

## Chapter 4 Justice and Human Nature

### 1. Justice Manifested as Phenomena of Human Nature

Chapters 1 and 2 looked at the Idea of Justice in terms of the legal codes of different ancient Societies with the idea of seeing what principles, if any, might be extracted from these legal codes that could help us to determine what "justice" might be. We also examined examples from so-called "primitive" Societies who had no legal codes at all yet seemed to indeed possess some notion, vague though it was, of justice. We further examined the ideas various philosophers put forth about notions of justice. Finally, we have seen that in many cases the notion of justice seemed to be connected to or bound up with a Society's traditions, customs, mores, folkways, religions and/or their religious notions of "natural law."

In this propaedeutic review, it was clear there were a great many differences in detail from one Society to another. It is also clear that, so far, we have not yet teased out one unifying definition of "justice" even if it does seem that there were many commonalities suggestive of a proposition that *something* commonly presupposed might underlie the Idea of Justice. One of these commonalities is that, whenever some notion of "justice" seemed to be present, it was always found within the context of a *Society* and, furthermore, did *not* seem to be necessarily associated with any particular form of *government*. Most governments we saw in these examples were monarchies, true enough; but Rome was a republic for centuries and primitive Societies like the BaMbuti had nothing recognizable as a "government" distinct from their mores, folkways and an expectation of cooperation that can rightly be described as consensus democracy. A second commonality was that the legal codes we examined all had either explicit ties to the particular Society's mores and folkways or else strong suggestions that there were such ties.

Much of the character of the ancient legal codes appears *ad hoc* and to have arisen as case law, i.e., to be the result of particular decisions made in the course of deciding specific cases of grievances. It was not until the advent of Roman "legal science" that we saw any evidence of attempts to systematize laws. And this attempt by the Romans came after the Greek philosophers began trying to dissect and classify notions of justice. Today's diverse philosophies of justice are still occupied with ideas of classification whenever we see the word "justice" preceded by an adjective modifier such as "distributive justice," "social justice," "environmental justice," &etc. But putting a classifying adjective in front of an undefined term does nothing to explain that term.

One thing that is clear above all else is that in every instance all phenomena to which any idea of justice seems to pertain were *human*-caused phenomena. Every action that led to legal reaction was committed by one or more human beings, and every grievance in reaction to this was a grievance expressed by one or more other human beings. It is also clear that every such instance involved two or more parties in a dispute or grievance, e.g., an alleged transgressor and a plaintiff to a specific transgression. In most cases, the case involved members of the same Society, although in Hittite law the case might involve two Societies between whom *a treaty or understanding* of some sort was in effect and the grievance involved a transgression of this treaty of some kind or some action by one country's members offending the other's.

We can conclude from this that, whatever justice might be, effects related to it are manifested in *human* nature. We can further conclude that these manifestations involve interactions or interrelationships between two or more human beings, i.e., the interactions are in some way *social* phenomena (taking the adjective "social" in its broad connotation of "any situation involving two or more people"). This places the *context* of all ideas of justice and injustice squarely within the scope of *social-natural* phenomena.

Aristotle wrote,

In all sciences that are concerned with principles or causes or elements, it is acquaintance with these that constitutes knowledge or understanding. For we conceive ourselves to know about a thing when we are acquainted with its ultimate causes and first principles, and have gotten down to its elements. Obviously, then, in the study of Nature, too, our first object must be to establish principles. . . .

Now the things most obvious and immediately cognizable by us are concrete and particular, rather than abstract and general; whereas elements and principles are only accessible to us afterwards, as derived from the concrete data when we have analyzed them. So we must advance from the concrete whole to the several constituents which it embraces [Aristotle (date unknown), pg. 315].

The Nature with which our study of "justice" is concerned is human nature. Furthermore, it is human nature in the context of social interactions of all kinds. Borrowing Bloom's phrase, human beings are our "social atoms" in this context. To understand these "atoms" individually we will draw from the Critical theory summarized in review from chapter 3. Understanding the interaction aspects will involve a study of what we might call the "social-chemistry" of human beings in Societies.

Human beings are the agents and patients<sup>1</sup> in all events that we say involve manifestations related or tied to notions of justice and injustice. The actions of the agent are said to be causative, or at least partially causative, of the effect on the patient. His actions may have an immediate and direct effect on the patient or the effect may be remote, indirect, or delayed. It follows that our study must seek to understand what rules there may be which might determine the event said to manifest justice or injustice (its *causatum*<sup>2</sup>) as well as why and how that event comes to be regarded as pertinent to justice or injustice.

Furthermore, the notion of justice is generally regarded as something having the quality of being "right" or "good." Injustice, on the other hand, is a notion of something regarded as having the quality of being "wrong" or "evil." Judgments of "right vs. wrong" or "good vs. evil" are called *moral* judgments. We must therefore also seek to understand the human nature of moral judgments.

Both of these tasks of our study are quite formidable. The first summons in such notoriously difficult-to-understand ideas as motivation, intent, and interest. The second brings in the historically difficult task of understanding the notions of good and evil. In addition, the idea that an action by an agent *A* somehow interacts with or affects a patient *P* presupposes a notion of causality and a notion of dependency<sup>3</sup>. These ideas are all *noumena* while our ability to study them is only possible by means of phenomena of human nature. Furthermore, this understanding must be epistemology-centered if it is to be objectively valid.

## 2. The Empirical Development of Moral Judgments

Every human being makes judgments of "right vs. wrong" and "good vs. evil." These judgments are often about fairly trivial matters such as "chocolate tastes good" or " $2+2=5$  is wrong." Adults rarely regard judgments of this sort as having any moral connotation at all. It can therefore be very surprising that some children younger than around seven years of age *do* regard a judgment like " $2+2=5$  is wrong" as a *moral judgment*. This fact was discovered by Piaget in a brilliant set of experiments designed to study how moral judgment develops in children [Piaget (1932)]. Here is an example.

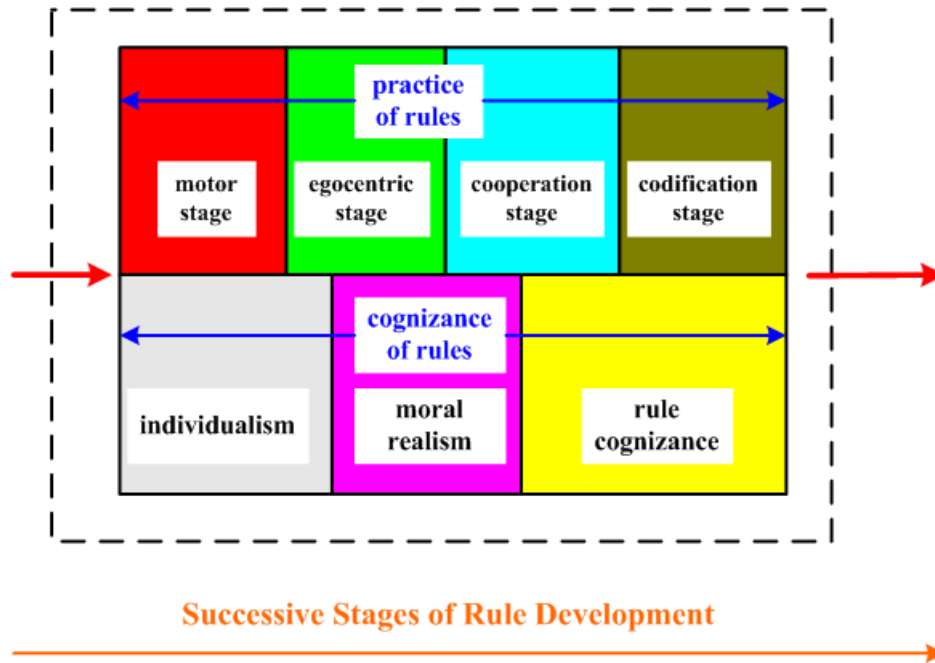
CLAI (age 6): "Do you know what a lie is?" - *It's when you say what isn't true.* Is ' $2+2=5$ ' a lie? - *Yes, it's a lie.* - Why? - *Because it isn't right.* - Did the boy who said that ' $2+2=5$ ' know it wasn't right or did he make a mistake? - *He made a mistake.* - Then if he made a mistake, did he tell a lie or not? - *Yes, he told a lie.* - A naughty one? - *Not very.* [Piaget (1932), pg. 143]

"Not very" naughty, but still naughty. When we consider that "naughty and nice" is the child's equivalent of "evil and good," observations like this one clearly convey to us that moral judgment is something more complex than most of us usually think.

<sup>1</sup> An agent is a person who acts. A patient is a person acted upon or affected by the actions of an agent.

<sup>2</sup> A *causatum* is a rule for the determination of a change under the condition of a cause. A rule is an assertion made under a general condition.

<sup>3</sup> Causality is the notion of a determination of a change by which the change is established according to general rules. Dependency is the notion of a change which is a contingent and rule-determined consequence of the *Existenz* of something else.



**Figure 1:** Stages of development in a child's moral judgment. Piaget classified this development in two dimensions: the practice of rules; and the child's cognizance of rules. All children go through these stages in the same order with some minor differences in the age at which they complete one stage and begin the next.

Piaget's research disclosed that there is an unaltered series of stages in the child's development of moral judgment, and that all children go through these same stages in the same order with only small differences in their ages at which one stage ends and the next begins [Piaget (1932)], [Wells (2012), chap. 5]. He also noted that adults, when confronted with novel situations, will sometimes exhibit *restaging* of this developmental sequence as they resolve the new problem or situation [Wells (2012), chap. 5, §4]. These facts tell us that moral judgments arise out of a process of judgmentation and co-involve developments in the structures of the manifold of concepts and the manifold of rules discussed in our previous chapter. That is why "moral judgment" does not appear as a "block" in the mathematical model of *nous* presented in chapter 3. The phenomenon, that humans make moral judgments, is an *outcome* of judgmentation and not a constituent *part* of judgmentation. The task before us is to better understand the how and why of this phenomenon of human nature. We will start with an explanation of these stages of development.

Let us begin with the dimension labeled "practice of rules" in figure 1. Its first stage, the **motor stage**, corresponds to habit-based behaviors. These are behaviors corresponding to one's usual routines; some people describe this as "being on autopilot" when your actions are such that they don't require your close attention or thought. Walking is one example of this but there are others that are more drawn out. For instance, do you have a "morning routine" when you arrive at work? Perhaps getting coffee, checking your email, chatting with a coworker, etc. before "getting down to work"? William James wrote that "habit diminishes the conscious attention with which our acts are performed" [James (1890), vol. I, pg. 114]. He also commented, "Habit is thus the enormous fly-wheel of society, its most precious conservative agent" [*ibid.*, pg. 121]. Piaget's research revealed that the very youngest children are incapable of "rule practice" going beyond their exercise of acquired habits during the first few years of life. But even a brief reflection upon human behavior tells us adults never entirely abandon acting from habit. The difference is that adults can *choose* to act non-habitually while infants largely cannot<sup>4</sup>.

<sup>4</sup> James was very much a proponent of the view, "you can't teach an old dog new tricks." In this he was wrong. It is true most people become slaves to their habits most of the time, but it is not true they cannot break out of them.

The next stage is the "egocentric stage." In Critical Epistemology, **egocentrism** is the empirical character of the process of human reasoning in which a person presumes that other people view and regard objects and events the same way he does, and that they understand phenomena and ideas in the same way he does. It is a non-pejorative technical term. When people use the term pejoratively, as in "he is too egocentric," this is a non-technical dictionary usage of the word that often is used to denote that the person in question is exhibiting what, in technical terms, Kant called "self-conceit" (*Eigendunkel*). Piaget found that babies are, as he put it, "radically egocentric." Young children of a few years of age also never question their belief that "reality" is exactly as they perceive it and that everyone else perceives and thinks exactly as they do. They do not begin to question this belief until the next stage, which is when the process we call "socialization" begins. But even after they move beyond the egocentric stage, there still remain *habits of thinking* developed earlier (in the manifold of rules) they carry with them into adulthood that give rise to numerous *habitual* exhibitions of egocentric thinking. Not infrequently, these habits underlie miscommunications and problems or conflicts in interpersonal relationships. Psychology research in the 1950s found,

It seems in a large percentage of interactions the basic motives are expressed in a reflex manner. They are so automatic that they are often unwitting and often at variance with the subject's own perception of them. . . . It is often un verbalized and so subtle and reflex as to escape articulate description. [Leary (1957), pg. 92]

One important point to carry away from this is *the manifold of rules is a conservative structure that can be altered by accommodation* (practical learning) *but still preserves old rule substructures* (practical rules, maxims, and tenets). The manifold of concepts is, similarly, a conservative structure.

Behaviors characteristic of these first two stages are commonly regarded as lacking any "moral" context or significance. However, as we will see later, Critical Epistemology requires us to make an alteration to this point of view. Some of these habitual and egocentric practical rule structures do have a *foundational* moral significance with implications for Societies. I discuss this later.

**Cooperation** is the third stage. A key difference between this stage and the egocentrism stage is that the activities of multiple people are directed towards a common and agreed to purpose in the cooperation stage, whereas activities in the egocentrism stage are directed towards individual purposes without regard for what the others are doing or working towards. There is at this stage a common group purpose and a common interest involved that was absent in the previous stages. All the participants "play by the same rules" although not all participants necessarily have the same level of understanding of these "rules."

The final stage is the **codification of rules** stage. It is at this stage where one can speak of *legislation* of rules by the participants ("lawmaking") with the "laws" (rules) established by the common consent of the participants. These "laws" (rules) and their purposes are commonly understood by all participants. One can now speak of a kind of government institution at this stage. The rulemaking process in this stage addresses not only actual situations and circumstances previously experienced but also hypothetical situations and circumstances addressing concerns raised by various participants. Piaget observed that this stage emerged among boys at around the age of ten to twelve years. He commented,

Interest seems to have shifted its ground since the last stage. Not only do these children seek to cooperate . . . rather than to play for themselves alone, but also - and this undoubtedly is something new, they seem to take a peculiar pleasure in anticipating all possible cases and in codifying them. . . . Throughout the fourth stage, the, the dominating interest seems to be interest in the rules themselves. . . . We have described elsewhere the extraordinary behavior of eight boys of 10 to 11 who, in order to throw snowballs at each other, began by wasting a good quarter-of-an-hour in electing a president, fixing the rules of voting, then dividing themselves up into two camps, in deciding the distance of the shots, and finally in foreseeing what would be the sanctions to be applied in cases of infringement of these laws. Many other facts analogous to this could be culled from studies that have been made on children's societies. [Piaget (1932), pp. 49-50]

This fourth stage of rule-practice among children can be regarded as the emergence of a consensus democracy formed by the children with the primitive establishment of a social contract among them. The transition from stage three to stage four is the childhood equivalent of a transition from what Santayana called a "natural society" to a "free society" [Santayana (1905), pp. 137-159].

Running parallel in time with the practice of rules dimension is the cognizance of rules dimension. In children, Piaget found,

In the first stage, rules are not yet coercive in character, either because they are purely motor, or else (at the beginning of the egocentric stage) because they are conceived, as it were, unconsciously, and as interesting examples rather than as obligatory realities.

During the second stage (apogee of the egocentric stage and first half of the cooperating stage) rules are regarded as sacred and untouchable, emanating from adults and lasting forever. Every suggested alteration strikes the child as a transgression.

Finally, during the third stage, a rule is looked upon as a law due to mutual consent, which you must respect if you want to be loyal but which it is permissible to alter on the condition of enlisting general opinion on your side. [Piaget (1932), pg. 28]

The first stage, the **individualism stage**, is the most difficult and challenging to analyze, as Piaget admits. This is because the child is not yet old enough to clearly verbalize his own reasoning and pays little detailed attention to his own actions. Putting this last description into Critical terminology, the child has not formed clear and distinct concepts of what he is doing and why; instead, those details still lie solely within his practical schemes and maxims in the manifold of rules, and his perception of them is still syncretic. This interpretation is wholly congruent with later findings on the development of cognizance and, interestingly, adults were found to *also* exhibit aspects of behavior similar to those of children in the individualism stage [Piaget (1974)].

Mental adaptation is defined as an equilibration of assimilation and accommodation [Piaget (1947)]. Piaget wrote,

[Intelligence] itself does not consist of an isolated and sharply differentiated class of cognitive processes. It is not, properly speaking, one form of structuring among others; it is the form of equilibrium towards which all the structures arising out of perception, habit and elementary sensorimotor mechanisms tend. It must be understood that if intelligence is not a faculty this denial involves a radical functional continuity between the higher forms of thought and the whole mass of lower types of cognitive and motor adaptation; so intelligence can only be the form of equilibrium toward which these tend. . . . Every structure is to be thought of as a particular form of equilibrium, more or less stable within its restricted field and losing its stability on reaching the limits of the field. [Piaget (1947), pg. 7]

In regard to the individualism stage, what is exhibited in behavior are means by which the child builds these "particular forms of equilibrium . . . more or less stable within their restricted fields." Piaget made three observations that are of special pertinence to our discussion here [Piaget (1932), pp. 50-53].

The first is that every act of adaptation by a child in the individualism stage becomes extended beyond its content of intellectual effort into a behavioral *ritual*. For example, an infant's habit of sucking its thumb might become part of its ritual in preparation for going to sleep. Elementary sensorimotor schemes, initially independent and uncoordinated, become coordinated and developed into habits.

Secondly, certain particular actions are, at any given time, approved or enjoined by the environment. Most of the child's ritualized or habitualized actions under most circumstances are unaccompanied by any feeling of duty or obligation on his part and, so, are without moral significance. Under some circumstances, though, the child might feel compelled to the action, and here this "right or wrong" aspect of judgmentation *does* have a moral connotation *even if the action itself is not considered by adults* as

having any kind of moral significance. For example, a toddler who accidentally pinches his finger may, and often does, run crying to a parent, holding out the injured finger in the expectation that the parent *will* somehow "make it better." The origins of this behavior are, psychologically, murky but it seems not-unlikely that these origins might lie deep within earlier experiences, such as when he was a baby and a parent appeared, picked him up, and comforted him after he awoke and cried in the middle of the night.

Lastly, Piaget observed that *regularity* is an important factor in first stage behaviors. In this stage of a child's development of moral judgment, regularity itself produces awareness of, if not a "law" in formal terms, at least what we might call a "prevision of a law" even though, at this stage, the child's sensorimotor scheme does not give rise to feelings of obligation in the absence of other intervening external factors.

Now, it is certainly true that most early childhood habits disappear as the child grows older. Teenagers, for example, do not habitually suck their thumbs even though they did habitually do this as babies. Even so, older children *and adults* are observed to develop other habits of ritualized and regular behavior that can be seen as analogues, to a sometimes startling degree, to individualism-phase behaviors. Consider, for instance, a chain smoker who smokes one cigarette after another in rapid succession. Yes, cigarette smoking *is* addictive; but it is *also* a habit. The time between one cigarette and the next is too brief for a chain smoker to experience the symptoms of nicotine withdrawal, but he nonetheless - often absent-mindedly - puts another cigarette in his mouth and lights it. Smoking has become a *ritual* for him, and the similarity of this ritual to an infant's ritual of thumb-sucking seems too obvious to need to be belabored. It is sometimes said he has a "psychological addiction" to smoking but this characterization is meaningless without a more in-depth elaboration. It is a ritual akin to a baby sucking on his pacifier.

Many re-staged individualism behaviors exhibited by adults appear as quixotic personal idiosyncrasies - harmless oddities of behavior. For example, I once knew a middle-aged man, a mechanical engineer and the father of two boys, who had a habit of making motor noises with his mouth as he was leisurely puttering around his house. I doubt he was even aware that he was doing it. When I was a college student, I myself had a habit of absent-mindedly flipping my pen into the air and catching it, over and over, while I was absorbed with studying my physics textbook. I wasn't even aware I was doing this until one night when I looked up and saw both of my roommates staring at me and flipping *their* pens and catching them. "What are you guys doing?" I asked them before suddenly realizing *I* was still doing it. Another example is found in a person who absent-mindedly always switches off the light switch when leaving the room or automatically straightens a picture that was hanging crooked. Often, individualism in adults appears in self-contained actions that require no interaction with others, or which tend to be indifferent to social conventions.

A point I wish to juxtapose next to this discussion at this point is this: The manifold of rules (and the manifold of concepts as well) is a conservative structure. Whatever the child's unconscious rule-structure was that let him express the habit of thumb-sucking as an infant, "growing out of that habit" does not imply the extinction of that rule substructure. He has developed higher rules (conditions) that inhibit expressing that behavior, but the structure itself is merely "dormant" and available for assimilating *other* habits later in life. If you would like to see a concrete demonstration that this motor rule structure is still present and intact in the adult, all you have to do is suck your own thumb right now. The fact that you are *able* to do this "at will" demonstrates the practical structure "is still in there somewhere." As a "preview of things to come," I will also say now that latent individualism maxims in a person's manifold of rules will be pertinent in our later discussion of what Kant called "Duties to Self."

The next stage in the dimension of rule cognizance is the stage of **moral realism**. Piaget summarized his observations of children in this stage in the following way.

We shall therefore call moral realism the tendency which the child has to regard duty and the value attaching to it as self-subsistent and independent of the mind, as imposing itself regardless of the

circumstances in which the individual may find himself.

Moral realism thus possesses at least three features. In the first place, duty, as viewed by moral realism, is essentially heteronomous. Any act that shows obedience to a rule or even to an adult, regardless of what he may command, is good; any act that does not conform to rules is bad. A rule is therefore not in any way something elaborated, or even judged and interpreted by the mind; it is given as such, ready-made and external to the mind. It is also conceived of as revealed by the adult and imposed by him. The good, therefore, is rigidly defined by obedience.

In the second place, moral realism demands that the letter rather than the spirit of the law shall be observed. This feature derives from the first. . . . [At] the very outset of the moral evolution of the child, adult constraint produces . . . a sort of literal realism of which we shall see many examples later on.

In the third place, moral realism induces an objective conception of responsibility. We can even use this as a criterion of realism, for such an attitude towards responsibility is easier to detect than the two that precede it. For since he takes rules literally and thinks of good only in terms of obedience, the child will at first evaluate acts not in accordance with the motive that has prompted them but in terms of their exact conformity with established rules. Hence this objective responsibility of which we shall see the clearest manifestations in the moral judgment of the child. [Piaget (1932), pp. 111-112]

As they get older, children grow out of this primitive moral realism as their thinking progresses beyond egocentrism and becomes more socialized and they accommodate themselves to living in a society. This achievement marks their arrival at the third stage of **rule cognizance**. In the third stage the child begins to consider the *intent* of rules and whether an action was intentionally committed or merely accidental. The "spirit of the law" becomes at least as important as the "letter of the law" in his thinking. Rules come to be regarded as products of mutual consent rather than rigid commandments given by a higher authority. It is only in this stage that children's behaviors and attitudes exhibit qualities adults recognize as "moral."

However, because of re-staging we do see moral realism re-emerge in adults in certain situations and circumstances. Many sects of Christian Evangelical Protestantism, for example, tend to dogmatize tenets of moral realism – although this is by no means confined solely to Christianity and tends to appear in most forms of fundamentalism. In the United States, the past few decades have likewise witnessed an upsurge in objectively-literal interpretations of criminal law. One prominent example of this is the "strict constitutionalist" movement in American politics. The precepts of this movement ignore both the "spirit" of the U.S. Constitution as laid out in historical records of its development and also ignores the expressly stated intention of the framers that the Constitution evolve so as to remain consistent with changes in U.S. society. It is a development indicative of a resurgence of moral realism in some people's attitudes regarding ideas of justice. It is the mark of a devolutionary moral re-staging taking place in the American legal and legislative institutions that can be labeled reactionary fundamentalism. In Europe we can see a spreading of a contrary but no less objectively-literal legal dogmatism that can be labeled liberal fundamentalism in European legal and legislative institutions. This is as much an adult re-staging of moral realism as the American reactionary legal fundamentalism. In *both* cases the re-staging is *simultaneously* illiberal and anticonservative in comparison with the original contexts of the adjectival terms "liberal" and "conservative".<sup>5</sup> A more in-depth review of moral realism is provided in Wells (2012), chap. 5, pp. 127-133.

### 3. Kant's Moral Categories

Despite the shortcomings in his treatment of practical Reason, Kant was able to formulate a high level

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<sup>5</sup> liberal: "pertaining to a free man"; conservative: "tending to preserve from loss, decay or injury" [Webster's Unabridged Dictionary (1962)]. The modern nominal labels "liberal" and "conservative" are both more accurately regarded as what Santayana called fanaticism: "A fanatic is one who redoubles his effort after he has forgotten his purpose." Both describe what was once called "radicalism."

mathematical description of the phenomenon of human moral judgmentation. He called this "the categories of freedom" [Kant (1778)] but a more correctly meaningful name for them, which I use here, is "Kant's moral categories." Figure 2 below presents them in 2LAR form<sup>6</sup>.

Kant's moral categories are in no way primitive functions. They are formal *mathematical* descriptions of phenomena of moral judgmentation. As is always the case with 2LARs, description of the representation calls for one *momentum* from each of the four heads of Quantity, Quality, Relation, and Modality.

Kant's moral categories of Quantity describe the principal contributing process of judgment that is the source of a moral judgment. The **subjective** category implicates reflective judgment; the judgment the person makes is a subjectively based choice, and the person does not consider his judgment binding on other people. The **objective** category implicates determining judgment, and the judgment itself is based on the person's cognizance (concepts) of rules of practical precepts *grounded* in subjective judgments of taste but *arising* from the manifold of rules and regarded as a *theoretically* hypothetical imperative the person holds-to-be-binding for everyone. One simple example is, "Don't spit into the wind." The **a priori** moral category implicates practical judgment and the manifold of rules, is grounded in a harmonization of determining and reflective judgment, and is regarded by the person as a *theoretically* categorical imperative that everyone *ought to obey*. However - and this is an important point - no category of Quantity *by itself* makes a judgment a *moral* judgment in the deeper sense of either social mores, or of religion, or of meritorious conduct. It takes, in addition, a category of Modality to complete such a classification of a judgment.

The moral categories of Quality are straightforward. A practical rule of **commission** denotes practical appetite has validated motoregulatory expression of an action. A practical rule of **omission** denotes the opposite, i.e., that practical appetite been determined such that a particular action expression is vetoed by practical Reason. The category of **exceptions** denotes that an action (whether of commission or of omission) is *conditional* upon some other situation or circumstance. It represents, in effect, a synthesis of practical rules of commission with practical rules of omission. For example, this Quality of a judgment underlies the distinction made in law between *justifiable* homicide and *felony* homicide (murder). In regard to this, I will note in passing that the most common English translation of the Bible's sixth commandment, "You shall not kill," is a *mistranslation*, harking back to the Latin Vulgate Bible<sup>7</sup>, of the Hebrew sixth commandment in the Torah, "You shall not murder." [Exodus 20: 13]

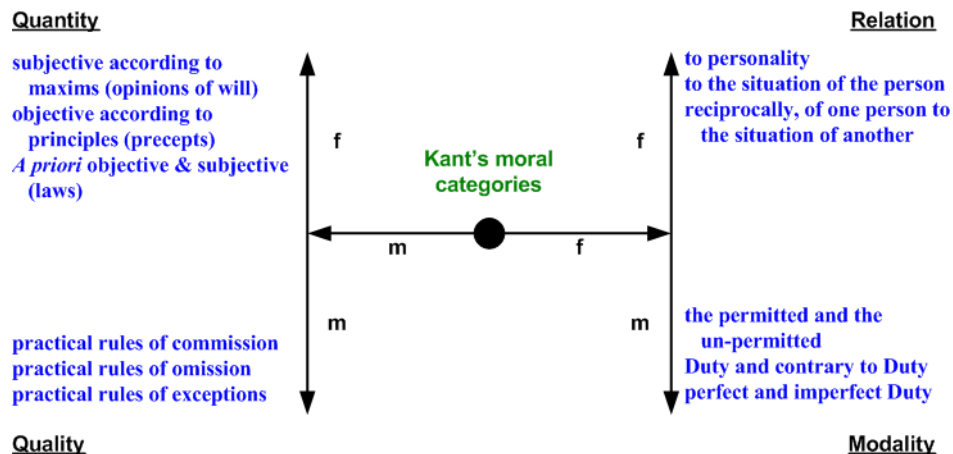


Figure 2: 2LAR of Kant's moral categories

<sup>6</sup> I reserve the name "categories of freedom" for the twelve synthetic *momenta* of the process of practical judgment.

<sup>7</sup> Latin does not have a word that precisely corresponds to the English word "murder." The authors of the Latin Vulgate Bible used the phrase *non occides* to translate from the Hebrew sixth commandment. *Occides* comes from *occido*, "to strike down." "Murder" derives from the Anglo Saxon word *morthor* ("death").



The moral categories of Relation pertain to the *nexus* or relationship of a tenet of action to the judging person. The Relation **to personality** is how the action relates to the *nexus* of tenets of action pertaining to the person's **Self-respect**. Self-respect is a technical term in Critical epistemology meaning the first and *a priori* interest of practical Reason, which is to act to ensure judgments of expedience in reflective judgment are in coherence with the manifold of rules under the formal condition of the categorical imperative of pure practical Reason. Indeed, from the theoretical Standpoint a person's **personality** is the entirety of the *nexus* of practical rules in his manifold of rules. If he judges that something threatens or disturbs this *nexus* (threatens to violate the categorical imperative), he *will* take action to abolish that threat, and his action will be as forceful or even violent as abolition requires. The term Self-respect (capitalized) differs from another technical term, self-respect (*Achtung*), which means the representation of a value prejudicial to self-love in the determination of appetitive power. To the practical Standpoint belongs the idea of Self-respect; to the judicial Standpoint belongs the idea of self-respect. The two terms are related to one another but are not identical. For example, if you should attempt to dishonor a person whose tenets of Self-respect and affective judgments of self-respect are such that he holds "my honor is dearer than my life," you might very well find yourself challenged to a "duel of honor." You might have "coffee and pistols at dawn" in your immediate future. The interesting French mathematics genius Évariste Galois, the inventor of the mathematics of group theory, met his death at age 21 in such an incident. Incidents of justifiable homicide usually have moral judgments with Relation to personality behind the deadly action.

The moral category of Relation **to the situation of the person** is the *nexus* of tenets of action pertaining to how the person deals with the contingencies of external Nature so far as these contingencies pertain to his own well-being. Maxims of prudence and pragmatic maxims have this Relation underlying them. If a starving and penniless person steals a loaf of bread, his action was predicated under the Relation to the situation of his person. If a man shrugs off an insult from another man, this action too is predicated on the Relation to the situation of the person (the incident being such that it did not provoke a judgment with Relation to personality). The children's rhyme, "Sticks and stones may break my bones but words shall never hurt me," comes out of this category of Relation and has usefully served to deflect formation of extravagant or excessive practical formations of judgments with Relation to personality for a long time by parents attending to their children's moral education and development.

The moral category of Relation **reciprocally, of one person to the situation of another**, is the *nexus* of tenets held-to-be-binding in contexts of social contracts. Judgments such as these underlie nearly all ideas of social mores, religious tenets of charity and grace, business contracts, wedding vows, and most laws legislated to serve and promote welfare and domestic tranquility in Societies. They also underlie laws and regulations pertaining to business practices including fair labor and child labor laws, anti-slavery laws, environmental regulations, and health and safety in the workplace regulations.

The first three headings (Quantity, Quality, and Relation) always pertain to the Object of a judgment (in this case, an action by the person). The heading of Modality, on the other hand, always pertains to how the judgment stands in relationship to the person doing the judging (the judging subject). It adds nothing to the concept of an Object. As Kant put it, Modality is a judgment of a judgment. For the moral category of **the permitted and the unpermitted**, an act is permitted if it is not proscribed by a moral maxim or law. The act is then said to be morally indifferent. An act is unpermitted if the action is proscribed by a practical rule limiting one's liberty to carry it out but this proscription is an amoral proscription. The category of **Duty and contrary to Duty** is a contextual determination of what the concept of a Duty asserts and does not assert in its meaning implication. In deontological ethics, a **Duty** is a necessitated and practical act in accordance with an idea of objective moral law that excludes all personal inclinations from being *grounds* for the action. The person carries out the action on the ground that "it was the right thing to do" regardless of what his own inclinations might have been. An *idea* of moral law is a concept of a noumenon (moral law) and, because it is a concept residing in the manifold of concepts, the necessitation of a Duty is *made* necessary by a *theoretical* categorical imperative. This category *is* a moral category

but, because theoretical categorical imperatives are concepts, only express an "I ought to," and do not carry the direct compelling force of practical Reason's natural law of the *practical* categorical imperative, the concept represents only the person's *understanding* of moral law. The moral category of **perfect and imperfect Duty** can be regarded as a synthesis combining the first two moral categories of Modality. A **perfect Duty** is a Duty in the form of a *social* Obligation. An **imperfect Duty** is a Duty in the form of an Obligation *to oneself*. An **Obligation** is an overall orientation of judgmentation in the self-determination of appetites such that the action is necessitated by a *practical* moral imperative in the manifold of rules. An imperfect Duty *is* a moral category but not in the same context as most people normally see morality. Kant introduced the idea of Duties-to-self as an important and foundationally crucial prerequisite for the ability and willingness of a person to *make and commit himself to* social obligations. He wrote,

The first topic . . . is our Duties to ourselves. These are not taken in juridical regard, for justice regards only the relationship to other people. Justice cannot be observed in regard to myself, for what I do to myself, I do with my own consent and commit no breach of public justice when I take action against myself. We shall be speaking here of the use of freedom in regard to oneself. By way of introduction, it should be noted that no part of morals has been more defectively treated than this of Duties to oneself. Nobody has framed a correct concept of such Duties; it has been deemed a trifle and ultimately thought about only as a supplement to morality, and believed that once a man has fulfilled all his Duties he may finally also think about himself. In this portion, therefore, all philosophical morals are false. . . .

Far from these Duties being the lowest, they actually take first rank and are the most important of all; for even without first explaining what Duty to self is we may ask, If a man debases his own person, what can one still demand of him? He who violates Duties to himself throws away his humanity and is no longer in a position to perform Duties to others. Thus a man who has performed his Duties to others badly, has not been generous, kindly or compassionate, but has observed Duty to himself, and lived in a seemly fashion, may still in himself have a certain inner worth.

But he who has violated Duties to himself has no inner worth. Thus the infringement of Duties to oneself takes all his worth from a man, and the infringement of Duties to others deprives him of worth only in that respect. Hence the former are the condition under which the others can be observed. [Kant (c. 1784-85), 27: 340-341]

Kant drew a careful hairsplitting distinction between a Duty (*Pflicht*) and a duty (*Verpflichtung*) and between an Obligation (*Verbindlichkeit*) and an obligation (*Obligation*). The distinction is one of Standpoints (practical for Duty and Obligation, theoretical for duty and obligation). This distinction, while important for the Critical theory of mind, is not especially important for the subject of justice. A detailed technical explanation of these distinctions is provided in chapter 6 of Wells (2012). What I would like to point out here is Kant's statement above that *the idea of justice* does not pertain to Duties to oneself; by implication *justice does pertain to social Duties and Obligations which are reciprocal* (third moral category of Relation). It is here where we at last come across the direct epistemological connection between the idea of morality and the idea of justice. The third moral category of Relation above pertains to *laws* and lawmaking but the moral category of perfect Duty pertains to *justice*.

Kant's remarks about "he who has violated Duties to himself" are curious because from the practical Standpoint *no person can violate Duties to himself*. Substructures are constructed in a person's manifold of rules under the compelling force of the natural law called *the* categorical imperative of pure practical Reason. Acts of reevaluation in the cycle of judgmentation can lead to these substructures being altered in accommodation by practical judgment, but while they stand unaltered a person cannot defy them when they are invoked during the synthesis of appetite. If the action they mandate corresponds to Duty and Obligation, these substructures constitute a person's *private moral code*. We all have one, although that of one person generally differs in at least some particulars from that of another person's. That of a sociopath differs greatly from those of most other people and is entirely or almost entirely regulative for Duties to self. The absence or near-absence of tenets of perfect Duty in a sociopath is why he is called a sociopath.

Kant's curious remarks can be traced back to his erroneous idea of an occult "moral law within me" that he equated with the categorical imperative. Evidence of this is seen in a number of specific "Duties" Kant claimed were Duties to oneself, all of which he clearly derived from various religious tenets. Among them were "Duties" mandating keeping oneself physically fit, not committing suicide, maintaining sobriety, and a number of others of this sort. Here we clearly find the fingerprints of Kant's theocentric orientation.

I will comment that a great many concepts people hold about their moral ideas are held as *beliefs* and tend to go unquestioned until and unless something in experiences gainsays the belief. Something college philosophy courses in ethics seem to love to do is to present moral dilemmas in the form of "no-win situations" such as, "Your house is on fire and your two children are trapped inside at opposite ends of the house. You only have time to save one of them. Which one do you save?" Personally, I see little usefulness in such exercises, unless it is merely to make students aware that moral dilemmas exist; the course almost never follows up with any guidance or explanation of how to resolve the dilemma. As moral philosopher Onora Nell pointed out,

It was assumed it could be discovered when an agent's maxim was inappropriate to his situation or to his act, or when the agent was acting on the basis of a mistaken means/ends judgment. But when we act we are not in that position. Once all reasonable care has been taken to avoid ignorance, bias, or self-deception, an agent can do nothing more to determine that his maxim does not match his situation. Once an agent has acted on his maxim attentively, he can do no more to ensure that his act lives up to his maxim. We cannot choose to succeed, but only to strive. [Nell (1975), pg. 127]

For the example just presented above, the deontological maxim would be for the person to take action, if an action is physically possible and we assume the person holds it to be a Duty to save his children from harm, to *try* to save *somebody* and *hope* it might actually turn out that there *is* time to save both despite the way the situation has been presented in the exercise. There *is* no *a priori* "no-win" empirical circumstance but only an *a priori presumption* of one. We cannot choose to succeed, but only to strive.

#### 4. Interest, Approval, and Duties

Kant provided us with his 2LAR description of empirical appearances of moral judgmentation, but what factors underlie the occurrences of these phenomena? Like most people, Kant seems to presuppose that there is only one general "true" form of morals and morality - a belief and an enduring symptom of adult moral realism. There seems to be little reason to doubt that, in this, he was displaying a peculiar phenomenon anthropologists call "ethnocentrism" - the belief found to be displayed by every culture that their own ways are superior to those of all other cultures. As Turnbull documented, even the BaMbuti Pygmies of the Congo's Ituri Forest displayed this attitude regarding the "civilized" Bantu and Sudanic villagers living nearby, who the BaMbuti regarded as more or less silly people [Turnbull (1962)]. Kant did not try to formulate any theory of causal factors underlying moral judgmentation and was content to assign this to the "freedom" of human willpower. Recalling the Aristotle quote with which we began this chapter, that will not do.

To explore and look for principles of human nature, by which we can better understand the phenomenon of human moral judgmentation, we will begin with two important Critical ideas and their relationships to conceptualizations of Duties. These are the ideas of *interest* and subjective *approval*.

In Critical terminology, **interest** is anticipation of a satisfaction or a dissatisfaction combined with the representation of the *Existenz* of some object of desire. Critical **anticipation** is knowledge through which a person can recognize and determine *a priori* what belongs to empirical cognition. In the context of this definition, knowledge is any capacity for making a conscious representation. As an anticipation, interest is an affective representation of an act of aesthetical reflective judgment.

As a mathematical Object, interest is a judicial function of Relation to formal expedience in reflective judgment. Recall from chapter 3 that the principle of formal expedience is the governing principle of the

process of reflective judgment. The idea of interest has three kinds of synthetic *momenta*. The first type is internal expedience (immanent interest) subsisting only in the affective representation of desire. The second type is external expedience subsisting in the actual *Existenz* of an object of desire (when the interest is from a feeling of *Lust*) or its non-*Existenz* (*Nichtsein*) when the interest is from a feeling of *Unlust*. This one is called "transeunt interest." The third kind of interest is reciprocal interest, which subsists in a subjective state for which the *Existenz* of the object of desire is merely a means for realizing (making real) the anticipated satisfaction. This is Relation to the type of expedience in reflective judgment that is called "transitive expedience" because the formal expedience in reflective judgment is in this case expedience in the making of a transition from an initial subjective state to a different and equilibrated consequent subjective state.

Kant employed three questions to illustrate relationships between interest, the regulating acts of the process of Reason, and the three Critical Standpoints of epistemology. These were:

- "What can I hope?" - judicial Standpoint and immanent interest;
- "What can I know?" - theoretical Standpoint and transeunt interest; and
- "What should I do?" - practical Standpoint and reciprocal interest.

In all three cases the overall context of the idea of interest is the process of equilibration in the overall judgmentation loop. Kant called his three questions above "the interests of Reason" and this labeling makes it clear that the questions are not interests tied exclusively to a specific and isolated process of judgment. There is in each case a *principal* process of judgment "making the call" that equilibration has succeeded and the condition of the categorical imperative has been met. But judgmentation involves all three processes of judgment and all three contribute to "answering each question." The principal processes are, respectively in order of the questions above, reflective judgment, determining judgment, and practical judgment. All three must harmonize with each other to achieve equilibrium.

When characterizing various classes of empirical experience in terms of Critical interest, a number of context-specifying labels are employed. A **deontologically valid interest** is an interest that is manifested by a person's satisfaction being tied to fulfillment, through actions, of conditions pertinent to Duties and Obligations. You should note that "action" in this case includes "inaction" when the moral category of an act of omission is involved in characterizing the moral judgment or an act of exception results in inaction. When a person acts from a deontologically valid interest, we can say he is effecting a *moral* decision.

We can also speak more abstractly (mathematically) of interests when circumstances involve interacting groups of people. Under such circumstances, each individual person acts in service of his own interests. An interest of a person *A* and an interest of a person *B* are said to be **congruent interests** if satisfaction of one of these person's interest does not necessarily prevent the satisfaction of the other person's interest. If one person's satisfaction of interest *does* necessarily prevent the other's satisfaction of his interest, then this is a situation where their interests are said to **incongruent interests**.

Sometimes interests are foundationally incongruent. For example, two boxers in a boxing match each usually have a private interest in winning the match and another in emerging from it without serious injury. But only one of them can *win* the match and so their separate interests in winning are incongruent. But here, as is the case in most athletic competitions, it might be possible for the *conflict* of interests to be resolved to the satisfaction of each. Take, for instance, a competition between two groups of boys playing a game of baseball. Each team wants to win (has an interest in winning the game) *and* the rules of the game of baseball are such that only one team can win. Their separate interests in winning are therefore incongruent interests. However, little boys generally play baseball *for the sole purpose of having fun*. This is a congruent interest shared by all the players. For most boys (and, for that matter, most girls), the interest in winning is inferior to *and conditioned by* the interest in having fun. The game "isn't any fun" if somebody cheats and "gets away with it" or if the players are constantly squabbling with each other. The incongruent interests in winning are *made subordinate to* their **common and congruent interest** in

"having fun." In these kinds of circumstance we can speak of **contrary interests** because the interest of one person or party *do not necessarily* prevent the other from satisfying the *superior* common interest. There is, so to speak, a "higher" congruent interest of more importance to each by which incongruent interests are *transformed* by the congruent higher interest. In this case, we can say the incongruent interests ("winning the game") are **mutually resolvable interests**. This is why the institution of Little League Baseball puts so much effort into stressing that baseball is about having fun and places such great *moral* emphasis on "good sportsmanship." Transforming incongruent (contradictory) interests into merely contrary and mutually resolvable interests is the purpose underlying most negotiation efforts. As one of Piaget's young "legal experts" in the game of marbles told him, "We scrap for a bit and then fix things up." It seems many young children understand the *moral* idea of negotiating better than some adults do.

With regard to its context in the principle of formal expedience, it is not-incorrect to view interest as a sort of activity energizer for judgmentation. However, something else is needed to provide some kind of direction or orientation in judgmentation as soon as we speak of an "object" for an *affective* perception of desire. There must be "something that sees to it" that an *objective* perception emerges in the synthesis in sensibility to "go with" or "be expedient for" the affective interest. Kant called this "something else" an **approval of taste** [Kant (c. 1773-79), 15: 271)].

In Critical Epistemology, **taste** is the aesthetical capacity for judgmentation of an object or of a mode of representation such that *subjective* satisfaction or dissatisfaction is not determined by any *objective* interest. "Determined without objective interest" means the feeling of satisfaction or dissatisfaction subsists only in the representation of the object and does not depend on the manner of the *Existenz* of the object [Kant (1790), 5: 205], such as, e.g., when satisfaction does not depend on possessing or making use of the object. Taste focuses attention on a *parástase* which is generally engaging according to the laws of the synthesis in sensibility. What Kant means by "generally engaging" is,

In everything that is to be approved in accordance with taste there must be something that facilitates the differentiation of the manifold (patterning); something that promotes intelligibility (relationships, proportions); something that makes the pulling of it together possible (unity); and finally, something that promotes its distinction from all other possibilities (precisioning). [Kant (c. 1773-79) 15: 271]

These four "somethings" are the synthetic functions of the approvals of taste. They are called *patterning*, *conceptualizing*, *coalescing*, and *precisioning*, respectively. In the terminology of Critical Epistemology, these functions fall under the general headings of Quantity, Relation, Quality, and Modality, respectively.

**Patterning** is the act of representing a pattern. A **pattern** is an arrangement of form as a grouping or distribution of elements. In terms of judgments of taste, mathematics is the aesthetical determination of patterns found in the data of the senses. **Coalescing** is the aesthetic function of *syncretism* in judgmentation. The capacity for *objective* syncretism ('fusion') is built into the synthesis of representational matter in sensibility to compose an intuition. The formation of an intuition, in terms of its matter, is a process that can be pictured as a sort of accretion process in which divers sensible representational matter coalesces ('fuses') into a singular representation. Kant called this process *Gestaltung* ("formation"). Sensibility does not judge and *Gestaltung* of an intuition is adjudicated by reflective judgment. Of particular interest for the present topic-at-hand is the "flavor" of this approval of taste in regard to the process of reflexion. Here, Kant tells us,

Reflexion (*reflexio*) does not have to do with objects themselves, in order to acquire concepts directly from them, but is rather the state of mind in which we first prepare ourselves to find out the subjective conditions under which we can arrive at concepts. It is the consciousness of the relationship of given representations to our various sources of knowledge through which alone their relationships among themselves can be directly determined. [Kant (1787), B: 316]

The coalition that occurs during *Gestaltung* of an intuition is an objective coalition, but the coalescing function of taste by which representation is adjudicated is a subjective function.

*Conceptualizing is the comprehension functional of reasoning.* In terms of its effects in reflective judgment, it is the *a priori* aesthetic functional of taste that refers an intuition to teleological reflective judgment by *signifying* the intuition is practically expedient for a purpose of practical Reason and is motivationally expedient for the manifold of concepts.

Kant called conceptualizing "the intelligibility function of approval of taste," but what is meant by saying this? What is 'intelligibility' to be taken to mean? 'Intelligibility' is an English rendering of the word Kant actually used, which was *Begreiflichkeit*. The verb *begreifen* means "to comprehend" and it denotes the highest of the seven levels in Kant's hierarchy classification of *degrees of perfection* to which one's knowledge can be raised [Kant (1800) 9: 64-65]. Kant's seven levels are:

1. to represent something;
2. to represent something with consciousness, i.e., to perceive;
3. to be acquainted with something, i.e., to represent something in comparison with other things as to sameness and to difference;
4. to be acquainted with something with consciousness, i.e., to cognize it;
5. to understand something, i.e., to know through understanding by means of concepts;
6. to know something through reason, i.e., to "have insight" into it;
7. to comprehend something, i.e., to know through reason to a degree that is sufficient to satisfy one's aim (that is, to satisfy a condition for making actual one's intended purpose).

Kant remarked that comprehension is only relative (sufficient for a specific aim), and that we do not comprehend *anything* without qualification. The *conceptualizing function* pertains to *on-going perfecting of one's knowledge* by raising it up through Kant's knowledge hierarchy. Perfecting is a process.

I call to your attention levels 1 through 4 in Kant's hierarchy above where he draws a distinction between representing or becoming acquainted with something vs. representing or becoming acquainted with something *with consciousness*. Perfecting one's knowledge is a *process* that is first carried on aesthetically – without consciousness of an object – before representation in sensibility is *marked* as an intuition (by reflective judgment) and re-cognized in concept form. If a person is introspective to some degree, experiencing a "flash of insight" seems mysterious. But this is because "having insight" is already an advanced stage of knowledge perfection (level 6). A great deal of *aesthetic* formulation necessarily precedes cognizance of it.

The conceptualizing functional of approval of taste *signifies* an intuition is expedient for a purpose and motivational for understanding, and thereby gives it its contexts. When understanding is achieved and presented in a resulting intuition, the making of that resulting intuition constitutes the "flash of insight." Expedience for a purpose, however, is not in and of itself the satisfaction of a purpose. Comprehension (level 7) occurs only when that purpose is sufficiently satisfied. Thus "insight" is followed up by additional acts of reasoning ("comprehending") that bring closure to the process overall. This is what is meant by saying the conceptualizing functional "promotes" intelligibility. It is called a "functional" because the conceptualizing approval of taste does not consist of just *one* act of judgment but, rather, brings into play a *cycle* of reflective, practical, and determining judgments.

Kant used a Latin word, *praecisionis*, to explain what the **precisioning** functional of approval of taste means. Literally, *praecisionis* means the act of lopping off or amputating an extremity. This is what a person does when he makes a concept precise. He lops off connections and contexts that are outside of the scope of the concept being made precise. It is this act Kant meant by "promoting the distinction of a

manifold from other possible manifolds."

The precisioning functional *sets a concept in a distinct context by ascribing to this context a subjective necessity*. By doing so, it makes the object of a concept stand out as exemplary. An exemplary object is one that *serves as a pattern* in some context. The precisioning functional is a Modality functional. This means that in judgments of taste precisioning pertains to *the relationship of the person to the concept* and not to how the concept represents its object. The other headings (Quantity, Quality, and Relation) pertain to the representing of an object. The Modality heading pertains to the manner in which the person views the concepts of the object, e.g., as possible or impossible, actual or unreal, necessary or contingent.

While it is tempting to think of the process of sensibility as a process dealing with "one thing at a time," this is not correct. Sensibility deals with multiple concurrent representations, most of them unconscious (or, if you prefer, "preconscious"). If it were otherwise, the phenomenon of human creativity would be unexplainable. One hits closer to the mark by regarding sensibility as a process that is something like a maelstrom of representable matter. From this maelstrom imagination (in the process of apprehension) must pluck out perceptions. For describing this synthesis, Kant introduced the notion of what he called an *aesthetic Idea*:

*Spirit* in an aesthetic significance is called the animating principle in the mind. That, however, by which this principle animates mind, the stuff which it uses for this, is that which suitably sets mental powers soaring, i.e., into a play that is self-maintaining and even strengthens the powers to that end.

Now I maintain that this principle is nothing other than the capacity for presentation of *aesthetic Ideas*; by an aesthetic Idea, however, I mean that representation of imagination that occasions much thinking though without it being possible for any determinate thought, i.e., *concept*, to be adequate to it, which, consequently, no language fully attains or can make intelligible. . . .

Now, if to a concept were imparted a representation of imagination that belongs to its presentation, but which by itself gives rise to so much thinking that it can never become concentrated in a determinate concept, hence which aesthetically enlarges the concept itself in an unbounded way, then here imagination is creative, and brings the power of intellectual ideas (reason) into motion, that is, at the instigation of a representation it gives more to think about than can be grasped and made distinct in it (although it does, to be sure, belong to the concept of the object). [Kant (1790) 5: 313-315]

Because aesthetic Ideas are representations that give rise to so much to think about that they cannot be contained in a single concept, precisioning is that in judgmentation which, by 'lopping off' part of the aesthetic Idea, allows intuitions to be apprehended.

Aesthetics is popularly regarded by many people as merely the study or appreciation of fine arts. But in Critical Epistemology, Aesthetic is the science of laws of sensibility. From what we have just seen, it goes much, much farther than mere fine arts appreciation. Affectivity drives human cognition and so this theorem of mental "physics" raises the natural question of how *feelings* can lead to the production of *cognitions*. The discussion of approvals of taste sheds light on that very question. Mathematics is founded on it [Wells (2020), chap. 5] and concepts of Duties arise from it. Let us next look at the latter.

## 5. Duties

A concept of a Duty is a concept of a *noumenon* and cognizance of a Duty is an understanding of the grounds of one's own action expressions either: 1) as these have been actualized through motoregulatory expressions from the practical rules in one's manifold of rules; or 2) logically and hypothetically through ratio-expression, thinking, and reflection about what one ought to do under particular circumstances. A Duty is held-to-be-binding (by the individual person) either as a *theoretically* categorical imperative ("I must do *x*") or as a *theoretically* hypothetical imperative ("if *y* I must do *x*"). Furthermore, the *interest* behind a Duty is a *moral* interest because a Duty is regarded as "the good or right thing to do" (in an act of commission) or "to not do" (in an act of omission), *and* to do otherwise is held-to-be evil or wrong by

the person.

The conjunction is important here and distinguishes a Duty from mere acts of prudence or pragmatism (e.g., "buckle your seat belt before driving a car"). In Critical Epistemology, **good** is an Object of *practical Reason* by which an object (called an "objective good") is represented as a *positive and necessary* object of appetitive power. Similarly, Critical **evil** is an Object of practical Reason by which an object is represented as a *negative and necessary* object of appetitive power. Good refers to the choice to effect or maintain the actual *Existenz* of the object; evil refers to the choice to effect or maintain the non-*Existenz* of the object. The notion of good or of evil is contained within the act of determination of appetitive power according to practical maxim in the manifold of rules and is not contained in the outcome of an *action* as an object. Good and evil are practical notions and neither good *per se* nor evil *per se* are ever manifested as appearances in sensibility. From a logical perspective, the word "good" is the label of a genus under which particular manifestations in appearance are classified. It is the same for the genus we designate with the word "evil." In *moral* contexts, "right" and "wrong" are used as alternative words for "good" and "evil."

To what objects of appearance notions of good and evil will be applied is the product of a person's experience, including the experience of his moral upbringing, religion, and socialization. These objects of appearance are *made* (by the person) *to be* focal points for his ideas of good and evil in his manifold of concepts. Santayana wrote,

The relation between aesthetic and moral judgments, between the spheres of the beautiful and the good, is close, but the distinction between them is important. One factor of this distinction is that while aesthetic judgments are mainly positive, that is, perceptions of good, moral judgments are mainly and fundamentally negative, or perceptions of evil. Another factor of the distinction is that whereas, in the perception of beauty, our judgment is necessarily intrinsic and based on the character of the immediate experience, and never consciously on the idea of an eventual utility in the object, judgments about moral worth, on the contrary, are always based, when they are positive, upon the consciousness of benefits probably involved. . . . The truth is that morality is not mainly concerned with the attainment of pleasure; it is rather concerned, in all its deeper and more authoritative maxims, with the prevention of suffering. There is something artificial in the deliberate pursuit of pleasure; there is something absurd in the obligation to enjoy oneself. We feel no duty in that direction; we take to enjoyment naturally enough after the work of life is done . . . The sad business of life is rather to escape certain dreadful evils to which our nature exposes us, - death, hunger, disease, weariness, isolation, and contempt. By the awful authority of these things, which stand like specters behind every moral injunction, conscience in reality speaks, and a mind which they have duly impressed cannot but feel, by contrast, the hopeless triviality of the search for pleasure. It cannot but feel that a life abandoned to amusement and to changing impulses must run unawares into fatal dangers. The moment, however, that society emerges from the early pressures of the environment and is tolerably secure against primary evils, morality grows lax. . . . The reign of duty gives place to the reign of freedom, and the law and the covenant to the dispensation of grace. [Santayana (1896), pp. 16-17]

Concepts of Duty are understood under the moral categories of Duty and contrary to Duty, and their classifications as perfect and imperfect Duty, as explained earlier. They are further classified into three categories of Relation as: 1) Duty in Relation to personality; 2) Duty in Relation to the situation of the person; or 3) the reciprocal Relation of the person to the situation of another person (figure 2). The first is called a **Duty to oneself in regard to personality**; the second is called **Duty to oneself in regard to one's situation**; and the third is called **Duty in regard to another person**. The first two belong to what a person has *constructed* as part of his or her *private and personal* moral code. The third belongs to a *public* moral code that groups of people have *collectively agreed and committed themselves to*. The private part of a moral code is the personal concern of the individual alone *provided that* actions arising from it *are not contrary to the public part* of the moral code. The proviso exists because of the prior *commitment* by all parties involved to respect and obey the maxims of this public code and to obey its *legislated* precepts.



Here, *and only here*, is found a fundamental ground and principle for the idea of *justice*. The *system* of a public moral code, agreed and committed to by a group of people, is called a **social contract**.

But problems and controversies arise in Societies because of the noumenal character of Duty, good, and evil. The practical maxims in a person's manifold of rules are, in a manner of speaking, *self*-legislated, and an individual's rule structure, being his or her unique product of contingent experience, is not the same structure as other people construct in their manifolds of rules. To think otherwise is to exhibit moral realism. How a *Society* is to deal with and manage these differences is the principal *problem of justice*.

## 6. The Problem of Justice

Because the Object of the idea of justice is supersensible, "justice" is a mathematical object and, as such, it is capable of being a *defined* object. Indeed, *many* definitions have been offered for it but there has never once been a universally-accepted single definition of it. Some people even ask, "Is there really any such thing as justice at all?" Other people flatly declare, "There is no justice." Does justice merely designate a genus under which we find various species of justices? Or is there *one* definition of justice capable of *grounding* all species of justices? To ask this last question is to ask, "Can the idea of justice have *practical* objective validity? If so, how?" To ask this is to state the problem of justice.

To give a more concrete example of how knotty a problem this is, let us take a look at what law student Komal Parnami had to say about it. She wrote,

Justice is one of the most important moral and political concepts with no agreed definition. . . . The claim for justice gains meaning in specific circumstances and cultural contexts. Justice is an evolutionary concept. . . . The interrelationship between justice and the law is complex. Legal and political theorists since the time of Plato have wrestled with the problem of whether justice is part of law or is simply a moral judgment about law. An example of the latter is when we speak of an "unjust law." When stated negatively, the concept of justice is the avoidance of injustice.

There are problems defining justice due to the individualistic nature of the concept. What might be just for me in a particular situation might not be just for someone else in some other situation. There are no universal principles by which justice or injustice can be defined other than the way in which the government has made its laws. However, since law is the means to an end, the law itself should be a just law as a prerequisite to use it as a means of serving justice. . . . To an ordinary person, justice may mean due punishment for a crime. To a philosopher, justice may mean morality. To a lawyer, justice may mean the application of the rule of law. The meaning of justice in popular discourse is the idea of getting what one deserves, fairness, moral righteous and equality. [Parnami (2019)]

Students are learners and, as such, often display a wonderful ability, through their questions, to point out to him when the emperor behind the lecture podium in front of the class isn't wearing any clothes<sup>8</sup>. In the review provided in the first two chapters of this treatise, we saw many examples of issues Parnami raises above. A nation can have a legal system but that does not necessarily mean it has a justice system.

Let us home in on Parnami's "individualistic nature of the concept" of justice. There is a glint of gold in this simple observation. One thing - and perhaps the only thing - that every legal system and every theory of justice has in common is this: Judgments about justice are *always* judgments made by human beings. If there is any common ground upon which to build an objectively valid and practical definition of justice, we must look for that ground nowhere else but in what is *common* in human nature.

Let us recall this Durant quote from chapter 1:

Man is not willingly a political animal. The human male associates with his fellows less by desire than by habit, imitation, and the compulsion of circumstances; he does not love society so much as he

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<sup>8</sup> See Hans Christian Anderson's "The Emperor's New Clothes."

fears solitude. He combines with other men because isolation endangers him, and because there are many things that can be done better together than alone; in his heart he is a solitary individual, pitted heroically against the world. If the average man had had his way there would probably never have been any state. Even today he resents it, classes death with taxes, and yearns for a government which governs least. If he asks for many laws it is only because he is sure that his neighbor needs them; privately he is an unphilosophical anarchist, and thinks laws in his own case are superfluous. [Durant (1935)]

Durant's comments and explanations here are speculative generalizations inasmuch as he obviously had not asked every living person about them. They are plausible and reasonable generalizations - some perhaps products of introspection and self-reflection, others almost undoubtedly drawn from essays by authors such as Ralph Waldo Emerson and Henry David Thoreau. Poets, too, have sung praises to solitary individualism:

Come away, O human child!  
 To the water and the wild  
 With a faery hand in hand,  
 For the world's more full of weeping  
 than you can understand. [Yeats (1889)]

To the extent that there is some truth in these descriptions of human beings, what causes them to forsake "the water and the wild," join with other people in Societies, and tolerate the restrictions of laws and of governments? The Critical answer is straightforward enough: it is because he feels or guesses or thinks that to do so serves his own interests and to not do so is contrary to his own interests. Putting this another way, he drives himself to it because of *Duties to himself*. Man has no social instinct but he does not need one to act out of Duties to himself. But he *also* finds associating with others, whose own interests *they* feel or guess or think are served by associating with *him*, comes with a condition if he is to succeed in realizing (make real) the objects of his interests and negating those contrary to his interests. What it requires and demands of him is what Critical theory calls **commitments**.

Figure 3 provides the 2LAR description of the idea of commitment. Like Kant's moral categories, the *momenta* depicted in figure 3 are not primitive functions. They are descriptive factors characteristic of the action of a person's making of a commitment at the 2nd level of analytic representation. The descriptions of each follow.

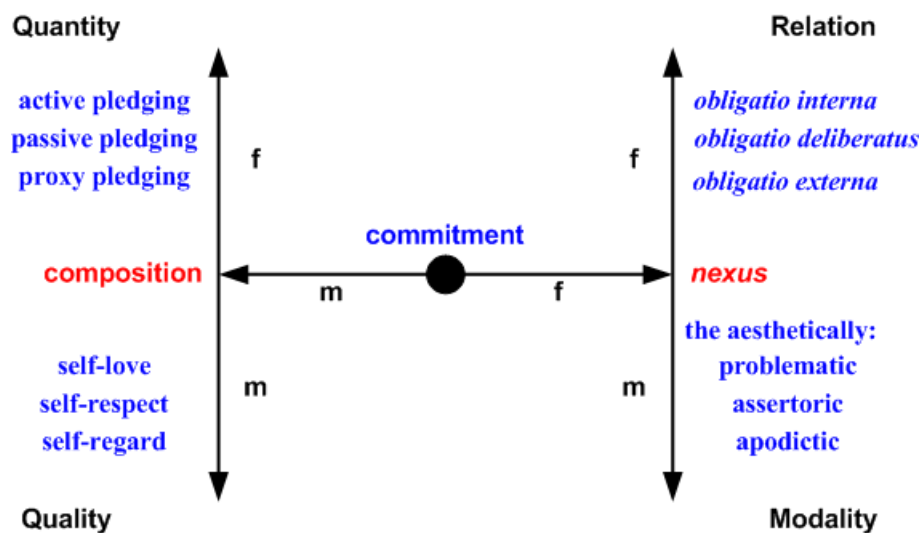


Figure 3: 2LAR of the idea of commitment.

Kant tells us that pledging (Quantity in commitment) and Obligation are closely coupled. He said,

All Obligations to generous acts are active pledgings. I am bound to the act, although it is a service. Deeds whereby we can bind others if we perform them are services. We are bound to the act towards a person without being bound to the other [person]. *Obligati sumus ad actionem ita ut et illi non obligati simus.*<sup>9</sup> We are bound to the act, not to the person. If I am bound to help the unfortunate, and thus to the act but not the man, that would be active pledging. But if I owe a debt to someone, I am bound not only to the act of payment but also to the creditor, and that is passive<sup>10</sup> pledging. It seems, however, that all pledging is passive for if I am bound then I am obliged. Yet with an active pledging there is a constraint of reason, and I am constrained by my own considerations, so there is nothing passive about it; and passive pledging must come about through another, whereas if a man is necessitated by reason, he rules himself. The distinction of Obligation is therefore right. *Obligatio passiva est obligatio obligati erga obligantem, obligatio activa est obligatio erga non obligantem.*<sup>11</sup> [Kant (c. 1784-85), 27: 260]

Of the seven different definitions of the noun **pledge** given in Webster's Dictionary, the one pertinent to our present context is *a promise or agreement*. Of the seven different definitions of the verb **to pledge** given in Webster's Dictionary, the one pertinent to our present context is *to bind to the performance of some engagement or obligation by giving a pledge*. The language scholars who compiled the 1962 edition of Webster's speculated that the word "pledge" derives from the Latin verb *præbere*, to proffer.

The Critical distinction between active and passive pledging lies in the Object made to stand as the pledgee. **Active pledging** is an *impersonal* pledging in the context that the pledger makes his pledge to an abstract Object or an ideal. Commonplace examples include "society," "my country," and "political freedom." There is no identifiable actual person at the pledgee end of the pledger's commitment even though the pledger is able to point out some actual exemplars he uses as illustrations of his idea of the pledgee Object. The pledger makes his own pledgee-Object.

In contrast, **passive pledging** is *personal* in the context that the pledgee is an actual and identifiable person. The compacting process is an interpersonal process and is subject to all the sensuous apprehensions that attend immediate interpersonal interactions. Affectivity in judgmentation (what Kant calls "passion and emotion" in the previous quote) is signified by the intuition of a specific individual or identified group of individuals. A literary example of the latter is provided by the slogan of the Three Musketeers, i.e., "All for one and one for all." Kant calls this form of pledging "passive" pledging because the pledger orients himself by means of whatever subjective "passion and emotion" he associates with the specific people he identifies as pledgees.

If you were to devote enough time to the labors of Kant scholarship, sooner or later you will learn two things about Kant: (1) his key synthetical concepts always come in threes; and (2) he usually only tells you about two of them, leaving the third for you to deduce yourself from a synthesis of the two he does present. (2) is one of Kant's more irritating habits as an author and lecturer, although learning how to deal with it does eventually turn you into a better scholar of philosophy. It is probably more true than not to say if you don't find Kant irritating, you're not studying him properly. In addition to active and passive pledging there is a third form, unnamed and un-discussed by Kant, we must take into consideration. We call this third one **proxy pledging**. In this one, the actual pledgee-Object is an abstraction – a mathematical entity – that the pledger has *personified* (i.e., he has made himself regard the proxy as if the proxy were an actual person). For example, in "I pledge allegiance to the flag," the flag is a proxy pledgee-Object *meaning* all the people who are citizens of the nation represented by the flag.

The definition of **pledging**, i.e. *binding oneself to some obligation by giving a pledge*, implies that a

<sup>9</sup> "We are pledged to the action as such, and not pledged to the person."

<sup>10</sup> subject to passion or emotion

<sup>11</sup> "Passive pledging is pledging owed to an obliger, active pledging is not pledged to an obliger."

person has actually committed himself to do something or to behave in some particular way. This is the significance of the word "binding" in the definition. It is important to note that there is a technical distinction between "pledging" used in the metaphysical context – where the commitment is actual – and the casual usage of this word under which a person might or might not actually mean to keep a promise he has uttered or honor a commitment he has said he will honor. It's probably a safe bet to suppose everyone reading this book has had a personal experience in which someone has broken a promise he previously made or refused to do something he previously said he would do. We would call this a *false pledge* if the person intentionally uttered a pledge he never intended to keep, and a *non-pledge* if the person failed to understand he was making a pledge committing himself to do something.

There are three distinctive Relations in how commitments are made. Kant said,

We have *Obligationes internas erga nosmet ipsos*<sup>12</sup>, in regard to which we are outwardly quite at liberty; anyone can do what he will with his body, and that is no concern of anyone else; but inwardly he is not at liberty, for he is constrained by the necessary and essential ends of mankind.<sup>13</sup>

All obligation is a kind of compulsion; if this compulsion is moral, then we are either forced from without, or we compel ourselves, and this is a *conditio interna*<sup>14</sup>. But it can be morally forced from without by others if another wrings from us, according to moral motives, an action we do reluctantly. If, for example, I am in debt to anyone, and he says, "If you be an honest man, you must pay me; I will not sue you, but I cannot let you off because I need it," then this is an outer moral compulsion by the choice of another. The more one can compel himself, all the more at liberty he is. The less he can be forced by others, all the more inwardly at liberty he is. We must here still distinguish between the capacity for freedom and the state of freedom. The capacity for freedom can be greater, although the state is worse. The greater the capacity my capacity-for-freedom is, and the more liberty from stimuli is, all the more at liberty is the man. If a man were not in need of self-compulsion, he would be wholly free, for his will would then be entirely good, and he might willingly do all that is good, since he would be in no need of forcing himself; but that is not the case with man. Yet one man can come nearer to it than another if, that is, the sensuous impulses, the stimuli, are stronger in the one than the other. The more one practices self-compulsion, all the more at liberty he becomes. [*ibid.*, 27: 269-270]

*Obligatio interna* (inner pledging) is a form of pledging in which the pledger and pledgee are one and the same person. All obligations are Self-determined<sup>15</sup>; *obligatio interna* makes an obligation (and the duties attending it as its matter) and makes it an obligation-to-Self. In terms of morality as the logic of actions, an *obligatio interna* is a logically *categorical* Relation. *Obligatio externa* (outward pledging), in contrast, is pledging where the pledgee is another person or group of persons. It is logically *disjunctive* and *obligatio externa* necessarily presupposes *obligatio interna* accompanies it. Put another way, the pledger makes it an obligation-to-Self to commit to a specific obligation-to-another and to carry out any duties combined with this obligation *if the pledgee requires it of the pledger*. Kant explained this distinction in the following words:

All Obligation is either inward or outward. . . . Outward *obligationes* are greater than inner, for they

<sup>12</sup> "inner legal liability to ourselves," i.e. one can make his maxim a theoretical moral law for governing himself and hold himself liable to it. We call the feeling of *Unlust* experienced when transgressing such a law by the name "guilty conscience."

<sup>13</sup> in other words, constrained by human Nature in the aspect of man as *homo noumenon*. As Aristotle would have put it, "nothing that exists by nature can go against its own nature." Traditionally, most people think that Kant is speaking here of some noble brotherhood-of-man ideal, but epistemologically and from the judicial Standpoint that interpretation is nonsense even if, as your author is nearly certain, Kant thought that a proper science of morality and ethics might be able to bring such an ideal into phenomenal *Existenz*.

<sup>14</sup> "an inner preserving" of what we might call "the qualities of one's personality."

<sup>15</sup> An **obligation** (in German, *Obligation*) is the necessity of a free act under a theoretically categorical imperative as the act is represented in the manifold of rules and conceptualized in object-form in the manifold of concepts. An obligation can be regarded as a conceptual formula for acting-rightly.

are simultaneously inward, but inner are not simultaneously outer. *Obligatio externa*<sup>16</sup> already presupposes that the action as such stands under morality, and is therefore *interna*<sup>17</sup>; for the *obligatio externa* is an obligation because the action is already one in the internal sense. For in that case the action is a Duty, that makes it an inward Obligation, but because I can still compel a man to this Duty by my choice, it is also an *obligatio externa*. In *obligatione externa*<sup>18</sup> I have to conform my action to the choice of another, and to this I can also be forced by others. *Obligatio externa* can also be pathologically forced by another; if he does not let himself be morally compelled, he has a warrant to compel pathologically. In general, every right has a warrant to compel pathologically. [*ibid.*, 27:270]

In this quotation we find a splendid example of how Kant earned the reputation for being a notorious technical hair-splitter (as well as a splendid example of why his work is so notoriously difficult to translate). Note that "obligation" (in German, *Obligation*) and "Obligation" (in German, *Verbindlichkeit*) appear within the same argument. An Obligation is an overall orientation of judgmentation in the Self-determination of appetites. The term belongs to the practical Standpoint of Critical epistemology. An obligation, on the other hand, involves concepts of theoretically categorical imperatives and belongs to the theoretical Standpoint of Critical metaphysics. What makes this form of Relation logically disjunctive (in the context in which the term disjunctive is used in Kantian Logic) is that the obligation co-determines an obligation on the part of the pledgee, i.e., determining one obligation also determines another. The pledger's expression of the action (a duty) is at the same time a manifestation of a Duty he has placed himself under.

A new factor also appears in this quotation, namely the concept of *legal liability*. The first thing that must be stressed as this concept is introduced is that legal liability is to be understood in a *deontological context only*. This distinction is one in which the concept of legality is tied to the deontological *real-explanation* of *justice*. It is probably true that the great majority of people in every country are familiar with the idea of legal liability in the context of "if you break the law, you can be held liable for doing so." What is true in every country is that the country's legal system contains some laws that are deontologically *just* and some that are deontologically *unjust* or *non-just*.

Deontological legal liability is grounded in the *homo noumenal* Nature of human beings as Self-determining (free) agents. All *real obligations*, by which I mean obligations manifested by actual expressions of actions, are solely determined to *be* obligations by the individual. *You cannot impose* a real obligation on *any* other person. If he doesn't determine himself to hold something to be an obligation, then it simply isn't a deontological obligation, period, and no *duty* can be imputed to him. He can, of course, be compelled to do something through, ultimately, the use or threat of force (either physical or social), but if he submits to the compulsion this is through an act of prudence under a Duty-to-Self. To think that anyone can place anyone else under an obligation through the use or threat of force is the constant error committed by tyrants and despotic governments throughout human history. Probably more important, though, is that it is an error of ignorance sanctioned by custom that can be found displayed even in governments whose officials would be horrified and offended to hear their governance called "despotic."

Why would any human being make a Self-obligation of *obligatio externa*? The answer is likely already clear to some readers, but for the others I will merely remark at this point that the answer is *because by doing so he benefits the power of his own person*. How and why this is so we will discuss later in much more detail because this involves the terms and conditions necessary for the possibility of any social contract. What we most immediately need to discuss next is the deontological idea of *moral compulsion*. Kant tells us,

We begin by noting of compulsion in general that the necessitation is of two kinds, objective and

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<sup>16</sup> "outward pledging"

<sup>17</sup> "inner"

<sup>18</sup> "outward legal liability"

subjective. Subjective necessitation is the representation of the necessity of acts *per stimulus* [by sensuous stimulation], or through the impelling causes of the subject. Objective compulsion is constraint of a person through that which has the greatest constraining and moving power in his subject. Compulsion is therefore not a necessity, but a constraint to act. But the being who is constrained must be one who would not do this act without constraint, and would, indeed, have objections against it. . . . Compulsion is thus a constraint of an act reluctantly done.

This constraint can be objective and subjective. Thus we forego a thing reluctantly from one inclination, though we do it according to another; as a miser, for example, forgoes a small advantage if he thereby secures a greater; but reluctantly because he would sooner have both. All compulsion is either pathological or practical. Pathological compulsion is the making necessary of an act *per stimulus*; practical is the making necessary of an act reluctantly done *per motiva* [from motives]. No man can be pathologically forced because of free will. Human choice is an *arbitrium liberum*<sup>19</sup>, in that it is not necessitated *per stimulus*. Brutish choice is an *arbitrium brutum*<sup>20</sup> and not *liberum* because it can be necessitated through *stimulus*; if a man, for example, is pressed into an act by numerous and cruel tortures, he still cannot be forced to do the acts if he does not will it; he can, after all, withstand the torture. Comparatively speaking, he can be forced, indeed, but not strictly; it is still possible to refrain from the act regardless of all sensuous impulses. That is the nature of *arbitrium liberum*. . . Hence a man can be pathologically forced but only comparatively speaking, e.g. by torture.

An act is necessary if one cannot resist it; grounds are necessitating if human powers are not adequate to resist them. But a man can be practically forced *per motiva*, and then is not forced but moved. The compulsion, then, is not, however, subjective, for otherwise it would not, of course, be practical, and it is done *per motiva* and not *per stimulus*, for stimuli are subjective self-moving activities of the senses. [Kant (c. 1784-85), 27: 266-267]

A *motive* is a ground of motion and, in relationship to volition, is "the reason one does something." A person acts out of motives and is said to be rationally *Self-compelled*. Here, Kant tells us,

Something is *done grudgingly* by a free being (1) insofar as there is present in him an inclination to the opposite of what he *wills* to do and (2) he nevertheless does what he *wills* as a free being. This is *actio invita*<sup>21</sup> in the moral sense. Elsewhere, to be sure, we also call *actionem invitam*<sup>22</sup> an action done *without willing, or not done willfully*, which has the name *actio involuntaria*<sup>23</sup>. Here, then, is a want of will itself, i.e. the [want of a] free alternative, and resolve to the action on grounds of reason, which is the proper *causa determinans*<sup>24</sup>; the action is done grudgingly only because of the mainsprings<sup>25</sup> to the contrary that lie in the physical nature of man. Instead of this, by *actio involuntaria* we have an absence or ignorance of the moving cause to action; it therefore does not belong among free actions, and *actio invita* must never be understood in that sense. [Kant (1793-4), 27: 519]

A person committing himself to an *obligatio externa* may have pledged himself to do something that he would not otherwise choose to do, and if such is the case then when he takes that action this is *actio invita*. The action is said to be done *willingly but grudgingly*. When the motive of this action is an outward legal liability (*obligatione externa*) following from an act of outward pledging, the person is not acting immediately on his own behalf but, rather, is acting from Kant's moral category of the reciprocal Relation that he has set up between himself and the situation of another person or of an abstract entity, i.e. "society," "the bank," "the neighborhood," etc. In psychology terms, he has "semantically represented an impact message that has for a meaning implication a necessitation (making necessary) of expressing the

<sup>19</sup> free choice, choice that is determined or determinable independently of sensuous stimuli.

<sup>20</sup> choice that is determined through sensuous stimuli.

<sup>21</sup> "reluctant action"; action one takes contrary to one's own wishes or inclinations.

<sup>22</sup> same as *actio invita*; the difference is merely grammatical.

<sup>23</sup> "involuntary action"; action one would not take if any alternative choice was pragmatically feasible.

<sup>24</sup> "defining reason"

<sup>25</sup> *Triebfedern*: representations that serve as a condition for a *causatum* of activity

action he takes."

The ground of his self-made necessitation makes an enormous difference. Kant said,

All necessitation is not only pathological but also practical. Practical necessitation is not subjective, but objective, for if it were subjective it would be a *necessitatio pathologica*<sup>26</sup>. No other necessitation than necessitation *per motiva*<sup>27</sup> is in keeping with freedom. These motives can be pragmatic and moral, the moral being drawn from the *bonitate absoluta*<sup>28</sup> of free will.

The more a man can be morally forced, all the more at liberty he is; the more he is pathologically forced, though this only occurs in a comparative sense, all the less at liberty he is. It is peculiar: the more anyone can be forced in a moral sense, all the more at liberty he is. I compel a person morally through *motiva objective moventia*<sup>29</sup>, through motives of reason, along with his greatest freedom, without any impulse. Hence it takes a greater degree of freedom to be morally forced, for in that case the *arbitrium liberum*<sup>30</sup> is more powerful – it can be forced through motives and is free of [sensuous] stimuli. So the more anyone is free of stimuli all the more can he be morally necessitated. Liberty waxes with the degree of morality. . . .

He who has less Obligation is freer [is more at liberty]. So far as anyone stands under obligation, so is he not at liberty; but if that obligation comes to an end he becomes at liberty. Our being at liberty therefore becomes diminished by obligation. . . . Thus one is not at liberty if he has taken on benefactors.<sup>31</sup> Yet, comparatively, we can have more freedom in one respect than in another.

One who stands under *obligatione passiva*<sup>32</sup> is less at liberty than one who stands under *obligatione activa*<sup>33</sup>. We cannot be forced to any action of magnanimity, yet for all that they are incumbent on all of us,<sup>34</sup> hence all of us stand under *obligatione activa*. To actions of bounden duty we can be forced, and stand then under *obligatione passiva*; he who henceforth stands under *obligatione passiva* to anyone else is less free [less at liberty] than he who can oblige him [to make good on that liability]. [Kant (c. 1784-85), 27: 268-269]

On first reading, Kant appears to contradict himself between the second paragraph and the third and fourth paragraphs. Let us take a look at this more closely. "He who has less Obligation is freer": This does not seem difficult. The less Obligation a person compels himself to be answerable for, the more his actions are said to be *freely taken at his own liberty*. This liberty of action is of the greatest degree when the person need not consider any interests but his own and has no obligation to anyone other than himself. This is what Locke called *natural liberty*. What then of "The more a man can be morally forced, all the more at liberty he is"? This is a contradiction *if* we are talking about one and same kind of liberty, but Kant is not. This second case is called *civil liberty* and it is grounded in a social contract.

Kant presents us with two forms of pledging, *obligatio externa* and *obligatio interna*. As I said before, Kant's synthetical functions always come in threes and we are still missing one. *Obligatio interna* is an idea of categorical Relation, *obligatio externa* is an idea of disjunctive Relation (determination of one part

<sup>26</sup> "constraining from feelings or sensations"

<sup>27</sup> "from motives"

<sup>28</sup> "unqualified excellence"

<sup>29</sup> "motives that objectively stir the senses"

<sup>30</sup> "free choice," i.e., choice that is determined or determinable independently of sensuous stimuli

<sup>31</sup> because in this case one places himself under a form of obligation called "being indebted to them"

<sup>32</sup> "legal liability subject to passion or emotion"; "legal" in the context of having assumed an obligation in return for a benefit and passionate in the context of the obligation directly involving another *specific* person

<sup>33</sup> "practical legal liability"; again "legal" in the context of having assumed an obligation but practical in the context that the obligation is assumed from inner motives of principle and not a specific relationship with another person

<sup>34</sup> This is to be interpreted to mean "we do indeed take on such actions" and not that someone else has a legitimate right to expect us to take them on or that we all necessarily have a duty to take them on. The proper context is no more than an observation of human nature, the latter two utterly lack objective validity.

of the Relation co-determines the others as well). The missing Relation, unmentioned and unnamed by Kant, is the hypothetical Relation. We need a name for this term, and so we will call it *obligatio deliberatus* or "deliberate pledging."

Whereas *obligatio interna* pertains to Relations of Duties-to-Self with respect to one's own personality, *obligatio deliberatus* pertains to Duties-to-Self with respect to one's situation. The adjective *deliberatus* means "resolved upon or worked out" in the connotation of the Latin verb *delibero*:

*delibero* ~are ~aui ~atum

1. (a) to engage in careful thought, weigh the pros and cons, deliberate. (b) to take counsel, consult. (c) to consult.
2. (a) to consider a matter carefully, ponder, think over. (b) to consider what, whether, etc.; to consider whether to.
3. to have resolved upon after consideration; to have decided that or to.

*Obligatio interna* does not "go outside" the person's inner subjectively sufficient grounds for taking actions. It is concerned with the individual's *self-respect*. Critical self-respect (*Achtung*) is the representation of a value prejudicial to *self-love* in the determination of appetitive power. Self-love means the determination of a choice on the subjective ground of happiness. The *principle of happiness* is an acroamatic principle of judgmentation. This principle states that the disposition to act on the basis of the matter of Desire (i.e., to make an appetite on the grounds of this matter) is a pure purpose of practical Reason. However,

All material practical principles, regarded as such, are altogether of one and the same kind and belong under the general principle of self-love or one's own happiness.

The *Lust* from the representation of a thing-in-the-world, so far as it should be a ground of determination of desire for this thing, bases itself on the *receptiveness* of the subject because it *depends on* the *Dasein* of an object; hence it belongs to the senses (feeling) and not with understanding, which expresses a reference of the representation *to an Object* according to concepts, but not to the subject according to feelings. It is therefore practical only so far as the sensation of the pleasantness that the subject expects from the actuality of the object determines appetitive power. Now *happiness* is but the consciousness of a rational being of the pleasantness of life uninterruptedly accompanying his whole *Dasein*, and the principle to make this the highest ground of the determination of choice is the principle of self-love. [Kant (1788), 5:22]

In contrast, self-respect reflects the first pure and *a priori* interest of practical Reason, which is to act for the practical perfection of its structure of practical rules. Self-respect is an affective perception taking its transcendental place from the spontaneity of a human being and never from his capacity for receptivity. As an affective perception prejudicial to self-love, consciousness of self-respect has only a negative criterion; this is to say one becomes conscious of *lack* of self-respect. Self-respect, therefore, is always tied to a feeling of *Unlust*, whereas self-love can be tied to *psyche* either as a feeling of *Lust* or of *Unlust*.

As you can see, the *momenta* of Quality in commitment have slipped into our discussion. We must also speak of a third kind of feeling. This kind is called *self-regard* (*Selbstsucht*). One connotation of the German root word is egoism or selfishness, but Kant uses the term in a broader sense than just this. Whenever you "feel good about yourself," this is a feeling of self-regard. Self-regard is a feeling of *Lust*, whereas self-respect is tied to *Unlust*. Self-love, as stated above, can pertain either to *Lust* or *Unlust*.

I have introduced the Quality *momenta* of commitment somewhat differently than I normally would. A note of explanation is therefore in order. I have done so because *their explanations are confounded with those of Relation*. In most 2LARs, Quantity, Quality, Relation, and Modality do not have this aspect of confounding but here, in explaining commitment, we are not dealing with primitive functions of mind but



empirical aspects of behavior. Furthermore, we are talking about behaviors at a higher and much more contextually restricted level pertaining to particular *states of mind* that set up *contexts* for the human nature of a person's *motives* for pledging and committing himself to *theoretical* actions involving not only his present situation but also aspects of empirical situations that are still in the future for him. It should be born in mind that people *do* sometimes break their prior commitments, ignore past promises they have made, and that *theoretical* imperatives express an "I ought to" instead of an "I will." Commitment is not a natural law of human behavior but, rather, a spontaneous yet still *empirical* product of judgmentation.

There is still more that needs saying in regard to Relation in commitment, but before doing so let us finish off the Modality heading of commitment. Modality does not concern the Object (commitment in this case) but, rather, how judgmentation connects with the person himself (the "subject" enacting the process of judgmentation). The *momenta* of Modality in commitment are understood in a *logical* context in the *mathematical* idea of commitment. Furthermore, this context is *aesthetic* rather than intellectual and rationally theoretical. The *momentum* of the aesthetically problematic means the commitment is not *grounded* in imperative rules in his manifold of rules. The *momentum* of the aesthetically assertoric means that *at the time* the person makes and pledges a commitment *he really means it* and regards fulfilling it as a Duty. Deduction of the third *momentum* is carried out as a synthesis of the first two, i.e., the problematic + the assertoric → the apodictic. This is not, however, apodictic in the context of logic but, rather, is *aesthetically apodictic* and pertains to aesthetical, not logical or practical, Self-perfection. Acts of judgmentation producing this *momentum* of Modality are acts which produce an aesthetical determining factor in choosing to make commitments and what kind of commitment the person will choose to express. Judgmentation is a cycle of mental activity and the judgmentation process only ends when equilibrium is achieved.

Now let us further discuss Relation in commitment because this heading, more than the others, goes directly to relationships between justice and law. *Obligatio deliberatus* is pledging of a Duty-to-Self in regard to one's own situation. The vast majority of prudential and pragmatic tenets a person makes for himself have little or no connection to the nominal customs the average person typically associates with the notion of morality. Yet everything that a person holds-to-be a duty to himself is *de facto* a personal *more* because it is a determining factor in his logic of actions. The logic of prudence is reflected in the qualities of those actions we call either prudent or pragmatic. We get our word "prudent" from the Latin word *prudens*:

***prudens ~ntis***

1. (a) well aware of what one does or the consequences of one's action, acting deliberately, open-eyed. (b) having foreknowledge of, aware of. (c) well aware that, knowing that. (d) (of a state) brought about deliberately, intentional.
2. (a) exercising foresight, prudent, discrete. (b) (of actions, policy, etc.) characterized by prudence or good sense.
3. (a) having good understanding, sagacious, clever. (b) having a good practical understanding of or skill in.

Prudent actions and pragmatic actions both come down to us out from the Greek *pragma*, which means deed or act. The distinction we make in describing something as prudent vs. pragmatic is a distinction of Modality (the judgment of a judgment) with "prudent" bearing a problematical Modality and "pragmatic" bearing an assertoric Modality. The affective association we make that distinguishes the pragmatic from the prudent is reflected by the following connotations of the word *pragma*<sup>35</sup>: (1) occurrence, matter, affair; (2) thing, concrete reality; (3) *pragma esti*, it is *advantageous* for me; (4) (a) thing of consequence or importance; (b) *pragma esti moi*, it *concerns* me; (5) matter in hand, question. *Obligatio deliberatus* is

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<sup>35</sup> Liddell & Scott (1996)

logically hypothetical in Relation because it addresses empirical matters and concerns of cause-and-effect.

*Obligatio interna* on the other hand is categorical. Frustrate a person's judgmentation that involves practical rules linked with *obligatio deliberatus* and you will encounter resistance; do that with rules linked with *obligatio interna* and you will engender hostility and anti-bonding. If you want to make an implacable enemy, attack his self-respect. You'll end up in as nasty an anti-bonding relationship as ever you could imagine. When you end up in that situation, you will have participated in the other person's determination of an *obligatio interna*, the most extreme example of which is the case where he has decided that his optimum relationship with you involves ending your *Existenz*. Relationships between persons in the state of nature no less involves *obligatio* than do those of civic relationship.

On the bonding relationship side of the picture, all those tenets adults typically regard as examples of morality are tenets from pledging *obligatio externa*. Perhaps the easiest way to gain an understanding of *obligatio externa* is to look at this Relation as the synthesis of the other two. What is *obligatio deliberatus* regarded as *obligatio interna*?

Here the pledging is one in which the exterior situation (the relationship with the pledgee) is held by the pledger as *an exterior relationship that involves self-respect and also self-love*. It can hardly be put any plainer than by saying reciprocal obligation is mutual Relation wherein both persons serve themselves by serving the other. This has two aspects to it. The first is this: *the pledger anticipates and requires as a condition something from the pledgee that promotes his own happiness*. As the old saying goes, "there ain't no such thing as a free lunch." The second aspect is that *failure by the pledgee to meet the anticipated condition provokes a feeling of Unlust and is signified by a meaning implication antagonistic to tenets of self-respect*.

Ontology-centered philosophers, moralists and theologians have sought without success for centuries to erect *civic morality* on coldly rational and objective grounds. When this has failed, they often resort to trying to govern people's actions by means of negative feelings of lack of self-regard. Hence, "you should feel guilty about refusing" to contribute to this worthy cause, help out at the church bazaar, etc. & etc. This might work for a time with some individuals, but it is an inherently unstable means of attempting to govern others' codes of behavior because *the root of all civic morality is subjective in its grounds and objective only in the determination of specific duties and obligations*. The latter concerns the matter of expression, but the former goes directly to *Duty and Obligation*, which is something else altogether. Perhaps nothing else in empirical science demonstrates the human Nature of this better than Piaget's often-amusing case studies of the development of moral judgment in children [Piaget (1932)]. What makes the ontology-centered practices of teaching and governing civic morality unstable is that it is far too easy to, without deliberate intent, miss the mark of self-regard and hit the person in his self-respect instead. *No person can determine another person's Self-determination of his own self-respect*. Deontologically, this is the very moral essence of freedom in the *homo noumenal* character of man. You can provoke his feeling of self-respect, but you can't control it and it is important to remember that self-respect is always and only consciousness of a feeling of *Unlust*. Feelings of *Unlust* pertain to desirations for preventing or abolishing the *Existenz* of the Object that a person has made symbolic for *Unlust*. You cannot engineer *attractive* behavior by appealing to self-respect. All social compacting is immediately combined with semantic representing of self-regard.

## 7. Interest Commitment Causes Judgments of Justice and Injustice

Every human being constructs practical imperatives in his manifold of rules and, when he later becomes cognizant of their manifest appearances, concepts of Duties in his manifold of concepts. All people come to construct Duties-to-Self, and people who have been adequately socialized through their experience also add reciprocal Duties to others in regard to their situations. Such Duties are conceptualized as means of effecting improved satisfaction of Duties-to-Self. Abnormally antisocial people, on the other hand, are

people who have constructed few or no reciprocal Duties; they are entirely or nearly entirely "out for themselves" and have never recognized the possibility of satisfying their own interests through genuine commitment to long term social cooperation. In both cases, though, the maxims and Duties a person makes for himself he makes to achieve satisfaction of his interests. Mill wrote,

If you wish to know what is practically a man's interest, you must know the cast of his habitual feelings and thoughts. Everybody has two kinds of interests, interests which he cares for, and interests he does not care for. Everybody has selfish and unselfish interests, and a selfish man has cultivated the habit of caring for the former and not caring for the latter. Everyone has present and distant interests, and the improvident man is he who cares for the present interests and does not care for the distant. It matters little that on any correct calculation the latter may be the more considerable if the habits of his mind lead him to fix his thoughts and wishes solely on the former. [Mill (1861), pg. 71]

Mill does make one error here. An interest a person "does not care for" is not an interest (for him) at all. What Mill should have said is "there are things a man *ought to make* his interests and care for but does not." Mill expresses a manifest hint of moral realism in his thinking in this quote, and, as well, a habit of ontology-centered thinking when he reifies "interest" as if it was something that existed independently of the person who anticipates a satisfaction from some object of his desire. But it only takes a small Kantian "Copernican turn" to find practical objective validity in the idea Mill was trying to express here.

Because no two people ever have identical experiences in life, no two people ever have entirely the same interests or maxims. Incongruent interests can and do lead to *conflicts of interests* in both direct interpersonal interactions and remote interactions<sup>36</sup>. When an interest of one person or group of people is hindered or thwarted by the action of another person or group of people, those whose interest was hindered or thwarted experience a feeling of *Unlust* because of it. We can, with deontological correctness, call this *a feeling of injustice*. If something happens subsequently that either restores the thwarted satisfaction of interest or, alternatively, brings about what an aggrieved person feels is a *satisfactory* punishment of those whose satisfaction of their incongruent interest he blames for causing his own feeling of injustice<sup>37</sup>, that satisfaction is called *a feeling of justice*.

What has just been said is a deontologically correct real explanation of causal manifest conditions that *define* the noumena of injustice and justice. Both spring from human affectivity related to interest. They are logical opposites of each other. Actions producing feelings of injustice logically antecede actions producing feelings of justice. Reconciliations and punishments, when they adequately negate feelings of injustice, are said to "*restore* justice."

Here we have our first epistemological real explanations for the *Dasein* of injustice and justice. This is a significant achievement for the theory of justice, but our work is not yet complete. We must ask and answer, "What is necessary for the possibility of justice?" The remainder of this treatise turns now to the task of addressing this question.

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<sup>36</sup> By "remote interaction" I mean an action expressed by one person or group of people that has an unintended consequence for a different person or group of people.

<sup>37</sup> Retaliation and retribution were characteristics found in all the legal codes reviewed in the first two chapters. In some Societies revenge was also sanctioned by law, while in others it was proscribed by law.

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