

Why Governments Fail: An Inquiry into the Use of Instruments of Evil to Do Good

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In addressing the topic of “why governments fail” I shall emphasize the obvious. The very nature of government involves the legitimate use of force in ordering human relationships. The use of force in human relationships is of the nature of an evil. The use of instruments of evil as a necessary means to realize the advantage of ordered social relationships creates a fundamental moral dilemma that can be appropriately characterized as a Faustian bargain. A reasonable expectation, given the Faustian bargain, is that governments will fail. To ignore the moral dilemma is to set a course that inevitably leads to human tragedy.

In examining the Faustian bargain inherent in human societies, I shall draw upon two analytical traditions that attempt to cope with this problem. One is Thomas Hobbes’s explanation of the nature of political phenomena. In drawing upon Hobbes’s analysis, I shall emphasize the relationship of political organization to human well-being and show how instruments of evil are necessary to the realization of the common good. Hobbes’s solution turns upon a sovereign’s accountability to God, and fails if a sovereign neglects his responsibility to God.

I shall then turn to American efforts to devise an alternative solution where the exercise of governmental authority is subject to a rule of constitutional law. The Faustian bargain remains an integral part of this solution but the constraints inherent in a system of constitutional law may place some limits upon those who would use the coercive powers of government to their own advantage. But such constraints will have the desired effect only if citizens in a democratic society have a critical self-awareness of what they are doing and exercise their prerogatives of constitutional choice so as to maintain appropriate limits. Under these circumstances, the normal expectations of tragedy can be ameliorated somewhat. Attention will be given in conclusion to some factors that detract from developing a critical self-awareness among citizens about problems of constitutional choice in a democracy.

Hobbes’s Leviathan

Some of the puzzles or paradoxes inherent in the human condition are best highlighted in Hobbes’s analysis of the basic logic inherent in the organization of human societies. Hobbes proceeds on the assumption that commonwealths are artifacts (“artifices” is his term) and that human beings are both the material (matter) of which commonwealths are made and the artisans (ar-

tifiers) that create and organize commonwealths. Like a modern economist, Hobbes treats the individual as the basic unit of analysis and devotes the first several chapters of *Leviathan* to human nature. His development of a theory of governmental organization involves three major steps.

Elements in a Theory of Governmental Organization

The first step is to try to conceptualize a situation that is devoid of all of the constitutive elements of a commonwealth except for human beings. Without rules or any of the other constitutive elements of political organization, Hobbes anticipates that human beings will experience a state of war of each individual against every other individual, where “the life of man” would be “solitary, poor, nasty, brutish, and short” (82). Since Hobbes has posited that the object of each individual is “some good to himself” (86), a puzzle or paradox is created: people seek their own good but realize misery instead. An unconstrained pursuit of self-interest yields the misery of war. Hobbes then anticipates that human beings can have recourse to reason to avoid the miseries of war.

The second step is to conceptualize peace as an alternative to war and proceed from the imagined consequent to identify the causes so that the conditions necessary to the realization of peace might be specified. In doing so, Hobbes formulates his laws of nature. Since these specify rules for the ordering of human relationships that will lead to peace, they can be viewed both as logically necessary conditions for peace and as moral precepts. The rules imply that some forms of behavior are foreclosed and other forms of behavior are allowed. Language is used to partition behavioral space by moral criteria. These criteria distinguish admissible from inadmissible patterns of conduct. Since human beings are creatures that use language, they can use words formulated as rules to order their relationships with one another.

Hobbes views his natural laws to be generally consistent with the Golden Rule: “*Do not that to another, which thou wouldst not have done to thyself*” (103). He suggests that the Golden Rule can be used to make his laws of nature intelligible even to those of the “meanest capacity.”

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

This capacity of an individual to take on the perspective of another and potentially to function as an impartial observer is related to Hobbes’s presumption that an underlying “similitude of thoughts and passions” (6) characterizes all mankind. Men vary in the objects of their thoughts and passions. But there is an underlying similitude of thoughts and passions that enables one person, by first coming to understand oneself, to understand how others think

and feel. To the extent that human beings share an underlying similitude of thoughts and passions, grounds exist for the development of common elements of understanding and agreement among human beings. Those characteristics that are shared in common by all mankind are the universal characteristics of human nature.

Hobbes's laws of nature are derived from these presuppositions. He anticipates that each individual would, on prudent, self-interested grounds, prefer peace to war. Thus, each human being would have an individual preference for living a life in accordance with the moral precepts inherent in the laws of nature, rather than to endure the miseries of war. "The laws of nature are immutable and eternal" (104) because the vices of injustice, ingratitude, arrogance, pride, iniquity, etc., can never be a lawful basis for governing human relationships.

The third step in Hobbes's analysis is the most difficult one. While everyone would prefer peace to war, no one would act in conformity with the laws of nature unless others did so too. The problem then is how to bind men to their words so that the rules implied by the laws of nature can be made effective in ordering human relationships. Universal acceptance of the laws of nature as good is not sufficient. It is necessary to have recourse to "the terror of some power to cause them to be observed" because the laws of nature are contrary to some passions that carry human beings "to partiality, pride, revenge, and the like" (109). "[C]ovenants, without the sword, are but words, and no strength to secure a man at all" (109). This poses a serious dilemma in organizing human social relationships. Instruments of evil—the terror of the sword—are necessary for realizing the common good of peace.

Hobbes's resolution is for each individual to recognize that the advantage of a rule-ordered society requires recourse to some human agents who are authorized to function as rulers and others as ruled. Rules necessarily imply both rulers and ruled. Hobbes's basic covenant for the creation of a commonwealth, thus, requires each to surrender his natural right to govern himself to a ruler or assembly of rulers who exercise the basic prerogatives of rule, including the terror of the sword to bind men to their word. For there to be a single system of rules, Hobbes reasons that there must be a single source of rules. Those who are the source of rules cannot themselves be held accountable to law. Those who rule exercise an unlimited and undivided authority to govern.

In Hobbes's formulation, civil law embodies the principles of the laws of nature; and civil law becomes the measure of right and wrong, justice and injustice, and lawful and unlawful. By definition, then, those who exercise sovereign prerogatives can do no injustice, nor commit a wrong under law. While sovereigns cannot commit an injustice in Hobbes's theory, he does recognize that they can commit "iniquities" (116).

Hobbes's commonwealth thus depends upon a radical inequality between sovereigns, as those who exercise the prerogatives of rule, and subjects, as those who are bound by rules as the necessary condition for deriving the benefits of a rule-ordered society. Again, rules imply rulers and ruled. Those

who rule wield the sword of justice. The advantages of law depend upon the potential use of instruments of evil in the enforcement of law.

The Faustian bargain inherent in the potential use of instruments of evil as necessary conditions for deriving mutual advantages in a system of law creates extraordinary opportunities for those who exercise the prerogatives of rule to exploit others and to dominate the allocation of values in a society. Hobbes recognizes this possibility, but he considers a willing acceptance of these burdens on the part of subjects as the price of peace. He sees no way that rulers can be held accountable to others without the creation of some new sovereign who would exercise ultimate authority. As a result, he contends that sovereigns can be responsible to none but God. We need then to consider Hobbes's conception of God and how an accountability to God might affect the use of instruments of evil to do good.

The Metaphysical Key to Hobbes's Commonwealth

Hobbes considers the "general inclination of all mankind" to be "a perpetual and restless desire for power after power, that ceaseth only with death" (64). Power is defined as "present means to attain some future good" (56). Human life is thus marked by a continual striving for present means to attain some future good that goes on without end and ceases only with death.

Among the manifestations of this continual striving is an "anxiety for the future time," which

disposeth men to inquire into the causes of things; because the knowledge of them, maketh men better able to order the present to their best advantage.

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

Love of knowledge thus leads human beings to conceptualize God as eternal being. Man can conceive of God as eternal being, but there is no way that God can be directly perceived by humans as an observable being. The meaning of God can either be discovered by "the natural dictates of right reason" (233–34) or by revelation and the teaching of the prophets. True religion for Hobbes is one where revelation and prophetic teachings are consistent with the dictates of right reason.

Hobbes explicitly views his laws of nature or articles of peace as being "Divine laws" (235). If God is an eternal being ruled by covenant, then those rules would be "immutable and eternal" (104) and serve as a basis for governing relationships among all who acknowledge an eternal providence (233). The question then is what accountability to God implies when Hobbes indicates that a sovereign is accountable to none but God. This is the central issue addressed in Hobbes's chapter on the Kingdom of God by Nature.

In developing his argument, Hobbes turns to the common meaning of the

terms used to express the concepts of worship and culture in Latin. He suggests that the education of children in the sense of “a *culture* of the mind” (235) provides the proper referent for the relationship of sovereigns to subjects. Hobbes then observes:

where men’s wills are to be wrought to our purpose, not by force, but by compliance, it signifieth as much as courting, that is, a winning of favour by good offices; as by praise, by acknowledging their power, and by whatsoever is pleasing to them from which we look for any benefit. And this is properly *worship*; in which sense *Publicola*, is understood for a worshipper of the people; and *cultus Dei*, for the worship of God. (235–36)

“Courting” in the sense used by Hobbes might be translated to mean “loving care.” The proper attitude of one who cultivates the minds of children is one of loving care. This, to Hobbes, means worship.

The conclusion that Hobbes draws from a somewhat more elaborate argument is that “obedience to his [God’s] laws, that is, in this case, the laws of nature, is the greatest worship of all” (239). Adherence to the natural laws is the highest form of Divine worship. In turn, the neglect of God’s laws “is the greatest of all contumelies” (240). Hobbes then concludes, “And these are the laws of that divine worship, which natural reason dictateth to private men” (240).

Hobbes goes on to conclude his chapter on the Kingdom of God by Nature by warning of the natural punishments which will follow from a neglect of God’s law.

There is no action in this life, that is not the beginning of so long a chain of consequences, as no human providence is high enough, to give a man a prospect to the end. And unpleasing events; in such manner, as he who will do any thing for his pleasure, must engage himself to suffer all of the pains annexed to it; and these pains, are the natural punishments of those actions, which are the beginning of more harm than good. And hereby it comes to pass, that intemperance is naturally punished by diseases: rashness, by mischances; injustice, with the violence of enemies; pride with ruin; cowardice, with oppression; negligent government of princes, with rebellion; and rebellion, with slaughter. For seeing punishments are the consequent to the breach of laws; natural punishments must be naturally consequent to the breach of the laws of nature; and therefore follow them as their natural, not arbitrary effects. (240–41)

We can conclude from Hobbes’s analysis that instruments of evil can be used to gain the advantages of peace and the other benefits of human organization *only so long as those who exercise the prerogatives of rule do so with loving care for their subjects and adherence to the moral precepts of the natural laws as the highest form of worship owing to God as eternal providence.*

Moral virtue, in Hobbes’s theory of government, derives critically from

the virtue of those who exercise sovereign authority. Once virtuous sovereigns exist, law can be used as the measure of value. Virtue accrues to subjects by learning to order their relationships with one another by reference to law. But if moral virtue is abandoned by those who exercise the prerogatives of rule, bad laws become “traps for money” (228) and rulers can use their prerogatives to exploit others. Those who have greatest confidence in their capacity to do good suffer false pride and can produce the greatest evil. Instruments of evil come to dominate human relationships and the human condition assumes tragic proportions. A basis no longer exists for reciprocity to occur among members of human communities on mutually beneficial terms. Peace and concord give way to oppression and tyranny. These are the natural punishments that flow from a neglect of moral virtue that is consistent with prudent self-interest.

Efforts to Limit the Exercise of Governmental Prerogative by a Rule of Law

If the lot of mankind is the negligent government of princes, then Hobbes’s quest for peace can be expected to yield oppression and tyranny instead. This circumstance leads to the question of whether human beings might again have recourse to reason and search out an alternative to Hobbes’s theory of sovereignty. A revolution, or a rebellion in Hobbes’s terms, would not suffice. A successful revolution would merely replace an existing sovereign with a new sovereign. When successful revolutionists demand unlimited authority to accomplish the tasks of the revolution, they are making a claim for unlimited sovereign authority. If people acquiesce in that claim a new sovereign is created; and that new sovereign confronts anew the dilemma inherent in using instruments of evil to do good.

The struggle from the sixteenth century onward, especially in Europe and North America, has been one of finding an alternative to unlimited exercise of sovereign authority. While there are venerable traditions in Switzerland, the Netherlands, Great Britain, France, and elsewhere in Europe, I shall draw upon efforts in the United States of America to fashion a solution in which no one would exercise absolute authority and everyone would exercise some fundamental authority in the governance of society. In this arrangement, all exercise of governmental authority is subject to a rule of law. Government, as the legitimate use of coercion to enforce law, is necessary to gain the benefits of an organized society. The question is whether recourse to a rule of law that applies to the conduct of government might reduce the tendency to use instruments of evil to exploit others and dominate the allocation of values in a society. To explore this question requires one to specify the conditions that would apply to a system of government where rules of law might be enforced against those who govern. Rather than presuming that governmental authority is indivisible, the American theory of constitutional choice presumes that authority can be allocated and distributed in a complex structure of

authority relationships. Several basic distinctions are made for developing such a system of allocated and distributed authority.

The Structure of Constitutional Rule

Perhaps the most basic distinction is that made between a constitution as fundamental law and ordinary law. A constitution applies to the organization and conduct of government. Ordinary law applies to patterns of social relationships that would normally characterize relations among subjects. These distinctions, in turn, depend upon distinctions between constitutional decision making and governmental decision making. Effective limits cannot be maintained if a government is free to alter the basic law that applies to its own organization and conduct. As a result, special prerogatives are reserved to the people to decide matters pertaining to a constitution as fundamental law. But a government can exercise authority to enact and revise ordinary law subject to the terms and conditions of basic constitutional law.

Once the distinction between a constitution and ordinary law, and between constitutional decision making and governmental decision making, is established, it is then possible for a people in a democratic society to decide upon the basic allocations of authority that are specified in the terms of a constitution itself. Three different types of provisions can be viewed as having an important place in establishing limits upon the exercise of governmental authority.

The first of these limits pertains to the formulation of the basic authority of persons and citizens together with the implied correlative limits upon the authority of government. If citizens are to exercise basic prerogatives of government then their capacity to maintain an open public realm for discussions, debates, and deliberation about public affairs, free from dominance by governmental authorities, is essential. Freedom of speech, press, and assembly become essential prerogatives accruing to individuals in a democracy with correlative limits upon the authority of government. Similarly, persons and citizens require an individual authority to exercise autonomy in the governance of their own affairs: individuals in a democracy are first their own governors. Authority pertaining to rights of property, contract, and voluntary association are, thus, fundamental prerogatives of persons in a democratic society. In addition, the right of both citizens and persons to make enforceable claims upon officials exercising governmental prerogatives is essential in assuring due process of law. Procedural rights specify the liability of officials to conform to rules governing official conduct so as to fulfill the procedural requirements for doing justice.

Another method of distributing authority in a democratic constitution is to allocate the prerogatives of government among different types of decision structures. In the American experience this is typically done by distinguishing legislative, executive, and judicial functions, and assigning authority so that each decision structure is subject to limits exercised by other decision structures. This system of reciprocal vetoes gives rise to what is characterized as a

system of checks and balances. Governmental action requires the concurrence of the different decision structures. Each decision structure is constrained by the limits imposed by the others. The realm of feasible actions is bounded by limits; and, so long as the different decision structures act within the constraints of constitutional law, a system of government can be conceived where no one structure is allowed to dominate the rest and all forms of governmental actions occur within the constraints of fundamental law.

A third type of limit specified in American constitutions is provision for the direct or indirect participation of citizens within the different decision structures of government. The election of legislative, executive, and judicial officials allows for the direct participation of citizens in selecting the basic personnel of government and for the indirect representation of citizens in the councils of government. Among the states, provision for citizen participation in the affairs of local units of government is even more extensive than was provided for in state governments themselves. In addition, direct citizen participation in the operation of the judiciary occurs in the organization of trial juries and grand juries. A decision to use the coercive authority of the community thus allows for the direct participation of citizens in making such decisions. The exercise of punishment associated with the violation of law depends upon the right of each person charged with a crime to the right of a trial by jury. Citizens have a direct role in scrutinizing the charges made by officials before coercive sanctions can be imposed.

Grand juries provide further opportunity to scrutinize the grounds for levying criminal charges and more generally inquiring into the discharge of public trust by public officials. Grand juries are entitled to initiate their own investigations into the discharge of responsibilities by public officials and can return indictments for misfeasance or malfeasance in office when evidence exists to support such charges.

Amplifying Limits through Principles of Federalism

The most difficult problem in fashioning a system of government that is subject to a system of constitutional law arose in the development of a government that applied to the United States of America as distinct from the several states. The first efforts to establish such a government drew upon principles of confederation in which the several states were represented in a Congress that was vested with authority to act on behalf of the several states in formulating measures that would apply to continental defense, interstate and foreign commerce, and other matters of joint interest.

After a period of initial experience with principles of confederation, the conclusion was reached that those principles were based upon a fundamental error in conceptualizing the nature of government. A new effort was made to fashion an alternative structure based upon principles that have come to be identified with a federal system of government as distinguished from a confederation. The crucial point at issue is whether Congress as a government could govern other governments, or whether it was necessary to create a

concurrent system of government, which included executive and judicial as well as legislative instrumentalities that could then act in relation to the person of individuals. The conclusion was reached that justice could not be done unless the authority of magistrates relates to the person of individuals. The use of collective sanctions does not discriminate between wrongdoers and those who are innocent of wrongdoing. The requirements of justice thus depend upon the organization of governments that relate themselves to the person of individuals as responsible actors. The sword of justice must apply to persons in their individual capacities rather than to collectivities.

Federalism permits the concurrent application of principles of constitutional rule; and the integrity of a federal system can be maintained only so long as all units of government are subject to an enforceable system of constitutional law. Under these circumstances, people can participate in the organization and governance of diverse communities of interest without having a single unit of government that exercises sovereign authority. Rather, people can participate in diverse units of government, each of which exercises limited authority.

Principles of federalism are potentially subject to indefinite extension. Under those circumstances, all human relationships might potentially be subject to law. Hobbes's theory of sovereignty, by contrast, implies that relations among sovereigns cannot be constrained by law. The human lot, under those conditions, is limited to one where islands of peace might be attained within commonwealths. Relationships among commonwealths themselves would remain under a continued threat of war.

The rather ingenious constitutional paraphernalia of the American system of government is extended to a point where no one exercises unlimited authority. No one is allowed to be a judge of his own cause in relation to the interests of others. All who exercise authority are subject to limits. Under these circumstances, those who exercise the prerogatives of government can be subject to the limits of an enforceable system of constitutional law.

Institutional Failure in Constitutional Orders

But this ingenious constitutional apparatus continues to be subject to institutional failure. Wherever majorities can dominate access to instrumentalities of government they can use those instrumentalities to exploit others. Systematic exclusion of blacks from the offices of persons and citizens permitted one of the most oppressive tyrannies known to mankind in the form of that peculiar institution of American slavery. The extension of legal personality and citizenship, following the American civil war, failed to prevent ruling coalitions from forming to continue the exploitation of blacks in many American communities.

Traditions of machine politics and boss rule developed where those who controlled elections could dominate all relevant decision structures and exploit the coercive powers of government to their own advantage. In the course of doing so, the power of eminent domain and the granting of public fran-

chises enabled a generation of robber barons to gain control over public utilities as natural monopolies and capture a lion's share of the economic rent inherent in nineteenth-century economic development. Similarly, in the contemporary scene, control over the supply of money and credit enables some to usurp the prerogatives of government and impose the costs upon others through an increasing rate of inflation.

The use of instruments of evil to do good continues to plague even societies organized according to constitutional principles of limited and federal government. The question remains whether people in a democratic society can have recourse to the appropriate knowledge and processes for decision making so as to correct the problems of institutional failure when these become manifest in human relationships. Can oppressed minorities, such as American blacks, have recourse to appropriate decision-making processes so that remedial actions under universal standards of law can be taken despite their minority status? Can the rig of the political game be changed to reduce the dominance of political bosses? These questions point to the essential importance of citizens being able to act in a way that imposes limits upon officials and to make constitutional changes to reestablish limits when prior limits no longer suffice.

The Moral and Metaphysical Foundations of Constitutional Choice

We are thus confronted with the question of whether citizens in a democracy can organize the conduct of moral and political inquiry under circumstances where they can take account of each other's interests and do so in a way that is consistent with the responsibility of Hobbes's sovereign to God as eternal being. Citizens in a democracy, if they are ultimately responsible for maintaining the limits of constitutional rule, must be accountable to the same moral and metaphysical standards as Hobbes's sovereign.

Hobbes proceeds on an assumption that unity of a commonwealth derives from having one sovereign whether that sovereign is one man or an assembly of men. A multitude can function as an organized society for Hobbes only as it derives unity from the exercise of authority by a single sovereign representative. But for a democracy to function there must be an agreement upon the basic constitutional terms and conditions for doing so. Unity must derive from the represented. The measure of what is right and wrong, just and unjust, lawful and unlawful comes not from the ordinary law but from measures that citizens can use in evaluating the conduct of officials in the discharge of their governmental responsibilities. Can we imagine circumstances where citizens in a democracy will have opportunities for the conduct of moral and political inquiry that are conducive to the exercise of prerogatives of constitutional choice so that the discharge of governmental prerogatives conforms to appropriate moral precepts?

Such a possibility might be derived from Hobbes's basic presupposition that human beings are potentially self-knowing creatures that share a simili-

tude of thoughts and passions characteristic of all mankind. By reflecting upon the way one thinks and feels, one can come to an understanding of oneself as an autonomous creature and use one's reflective knowledge to order one's life in a way that enables one to become a responsible being, both in relating to other human beings and to other forms of being. In doing so, one might come to understand how others think and feel without knowing the particular idiosyncrasies of their thoughts and passions. A limited ground exists for making intersubjective comparisons about what it means to be human.

Such a method of inquiry enables potentially self-knowing creatures to become aware of their own essential values in considering their relationships with others. On the basis of such inquiries, informed by the responses of others, human beings may develop appropriate measures for informing human choice and in evaluating human actions. If there is a basic similitude of thoughts and passions characteristic of all mankind, such modes of inquiry should permit people who share a community of interest with each other to reach general concurrence about the criteria of choice that have fundamental meaning to each and every person. Common understanding, if properly grounded, gives rise to common agreement.

If human beings can develop appropriate measures to serve as criteria of choice and for the evaluation of human actions, we might follow Hobbes further in anticipating how appropriate rules of conduct might be derived from natural dictates of right reason. The measure here is to contemplate how God might rule by covenant. Such rules would then be universal rules that would be consistent with the criteria of choice that take account of the basic values derived from the similitude of thoughts and passions characteristic of all mankind. Such rules would, if properly understood, serve as the basis for ordering human relationships that would be consistent both with the prudent interests of fallible creatures and with a universal order.

Moral virtue in a democratic society thus depends upon citizens having knowable grounds for establishing measures that can both be used as criteria of choice and standards for evaluating human actions. Such measures should serve as criteria of choice in devising rules of law that are applicable to the contingencies found in existential situations and for evaluating actions that flow as a consequence of using such rules to order relationships among human beings. Such measures should be applicable to both rulers and ruled. To be appropriate such measures of value should provide the basis for maintaining reciprocity among members of human communities on mutually beneficial terms. Self-interest rightly understood, to paraphrase Tocqueville, depends upon a shared understanding of moral virtue that is consistent with prudent self-interest.

If decision processes are organized so as to facilitate the testing of intersubjective comparisons, we can have some measure of confidence in their "objective" character. We continuously rely upon human beings to judge good wines, talented singers, the power and gracefulness of ballet dancers,

and the skill of gymnasts. Citizens, if provided with the appropriate circumstances, can learn to recognize a wrong or an injustice when they see it. Fallibility also requires that such judgments be carefully scrutinized by others so that no one is allowed to judge his own cause. “[M]an can transcend his own subjectivity by striving passionately to fulfill his personal obligations to universal standards” (M. Polanyi, *Personal Knowledge* Chicago: University of Chicago Press, 1958). Only by striving passionately to develop appropriate measures for evaluating human action can we aspire to standards that can apply to rulers and ruled alike.

The viability of a democratic society depends upon a shared understanding of the meaning that is attributed to the basic value terms inherent in rule-ordered relationships. Citizens are responsible for understanding the terms that are embodied within the framework of fundamental law. As both subjects and citizens, individuals in a democratic society are required to know when obedience is proper and when disobedience is essential to maintain the limits of an enforceable system of constitutional law. Otherwise, the usurpation of authority by officials will threaten the viability of any democratic society. If citizens as subjects acquiesce in the usurpation of authority by officials, unlimited prerogatives will prevail and a democracy will cease to exist.

Thus, citizens need to know the basic criteria of choice that pertains to the proper exercise of governmental authority. Without such criteria of choice, to paraphrase Hobbes, one does not know, when commanded by officials, whether it is contrary to fundamental law or not. In such a circumstance, a citizen by “too much obedience” (232) can offend against the fundamental law.

We might look upon democracies as a way of life in which citizens are the basic artisans responsible for the governance of such societies. The language of artisanship is always thoroughly permeated with the use of value terms. The opportunities for political artisanship extend to all forms of association in the organization of collective endeavors and are not limited to constitutional decisions that apply only to national governments. So long as basic principles of organization can be reiterated in the organization of diverse associations and consistent measures can be used as criteria of choice across associations, we can have recourse to general principles of organization that can be applied to attain complex structures that take account of diverse communities of interest. So long as citizens are experienced in the skills of political artisanship, and share a knowledge of political artisanship, we can have some confidence that the basic principles of constitutional choice can be articulated in the way that citizens can use in the organization and conduct of their everyday lives.

Conflict over basic matters of governance may, if appropriately presented in a language of constitutional choice, provide the occasions for a continuing inquiry about recurrent issues of institutional weakness or institutional failures that require the attention of citizens as constitutional decision makers. So long as the political process is organized to facilitate basic constitutional

inquiry, we might assume that citizens in a democracy can acquire capabilities to address and solve new problems over time.

Threats to the Maintenance of Constitutional Order

We are, however, also confronted with the circumstance that a universal characteristic of human beings is their capability for learning. They enter into being, not as fully equipped omniscient observers endowed with perfect information, but as creatures that only have a potential for learning. When amplified with the development and use of language, human beings acquire extraordinary potential for learning, but those potentials are unlikely to be exhausted. So long as human beings have potentials for new learning, they can never escape the burden of being fallible.

The problem of maintaining ordered social relationships is always subject to the basic limitation and tension that the human condition is itself subject to transformation in light of new knowledge and new patterns of development that occur as a result of new knowledge. The referent to which the language of rule-ordered relationships applies is itself subject to change. What is “interstate commerce” in the meaning of the U.S. Constitution, for example, is quite different today than when that term was first specified in 1787. This circumstance greatly increases the ambiguities associated with the use of language in rule-ordered relationships.

The language appropriate to citizenship in a democratic society can also be easily corrupted. The cult of modernity leads the “modern” intellectual to reject the terminology of an earlier generation as archaic. Value terms in particular are apt to be identified as meaningless. With the rejection of value terms as meaningless comes a denial of the artifactual nature of political and social phenomena and a demand that methods of the natural sciences be applied to the study of such phenomena. Value terms are at the core of rule-ordered relationships, and rule-ordered relationships are at the core of political order and social relationships. An intellectual tradition that rejects value terms as meaningless cuts itself off from the essential nature of political and social phenomena. If citizens were to accept epistemological positions taken by many modern scholars, they would be devoid of the appropriate moral and metaphysical grounds for functioning as intelligent constitutional decision makers.

While we can conceptualize the possibility that citizens might develop the appropriate conditions of moral and political inquiry for exercising constitutional choice, we also must recognize that human beings continually strive to test the limits of their capabilities. Under these circumstances we need to recognize that the use of instruments of evil to do good is always problematical. Human beings can aspire to creating the conditions of life where prudent self-interest is consistent with universal standards of freedom, justice, and mutually productive relationships. But these conditions depend upon potential recourse to the coercive power of the sword. If human beings become critically aware of the burden of being fallible, they might learn how

to make only very limited use of instruments of evil to do good. In that case, human beings would learn to live with the conditions where both rulers and ruled are subject to the rule of law and are held accountable to the same standards of evaluation.

NOTE

This paper was prepared for presentation at an international symposium on Anatomy of Government Deficiencies held in Diessen am Ammersee (Bavaria), July 22–25, 1980. It draws heavily upon work that I am currently doing on a book-length manuscript entitled *Leviathan and Democracy*. References are to the Michael Oakshott edition of Hobbes's *Leviathan* (Oxford: Basil Blackwell, 1960).