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Note on the Measurement of Governmental Continuity with its Implications for the Legal Profession

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Because legal practice requires attorneys to apply themselves to the specifics of individual cases, it may be useful to generalize to an idea framework whose object is to measure the level of continuity existing in the legal system within which lawyers function. The relevance is that owing to the nature of the practitioner's work it is necessary that within the governing structure of a country there be present a reasonable level of governmental continuity. The latter is germane to the practice of law, for attorneys can work with adversarial proceedings and cases at suit only if there is certainty about the existence of continuous operation in the governing institutions of a nation state.¹

That the measurement of governmental continuity can be given a mathematical context is the suggestion of this paper. By the term governmental continuity is meant that capacity of the formal governing institutions of democracies in the Western tradition to maintain themselves in continuous operation through the instrumentality of political parties. Examples of these democracies include, among others, Australia, Belgium, Canada, Great Britain, Norway, Sweden and the United States, all of which emphasize the importance of periodic, free elections, the formation of political parties to contest elective offices, and the governance of national governments through a single party or one in coalition with another.

In Great Britain the Conservative, Liberal and Labour parties have provided the matrix for the expression of continuity for British governmental institutions as represented by Parliament

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1. For a general discussion of judicial systems, Great Britain among them, see: Henry J. Abraham, *The Judicial Process*, 3rd ed. (New York: Oxford University Press, 1975).

and the monarchy. These parties, whether singly or in combination with another, have facilitated the continued governance of Britain through the maintenance of a free electoral process, where opposition candidates contest for a limited number of seats in the House of Commons. The monarchy itself, whether represented by George V or Elizabeth II, has exercised formal sovereignty through general approval given it by parties either of Conservative, or Liberal or Labour persuasion. Thus, what these political parties, within which beliefs and issues are advocated, debated upon and offered for voter support, have done is to enable the formal governing institutions to maintain themselves as integral parts of the legal and constitutional system.

Similarly, the Democratic and Republican parties in the United States, being parties that by their national organization have the maximum capacity to win control of the executive and legislative branches through electoral success, have made possible the continuity of American governing institutions. These institutions comprise, of course, the executive, legislative and judicial branches, all three of which are influenced by the policy-making and appointing capacities of the two principal parties.

To make the statement that Prime Minister Wilson (as of 1975) and President Ford (as of 1975) are members of the British Labour party and of the American Republican party is to indicate the obvious. But what the statement also does is to suggest the ability of the respective parties of Wilson and Ford (Thatcher and Reagan in 1985) to exercise control of the executiveship in each country. And such control is an observable manifestation of the maintenance of governmental continuity for the legal and constitutional systems of the countries involved. The fact that adjacent to the name Wilson and to that of Ford are the designations Labour and Republican makes for observable evidence of the continuity achieved by the two parties for their governing institutions.

What would be useful in understanding the term governmental continuity and its importance for the legal profession would be to give visible representation to it by working with an actual situation. Such representation can take the form of a mathematical design whose object is to measure governmental continuity in a democracy of Western tradition. This design

is to be simple and adjustable to differing situations in individual countries: if the design is too specific, then its utility for generalizing purposes is diminished; and if generality is lacking, then the design's applicableness to the specific is subject to qualification.

What follows below is possible substantive content for the measurement of governmental continuity, whose design is applied to British political parties and governments-in-power during the 100 years between 1875 and 1975.²

Governmental Continuity Measurement (GC_m)

figure 1

$$GC_m = \sqrt{\frac{X \cdot Y \cdot W}{M + N}}$$

Presumably, the passage of something called time is essential for something called continuity to take place, for continuity implies the long-term existence of something. The base of such continuity is likely to be the time factor, since time itself facilitates the establishment of a base. In the figure above, X represents a specific time period — i.e., 100 years, within which the design is applied and tested. Thus, X is a base line in the calculation against which Y and W are multiplied for purposes of measurement.

While the letter X represents the base line of a 100-year period, the letter Y represents the number of major political parties existing in the country during the 100 years.³ The rationale for the importance given to party is that in the time passage of a century the entity called party is the main instrumentality in a democracy by which changes in society are effected governmentally. One observable indication of these changes is the designation given various administrations in American government, including Square Deal, New Deal, Fair Deal, New Frontier, Great Society and New Federalism.

2. The reason for referring to British political parties and governments-in-power is to give illustration to a political-governmental system from which the American system has its base.

3. What is necessary is that a political party have existence at some time during the 100-year period and have had the capacity to exercise control of the executiveship as a result of electoral success, such control being exercised by itself or as part of a coalition of parties.

Within the design the letter W represents the total number of separately organized governments-in-power instituted by British parties in the time reference of 100 years. By government-in-power is meant the executiveship of a country: for instance, each time period that a Prime Minister functions in a Parliamentary democracy is measured as a separately organized government-in-power. Specifically, Prime Minister Churchill functioned in executive position during the time periods 1940-1945 and 1951-1955; therefore, he represents two governments-in-power. Churchill also headed, technically, a third or caretaker government from May to July, 1945, a government whose purpose was to continue administrative operations during the period of time when Parliamentary elections were being held. But such caretaker government is not measured as a separately organized government-in-power within the measuring instrument.

In a presidential form of government which has democracy as its model — like the United States, the total time period during which a President functions is measured as a separately organized government-in-power. An instance: Theodore Roosevelt functioned as Chief Executive during the period of time from 1901 to 1909; consequently, he represents one government-in-power.⁴

That there is a connection in the measurement of governmental continuity between time passage and the operation of political parties, whose electoral success results in their forming governments-in-power, is probable. Although time provides a base for the measurement of continuity, its concomitants in this context, the political parties and their governments-in-power, are given equal measuring weight. The rationale is that the parties fill in or consume the time period substantively through the advocacy of programs and the institution of governments-in-power whose object is to implement these programs. Within this design, then, time as

4. Although the time reference just referred to in figure no. 1 is 100 years, the period covered can be 50, or 200 years, or some other time designation. Because something called continuity implies a long-term condition for governing institutions, the measuring instrument assumes that a time base of at least 50 years is necessary for the design to be operative.

a base line, parties and governments-in-power are all given equal importance.

These elements in the design have equal measuring weight, since without the passage of something called time the political parties and governments-in-power would not have a chance to develop and express themselves in electoral campaigns and governmental programs. Correspondingly, political parties are measured equally with governments-in-power, since without the parties there would not be governments-in-power in a modern democracy. What these conditions suggest is that time, parties and governments-in-power are related integrally to one another and are, therefore, to be given equally proportionate weight within the calculations of the design.

The design further assumes that the relationship between time, parties and governments-in-power is multiplicative rather than simply additive, and that a product calculation is appropriate for measuring the multiplying activities of parties and of governments-in-power.⁵ Thus, the probability is that the proliferating expansion of party workers and of financial contributors will multiplicatively bring in more workers and contributors during the period of a century. In these 100 years the promotion of programs by the governments-in-power of one party (or coalition of parties) when first in control of the executiveship is likely to proliferate multiplicatively into the promotion of additional new programs by this same political party (or coalition of parties) when last in executive control at the end of the time period. The adverb multiplicatively is used here to indicate the mathematical field of maximum possibilities existing for the proliferating expansion in party recruits, financial contributors and programs during the 100-year time period.

The presumption is that an increase in workers, contributors and laws may not be precisely multiplicative in the sense that the enactment of 20 bills, for instance, in a specific area of health care, sponsored by the executiveship of one party (or coalition of parties) at the beginning of the century, would necessarily eventuate in the passage of a total of 400 bills in

5. Activities expressive of continuity are understandable more from a product or multiplicative calculation, as the idea is that they involve a 4 times 4 equals 16, or 8 times 8 equals 64 calculation rather than a 4 plus 4 equals 8 calculation.

the same area by the end of the 100 years. But there does exist, mathematically, a field of maximum possibilities for an expansion from 20 to 400 bills in a specific area of health care by the governments-in-power of one party (or coalition of parties) in this time period.

In figure no. 1 above, the letter M represents the year which is at the beginning of the 100-year time period, which can be 1875, if the design is to be directed toward a time passage between 1875 and 1975. The numbers represented by M, or 1875, whose effect is to provide for time passage extending backward through 1875 years, are added to those of N, or 1975, whose effect is to represent the extension of time into the future — i.e., 1975 years into the future if this year is chosen to be the ending year of the 100-year time period under study.⁶

Subsequently, there are added together the time extensions, both backward and forward, whose total is then divided into the total of X times Y times W, or 100 years times the number of political parties in the country that does organize governments either singly or in combination with another party times the number of governments-in-power. By measuring M + N, or the time extensions, against X times Y times W, the consequence is to proportion the importance of a 100-year time passage, of the number of parties and of the number of governments-in-power in reference to the centuries.

Because the result obtained by dividing M + N into X times Y times W calculates a mathematical field indicating the maximum possibilities for relationships to take place between time and time-influenced activities of political parties and of governments-in-power, the next task is to square root the result. What is done through taking the square root of these maximum possibilities is to try to determine that base factor which accounts for the field of maximum possibilities. Recognizably, if a field of objects adds up to 36 for its totality, then 6 is the base factor accounting for the field of 36, as 6 times 6 equals 36. What the design reaches for is that base factor which

6. The democracies referred to use the Christian calendar as a time referent; therefore, the measuring instrument employs this calendar. But the instrument is usable in conjunction with non-Christian calendars as well, for the numbers of years are still present and are incorporable into the design. It is assumed that democracies using the Christian calendar would be examined separately from those employing the non-Christian calendar.

makes possible the measurement of governmental continuity in a democracy of Western tradition.

To illustrate in a practical way the application of the design, the measuring instrument is applied to British political parties and governments-in-power during the time period between 1875 and 1975.

Governmental Continuity Measurement (GC_m)

figure 2

$$GC_m = \sqrt{\frac{100 \cdot 3 \cdot 30}{1875 + 1975}} \quad \frac{9000}{3850}$$

therefore, $\frac{9000}{3850} = 2.338$ (potential level of continuity)⁷

thus, $\sqrt{2.338} = 1.529$ (base level of continuity)⁸

In the above illustration, X represents the 100-year time period in British political party and governmental history between 1875 and 1975. Y indicates that during this time period there were three political parties that could organize governments-in-power, either singly or in combination with another, while W or 30 represents the total of 30 separately constituted governments-in-power during the 100 years. In this time period 18 individuals functioned as Prime Minister and instituted 30 different governments-in-power.⁹

7. 2.338 represents the potential level of continuity, or the mathematical field which indicates the maximum possibilities for relationships to take place between time and time-influenced activities of political parties and of governments-in-power in respect to the maintenance of continuity.

8. 1.529 represents the base level of continuity, or the base from which there is evolved the field of maximum possibilities for relationships to take place between time and time-influenced activities of political parties and of governments-in-power in respect to the maintenance of continuity. Simply put, potential level of continuity refers to the furthest extent to which continuity can be maintained in a given time period, while base level of continuity makes reference to the essential foundation from which there evolves continuity in a given time period.

9. *Information Please Almanac: Atlas & Yearbook 1980*, 34th ed. (New York: Simon And Schuster, 1979), p. 271.

In the United States between 1875 and 1975 there were 21 governments-in-power, which were instituted by 20 individual Presidents, the nonconsecutive term of Cleveland being measurable as a second government-in-power since four years intervened between his terms. With ratification of the 22nd Amendment there has been a relatively fixed rate of governmental continuity in respect to American governments-in-power, as no President can serve for more than two full four-year terms. An exception can occur in that situation where the Vice President succeeds to the office of President upon the death or resignation of the incumbent President during the last two years of the latter's term of office. Here the Vice President who succeeds to the presidential office in this time frame can run twice for two full four-year terms. Still, the variable within the design referred to as party can change in number (the United States might at some point have more than two principal parties), and this circumstance would affect the outcome of the design.

To return to figure no. 2: the result obtained by multiplying 100 times 3 times 30 is 9000, which is then divided by $M + N$, or $1875 + 1975$, whose total is 3850. The number 9000 indicates the connection between the 100-year time period, the three political parties and the 30 governments-in-power, all of which are calculated from a product perspective. The rationale for such perspective is that in this time period the political parties are stimulated to develop and organize themselves, as a result of which governments-in-power are made possible. In Britain the Labour party earlier in this century instituted itself, recruiting workers, establishing Parliamentary constituency associations and liaison with trade unions, advocating programs in electoral campaigns, electing members to the House of Commons, winning enough seats to become a government-in-power on its own majority (Atlee in 1945), and then implementing its programs through administration of the central government in London.

In figure no. 2 the number 3850 represents the time extensions both backward and forward (backward 1875 years and forward 1975 years). The result obtained by dividing 3850 into 9000 is 2.338, the potential level of continuity, which represents a mathematical calculation of the proportionality of continuity expressed by the 100-year time period beginning in

1875 and ending in 1975. Therefore, the number 2.338 represents the field of maximum possibilities existing for relationships to take place between time and time-influenced activities of political parties and of governments-in-power in respect to the maintenance of governmental continuity.¹⁰

To find the base level of continuity for this time period, the figure 2.338, the potential level of continuity, is square rooted; the result is 1.529, the base level of continuity, which indicates the base factor reached for the governing institutions of Britain by the political parties. This base level represents, then, the foundation for continuity maintenance — i.e., the maintenance of governing institutions in continuous operation. By multiplying 1.529, the base level of continuity, by 1.529 the figure 2.338, the potential level of continuity, is reached.

An assumption of the measuring instrument is that the smaller the square root, the greater the base level of continuity obtained by the political parties for the governing institutions during the time period examined, and that the larger the square root, the lower the base level of continuity. Consequently, the smaller square root means a larger degree of governmental continuity existing in the country, and the larger square root signifies a lesser degree of continuity.

The study assumes that continuity can be present only if political parties are given time with which to develop their programs and implement them through electoral success as the governments-in-power. For instance, if a Labour government were to form in one calendar year, a Conservative in the first six months of the second calendar year, a Labour in the last six months of the second year, a Conservative in the first two months of the third calendar year, etc., then there would be a diminution in the level of governmental continuity.

A base level of 1.529 suggests that the practitioners of law in Britain during the time period 1875 to 1975 had a relatively stable legal and constitutional environment within which to function. What is assumable is that the larger the number of governments-in-power during a specific time period, the less the continuity existing for governing institutions and,

10. The lower the potential level of continuity the lower the base level, and the greater the degree of continuity existing in the governing institutions of the nation state.

correspondingly, the less the stability existing for the practice of law.

What is important about governmental continuity in the Western democracies is that its existence reaffirms the utility of periodic, free elections, the formation of political parties to contest elective offices and the governance of national governments through a single party or one in coalition with another. Understandably, if during a single calendar year there were organized four or five separate governments-in-power within a parliamentary or presidential system, such circumstance would be disruptive of continuity.

This circumstance would represent an obstacle to the deliberative application of the law, especially that branch of the law called statutory, which is subject to amendment through the changing policies of successive governments-in-power. In this environment there would likely be a diminution in the perception held by citizens and legal practitioners alike toward the importance of continuity in the formulation of rules of conduct to be followed by all in society.

The point is that if the governing institutions have a reasonably high degree of continuity, then there is likely to be less uncertainty in the legal-constitutional environment within which precedents are established, cases at suit between the state and citizens and between private parties are resolved and court decisions are rendered. A fundamental question intervenes here: what kind of legal practice could there be if governing institutions had no continuity.

By employing this design the legal scholar can obtain an estimate of the varying levels of continuity present among various democratic nation states. The attorney with an international practice may find it useful to be knowledgeable about such levels in terms of his/her own response to clients and casework.

The following are useful in gaining an understanding of this design: Ted Robert Gurr, *Persistence and Change in Political Systems, 1800-1971*, *American Political Science Review*, 68:1482-1504, 1974; and E. Terrence Jones, *Conducting Political Research* (New York: Harper & Row, 1971).