

When tribes or clans gave way to states and states became more democratic, the issue of private-public relations gradually developed. Early versions of the state—especially theocracies—tended not to make a sharp distinction between private and public. The gradual development of the modern state entailed a tendency toward more separation of the two spheres, at least in theory. In the 19th century the spheres of male and female activity became more sharply segregated, with the public sphere treated as a male domain (with consequent effects on male and female definitions of selfhood).

In 17th-century Puritan Massachusetts, selfhood, community, the public realm and religion were all intertwined and necessary to one another. In the late 20th century, in the United States, people often emphasized the Constitution's Bill of Rights more than the main body of the Constitution and liked the idea that rights derived from natural law. Respect for government and the public sphere had substantially diminished. In this multicultural country, ethnic groups varied in their definitions of the word "public," depending on their own historical experiences and on their power position in the United States. To some people, liberty alone seemed a shaky ground for community and for selfhood. Increased globalization also raised questions: e.g., whether the state as a political form was in danger of becoming obsolete, and—if so—what would happen to cities.

In the following chapter, first published in volume 2 of Paul C. Nystrom and William Starbuck, eds., Handbook of Organizational Design (New York: Oxford University Press, 1981): 464-491, I analyzed the evolution of public-private relations in Western history.

CHAPTER 15



Public or Private Government?

Government is the process that translates values and policy into enforceable law and institutionalized, organized action, that authoritatively allocates resources. A private government is the government of a business or industrial corporation, a bank or other financial institution, a trade association, church, or any other limited-purpose organization. Americans and some Europeans often presume that most associations are private and distinct from public government. The fact is that many private governments are inextricably intertwined with public governments. Both a private government and a public government to which it relates may be local, provincial, national, or supranational.

The presupposition that there are distinctly separate private and public governments did not exist during many periods of history and does not exist today in parts of the world where religion dominates or where social organization is primarily tribal. Because the presupposition itself is not relevant to many situations, illustrations of nonseparation are not all of one kind or of equal significance. Chinese emperors commingled finances that could have been called either private or public.¹ Early Roman emperors used their own slaves as staff and used taxes for personal expenditures because, in their own sphere of activity, they made no distinction between public and private, though the distinction existed in Roman law for other spheres.² Many American founding fathers and the Duc de Morny and others in France's Second Empire used public offices to enrich themselves because the idea of separating public offices from private interests had not been matured and clarified.³

Other examples of nonseparation refer to the public regulation of everyday behaviors that are often considered private. Reverting to an ancient Greek idea of the community as the place in which mankind is brought to God, early New England towns scrutinized the details of a person's behavior and his or her family life. In Saudi Arabia, details of personal behavior are regulated by the king in the name of Islam.

Still other examples refer to the overall structure of society and government. In the governance of many Muslim countries today—as in their Middle Ages—what Westerners would distinguish as private and public are not structurally separate. European feudalism and the medieval manorial system attached responsibility for governance to personal, social, and economic statuses, linked

in some periods to military roles. The early Anglo-American colonies were developed by quasi-private companies such as the Virginia Company or the Massachusetts Bay Company, chartered by the crown to serve the English commonwealth. The companies had governmental and even military powers. New Amsterdam, too, was the province of a commercial company, serving Dutch interests. Municipal boroughs in England and some towns in the middle and southern American colonies thoroughly commingled the economic interests of a town's merchants with those of its municipal corporation. Until 1811 in New York State, and later in other states, all business incorporation in the United States was by special charter of the legislature. The charter usually conferred some form of monopoly, partially because the common law of property protected the rights of the earliest property holders against conflicting uses by later neighbors,⁴ but also because the companies were public utilities. The assumption was that such corporations were arms of the state. Later, general incorporation laws had a different premise. As Latham has written, "The charters of the seventeenth century were instruments by which private persons served public purposes; the nineteenth-century charters became instruments by which private groups used the state in the enrichment of private interests."⁵

Inherent in public-private relationships are not only political issues, but also military, religious, sociological, and economic ones: the relative weights and relationships of spiritual and secular concerns; the social basis of morality and the relationship of morality to positive law; the stage and momentum of economic development; and the relationships of social, economic, and ethnic groups to one another. The issues change when emphasis shifts from the local community to the nation-state or to transnational organizations like the European Economic Community.

The cultural and temporal relativity of the issues makes an historical perspective desirable. As prologue to further analysis, this chapter will begin with historical sketches of the relations between church and state in Europe and North America; the development of organic structures in medieval Europe; the rise of modern corporations and corporatism; and the relationship of international or multinational private governments to national sovereignty.

Church and State in Europe and America

Although, in modern times, it is a relatively new idea to claim that the governance of private organizations is not separate and distinct from public government, they were commingled in the European Middle Ages in a way that made distinctions between the words private and public not really relevant. European and American history has seen dialectical transitions in practice and in theory, from medieval organic societies through dismantling the medieval organism to developing organic characteristics within states.

Medieval European thinkers believed that the whole of mankind comprised a single organism. In medieval thought, each part of mankind and every creature on earth occupied an assigned place in a harmonious, universal hierarchy. Each individual element or creature had a functionally unique role to play, but each was also a microcosm of the macrocosm. As Gierke wrote, “Like mankind as a whole, so, not only the Universal Church and the Universal Empire, but also every Particular Church and every Particular State, and indeed every permanent human group” was compared to a natural body.⁶ Within such a body, the law did not always affect each part equally. Rights resided in each group taken as a whole in relation to the larger whole. Each organism—group, church, or empire—came to life only through its parts; yet the organism’s existence was independent of changes in its parts.

Medieval European thought presumed that all mankind formed a community constituted by God. In this human community there was a duality between the secular and sacred orders. This was not a duality between state and society, or between private and public. Both sacred and secular authorities could interfere in aspects of life later called private.⁷ The concept that private and public governments fell into two separate spheres did not fully develop until after the sacred order was relegated to a lesser role and the Roman Catholic Church was drastically reduced in significance, that is, until society became secular. Then, what had once been most important—the afterlife and the moral base of living—became no longer a public interest, but only a private one, having no ascendancy over economic interests, which were also private.

The path to this change was paved with arguments about church and state. Influenced by Diocletian’s reorganization of the Roman Empire and by Constantine’s conversion to Christianity, the Roman Catholic Church gradually transformed itself from a loosely organized sect into a bureaucratic hierarchy.⁸ Beginning with Charlemagne, from the ninth century forward, Holy Roman emperors represented the secular side of the former Roman Empire. The question was how dominant a pope was entitled to be over an emperor.

By the thirteenth century, supporters of the pope were arguing that God had mandated both spiritual and temporal powers to the Church, as the one true state, headed by Christ with the pope as His vice-regent, and that the authority of the secular government came from God through the Church.⁹ Under feudal law, the secular emperor was the highest of the papal vassals and the divine law of the Church took precedence over the positive law of the secular government. On the other hand, partisans of the emperors claimed that their powers derived from those of the old Roman emperors, and that secular power should not be subordinate to ecclesiastical power: each derived directly from God, and both were aspects of a single commonwealth.¹⁰

Eventually, with the Reformation and the rise of Protestant states in western and central Europe, sovereignty was deemed indivisible. Each state had its own church, and—following pre-Christian precedents—the head of state became the head of the church. Not all peoples took the path of Protestantism, but when German Protestant princes assumed power over territories with Catholic populations, they applied to those territories too the theory that ultimate and indivisible sovereignty lay in the state.¹¹

A Prussian law, enacted in 1794, prohibited alien bishops or other ecclesiastical superiors from exercising jurisdictional powers within Prussia.¹² Although France remained Catholic, Louis XIV treated the pope as a foreign ruler; he prohibited French bishops from communicating with the pope without the prior consent of the king or his officials. Napoleon thought of himself as the heir to Charlemagne. Needing religion to consolidate his empire, he persuaded the pope to crown him emperor in the Notre Dame Cathedral at Paris; then he proceeded to annex the papal states, to imprison the pope, and to make himself head of the Church in his empire.¹³ Fusions of church-state power were followed by successive demotions of religion. Protestants were not inherently committed to a church-state separation, as Calvin's theocracy in Geneva demonstrated.¹⁴ But the multiplication of Protestant sects, especially in England, and appearance of new church forms that migrated to America paved the way toward disestablishment of churches altogether in America.

Next came successive moves toward toleration of dissent, a toleration facilitated by the declining importance of religion anyway.¹⁵ Althusius wrote in 1603 that the sovereignty of the state was compatible with the autonomy of other groups; a state was a federation of other associations.¹⁶ England and France expressed opposite moods toward the end of the seventeenth century: in 1685, France officially ended her toleration toward the Huguenots; but, in 1689, an English law permitted all religious dissenters but Unitarians, Socinians, and Papists.¹⁷ By the 1820s, England had removed most restrictions toward dissenting churches.¹⁸

Privatizing religion was accompanied by privatizing of other activities. In the late Middle Ages in Europe, law, medicine, and the academic professions usually required university degrees, and universities were usually controlled by the Roman Catholic Church, but in the sixteenth and seventeenth centuries these professions began to be secularized and to form organizations of their own. Accounting was already established as a free profession in Renaissance Italy. The new, free professions of architecture and dentistry formed.¹⁹ Education was slow to be secularized, with secularization going further in the United States than in Europe. In the United States during the nineteenth century, church-sponsored education was gradually replaced by secular, universal, free, public education,

and the concept of public education was extended to college and university training. Church-sponsored education was treated as private thereafter.

In the twentieth century, the Church of England remained a state church, German churches were supported by taxes, and there were semi-state religions in Norway, Sweden, Italy, and Spain.²⁰ American churches had tax exemptions. The long battles over governmental support of religious schools in France and the United States continued. Despite the American Constitutional provision guaranteeing freedom of religion, the issue of whether religion was totally private or quasi-public had not been completely resolved.²¹

Devolution of the Organism

The medieval organism had four dimensions: geographical length and breadth were two dimensions, height—the reach from earth to heaven—was a third, and time linked to eternity was a fourth. The devolution from the medieval organism to the liberal nation-state—and the demotion of religious and vocational organizations to nonexistence or private status—required that the sacred and secular be separated from one another. With that separation came a change to two-dimensional space and secularization of time.

Toward Two-Dimensional Space

The spatial change altered the theory of how various political units—city, province, empire—relate to one another. Aristotle had written that people were naturally social.²² In isolation, people could not live the intellectual lives so essential for full expression of their potentialities. Only as citizens of city-states could people fulfill themselves. Private lives were essentially inferior. The state, public lives, and the common good were the highest and sovereign forms of morality.²³ The Greek city-state had been both a civil and religious community. In the Roman Empire, rendering unto Caesar the things that were Caesar's became the strategy of a Christian minority trying to avoid persecution by separating religion from civic obligation; but when circumstances eventually permitted, in medieval society, Christians revived the ancient idea of combining civil and religious community.

At first, this idea of community at the local level did not conflict with the idea of an all-embracing higher community. The European medieval town acquired power to govern itself and to live under legal rules that it did not share with the surrounding countryside. Yet, in Roman Catholic theology, because all of humanity was thought to be organized in a single organic structure, local civic-religious communities were subordinated to higher and wider communities in which they found their completion and their limitations. The Holy Roman Emperor was believed to be ruler of all peoples of the world.²⁴

As the differences between the local community, the principality or kingdom, and the larger Roman Catholic empire gradually became merely differences in size, the smaller no longer a microcosm of the larger, the lesser community did not require the greater one to complete its meaning. The so-called universal world empire evaporated into an unsubstantial shadow.²⁵ New national states had a growing sense of independence and exerted greater secular power over the cities within their borders. State-chartered English cities and American towns in the middle and southern colonies were secular corporations whose functions were social and economic.²⁶

The Protestant rebellions in southwestern German imperial cities were based on the older idea of a city as a place where citizens regulated their own lives to accent communication with the sacred and salvation in the afterlife.²⁷ This idea of the role of community was the informing concept behind Calvin's Geneva and Winthrop's Boston. New Englanders repeatedly transplanted a diluted form of this concept as they pioneered across the northern United States. The idea of an urban moral commonwealth requiring local civic loyalty and citizens' contributions to local public service colored the thinking of Yankee and German-American urban reformers during the nineteenth and twentieth centuries,²⁸ was present in American cities' battles for home rule, and helped account for the particularism of some American suburbs of the 1950s and 1960s. The counters to these were, on the one hand, the efforts of nineteenth- and early twentieth-century American immigrant ghettos to develop their own, neighborhood versions of community,²⁹ so that the common framework for different groups had to be more secular and neutral; and, on the other hand, the tendency of the liberal nation-state to transcend the local community as a focus for loyalty and to deflect to national patriotism what might otherwise have been a more thoroughgoing, otherworldly emphasis.³⁰ Meanwhile, the form of Ameri-can cities along the middle and southern Atlantic seaboard had long since changed from being primarily corporative to being primarily territorial, with voting based on residence: a territorial city within a territorial state.

Secularization of Time

The same devolution that made space two-dimensional—that is, merely geographic—unlinked time from otherworldly eternity and hooked it instead to the secular idea of progress. This change meant that human organizations of all kinds were no longer regarded as timeless. In addressing himself to the problem of succession in the mystical body of the Church, Thomas Aquinas had made it clear that this body was composed not only of those living simultaneously in the contemporary ecclesiastical world community and within a universal space, but also of all members past and future, actual and potential, who followed each other successively in a universal time. The same principle

was applicable, with slight variations, to any like corporate grouping, large or small, ecclesiastical or secular.³¹ Aquinas' principle could also be applied to the emerging national state during the period when the state was conceived of as being a mystical body of which the crown was the symbol and concrete representation. Kantorowicz brilliantly delineated the later implications of Aquinas' principle in his book *The King's Two Bodies*.³² As he demonstrated, the medieval concept of the king as human by nature and divine by grace led the sixteenth- and seventeenth-century English to distinguish between the natural body of the king and the king as the embodiment of the body politic. In the latter capacity, the king both represented the whole country and headed an immortal organism. Hence the king as body politic could not die even though the king as natural body did die. Guilds, corporations, and chartered companies were also considered to be bodies politic.

To apply reason and will to the remaking of institutions, people had to discard the medieval belief that institutions persisted into perpetuity. Often this entailed a repudiation of the idea that an organization had existed since time immemorial. In England before the Tudors, one concept of a corporate charter—whether to a municipality, ecclesiastical body, university, or guild—had been that it merely recognized an already existent corporation. The Tudors and Stuarts revived the older Roman idea that any corporation was the creature of the state. Sixteenth- and seventeenth-century England relied on joint-stock companies and partnerships for commercial enterprises. This also helped to diminish—temporarily—the strength of the idea of corporate persistence, since partnerships dissolved when their natural members died.³³ Business organizations came to be formed by private contracts, and contracts made by human will can be unmade. In addition, because kingships had perpetuity that endured while individual kings came and went, eventually the peoples of some countries felt they had to eliminate not just kings but also kingships in order to gain greater control over their own country.³⁴ The new belief was that the state itself was formed by social compact. Out of this process, popular sovereignty evolved.

The Law of Popular Sovereignty

When towns, with their self-governing merchant and craft guilds, came increasingly under the jurisdiction of the new, national states in western Europe, and kings rose to power, new issues arose about the rights of citizens and organizations. From earliest times, the pope's authority had been challenged by those who favored general councils of bishops. In both the medieval Church and state, the principle of popular sovereignty was latent and even sometimes explicitly articulated. Those who advocated that the people themselves had inalienable sovereignty did not argue at first that people had the right to participate solely as individuals in the powers ascribed to the whole community; rather, citizens

should act as parts of a whole which are articulated by differences of rank, profession, and office.³⁵ The ostensible purpose of decision-making was not to express the will and interest of the individual but to find and act upon the will of God.³⁶ For popular sovereignty to evolve, God had to become absentee and nongoverning.

The idea of natural law reinforced the principle of popular sovereignty. In medieval English theory, the state had power over positive law, but was subject to natural law. Some aspects of the law of property and contract did reside in positive law, and hence could be altered, but most of the law of property and contract descended from the natural law. Rights deriving from the natural law could not be abrogated by a sovereign power. The king had inalienable rights, but so had the people. Any act of the sovereign that violated natural law was formally null and void. Natural law came to be viewed as God's way of working. No longer was He believed to rule by fiat. Or natural law was seen as a process that required no God at all. Gradually, the idea of natural law was used to emphasize that individual people had inalienable rights that took precedence over the rights of either states or organizations.

More and more emphasis was placed on human will rather than God's creation as the basis on which communities and states were founded. Public government represented the people as a whole, whereas, in the Middle Ages, the various estates and corporate groupings were represented as parts of society by agents to the royal government.³⁷ When states became what individuals had collectively created, some social philosophers argued that there was no need for intermediate associations as bodies politic within the state. If they did exist, they should be regarded as temporary creatures of the state or as the temporary results of private acts.

The change toward a clearer distinction between public and private, from the seventeenth through the nineteenth centuries, both resulted from and helped to bring about the shifts in western European economies from agriculture to commerce and then to industry. Concomitantly, private-public relationships came to be perceived in a predominantly secular framework, and the idea of worldly progress gradually crowded out emphasis on the afterlife. Progress required the dismantling of associations having the static persistence required by the medieval concept of society as an organism. At first, the effort was to create leeway for the free play of individuals—the new industrialists. Later, new economic groupings and social organizations formed, tuned to the new, secular, temporally open-ended progress. After an intervening stage of mercantilism, which favored commercial interests because they presumably brought wealth into the national commonwealth, came the gradual growth of the liberal state, together with laissez-faire, market-based economics.³⁸

The liberal state and laissez-faire economics were based on the idea of natural law inherited from the Middle Ages, but reinforced and transformed by the processes of social struggle, and influenced by Galileo's and Newton's discoveries that general laws governed the universe. In a naturally harmonious universe, the human side—a microcosm of the whole—could be run by competition among individual interests. Individual people were complete in themselves, with natural rights that were independent of the past, of group organizations, or of any government. A state was created by social compact for reasons of convenience and prudence, and some said a state could be remade or unmade if it no longer served the purpose.

Eventually the idea developed that states should be based on popular sovereignty working through elected representatives, with majority rule and minority rights. The links between people and their formally organized associations should be based on private contracts and should be regulated by free competition. Smith's *The Wealth of Nations* was initially published the same year as the opening of the American Revolution, 1776.³⁹ Smith became the voice of the new industrialists and some skilled workers who were anxious to strip away old agrarian and mercantile restrictions at a time when English industry was expanding and seeking new foreign markets which it could dominate if other countries were open to free trade. Later, Ricardo became the leading spokesman for full-fledged laissez-faire economics when he justified England's repeal of import duties on grain in 1817.⁴⁰ The English government remained largely laissez-faire until the 1920s.

The Evolution of Corporatism

In England, the emergent liberal state tended to be suspicious of private governments. Guilds, atrophying anyway, had been abolished. Locke, writing in the last decade of the seventeenth century, said that although people have a natural and inalienable right to association, private governments—including churches—were social compacts which the state could regulate in order to preserve peace and order.⁴¹ By the end of the eighteenth century, still in the medieval spirit of the just price, English common law opposed as criminal conspiracies most forms of concerted action to raise prices or wages.⁴² Then in 1825, so prices could be raised by free competition, England repealed her Combination Acts, which had prohibited organization of either workers or employers, but the efforts of labor unions to raise wages were restricted in some respects until 1906.

Hobbes, in *Leviathan*, published in the mid-seventeenth century, said the sovereign should be the sole interpreter of divine and natural law.⁴³ Proponents of the liberal state argued that public government in its limited role should serve impartially the public interest.⁴⁴ Since associations were deemed to be

private, they were assigned no direct role in defining the public interest. English liberals opposed the eighteenth-century pattern which put Parliament at the special private service of individuals, regions, and groups. Yet in the mid-nineteenth century, railroad interests had an undue share of Parliamentary representation, and subsequently Parliament—and the executive branch too—became thoroughly interlocked with interest groups.⁴⁵

Even in the temporary excesses of the French Revolution, the French state never was as laissez-faire as the British. The Napoleonic Code abolished many feudal privileges, but even during its most liberal period, in the nineteenth century, the French state was directive in economic affairs. Yet the French did go further than the British in outlawing organizations. Organized groups which considered themselves historically and theoretically antecedent to the state had been powerful in France's ancient regime. The early French parliaments had been assemblies of estates demanding the right to veto royal action contrary to their interests. The seventeenth-century French state had shored up decaying guilds by formulating regulations of apprenticeship, master-worker relations, and standards of workmanship. Then, the eighteenth-century revolutionary mood was partly directed against all intermediate organizations. Condorcet bitterly attacked monopolistic guilds and corporations,⁴⁶ as Voltaire had attacked the privileges of the Church.⁴⁷ Rousseau, frowning on organizations other than the states, said that if they existed they should be numerous and as equal as possible.⁴⁸ Guilds were abolished by law in 1791, but lawyers, doctors, butchers and bakers organized again. Then, in the time of Louis Napoleon, guilds were destroyed again: the butchers' guild in 1858 and the bakers' guild in 1863.⁴⁹ Labor and trade associations were prohibited by Napoleon I, were not legalized until 1864, and did not become fully legal until 1884.⁵⁰

Despite this adverse climate, in France as in England, interest groups began to multiply and to intertwine with public government.⁵¹ In 1815, Napoleon planned to have 23 out of 629 Deputies to the National Assembly elected from among merchants, shop-owners, and manufacturers, and Saint-Simon later enlarged on the idea.⁵²

In Revolutionary documents and in federal and state constitutions, the United States went far in articulating the philosophy of the liberal state, but this did not mean economic liberalism. The separation of public and private governments took three-quarters of a century to evolve, and even then it has never been complete. Although the federal government came to be based on the idea of government restraint, state and city governments actively promoted transportation, and some states abetted banking.⁵³ States were partners in corporate enterprise.⁵⁴ The Pennsylvania government, for example, owned shares in private transportation companies not only to gain revenue but also to promote transportation and to guide corporate policies. Pennsylvania wrote maximum

rates into the charters given to transportation companies, charters with time limits that made it clear that the companies did not have perpetuity. Representatives of the state sat on corporate boards of directors. Pennsylvania also held shares in private banking companies and relied on them for revenue.⁵⁵ Because of these kinds of involvements, state governments in general resisted pressures to place banks and transport companies under general incorporation laws.⁵⁶

The law of corporations goes back to the Romans and was applied primarily to non-business corporations until about the sixteenth century in England.⁵⁷ In the sixteenth and seventeenth centuries, England chartered companies to carry out overseas exploration and colonization because the crown lacked bullion to hire navies, armies, and administrators to perform such tasks directly,⁵⁸ but the companies were not corporations in the modern sense. These companies, such as the East Indies trading company, could make and enforce laws and sometimes even coin money. They were treated as arms of the state—a state based on the conception that the national economy was a commonwealth. The public interest was equated with flows of money into royal treasuries. It was believed that this would automatically assure private gain.

The English South Sea Bubble Act of 1720 had the effect of discouraging the corporate form of business enterprise. Business corporations were rare, especially in America, before about 1780.⁵⁹ In the early years after American independence, corporate charters were granted on a one-by-one basis by special legislative acts. Since the justification for creating a corporation was usually that it was clearly public in nature, corporations were treated as public utilities, often with monopoly privileges. Early American judge-made law emphasized the inviolability of property rights once vested.⁶⁰ Early nineteenth-century business-corporation leaders argued that economic rivalry was, in effect, a private-law nuisance to property.⁶¹ In return for their concession, states determined the internal structures of corporations and often severely limited their life spans.⁶²

Legal interpretations of vested rights stood in the way of the development of free enterprise and newer forms of democracy. As the number of charters grew, some individual businesspeople, fearing new corporations and economic concentration, argued that there should be no charters at all because chartering violated the concept of the state as a social compact of individual persons. If capital must be marshaled, let the state itself engage in banking and transportation; otherwise, the most effective enterprise was by individuals, they said. Other groups, bringing pressure for general incorporation laws, argued that anyone should be able to form a corporation and that corporations should be private compacts. Pennsylvania adopted general incorporation laws as early as 1791 for literary, charitable, and religious corporations, and extended these laws to manufacturing and mining corporations from the 1830s onward. Throughout a

large part of the nineteenth century, American states moved a step at a time toward general incorporation laws. England endorsed general incorporation through the British Companies Acts of 1844 and 1855. Gradually, the principle of perpetuity was applied again to corporations.⁶³

The United States' Supreme Court decided that a corporation was a person within the meaning of the U.S. Constitution's fourteenth amendment.⁶⁴ This gave corporations rights and protections they had not had before. Eventually in American law the idea developed that individuals might be citizens of a corporation or other private government, as they were also citizens of the state.⁶⁵

What was emerging in America as well as Europe was a new version of medieval corporatism—a state comprised of semiautonomous groups with private and public governments participating in one another's decision making. This corporatism included de facto, if not explicit, representation of interest groups in public government. In the United States, from the latter half of the nineteenth century forward, powerful business and banking interests have had enclaves in public government. Wall Street lawyers might draft important national legislation; city councilmen, mayors, state legislators, governors, congressmen, senators, and even presidents might be servants of business interests. In the 1870s and 1880s, professional associations often were formed or guided by officials charged with administering public agencies related to public health, education, or engineering.⁶⁶ When the Farm Bureau Federation finally gained a footing in the 1920s and the farm bloc gained seniority in Congress, agricultural interest groups, too, gained powerful liaison with public government.

Corporatism in the Twentieth Century

Middle-class methods of gaining power emphasized what was expected to be separation of private from public governments through civil service, through preference for the executive branch over the legislative branch, and through public government by supposedly impartial experts serving the public interest. Contrary to what they said they wanted, the group of reformers known in American politics as Progressives increased the pluralistic interpenetration of private and public governments. The revolt in 1910 against the Speaker of the House of Representatives, and similar revolts in some states, accentuated the pluralistic, decentralized committee system in legislatures.⁶⁷ In these committees, interest groups had comfortable homes. Public regulatory boards and administrative agencies, promoted by Progressives, gave vocational organizations and other interest groups their own arms of government.

From their enclaves in public government, professional associations were better able to articulate and strengthen an increasingly complex division of labor. Public government gave each specialist group the tools and recognition it

needed to bargain more effectively for a more clearly defined place in the private sphere. Public and private law and government were linked in the task of regulating professional work, in systematizing professional work roles, work rights, and obligations. This process is described in Gilb's *Hidden Hierarchies*.⁶⁸ As the division of labor proliferated, new organizations of professionals, seeking governmental reinforcement, had to strike bargains with the groups that were already vested. A pecking order was established both inside the realm of public government and outside, in university curricula and workplaces. Professionals' councils, confederations, holding companies, or interlocking directorates bound related groups together for intragroup bargaining and for lobbying. Negotiations became continual, rather than episodic. Decisions that ultimately were given the sanction of public law were often made in the offices and conferences of private governments, sometimes with public officials present during the bargaining, so that the public part of the law-making process merely sealed bargains already reached. In other cases, legislatures served as arenas in which unreconciled groups did battle. A profession's relation to public government depended on the stage of its development, as well as on the nature of specific issues. But neither legislation nor administration occurred wholly within public government; both were carried on in a continuum that began with private government.

America and Europe have seen a growth of de facto corporatism in the twentieth century, often under the cover of theoretical liberalism. The philosophy justifying corporatism never really died: it had been restated by nineteenth-century conservatives—such as Bonald⁶⁹ and Hegel;⁷⁰ it lurked in the sociology of Comte,⁷¹ Durkheim,⁷² and Spencer;⁷³ and a version of it was present in guild socialism and Sorel's syndicalism.⁷⁴

Corporatism could be found intact in the thought of French Social Catholics, among the most prominent of whom was La Tour-du-Pin. La Tour-du-Pin proposed a system of regional and national chambers of representatives of organized vocations; the state was to be organic in nature, with limited sovereignty at the top.⁷⁵ Between 1870 and 1918, these views were accepted by a majority of Social Catholics;⁷⁶ then, between the two World Wars, a handful of Social Catholics in the French Chamber of Deputies fought almost in vain to effect corporatism through the public law.⁷⁷

French corporatists of the 1920s and 1930s ranged from the extreme left to right of center, and France had its share of fascists.⁷⁸ The French corporatists sought joint employer-employee corporations. Each corporation was to have a fund to finance technical schools, medical care, clubs, social life, old-age maintenance, and sickness and unemployment benefits. Job security should be guaranteed, and aid in job relocation should be given when necessary. The corporation would regulate wages, hours, prices, quantity and quality of production, and

arbitration. There should be regional councils and a general council at the national level. A bill of this effect was introduced in the 1937 Chamber of Deputies, but failed.⁷⁹

Since the seventeenth century, Prussia and other German states had promoted economic enterprise. From the 1870s onward, German industry was increasingly organized into cartels with state encouragement.⁸⁰ Magnates from German industries played a substantial role in German public government. As the cartels grew in strength, an emergency decree in 1923 made them subject to the supervision of public government and subject to a special cartel court.⁸¹ There was also a labor court. Hitler converted existing German corporatism into a source of state power.⁸² Various occupations and industries were formally represented in public.⁸³

European fascism was a corruption of corporatism: Germany under Hitler, Italy under Mussolini, Spain under Rivera, Portugal under Salazar, Austria under Dollfuss.⁸⁴ The Roman Catholic Church, which had always fostered corporate theory, collaborated with many fascist regimes as a defense against communism or international socialism.

Impressed by Rivera and Franco in Spain, after the fall of France in 1940 and the creation of the Vichy government Marshall Pétain led a regime which extended corporatist patterns even to the colonies, and which linked business leaders with high civil servants in relationships that carried over into postwar France.⁸⁵ Pétain's regime endorsed the traditional Roman Catholic view that the state was a spiritual union of families, vocations, local governments, and provinces, that these components had priority over the state, and that the state should not encroach on activities of these components unless encroachment would benefit the common good. Pétain's regime purported to sponsor the medieval ideas of cohesive guilds, of limits on the state's authority, of the just price, and of Christian fraternity; but in practice, many corporatist organizations existed only on paper and the state ruled.⁸⁶

In the United States in the early twentieth century, relatively few theorists wanted to apply European guild socialism, pluralism, syndicalism, or corporatism to America. A deterrent was Americans' acceptance of the Augustinian concept that law is the command of a sovereign whose power cannot be divided except territorially. Americans failed to absorb the view of the law expressed by Ehrlich's⁸⁷ *Fundamental Principles of the Sociology of Law*, first published in 1912. Ehrlich thought of society as the sum of human associations in relation to each other. The living law expressed the inner order of those associations and of the relations. Law was far more than the command of the sovereign or written statutes, court decisions, or administrative rulings. It included informal transactions between public government and various social groups.

One exception to the American viewpoint was Follett's *The New State*.⁸⁸ Follett repudiated liberal ideas of individualism and social contract and instead praised the idea that groups had personalities which made them more than merely aggregations of members. Democracy, Follett said, is the will of the whole, achieved through groups' reaching out towards a higher unity. Sovereignty is the power generated within groups, but recognizing the claims of every other. The state should have no authority as a separate group, but only the authority conferred by constituent groups. "We need strong corporate bodies not to compete with the state but to minister the state. We must change our conception of the state from sovereign state to service state."⁸⁹ Her prescription had more applicability to the American situation than her contemporaries knew.

An expanding corporatism took a giant step during the New Deal of the 1930s, especially in the National Recovery Act. The New Deal administration tried to reconcile the disparities in power and degree of organization between big business on one side, and small and medium-sized business, labor, and agriculture on the other. To do this, the public government had to recapture some of the power denied it by the liberal philosophy of limited government, a power that was held by big business corporations. The rationale for that recapture was provided by big business itself: in the late nineteenth century, Carnegie and others had argued that private wealth and power are held as public trusts or, even better, trusts from God Himself.⁹⁰ The medieval origins of this idea are manifest. But if business power was held as a public trust, then the public government could capture controlling portions of it to serve the public interest. And what did the public interest require? Among other things, economic democracy, or equal opportunity in the marketplace. And how could this be achieved? By using the power of public government to help unorganized groups get organized so that they could compete with big business and with each other on equal terms. The idea of the free market was not abandoned, but applied to groups rather than to individuals. "A species of political pluralism is thus assumed, existing only on sufferance of the largest group—the government itself. The justification of this pluralism is social expediency and the distribution does not limit the power of government."⁹¹

Sometimes the New Deal administration sought to legitimize its recaptured power by means of a reinterpretation of the natural law: the new natural law said that human needs should be satisfied. At other times, President Roosevelt repudiated the idea that economic laws derived at all from nature. He said that they were simply made by people, who could change them better to serve human needs.⁹² What were the human needs? People needed freedom of speech and religion, and also freedom from want and fear. Because the industrial order had diminished the independence of people relative to their environment,

individuals were no longer independent in providing for their own wants. Yet this increasing dependence did not eliminate the moral and social values to be obtained from independence and liberty. The New Deal administration was public government as the foremost creator of wealth, distributor of wealth, and conserver of wealth. Government must intervene to help people attain freedom, which was defined as English philosopher Green had defined it: a positive capacity to do or enjoy something worth doing or enjoying, a power exercised through the help and protection of the community.⁹³

Democracy was to be achieved not only by equalizing power but also by encouraging private governments to regulate themselves. The Securities and Exchange Commission, the Wagner Acts, the Agricultural Adjustment Acts, and above all the National Recovery Administration were intended to put into effect forms of industrial self-government. Members of each industry were to elect an authority to make self-regulation codes which were to be approved in Washington, D.C., but policed by the industry. These codes covered prices, hours of work, working conditions, wages, and accident compensation.

Except to encourage the organization of labor, the National Industrial Recovery Act did not work very well. Industries that were already tightly organized did not need public government's help; for loosely organized industries, such as poultry, cleaning and dyeing, and garment making, the Act was not enough.⁹⁴ The National Recovery Administration had the most appeal to industrial groups which were primarily interested in price fixing: more than 500 pricing codes were prepared, and more than 240 accounting systems were designed by which prices were to be fixed. Few of these codes were ever approved by the public government, however. Then the National Industrial Recovery Act was declared unconstitutional.

Interest groups achieved better self-organization anyway.⁹⁵ By this time, the business corporation had become, to use Miller's phrase, a federation of associational groupings, including the security holders, corporate managers, rank-and-file employees, special technical consultants, and union managers or leaders.⁹⁶ Suppliers and dealers were direct satellites, and consumers and the general public were related parts of the larger corporate community.⁹⁷

The scope of public government also increased. The relative importance of the federal government expanded through defense spending, space research, and social programs. Greater federal government reliance on income tax policy, Federal Reserve regulations, and counter-cyclical government spending were guided by macroeconomic theories and statistics. State governments became more involved in economic development than they had been since the 1870s. Aided by federal funds, city governments pursued a variety of social programs.

As both public and private governments increased in number, size, and importance, their interrelationships increased. Throughout the twentieth cen-

tury the margins between public and private governments blurred. Some municipalities turned to private ownership of public utilities or to joint ventures with private companies, the federal government assumed increasing responsibility for American railroads, and public governments created quasi-public corporations, such as the Tennessee Valley Authority or the New York-New Jersey Port Authority. American courts found that many kinds of businesses were affected with the public interest and were, therefore, subject to regulation. The power of eminent domain over private property for public use was expanded through broader interpretations of what constituted public use. American business depended increasingly on purchases by the federal government, which accounted for about one-third of the gross national product by the 1960s. In the 1960s, public governments paid for about two-thirds of all American research and development, thereby directly benefiting American businesses.⁹⁸ An Associated Press study in 1971 estimated that private enterprises collected approximately \$30 billion a year in governmental subsidies and aid. The military-industrial-scientific complex, about which President Eisenhower warned in the late 1950s, had hardened in the late 1960s into so-called Pentagon capitalism—that is, detailed guidance by Pentagon employees of the research and manufacturing activities of certain corporations, and substantial reliance by those corporations on military purchase of their products.⁹⁹ In some cases, the officers of corporations were former Pentagon employees. The political sovereignty of public government was often invoked to aid the economic sovereignty of corporations; for example, in 1977 the faltering American steel industry asked the federal government to curtail foreign dumping of steel in the United States.¹⁰⁰ Some industries, such as air travel and trucking, relied on public-government regulation to curtail competition and to put floors under prices. American businesses generally relied on the federal government to stabilize the economy.

The public policy-making process flowed through and between corporations, other kinds of associations, and various levels of public government. Miller argued that the most relevant legal theory was that of Ehrlich: that the basis of law was the inner order of the associations and their relations with one another and with public government.¹⁰¹ Commons had expressed a similar point of view when he emphasized the working rules of organizations as the foundation of law.¹⁰² As corporate power moved toward greater fusion with the power of public government, both sides being aided by the knowledge industry, the result was called a technocorporate state.¹⁰³ The technocorporate state was dependent on new accounting methods. Schick concluded, “In the basic social accounts, the public-private distinction no longer is significant; more and more and more the accounts concentrate on the aggregate social input and output, regardless of its public or private character.”¹⁰⁴

The system in the United States was not so different from European corporatism as many people thought it was. After the Second World War, Europe had well-organized special-interest groups. Although the United States had a higher percentage of its population belonging to and active in formal organizations, Europe still thought of political community as being composed of estates.

Formal organizations were widespread and important in postwar Germany, though the average person was less apt to be involved than in the United States.¹⁰⁵ Among others were the Bundesverband der Deutschen Industrie, with 98 percent of eligible employers belonging; the Bundesvereinigung der Deutschen Arbeitgeberverbunde, a federation of German employers' associations; the Deutscher Bauernverband, a farmers' league; the Deutscher Gewerkschaftsbund, a federation of national independent unions; and a federation of white-collar unions.¹⁰⁶ There were also Protestant churches and the still powerful Roman Catholic Church. Germany was tending toward fewer and larger associations, representing functional groups and reflecting still-sharp class divisions. These were closely intertwined both with the land and federal governments, and were consulted frequently both by the bureaucracy and the legislatures, often through the device of formal advisory councils. Their influence was greater in Germany than the influence of comparable groups in France or England.¹⁰⁷

England had the National Farmers Union, with ninety percent of all the farmers in England and Wales; the British Employers Confederation; the Federation of British Industries; the National Union of Manufacturers; the Association of British Chambers of Commerce; the Trades Union Congress; and many others.¹⁰⁸ Few except the trade unions had formal machinery to achieve representation in the House of Commons, but organizations often did have officials or staff employees as Members of Parliament. Many or most of the ministries consulted with affected groups prior to drafting bills and certainly prior to the sending of bills to Parliament.¹⁰⁹

By the late Fourth Republic, France had over 2000 special advisory boards, committees, councils, and commissions attached to her public government; many of these groups so usurped the administrative functions that they could be said to run the government.¹¹⁰ When President de Gaulle resigned in 1969, it was partly because the public had failed to back his proposal to make the Senate explicitly representative of interest groups.¹¹¹ When the European Common Market was established, it, too, had interest groups.¹¹²

In Japan, public governments and businesses worked closely together.¹¹³ In Communist countries, the balance between public government and private association was much more heavily weighted on the side of public government. With the consolidation of the Bolshevik regime in the Soviet Union, quasi-official associations had been created for a wide variety of groups, but the

Communist party permeated them all—even the church.¹¹⁴ After 1930, trade unions were no longer independent bargaining units, but were under complete control of the party. They performed a limited service function, provided some grievance machinery and some check on managers, and were consulted by the national policy makers.¹¹⁵

In the Chinese People's Republic from 1949 to 1952, a number of private businesses were permitted and even encouraged to continue because the regime needed their output and the skills of their managers. But in 1953 the regime announced that the state should absorb the private sector without compensation. By the end of 1956, nearly all former private enterprises were under joint public-private ownership or had been totally nationalized. Only very small shops remained private.¹¹⁶

Private Governments and National Sovereignty

Both within individual states and in the world at large, important changes in public-private relations were related to the spread of multinational corporations. American and European corporations operated multinationally or participated in international cartels long before World War II, but American multinationals proliferated in the 1960s as a result of opportunities to develop or exploit underdeveloped countries, the advantages of operating inside the tariff barriers of the European Common Market, industry's need to expand into new markets to justify high research and development costs, and other financial considerations.¹¹⁷ By 1974, an estimated 30 percent of American corporate profits were derived from overseas, and the foreign-owned deposits of the largest American banks were established in 1972 at over 65 percent of their domestic deposits.¹¹⁸

American corporate expansion abroad was aided by American postwar military and political hegemony in the world, and it reinforced that hegemony, but the expansion was not directly analogous to western Europe's conscious and deliberate use of overseas trading companies as arms of the state in the sixteenth and seventeenth centuries. American companies expanded on their own initiative as an aspect of economic competition. American public government sometimes aided them, but sometimes also worked at cross-purposes. The United States government rarely used American multinationals directly as instruments of American foreign policy.¹¹⁹ As Vernon wrote, "In general, relations between United States-based multinational enterprises and the United States government are much less intimate and less closely coordinated than those of any other major advanced country."¹²⁰

British overseas corporate activity prior to World War II, such as British Petroleum's exploration for oil in Iran, had been symbiotically related to other

aspects of British imperialism. In prewar Germany, because their home market was too small for the highly developed economy they controlled, the German monopolists needed territory and “protectorates” which could be obtained only by national monopolies and state capitalist expansion. To fight existing international monopolies whose power was based on unrestricted trade and the free flow of goods and capital, Germany organized national state monopolies to attack and break down the old world order.¹²¹

By the 1970s, a desire to emulate and compete with American corporate expansion spurred expansion of the multinational business activity of other advanced industrial countries.¹²² It was believed that a nation-state's internal prosperity and relative power position in the world would be improved by such corporate imperialism.

Because multinational corporations from free-market countries were not always arms of the state, but operated somewhat autonomously, new problems of private-public relations arose.¹²³ None of the multinationals after World War II seemed to have the power of the prewar cartels that, in the early stages of the war, kept vital supplies flowing between countries at war with one another.¹²⁴ Prewar legal tribunals distinguished sharply between international private and public law.¹²⁵ Consequently, private governments had considerable free rein. However, the cartels' economic arrangements had not amounted to full-fledged private governments, and when the war came, most countries treated the foreign companies within their borders as if they were national companies. By the 1970s, those multinationals which organized by product groups rather than by countries and which employed genuinely international managers had made themselves into supranational private governments.¹²⁶

Although still subject to regulation by the public governments in their home countries, dependent on diplomatic and sometimes military backing from their home countries, and subject also to regulation by the countries that their subsidiaries inhabited, postwar multinationals sometimes occupied gray zones that no public government could fully regulate. Multinationals allocated the manufacturing of components to different countries, manipulated finances and transfer prices between their subsidiaries so as to increase profits, manipulated technology transfers between their subsidiaries, and timed their intrafirm payments to circumvent countries' attempts to regulate the flows of money and goods.¹²⁷ When Ford-U. S. bought British Ford in 1961, this helped bring on the American gold crisis that led to abandonment of gold as backing for the dollar in international monetary exchange. When the United States government attempted to use tariffs to curtail foreign dumping of steel in the United States, foreign companies promptly moved to buy into American companies to circumvent the barrier. Multinationals introduced styles of management and of employee relations, types of products, and methods of selling that modified

cultures. A powerful multinational might exercise de facto sovereignty over a small country.¹²⁸

Looking at international trade, Kronstein concluded that “forces . . . are bringing about the monopoly of industrial and commercial processes, from basic raw materials and technology and services, such as transportation distribution, or banking, to the supply of the ultimate customer with products and services of any kind. ‘Markets’, formerly independent, are becoming subdivisions of a total market . . . independent markets function independently only so long as they are licensed by the ‘total fabric.’”¹²⁹

For the most part, in the postwar era multinationals and individual countries did not operate on two legally separate planes.¹³⁰ Some multinationals were mixed public-private in ownership, and some were owned entirely by public governments. Privately owned corporations frequently entered into joint ventures with government enterprises in foreign countries, especially in Communist countries; and private banks formed consortia with government-owned banks.

Private cartels used public antitrust regulations and trade regulations for their own purposes. In some instances, according to Kronstein, private regulation became effective only when supplemented by public regulation.¹³¹ The dichotomy between private and public no longer characterized the international situation: private governments worked in tandem with public governments in more than one country, and engaged in conflicts with other international, private-public combines. International private law and international public law were no longer separate.¹³² This integration seemed to be leading to a new, international technocorporatism, making obsolete the nation-state. Ultimately the fusion of public and private would characterize the international sphere as much as it did in the internal structure of countries like the United States.

Some Marxists asserted that integration would lead to class struggles cutting across the advanced industrial countries.¹³³ The growing strength of Eurocommunism in the 1970s seemed to support this assertion. A few genuinely international scientific and professional associations existed.¹³⁴ However, the most effective unions were those organized within the framework of a single—usually American—multinational company, and the members of scientific and professional associations were still primarily national in their loyalties.¹³⁵ The forces of integration, even when backed up by increasingly efficient communication and transportation, were not strong enough to eliminate nationalism altogether. Relatively powerless and underprivileged countries protested with increasing assertiveness against the central, international decision-making network.¹³⁶ For example, oil-producing countries formed their own organization to offset the power of multinational oil companies in oil pricing. Internationalism, by making people aware of their relative lack of power and wealth and by raising fears of cultural and economic colonialism, seemed to reinforce

nationalism. Nationalism persisted, while some corporations appeared to be supranational, and mixed public-private consortia were also important in the international sphere.

No supranational regulatory body existed to regulate either private multinationals beyond the control of national governments or mixed private-public consortia. The United Nations recommended in 1973 that there be international corporate charters and international company laws and that nations harmonize their regulation of multinationals. The United Nations itself lacked power to regulate multinationals.¹³⁷ The International Monetary Fund faintly adumbrated an international regulatory body. For adjudication of international disputes between private governments, there was no sovereign international private law, but only various systems of conflict-of-laws law, inconsistent with one another.¹³⁸ Nor was there a sovereign international public government or public law. There were only treaties and international bodies, such as the World Court, operating by virtue of the consent of member nations.¹³⁹

An effective system of world trade seemed to require that one strong national state or bloc of nation-states dominate the scene enough to impose its currency and certain tacit rules on the others. Until the 1930s, Britain and its empire played that role, followed by the United States from 1945 until the 1970s. In the absence of such domination, the conditions for trade were more unstable.¹⁴⁰

To stabilize the world order, World Federalists dreamed of a world-state, of which individual nation-states would be constituent units. But a sovereign world-state could not function without some kind of worldwide moral consensus.¹⁴¹ To be sure, great empires had existed in the past without internal cultural homogeneity—the Roman Empire being a good example, although its lack of homogeneity was a source of instability. The Chinese imperialist order endured for a much longer time because it did rest on a substantial degree of cultural homogeneity and, therefore, consensus about moral values. Historically, religious institutions played the major role in reinforcing the moral consensus necessary for a political organization to exist. Religion had also undergirded economic imperialism. The medieval European idea of a world empire was religious. Even though medieval Europe was politically fragmented, it had a certain cohesion in the areas dominated by the Roman Catholic Church. This cohesion, in turn, enabled the development of trade. It was not accidental that, as Europe conquered other areas of the world, missionaries accompanied soldiers and traders.

To reinforce a twentieth-century world-state, no religion, with the possible exception of Communism, had the necessary universality. By the 1960s, oriental religions had become relatively insignificant as possible claimants of general allegiance. Protestantism, born in dissent from claims to universalism, was not well-disposed to universal forms of organization. The only real contestants for

universal moral dominion could be Islam and Roman Catholicism, since they claimed over 500 million adherents apiece. [By the end of the century there were some one billion Muslims.] But Islam was in no position to aspire to universality. The Roman Catholic Church had not given up its ancient claims to universal sovereignty; it had never quite relinquished the medieval concept of the universal organism, with its functional hierarchy. Yet Roman Catholicism also had no likelihood of achieving universal dominion, and therefore could not by itself serve as a stabilizer for world economic exchange or provide the mythology for a world political order.

Catholicism was not demolished by the spread of Communism, as Poland and Italy in the 1970s demonstrated. However, unless a world-state could be developed on the basis of civil religion,¹⁴² if any single moral order were likely to dominate the world, [it seemed before the dissolution of the USSR in 1991 that] its mentor would more likely be Marx than Jesus. Of the 146 member states in the United Nations in 1977, only about twenty had market economies. The others had controlled economies, frequently justified through Marxist ideology. There were more people under Communist regimes than there were under Islam and Roman Catholicism combined, and the number of Communists kept growing. Socialism steadily gained ground in Europe. Capitalism, with its special heritage of private-public relations and its special relationship to Christianity, was losing numbers and geographical area. [The dissolution of the USSR in December, 1991 and the subsequent dissolution of the Communist bloc abruptly changed that pattern.]

Meanwhile, private-public relations in the international sphere were not relations between international private governments and an international public order; rather, relations were between interpenetrated groupings of private governments and nation-state.¹⁴³ International consortia and cartels did not have a collective psychic structure or political value system or political group mind. As Hexner observed, their members, belonging to various nation-states, did not divide their political loyalties between home state and cartel but only compromised their business interests.¹⁴⁴ Yet, nation-states were so linked together by overlapping business interests that perhaps this interpenetrating private-public pluralism was a sufficient stabilizer.

Apart from their bearing on the problem of achieving a worldwide public order, religious institutions were an aspect of international, pluralistic, public-private relationships. Roman Catholics still claimed that their Church in its spiritual mission had an authority parallel to that claimed by any state in its temporal mission. The Catholic, they said, is a citizen of two worlds; the City of God and the city of Man.¹⁴⁵ The Church's spiritual sovereignty, they said, is unshared and total, independent of any other juridical entity, including the nation-state;¹⁴⁶ the Church is not a foreign power with respect to any nation-state, but

does in fact have sovereignty over all Catholics within every nation-state.¹⁴⁷ To protect its sovereignty, the Church appealed to natural law and to the right of freedom of association.

The actual relation of the Church to individual states varied from state to state. Colombia gave the Church much power within its borders and complete independence from the state, so that the state harnessed itself to the purposes of the Church. Other states retained rights to appoint high-level Church officials within the country. Some Communist countries sent diplomatic representatives to the Vatican; some did not.¹⁴⁸ Because nation-states had made such strong claims to sovereignty, the Church might argue that sovereignty was shared, but the Church never gave up the idea that it had the higher sovereignty. Whatever the particular circumstance, as Maritain wrote, for a Roman Catholic, basic political reality was not the state but the entire body politic, complete with its many institutions and communities and its morality.¹⁴⁹

The international implications of this view were, as one member of the Jesuit order has written: “The Vatican is not like the other non-territorial international personalities: mere instruments created by the members themselves as an extension of their joint power, to serve a common, if higher, political cause. The Church is a separate society whose goals are not subordinated to those of the political community . . . If the citizen recognized the Pope of Rome as . . . a guide, the State has no choice but to bow and to make its calculations on that basis.”¹⁵⁰

Furthermore, he claimed, the state has moral duties to religion, to God. Or as another Roman Catholic said, “The state and the common good are not the whole of morality; they are parts of that hierarchy of moral values which culminates in God.”¹⁵¹

The most important theoretical issue concerning the international relationships between public and private governments was whether one or another of the claimants to world moral hegemony could possibly prevail. If this were to happen, the modern distinction between private and public might be discarded, since the distinction itself requires that there be a high degree of secularism, an absence of strong religious commitment, and an absence of ideological monism—even though states took their shape in the first place by utilizing such commitment or monism. But, as a practical matter, clear separation between the two spheres was doomed anyway, since the prevailing international pattern was one of increased private-public interpenetrations and joint ventures.

The Relations of Public and Private

What should be the division of responsibility between private and public governments? Should there be any clear distinction at all between these two spheres? If there is, should the two carry out parallel or complementary

functions? If the division is on the basis of tasks, which should do what? Should most responsibility be private or public? Should each police the other?

The answers depend, as this chapter has argued, on the country to which the questions are applied. Mansfield claimed that “[a]ll moral and political aspirations, refusing to accept society as it is, imply the duty to disturb the privacy and impose on the freedom of others . . . Modern [representative public government] requires . . . an undemanding god, a society without aspirations.”¹⁵² Because of its tsarist and boyar past, as well as its communist hopes, the Soviet Union has less of a private tradition than the United States. The Islamic religion provides more justifications for public intervention in private lives than does the individualistic aspect of Protestantism.

An agricultural society whose people are poor and illiterate will have far fewer private governments than an affluent, urban, industrial society. If the country is feudalistic, like eighteenth-century Russia, applying the words public and private to government may not be relevant; there may be a symbiotic relationship between the royal government, the church, and various nobles with their retinues and serfs. Initial changes to a more urban and industrial society might loosen such connections, so that public and private governments become more distinct and separate, but probably only as a prelude to their eventual interpenetration in new ways.

Stages of development are important. The private governments of a socially stratified agricultural society may be used to reinforce the status quo. The private governments of a socially stratified industrial society may serve as channels through which individuals achieve social mobility. Private governments in a society suffering severe strains may help to mobilize eventual revolution.¹⁵³

A country’s place in the international order also makes a difference. Countries differ in the number and size of multinational corporations they are host to or spawn. An advanced industrial country with relatively small land mass and small internal markets will have to emphasize export trade if it wishes to sustain economic power on a par with that of countries with large internal markets. Even though the small country may encourage free enterprise, public resources must be marshalled to encourage foreign trade and counteract the size and importance of foreign multinationals.¹⁵⁴

In many parts of the Third World in the past, the separation between public and private governments, if it existed at all, was between native social groupings with their internal customs and procedures of government, on the one hand, and a commercial, cosmopolitan, foreign-dominated colonial government, on the other. In the postcolonial circumstance of these countries, the separation of private from public government might be a continuation of the precolonial pattern, but with native elites occupying the positions that colonial powers formerly occupied. As a society shifts from agriculture to industry, private-

public relationships change; the number and size of corporations increase, whether native or foreign; and a more complex, rationalized division of labor develops, accompanied by the formation of vocational associations. At this stage, problems concerning the division of responsibility between public and private government might resemble those in advanced industrial countries.¹⁵⁵

Relevant political and economic philosophies vary. In Bentham's England of the 1830s, the welfare of the community was often defined as the sum total of the utilities of individuals; guilds were deplored; free enterprise was justified as the most economic system.¹⁵⁶ Critics later pointed out that the maximization of privately exchangeable utilities might not maximize aggregate satisfaction, and that free enterprise might minimize the costs of entrepreneurial outlay but not total unit costs: many costs are simply shifted from entrepreneurs to others.¹⁵⁷ Many societies have thought of the state as an instrument for the protection of property, which is often to say that public government should be used for the protection of private government, but the Communist Manifesto repudiated this purpose when it decried the state as an instrument for managing the affairs of the bourgeois class. Neither the capitalist nor the Marxist view fully embraces the Hegelian idea of the state as an articulation of estates, corporations, classes, and families, differentiated in function, which the state infuses with spiritual significance, thereby binding them into a unity.¹⁵⁸

Legal systems vary in their treatment of multinational corporations. In Anglo-American law, a corporation is governed by the law under which it is incorporated. In European continental law, a corporation is governed by the law of the place where management and control are centered. The legal status of corporations differs in different countries: whether a corporation can have no existence beyond the limits of the sovereignty which created it; whether each state may decide arbitrarily what corporations to recognize; or whether, once created by a competent state, the corporation has legal status everywhere.¹⁵⁹ One important legal question is whether the laws of the parent country follow a corporation wherever it goes: for example, whether American anti-bribery laws, antitrust laws, the Trading with the Enemy Act, and other laws follow American corporations abroad.¹⁶⁰ Conversely, can the host country impose legal requirements on a corporation contrary to its parent country's national policies? Since far more extensive disclosure of business information to public government is required in the United States than is required in most European countries, other countries have sometimes made it illegal for American companies within their jurisdiction to surrender business records to officials of the United States government. The bribery issue is particularly difficult, because bribery is a normal and even honored part of the political system of some countries, especially ones with controlled economies. It may be custom for a public official to use political payoff to sustain his family, village, or tribe.¹⁶¹

Some legal systems treat the law as a medium for the application of custom; some, for the ratification and enforcement of private contracts; some, as an instrument for goal achievement; some, simply as fiat, the command of the sovereign. Each of these differences creates a different set of instruments and criteria for private-public relationships. Legal criteria for the relations of public and private government may or may not be stated in written or unwritten constitutions. For American business corporations, state constitutions have been more relevant than the federal Constitution, but compulsory federal incorporation could bring all business corporations more totally under federal Constitutional mandates.¹⁶² Legal criteria may be tacit and traditional or more explicitly stated in the common law, as in American case law distinguishing business affected with the public interest from business not so affected.¹⁶³ One important legal question is whether the private or the public government shall have the burden of proof to demonstrate that the other is overstepping its boundaries.¹⁶⁴

Relations between public and private governments may be formalized and socially sanctioned through use of boards, commissions, and advisory committees, participation in consortia, or even functional representation. With functional representation, the liberal idea of representation from the populations of individual areas may or may not be retained. Private governments may write legislation and administrative rulings for public governments behind the scenes. In times of rapid economic or social change, when the situation is fluid and often experimental, relationships between public and private governments may depend on cost-benefit analysis, distinguishing between individual and social goods, and asking who should bear the costs of particular activities.

The relative responsibilities and relationships between public and private governments differ between market and socialized economies, and under various kinds of planning systems. In an economy emphasizing market processes, public government may provide for national defense, conduct foreign diplomacy, regulate some aspects of foreign or interstate commerce, run the post office, coin money, keep minimum law and order, and provide for education. Or the public government may go further and intervene to maintain free competition to protect consumers, or to provide a remedy when the marketplace fails to translate a public need into a market demand.¹⁶⁵ It may help the helpless or reinforce the weak without undermining the market, though theorists such as Spencer and Sumner did not think so.¹⁶⁶ The rationale for public government not doing much more than these things is that individuals know their own self-interest best and that free enterprise promotes individual freedom and dignity, enables capable individuals to seek their own levels, encourages imagination and innovation, is essential for political freedom and social pluralism, is flexible and efficient in the allocation of resources, is responsive to consumers, and enhances productivity both at the level of an individual business and at the

national level. Theorists of the market system have contended that the free pursuit of individual interests in an open market will assure an automatic equilibrium of needs, costs, and prices; and that private gain assures public gain.¹⁶⁷

Critics of the market system say individuals do not always know their own best interests and do not always have sufficient information about the market; that there is no genuine equality of opportunity; that automatic equilibrium does not ensue; that more long-range stability is essential, which requires public government to use macroeconomic interventions; that land and resources are becoming so scarce as to be a public trust; and that the free market does not adequately express aesthetic and other nonmaterial values.¹⁶⁸

Proponents of the market system have in the past argued that vocational associations should be prohibited or kept at the voluntary level, or that public government's reinforcement is necessary to raise their bargaining strength to a level more equal with that of employers. In the noneconomic sphere, the market system has sometimes been used to underwrite the disestablishment of religion. Even where there is separation of church and state, however, religious groups have sometimes contended that they should have special privileges or be subsidized for education of children in their special schools because this relieves the public-education system from the costs of educating those children. The market system has also been employed to justify academic freedom and the freedom of the press, on the grounds that, if ideas are allowed to compete in the marketplace, the best will win; or on the grounds that private criticism of public government is necessary to keep it responsive to the people.

A number of factors in the world situation make the market system difficult to apply: the rising expectations of underprivileged people everywhere; the increasing difficulties of their entering successfully into industrial competition with the advanced industrial nations which control new technology; the scarcity of natural resources in the world and of food in many places; the need for no-growth solutions to population pressure in some areas; and the need for better ecological balance in the natural environment. The global closed system no longer offers open frontiers as solutions to problems—neither frontiers in space nor frontiers in time. Taken all together, these facts mean that competition for the world's goods has become almost a zero-sum game. And for this situation, solutions through free-market competition often seem too slow, too wasteful, or inequitable because of the gross inequalities among competitors.

Given the world circumstance, it is no wonder that so many countries have turned to controlled economies or to economics characterized by significant proportions of public ownership and by comprehensive long-range planning. The public government of a relatively weak country may turn to nationalization of industries within the country, but the problem is what industries to

nationalize: those dominated by foreign companies, uneconomic or troubled industries, defense industries, industries on which many others depend, energy-sensitive industries, import-substitution industries, or export industries? Sometimes quasi-public corporations are created. The decision to nationalize may be based on a desire to gain more internal control over an economy buffeted by international forces, or to move an economy to a more competitive international position, or to move toward economic self-sufficiency as a way of protecting the country against possible foreign invasion, or to augment the country's involvement in international trade, or to provide for more regional and social-class equity at home.¹⁶⁹ Because of the need to tap the advanced technology of other countries and not to be too isolated from the centers of international economic decision making, nationalization may be disadvantageous.

Private-public relations vary under different kinds of planning systems. Steiner distinguished between various kinds of planning.¹⁷⁰ Aggregate planning concentrates upon general levels of output and income, employment, price levels, consumption, investment, and balance of payments. Cross-sectoral planning is concerned with supply, distribution of income, manpower, goods, credit, or information. Sectoral or subsectoral planning may take place for such areas as agriculture, crops, mining, steel, road construction, railroads, electric power, education, and health. Enterprise planning is conducted by or for public, private, and mixed enterprises. There is also spatial planning. The role of private government varies in different kinds of public planning. Private governments tend to be more thoroughly involved in spatial planning than in the other kinds of non-enterprise planning. Reasons for involvement of private government in public planning include the fact that much planning already goes on within private governments, which needs to be integrated with public policies; private governments have information necessary for public planning; and effective implementation requires their cooperation. National planning must take into account the international situation. As stated earlier, private governments have so crossed national boundaries that they are out of reach of many national public controls. Private governments might evade one country's controls by their actions in other countries, unless they are fully committed to the planning. It is usually to the self-interest of private governments to be involved in public planning, because macroeconomic policies can determine how much national income is allocated to higher wages and how much to higher profits; influence aggregate levels of employment and inflation; and redistribute wealth or income between regions, larger and smaller companies, and various occupations.¹⁷¹

For many advanced industrial countries, a balance has been struck somewhere between an all-out free-market system and a totally planned economy.¹⁷² Business corporations, as private governments, make a number of decisions

that affect the public interest: about what products to produce and their quality; plant location and shutdowns; the building or reducing of inventories; investment in research and development and new technology; advertising and public relations; personnel policies and the relative weight given to the interests of workers, stockholders, suppliers, dealers, consumers; the nature and degree of the company's foreign activities, the repatriation or not of foreign profits, modes of financing foreign subsidiaries, distribution of manufacturing functions between different countries, technology transfer, and payment policies.¹⁷³ The kinds of decisions made, and their impact, depend in part on the stage of development both of a corporation and its industry.

In a country having major private enterprises, public government might observe, inspect, aid, supervise, or control private governments' activities. It can regulate through inducements, fines, or police actions.¹⁷⁴ A private corporation might provide information and services to a public government, while the latter gives it subsidies, insures its financial arrangements, buys from it, gives it specific tax abatements, and gives it indirect benefits through tariffs, harbors, roads, and ports. Public government helps businesses by stabilizing the economy. It can permit corporations and unions to administer prices. It can reinforce monopolistic practices through patent, corporation and labor law, tax policies, and licensing. It can grant specific exemptions from antitrust laws.¹⁷⁵ Public government, through foreign policy, may reinforce or discourage the expansion of foreign markets. It might collaborate with businesses on joint projects such as a military mission or a moon shot or a satellite launching, or to achieve broad objectives such as regulating the size of the gross national product or controlling inflation.¹⁷⁶

There is no doubt that American business corporations—including the banks which have control over other corporations—have exercised enormous power over prices, resource allocation, and the nature and direction of investment, not to mention their power over mass media and hence over mass cultural indoctrination. In proportion to this power, inspection, control, and supervision by public governments have been minimal. Public governments have interfered with the activities of private governments when those activities were unlawful or when the activities did undue harm, deceived, coerced, or violated contracts. Lately, as membership has become more frequently involuntary, American public governments have justified controls over some private governments on the grounds that they are public utilities, or that incorporation is not a right but a limited franchise from the state.¹⁷⁷

For professional associations or labor unions, public government can legitimate the group's claims to control over certain skills or employment areas. Or the private government, if its members consist of public employees, can force not only personnel policies but also some more general policies upon the public

employer with which it bargains. For hospitals and universities and similar non-profit private governments, public government may provide subsidies as well as guidelines for safety and fairness.

Taken together, all of these linkages tend to weave public and private governments into a single interpenetrated system. In the United States, some economists have argued that public government should intervene directly more than it has in the past. They argued that trying to use Keynesian macroeconomics as the primary method of regulating all phases of a national economy could become a paradoxical, self-defeating neomercantilism. More specific actions by public government may be essential to provide employment for the marginally employable, to encourage agricultural production on a selective basis, to provide affordable housing for young families and the poor, to aid the most backward, crime-ridden, older cities, to establish mandates for land use, and to develop long-range energy sources.¹⁷⁸ Such actions have an effect upon one another that requires comprehensive planning, which must be done in collaboration with private governments. Macroeconomic policies, actions by private groups alone, or ad hoc actions by public government are not enough to solve such problems.

Above and beyond its relationships with private governments, public government may play a symbolic role necessary to unify its people and to create mass markets for businesses. Public government might go further and use its powers to enforce a substantial redistribution of wealth, by area or social class.

On the other hand, private governments might assume more responsibility. Walton's¹⁷⁹ typology of models of corporate responsibility includes: the austere mode,¹⁸⁰ which assumes that business should simply concentrate on business; the household model,¹⁸¹ which stresses the importance of human resources; the vendor model,¹⁸² which emphasizes consumer relations; the investment model,¹⁸³ which regards philanthropy as enlightened self-interest; the civic model,¹⁸⁴ which treats a corporation as a citizen with a citizen's responsibilities; and the artistic model,¹⁸⁵ which stresses creativity. At various times, American corporations have been urged to assume more responsibility for safety in products, fairness in hiring and unemployment, rehabilitation of the marginally employable, day-care centers, job security and retraining, purchasing from minority businesses and depositing funds in minority banks, urban transportation, housing, education, and political reform, local drug rehabilitation, the cleanliness of the environment, land-use planning, conservation of natural resources, encouraging the arts,¹⁸⁶ and behavior abroad which is consistent with American foreign policy.¹⁸⁷

Corporations might carry out their social responsibility in a variety of ways.¹⁸⁸ Philanthropy has been traditional, aided by the tax deductibility

of corporate contributions.¹⁸⁹ Industrial councils and codes of good business practice might help corporations police themselves.¹⁹⁰ Federal chartering and mandatory disclosure of all activities might act as a policing mechanism. Public-affairs or urban-affairs officers on central corporate staffs might carry out the responsibility.¹⁹¹ Or corporate boards might include representatives of suppliers, customers, women, minority ethnic groups, foreign nationals, public government, or investment funds.¹⁹² In Yugoslavia, workers control their own companies.¹⁹³ The Scanlon plan, first introduced in the United States in 1947, provided bonuses to workers for increases in productivity on the basis of accounting methods and work procedures which the workers helped establish and monitor.¹⁹⁴ Under codetermination in Germany, employee representatives sit on one board of directors in a two-board system.¹⁹⁵ This board elects the managing board, supervises, and inspects. Employee representation is restricted to less than half of the supervisory board for steel, coal, and iron firms having 1000 employees or more.¹⁹⁶ Scandinavian countries have enterprise councils, and a French law of 1966 required there be two nonvoting labor directors on boards of French public corporations. The German formula has been proposed for European companies chartered by the European Common Market.¹⁹⁷

Employers argue that the presence of outsiders may impair board operations. Increased corporate social responsibility might entail increased public-government supervision and further abandonment of free enterprise and the market system.¹⁹⁸ In some countries, such as the United States, trade unions oppose labor representation on corporate boards. They say it is not meaningful unless it comprises half of the supervisory board.¹⁹⁹ A system that works with two boards might not work in countries where there is only one corporate board. The problem of how to determine whether group representatives are really representative has not been resolved. Also, outside representatives may find themselves with conflicts of interest between their board roles and their other activities.²⁰⁰ European codetermination is based on the tradition of European corporatism. It might work in Latin America, where corporate tradition is still strong,²⁰¹ but in the United States it runs counter to a tradition of bargaining through adversary conflict. As Clegg, Levitt, Sturmthal, and others have argued, business and labor should fight each other to obtain full articulation of their respective interests.²⁰²

Social indicators include information about how private-government activity relates to income, unemployment, and employment opportunities, product and service quality, safety and health, crime, and community transportation.²⁰³ More topics could be added. Another way to enforce corporate responsibility is to subject corporations to an annual social audit, tracing the impact of the corporation. A corporate social audit would be significantly different from a profit-and-loss statement,²⁰⁴ because “traditional corporate accounting

is a derivation of, and is coterminous with, the theory of market economy. As such, it is concerned with transactions.”²⁰⁵ Controversy has raged about how corporate audits should be conducted. In 1978, the U.S. Department of Commerce tried to establish a corporate Social Performance Index, but the idea had to be withdrawn because of corporate opposition.²⁰⁶ Should social audits be conducted by normal auditors? Alternatively, should churches or universities rate business corporations? Would auditors inspect in the field?²⁰⁷ Would the intent be to report to the public, or to inform internal decision makers? If the latter, would its purpose be to satisfy their consciences, help them stay out of trouble, or spur them toward solutions of social problems?²⁰⁸

If corporations were truly democratic internally, their stockholders probably would not vote in support of greater social responsibility.²⁰⁹ Demands that they exercise more social responsibility put a great strain on American corporations that have been defined as private governments since the advent of general incorporation laws and the Supreme Court decision of 1886.²¹⁰ If corporations did assume greater social responsibility, they would probably co-opt and control the persons and domains for which they were held accountable, unless they consciously rejected such control. If corporations were to extend their power, what could countervail that power?

If business corporations should exercise greater public responsibility, then so should large labor unions, with their hundreds of millions of dollars in pension funds.²¹¹ Why should these funds go into stocks, bonds, and banks—that is, into the service of the business community?²¹² Why should a labor union’s real estate investments be in Florida, California, and Las Vegas, rather than in areas where they might help the underprivileged? The size of pension funds is so large that failure to assume social responsibility affects the general welfare. Physicians’ and lawyers’ organizations clearly should be held to higher standards of public responsibility, since such a standard is explicitly part of the justification for these professions and their self-governance.

If any private government should enlarge its social responsibilities, the questions are: by what criteria, set by whom? In public governments, main goals and priorities are established through budgets; the process of establishing budgets is a process of establishing value priorities. The results of this process are often far from satisfactory in terms of general or long-range interests. And the process is not applicable to private governments. There is no consensus about how private governments might appropriately determine what is the public good or monitor outside groups’ priorities. In the United States, case law does not outline clearly where the social responsibility of private governments should stop.

As Berle put it, the United States has been in transition from a system based on individually controlled property to a system of collectively controlled

economic and social power.²¹³ For many other parts of the world, the transition is even more advanced. Issues about private-public relations are similar to issues about central-local relations or the relations of large to small units, whether they be all private or all public. Value assumptions are involved in all such relations. An adequate philosophy does not exist to guide the new forms of collective power, whether the power be lodged in public government, very large private governments, or a combination of the two. Neither universal suffrage nor pluralistic conflict by themselves supply needed new values. People do not always know what their interests are or what values should be relevant. Sometimes people have to be introduced to enriching possibilities.

Values affecting public-private relations vary from one society to another. Societies that put a greater priority on the afterlife than on life on earth might not emphasize material progress as more secular societies have done. Even within a single society, there can be real conflicts between the values of males and females, people of different age and ethnicity, or members of different socio-economic groups. There are differences between special interests and the general interest, between short-run and long-run interests.²¹⁴

In times of change, from whence should normative guidance come? Churches, universities, and sometimes even public governments no longer serve as moral mentors to large numbers of people. If mass media are the primary mentors, the values they impart may not be desirable by other criteria. But what is the source of other criteria? If majority opinion cannot be trusted; if natural law is merely descriptive rather than normative; if the fates of power must themselves be subjected to higher standards, the standards might be—as some New Deal philosophers said they should be—whatever serves the social, spiritual, and aesthetic needs of the people. But this brings the analysis circuitously back to the problem of how to determine human needs, which is fundamental to the question of what forms of public-private relations best serve those needs.

One set of basic values might presume that the survival of a given system or the preservation or enhancement of national economic and power advantages are the fundaments from which all other values should be derived. Other possible primary values include maintenance of privileges, stable community, law and order, material abundance, rapid growth, and redistribution of power and wealth.

It is this writer's opinion that the well-being and constructive self-determination of individuals are primary values; other values should be subordinate; public-private relations should be structured to serve these primary values as much as possible. For example, the family is a basic social institution. Ordinarily, the cause of individual freedom is best served by respecting the autonomy of the family as a private government. But if a particular family does violence to the needs of the individuals within it, then public government

should intervene. The same criteria of individuals' needs apply to a number of other questions. For example, should the cultural homogeneity of neighborhoods be protected as a way of providing surrogates for individual development, or should public government require that they be open to heterogeneity, thereby reinforcing another kind of individual freedom? Should private clubs be allowed to choose their members to ensure cultural homogeneity, or do tax-exempt status or other public advantages entail that they should be open to anyone? Schools should help maintain social order, impart the rules of the game, take into account long-range social and economic realities, and air various viewpoints, but the ultimate standard in classrooms should be whatever serves individual students. Issues about the respective rights of schools and parents should be resolved by the same criteria. Schools should not be indoctrination agents for a society's dominant powers. Parents and students sometimes need protection against a school's arbitrariness, but sometimes a school may serve the cause of a student's individualism more than do her or his parents.²¹⁵

Once out of school, most individuals go to work, but an individual's well-being involves much more than his or her life at work. Public-private relations affecting an individual encompass far more than the relatively simple issues about relations between public and private governments. Sennet argued that eighteenth-century Western Europe enriched individual lives by maintaining a sharp distinction between public and private life, and by encouraging an elaborate code of expressiveness for public life.²¹⁶ The range and sensitivity of self-expression in the private sphere was thereby enhanced. In contrast, during the nineteenth century, the code for public expressiveness and public sociability was eroded. Except for vicarious action through a few heroes, politicians, or performers, expressiveness was confined to private life. Sociability was mainly private and centered around the family. For males, personal freedom often entailed temporary escape from the codes of private social institutions. Public life was the area for such escape, but it did not sustain an individual. Western Europeans and North Americans in the 1960s and 1970s tried to extend personal expressiveness and patterns of sociability into public life. But the neutrality of the public sphere defeated them, and the absence of distinction between public and private modes of sociability and expressiveness eroded the private sphere.

Individual development requires that privacy be respected. As Westin concluded, privacy satisfies four needs that blend together in an individual's life: needs for personal autonomy, for emotional release, for self-evaluation, and for limited and protected communication.²¹⁷ The contribution of privacy to personal autonomy involves the protection of the inner core self, the ultimate resource of the individual. A person seeks protection from the manipulation and dominance of others in defense of his uniqueness and dignity as a person. The autonomy of the self depends upon the maintenance of wells of reserve.²¹⁸

People need privacy for bodily and sex functions, for recovery from loss, anxiety, or sorrow, for relaxation after emotional stimulation, and for relief from playing social roles. Privacy helps maintain social distance, which maintains psychic distance and creates perspective. The right to privacy should include protections against undue demands from public government for disclosure of personal information, protections against arbitrary search and seizure, and constitutional protection against excessively intrusive social regulation. A public government which stamps a monolithic heavy hand on everything is too oppressive. A private government might also intrude too much into an individual's life space.

A balance is required between the liberal definition of freedom primarily as self-determination—which assumes that the means for pursuing happiness are readily available—and the older, organic state's definition of freedom as self-realization—which has often taken existing social guidelines as unchangeable. In order to have self-determination, middle-class Americans and others in similar societies learn to internalize norms and to keep psychic distance from other people.²¹⁹ This freedom is self-actualization and if the self is defined in terms of social roles, freedom becomes the performance of roles. This view comes close to the Communist definition of freedom as the recognition of necessity, or to Skinner's proposal that people be bred and conditioned to fit the coming society.²²⁰ This view could be stretched to mean that people become like the pitless, seedless, uniform fruit that are bred by agricultural scientists to fit mechanical pickers.

In Western society, private property has been treated as a surrogate for privacy and as an extension of self-space.²²¹ Hence, the laws of trespass and nuisance have protected the property holder. But property has become far more than merely chattel or real estate held in fee simple; it includes rights of various sorts, good will, liens. Modern kinds of property do not necessarily reinforce individualism, but, on the contrary, may web the individual to society and to its various subtle pressures for conformity. Private property may be taken for public use, either simply through police power or by exercise of eminent domain. Protection of the individual turns only on what the basis of compensation shall be. Under American law, for example, an owner is reimbursed for monetary loss, but not for potential profit or the taker's gain, and certainly not for losses that cannot be translated into monetary terms. Society is not structured to sustain individuals in the ways that private property once sustained them.

For aspects of life that center on work and politics, some argue that individual freedom is best protected by an appropriate balance between private and public government. Private governments may help sustain freedom by impeding totalitarian mass movements. But a mass movement, working through private governments of another kind, may be necessary to express the needs and

interests of the otherwise powerless, to break through society's logjams, and to effect innovations.²²² Private governments may protect freedom vis-à-vis one another and public government by exercising countervailing powers.²²³ Yet, not all interest groups are equally powerful, so that some groups' freedoms and prerogatives are better protected than others.²²⁴ Even when a private government appears to be redressing an imbalance, it does not always do so. It could be argued that, in the past, even long and violent strikes served to rationalize labor and enculturate formerly rural folk to urban factory life and, thereby, served the interests of capitalists. Leaders of conflicting groups often have more in common with each other than with members of the organizations they lead, and sometimes pursue their own interests at the expense of the interests of the rank and file. Sometimes, leaders foster apathy, even though, at other times, they counteract it.²²⁵ Occasionally, elected public representatives forget their origins and mission and collude with the leaders of private groups which they are supposed to be regulating.

In summary, forces that are supposed to be countervailing are not always countervailing. Even if they were, the public interest is not necessarily the result of countervailing forces. There is as much fallacy in the argument that private governments balance against one another and the state as there is in the argument that freedom is protected by the checks and balances of public government. Critics have pointed to the lack of consistency and clear direction of a pluralistic political order based on mutual accommodation and adjustment. Pluralism in the past has worked only where there was geographical space for expansion, so that the losers in power struggles had space in which to retreat. With the prospect of zero growth, the leeway for pluralistic political orders may not exist any more. Also, if public government merely ratified the bargains of countervailing groups, it might not have the leverage to form a unified market for goods and services on which modern corporations, labor unions, and professional associations rely. Some of the macroeconomic functions performed by public government require that it have a critical mass of power, a power not detached from, but exercised in continuum with, private governments.

In any case, the problem is not simply one of expressing and balancing interests. Many Americans objected to the National Recovery Administration because it violated traditional notions of the liberal state; others could have objected to it because it did not confront squarely enough the lack of democracy within private governments. Private governments are agencies of social control, demanding conformity in exchange for the freedom they supposedly gain for individuals. This exchange can be a form of tyranny, since organizations do not treat their members as whole persons, and since not all members of an organization have compatible interests. Three decades after the New Deal, an attempt was made to enforce democracy within labor unions by means of the

Landrum-Griffin Act. For business corporations, there have been sporadic efforts to organize minority stockholders, although the declining importance of equity financing has helped to make stockholders less and less influential in the business world.

The argument still holds that private governments help assure the freedom of individual people: give them a sense of belonging, educate them for citizenship, increase their general awareness and capacity for participation, represent them in debates over the general interest, and protect their interests from others. Individual people may be protected from acts of their private governments in two main ways, each of which has counterarguments. First, having multiple memberships, many people do not want to participate fully in their private governments. They join organizations to obtain services, and if the services are not satisfactory, the members can vote with their feet.²²⁶ But departures are not practical where the sanctions for leaving are too great, such as in labor unions or professional associations with substantial control over job markets. Also, public government sometimes requires individuals to join organizations, as in the case of union shops. Second, democracy means accountability: there are guarantees of due process in disputes over admittance and ejection from membership or in the adjudication of other grievances, and there is the right of appeal to public government in cases of unfair discrimination and violation of due process. The problem is, of course, that these rights exist more in the formal law than they do in living fact. Large unions tend to become bureaucratic. It could be argued that the application of antitrust regulations to labor unions to keep them small might give more voice to individuals, but McConnell has shown that elites dominate small organizations.²²⁷

Localism in government and business, and smallness or human scale, are sometimes touted as surrogates for individualism. But the small and local can also tyrannize. In any case, the trend appears to be toward large-scale systems of interpenetrated private-public governments.

Two of the most important social facts in recent years are the growth of societal management and of bureaucratization. Managers drive toward cooperation and consensus and encourage mergers.²²⁸ “In a managed society it is not at all clear that a serious degree of political autonomy is possible either for private individuals or for groups.”²²⁹ In great empires of the past, bureaucratization increased as an empire reached a point of decadence. Bureaucratization appears all over the world presently, not just in public governments but also in private ones.²³⁰ The situation calls to mind Fuller’s warning against the late stages of societies and organizations after spontaneous commitment has given way to legalism.²³¹ The prevalence of bureaucracy challenges the general value of privacy, a value that still has potent meaning in individual lives.

Business corporations and states can serve an individual citizen inadvertently, simply because they may be projections of the individual's self-image.²³² Their behavior and style can affect the self-esteem of their citizens. The self needs not only the consensual validation of others, but also supporting imagery. However, as private and public governments lose independence vis-à-vis one another, they may cease to be effective projections of individual selfhood.²³³

Private organizations might possibly play the role Hegel ascribed to them, as a new version of medievalism: to channel individual egotism into reciprocity and mutuality and pave the way for the state's higher universal orientation.²³⁴ But would the individual really be served? And is the Hegelian ideal really possible? There has been no tendency to reorganize local community so that once more it might help bring its citizens to God. Although corporatist aspects of modern society do resemble the medieval pattern, and—in the coming era of scarce resources—the resemblance may grow even greater, contemporary society certainly does not replicate the seamless web of the Middle Ages—a web of time, space, and organic hierarchical relationships.

Another way of solving the problem has been suggested by Anderson.²³⁵ The problem of freedom for the nineteenth century was to open an indeterminate set of possibilities for individual affiliation and compact. For the mid-twentieth century, it seems more that of assuring the predictability, performance and availability of a stable set of specified relationships with institutions. For the individual, his functional role is increasingly a realm of obligations, for standardized, routine performance on which others depend. His freedom appears mainly in his role as consumer, his individual capacity to use the framework of the functional order, to orchestrate his interactions with it, in pursuit of personal ends. Obligations increasingly attach to the realm of work, rights and freedoms to that of leisure. Individuals come to depend on a stable and specified political order, a policy defined by relationships with complex institutions, for their life chances, for the definition of purpose and meaning in life itself.

Freedom only in leisure seems a shallow and illusory kind of freedom. For some people, work institutions or their professions may become so valued that home is no magnet by comparison. Perhaps such people can use self-help as the best protection against institutional intrusions, just as people convert public space into private space.²³⁶ Even though civil-service reformers have taught that governmental bureaucracies should be abstractly public, people tend to privatize their jobs within either public or private governments, as a way of protecting space for their self-identities. The process could go too far, of course. Feudalism grew out of the privatizing process; and in Europe from the sixteenth to the eighteenth centuries, public governmental posts were bought and sold as private property.²³⁷

²³³

Excessive privatization destroys community. People's needs for order and continuity preclude anarchism. When survival itself is at stake, individual freedom diminishes in importance. Yet within necessary constraints, the most important issue remains not so much what should be the relationship between private and public governments but, rather, what institutions within either or both the private and public spheres can protect and serve individuals best,²³⁸ not only in their roles as workers, consumers, and citizens, but also as students, lovers, parents, persons lolling in the grass, or even poets.