there is a reasonable doubt about the safety, efficiency, judiciousness, or potential destructive ramifications of a given activity, then that activity should be suspended until a time when those doubts have been completely, successfully, and rigorously addressed.

(24) The defense of sovereignty is best served through the co-operation of de-centralized communities of sovereign individuals ... with only occasional, limited, and secondary assistance from centralized institutions and groups.

(25) Standing armies do not serve the interests of sovereignty but, rather, serve the interests of the bureaucracies that organize, fund, equip, and direct those standing armies. Being able to defend one's country and communities from physical attack does not require standing armies but, instead, requires sovereign individuals who understand the value of defending the principles of sovereignty that help a community and network of communities to flourish.

(26) The police should not be considered to be law-enforcement officers but should serve as guardians and protectors of sovereignty – both individually and collectively. In many respects, systems of law tend to serve the interests of the ways of power and, therefore, tend to operate in opposition to the ways of sovereignty.

(27) When done correctly, the practice of sovereignty creates a public space or commons that is conducive to the pursuit and realization of the principles of sovereignty by everyone who is willing to struggle toward that end.

(28) Sovereignty is rooted in the principle that the commons – that is, the resources of the Earth, if not the Universe – cannot be proven, beyond a reasonable doubt, to belong to anyone. Therefore, the commons should be shared, conserved, and protected by all of us rather than be permitted to be treated as individual, institutional, corporate, or government forms of private property.

What is being proposed in the foregoing paragraph is neither a form of communism nor socialism. Communism promotes the idea that the means of production are owned by the people, whereas socialism proposes that production should be done in accordance with some form central, government controlled planning for the benefit of all citizens.

If no one can prove – beyond a reasonable doubt – that they are entitled to the resources and lands of the Earth – or specific portions thereof -- then, neither the proletariat nor a central government is justified in claiming ownership of anything, nor are they justified in claiming the right to determine how lands and resources should be used.

Human beings do not own the Earth. At best, human beings have a fiduciary responsibility to the Earth and its inhabitants, and, therefore human beings must engage the Earth like someone would do if that individual were to chance upon resources of unknown provenance.

(29) Whatever forms of private property are considered to be permissible by general consensus, that property should serve the establishment, enhancement, and protection of the principles of sovereignty … both individually and collectively.

(30) All business must be conducted with the idea of helping to establish, promote, or protect sovereignty. All businesses must be conducted from the perspective that since no one is capable of successfully demonstrating -- beyond a reasonable doubt – that they have the right to ownership for the land and resources of the Earth, then all business arrangements are temporary and subject to the

consensus agreement of the community concerning the potential of that sort of a business to serve the interests of sovereignty.

Aside from what is necessary to operate a business in an effective and productive manner, as well as what is necessary in the way of resources to be able to improve that business through research and development, and/or is necessary to provide a fair return for the employees of such a business for their collective efforts, then any profits that are generated by a business should be shared with the community or communities in which that business resides. The shareholders of a business should always be the entire community in which a business is located and not just a select number of private shareholders.

In exchange for the foregoing kind of arrangement, there should be no taxes assessed in conjunction with business operations. At the same time, both businesses and the community become liable for whatever damages to individuals, the environment, or the community (or other communities) that are adversely affected by the activities of those businesses.

(31) A market in which all of its participants are not sovereign individuals is not a free market. Markets that exploit the vulnerabilities of participants are not free. Markets that are organized by the few in a way that undermines, corrupts, or compromises the principles of sovereignty are not free.

Markets in which the participants are all equally sovereign are free. Nonetheless, the freedom inherent in those markets should serve the interests of sovereignty for those individuals who are both inside and outside of those markets.

(32) Sovereignty is only realizable when it is rooted in a collective, reciprocal, guarantee that we will all treat one another through the principles of sovereignty.

(33) Violations of sovereignty are an impediment to the full realization of the principles of sovereignty. However, those violations should not primarily or initially be subject to punitive forms of treatment.

Instead, violations of sovereignty should be engaged through a process of mediated, conflict resolution and reconciliation intended to

restore the efficacious and judicious functioning of sovereignty amongst both individuals and the collective. This mediated process is, first and foremost, rooted in a rigorous effort to determine the facts of a given situation before proceeding on with the process of mediation, conflict resolution, or reconciliation.

A community has the right to defend itself against individuals who violate and show a disregard for, the sovereignty rights of the members of that community. The aforementioned right to self-protection might assume a variety of forms of negotiated settlement between a community and those who undermine the principles of sovereignty within that community or with respect to that community.

(34) Alleged scientific and technical progress that cannot be rigorously demonstrated -- beyond a reasonable doubt -- to enhance the pursuit and realization of principles of sovereignty in conjunction with others – both individually and collectively -- is subject to being governed by the precautionary principle.

(35) Sovereignty is not a form of democracy in which the majority rules on any given issue. Rather, sovereignty is a process of generating consensus within a community that can be demonstrated, beyond a reasonable doubt, to serve the sovereignty interests of everyone.

(36) Sovereignty is rooted in the principle that before making a community decision concerning any given practice, then that community should take into consideration what the impact of that practice might be with respect to generations seven times removed from the current one.

(37) Everyone should underwrite the costs of pursuing, establishing, enhancing, realizing, and protecting sovereignty -- both individually and collectively -- according to his or her capacity to do so.

(38) Sovereignty is not a function of political maneuvering, manipulations, or strategies. Rather, sovereignty is a function of the application of: Reasoned discussion, critical reflection, constructive reciprocity, creative opportunities, and rigorous methodology in the pursuit of pushing back the horizons of ignorance and seeking to establish, enhance, realize, and protect sovereignty, both individually and collectively.

(39) Sovereignty is not about hierarchy or leadership. Advisors and technical consultants who are capable of lending their expertise and experience to a given project that serves the interests of sovereignty in a community are temporary facilitators whose responsibilities do not extend beyond a given project or undertaking. Those facilitators often tend to arise in the context of a given need and, then, are reabsorbed into the community when a given need has been met.

(40) Education should serve the interests of establishing, developing, enhancing and protecting the principles of sovereignty – both individually and collectively – and not serve the interests of the way of power. Education should not use techniques of undue influence that push or pull individuals toward accepting, or rejecting, specific philosophical, political, economic, or religious perspectives.

(41) To whatever extent taxes are collected (and the issue of taxes needs to be considered and justified – to whatever degree this can be accomplished -- in a critically, rigorous fashion), then those taxes should be assessed only on a local basis and only after all sovereignty needs of an individual for a given period of time have been addressed. Those taxes should be proportional -- within generally agreed upon specific limits -- to a person's capacity to pay those taxes without undermining a person's ability to fully pursue realizing the principles of sovereignty.

Whatever taxes are collected can only be used in conjunction with projects of which the individual taxpayer approves. Disputes concerning the issue of taxation should be handled through mediated discussions and not through punitive or coercive policies.

The foregoing statements of principle concerning the idea of sovereignty mark the beginning of the exploratory process, not the end. We all need to critically reflect on the foregoing set of principles because what we have today is working for just a very small number of individuals that follow the way of power and, as a result, seeks to prevent people in general from being able to pursue, establish, enhance, realize, and protect the principles of sovereignty. (For further reflections on sovereignty and the constitution, see: *The Quest for Sovereignty*, *Sovereignty: A Play in Three Acts*, *Beyond Democracy* –

especially the Introduction, Chapters 1-2, as well as Chapters 8 through 13 of this latter work – *Framing 9/11, 3rd edition, Evolution Unredacted, Educational Horizons, and The Spirit of Religion*).

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