

Preliminary Draft

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DEMOCRACY AND THE ADMINISTRATIVE STATE

Edward L. Rubin

CHAPTER THREE

Now that the criteria for a theory of democracy have been identified and the existing theories canvassed, the theory that this book proposes and elaborates can be presented. It was introduced in Chapter 1, beginning with the gap in current theories, then proceeding to the central features of this book's thesis, and ending with the underlying concept of society on which that thesis rests. This chapter's more complete and systematic presentation will proceed in the opposite order. First, it will discuss the concept of society that emerged in the Western World at the end of the Eighteenth Century and gave rise to modern democracies. Then it will explicate the essential features of those democracies – the historically grounded mechanisms of representation and specialized administration. It will follow by demonstrating how those mechanisms account for features of modern democracies that are omitted from existing theories, and conclude with answers to the objections that will naturally occur to many readers.

The starting point for this book's thesis is that a transformation of political, economic and social life occurred in Europe and its North American colonies at the end of the Eighteenth Century.¹ This thesis depends upon two heuristics which should be briefly noted before proceeding with the explication. First is the division of society into its political, economic and social elements, the last of which is often described as civil society.² Whatever the shortcomings of this approach, it has the advantage of familiarity. It is being used here as a means of organizing a set of external observations, not a strong claim about the separate identity of these elements or their character as self-contained and structured systems. The very nature of a functioning society is that there are extensive connections among these elements, and the very nature of nature is that the relationship between large-scale phenomena that extend over long periods of time will necessarily be interactive, or co-causal. A change in one area produces

concomitant changes in another, which in turn produce concomitant changes in the first. Some of these connections occur on the surface of society, which is not to say that they are shallow or minor, but that they are apparent to people at the time. Other connections run deeper, involving structures of thought that can be discerned only in retrospect. But there is rarely any validity, or any value, in univalent assertions of causality, even such celebrated ones as the claim that the English Civil War was caused by the economic rise of the gentry,³ or that capitalism was caused by Calvinism.⁴ This is not Humean skepticism. Gavrilo Princip caused the death of Archduke Ferdinand and an atomic bomb caused the destruction of Hiroshima. But the origins of World War I and the revival of the Japanese economy after World War II cannot be attributed to a single event; they were co-causal.

A second heuristic is that history can be periodized and delimited boundaries among those periods identified. As is commonly acknowledged, this approach must be used with caution. It is virtually impossible for us to think of Western history without identifying the Thirteenth Century as part of the Middle Ages or the Fifteenth Century as the Renaissance, but Thirteenth Century people did not view themselves as located midway between the Ancient World and a modernity that had yet to emerge, while the term Renaissance was invented by a Nineteenth Century historian and refers to developments that are salient mainly to modern literature professors and museum goers. One caution is that boundaries between periods should generally be treated as turning points or tipping points of long-acting developments, not as hard-edged dividing lines. A second is that periodization is more reliable when it is perceived as such by the people who experienced it. Although the thesis of this book involves all the elements of society, its focus is on the political system, and here the identification of the late Eighteenth Century as a turning point respects both these qualifications. It is well understood that the American and French Revolutions were the product of England's gradual expansion of political rights and parliamentary government in the first case, the century-long deterioration of France's royal absolutism in the second, and the ideas of the Enlightenment in both. And no one living in Western Europe or the English-speaking colonies of North America at the time of the American and French Revolutions doubted that these events represented a remarkable turning point in political history.

A. Transformations in the Political, Economic and Social Systems in Pre-Modern Europe

The transformation of the political system that occurred at the end of the Eighteenth Century is best understood in the larger historical context of Western civilization. That civilization is typically dated to the collapse of the Roman Empire in the Fifth Century. The five centuries that followed, traditionally described as the Early Middle Ages, is one of the familiar periodizations whose value has been questioned. Peter Brown and others prefer to think of the Third to Seventh Centuries as Late Antiquity, noting that economic and social life showed notable regularities during this period, and differed more profoundly both before and after.⁵ For

ordinary people, whether landowners, artisans or peasants, the event that marks the fall of Rome for us – the replacement of the last Latin Emperor in the western half of the Empire by a Germanic warrior in 476 – was a distant and trivial incident. Gregory of Tours, the literate Latin bishop who wrote a history of the Frankish Kingdom that succeeded the Roman Empire, never even mentions it.⁶ But in political terms, the collapse of central authority in the West during the course of the Fifth Century remains significant because it required the leaders in that region, such as the Frankish kings, to devise new modes of governance.

What they developed were kingdoms where local leaders controlled delimited areas on the basis of royal grants that either conferred authority on them as comrades of the king or recognized them as former opponents who had submitted to his rule. With the gradual dissolution of the institutions that enabled the preceding imperial regime to exercise control through literate, tax-supported administrators, these local leaders assumed virtually all the functions of governance. They carried out these functions by granting land in turn to their companions and by relying on the various arrangements that had been cobbled together as imperial authority collapsed. Ordinary people, which in this case meant anyone who did not own a sword and a horse, either grudgingly accepted these local rulers and sub-rulers or affirmatively sought their protection. The result was that the basic mode of governance – what can be described as the infrastructure of authority – had been transformed. The centralized, hierarchical, and formal system of the Roman Empire, which conferred widespread and ultimately universal citizenship on ordinary people, was replaced by what we now refer to as the feudal system. Political leaders were bound to each other by individualized alliances based on the grants and sub-grants of land, while ordinary people were subjected solely to their local leader and bound by equally individualized relationships, in this case based on submission rather than alliance. Order was no longer maintained by centralized forces or salaried officials, but by the physical power of each local leader and his followers, with disputes resolved by combat or alliance, and only the most disproportionate responses or outright rebellions being controlled, with varying success, by the reigning monarchs. Those monarchs exercised their low levels of control by traveling around their realm, from one local leader's fortified residence to another, asserting authority in each region by their immediate presence.

The political morality that co-causally developed in conjunction with this mode of governance has been generally identified as a morality of honor.⁷ Its organizing feature was the mutual and personal bonds among the ruling warrior elite. Leaders provided their subordinates with protection and rewarded them with generosity, compatriots and followers responded with loyalty and gratitude, which they then expected from their own subordinates whom they in turn protected and rewarded. With central authority so weak, protection and loyalty meant a willingness to fight, to defend oneself, one's superiors and one's subordinates against any harm committed to their persons or their property. With the formal structures and documentation of authority so attenuated, this combativeness had to be secured by one's reputation, and thus an

insult became as serious an offense as an injury or an invasion. This was the essence of honor, the organizing principle of the post-Roman political morality. One means of enforcing it was through a duel, but that demanded a fairly high level of communication and procedural agreement; in their absence, the response was a blood feud.

A turning point seems to have occurred around the year 1000. While the dating looks suspicious – people were certainly aware of the year’s numerological allure, but mainly because they were expecting the return of Jesus Christ— it is sufficiently accurate for present purposes. External threats diminished; the Moslems were defeated and the Vikings became Christians. Commerce expanded and became more extensive, existing cities grew and new ones were established, universities were founded and literacy increased. These conditions provided the opportunity for the rulers of the Germanic successor states, particularly England, France, and Spain, to assert increased political control over the areas they ruled. New technology provided these rulers with artillery that could reduce a nobleman’s previously impregnable stronghold to rubble, while simultaneously compelling them to replace the feudal warriors who served them on the basis of personal loyalty with professional troops who were paid a salary and maintained as standing armies. They gradually stopped circulating through their kingdoms as a method of control, and settled in grand palaces, where they received information and dispatched instructions. The quondam warriors gradually became courtiers, replacing their now defenseless stone castles with elegant manor houses and gathering in the capital or royal palace to receive the grants and preferences that the increasingly powerful monarchs could bestow.⁸ Their subordinates, both lesser nobles whom they treated as comrades or personal retainers, and peasants whom they treated as personal property, now became subjects of the king, whose authority reached outward to the borders of the monarchy and downward to the lowest levels of its populace.

Not surprisingly, this transformation in governance caused, and was caused by, an equivalent transformation of the prevailing political morality. The guiding goal for the elite was no longer to assert themselves and defend their followers with hair-trigger aggression, but to serve the monarch with intelligence and grace. Violence was replaced by litigiousness, as dueling was declared illegal and disputes over property or behavior were to be settled in the royal courts. Loyalty remained a crucial element of this political morality, but it attached to the monarch’s institutional role, which was becoming increasingly established and elaborated, rather than being conceived as a personal relationship.⁹ As such, it could extend to ordinary people, who were now governed by the monarch’s laws and, increasingly, by his appointed officials, rather than by a local ruler. In short, the essence of political morality in this era was to obey and serve the monarch, and thus the regime that he embodied.

Precisely when these regimes were conceived as nations, and when the political attitudes that accompanied them can be described as nationalism, is not easy to determine. Because the

preceding mode of governance involved dispersed and overlapping jurisdictions, it was possible for a nobleman to owe loyalty to multiple masters, including rivals such as the King of England and the King of France.¹⁰ This led to difficult dilemmas -- or delicious opportunities -- during the transitional period, but they were gradually resolved by defining commitments outside the geographic boundaries and institutional structure of the regime as treason. The transformation of emotive commitment is more important, of course, but more difficult to discern in the absence of survey data. In the Fifteenth Century, Joan of Arc's meteoric career and stellar reputation among French-speaking people indicates an emerging nationalism, although she was captured and handed over to the English by their francophone allies. The Reformation, in the following century, further elevated the role of the monarchs as either leaders of new national churches or as defenders of the old and previously universal one. Whenever it occurred, it seems clear that the reconception of the regime as nation, and of people's loyalty to that regime as nationalism, amplified the process of redefining political morality as service to the centralizing monarchies of the late Medieval and Early Modern eras.

A political transformation of this magnitude could not occur, of course, without pragmatic opposition and emotional stress. The warrior elite not only fought to maintain their independence, but clung to the rituals and symbols of that independence long after its reality had faded. They continued to assert their honor, sometimes by fighting illegal duels, and they continued to display their prowess, sometimes in meaningless albeit dangerous tournaments, more often by hunting deer and foxes. They continued to treat agriculture as the only honorable source of income and to define their status by lands which they owned but no longer ruled. At the time when monarchs, like Edward I or Edward III in England and Louis IX (St. Louis) or Charles the Fair in France, were slowly crushing the political life out of the nobility, they patronized and consumed a body of literature that depicted their earlier period of dominance, including such poignant features as a king who gathers his loyal companions at a round table so they can be treated as his equals, a glorious knight who wins the undying love of the king's wife, and another knight who ventures into the realm of a disabled, possibly impotent king to obtain a mysterious and invaluable prize. This literature is infused with such intensity and charm that it continues to exercise a hold on our imaginations in this mechanized, democratic era, as anyone who has read Arthurian tales, gone to a medieval dinner theater or watched a Star Wars movie can attest.¹¹

In both the Early Middle Ages and the High Medieval-Early Modern Era, the economic system was co-causally related to the political system. The collapse of central authority in the West, and the possibly more significant conquest of North Africa and the Iberian Peninsula by Islam-energized Arabs in the Eighth Century,¹² disrupted the stable conditions on which commerce and manufacturing depend. The roads deteriorated and, together with the sea routes, became prey to a variety of outlaws and brigands. Urban populations, which need to buy

everything except the specialized goods they sell, began to decline when both buying and selling became problematic. Their decrease in turn shrank the markets for traded goods. In imperial times, large quantities of garum, a fermented fish sauce, were shipped from factories on the Atlantic coast of the Iberian Peninsula to Rome. But this trade suffered as the Mediterranean became the boundary between hostile cultures rather than a large lake in the middle of a unified empire. Deprived of garum, along with grain from Egypt and wine from southern Gaul, the capital lost population until it became a small town in the middle of the large open space that its defensive walls enclosed. At that point, no one could make a living producing garum for export to Rome, and the factory workers were compelled to become farmers.

The economic system that developed in this setting centered on the quasi-self-contained estates of the quasi-independent local leaders in a co-causal interaction. Those who worked the land, by far the majority of the population, were generally not subsistence farmers, but rather members of a well-integrated economic unit that fed its inhabitants and generated a surplus for its leader and the warriors who supported him. Within this unit, the transport of goods was largely costless because the leader maintained order by force of arms, and the relatively short distances were readily traversed by local people who knew its paths and byways. Religion, now separate from the state as it had not been in the Empire, incorporated itself into this system, adding a parish priest to the estate's elite who were supported by its surplus, and establishing monasteries and convents whose abbot or abbess, priests or nuns, and subservient peasants paralleled the structure of the secular estates. Trade and manufacture did not cease; after all, only some estates produced wine or furs, and virtually none produced jewels or weapons. But goods that moved in heavily armed convoys on ill-maintained roads or through independently ruled seaports were burdened by transaction costs that made them inaccessible to all but the wealthy few. For some items, such as jewelry or tools, it was the manufacturers rather than the products that traveled from one estate to another, low-status individuals who earned a living by paralleling the peregrinations of the reigning monarchs.

After the year 1000, with the growth of centralized authority in the nascent nation states, trade and manufacturing increased dramatically. Here again, the relationship was co-causal. During the first centuries of the High Medieval-Early Modern Era, commerce flourished along the north-south axis that lay between France and Germany, the middle division of Charlemagne's great empire which had broken into pieces after its monarch died without an heir. The Low Countries, Lorraine, Geneva, Piedmont and North Italy were the initial sites of Europe's economic revival, precisely because they lay outside the control of the feudal monarchies. While they did not necessarily lose their prosperity as time went on, they gradually relinquished their dominance as the monarchs found ways to extricate their own economies from feudalism. They gradually established order in the spaces between the fortified estates and built roads and bridges to encourage and take advantage of this recaptured interstitial space. They encouraged trade

fairs and chartered cities, institutions outside the structure of feudal system that paid taxes directly to the king and served as a counterbalance to the landowners. When people at the time declared that “city air makes a man free” they were not referring to freedom of speech or conscience, but to former serfs who became artisans, merchants, shopkeepers and manual laborers in the burgeoning urban economy. Within the cities, production of such varied products as clothing, shoes, hats, furniture, tools, candles, beads and saddles was often under the control of craft guilds. An association of artisans who worked out of their own homes and owned their own tools, the guild prescribed the quality of the product, the quantity of production, and the price of the product, and conducted regular inspections to ensure compliance with these multifarious requirements. Chartered by the monarch, or by the officials of a city chartered by the monarch, these organizations became additional elements in the emerging national economies.

To be sure, the process was slow and the trajectory jagged. The development of true national markets was delayed by legal impediments such as internal tariffs and tolls, and by social conditions such as customs that seemed bizarre to anyone who had not grown up with them and regional dialects that were tantamount to different languages.¹³ But the centralizing monarchs aggressively pursued policies that fostered the development of these markets, a policy that, by the Early Modern Era, took the form of mercantilism.¹⁴ This included internal improvements, the construction of ports, grants of extensive monopolies, permits for the free transit of goods, and the standardization of coinage, weights and measures. Its essential feature was the effort to produce a favorable trade balance, to increase national wealth by maximizing exports and restricting imports. Modern economists doubt that this was an effective strategy, and often conclude that economic growth probably occurred in spite of it, not because of it. What is important about mercantilism for present purposes is that it required construction of a balance sheet for the monarchy as a single, integrated economic unit. It thus represented a truly national perspective, parallel and co-causally related to the emerging political concept of the monarch’s regime as a unified nation.

Developments in civil society, which necessarily includes ordinary people and is associated with the *Annales* approach to history, are more difficult to trace than political or economic ones. Of course, they overlap with the other areas, and much of what has been said thus far about them is relevant to civil society as well. We know, for example, that many peasants in the Early Middle Ages submitted themselves to slavery or serfdom, preferring the protection and patronage of a local war leader to citizenship in an attenuated or non-existent empire. We know that, in the High Medieval-Early Modern period that followed, many peasants escaped this condition and became subjects of the king, rather than a landowner, as a result of the labor shortages that followed the Black Death, and that others freed themselves by becoming mercenary soldiers or residents of the expanding cities. These interactions with the political and economic system at the level of the ordinary life confirm the general pattern of a society that

fractured into quasi-independent units in the Early Middle Ages, and gradually re-integrated into nation states with national markets in the period that followed.

The attitudes and sensibility of ordinary people are more fully located within civil society, where documentation is more sparse. In the Early Middle Ages, peasants and laborers were not regarded as needing or being entitled to the sense of honor that governed elite political and social relations, but they may well have reiterated these sentiments within the narrow compass of their village, perhaps by beating up their neighbors, and they certainly related to the elite leaders who protected them through the medium of loyalty as well as obedience. In the High Medieval-Early Modern period, they were obviously not moving to the capital and becoming courtiers, but it seems likely that their personal sense of identity and loyalty was shifting from the local landowner to the centralizing monarch. One area that is definitively an element of civil society is religion, and here there seems to be a concomitant shift in attitudes. The Germanic tribes that inundated the Western World when as the Roman Empire dissolved either entered as Christians (albeit schismatic ones in several cases) or were converted rather quickly, the most significant being the conversion of Clovis I, King of the Franks, in 508. While some features of Christianity remained constant over time, such as its belief in the redemptive power of Jesus' sacrifice and its skittishness about sex, there were significant reinterpretations during these different eras.

Early Medieval Christianity emphasized the power of Christ. He appears in the standard iconography as the Pantocrator, gazing out at the viewer resolutely and commandingly. The saints who brought His message to the pagans were described as doing so with displays of strength rather than spirituality, levelling pagan temples, splintering their sacred trees, and striking their priests dead or blind.¹⁵ In short, Christ and His minions display the virtues of the local war leaders, who protect their followers and smite their enemies in the midst of a threatening world. During the Ninth and Tenth Centuries, however, the Church became concerned that this high-testosterone approach to God imposed too little discipline on the warrior elite, who were indulging their power at the expense of the Church's property as well as its parishioners. They initiated the Peace of God movement, which demanded more chivalrous behavior toward noncombatants and, incidentally, bequeathed to us a second day of rest each week, originally a second day when fighting was forbidden. By the Eleventh Century, the Church had managed to redirect the bellicosity of the warriors from fighting each other to crusading against the heathens.

In the High Middle Ages and the Early Modern period that followed, the emphasis shifted from Christ's strength to his spirituality and suffering. Increasingly, he was depicted as the Man of Sorrows, being flagellated, carrying the cross to Calvary, dying on the cross in agony, or being taken down as an emaciated corpse. When shown alive, He was often depicted as gazing upward toward the heavens. The Virgin Mary, previously a secondary figure, assumed

prominence as a nurturing, protective mother. The saints became spiritual leaders, showing people, by both instruction and example, how to serve and worship God. Thus, the central message was no longer Christ's strength but the pathway to salvation that the contemplation of His suffering, and of the Virgin's devotion to Him, can provide. With the Reformation, Mary and the saints were cleared away and people were now told to serve God directly, focusing their attention more directly on developing the right relationship with Him so that they would either secure their place in Heaven or reassure themselves that they were headed there.

This interpretation of Christianity became part of a comprehensive system of belief that can be described as a morality of higher purposes. Just as the king replaced the local lords as a remote but all-powerful leader of the nation, and the national economy replaced the self-contained estates, religion, a key component of civil society, changed its message. Rather than recognizing the power of God and the saints as they acted in the world, Christians were now supposed to worship them as they sat upon their heavenly thrones. Moral action was redefined as behavior directed to a goal outside oneself, at first personified by the king or God as father-figure, but as time went on increasingly abstracted into the king as leader of the nation and God as ruler of an otherwise autonomous reality. In short, the political system the economic system and the structures of civil society such as religion and morality, underwent equivalent and interconnected transformations. Weber theorized that the human tendency to seek material reward, previously domesticated by the Church through demands for extensive contributions, was now justified as an emblem of salvation.¹⁶ That may be, but such behavior was also seen as a contribution to the wealth and power of a nation that was engaged in an increasingly intensive military and economic struggle with its rivals.

The Political, Economic and Social System of High Modernity

At the end of the Eighteenth Century, the political system, the economic system and the civil society of the Western World were transformed once more, and it is from this transformation that modern democracy emerged. In the political system, the advent of democracy was co-causally related to the decline of royal authority. To some extent, as described in Chapter 1, this decline was circumstantial, the result of weak monarchs in both England and France. But monarchy in Western Europe had survived equally ineffective rulers in the past, such the insane Charles VI of France, who thought he was made of glass, or the hapless Edward II of England, who might as well have been. Clearly, there were deeper forces at work during the Eighteenth Century. One was the Enlightenment, and more generally the steadily increasing skepticism about religion. This inevitably undermined the primary justification for monarchical authority, which is that it had been established or at least approved by God. By the time of the revolutions, conservatives like Edmund Burke in Britain and Joseph de Maistre in France realized that religious arguments would be ineffective and urged respect for traditional

modes of government based on their pragmatic value in keeping the peace.¹⁷ The argument was not a new one; it can be discerned in the Fourteenth Century writings of Marsilius of Padua¹⁸ and become well-known in the late Seventeenth Century through Thomas Hobbes' *Leviathan*.¹⁹ But these works were regarded as disconcerting, if not heretical, when they were written. By the era of the revolutions, the pragmatic justification for monarchy was welcomed by conservative politicians such as Metternich and Lord Liverpool as the best that could be done.

Even more important, a variety of political, economic and social forces had led to the development of what Jurgen Habermas has described as the public sphere.²⁰ A relatively large urban middle class had emerged, literate, sophisticated people who communicated with each other through a burgeoning array of newspapers and periodicals, as well as in cafes and coffee houses (coffee had become the rage in Europe; Bach wrote a humorous cantata about its popularity). These people were sufficiently knowledgeable and skeptical to recognize that the king could not secure their welfare through his status as God's chosen ruler or the father of his country, but only by adopting beneficial policies for governance. They were functionalists, who in the process of establishing new positions for themselves and creating a new economy, tended to judge human action by the purpose that it served, not by the status it reflected. Increasingly, they viewed the monarch's palaces, banquets and balls as excessive expenses rather than as justifiable privileges, particularly if they weren't invited to attend.

In short, the idea was developing that government should serve the people. It flourished with particular intensity in the American colonies, where the king was a remote and abstract figure whose splendor could not be perceived except in the most attenuated form. The transplanted English people who settled there shared the literate, functionalist culture of the mother country but lacked traditional structures that served to counterbalance these emerging attitudes. Most notably, land ownership was different in the colonies. Founded under the auspices of an Early Modern centralizing monarchy, and long after the end of feudalism, the people who maintained order at the local level were appointed officials, not recipients of land grants, and there was thus no resident nobility. Even more basically, the fixed supply of land that determined the European social structure for its entire history did not prevail in the colonies. A pragmatic and amoral willingness to displace the native population, and to use African slaves as menial laborers, provided the English settlers with an effectively unlimited supply of land. Consequently, social differences were not based on the qualitative difference between landowners and tenants, but only on the quantity of land one owned, a much less salient distinction. As a result, the view emerged that every person – every person of European origin, that is – was of significance, and that government should serve the interests of them all.

When the colonists perceived that the British government did not fulfill this function, they had no reluctance about whom to blame. The least sonorous and quoted sentence in the Declaration of Independence's opening paragraphs is the most decisive: "The history of the

present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States.” It is this sentence that the remainder of the document expands upon. The listed injuries, for the most part are not violations of the rights of human beings or Englishmen, but failures to provide an effective government that served the people’s needs. The King is charged with having refused to “Assent to Laws, the most wholesome and necessary for the public good,” forbidden appointed officials to “pass Laws of immediate and pressing importance,” refused to pass laws to “encourage . . . migration,” increased “the Conditions of new Appropriations of Lands,” “erected a multitude of New Offices, and sent hither swarms of Officers to harrass our people, and eat out their substance,” cut “off our Trade with all parts of the world,” “plundered our seas, ravaged our Coasts, burnt our towns, and destroyed the lives of our people,” and “endeavoured to bring on the inhabitants of our frontiers, the merciless Indian Savages, whose known rule of warfare, is an undistinguished destruction of all ages, sexes and conditions.”

The revolutionary ideas that had been incubated in the American colonies and prevailed with French assistance returned to ignite a violent conflagration in France itself. The explicit rationale was that the monarchy had failed to serve the people’s needs, as defined by the people themselves. The “people” were transformed from an abstraction to an institution when Louis XVI called the Estates General, long dormant under royal absolutism, to vote increased taxes so that he could pay the costs incurred in assisting the Americans. In June, 1789, deputies belonging to the Third Estate, relying on their superior numbers, on enlightened members of the nobility, and on impoverished members of the priesthood, insisted that the three Estates vote together as a single legislature, which they renamed the National Assembly. The next week, locked out of their meeting place in the royal palace, they repaired to a nearby tennis court where they took their famous oath “never to be separated until we have formed a solid and equitable Constitution as our constituents have asked us to.”²¹ It was this Assembly that promulgated the Declaration of the Rights of Man and of the Citizen, premised on the idea that individuals have equal value and collectively constitute the government to serve their purposes.

Some three years later, the National Convention, the second successor of the National Assembly and the first legislature of the Republic, set to work trying the former king, now imprisoned with his family after his abortive flight from Paris. Louis-Antoine Saint-Just, soon to be a leader of the Terror, urged that the king be executed without trial on the grounds that he was a tyrant whose continued existence was inconsistent with the Republic. But the Convention, nearly half of whose members were lawyers, rejected this political solution and opted for a judicial proceeding with itself as jury. The indictment began: “Louis, the French people accuses you of having committed a multitude of crimes in order to establish your tyranny by destroying its liberty.” There followed a series of specific charges: “you attacked the sovereignty of the people by suspending the assemblies of its representatives and by driving them by violence from the place of their sessions,” “you ordered the ministers not to sign any documents emanating

from the National Assembly, and you forbade the Minister of Justice to deliver the Seals of State,” “You caused an army to march against the citizens of Paris,” “You destroyed our navy. Many officers of that body were emigres; hardly any remained to perform the service of the ports,” “You issued an order to the commanders of the troops to disorganize the army, to drive entire regiments to desertion, and to have them cross the Rhine in order to place them at the disposal of your brothers and Leopold of Austria.” Apart from the impossibility of expressing the sort of racist attitudes toward the Prussians and Austrians that the Declaration of Independence expresses toward Native Americans, the two indictments display a similar tone. But, as also the case with the Declaration, the accusatory legal language reflects an underlying transformation of political attitudes. This had been signaled a decade earlier, when Guillaume-Chretien Malesherbes, the great botanist, who was serving as a royal official and would later defend Louis XVI in his trial before the National Convention, addressed a remonstrance to Louis XV urging him to call the Estates-General. “The incorruptible witness of its representatives will at least show you if it is true whether . . . the cause we defend today is not that of the People *by whom you reign and for whom you reign.*”²²

It is widely recognized that the economic transformations that began at the end of the Eighteenth Century were as momentous as the political ones and, in fact, these transformations are invariably described, with a noun borrowed from politics, as the Industrial Revolution. The important point, for present purposes, is that these two sets of transformations are not only related to each other by their magnitude, which is signaled by their identical noun, but also by their conceptual basis, which is obscured by their different adjectives. “Industrial” suggests that the motive force was essentially technological, and involved the invention of the steam engine, the mechanical loom and the cotton gin. As in the relationship between democracy and administration, however, the temporal correspondence must be treated as more than mere coincidence. In fact, the Industrial Revolution was but one component of a more general transformation of the economic system that began at the end of the Eighteenth Century. It included the decline of the traditional European village, the commercialization of agriculture by the enclosure movement, the migration of the rural population to rapidly growing urban centers, and the development of an increasing class of salaried employees who purchased rather than produced the things they used in their homes. All these changes were co-causal with each other; it is probably impossible to disentangle them, and not even worth the effort do so unless it serves some explanatory purpose. For now, the important point is that the economic system was undergoing rapid transformation at the same time that the political system was changing to produce the administrative state and to make democracy a reality in some places and a demand in many others.

The mode of economic organization that co-causally generated and instantiated the Industrial Revolution is generally described as capitalism. It displaced the prior system in the Western World, which is described as mercantilism, and was in turn challenged by socialism. These are all contested terms, and more importantly, to quote Lewis Carroll’s Humpty Dumpty,

they are portmanteau terms, combining a variety of distinct elements. The essential elements of capitalism are taken to be the private ownership of the means of production and a free market for the exchange of goods and services. Its character as a novel and transformative development at the end of the Eighteenth Century, however, refers only to the free market. Private ownership was a feature of mercantilism as well as capitalism and, in fact, was more extensive in that system. Many of the functions that we now definitively associate with government control, and became thus associated when capitalism prevailed, were carried out by private persons and treated as private property in the mercantilist era. The right of collect a particular tax, for example, was typically sold to an entrepreneur, who then owned that right and derived his income by exercising it. Military recruitment, policing in the cities and the high seas, the management of prisons and licensing various forms of transportation were all treated in a similar way.

What truly distinguished capitalism from its predecessor was the free market, sometimes known as a laissez-faire economy. The licenses granted to private parties in the mercantilist system were often monopolies, an exclusive right to carry out a particular function in a particular area. Emerging from a feudal era that did not distinguish between public and private in the manner we do now, the mercantilist system granted similar royal monopolies to productive and distributive activities that capitalism would regard as private enterprise, such as mining iron, producing salt, growing sugar in the colonies, importing coffee, tea and spices, or trading with a particular nation. Similarly monopolistic control was exercised by craft guilds, sometimes with affirmative support from the regime and almost always with its explicit endorsement. These powerful organizations of non-nobles controlled entry into the field, the quantity of goods produced, the price of the goods and many of their characteristics as well. All these systems of economic control were consistent with Seventeenth and Eighteenth Century absolutism, where the royal regime exercised plenary power but implemented that power through its delegates. More basically, they were consistent with the underlying belief that the individual should serve the state. The monopolies were an exercise of state power, designed to increase the national wealth. It was natural for European monarchs to assume that that this goal would be established through government domination, in the same way that they had established political order by achieving a Weberian monopoly of force and controlling the previously fractious nobles.

The advent of capitalism represented a rejection of these methods of control and was fully understood to be so at the time. It is certainly valid to describe the resulting system as a free market or a laissez faire economy, but those terms must be understood in their historical context. The freedom that the rising group of industrialists sought, and that they rapidly achieved in the wake of the revolutionary tidal wave that engulfed Western society, was freedom from the previous and familiar restrictions of the mercantile system, including state monopolies and craft urban guilds. Adam Smith, its patron saint, titled his book (published in the pivotal year of 1776) the *Wealth of Nations* because he wanted to claim that a market freed of the former

mercantilist restrictions would nonetheless achieve the mercantilist goal. The capitalists understood themselves to be free, as well, from the obligations and restrictions that traditional village life imposed on the owners and masters of the land-based economy. As a new economic elite, in a new urban context, they could make demands on the workers that were justified by efficiency, perhaps by Weber's Calvinism, and at bottom by the power of the strong over the weak.

These demands, combined with the scale and velocity of the associated demographic shifts, produced conditions so horrific that Friedrich Engels could plausibly describe them with imagery borrowed from Dante's *Inferno*.²³ But however notorious they were, and should remain, they do not capture the underlying meaning of the Industrial Revolution. The motivation of the capitalists, after all, was not the oppression of their workers, or even the demise of mercantilism, but rather to make money. There was money to be made from agricultural land, but most of the fertile land was already owned and extensively exploited. There was money to be made by supplying goods to nobles, but although they were wealthy individually, they were small in number and often supplied by their own employees or by established artisans. The great opportunity came from selling cheaper goods to the rapidly growing middle class and, later on, the working class, people who could not produce anything they needed for themselves because they were living in cities and working full-time at specialized tasks.

This turned out to be -- almost literally -- a fabulous source of wealth. In the early stages of the Industrial Revolution, the new middle class of factory managers, store owners, accountants and lawyers were the primary purchasers, together with people outside Europe who could be induced or compelled to buy European goods.²⁴ As time went on, the rapidly proliferating working class that this process generated provided an even larger market. The more workers who were employed in factories and paid wages, however meager, the greater the demand for the goods manufactured by those factories. The amount of money to be made by selling five-pound suits to 5,000 noblemen -- even if they could be persuaded to buy factory-made products -- paled in comparison to the amount that could be made selling five-shilling shirts to five million working people who could neither afford a tailor or make the shirts themselves. A large factory, powered by water, had been built in England in 1719 to produce silk clothes for the elite. It thrived as an isolated marvel and survived as a tourist attraction. A century and a half later, factories that produced cotton clothes for the masses were rapidly-proliferating eyesores. Their unsightliness and multiplicity were partially because they were used steam rather than running water, but mainly because they were powered by a self-generating and reinforcing process in which increased production generated increased employment and increased demand, which in turn induced increased production. Each factory may have been something of an ugly duck, but the general system was a veritable golden goose of the sort depicted in the fairy tales of the bygone rural villages.

At the deepest level, therefore – the level where social meaning and motive truly reside -- the freedom of the capitalists was not freedom at all, but a subjugation that they willingly embraced. The true freedom of the laissez faire economy was the freedom of the consuming public to choose the goods and services that they would purchase with their hard-earned incomes. What the capitalists demanded, and quickly received, was untrammelled and abject submission to the preferences of these consumers. “Abolish the state-sponsored monopolies,” they said, “and all restrictions on price, quality and accessibility of goods. We will live or die on our ability to produce what the consumers want, and we will cut each other’s throats in our efforts to appeal to them. We will hire scientists and engineers to invent new products that no one has heard of or imagined before and try to persuade the consumers that they really need or really want them. We will serve their needs and their desires.” One of the first nationally marketed items were Nabisco’s Uneeda Biscuits, so-called because they were marketed with the slogan “Lest you forget, we say it yet, *you need a biscuit.*”

Clothing, the signature product of the Industrial Revolution in its early stages, provides an illustrative example of this process. In pre-modern society, clothing was made at home by the people themselves or, for the wealthy, by skilled artisans. Its individual items were considered valuable; as late as the world of Jane Austen’s novels, upper middle class women still found darning socks a useful way to spend their time. The vast differences in people’s social status and material resources naturally determined the type of clothes they wore, but through a typically co-causal process, the type of clothes that people wore were also regarded as an emblem of their social status. The distinction was then enforced and reinforced by social norms, and in some cases by legal enactments. In Tudor England, for example, sumptuary laws prescribed that no one below the rank of earl could wear sable fur, that no commoner could wear a silk shirt unless he owned land worth £ 20 in annual rents, or any scarlet clothing if the land was worth less than £ 5.²⁵ Modern society has not abolished either the economic differences or some of the accompanying norms. Working class people cannot afford a closet full of Abercrombie and Fitch suits and would not choose to wear one of them in any case. But the laws have unraveled and the norms have been altered. While mass production has made clothing cheap, people’s attitudes have motivated them to spend a lot of money on it, and the inevitable distinctions in social class that result have been subsumed into a more general pattern where clothing is seen as a mode of self-expression. The prevailing forces in society, far from restricting people’s choices, urge people, now regarded as consumers, to indulge this inclination. Economic leaders work hard to devise new means for them to do so. Air Jordans may mean something different for a teenager in a ghetto neighborhood and a yuppie living in an exclusive suburb, but Nike spends vast sums encouraging both to wear them. Political leaders only position on this process is that it is good for the economy.

Music provides a second and closely related example of this same set of phenomena. Joseph Hayden spend the major part of his career in the service of Count Nikolaus Esterhazy,

producing music to be performed in Esterhazy's home and directing the orchestra that performed it. But in 1790, the second year of the French Revolution and the American republic, Johann Peter Solomon arrived on Hayden's doorstep with a fabulous offer, beyond anything that Hayden had received from his noble patron. The basis of this offer was Solomon's realization that he could have Hayden's music performed in a concert hall and sell relatively inexpensive tickets to the thousands of middle class people who attended. By doing so, he could become rich and make Hayden rich as well. Within a few decades, music was regularly being played in concert halls, just as clothing was being sold in city stores, both at one hundredth of the price per item to one thousand times as many people. A difference that reveals the underlying motivation for both products is that there was no essential technological advance in musical production or performance. In the pre-modern era, after all, music was regularly performed for large audiences in church. The essence of the transformation was the free market; instead of being imposed on people and supported by tithes and taxes, music could be offered for sale and supported by the money that people voluntarily paid to hear it. Technological innovations such as vinyl records, CD's and the Internet are consequences of this transformation, although they amplify it through co-causal processes of course. We describe the widely sold clothing that resulted as mass produced and our widely-sold music as popular, but the adjectives could be interchanged without any loss of accuracy.

This then is the conceptual connection between the political transformation of the late Eighteenth Century and the simultaneous transformation of the economic system. Democracy and administrative government are both premised on the basic idea that government should serve the needs and desires of the people, as the people themselves define them. The new feature of the economy that generated and implemented the Industrial Revolution was the free market, premised on that same concept of serving people's needs and desires, in this case as consumers rather than as citizens. The relationship, not surprisingly, is co-causal and recursive. The Industrial Revolution brought people into the cities and the money economy, thereby turning yeoman and cottagers into consumers, but it also tore them away from the traditional structures and subjected them to the punishing conditions of the industrial factory and the urban slum. In addition to needing to purchase things they previously produced for themselves, they needed government to protect them from the consequences of this transformation, to abate the miseries to which their unprecedented and unprotected status now subjected them.

Any account of political transformation that is based on human misery much be carefully assessed. The meager evidence we have suggests that village life was not as Goldsmith depicted it in his nostalgia-drenched *Deserted Village* ("Sweet Auburn, loveliest village of the plain, Where health and plenty cheered the laboring swain, . . . How often have I blessed the coming day, When toil remitting lent its turn to play"). In fact, the conditions for ordinary people living in the countryside were often miserable by present standards. Whether life in an urban slum and an industrial factory was worse is a question that we cannot answer, not only because we lack the

necessary survey data, but also because any information that we can obtain about either situation can only be viewed from our current habitation of a world with electric lights, indoor plumbing, cell phones and anesthesia. One thing that can be said with confidence is that the quondam peasants who swarmed into the cities in the late Eighteenth and early Nineteenth Centuries were excruciatingly aware of their present miseries, and likely they perceived them in contrast to a vaguely remembered youth or the regretful memories of their parents and grandparents. Goldsmith's poem may not be an accurate account of village life, but it is almost certainly an accurate account of the way people perceived that life once they had lost it. This experience of change and loss was something new. Village life, however wretched, changed only slowly and incrementally, so that its discomforts were masked by familiarity. The factory workers of the industrial era knew that they were subject to unprecedented sufferings, and they knew who to blame. What had previously been regarded as misfortune was now seen as abuse.

A second feature of urban, industrial life was that people were not only more conscious of their afflictions, but they were also more able to take action in response. Ordinary people in the countryside were dispersed among the wealthy, living in small villages that were typically isolated from each other by factors ranging from their psychological identification with their own locality to the dreadful condition of the roads. The manufacturing system in England that preceded the Industrial Revolution, and corresponds to the political development of parliamentary power that adumbrated the transition to democracy, was the domestic or putting out system. In textile production, it consisted of families working in their own homes, on their own looms and spinning wheels, with raw materials supplied by a master who then collected and marketed their products. Despite the eulogistic account that Defoe provides in his famous description of Halifax,²⁶ wages were low, hours were long, and the work itself was monotonous and debilitating.²⁷ But the structure of this system meant that families worked separately and were unconnected with each other except when the men had the opportunity to drink at the local tavern on "Saint Monday." When the Industrial Revolution replaced the domestic system, workers were herded together by the hundreds on the factory floor and by the tens of thousands in the urban slums. This provided them with the opportunity to complain among themselves about the unfortunate condition of their lives, such as the absence of Saint Monday, to organize in opposition to their circumstances, and to produce political leaders who would champion their cause.

At the same time as these transformations in the political and economic systems, an equally momentous transformation was occurring in civil society. The morality of higher purposes was replaced by a new social morality, the modern morality of self-fulfillment.²⁸ Its central tenet is that individuals should define their own goals and organize their behavior to achieve those self-defined goals as effectively as possible. It sounds immoral – in fact, it is immoral – to those who continue to believe in the morality of higher purposes, but it is an equivalent and contrasting moral system. Not only does it provide an organizing principle for

people's lives, but it also prescribes an equally demanding although distinctly different set of rules for interpersonal relations. Instead of condemning people who fail to serve their nation or a universal God, it condemns those who impede anyone's individually defined pathway toward fulfillment, either directly or indirectly. According to this modern morality, people are no longer assigned to a defined position in society in order to achieve the higher purposes of God-ordained order and social stability. Instead, each person is allowed and in fact encouraged to pursue the career and lifestyle he or she desires. Outright discrimination on the basis of gender, race, religion or sexual orientation is condemned, and so are subtler impediments such as stereotypes, nepotism, patronage, old boy networks and gentlemen's agreements. Consensual sex is no longer justified as a means of procreation, that is, as serving the higher purposes of continuing the species or populating the nation; thus birth control, abortion, homosexuality and gender change are not regarded as immoral. What is immoral is to condemn or in any way impede people's efforts to find their way to a fulfilling and meaningful sex life for themselves. In contrast, non-consensual sex, including date rape, marital rape and child abuse, are no longer tolerated as inevitable consequences of the existing social hierarchy, but excoriated as inflicting physical and psychological damage that impairs people's ability to enjoy fulfilling sex lives. The internal discipline that enforces this morality is not shame, as in a morality of honor, or guilt, as in the morality of higher purposes, but regret. People should not find, as they look back on their life or some definitive portion of it, that they have failed to define their own goals or pursued their own path for achieving them.

Because the morality of higher purposes was so closely tied to the Christian religion, the increasing secularism of modern society provided a major impetus for the displacement of that morality. Religion was an essential component of the village power structure, but it was much more than that. Its services shaped the weeks and its celebrations shaped the year, its rituals defined birth, marriage and death, and its teachings explained the human position in the Great Chain of Being between the angels of the sky and the vermin of the earth. When people moved into cities and became urban workers, they left this framework behind, entering a new realm ruled by nouveau capitalists where time was structured by factory and office schedules, birth, marriage and death viewed as personal events, pavement covered the ground and smoke obscured the sky. In this man-made setting, people's orientation gradually changed from the sacerdotal goal of salvation to the human goal of a fulfilling existence in the here and now. They came to see themselves as defining their own goals and establishing their own position in society. They became willing to pay for concert tickets because music was reconceived from something that instructs people about the salvation of their souls to something that provides an entertaining and fulfilling experience. To return to the political system, the English Revolution of the mid-Seventeenth Century was suffused with religion, and the revolutionaries tended to be more devout than the establishment. The French Revolution of the late Eighteenth Century was conceived in largely secular terms, and the revolutionaries ranged from deistic anti-clericals to outright atheists.

A transformation of the morality that prevails in civil society does not necessarily lead to the decline of its religious institutions. The Catholic Church survived and flourished through at least two such transformations, first from the Roman Empire, where it was a minority and often-persecuted religion, to the Early Middle Ages (or Late Antiquity), where it served as the state religion that supported a morality of honor, and then to the High Medieval and Early Modern periods, where it championed the morality of self-fulfillment. The modern morality of self-fulfillment can find as much support in Christian Scripture as previous the morality of higher purposes. The New Testament does not contain a word about abortion, its condemnation of adultery seems at least as concerned about the abandonment of women as the waywardness of men, St. Paul did not say that it is better to marry than to burn in Hell but rather that is better to marry than to burn with passion,²⁹ and the somewhat elliptical condemnation of homosexuality in Romans 1 is counterbalanced by the declaration in Matthew 25 that those who do not provide health care for the poor will suffer eternal damnation. The crucial difference is that modern morality demotes religious and spiritual feeling from an essential, organizing principle for life to one of many different human needs where people can fulfilling experience. Instead of remaining within the religion of their birth, or undergoing a life-changing conversion experience, modern people go denomination shopping, or stop by church on the weekends when they aren't rock-climbing or antique-hunting.

It would be difficult to argue that there was no significant transformation of civil society and personal morality between the Reformation and the present time. But locating the crucial turning point as the last decades of the Eighteenth Century is admittedly more difficult. To do so seems to violate the caution stated at the outset of this Chapter about periodization. Everyone at the time knew that the political system had undergone a colossal change. The advent of industrialism, though less dramatic, was also apparent to contemporaries. In contrast, there was no mass recognition of a new morality, no people marching in the streets demanding self-fulfillment, no self-fulfillment institutes proliferating through the landscape. There were, however, a number of events and incidents that indicate a crucial turning point.

The first is the condemnation of slavery. To us, on the far side of this moral transformation, pre-modern attitudes about the subject are simply inconceivable. We have no trouble understanding how an unholy alliance of economic self-interest and self-serving rationalization could perpetuate this practice; what is difficult to understand is that people did not perceive it as particularly troublesome. Among leading political theorists, only Aristotle, a highly systematic thinker, even bothered addressing the subject.³⁰ As modernity approached, Bartolome de las Casas raised objection to the enslavement of the Indians, but his rationale was that they had a great civilization and his solution was the importation of Africans to take their place.³¹ The Quakers finally raised a general objection in the Seventeenth Century, but at the time, far from being the currently sedate, conventional denomination that politely uses their

remaining network of parochial schools in Philadelphia to have atheist teachers provide an excellent education to Jewish children, they were seen as dangerous lunatics.³² Then quite suddenly, people realized that no human beings should be the property of others, to be used in any way their owners wished, with no opportunity to shape their own lives and pursue their own desires. In 1772, Lord Mansfield declared that slavery was illegal in the British Kingdom, being “so odious, that nothing can be suffered to support it, but positive law,” which was lacking in this instance.³³ In the 1780s, James Ramsay published his account of the horrors of West Indian slavery³⁴ and William Wilberforce and his allies began the campaign that led to the abolition of the slave trade in the British Empire in 1807. In 1777, Vermont became the first jurisdiction in the Western World to officially outlaw slavery and the other Northern states followed shortly thereafter including Pennsylvania in 1780 (it had not done so earlier, despite the Quakers), Massachusetts in 1783, Connecticut in 1784, and New York, which had a substantial number of slaves, in 1799.³⁵ What had been regarded as a part of nature for at least two thousand years, the consequence of society’s organization as a divinely-structured hierarchy, had become an abomination in a few short decades.

A conceptual development that occurred at the same time and that reveals the same moral system in a rather different guise, is Jeremy Bentham’s *Principles of Morals and Legislation*, published in 1789³⁶ and Adam Smith’s *Wealth of Nations*, published in 1776.³⁷ The basis of Bentham’s utilitarianism is that the peasant girl’s frustration that she cannot go to law school counts equally as the nobleman’s distress that the king has seized his property. In other words, utilitarians perform the necessary calculus according to the strictures of the new morality of self-fulfillment, where each person’s life experience provides the starting point for moral judgment. Some of this position’s implications have proved to be a stumbling block for many people in accepting utilitarianism as an ethical theory. When one person tortures another, do we want to count the torturer’s pleasure on the same scale as we count the victim’s pain? When an invalid enters a hospital, should we consider killing her so that we can harvest her organs to save five otherwise healthy patients? Many people in this modern world say no, based on judgments based upon from some other moral system. What is important to note is that these serious defects in utilitarian theory do not undermine its basic premise that everyone in our society counts equally. We do not base on judgment about the torturer on the idea that the victim is a more valuable person, or our judgment about organ harvesting on the social status of the involuntary donor. The moral objections to utilitarianism accept its basic premise that everyone counts equally, and make different judgments based on people’s action, not on their status. Economic theory does exactly the same thing. All costs count equally in economic analysis; if a benefit to X can only be achieved by imposing larger costs on Y, then the transaction is presumptively inefficient, no matter what the status or the quality of the particular individuals or institutions who are entered into the equation. As in the case of utilitarianism, moral objections to the use of economic analysis in social policy are often raised, but they do not challenge the basic egalitarianism that it derives from the new morality of self-fulfillment.

Beginning in the Twelfth Century, the open hearths, vented through the ceiling, that had been such a characteristic feature of English buildings in the Early Middle Ages, began to be replaced by closed fireplaces vented through a chimney. It then became necessary to clean these chimneys when they became clogged with soot. Since the chimneys were often only nine inches wide, the master sweeps who undertook this cleaning process used boys, and sometimes girls, typically beginning at the age of eight, but often as young as five or six. Carrying a brush, the children would climb up the hot, dark, narrow space, which could run thirty or forty feet, brushing off the encrusted soot as they proceeded. They did this six days a week, beginning at the earliest hours of the morning and continuing past noon. At night, they “slept black,” that is, without having washed, lying in a cellar on the bags of soot they had collected. If they hesitated to proceed up a chimney, or went too slowly, their master might prick their feet or light a bundle of hay in the fireplace beneath them. In relatively wide chimneys, children who failed to brace themselves properly against the sides as they climbed could fall, suffering great injury. In narrow chimneys, those who arranged their limbs improperly would become stuck and slowly suffocate to death in the sooty darkness.³⁸

What went through the minds of a respectable wealthy or middle class couple as they watched an eight year old child, his skin blackened by his prior efforts, disappear up the hot, narrow chimney in their home? Putting children to work at tender ages was standard as this time and seen as a great benefit to their families; both Locke and Defoe extol its virtues.³⁹ Certainly, this practice would have seemed more acceptable when most adults were illiterate and innumerate, so that the need to devote a person’s early years to education was not particularly great. It is hard to condemn those we cannot fully comprehend. But here is what we know for sure: for five centuries, no one raised any objection to the use of these children for the always miserable and sometimes lethal task of chimney sweeping. We also know that the first condemnation of this practice came in 1773 when James Hanway published *The State of Chimney Sweepers’ Young Apprentices*.⁴⁰ And we know that the House of Commons responded quickly, enacting restrictive legislation in 1788. Again, economic self-interest and self-serving rationalization delayed the final resolution of the issue. The House of Lords eviscerated the legislation’s enforcement provisions and the use of children as chimney sweeps continued until the great Anthony Ashley Cooper, Lord Shaftsbury, put an end to it in 1875. But issue entered into the political discourse in the late Eighteenth Century, initiating a widespread and concerted reform movement that ultimately validated the idea that no human being should be treated as a disposable household cleaning tool.

The Advent of Representative Democracy

Democracy in the Western World resulted from this transformation of the political system, the economic system and civil society. In each sector, and co-causally, the belief took

hold that social institutions should serve the needs to individuals. With respect to the political system, however, the observation may seem tautological. Democracy, as defined in the previous chapter, is a system of government where the problem of succession is solved by elections in which at least a significant proportion of the populace participates. That would seem to be the natural, or indeed inevitable method to ensure that the government responds to the needs and desires of the people. Embedded in this observation, however, is a strong and unsupportable assertion about language, which is essentially that words are Platonic archetypes, that they describe entities that exist in some sort of realm that is separate from the observable world to which they refer. We say, for example, that ducks evolved in such and such a manner, but that formulation implies a teleology, as if the evolutionary process was directed toward the production of a duck. The proper formulation is that the evolutionary process produced a group of creatures that we, as observers, choose to distinguish from other creatures and to which the label “duck” is then attached.

Less than careful language does no great harm in a field that can clarify its terminology with anatomy, fossils, cladograms, and DNA analysis. In political theory, where these tools are generally unavailable, Platonic terms can be misleading. We tend to treat democracy as if it were something that can be chosen by a collective act of will. We recognize, of course, that it must be instantiated in specific institutions, and acknowledge this reality with the observation that it comes in at least two basic varieties, direct and representative. But we often speak as if a polity can go into the forms of government emporium and order up democracy, which will then be served either as participatory chocolate or electoral vanilla. In fact, institutional structures and individual capacities restrict the choices available to any society. This is not to deny the role of either human decision making or impersonal contingency, but rather to observe that these forces operate within constraints determined by the society’s historical experience. People’s reactions to this experience will vary, and such differences often shape the political landscape. We often identify those who celebrate the power of the past as conservatives and those who strive to overcome it as progressives. It is important to recognize, however, that progressives are also bound by historical experience in framing new proposals, while conservatives must recharacterize the past in order to use it as a means of opposition. As critical observers, we need to be aware of these complexities and variations. In times of change or transformation, such as the late Eighteenth Century in Europe, there will be a hermeneutic interaction between past and present, with the past continuing to provide the text but the present actively interpreting its meaning.

In responding to the transformation of attitudes that occurred at the end of the Eighteenth Century, those who favored change, for whatever reason, had one mechanism available to them to instantiate their belief that institutions in the political system should serve the needs and desires of the people. This was representation. The revolutions in North America and France, and the more subtle turning point in Britain, all centered on the role of representative

assemblies. It is this process of lodging political authority in representative assemblies that we identify as the advent of democracy. But democracy, as the term is generally used, is not identical to representation, nor is either a subset of the other. In Ancient Greece, democracy existed and flourished without representative institutions. In Western Europe, representative institutions developed in non-democratic settings. Democracy and representation are separate political mechanisms that were combined in the alembic of Eighteenth Century historical developments in some parts of the Western World, and in Nineteenth or even Twentieth Century developments in others.

It is thus inaccurate to regard this process as the decision by political leaders or the populace in general to adopt a particular pre-existing mode of governance called representative democracy. The better description is that a culturally-available mechanism that had evolved for other purposes was gradually recognized, through political action, as capable of instantiating the increasingly profound and wide-spread belief that social institutions should serve the needs and desires of the individuals in the society. This does not necessarily invalidate efforts to construct theories of government derived from an inquiry into the concept of democracy or the concept of representation. It does not even preclude the possibility that these concepts influence the institutions that they were attempting to explain. The essential point is that the political institution that we now describe as representative democracy was an historical development with culturally-specific contours, origins and motivations. It emerged out of the preceding centuries of European experience and was entirely disconnected from the similarly named experience of Ancient Greece, with the small matter of a two thousand yearlong gap -- about half the length of recorded history -- intervening between the two.

When we speak of Ancient Greek democracy, we necessarily focus upon Athens. This is in part because the fragmentary survival of the written sources from this period denies us detailed information about any other democratic city-state. The most complete and incisive Greek history, that of Thucydides,⁴¹ deals exclusively with Athens, and of the hundred odd studies of city-states constitutions that Aristotle assigned his students to compose, only the one devoted to Athens has survived.⁴² But the centrality of Athens is also an accurate reflection of the attitudes that prevailed at the time; everyone recognized it as the leading democratic polity. The system of government that prevailed in this emblematic polity, however, seems not only unfamiliar but bizarre, even though we describe it with a familiar term. Cleisthenes, the late Fifth Century architect of its democratic system, divided all Attica into geographic units called demes. They had their own magistrates, their own assemblies and their own festivals, and it was enrollment in a deme that defined the all-important status of citizenship. But this enrollment was based on parentage, not residence; one remained a member of one's birth deme no matter where one lived. The demes were grouped into ten tribes of equal size, each composed of one third urban demes, one third coastal demes, and one-third rural demes. Every year, 50 members of each tribe were chosen by lot to comprise the Boule, or Council of Five Hundred, and no one

could hold this office more than twice in his lifetime. The Boule set the agenda for the Ecclesia, or Assembly, made recommendations regarding some agenda items, implemented the decisions on those items that the Ecclesia reached, and took necessary action during the time that intervened between the Ecclesia's meetings. Each group of 50 tribesmen was chosen by lot to preside for one of the ten months that comprised the civil calendar. The presiding officer of the presiding group was chosen by lot and served for a single day. There were also specialized officers, as many as 700, who were also chosen by lot from among those volunteering. In one of the few areas where the Athenians recognized the need for expertise, ten military commanders, one from each tribe, were elected by the entire Assembly.⁴³

Despite all this participation and all these sub-groups, the concept or practice of representation is nowhere to be found in Athenian democracy; in fact, the Athenians almost seem to be studiously avoiding it. In the Ecclesia, which at least in theory made the major decisions, all citizens were eligible and everyone's vote counted equally. The military commanders were elected, with one coming from each tribe, but according to Aristotle, and probably the Athenians as well, election was an oligarchic practice, at odds with democratic governance.⁴⁴ In any case, it was the Assembly that elected all ten, and the expectation was that they would constitute an effective general staff, not that they would speak for their tribe of origin. Although the Boule members came from each of the tribes in equal numbers, they were chosen by lot and the Boule was structured according to a principle of successive authority, rather than constituting a deliberative body with input from each tribe. The tribes were composed of groups from different regions but did not seem to have any separate decision-making function. The demes did exercise authority at the most local level, but membership was based on origin, not residence, and here too action was taken by an assembly of the citizens or by officials selected at random. It is difficult to resist the conclusion that the concept of representation was simply foreign to the minds of Athenians, as foreign as the mechanisms of general assembly and selection by lot would be to us if we did not know something about the Athenians.

Just as the Ancient Greeks developed democracy without representation, the Western World developed representative institutions without democracy. The feudal system that emerged in Western Europe after the collapse of Roman authority provided the kings with various sources of revenue, generally dues with evocative names such as carucage, frankalmoign, scutage, tallage and merchet. But the kings found these sources of revenue inadequate as they expanded their authority during the state-building process of the succeeding era. The problem rapidly intensified from irritating to critical when the English demonstrated that they could demolish a feudal levy of armored knights, riding armored horses, flying banners and carrying heavy lances by using mercenary troops armed with longbows and dressed in loincloths. But the king could not raise additional taxes that were needed to pay such troops under feudal law – and this was a law that people were willing to fight for long after the decline of feudalism – unless he received the consent of those he was proposing to tax. The means of making the request, if not

necessarily obtaining the consent, was easy enough for the first two estates, that is, the clergy and the nobility. The clergy was organized in a strict hierarchy, with clearly identified leaders at the national level as well as the universal one. The nobility was similarly hierarchical under the feudal system, with a relatively small number being direct vassals, or tenants-in-chief, of the king. In England, they numbered twenty-five when the Magna Carta was signed in 1215, and it was probably these twenty-five, and certainly not a petty jury, that are being referred to in the famous Chapter 39, when King John promised not to prosecute or punish any of the signatories except by “the lawful judgment of his peers.”⁴⁵

Obtaining the consent of the third estate, that is, free commoners who lived in the royally chartered cities or owned the land they farmed, posed a greater difficulty. This group had been rapidly expanding with the revival of commerce and, to an increasing extent, that was where the money was. But how was the consent of this extensive, dispersed and unstructured mass of commoners to be obtained? The solution that developed was that they were to meet in local groups and choose individuals who would then join the clerics and nobles in a council or assembly that could approve additional taxation. Scholars have identified the process by which the assembly members for the third estate were chosen as being derived from Roman civil law, specifically the provision that “what touches all must be approved by all.”⁴⁶ Since this was the period when Roman law was being revived by incredibly assiduous monks, the account is plausible, but it remains difficult to discern precisely how this mechanism was developed and how it was envisioned. In any case, it was a tremendous conceptual advance, one that revealed a new category between direct attendance at an assembly and election of a magistrate who served some specified function.

Crucially positioned astride the flow of funds that was so essential to the continued expansion of the monarchs’ power, these assemblies – most notably the French Estates-General, the Spanish Cortes and the English Parliament – were able to exercise substantial decision-making power. By the Sixteenth and Seventeenth Centuries, however, the monarchs, having used the funds already granted to suppress the nobility, turned against the townsmen and merchants who had been their allies in that prior struggle. In France and Spain, they prevailed in this effort, and by doing so ushered in the so-called Age of Absolutism.⁴⁷ The first two Stuart kings in England made the same attempt; in fact, James I, in his prior role as James VI of Scotland, had written a book asserting the divine right of kings⁴⁸ But the English Parliament was able to fight back, perhaps because it represented a more powerful group of non-noble landowners and merchants, perhaps because the Reformation had destabilized England’s religious hierarchy, perhaps for the more simple reason that the Stuarts were foreigners. James managed to remain in control and expand his authority in delimited areas, but his son, Charles I, replaced his father’s intellectual ability and political dexterity with a genius for antagonizing people. Parliament rose up against him, seized control of the government, and cut off his head.

Having ended the monarchy as an expedient, and confronted anarchy as a consequence, the various contestants for control of England now had to justify their roles in a manner that would secure obedience. Every educated Englishman had a range of concepts available to him from the well-known work of Plato, Aristotle, Cicero, Polybius and Machiavelli, and from the examples of Athens, Sparta, Rome and the Italian city-states, most notably Venice. These concepts included not only democracy and republicanism but also mixed government – the idea that monarchical, aristocratic and democratic elements should be combined to obtain the virtues of avoid the vices of each separate element. Historical experience, moreover, provided the practice of representation, and produced the brute fact that it was a representative assembly, and not a rival monarch or member of the royal family, that had deposed the king and asserted control in his place.

The idea that a representative assembly might be connected in some manner to the concept of democracy seems to have developed for the first time, at least with any prominence, during this Civil War period. A group of radical republican writers, notably James Harrington, Algernon Sidney and Henry Neville, explored the various ways in which a government without a king might be organized. Harrington, for example, offered the following prescription: “Democracy . . . consists of distinct tribes . . . subordinate to a senate consisting of not above three hundred senators, and to a popular assembly not under a thousand deputies, each of these . . . readily changeable in one third part upon annual elections in the tribes, the senate having the debate, and the popular assembly the result of the whole commonwealth.”⁴⁹ Here, the idea of democracy continues to conjure up Ancient Athens, with the reference to tribes and the division between a relatively small senate that deliberates and a larger assembly that decides resembling the roles of the Boule and the Ecclesia. But a representative institution, modeled on Parliament, has become the principal means of governing the democratic state in Harrington’s conception.

Lacking knowledge of the U.S. Constitution, no one at the time could have known that these radical republican ideas would be as influential as they turned out to be. They seemed part of the same wild proliferation of ideologies that had spawned the communism of the Levellers, the anticlericalism of the Quakers, and the millenarianism of the Fifth Monarchy Men.⁵⁰ After the restoration of the Stuarts, Harrington and Neville were arrested, while Sidney was executed for treason. For the next century, the connection between democracy and representation, although conceptually available, did not figure prominently in Western European thought. The persistent influence of Ancient Greek and Roman authors sustained the traditional association of democracy with the Athenian mechanisms of direct citizen participation in an assembly and the selection of magistrates by lot. As a result, democracy seemed impractical, because the mechanisms were not used in European governance, and dangerous, because Athens was seen as an erratic, unreliable regime that had hurled itself into a losing war with Sparta.

While the concept of democracy made little progress, representation flourished. Parliament, having seen the Stuart monarchy restored after the violence of the Civil War, terminated it again by peaceful means, the so-called Glorious Revolution of 1688. This initiated a gradual but sustained increase in Parliament's authority and a complementary diminution of monarchical power. Robert Walpole, a forceful but supple politician, became, in effect, the first prime minister of Britain (as the nation was now called after the unification of England and Scotland) and remained in that position for two full decades, from 1721 to 1742. The result was that the King was reduced to the status of a chief executive in a system that featured an independent legislature and judiciary. But the Walpole government turned out to be a transition rather than an apotheosis, despite George III's effort to reverse the trend. The constitutional crisis of 1782-83 been identified in Chapter 1 as the crucial turning point, the transition to a cabinet of elected ministers as the nation's executive authority. When George III conveniently became an insane nonentity in 1810 and George IV degenerated into an inane voluptuary in the two decades that followed, the monarchy was reduced to a figurehead and the people's representatives took full control.

Ideas regarding representation percolated through France over the course of the Eighteenth Century. They could be readily derived from the principles of the Enlightenment but were often based on the specific example of Britain. Voltaire visited during Walpole's Prime Ministership and sang its praises when he returned to France.⁵¹ Montesquieu visited during this time as well and ensconced the balance of political forces that Walpole had achieved in his three-branch theory of ideal governance.⁵² In 1789, Louis XVI found that he needed to revive the long-disbanded Estates-General for its old medieval purpose of voting increased taxes. There followed a successive transformation of this quasi representative body into the National Assembly, then the Legislative Assembly, and then the National Convention, whose members were elected through universal manhood suffrage (although, in addition to women, servants and those without fixed abodes were excluded). Revolutionary politics played out on the floor of these institutions, and the seating arrangement of the competing factions on the left and right shapes political discourse to this day. When the Convention rejected the idea of executing the King summarily and opted to sit as a jury and try him, it also rejected a call to submit Louis' fate to a popular referendum, arguing that the Convention, composed of elected representatives, spoke for the people. It then followed the English model and cut off the King's head. Its resulting control also followed the English model in yielding quickly to a dictatorship,⁵³ but, as in England, government by representative assembly had become an insistent and ultimately irresistible norm.

The influence of British thought about representation on its American colonies, as both a concept and a mechanism, requires little explication, since the colonists were not only ruled by England, but saw themselves as English. An elected legislature was established in each of the colonies, despite their differing origins and status. One illuminating event in the development of these institutions occurred early in the history of the Massachusetts Bay; in 1634, the Governor

concluded that the growing population made direct participation of all freemen in its legislative body (the General Court) impractical, and provided instead for the election of two deputies from each township. Generally speaking, the colonial governments, as in the case of Parliament, could only impose taxes with the consent of the representative body in each colony. Parliament itself could impose taxes on the colonies in general, but its effort to do so in 1763, following Britain's victory in the Seven Years' War, raised an outcry that quickly led revolution. Most of the revolutionary leaders knew Aristotle well enough, but they did not rally under the banner of "no taxation without a popular assembly and selection of government officers by lot." What they wanted was representation. The iconic Boston Tea Party was in part a protest about the pre-modern institution of royally-granted monopolies as opposed to a free market, but equally to the fact that the East India Company had been granted its monopoly by Parliament, where it had influence that the colonial merchants lacked.⁵⁴

In the wake of the Boston Tea Party, the colonists organized a representative assembly, the Continental Congress, originally consisting of 56 delegates from twelve of the thirteen colonies (Georgia, a prison colony exposed to Indian attacks, demurred). It presented its demands to the King, and when he failed to answer, it catalogued the colonists' grievances against him and declared the independence of its members as a separate nation. During the war that inevitably followed, the Continental Congress served as the sole institution of the new nation's government, organizing an army, raising taxes to support it, and initiating diplomatic relations. One of its committees drafted the Articles of Confederation which, when ratified by the states, became the nation's first permanent government. In other words, rather than the nation creating a representative institution, as in Britain and France, a representative institution had created the nation. The Articles of Confederation provided only for a representative legislature, but it soon became apparent that an executive was needed as well. A Constitutional Convention was organized, consisting of representatives from all the colonies. The plan it developed was partially inspired by Harrington, with its relatively small, indirectly elected Senate that advises the President on appointments or treaties and its larger, directly elected House of Representatives that alone initiates appropriations. More significantly, this plan reproduced the balance of forces that Walpole had achieved and Montesquieu had glorified. Having rejected the King, and with no desire for another one, the Framers simply extended the electoral process by which legislative representatives were selected to the selection of the chief executive, and declared that person to be the representative of the entire populace.

Although the term democracy gained increasingly familiarity as these momentous events proceeded, proponents of representative government tended to avoid it. Who wants to be called a pervert by Aristotle, after all? The French and the Americans preferred the term "republic" while the British simply referred to parliamentary rule. An alternative approach was to use the qualifier "representative" to dulcify "democracy," somewhat analogous to our usage of "benevolent dictatorship." This distinction between pure or true democracy and representative

democracy goes back at least to Spinoza. It was used by Madison in the Federalist Papers⁵⁵ and relied upon by Edmund Burke, both in championing the demands of the American colonists and excoriating the French revolutionaries. During the early decades of the Nineteenth Century, however, the unmodified term came into increasing use. In part, this was because scholars of ancient history such as George Grote had rehabilitated Athens, once regarded as mercurial and amoral, but now seen as the birthplace of liberty, philosophy, tragic theater, comic theater and realistic sculpture.⁵⁶ More importantly, representative democracy had become so securely established as the only form of popular rule that any modifier could be dropped, the way we no longer bother saying Xerox copies and that Brooklynites stopped calling their baseball team the Trolley Dodgers. The political battles regarding popular rule that dominated the politics of Britain, France, the United States and other emerging democracies over the course of the Nineteenth Century occurred within the framework of representative rule. They involved the extent of the franchise, specifically property and wealth qualifications, the direct or indirect election of representatives, and the scope of legislative authority.⁵⁷

The basic argument regarding Western democracy can now be summarized. According to the definition developed in Chapter 2, these nations are properly classified as democracies. But the term refers to a critical observer's concept, not the historical reality in Western culture of the regimes thus classified. The reality is that these democratic regimes emerged from a major transformation in people's worldview whose turning point occurred at the end of the Eighteenth Century, the belief that the institutions of society should serve the needs and desires of its inhabitants. This manifested itself, at the most basic level, in a morality of self-fulfillment, the idea that proper behavior is to seek, and allow others to seek, the goals that they themselves decide are most rewarding for themselves. It is elaborated through the demotion of religion into a voluntary activity for satisfying one's spiritual needs and the development of a consumer-oriented economy where huge firms design and market products that satisfy people's existing desires and strive to generate new ones. In the political system, it redefines the goal of government as the use of collective authority to satisfy the needs and desires of the people as they themselves define them.

Representation was recruited as the means of instantiating the political aspect of this general goal. A purely instrumental device, developed as a response to medieval conditions that had nothing to do with Athens, Aristotle, or the concept of democracy in general, it gradually merged with Britain's precocious albeit partial conversion to the new conception of politics over the course of the Eighteenth Century. By the end of that century, the transformation of beliefs became sufficient to support a transfer of political authority and the creation of new governmental institutions. Because the process was so gradual in Britain, the crucial turning point was a detail of governmental organization carried out by professional politicians, although the leading figures in the constitutional crisis of 1782-83 – Lord North, Charles James Fox and William Pitt the Younger – certainly drew on popular support in establishing the executive

authority of the Cabinet. In France and the United States, however, the shift was rapid, manifest and violent. The revolutionaries succeeded by leading or aligning themselves with the expanding social groups who demanded government institutions that would serve their needs and respond to their desires. These groups, aided by their leaders, identified representation as the essential feature of the institutions they demanded.

Political theorists have devoted a great deal of attention to the meaning of representation and its relationship to democracy. While the inquiry is illuminating, it often jettisons the ballast of political reality and floats away into the ether. For the purpose of this discussion, which is to present a theory of democratic government as it developed in the Western World, representation must be understood as a mechanism that was recruited to serve a specific purpose. It is the product of an historical process that developed during the Middle Ages and the Early Modern era and came to fruition at the end of the Eighteenth Century. The political leaders at this time – that is, those who drew their political power from the increasing majority of people who now thought that society's institutions should serve their individuals needs and desires – can be said to have chosen representation, and only later recognized that they had created a type of government that could be plausibly described as a democracy. This is not quite accurate because the concept of democracy was present in Western society, and educated people were certainly able to speculate about it and relate it to their current situation. But it is a fair approximation of actual events.

Hannah Fenichel Pitkin has usefully catalogued the various meanings that attach to the term representation.⁵⁸ It can be seen as a grant of authority, allowing the representative to act in place of the person or persons being represented, a process of accountability, where the representative must answer to those represented, a descriptive or informative process where the representative presents the views or characteristics of the represented parties, a symbolic process where the representative is seen as the embodiment of those represented, either by them or by others, and finally a guiding principle or role whereby the representative acts for, or on behalf of those who are being represented. While her conclusion is close to the one that will be adopted here, her approach resembles analytic philosophy, where words are treated as possessing at least a presumptive connection to concepts. This does not present the same problem as the assumption, discussed above, that democracy is some sort of quasi-Platonic archetype, existing outside historical processes. Pitkin's method is largely inductive, not deductive, in that it pays attention to the way we actually use words in our society. But it relies on a similarly unjustified assumption that our use of the same term for different purposes indicates a connection between those purposes that can be usefully interrogated.

This is not necessarily true. Consider the word star, which we use to describe both celestial bodies and leading figures in entertainment and sports. The latter usage is indisputably derived from the former, but does this verbal connection possess any significance that merits serious consideration? Would any group of astrophysicists, peering through telescopes or poring

over spectrographic data, think that useful insights could be derived from the fact that celebrities are described by the same term as their objects of study? Would any Hollywood executive consider the nature of celestial bodies when negotiating with a leading actor, or would any caller on sports radio (the one repository of rational discourse among radio talk shows) argue that too many stars will damage team morale on the basis of the way that supernovas explode or galaxies collide? Similarly, we use the adjective “sharp” to describe the shape of objects, a type of food taste, a level of intellect, and a clothing style, but it seems unlikely that any inquiry into the relationship among kitchen knives, asiago cheese, precocious eight-year olds and houndstooth jackets would be particularly productive. Perhaps representation, being more abstract or ideological is different, but that is not something that should be assumed or treated as a starting point.

The better starting point is historical experience. Political representation in Western democracy can be defined by the actual practice of the representatives as it has evolved over time. As described above, it was developed to obtain the consent of the common people, or third estate. Unlike the first two estates, the clergy and the nobility, they were too numerous to appear in an assembly directly. In some sense, this was true of the clergy and the nobility as well, since both groups numbered at least in the thousands, but they were organized hierarchically, in a structure that was established independently of the assembly, and thus had a relatively small group of recognized leaders who were in fact able to appear. The election of representatives served as a substitute for these independent hierarchies. Their role was to act in the assembly, a decision making body, in the interest or on behalf of those who elected them. Their modes of action naturally changed as the assemblies, and most relevantly the English or British Parliament, changed over time. At first, they did little more than grant or withhold approval, but gradually they assumed a policy making role. In that capacity, they proposed legislation, negotiated with each other and with the monarch, debated controversial matters as a collective body, and supervised executive authorities. This group of functions defines political representation in modern democratic nations.

At the theoretical level, controversies about the way the representatives should function, the way they should act for or on behalf of the people, have centered on the contrast between the roles of conduit and trustee. This distinction was first stated, as far as historical memory is concerned, at least, by Edmund Burke during the crucial period at the end of the Eighteenth Century.⁵⁹ Conduit or mandate representatives attempt to follow the preferences of those who elected them as closely as possible. Trustee or independent representatives regard their election as an authorization to use their own best judgement about the issues that are presented to them. Pitkin argues that the distinction “poses a logically insoluble puzzle, asking us to choose between two elements that are both involved in the concept of representation . . . Representation as an idea implies that normally they will coincide . . . Which should prevail depends in each case depends on why they disagree and which is right.”⁶⁰ This is fairly persuasive, and certainly

principled, but the actual practice of political representation suggests that the two roles are in fact distinguishable. The distinction does not turn on the nature of the representative, however, but rather on the nature of the issue. The more salient and controversial the issue, the more representatives will, and should, follow the views of their constituents. As the issue becomes more obscure, more technical or both, the representatives will, and should, increasingly rely on their own judgments. They will do so because it will be difficult to discern what their constituents want, and they should do so because most of their constituents will not have the time or interest to form any clear judgment of the issue.

Administrative Government as Representation

Representation by elected policy makers was not the only mechanism recruited by political leaders at the end of the Eighteenth Century to instantiate the emerging demand of the populace that social institutions serve their self-defined needs and desires. A second mechanism, administrative government, was recruited at the same time and for the same purpose. The temporal correspondence of democracy and administrative government in Britain, France and the United States was described in Chapter 1. To summarize, administrative government is a system that is articulated in two senses: first, it consists largely of hierarchically organized institutions with defined jurisdictions based on subject area and with staff members who are appointed on the basis of their training or experience in the specific area; second, the task of these institutions, as defined by the ruling authority and by themselves, is seen as the implementation of consciously chosen social policies. In Britain, the advent of this mode of governance came when William Pitt the Younger, whose accession as Prime Minister ended the constitutional crisis of 1782-83, reorganized the ministries and began buying out the noblemen who held their positions as personal property. In the United States, it came when the Constitution and the First Congress organized under it established national departments defined by subject area. In France, it was the revolutionaries in the National Assembly and its successors from 1789 to 1793 that abolished the structure of the Ancien Regime and established similarly defined departments in their place.

On the basis of the motivation for the transformations, described above -- in the political system, the economic system and civil society-- administrative government can be seen as representative in the same sense that elected policy makers are representative. Administrative agencies act for the people; they are designed, like a body of elected representatives, to create a system that responds to the people's self-defined needs and desires. The difference between elected representatives and appointed administrators derives from the difference between the settings, or context, in which their actions are carried out. Elected representatives operate at the highest level of government, the formulation of public policy for the nation as a whole or for the jurisdiction as a whole in a subordinate division of the nation. Administrators act at what can be described as a lower level because they are subject to the elected representatives, who issue general instructions to them and ultimately control their appointment and removal. As such, they

participate in the formation and implementation of conscious social policy, according to the definition given above. The legislature in democratic systems is typically limited to the formation of policy, while administrators engage in subsidiary policy formation and are primarily responsible for implementation. In carrying out that role, they have two further characteristics, also in accordance with the definition: first, they are organized by subject area rather than by function, and second, they are appointed rather than elected.

In Western democracies, the structure of administrative institutions reflects an essentially different way of dividing governmental tasks from the structure of the higher policy making level. At that higher level, tasks are divided by function; an elected legislature sets basic policy in all areas, a directly or indirectly elected chief executive implements the policies that the legislature assigns to it, and the judiciary implements the remaining policies and interprets the legislature's assignments for both the executive and for itself. This division is to some extent the product of historical developments, but it also reflects a basic necessity. There must be some institution, or set of institutions, with plenary authority over the entire governmental apparatus or there would be no solution to the problem of succession. Consequently, the authority of these institutions, if it is divided at all, must be divided by function, not by subject area. At the administrative level, in contrast, the agency carries out all these functions, but only in a specified subject area. It sets secondary policy, implements that policy, and then interprets the legislature's policy decision, and its own secondary policy decisions, in its assigned subject area. In other words, while the government in general is divided by function, administration is divided by subject.

As described in Chapter 1, it is at the higher level of government that the problem of succession arises. To be sure, officials at the lower, or managerial level, are also mortal, and must be replaced in order for the government to be an ongoing institution. But replacement at those lower levels can be determined because human beings, capable of action, are in place at the higher one, and they can determine how lower level positions shall be filled. In an administrative state, replacement is typically implemented by appointment, but this is not a necessary or exclusive mechanism. Subordinate positions can be filled by lot or by election, the way all significant positions were filled in Ancient Athens. They can also be filled by appointment with restrictions on removal of the office holders, or the extent to which they can be given commands by their superiors. All these mechanisms appear, to a limited extent, in modern Western democracies. Juries are chosen by lot, boards or commissions dealing with subjects ranging from education to water distribution are chosen by election, as are some judges, while other judges, although appointed, cannot be removed except in extraordinary circumstances. Moreover, modern democracies generally reiterate the structure of the general government at the regional or local level, with chief executives and legislatures elected by the citizens of the relevant subunit. This is the phenomenon of institutional isomorphism described in Chapter 2.⁶¹

Most of the alternatives to appointment confer a certain level of independence on the subordinate officials, either because they cannot be ordered to adopt specific policies or because they cannot be removed from their positions by the higher level authorities. To the extent that regions or localities are treated as separate polities, as occurs in federal regimes, the election of a chief executive or legislature at this level can be regarded as addressing the problem of succession rather than management. But the essential feature of a modern administrative state is that the great majority officials, and specifically those who carry out the bulk of the state's managerial functions, are appointed, organized in a hierarchy, and subject to command and removal by a higher authority. Even if the subordinate officials who are the heads of governmental units with authority over a subject matter or a geographic area are chosen by other means, their subordinates, who carry out most of the unit's managerial functions, will be appointed officials organized in a hierarchy and subject to command and removal. So-called independent agencies may be insulated from direct control by the chief executive, but they are generally subject to the same level of control by the legislature as executive agencies, and are also staffed by appointees. Thus, leaders of subordinate agencies in the modern state may be chosen by non-administrative means, but for the basic tasks of management, it's turtles all the way down.

Because they are organized by subject area, not by function, and because they are generally appointed, not elected, administrators have not been regarded as representatives in the sense that the term is used to describe the political system of a nation. But that is because representation has been viewed as intrinsic to democracy, rather than as a mechanism that was adapted from its non-democratic origins to implement the function that underlies Western democracy, which is to govern in a manner that serves the people's needs and desires. Once the instrumental character of representation by elected officials is recognized, it becomes possible to perceive non-elected officials as serving a similarly representative function. The distinctive features of these officials—organization by subject area and selection by appointment—is not due to some underlying or underhanded anti-democratic motivation, but rather to the necessities of democratic government in the modern world. If government is to serve the needs and desires of the people, it must address the problem of management through administrative means. The reason depends the structure of knowledge and the structure of society in the modern world.

The political and industrial revolutions of the late Eighteenth Century do not exhaust the list of revolutions that are relevant to modern democracy. There is at least one more: the Scientific Revolution of the previous century. While this was a complex and varied process, even less amenable to neat periodization than its companion upheavals, it is possible to identify particular achievements that are emblematic of the totality. They include Galileo's principles of motion, Newton's optics and his law of gravitation, and Harvey's circulation of the blood. Underlying these discoveries was a new conception of the physical world and the human body as

controlled by universal, consistent and mechanical forces, rather than having been infused by a creator with innate and unique qualities. The impact of this revelation was unsettling and profound – to this day, many people struggle with the implications of a later but related discovery, Darwin’s law of natural selection.

Beyond even this dramatic reconceptualization of the natural world, the Scientific Revolution produced what can be called an accelerated cumulation of knowledge. Language enables humans to cumulate knowledge by transmitting information and skills that they acquire in their lifetimes. Written records greatly increase this capacity. In philosophy or literary criticism, such records represent the limit of the cumulation process. The best one can do is to read the work of one’s predecessors in the field. The quantity of such work will increase over time, but the learning process is essentially the same; a modern philosopher learns Plato the same way that Cicero did, that is, by reading Plato’s work. This was the way pre-modern artisans learned their craft. They were specialized, in fact more specialized, than modern factory workers, but they typically began as apprentices and needed to learn everything about their craft over the course of their lifetimes. While there were so-called recipe books that circulated in pre-modern times, describing techniques for tanning leather, illuminating manuscripts, producing gold plate and a wide range of other crafts, they provided only supplementary assistance to the basic process of learning the entire activity from the beginning.⁶²

But the Scientific Revolution initiated a qualitative change in the cumulation process, as significant as the development of language or writing. By disclosing and then measuring the forces that control the natural world, science produces definitive findings that are accepted as valid by everyone in the field, and that serve as the basis for further research. These findings thus become an ever-growing body of knowledge that anyone working in the field must assimilate. No modern scientist would read Harvey to learn about the human body or read Newton to learn about the universe. Their work, splendid though it was when it was done, has been incorporated into the ongoing development of their field. To contribute to such a field, or make use of its most recent insights, one must reach its advancing edge, a task that requires increasing amounts of education and training as that advance continues. The familiar expression of modesty by Newton and many others that they saw further because they were standing on the shoulders of giants must be amended; ordinary modern researchers and engineers see very far because they are standing on an entire tower of successive giants.⁶³

The Scientific Revolution did not produce a significant impact on the political and economic systems at the time that it unfolded, or indeed, during the century that followed. For the most part, its discoveries were too remote from ordinary life. There was simply no way for people to use the fact that blood circulated through the body or that the Earth orbited the Sun. In the Nineteenth Century, however, science conquered the Western world. The reason is that its discoveries were conscripted by the entrepreneurs who had been spawned by the Industrial

Revolution. In its initial phases, industrialism did not depend on scientific discoveries and in fact made little use of them. A factory does not require any more technology than a concert hall; all the owner needed to do was gather the workers in a large, indoor space, assign them to specific tasks, and oppress them. The machines that initiated the Industrial Revolution were not based on the scientific discoveries, but were simple devices designed by people with pragmatic, hands-on skills. James Watt's steam engine, first installed in 1776, was an adaptation of an earlier version; in fact, the Roman inventor Hero had developed a steam-powered device, although he regarded it as a toy. The power loom, invented by Edmund Cartwright in 1786 and the cotton gin, invented by Eli Whitney in 1793, were even simpler devices, mere mechanical improvements on earlier versions that had existed for centuries.

As time went on, however, the new class of industrialists began to perceive the possibilities of science. Detached from traditional society, they lived in new cities that were the product of their collective efforts and worked in factories whose machinery was an unintended but accurate correlative of the mechanical universe that the Scientific Revolution had revealed. Thus conditioned to think in non-traditional and scientific terms, and impelled by the cutthroat competition that their commitment to the free market had engendered, industrialists began to hire scientifically-trained specialists to develop their products and improve their methods of production. The simple machines of the early Industrial Revolution were succeeded by the complex devices of its later efflorescence that only a specialist could understand. The products that the industrialists sold to meet the needs and desires of the populace were designed by these specialists and produced by these machines. Modern factory workers, unlike pre-modern artisans, do not need to reiterate the entire body of knowledge that is necessary for their task. The machines with which they work, and the techniques that they can learn in a few weeks or months of training, embed within them this cumulated knowledge. It is this process, much more than specialization, that enables a modern factory to produce products so complex and technologically sophisticated that no one in the factory fully understands the way they work.

As a result, we now live in a world of marvels, where most people can afford devices with capacities that pre-modern people did not dare grant to their imaginary wizards. The hidden price we pay for this technological cornucopia is that we have become referalized. Science has explained the world around us. It has revealed that the Sun is a sphere of gas and not a god, that fire is a chemical process and not a mystic force, and that disease is caused by infection or malnutrition, not evil spirits or miasmas. But it has simultaneously surrounded us with products that are as incomprehensible to us as these previously inexplicable features of the natural world were to feral humans. Pre-modern carriages and wagons were built by skilled artisans, but their construction and operation were readily understood by ordinary people, who could either do necessary repairs themselves or at least explain what needed to be done. Problems with a modern automobile can only be diagnosed by a computer, and local repair shops often need to send the offending part to some distant factory. The cars, computers and cell phones that we

depend on in our daily lives are as mysterious to us as the Sun, fire and disease were to a pre-modern farmer, and the fact that we curse the manufacturer rather than sacrificing to the gods when things go wrong indicates a change in sensibility but reveals the same level of helplessness.

Elected officials can only respond to the needs and desires of the people at the most general, or policy-making level of government, where the issues under consideration are generally comprehensible to ordinary people. The structure of knowledge in the modern world means that issues at a more specific level will be incomprehensible to them. This should not be taken as the sort of disparagement of ordinary people that has become widespread in the United States since the election of Donald Trump. No one in the modern world can comprehend more than the small fraction of the issues that fall within his or her specific area of expertise. A neurosurgeon will not have any idea how to ensure the safety of a nuclear power plant. In fact, she is unlikely to know how to ensure the safety of cardiac medicine, and even less likely to know how to ensure the safety of cardiac medicine for horses. For this, political leaders have needed to recruit the mechanism of specialized administration. They have been required to establish hierarchically organized agencies, each devoted to a specific subject and staffed by appointed officials on the basis of their training and expertise in that subject.

As scientific and technical knowledge cumulates, and as more training is required to reach the advancing edge of a field and produce new products, more training is concomitantly required to regulate these products. The officials who staff these agencies must be appointed on the basis of their specialized training and experience if they are to carry out their function. Moreover, while there are dozens of agencies, each major agency reiterates the general structure of the administrative apparatus within its specified boundaries. An agency with comprehensive authority over transportation must be divided into separate sub-units to deal with automobiles, railroads, airplanes and ships, and within those areas, with safety, infrastructure, pricing, and a variety of other issues. In our modern world, thousands of people have been trained for a decade in aircraft design, and spend all their working hours developing new features or modifying existing ones. How many people would want to fly on a plane whose features had been inspected for safety by elected officials, or even by an appointed official in the same administrative agency who were trained and experienced in automotive engineering?

The reason why the social structure of modern society requires administrative government to respond to the needs and desires of the people has already been discussed. Due to the collapse of traditional village culture and the rapid advance of industrialization and urbanization, people were subject to more intense oppression, or at the very least the more intense experience of oppression. They looked to government, previously insulated from them by the intervening layer of traditional institutions, but now exposed their demands. At the same time, ordinary people, by virtue of their geographic concentration and their secularized worldview, became more capable of expressing these demands in politically effective ways. In

response, as just discussed, political leaders recruited the mechanism of representation by election officials to establish regimes that would satisfy the basic normative principle of modern society, which is responsiveness to the self-defined needs and desires of the populace.

Modern society has generated at least three different and important roles, or situations, in which ordinary people demand that the government respond to their concerns. First is in their role as employees, particularly employees of industrial firms. This is the most venerable situation, having become apparent in the earliest years of industrialization when workers were subject to oppressive and dangerous factory conditions. It is also the most limited in scope, since it generally does not affect managers, store owners, professionals or homemakers; in fact, the differential impact of modernity on people's conditions of employment has created one of the leading political divisions among the populace of modern nations. The second situation is people's role as consumers, a situation which became apparent about a century later when Nabisco began selling Uneeda biscuits. Modern people live in a world of factory-produced, mass marketed goods, with no choice but to rely on these products and no remedy if they are misleading, defective or dangerous. The third role is as denizens of the physical environment that modern industry has created. At first, this was also limited to the conditions experienced by factory workers, who were crowded into horrific urban slums, while other members of society remained in the countryside or built gracious middle and upper class communities that required only essential government services such as water supply and sanitation. After industrialization proceeded for another century, however, its deleterious impact on the air we breathe, the water we drink, the scenery we admire and the wildlife we either hunt or treasure had become a serious concern. Still later, people became aware that the entire planet was being baked by industry, and that their children or grandchildren would be living in a hostile environment of our own creation.

In fact, administrative government expands beyond these specific roles to become a new way of understanding government in general. People not only expect government to protect them from the situations that modern industrial production generates, but also from other misfortunes and inconveniences that were never before regarded as the province of public authorities. An example is disease. During the Peloponnesian War, a dreadful plague occurred in Athens, probably because the entire population of Attica had taken refuge inside the city walls while the indomitable Spartan army ravaged the countryside. Thucydides provides an horrific depiction of social disintegration as people's ordinary means of dealing with disease proved useless. "Supplications in the temple, divinations and so forth were found equally futile, till the overwhelming nature of the disease at last put a stop to them altogether. . . [M]en, not knowing what was to become of them, became utterly careless of everything, whether sacred or profane."⁶⁴ Although the people themselves controlled the government – the people who were falling ill and seeing family members die -- Thucydides does not record a single effort taken by the government of Athens to abate the plague or even restore order. In our very different version of democracy, we expect the government, in particular its public health agencies, to take an

active role in combatting disease, even if its origins cannot be ascribed to any failure of regulatory policy. The refusal of the Reagan Administration to combat the AIDS epidemic stands as a serious indictment of him as a national leader.⁶⁵

The extent to which the government responds to these various concerns is a matter of policy, to be determined in a democratic system by elected representatives. Once that policy is established, however, the only way to implement it is through administrative officials. In their assigned areas of expertise, administrative agencies represent the people. They act for the people, in the sense of responding to their needs and desires, in the same manner as elected officials represent the people at the policy-making level. That is the essential reason why democracy and administrative government developed simultaneously. Although we associate elected representatives with democratic governance, representation is merely a mechanism for the underlying ethos of democracy, which is to create a government that responds to people's self-defined needs and desires. Administration is another mechanism that serves the same purpose, and it is equally essential. Given the conditions of modern society, it would be simply impossible for modern government to be responsive unless people were represented in specific areas of governance by appointed, trained administrators, just as they were represented by elected officials at the policy making level.

A number of objections can be raised to this reinterpretation of government and administration. Three will be considered here: first, that administrators who are appointed rather than elected will not necessarily be responsive to the general public; second, that administrative government is not distinctive to democracy, but is found in all Western nations, including those that we recognize as autocracies; and third, that administration is perceived by a significant number of people in modern society as interfering with their desires, rather than responding to them. There is validity to each of these objections, but –it will be argued – they clarify the basic thesis rather than disproving it.

It is certainly true that appointed officials will not always respond to the needs and desires of the people. That is something that it is worth remembering as an antidote to complacency, but it does not serve as an independent argument against administration. No governmental mechanism is perfect; elected representatives do not always respond to the needs and desires of people either. The argument that appointed officials represent the people in the same way that elected officials do only requires that the appointed officials are no worse than the elected ones, not that they are better, and certainly not that they are better to the point of perfection. In Western democracies, both elected and appointed officials are usually good enough in representing the people for the simple reason that it is what they are supposed to do. To assert that government officials violate this principle is excessive cynicism, excessive because it is asserted without being provable or even plausible. There is no reason to assume that those who devote their lives to public service behave worse than private people in civil

society. If all those people did not do what they are supposed to do, most of the time at least, the entire society would collapse.

There are, of course, stresses and temptations that lead people in all areas of society to misbehave, and these may vary in strength from one area or role to another. An unbiased assessment suggests that elected officials are subject to more stresses and temptations than appointed ones. If power corrupts, and more extensive power corrupts more extensively, then the small number of elected officials who set public policy are prime candidates for unresponsive behavior, rather than the mass of administrators who function within defined and generally narrow limits. To be sure, elected officials must stand for reelection at fixed intervals, but this lack of job security only translates into responsive behavior if the preferences of the people determine the election. Perhaps the leading criticism of democracy is that this is not the case, that money contributed by wealthy individuals and special interest groups is the decisive factor. Administrators are generally insulated from this temptation, since they are paid fixed salaries and, in most Western democracies, effectively forbidden from taking bribes. In addition, they are also disciplined by a wide range of familiar mechanisms. The elected legislators can decrease or redirect their budget, alter their authority, and subject them to oversight inquiries, while the elected executive or his subordinates can issue direct instructions, conduct inquiries and monitor performance. None of this suggests that we should relax our vigilance. Recommendations for disciplining both elected and appointed officials will be advanced in subsequent chapters on the basis of the theory presented here. But the clichés of popular political rhetoric about despotic, self-aggrandizing bureaucrats are not relevant to a discussion of this nature.

The argument that administrative governance is not distinctive to democracy is true. It is a method or mechanism of governance that developed gradually in the Western World as a means of centralizing government authority. Feudalism, in part a cultural pattern of the German tribes that flowed into the Roman Empire as imperial control became attenuated, in part a response to the further weakening of imperial control caused by the inflowing German tribes, was highly decentralized. Beginning in the Eleventh Century, the Catholic Church and then the leading monarchies began to reassert centralized control through mercenary armies, increased revenues derived from the revival of trade, and non-noble officials trained in the newly developed universities and organized in hierarchical chains of command. By the end of the Eighteenth Century, the mechanism was sufficiently developed that it could be recruited by political leaders as a means of responding to the needs and desires of the people. But it served other purposes as well, the most notable being to continue and intensify the exercise of centralized control. This latter function is common to all modern Western nations, whether they are democracies or not. It was sufficiently powerful to have created true administrative governance in all these nations. At the same time Pitt the Younger was buying out positions held as property in British government, the United States was creating a new government, and France

was transforming its existing government, Joseph II, the King of Austria and Holy Roman Emperor (as well as brother of Marie Antoinette and sexual advisor to her husband) was decreeing that government positions must be based on merit and demanding that office holders work full time in their positions and file semi-annual reports documenting their accomplishments.⁶⁶ The bureaucratization of Prussian government, famously implemented by Stein and Hardenberg, came a bit later, after the nation's bitter defeat by Napoleon, but it was in many ways more comprehensive.⁶⁷

The non-democratic origins and multiple functions of administrative government do not make it any different from elected representation however. As already discussed, assemblies of elected officials were organized and empowered by European monarchies and existed for many centuries without any perceived connection to democracies. The same separation is apparent in the modern era. Over the course of the Nineteenth Century, legislatures composed of elected representatives played an increasingly important role in both Austria and Prussia, the leading autocratic regimes in Western Europe. They were never as powerful as the British Parliament, since they did not determine the succession of the ruler, but by the end of the century they were probably as powerful as the U.S. Congress. Most of the large autocratic regimes of the present day, including Russia and China, feature elected legislatures as well. Their role in these regimes is to defuse opposition, to inform the rulers of discontent among the people, and to reduce that discontent by giving people a sense of participation. In other words, administration and elections are not the essence of democracy; they are mechanisms that it uses to serve its underlying purpose, but can be used for other purposes by other types of regimes. The essence of democracy lies in its purpose, which is that the government should serve the needs and desires of the people.

There can be no doubt that a significant number of people in modern society believe that administrative government does not respond to their needs and desires. In some cases, they want the government to do more, to manage the economy or social relations more comprehensively or more effectively. This is not a criticism of administrative government per se, but only a reminder that no governmental mechanism is perfect. Suggestions for improving administration are widespread, and several that emerge from the theory offered here will be discussed in Chapter Five. There are, however, a number of people who believe that administrative government in general does not respond to their needs and desires, but rather interferes with them. The most significant group in society that maintains this view are owners and managers of businesses, who feel beleaguered or oppressed by the proliferation of rules and the discretionary authority of bureaucrats. In their view, administrative government is the enemy of freedom, and thus in opposition to the values and practices of a representative democracy.

While this is an important criticism in practical terms, it does not refute the idea that administrative government represents the people. The reason is that the argument is based on a

mistaken premise. One of the elements of the modern sensibility that underlies democracy is the free market, described above as the absence of restrictions on what people are allowed to buy and who they were allowed to buy it from. In other words, it was a freedom that belonged to consumers, or more precisely, to the general populace in its economic role. It is in this sense that the free market reflects the same worldview as representative democracy and the more general morality of self-fulfillment. The freedom of producers that generates the free market is derivative of this more basic freedom of the general populace. In fact, as described above, it is actually a subjugation to consumer preferences, a willingness to live or die, in economic terms, on the basis of the needs and desires of the citizenry in their role as consumers. Capitalists gladly agreed to this subjugation because, in releasing them from the prohibitions that protected royal monopolies and the controls exercised by government authorized guilds, it proved to be the source of enormous and ever-growing wealth.

This market freedom is a matter of consensus in Western democracy. It is restricted only by strong normative considerations, typically arising from the pre-modern morality of higher purposes. Birth control medication, abortion and prostitution have been restricted because of the pre-modern view that sex should serve the higher purpose of procreation, as opposed to the modern view that it should be a source of personal fulfillment. There is nothing surprising about this. Just as the warrior nobility railed against the shift from the morality of honor to the morality of higher purposes, the rural, the devout and the generally discontented often berate the morality of self-fulfillment as immoral on the basis of their preferred morality of higher purposes. But producers advance a more theoretically supportable argument against the modern regulatory state, one that is in fact a major source of political division in modern democratic nations. They claim is that they, in their role as producers, are entitled to the same freedom as the general populace, the same entitlement that social institutions serve their needs and desires. Administrative agencies, they argue, thus violate the normative premise of the modern society and its free market economy, rather than instantiating it.

The defect in this argument is that it transfers to a small group of individuals, and perhaps to non-human legal entities like corporations, an entitlement that belongs only to the populace in general. In their role as employees, people rightfully demand that the government protect them from oppressive and injurious working conditions. In their role as consumers, they demand that the government protect them from misleading and defective products. In their role as inhabitants, they demand that the government protect them from deleterious and destructive environmental conditions. It is these demands that truly derive from the modern worldview that the institutions of society should serve the needs and desires of the people. Since preferences conflict in any society, the crucial question is which preferences should count, which ones are entitled to be treated as primary. Religious people express the preference that marriage be restricted to heterosexual unions, Southerners, like the white majority in Phillips County, expressed a preference for racial segregation, and producers express a preference for unregulated markets.

The rhetoric generated by the modern worldview can be conscripted in support of these positions in various ways; in the case of producers, it is the rhetoric of freedom. To resolve these conflicts, at the level of theory, it is necessary to refer back to the basic normative principle that underlies our modern world, which is that social institutions should serve the self-defined desires of the people. This means that the freedom of the market belongs to the people, not to producers. The freedom that the capitalists won from the demise of mercantilism was not for their own benefit, although they benefitted from it enormously, but an instrumentality that enabled the economic system, like the political system, religion and morality, to serve the people's self-defined goals and preferences.

These considerations provide an answer to the claim that producers have a basic right to be free of restrictions that protect the people in their roles as employees, consumers and inhabitants, but they do not resolve many of the conflicts about regulation that prevail in modern society. People also want prosperity; they want an economy that satisfies their desires as well as their basic needs (what Plato describes as “relishes” in the *Republic*).⁶⁸ In claiming that particular regulations do more harm than good, that they impair prosperity without providing real or useful protection, producers are advancing an argument that is fully consistent with the modern worldview. That is one of the basic issues that we rely on the mechanisms of democracy to resolve. We ask elected representatives to resolve these issues at the policy making level, and then we ask administrators, also acting as representatives, to resolve them at the implementation or managerial level. But producers cannot claim that their pragmatic arguments for limits on regulation carry normative force derived from the defining principle of modernity. That principle, the redefinition of social institutions as satisfying the self-defined desires of its individual members, operates in favor of consumers, not producers.

The remainder of this book will explore the implications of the reinterpretation of Western democracy for a range of issues that currently confront it. Chapter Four will address the problem of succession, and will argue that we should draw on the resources of administrative governance to create election commissions that can remedy some of the problems that currently afflict the electoral process, such as the dominant effect of money, the gerrymandering of electoral districts, and the dangers of anti-democratic rhetoric and attitudes. Chapter Five will address the problem of management. It will advance recommendations for improving the regulatory process by recognizing its essential character, but also suggest that regulators play a role in controlling elected officials. Chapters Six and Seven will then consider the underlying defects of democratic government that require controls from outside its regular institutions and procedures. Chapter Six will consider the familiar tyranny of the majority and the general problem that the human rights record of most democracies is acceptable only in comparison to dictatorship. It will recommend that the current method of control, which is generally judicial review, be supplemented by administrative agencies specifically designed and authorized to protect human rights. Chapter Seven will address the issue of economic inequality that

democracy has done so little to solve and will suggest [something that I haven't fully thought through at the present time].

¹ This section is based on my previous work, *Soul, Self and Society: The New Morality for the Modern State* (New York: Oxford Univ. 2015).

² See Jurgen Habermas, *The Theory of Communicative Action*, vol. 2: *Lifeworld and System: A Critique of Functionalist Reason* (Thomas McCarthy, trans.) (Boston: Beacon 1987); Talcott Parsons, *The System of Modern Societies* (Englewood Cliffs, N.J., Prentice-Hall 1971); Max Weber, *Economy and Society* (Guenther Roth & Claus Wittich, eds.) (Berkeley, Cal.: Univ. of California 1978). See generally Jean L. Cohen and Andrew Arato, *Civil Society and Political Theory* (Cambridge, Mass.: MIT Press 1992);

³ E.g., R.H. Tawney, *The Rise of the Gentry, 1558-1640*, *Economic History Rev.* 11:1-38 (1941). See generally R.C. Richardson, *The Debate on the English Revolution* (Manchester: Manchester Univ. 1998)

⁴ Max Weber, *The Protestant Ethic and the Rise of Capitalism* (Talcott Parsons, trans.) (New York: Charles Scribner's Sons 1958). See generally William H. Swatos & Lutz Kaelber, *The Protestant Ethic Turns 100: Essays on the Centenary of the Weber Thesis* (Boulder Co.: Paradigm 2005)

⁵ Peter Brown, *The World of Late Antiquity* (London: Thames and Hudson, 1971). See also Walter Goffart, *Barbarians and Romans AD 418-584: The Techniques of Accommodation* (Princeton, N.J.: Princeton Univ. 1980); Julia M. H. Smith, *Europe after Rome. A New Cultural History, 500-1000* (2005). But see Bryan Ward-Perkins, *The Fall of Rome and the End of Civilization* (Oxford, Eng.: Oxford Univ. 2005), for a partial rehabilitation of the traditional approach.

⁶ Gregory of Tours, *The History of the Franks* (Lewis Thorpe, trans.) (London: Penguin 1974)

⁷ A.W.H. Adkins, *Moral Values and Political Behaviour in Ancient Greece From Homer to the End of the Fifth Century* (New York: W.W. Norton, 1972), pp. 14-19; M.I. Finley, *The World of Odysseus* (New York: Viking, 1965); Francis Fukuyama, *The Origins of Political Order* (New York: Farrar, Strauss & Giroux, 2011), pp. 64-79); William Miller, *Bloodtaking and Peacemaking: Feud, Law and Society in Saga Iceland* (Chicago: Univ. of Chicago, 1990); Raphael Patai, *The Arab Mind* (New York: Hatherleigh, 2002), pp. 78-102.

⁸ Norbert Elias, *State Formation and Civilization*, in Norbert Elias, *The Civilizing Process* (Edmund Jephcott, trans.) (Oxford, Eng.: Blackwell 1994).

⁹ Ernst H. Kantorowicz, *The King's Two Bodies: A Study in Medieval Political Theology* (Princeton, N.J.: Princeton Univ., 1957)

¹⁰ Marc Bloch, *Feudal Society*. Vol. 1: *The Growth of Ties of Dependence* (L.A. Manyon, trans.) (Chicago: Univ. of Chicago, 1961), pp. 211-18; Barbara W. Tuchman, *A Distant Mirror: The Calamitous 14th Century* (1978), pp. 297-305.

¹¹ See Edward L. Rubin, *Beyond Camelot: Rethinking Politics and Law for the Modern State* (Princeton, N.J.: 2005).

¹² Henri Pirenne, *A History of Europe*, Vol. I: *From the End of the Roman World in the West to the Beginning of the Western States* (Bernard Miall, trans.) (New York: Doubleday & Co., 1956), pp. 3-31; Henri Pirenne, *Medieval Cities: Their Origins and the Revival of Trade* (Princeton, N.J.: Princeton Univ., 1969), pp. 1-35.

¹³ Graham Robb, *The Discovery of France: A Historical Geography* (New York: W.W. Norton, 2007); Eugen Weber, *Peasants into Frenchmen: The Modernization of Rural France, 1870-1914* (Stanford, Cal.: Stanford Univ. 1976)

¹⁴ Fernand Braudel, *The Perspective of the World* (Berkeley, Cal.: Univ. of California 1979).

¹⁵ See Gregory of Tours, *Lives of the Fathers* (2nd ed.) Liverpool, Liverpool Univ., 1991)

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- ¹⁶ Max Weber, *The Protestant Ethic and the Spirit of Capitalism* (Talcott Parsons, trans.) (New York: Routledge, 1992).
- ¹⁷ Edmund Burke, *Reflections on the Revolution in France* (Oxford, Eng.: Oxford Univ., 1999) [1790]; Joseph de Maistre, *Considerations on France* (Richard A. Lebrun, trans.) (Cambridge, Eng.: Cambridge Univ., 1994)
- ¹⁸ Marsilius of Padua, *Defensor Pacis* (Alan Gewirth, trans.) (New York: Columbia Univ., 2001) [1324]
- ¹⁹ Thomas Hobbes, *Leviathan* (New York: Penguin, 1968) [1651]
(Al²⁰ Jurgen Habermas, *The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society* (Thomas Berger, trans.) (Cambridge, Mass.: MIT, 1991)
- ²¹ Simon Schama, *Citizens: A Chronicle of the French Revolution* (New York: Vintage 1989), p. 359
- ²² Id. at 101 (emphasis in original quotation).
- ²³ Friedrich Engels, *The Condition of the Working Class in England* (London 1987) [1845]
- ²⁴ See Eric Hobsbawm, *Industry and Empire: The Birth of the Industrial Revolution* (New York: New Press, 1999), pp. 34-56.
- ²⁵ Jasper Ridley, *The Tudor Age* (New York: Carroll & Graf, 2002), p. 132-33
- ²⁶ Daniel Defoe, *A Tour Thro' the whole Island of Great Britain* (London: Peter Davies, 1927) [1724-27], pp. 604-10.
- ²⁷ See Francis Place, *The Autobiography of Francis Place* (Mary Thale, ed.) (Cambridge, Eng.: Cambridge Univ., 1972). See Dorothy George, *England in Transition* (Harmondsworth, Eng.: 1931)
- ²⁸ Rubin, *supra* note [.]
- ²⁹ 1 Corinthians 7:9.
- ³⁰ Aristotle, *Politics* (Benjamin Jowett, trans.), in *The Works of Aristotle* (Encyclopedia Britannica 1952), pp. 445-49 (1252a*-1255b*)
- ³¹ See Bartolome de las Casas, *A Short Account of the Destruction of the Indies* (New York: Penguin, 1999)
Lawrence A. Clayton, *Bartolome de las Casas: A Biography* (New York: Cambridge Univ., 2012), pp. 82-120;
Henry Raup Wagner & Helen Rand Parish, *The Life and Writings of Bartolome de las Casas* (Albuquerque, N.M.: Univ. of New Mexico, 1967), pp 25-30, 170-82
- ³² Christopher Hill, *The World Turned Upside Down: Radical Ideas During the English Revolution* (London: Penguin, 1991).
- ³³ *Somerset v. Stewart*, 98 ER 499 (KB, 1772)
- ³⁴ James Ramsay, *An Essay on the Treatment and Conversion of African Slaves in the British Sugar Colonies* (Cambridge, Eng.: Cambridge Univ., 2013) [1784]
- ³⁵ Peter Kolchin, *American Slavery, 1619-1877* (rev. ed.) (New York: Hill and Wang, 2003); Leon F. Litwack, *North of Slavery: The Negro in the Free States, 1790-1860* (Chicago: Univ. of Chicago, 1961), p.3
- ³⁶ Jeremy Bentham, *The Principles of Morals and Legislation* (Amherst, N.Y., 1988) [1789]
- ³⁷ Adam Smith, *The Wealth of Nations* (New York: Penguin, 1986) [1776]
- ³⁸ Benita Cullingford, *British Chimney Sweeps: Five Centuries of Chimney Sweeping* (Chicago: New Amsterdam, 2000); K.H Strange, *Climbing Boys: A Study of Sweeps' Apprentices, 1773-1875* (London: Allison & Busby, 1982)
- ³⁹ George, *supra* note [.] , pp. 22-24.
- ⁴⁰ James Hanway, *The State of Master Chimney Sweepers and Their Journeymen* (London: Sewell in Cornhill, 1779) [1773].
- ⁴¹ Thucydides, *The Peloponnesian War* (John H. Finney, trans., 1951) (New York: Modern Library, n.d.)
- ⁴² Aristotle, *The Athenian Constitution* (P.J. Rhodes, trans.) (New York: Penguin, 1984). Modern scholars have concluded that this work was not written by Aristotle himself.
- ⁴³ See generally Frederica Carugati, *Creating a Constitution: Law, Democracy and Growth in Ancient Athens* (Princeton, N.J.: Princeton University, 2019); Joint Association of Classical Teachers, *The World of Athens* (Cambridge, Eng.: Cambridge Univ. 1984); pp. 196-231; Donald Kagan, *Pericles of Athens and the Birth of Democracy* (New York: Touchstone, 1991), pp. 46-64; Thomas M. Mitchell, *Democracy's Beginning: The Athenian Story* (New Haven, Conn.: Yale Univ., 2015)
- ⁴⁴ Aristotle, *Politics*, *supra* note [.] , pp. 476-502 (1279b*-1301a*)
- ⁴⁵ J.C. Holt, *Magna Carta* (Cambridge, Eng.: Cambridge Univ., 1992).
- ⁴⁶ Otto Gierke, *Political Theories of the Middle Age* (Frederic Maitland, trans.) (Boston: Beacon Press, 1958), pp.61-67; Arthur Monahan, *Consent, Coercion and Limit: The Medieval Origins of Parliamentary Democracy* (Kingston, Ont.: McGill-Queen Univ., 1987), pp. 97-133; Gaines Post, *Studies in Medieval Legal Thought: Public Law and the State, 1100-1322* (Princeton, N.J., Princeton Univ., 1964); Gaines Post, *A Roman Legal Theory of Consent: Quid Omnes Tagit*, *Wisconsin Law Review*, 1950: 66

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- ⁴⁷ See John Lynch, *Spain Under the Habsburgs, vol. 1: Empire and Absolutism, 1516-1598* (New York: New York Univ., 1984); Geoffrey Treasure, *Seventeenth Century France: A Study in Absolutism* (Garden City, N.Y.: Doubleday, 1967)
- ⁴⁸ King James VI and I and the Divine Right of Kings: the Trew Lawe of Free Monarchies (Daryl Liwin, trans.) (Amazon, 2016) [1598]. The king seems to have actually written this book. Despite the attribution in this translation, he wrote it Scotland, before he acceded to the English throne.
- ⁴⁹ James Harrington, *A System of Politics*, in James Harrington, *The Commonwealth of Oceana and A System of Politics* (J.G.A. Pocock, ed.) (Cambridge, Eng.: Cambridge Univ. 1992), p. 281. The quote summarizes the discussion in *Oceana*. *A System of Politics* may have been written by John Toland, who edited Harrington's works, but was probably written by Harrington. See *id.* at xxiii.
- ⁵⁰ See Christopher Hill, *The World Turned Upside Down: Radical Ideas During the English Revolution* (London: Penguin, 1991).
- ⁵¹ Voltaire, *Letters on England* (Leonard Tancock, trans.) (New York, Penguin, 1980) [1733]. Regarding the British government, see pp. 44-50 (Letters VIII & IX).
- ⁵² Montesquieu, *The Spirit of the Laws* (Anne Collier, Basia Miller & Harold Stone, trans.) (Cambridge, Eng.: Cambridge Univ. 1990), pp. 154-212.
- ⁵³ See Crane Brinton, *The Anatomy of Revolution* (rev. ed.) (New York: Random House, 1952)
- ⁵⁴ Benjamin L. Carp, *Defiance of the Patriots: The Boston Tea Party and the Making of America* (New Haven, Conn.: Yale Univ., 2010); Benjamin Labaree, *The Boston Tea Party* (Boston: Northeastern Univ. 1979)
- ⁵⁵ See, e.g., Federalist X, in James Madison, Alexander Hamilton & John Jay, *The Federalist Papers* (Isaac Kramnick, ed.) (New York: Penguin, 1987)[1788], p. 122, 126.
- ⁵⁶ George Grote, *A History of Greece from the Earliest Period to the Close of the Generation Contemporary with Alexander the Great*, 12 vols. (4th ed.) (London: J. Murray, 1872) [1846-56]
- ⁵⁷ Alexis de Tocqueville, *Democracy in America* (Harvey C. Manfield & Deborah Winthrop, trans.) (Chicago: Univ. of Chicago, 2000).
- ⁵⁸ Hanna Fenichel Pitkin, *The Concept of Representation* (Berkeley, Cal.: Univ. of California, 1967)
- ⁵⁹ Edmund Burke, *Speech at Mr. Burke's Arrival in Bristol*, in *The Portable Edmund Burke* (Isaac Kramnick, ed.) (New York: Penguin, 1999), p. 155
- ⁶⁰ *Id.*, p. 165.
- ⁶¹ See Paul J. DiMaggio & Walter W. Powell, *The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organization Fields*, in Walter W. Powell & Paul J. DiMaggio, *The New Institutionalism in Organizational Analysis* (Chicago: Univ. of Chicago, 1991), p. 63.
- ⁶² See Ricardo Cordoba, ed. *Craft Treatises and Handbooks: The Dissemination of Technical Knowledge in the Middle Ages* (Turnhout, Belgium: Brepols, 2013).
- ⁶³ See Stephen Hawking, *On the Shoulders of Giants: The Great Works of Physics and Astronomy* (Philadelphia: Running Press); Robert K. Merton, *On the Shoulders of Giants: A Shandean Postscript* (Chicago: Univ. of Chicago Press, 1990).
- ⁶⁴ Thucydides, *supra* note [], pp. 110, 113
- ⁶⁵ See Randy Shilts, *And the Band Played On: Politics, People, and the AIDS Epidemic* (New York: St. Martin's Press, 1987).
- ⁶⁶ T.C.W. Banning, *Joseph II* (London: Longman 1994); Robert Kann, *A History of the Habsburg Empire, 1526-1918* (Berkeley, Cal.: Univ. of California, 1974), pp. 183-207; Saul K. Padover, *The Revolutionary Emperor: Joseph the Second* (New York: Robert O. Ballou, 1934).
- ⁶⁷ Christopher Clark, *Iron Kingdom: The Rise and Downfall of Prussia, 1600-1947* (Cambridge, Mass.: Belknap, 2006)
- ⁶⁸ Plato, *The Republic* (Alan Bloom, trans.) (New York: Basic Books 1968), p. 49 (p. 372c-d*)/