Chapter 6 Human Factors in the Satisfaction of Justice

1. Sovereignty and Justice

At this point it is worth our while to take a moment and briefly review some of what we have learned so far in this study of the epistemology-centered Idea of Justice. First, we have learned that *law* and *justice* are not the same thing. Moreover, we are now in a position to understand that their relationship in a Society is not independent of the form of the government of that Society but, instead, depends on the crucial political factor of whose hands hold the sovereignty of that Society.

Sovereignty is the idea of the supreme civil right to govern a collective body politic. The Sovereign consists of the person or persons who hold that governing authority. Body politic is the regulative Idea of the totality of all members of a Community. In Critical epistemology, a Community is a *voluntary* association of people who join together for some *common* purpose. This is an association that differs from what Critical epistemology terms a community (non-capitalized). The latter is simply a group of people living together in the same geographical area under the same laws. One difference between these two terms is that a Community is *not necessarily* governed by laws, whereas a community *is* governed by laws. The Ituri Forest's BaMbuti Pygmies provide an example of a Community in which there are no laws or legal codes; the role played by laws in a community is played in their case by *moral customs* (what Critical epistemology calls *Sittlichkeit*) that *practically* provides them with a *de facto* social compact even though that social compact is unwritten. In their case, the Sovereign is nothing less than the entire body politic of the group. BaMbuti Society is a rare example of what we will call a *consensus democracy*.[1]

The concept of a Community is further subdivided into non-civil Community and civil Community. A non-civil Community is a Community in which the association does not involve a civil convention that establishes common civil rights and civil liberties. A civil Community is a Community whose people share a common civil convention that establishes common civil rights and civil liberties with a common system of governance. A typical New England mill in 1830 was a non-civil Community; the original Plymouth colony in America, established in 1620, was a civil Community and their civil convention was called the Mayflower Compact [Jernegan (1929), pp. 119-120].

In almost all Societies noted by history since the time of the Sumerians, law is one of the important means by which sovereignty is effected. Practical philosophers from Aristotle to Montesquieu have been consistent in pointing out that there are only three general forms of sovereignty. One is traditional monarchy, in which sovereignty is held by one person (a king, by whatever title he is called). The second is when sovereignty is held in the hands of an elite few (an aristocracy, oligarchy, soviet, or junta). In both these cases, the other members of the Society are said to be subjugated (made subjects) of the one or the few. Both cases are also examples of governance by rulership [Wells (2010b), chap. 11, pp. 424-429]. The third form of sovereignty is called popular government and sovereignty in this case belongs to the *citizens* of the Community in their collective capacity to *co*-determine how to effect its governance. This form of sovereignty is often differentiated into sub-classifications. These traditionally are called republics, representative democracies, and democracies. The latter two are also subdivided into *consensus* democracies (e.g., *Gemeinschaft* Societies such as the BaMbuti Pygmies) and *non-consensus* democracies (e.g., ancient Athens) that operate under a principle of *majority rule* rather than by consensus.

All three general forms are also seen to exhibit practical idiosyncrasies that blur these crisp distinctions. For example, in the United Kingdom of Great Britain the monarch serves as a *symbol* of the country's unity and has an important *leadership* role, but the actual practice of its governance is a divisive non-

[1] Consensus democracies are rare today but it can be conjectured that there was a time in our distant prehistoric past when they were the most common form of Community. The fatal weakness of consensus democracy is manifested when the size of the population becomes so large that achieving consensus and a common system of moral customs becomes impractical.

consensus representative democracy. In the United States, its constituted government after 1789 until the middle nineteenth century was a form of republic I have elsewhere called an American Republic [Wells (2010)]. Since at least the early twentieth century[2] it has been a non-consensus representative democracy supposedly operating under the "majority rules" principle but which in fact often institutes instead a system of *minority* rule over the majority of its citizens [Mill (1861), pp. 75-77]. Since the mid-1990s political factions devolving toward governance by *rulership* have appeared in the United States at both the national and state levels. Shifting our gaze to the other side of the globe, since 1991 the Russian Federation has nominally been a federal semi-presidential republic but has since been misled into lapsing back into being a czarist monarchy. Manifestations of social deterioration of Order and Progress are far more historically common than are manifestations of preservation of Order and Progress.

Whoever holds the sovereignty of a Community creates the laws which govern it as a whole[3]. In all three general forms, there is found at least one mini-Community bound together by a social compact among its members that frequently seeks to exclude those who are not members of that mini-Community. Monarchy, for example, sets up a social compact between the king and his various nobles but not between them and the rest of the people. Aristocracy/oligarchy sets up one among the members of the aristocratic caste but again excludes the great majority of the people. Popular government, in principle, ostensibly extends the social compact to all of its citizens even though, in practice, its operation sometimes perpetrates violations of this compact. If an exclusionary mini-Community succeeds in gaining sovereignty it becomes what Toynbee called a dominant minority and usually, sooner or later, imposes governance by rulership [Toynbee (1946)]. Those who create the laws craft them to fit some idea of justice *as they see it*. Hence it follows that the relationship between law and justice is conditioned by the factor of political sovereignty.

"Justice is in the eye of the beholder" is a metaphor that rings true. We can see manifestations of this metaphor in such cynical quips as "right is what *I* do; wrong is what *you* do; good is what *I* do; bad is what *you* do." The reason for this is simply because *ideas* of justice and injustice spring spontaneously from affective feelings of justice and affective feelings of injustice. In human nature, affectivity drives cognition [Wells (2016)]. In many circumstances, this facet of human nature inclines some people to actions that devolve a civil Community towards monarchical or oligarchic rulership even when their intentions in doing so are good. Mill wrote,

> It is not much to be wondered at if impatient or disappointed reformers, groaning under the impediments opposed to the most salutary public improvements by the ignorance, the indifference, the intractableness, the perverse obstinacy of a people, and the corrupt combinations of selfish private interests armed with the powerful weapons afforded by free institutions, should at times sigh for a strong hand to bear down all these obstacles and compel a recalcitrant people to be better governed. But (setting aside the fact, that for every one despot who now and then reforms an abuse, there are ninety-nine who do nothing but create them) those who look in any such direction for the realization of their hopes leave out of the idea of good government its principal element, the improvement of the people themselves. [Mill (1861), pp. 30-31]

The greatest obstacle to the establishment of a good justice system has its roots in subjective facets of human nature. Yet, at the same time, it must also be acknowledged that these affective motivators can also be found at the roots of great accomplishments in the advancement of Societies and their endeavors to establish justice. Let us look at some of the more stark examples of affective motivators.

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[2] It is difficult to pinpoint precisely when the United States devolved from being an American Republic to being a non-consensus representative democracy but the transition almost certainly began around the time of the American Civil War of 1861-1865 when its "two-party system" surreptitiously usurped control of American politics.

[3] When, that is, they choose to create laws. The BaMbuti do not; imperial China created laws to govern nearly every aspect of Chinese life. The present Chinese government is very close to devolving back into imperial rulership and arguably did revert to imperial rule under Mao Zedong.

2. The Passion for Distinction

One class of powerful affective motivators is what John Adams called the passion for distinction. Even before there was a science of psychology, human beings recognized in the manifestations of human personalities and accomplishments the energizing role played by affective motivators. Adams wrote,

> A regard to the sentiments of mankind concerning him, and to their dispositions towards him, every man feels within himself; and if he has reflected and tried experiments, he has found that no exertion of his reason, no effort of his will, can wholly divest him of it. In proportion to our affection for the notice of others is our aversion to their neglect; the stronger the desire for the esteem of the public, the more powerful the aversion to their disapprobation; the more powerful the wish for admiration, the more invincible the abhorrence of contempt. Every man not only desires the consideration of others, but he frequently compares himself with others, his friends or his enemies; and in proportion as he exults when he perceives he has more of it than they, he feels a keener affliction when he sees that one or more of them are more respected than himself.
>
> This passion, while it is simply a desire to excel another by fair industry in the search of truth and the practice of virtue, is properly called *Emulation*. When it aims at power, as a means of distinction, it is *Ambition*. When it is in a position to suggest the sentiments of fear and apprehension, that another who is now inferior will become superior, it is denominated *Jealousy*. When it is in a state of mortification, at the superiority of another, and desires to bring him down to our own level, or to depress him below us, it is properly called *Envy*. When it deceives a man into a belief of false professions of esteem or admiration, or into a false opinion of his importance in the judgment of the world, it is *Vanity*. These observations alone would be sufficient to show that this propensity, in all its branches, is a principal source of the virtues and the vices, the happiness and misery of human life; and the history of mankind is little more than a simple narration of its operation and effect. [Adams (1790), pg. 340]

With a little reflection, it is not difficult to feel, if not to see, there is some connection to be found between the examples Adams cites and the Kantian notions of self-respect, self-love, self-regard, self-conceit, and self-contempt. Perceptions of desire are produced in aesthetical reflective judgments while values and connections of Desire with motoregulatory expression are produced in teleological reflective judgment. Being entirely subjective and non-objective perceptions, affective motivators are inexpressible in and of themselves by language (because language expresses by means of objective perceptions), and so are said to be *autistic* perceptions. Adams' brief list in his remarks above describes manifestations of the passion for distinction in terms of a person's manifest behaviors. In Critical terminology, a *passion* is an appetite of inclination that makes determinability of choice by means of objective first principles difficult or impossible. It is an habitual sensuous purpose a person has made into a maxim in his manifold of rules. *Inclination* is habitual *sensuous* appetite, and a particular inclination is regarded as a necessitated appetite for a particular object of Desire. Again, "necessitated" means "*made* necessary"; the maker of an inclination is the person himself, and the way it is made is by constructions of practical maxims in his manifold of rules. These constructions, however, are responses to actions taken with practical judgment *ex post facto* of their outcomes in regard to satisfaction of the practical demand for equilibration (the formula of the categorical imperative of practical Reason). Thus, self-made inclinations and passions are learned, not innate. Aristotle taught,

> [It] is clear that none of the moral virtues is engendered in us by nature, for no natural property can be altered by habit. . . . The virtues therefore are engendered in us neither by nature nor yet in violation of nature; nature gives us the capacity to receive them, and this capacity is brought to maturity by habit. Moreover, the faculties given us by nature are bestowed on us first in potential form; we exhibit their actual exercise afterwards. [Aristotle (c. 340 BC), Book II, pg. 71]

As it is with virtue, so, too, it is with vice. Adams went on to say,

> The desire of the esteem of others is as real a want of nature as hunger; and the neglect and contempt of the world as severe a pain as the gout or stone. . . . It is a principal end of government to regulate this passion, which in turn becomes a principal means of government. It is the only adequate instrument of order and subordination in society, and alone commands an effectual obedience to laws, since without it neither human reason nor standing armies would ever produce that great effect. [Adams (1790), pg. 341]

So it is that here we can see a fundamentally important relationship between law, justice, and the passion for distinction pointed out by one of the greatest social-natural political scientists in an age of great social-natural political scientists that has never been equaled in Western history.

Certainly the subjectivity inherent in this affective motivator is a major challenge to the designing of an institution of a justice system. Affectivity stubbornly resists efforts to explain or understand it objectively by the rational arguments and concepts learned people have passionately favored since ancient times. Still, to be difficult is not the same as to be impossible because the possibility might be discovered in an unexpected and largely unappreciated place. Consider what it is that great poetry is capable of doing. Those poets who are called great are people who succeed in expressing powerful *metaphors* that move the reader *affectively* by use of *objective* images. A poem is expressed in words, words convey objective images, and the great poet's skill lies in making these images arouse feelings and passions in the reader. Ask yourself whether you are somehow moved or not moved, or are somehow affected or not affected, as you read these words:

> In Flanders fields the poppies blow
> Between the crosses, row on row,
> That mark our place; and in the sky
> The larks, still bravely singing, fly
> Scarce heard amid the guns below.
>
> We are the Dead. Short days ago
> We lived, felt dawn, saw sunset glow,
> Loved and were loved, and now we lie
> In Flanders fields.
>
> Take up our quarrel with the foe:
> To you from failing hands we throw
> The torch; be yours to hold it high.
> If ye break faith with us who die
> We shall not sleep, though poppies grow
> In Flanders fields. [John McCrae, *In Flanders Fields*, 1915]

It will surprise a great many people, because of the way the subject is taught, but describing connections between affectivity and manifest actions is a task for which *mathematics* is sublimely well suited. Indeed, the *foundation* for mathematics in human nature is aesthetical [Wells (2020), chap. 5]. Poincaré wrote,

> More commonly the privileged unconscious phenomena, those that are capable of becoming conscious, are those which, directly or indirectly, most deeply affect our sensibility.
>
> It may appear surprising that sensibility should be introduced in connection with mathematical demonstrations, which, it would seem, can only interest the intellect. But not if we bear in mind the feeling of mathematical beauty, of the harmony of numbers and forms and of geometric elegance. It is a real aesthetic feeling that all true mathematicians recognize, and this is truly sensibility.
>
> Now, what are the mathematical entities to which we attribute this character of beauty and elegance, which are capable of developing in us a kind of aesthetic emotion? Those whose elements are harmoniously arranged so that the mind can, without effort, take in the whole without neglecting the details. This harmony is at once a satisfaction to our aesthetic requirements, and an assistance to the

> mind which it supports and guides. At the same time, by setting before our eyes a well-ordered whole, it gives us a presentment of a mathematical law. Now, as I have said above, the only mathematical facts worthy of retaining our attention and capable of being useful are those which can make us acquainted with a mathematical law. Accordingly, we arrive at the following conclusion. The useful combinations are precisely the most beautiful, I mean those that can most charm that special sensibility that all mathematicians know, but of which laymen are so ignorant that they are often tempted to smile at it. [Poincaré (1914), pp. 58-59]

The foundations of mathematics in human nature are none other than what Kant called the approvals of taste. Judgments of taste are *entirely* aesthetical. If the teaching of mathematics ever breaks away from the stranglehold the flawed philosophy called "formalism" has had on it for many decades, and recognizes its epistemological foundations in human nature, we could then look forward to a mass intellectual renaissance in mathematics that will sweep away Mankind's present widespread ignorance of the topic. In the meantime, there is nothing really standing in the way of working up valid mathematical descriptions of the nature of Adams' passion for distinction and its connection with manifest human behaviors and with the Idea of Justice.

Inclination, as sensuous and habitually necessitated appetite, is causally conditioned by practical maxims in a person's manifold of rules. Any passion is an appetite of inclination, and so Adams' affective motivators must *logically* stand in some synthetic relationship with these practical constructs. To understand such a relationship therefore requires a synthesis of the judicial and practical Standpoints of Critical epistemology, i.e., synthesis of the construction of experience (see figure 8 in chapter 3),

judgmentation in formal expedience + judgmentation in action → judgmentation in understanding.

Sensuous appetites are empirical in origin and, consequently, practical maxims of inclination also owe their construction in the manifold of rules to empirical experience. Conceptual outcomes of the synthesis are, therefore, ideas of *noumena* and, more specifically, must be *made* in ways that maintain direct connections to empirical experience. This is a *mathematical* principle of speculation following from the requirement of Critical Epistemology that *noumenal* constructs can have practical objective validity only when they are necessary for the possibility of human experience. The character of Adams' affective motivators, being empirical, must find their synthetic pairing with practical notions having this same empirical character in their deductions. This partner in synthesis is provided by Kant's moral categories.

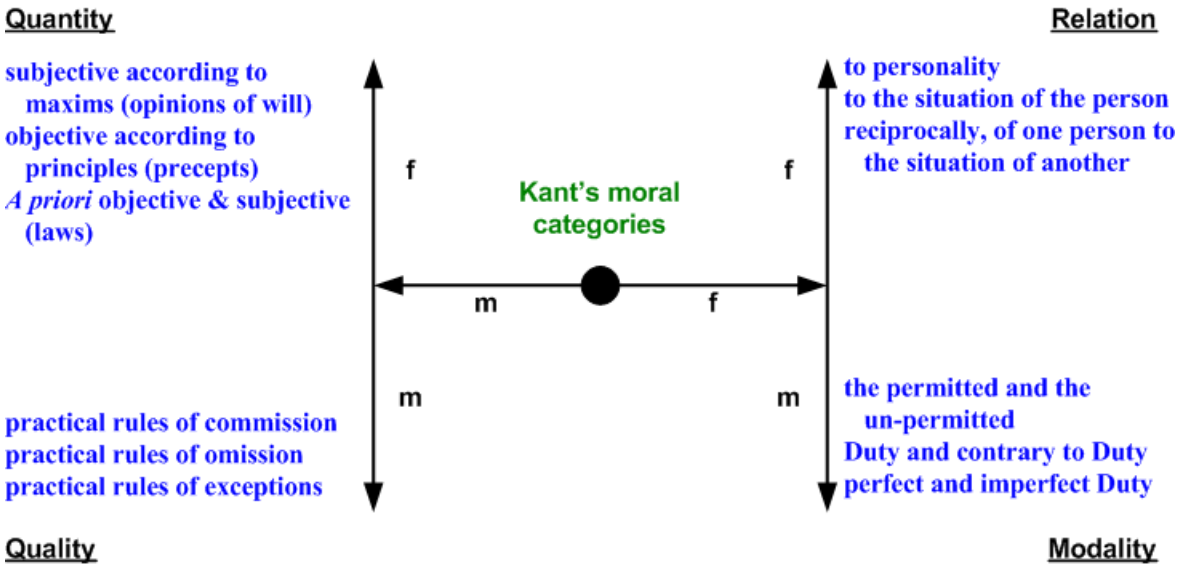

Figure 1: Kant's moral categories.

As noted earlier, Kant's moral categories (figure 1) are not epistemological primitives. They belong to that class of noumena fitting Aristotle's "clearer to us" descriptions of nature. Likewise, Adams' passion for distinction in all the cases he described falls into this class of noumenal speculation. The goal of their synthesis with Kant's moral categories is to develop a speculative understanding of their relationships with behaviors and attitudes at a level similar to the level of explanations we have for the moral categories. The way it is described, Adams' general passion for distinction is not well enough described to be analyzed into a 2LAR, and this means our level of understanding it from the perspective of a science will be more like the level of a Galileo or a Kepler rather than that of a Newton. (In this metaphor, Adams himself can be handily likened to Copernicus).

Reviewing the Adams quote, one facet of it easily stands out at once. In every case, the person's action is grounded in some speculative benefit *to himself* grounded in his situation with regard to another person. This means that the moral category of Relation is that of Relation to the situation of the person. Further, because any passion is a necessitated *habitual appetite*, all of the specific passions for distinction are appetites serving self-love (determination of a choice on the subjective ground of happiness). As habitual appetites he has *made necessary* for himself as subjective maxims of action, their Modality is that of an *imperfect Duty-to-himself* and their Quantity is *subjective according to maxims* since his purpose is not grounded in any *objective* precept. This leaves only the moral category of Quality undetermined. Here we must take into account that, in his pursuit of equilibrium - the progress towards which is adjudged by feelings of *Lust* or *Unlust* - his efforts will generally involve multiple specific acts of commission or omission, and so the Quality relationship in the passion for distinction overall aligns with the category of *practical rules of exception* according to situation.

What these results convey to us is that the passion for distinction stands aloof from those *social* mores we traditionally regard as *moral* maxims since these all pertain to the moral category of reciprocal Relation. At best, a particular passion for distinction is asocial; at worst it is antisocial. It therefore contributes nothing to *obligatio externa* in social contract commitment and, indeed, might be contradictory to it. Passion for Emulation is congruent with the fundamental term of a social compact[4]. Passion for Ambition, depending upon how the individual acts to further his ambition, can be either congruent or incongruent with the social compact term. Passion for Jealousy is at best an inclination contrary to the term of the social compact and, at worst, is in contradiction to it. Passion for Envy is malignant and, because it seeks to do harm to another, is incongruent with the term of the social compact. Passion for Vanity tends to be poisonous to the individual's commitment to the term of the social compact, and if it goes on to lead him to actions contrary to the fundamental *condition* of the social compact[5] then it is antisocial[6].

3. Stereotyping

Critical Epistemology defines stereotyping as *the process of forming judgments about people or things based on abstract models a person makes for himself*. The model is called a stereotype. A person conceptualizes a stereotype in order to better facilitate judgmentations of appearances involving persons or things he has so modeled or classified. Such judgments, though, can never be judgments of *real* people or things because a stereotype represents an *abstract* person or thing, i.e., it is a strictly mathematical concept that wholly characterizes no real individual person or thing.

[4] "Each associate is to put his person and all his power in common with those of the other associates under the supreme direction of the general will, and that each associate, in his corporate capacity, will regard every other associate as an indivisible part of their whole body politic" [Rousseau (1762)].
[5] "The association will defend and protect with its whole common force the person and goods of each associate in such a way that each associate can unite himself with all the other associates while still obeying himself alone" [*ibid.*]
[6] Descriptive of behavior which is disruptive and harmful (or potentially so) to the functioning of a group or Society.

First and foremost, a stereotype is a *model* and a model is a representation that mirrors, duplicates, imitates, or in some way illustrates a pattern of relationships observed in data or nature. Many people simply presume that stereotyping is a universally a bad thing but this is untrue. Science, for example, would not be possible if scientists did not stereotype aspects of nature to describe empirical classes of appearances. Whatever you might think of science overall, without it many things you regard as being "good things" in life would not exist; so too would many things you regard as being "bad things." *You yourself* would find it impossible to successfully function in everyday life if you had no stereotype concepts. One of the things you must be prepared to accept about stereotypes is that *you will find both truth and falsity in them*. When you use a stereotype to think and reason about someone or something, you are using reasoning by analogy and because of this some of your judgments can be in error. Indeed, this is a principal source of extravagance in reasoning (which I discuss in section 5 below).

Stereotyping *per se* is neither good nor bad; only the *uses* made of stereotypes are. Stereotyping sets up meaningful contexts for applying them. Because these contexts are usually taken for granted in everyday uses of stereotypes, and because this taking-for-granted tends to overgeneralize them, stereotypes are easily exploited and abused by propaganda. Merrill and Lowenstein wrote,

> Regardless of which of the many definitions [of propaganda] one is examining, he finds certain core ideas about propaganda: "manipulation," "purposeful management," "preconceived plan," "creation of desires," "reinforcement of biases," "arousal of preexisting attitudes," "irrational appeal," "specific objectives," "arousal to action," "predetermined end," "suggestion," and "creation of dispositions."
>
> Out of all these terms one may gather a certain impression about propaganda. It seems that propaganda is related to an attempt (implies *intent*) on the part of somebody to manipulate somebody else. By manipulation we mean *to control* – to control not only the attitudes of others but also their actions. Somebody (or some group) – the *propagandist* – is predisposed to cause others to think in a certain way, so that they may, in some cases, take a certain action. Propaganda, then, is the effort to manage the attitudes and actions of others through playing on their preexisting biases with messages designed largely to appeal to their emotions and/or irrationality.
>
> The propagandist does not want his audience to analyze or to think seriously about his message. He does not want to be questioned about his remarks. He does not want to be forced to deal in specifics or to present evidence. He has what Harold Lasswell has referred to as a noneducational orientation; by this he means that the ends or solutions had already been determined before the search for truth began. . . . Propaganda is not an invitation to the audience to deliberate, to contemplate, to analyze, to think, to question. It is an invitation to come to rather quick conclusions or to reinforce existing conclusions. It is an invitation to change or strengthen one's attitudes and to involve oneself in an action of some type. . . .
>
> Before looking more specifically at propaganda in journalism, perhaps it would be well to make these points about the propagandist: 1. He is *not* disinterested, 2. he is *not* neutral, 3. he *has* a plan, a purpose, a goal, 4. he *wants* to influence, to persuade, to affect attitudes and action, 5. he is not interested in audience members making up their own minds on the basis of a fair and balanced presentation of information. [Merrill & Lowenstein (1971), pp. 214-215]

One principal reason stereotypes pose a challenge is because propaganda targets your stereotypes and tries to do so in such a way to make you react on the basis of your stereotype without taking time to reflect upon it. It tries to rush you past this. Let us take traditional mass media as an example. Merrill & Lowenstein wrote,

> The mass media, in their news and interpretation aspects, simplify the reality of events with regularity. They present men and events as one dimensional and static. They not only create stereotypes but they perpetuate them and spread them through repetition and emphasis. The journalist who propagandizes finds this an easy and effective tactic. [Merrill & Lowenstein (1971), pg. 221]

Marshall McLuhan famously declared, "the medium is the message," and there is a great deal of truth in this statement. His statement is no less true of the relatively new phenomenon of "social media" made possible by the technology of the Internet.

Propaganda tries to make you *mis*use your stereotypes for purposes not your own. All propaganda contains an element of deception in it – not necessarily deception by telling outright lies, although this does happen frequently; but deception by *omission* of other relevant facts and contexts. This is part of its effort to get you to, as Merrill & Lowenstein put it, "come to quick conclusions or reinforce your existing conclusions." One way you should *not* try to defend yourself from propaganda is to retreat to cynicism. There is much truth in Oscar Wilde's remark, "A cynic is one who knows the price of everything and the value of nothing." If you make it your maxim to dismiss *everything* you read and hear out of hand, this is a maxim making it easy for you to ignore your Duties as a citizen. Along with the veracity of statements and ideas, you must try to determine the veracity of whoever makes the statement or is claimed to be its source. A degree of healthy skepticism when you first encounter statements is beneficial; it means you are reserving judgment until you have chance to check it out from other sources you have good reason to think are reliable and trustworthy. That criterion, all by itself, exposes social media and much of what is found on the Internet as the untrustworthy and propaganda-laced back fence gossip it is.

One of the great challenges stereotyping poses for institutions of justice systems is exemplified by a widely held stereotype we call "***free speech***." I call free speech a stereotype because, over the years, the idea of it has been made an overgeneralized synonym for *any* form of expression, and this was ***not*** what was meant when its original idea was written into the First Amendment to the U.S. Constitution by the first U.S. Congress. Americans in 1789 regarded a liar as a "transgressor of decency and morality" and such was the practical social power of public mores it was nearly inconceivable that anyone could ever agree there was such a thing as "the right to tell lies." If you should doubt this, then why do you think laws prohibiting defamation, slander and libel were passed? Why do parents teach their children, "telling lies is naughty"? Is telling a lie only "naughty" when a child does it?

In the U.S. and other countries governed by popular government, "free speech" has been reified to the point where it is held-to-be a holy relic. If you question anyone's "right to free speech" out loud in the U.S. you are, more likely than not, at risk of bringing down on yourself a flood of passionate indignation even if the speech you are questioning is the "right" to lie to people. Another absurd misuse of the stereotype "free speech" is the idea that money contributed to political campaigns for the purpose of bribing potential public officers is "protected free speech." It might be true that "money talks," as the saying goes, but money is not "speech" in any way whatsoever and it never has been.

One great misuse of stereotyping, to the detriment of the welfare and stability of Societies, is that stereotyping is used to modify Society's language. It does this by introducing metaphors that change the meanings of words by adding new meanings the old words never comprehended. For example, in the 1919 Supreme Court decision in *Schenk v. United States*, Justice Holmes wrote that no free speech safeguard would cover someone who falsely yelled "fire" in a crowded theater and caused a panic. Yet in the U.S. the safeguard of the First Amendment is regularly extended to protect deceptive propaganda. Why is it important to safeguard *uncivic* free speech aimed at deceiving people along with *civic* free speech questioning, say, the justness of a law or the qualifications of a candidate for office and asking for examination and debate about it? Why is lying to a police officer *not* protected free speech while lying to the general public *is* regarded as protected free speech? Would it mean the end of popular government if election laws favored election of statesmen over election of candidates who employ the most skilled staff of propagandists? I put it to you that the stereotype "free speech" has become an overgeneralized concept (an extravagance of reasoning) and that it is ***civil*** *liberty of speech* that properly should be the protected object. By "civil liberty of speech" I mean the saying or writing of opinions not-incongruent with the fundamental condition of Society's social contract.

Merrill & Lowenstein list several common propaganda tactics made possible by subtly manipulating

stereotypes. These include: presenting opinion as fact; making biased attributions; using misleading headlines; using biased photographs; censorship (also called "exercising editorial or news prerogatives"); repetition; negativism; appeal to authority; and fictionalizing (unannounced use of conjecture) [Merrill & Lowenstein (1971), pp. 221-227]. If you would learn how to not be duped by propaganda, you must learn to recognize its tactics. To do that, you must learn how to recognize when a stereotype is being exploited.

4. Bigotry

Perhaps the most socially perverted misuse of stereotypes is bigotry. It might very well be the social phenomenon standing in foremost contradiction to civil Community. I find myself unable to identify any other social phenomenon *more* contradictory to civil Community short of civil war.

Bigotry is *obstinate or ideological attachment to a particular party, sect, faction, opinion, or ideological dogma with excessive prejudice*. It has many manifestation including phenotypical racism, religious bigotry, ethnic bigotry, and economic bigotry. Often – and I am inclined to say "almost always" – bigotry leads to social stratifications established as caste systems. A caste system within any community (including nation-state Societies) is a mark of state-of-nature relationships among the different castes regardless of any "separate but equal" propaganda put out in denial of this. Where castes exist within a Community, there too exist Toynbee proletariats (people who have morally seceded from allegiance to the civil association because of perpetuation of injustices). Caste stratification is an identifying mark of *at the least* asocial governance of a community, and the line between asocial governance and antisocial governance is an extremely thin one.

Bigotry, in its obstinacy and excessive prejudice, is often an unquestioned holding-to-be-true of the stereotype but, more than this, involves *refusal* to question the stereotype. Ignoring evidence contrary to the bigoted belief (type-α compensation or "ignórance" in Critical terminology) is a characteristic mark of bigotry. Type-α compensation produces only unstable equilibrations in response to disturbance, which means that disturbances reoccur again and again from a variety of stimuli. Experiencing these re-occurrences itself becomes an additional source of disturbance to equilibrium. Anger, hostility, and aggression are not-uncommonly expressed as responses to this.

A bigot is any person who holds a bigoted attachment. The fundamental term of every social contract contains a requirement that each associate commit himself to a Duty to regard every other associate as an *indivisible* part of the whole body politic. But it is a fundamental characteristic of bigotry that the bigot *does* draw, in his own mind and often in other ways as well, divisions between some members of the Community and other members. Bigotry therefore *inherently* contains a contradiction to the term of the social contract. Whatever he might profess to the contrary, a bigot is *at best* an outlaw embedded in a civil Community; at worst, he is a deontological criminal. In either case, he is an infection in the body politic.

However, it is important here to note that *not all bigots know their ideas and maxims are bigoted*. The reason is because of another social phenomenon called "institutionalized bigotry." ***Institutionalized bigotry*** is *bigotry set up or established in the instituting of a system by means of common suppositions or speculations used as principles in the practice of the institute's functions*. The source of its institution lies most often in folkways and moral customs the majority of people in a Society accept without question because they were brought up from childhood within that Society and adopted these folkways and customs as part of their processes of socialization. Homogeneities in Society (or one of its sub-Societies) tend to mask its differences from other Societies or sub-Societies, and this allows customs and habits of thinking to take root and develop that a different Society regards as anathemas. The most consistent finding of anthropologists is the finding that every adequately functioning culture regards its own ways as the only proper ones and holds them to be superior to any other culture it encounters [Haviland *et al.* (2008), pg. 323]. Customs and folkways are learned *habits* of behavior expressed unthinkingly almost like an automaton.

In most cases, institutionalized bigotry quietly slips into the customs and folkways of a Society. It goes unnoticed because it usually favors a majority of a Society's population – sometimes on a national level, other times on a restricted and localized level. As an example of the latter, you can compare the folkways of a large city's population to those of rural communities. You can find it in the "company culture" of a large commercial business. Cases of institutionalized bigotry like these are generally accidental and rooted in the early history of a Society or a mini-Community. Here acting on the basis of institutionalized bigotry must be seen as a moral fault rather than a moral crime because the actors have no *intent* of harm. The unintended harm of prejudicial customs must be redressed, but the *education* of people is the most appropriate means of doing so - the aim of which is to end *perpetuation* of bigotry.

In other cases, institutionalized bigotry is intentionally instituted, although often with "good intentions" on the part of the institutors. Sometimes it is the case that the institutors' "good intentions" are based on imaginary fears; at other times, the intentions themselves are byproducts of personal bigotry. It is in these cases we find moral criminality in the institution. Examples of this include the introduction of Intelligence Quotient (IQ) testing [Wells (2013), chap. 15, pp. 548-555], the differentiated curriculum and "tracking" of pupils, according to socio-economic caste or immigration, by the Progressive Education Movement (PEM) in the first half of the 20th century [Wells (2013), chap. 14, pp. 528-531]. Many PEM educators decried the increasing high school enrollments of the time on bigoted grounds that 95% of all American children were "destined" to become wage laborers and "fit" into American Society in precisely the same economic and social ways as their parents. In 1910, the superintendent and deputy superintendent of the Cleveland school system co-wrote,

> It is obvious that the educational needs of the child in a district where the streets are well paved and clean, where the homes are spacious and surrounded by lawns and trees, where the language of the child's playfellows is pure, and where life in general is permeated with the spirit and ideals of America – it is obvious that the educational needs of such a child are radically different from those of the child who lives in a foreign and tenement section. [Elson & Bachman (1910)]

This is a superb example of institutionalized bigotry being *born out of* personal bigotry. Elson & Bachman weren't passively following along with *existing* customs and folkways; they were among the creators of a *new* custom in education that is still with us today. And they were not isolated voices. The majority of the members of the Progressive Education Movement agreed with them. In U.S. history, mass movements and political groups who put the adjective "progressive" in the name of their movement or group have documentable histories of almost always being institutors of institutionalized bigotry. *Ipso facto*, they have been many things, but "progressive" in the context of Progress is not one of them. Their self-labeling is just propaganda. In a country founded on the principles the United States was founded upon, institutionalized bigotry alike to these examples is, deontologically, a moral crime.[7]

Bigotry arises from the phenomenon of stereotyping, and stereotyping is a natural phenomenon of mind and inherent in it. Nothing you or anyone else can ever do can abolish stereotyping without abolishing our species at the same time. Many past and present well-intentioned would-be reformers mistake innocent mannerisms for "proof" of bigoted attitudes or customs by "logic-chopping" (over-precisioning) its contexts of usages. One common example is going after mannerisms of language by reading bigotry into

[7] There are some who argue that the institution of slavery was one of these founding principles. I very much disagree that it was a principle of the American Revolution at all. The American colonies did not revolt against Great Britain because their existing institution of slavery was threatened by the British king or parliament. It wasn't. The fact that racism descended in part from the institution of slavery and in part from religious bigotry, and that this bigotry still persists in America today, can legitimately be used to argue that the phrase "We hold these truths to be self-evident: that all men are created equal" was tainted with hypocrisy on the part of some colonists; but it is also true that some black Americans - for example, Crispus Attucks, Peter Salem, Salem Poor, Barzillai Lew, and Seymour Burr - joined the Patriot Party and were members of the revolutionary generation of Founders of American independence. To ignore this is to stereotype in a bigoted way who the Founding Fathers were.

situations where it doesn't actually exist. The "political correctness in language and speech" movement is an example of this.

Certainly one can justifiably go after bigoted language where an actual propaganda intent is found, e.g.: "tax-and-spend Democrat"; "greedy capitalist"; "rock ribbed Republican." But the point I am trying to make here is: *don't make yourself a bigot about bigotry*. Understand it for what it *essentially* is and exercise restraint in labeling things "bigotry" by enthusiasms of self-compulsion. Bigotry is a serious social and deontologically moral problem; it cannot be redressed by trivializing it or by imagining its *Existenz* under every linguistic or grammatical rock. Be judicious in your identifications of it.

5. Extravagances in Reasoning

Inclination presents one kind of challenge and it arises from the receptivity of the somatic senses. Spontaneity, the other source of Man's understanding of Objects and which is effected through reasoning in judgmentation, *also* presents a challenge. This challenge is called *extravagance in reasoning*.

The process of Reason is the master regulator of all non-autonomic action, thinking, and judgmentation. But this process is both affectively cold (Reason feels no feelings) and objectively dark (Reason knows no Objects of cognition). It follows only the formula of the practical categorical imperative of pure Reason (regulation for achievement and maintenance of equilibrium) and uses physical action expression and mental ratio-expression (employment of speculative Reason) to pursue this pure purpose. Its regulation effects what Kant called a transcendental dialectic of pure Reason by means of regulative principles of speculative Reason (which Kant called the Transcendental Ideas of pure Reason) [Kant (1787) B: 390-398]. In the employment of the process of speculative Reason, pursuit of equilibrium seeks to make cognition systematic (construction of the manifold of concepts), and to extinguish feelings of *Lust* and *Unlust* adjudicated in the process of reflective judgment (presentation of the manifold of Desires).

Pure Reason is not limited by any bounds imposed by experience. On the contrary, it is the process of Reason that drives the *construction* of a human being's knowledge of experience. Kant tells us human Reason has a natural propensity to overstep all boundaries of experience and that, by doing so, can lead us to conceptualize transcendental *illusions* of Objects [Kant (1787) B: 670]. Such illusions can be seductively deceptive and, he tells us, extremely difficult to resist [*ibid*.]. Upon first encounter with this characteristic of human reasoning, one might very well think that perhaps the human ability to reason is a handicap to human nature and, to a limited degree, sometimes this is so. But this ability is also what provides human beings with a capacity for understanding that far surpasses those of animals and brings us everything that is good in art, in wisdom, in compassion, in Community, and in religion.

In 16th century Europe, some churchmen argued that learning was dangerous for ordinary people when this learning went beyond acquisitions of simple knowledge of practical skills or prescribed religious dogma. It can scarcely be doubted that this opinion grew out of disbenefits that, epistemologically, were rational products of transcendental illusion. Heresy, for example, was placed in the category of wrong-thinking produced by too much learning[8]. Francis Bacon, who some credit with summoning the Age of Reason in Europe (1685-1815) [Durant (1961), pp. 162-183], disagreed:

> I hear [the divines] say that knowledge is of those things which are to be accepted of with great limitation and caution: that the aspiring to overmuch knowledge was the original temptation and sin whereupon ensued the fall of man; that knowledge hath in it somewhat of the serpent, and therefore where it enters into a man it makes him swell . . . To discover then the ignorance and error of this opinion, and the misunderstanding in the grounds thereof, it may well appear that these men do not observe or consider that it was not the pure knowledge of nature and universality, a knowledge by the light whereof man did give names unto other creatures in Paradise, as they were brought before him according to their properties, which gave occasion to the fall: but it was proud knowledge of good and

[8] Heresy is religious opinion contrary to church *orthe dóxa* (ὀρθή δόξα: "right opinion"; orthodoxy).

> evil, with an intent in man to give laws to himself, and to depend no more on God's commandments, which was the form of the temptation. [Bacon (1605), pg. 6]

"The divines" were not entirely wrong; knowledge without the wisdom to use it morally and properly *has* proven dangerous and tragic sometimes in human history. But Bacon was correct too in his remark that *proud* "knowledge of good and evil" can excite dangerous temptations. It is excess of pride held by people about their opinions wherein what I call the challenge of extravagance in reasoning germinates. Elsewhere Bacon wrote,

> In general, men take for the groundwork of their philosophy either too much from a few topics, or too little from many; in either case their philosophy is founded on too narrow a basis of experiment and natural history, and decides on too scanty grounds. [Bacon (1620), pg. 35]

"Taking too much from too little" and "taking too little from too much" are the two excessive poles of extravagance in reasoning. Kant identified two maxims of logical reasoning aimed at moderating it:

> 1. the principle of parsimony ("law of genera"): *entia praeter necessitatem non esse multiplicanda* ("entities are not to be multiplied without necessity");
>
> 2. the law of specification: *entium varietates non temere esse minuendas* ("the varieties of entities are not to be diminished rashly"). [Kant (1787) B: 680-684]

To these two maxims he added a third, which he called the "law of affinity":

> Reason thus prepares the field for understanding: 1. by a principle of *sameness of kind* in the manifold [of concepts] under higher genera, 2. by a fundamental proposition of the *variety* of what is same in kind under lower species; and in order to complete the systematic unity it adds 3. still another law of the *affinity* of all concepts, which offers a continuous transition from every species to every other through a graduated increase in varieties. We can call these the principles of the homogeneity, specification and continuity of forms. . . .
>
> The first law, therefore, guards against excess in the manifold variety of original genera and recommends sameness of kind; the second, on the contrary, limits in turn this inclination to unanimity and demands that one distinguish subspecies before one turns to the individuals with one's general concepts. The third law unites the first two, prescribing even in the case of the highest manifoldness a sameness of kind through the graduated transition from one species to others, which shows a kind of kinship of various branches insofar as they have all sprouted from one stem. [*ibid*., B: 685-688]

Kant does not mean for us to take these "laws" in a context like that of a law of nature (e.g., the "law of gravity"). It is more specifically accurate to call them "rules of good practice in dialectic reasoning." They come about from lessons learned by experience in speculating about Nature[9]. The process of Reason knows no objects of experience; rather, Reason is the carpenter of experience itself. Its carpenter's tools are the process of determining judgment and the synthesis of understanding in thinking. *Objects* are represented by *concepts* structured and ordered by the process of determining judgment in the manifold of concepts. Because: 1) object concepts originate in sensibility (as intuitions); and 2) matters of sensibility come *both* from the receptivity of our outer senses *and* from imaginative reintroduction of concepts from the manifold of concepts, it is just as possible for us to think fictional and imaginative objects as it is to think objects of nature. *Every* object is real in *some* contexts, unreal in *others*, and non-real in still others. Big Bird and Winnie the Poo are beloved *make-believe* children's objects – real in the context of story objects, unreal in the context of actual living beings, and non-real if you, the adult, have never heard of them before. The process of pure practical Reason is utterly indifferent to these distinctions unless and until their representations produce a disturbance to the person's equilibrium.

[9] By "Nature" I mean the objective representation (‘world model’) of all-that-exists.

Kant teaches us,

> The outcome of all dialectical endeavors of pure Reason not only confirms what we have already proved in the Transcendental Analytic, namely that all our inferences that would carry us beyond the field of possible experience are deceptive and groundless, but at the same time it teaches us this lesson: that human Reason has a natural propensity to overstep all these bounds, and that transcendental Ideas are just as natural to it as the categories are to understanding – although with this difference: that just as the latter [the categories] lead to truth, i.e. the congruence of our concepts with their Objects, the former [transcendental Ideas] effect a mere but irresistible illusion, deception by which one can hardly resist even through the most acute Critique. [Kant (1787) B: 670]

The principles of homogeneity, specification, and continuity of forms are pragmatic maxims of prudence aimed at trying to help you avoid the "deceptions and illusions" reasoning can lead you to. Your concept of Big Bird, if you have one, does no harm to you or anyone else unless, for example, you write his name in on the ballot as your choice for president of your country (and thereby derelict one of your duties as a citizen of a representative democracy[10]).

Kant's principles are not innate principles governing the process of Reason. They are learned – or not, as the case may be – through experience and thus are *man-made principles* rather than *principles making-a-man*. As for the process of Reason,

> Reason never relates directly to an object, but solely to understanding and by means of it to Reason's own empirical application; hence it does not *create* any concepts (of Objects) but only *orders* them and gives them that unity which they can have in their greatest possible extension, i.e., in regard to the totality of series; understanding does not look to this totality at all, but only to the connection *through which series* of conditions always *come about* according to concepts. Thus Reason really has as object only understanding and its purposive engagement, and just as [understanding] unites the manifold into an Object, so Reason on its side unites the manifold of concepts through Ideas[11] by positing a certain collective unity as the goal of understanding's actions, which are otherwise concerned only with distributive unity. [*ibid*., B: 671-672]

There are two socially harmful effects of failing to learn, and to discipline yourself to follow, these pragmatic maxims of reasoning. The first, which is directly related to stereotyping, is *overgeneralization*. Concepts of higher genera are synthesized by making abstractions from lower concepts (the species under the concept of a genus). Abstraction is an act of precisioning that eliminates from the concept of the genus everything by which the lower concepts standing under it differ. For example, the concept of the genus "Native American" contains in it *none* of the specific concepts characteristic of individual differences found among the people *classified* under this genus. The concept "Native American" is an idea of an *abstract* person. Its Object is a mathematical entity. You might be correct to think that some *specific*

[10] Even this example has its exceptions. In nations where there are political parties, voters are usually presented *only* with choices of candidates the political *parties* have selected; and if all of them are unacceptable to you, you typically are not given a choice to vote "none of these." Write-in candidates might be allowed on the ballot but this is an option cynically provided by election laws to buttress a claim that "you really *were* given a choice." Political parties are aware through experience that a write-in candidate never, or almost never, wins. However, if by some chance a majority of voters were to write in "Big Bird" as their candidate, this would effectively be the same as a choice of "none of these" *provided* the election laws did not rule that this vote is void and not to be counted as a vote at all. Unfortunately, the oligarchies of political parties do usually protect their monopoly on the mechanisms of elections against mere *voters* rebelling against the parties' choices of candidates. Such election laws are, of course, unjust. So are laws by which a party's candidate who has died prior to the election is still offered as a ballot choice – this being merely a corrupt tactic by which election law forces you to vote for a *party* instead of a person.

[11] The Ideas Kant refers to here are known as "*the* Transcendental Ideas of *pure* speculative Reason." They are *a priori* regulations for Reason's *employment* of the process of determining judgment by means of ratio-expressions of practical Reason.

individual "can't hold his liquor" – just as there are *specific* Caucasian, Asian, etc. individuals who "can't hold their liquor." But the concept "can't hold his liquor" is *not* a characteristic concept standing under the genus "Native American" (nor that of "Caucasian" nor that of any other ethnic genus). If you *make* a concept "Native Americans can't hold their liquor," this concept is an overgeneralization of the concept of "Native American" and other judgments grounded in the overgeneralization are unreal (false) propositions of transcendental deception. Racism is a manifestation of such a transcendental deception.

Errors of overgeneralization have frequently brought about bigotries, religious pogroms, persecutions, and wars. They also bring about errors in scientific theories and injustices in political legislation. Over-generalization is a commonly used tactic by which propaganda deliberately misleads people. Human beings have, as Kant put it, a propensity to overgeneralize. It is one of the extravagances in reasoning.

Specification can be another source of extravagance in reasoning. Extravagances of specification might, perhaps, be less frequent – or perhaps they are merely more subtle and difficult to perceive – but they are not-uncommon. For example, a person might honestly think that he is a "good citizen" and yet, by under-specification of his concepts of Duties, make himself a deontological outlaw to his Society. One sees evidence of this in democratic Societies when many people loudly talk about "the right to vote" but few speak with equal vigor about a citizen's *Duty* to vote. Deontologically, a civil *right* is any object defined by a civil convention that is regarded under that convention as in intangible property possessed by every member of the civil Community as an expected benefit of citizenship in that Community.

But for every civil right established by social contract there are accompanying *civic Duties*; these can be regarded as the "price" one must obligate himself pay in order to *purchase* his rightful possession of a civil right. If you rightfully possess a civil right to be protected by the police then you also have a Duty, as one of the *terms* of your social contract, to serve as a witness when you have knowledge of an unlawful action or incident. For example, suppose you witness an auto accident in which someone runs a stop sign and collides with another vehicle. Someone, *at least* one person, has been harmed during this accident and justice demands this harm somehow be redressed. But *how*? Making this decision is the function of a court of law but, in order to render a just decision in the matter, the members of that court must be presented with all the facts pertinent to the incident. *You* have knowledge of some of these because you saw what actually happened. But if you say to yourself, "this is none of *my* affair," and do not stop and remain at the scene of the accident until the police arrive to investigate it, you *deprive* your Community of facts that might be needed for a court to arrive at a just decision and make a fair ruling. If this does not occur to you, or you do not recognize your Duty to serve as a witness, then you have under-specified your concept of your Duties as a citizen, and this is an extravagance in reasoning by specification. As a person you belong to yourself; but as an associate in and indivisible part of the body politic of a civil Community, you belong to all its other citizens (and they to you). Here we find an opposition of interests – you in regard to your individuality vs. you in regard to your citizenship – and this opposition makes extravagance in reasoning by specification a formidable challenge.

Here is where Kant's maxim of affinity (continuity of forms) comes into its practical importance. The word "extravagance" carries a connotation of a lack of moderation or balance. Being overhasty or over-enthusiastic about either generalizing your ideas *or* specifying them too precisely is to reason immoderately or with a lack of balance in regard to what to leave in and what to leave out of the concept. Kant's maxim of affinity counsels you to try to insure the constructed manifold of your concepts proceeds with logical continuity in going from a concept of a genus to those of its species and *vice versa*. You should not expect yourself (or others) to always do this perfectly. It is easy to make a leap of judgment (a *saltus*) and equally easy to leave gaps in reasoning (a *hiatus*). It takes discipline and patience to avoid both. It takes discipline because reflective judgment is an impetuous process and practical Reason is an impatient one. A human being is not innately a creature of discipline; discipline is instead a learned habit and it must be consciously cultivated. Furthermore, the matters of experience that judgment and reasoning have to deal with are empirically *contingent* in Modality. A judgment you make today is one you might make differently tomorrow if you learn about new evidence or contexts that you do not know about today.

This is one important reason precedents of case law in the U.S. legal system are sometimes moderated by new precedents set out in later court rulings. For example, the 1st Amendment of the U.S. Constitution contains a clause prohibiting Congress from making any law "abridging the freedom of speech." But 128 years later, in 1919, the Supreme Court recognized this clause is an extravagance of overgeneralization in the ruling it rendered in *Schenk v. United States*. This case had to do with enforcement of the Espionage Act of 1917. It involved defendants opposed to the U.S. entry into World War I who had distributed fliers urging draft-age men to resist involuntary conscription into the armed forces under provisions of Title 10 of the U.S. Code, §246 (the federal law that authorizes conscription). The standing of this law under the actual wording of Article I section 8 of the U.S. Constitution is rather vague but the Supreme Court had previously upheld its constitutionality in *Arver v. United States* (1918). In *Schenk v. United States*, the Court ruled that the fliers were not a protected expression of free speech because during wartime "new and greater dangers to the country" are present than is the case during peacetime – a change in circumstances not considered when the 1st Amendment was passed by Congress in 1789 and ratified in 1791. It was from this case that the later metaphor, "you can't yell 'fire!' in a crowded theater," arose. During peacetime you can speak and campaign in opposition to laws authorizing involuntary conscription and this is protected free speech; during wartime you cannot and urging disobedience of it is not protected free speech. *Schenk v. United States* is an example of moderation by means of affinity of concepts because it recognized *two species* of free speech: protected free speech and unprotected free speech.

In the U.S. Constitution's Bill of Rights (amendments 1 through 10) there are other rights presented that are likewise open to question as to whether or not the literal wording presents extravagance in reasoning. These include "the right to bear arms" and "the freedom of the press." Their wordings are absolute (without limitations) and categorical (recognize no conditions), and both of them have been and continue to be objects of legal challenges and controversies with the same import as attended the absolute and categorical wording of the "free speech" clause. They merit application of the maxim of affinity *because* they are controversial. When man-made legislation or doctrine is expressed in absolute and categorical terms, you will potentially find extravagance in reasoning. Judgments of moral realism are extravagances in reasoning. There is another example in the Bill of Rights and this one leads to especially volatile and potentially destructive issues.

The example of freedom of speech and the finding in *Schenk v. United States* (that in a civil Community there are just limits to individual *civil liberties of speech* according to circumstances) hints of another question to be raised. Are there also just limits to *civil liberties of religion* according to circumstances? If so, then it logically follows that exceeding these limits is religious licentiousness in a civil Community. Such excess is a species of extravagance in reasoning.

Given the fact that there are many religions and that even within any one genus of faith (e.g., Catholic; Muslim; Hindu; etc.) there are many diverse opinions on matters of doctrine and dogma, the question of extravagance in reasoning in matters of religion is a *sociological* rather than religious question. A religious Community is a mini-Community (usually embedded in a parent Society) and for this reason questions and issues regarding one's conduct in religious practices face most of the challenges raised by the *Dasein* of mini-Communities generally. The practice of a religion comes down to following a code of conduct approved by the doctrines of one's faith. If I were Jewish, I would follow the dietary laws that make up part of Jewish doctrine. Because I am not Jewish and my faith does not proscribe, for example, the eating of pork, eating pork is not contrary to my faith. If I were a Muslim, I would not drink alcoholic beverages because Islam proscribes this. Because I am not a Muslim and for me the conduct is not religiously proscribed by my faith, consuming alcohol is not contrary to my faith. All proscriptions of religious doctrines, at least originally, seem to have been made for the purpose of preventing harm to oneself or others.

But what, if anything, changes when a situation involves *interactions* between people of *different* faiths in matters where the doctrine of one of these faiths is different from the doctrine of the other, and when satisfying one person's code of conduct necessarily means frustrating satisfaction of the other's doctrinal

code of conduct? Here there is a conflict of special interests involved. Within any civil Community whose social contract terms include the civil liberty usually called "freedom of religion," conflicts of interest of this kind have historically been breeding grounds for many explosive and potentially internecine social problems. How is a Society to establish justice in circumstances of religious conflicts of interest?

It is one thing if the two people involved are not members of the same civil Community. In that case, the individuals are not obligated by the same social compact conditions and their interactions are governed by judgments of prudence and Duties-to-Self rather than by moral custom and folkways. The matter of the conflict of interest involves different conventions of civil liberty and, therefore, an outlaw relationship between the two. If there is to be any *peaceful* resolution of the matter then either there must be some kind of *treaty* between the two civil Communities establishing how matters are to be resolved (Hittite law provided for this) *or else* the two individuals must forge a treaty *between themselves* to resolve their differences[12]. By "treaty" I mean "an arrangement or agreement made by negotiation." The simplest of these is to mutually agree to withdraw *sine nocere* ("without harm") from the interaction itself.

Some religious sects hold, as part of the doctrine, that it is a religious duty to go on missions to other countries to bring to people there the message of the missionary's faith *regardless of whether or not the laws of that civil Community prohibit this*. For example, present day Iran tolerates non-Islamic faiths in Iran but it is currently illegal to distribute Christian literature there in its official language, Persian. If a Christian missionary holds it to be his religious duty to try to convert Muslims in Iran to Christianity *and* he does so by violating this law, he will probably be arrested and put on trial by the government of Iran. If he is, the government of his home country will probably formally protest his arrest and demand he be returned. By his actions, *he* has embroiled his fellow citizens in a conflict in which some of his fellow citizens could come to harm trying to protect him *from the consequences of his own actions*. He has therefore *intentionally* violated the social contract *of his own civil Community* by outlaw actions in another country. This means, deontologically, *he has committed a criminal transgression against his own Community*.

If he thinks committing what in Iran is an unlawful action is not only his right (as a missionary) but, in addition, is a duty of his faith, this *is* an example of religious extravagance in reasoning. *He is not at civil liberty to endanger his fellow citizens with possible harm without their consent* because of his own personal religious doctrine. If his own country makes "freedom of religion" (properly, *civil liberty* of religion) part of its social contract, the missionary's extravagance is all the more egregious because, in that case, *his* action compels *others* whose doctrines do not agree with his to become embroiled in a matter contrary to their interests.

This example is sufficient to answer the first part of the question: there *are* limits and conditions to an individual's free exercise of religious practices within a civil Community where "freedom of religion" is made part of the social contract. The example is not the only one pertinent to religious extravagance in reasoning but a *just* understanding of this can become surprisingly complicated. Complications begin with the meaning of the phrase "freedom of religion." In the United States, everyone thinks he or she understands what this means *until* cases come before courts of law. When one does, the outcome often depends on whether judges merely interpret a law without giving consideration to whether or not the law is *just* or *unjust* under terms and conditions of the social contract. In many countries, including the United States, many terms and conditions of the civil Community's social contract are unwritten, and this is a hindrance to proper administration *of justice* (as opposed to proper administration of *law*).

To take the American legal system as an example, this system institutionalizes giving priority to legal interpretation over administration of deontological justice. This institutionalization is made by fiat in the *legal* definition of "justice" in *Black's Law Dictionary*. But, deontologically, justice is the negating of

[12] Viewed practically, a treaty is a limited partial social compact. It does not unite two Communities as one but merely establishes conventions and conditions for how specific conflicts of interest will be resolved.

anything that is *unjust* under the terms and conditions of a social contract. *Unjust* means anything that breaches or contradicts the terms and conditions of a social contract.

Black's defines "unjust" as "contrary to justice; not just." It defines "just" as "legally right; lawful; equitable." But these definitions are circular. The purpose of a legal system is to serve as a tool for a deontological justice system. A justice system is founded upon moral custom (*Sittlichkeit*) but legal systems such as the one in the United States leave this foundation out and so institute a mathematical caricature of "justice" by fiat. Montesquieu wrote,

> Should there happen to be a country whose inhabitants were of a social temper, open-hearted, cheerful, endowed with taste and a facility in communicating their thoughts; who were sprightly and agreeable; sometimes imprudent, often indiscreet; and besides had courage, generosity, frankness, and a certain notion of honor, no one ought to endeavor to restrain their manners by laws unless he would lay a constraint on their virtues. If in general the character be good, the little foibles that may be found in it are of small importance. . . . It is the business of the legislature to follow the spirit of the nation, when it is not contrary to the principles of government; for we do nothing so well as when we act with freedom and follow the bent of our natural genius. [Montesquieu (1748), vol. I, pg. 294]

> We have said that the laws were the particular and precise institutions of a legislator, and manners and customs the institutions of a nation in general. Hence it follows that when these manners and customs are to be changed, it ought not to be done by laws; this would have too much of the air of tyranny; it would be better to change them by introducing other manners and other customs. [*ibid*., pg. 298]

These acute observations are never more important than when religious extravagance in reasoning attempts to express itself through coercion and compulsion by means of legislation and legal mechanisms.

Deontologically, *freedom* is the capacity for one's Self-determination to take action. *Liberty* is freedom plus the ability to realize (make actual) that action. Strictly speaking, no other person can deprive you of your *freedom* short of killing you. You can, however, be deprived of *civil liberty* to act as you wish through coercion and force or the threat of force. When someone or some institution within your civil Community does so *without your uncoerced consent* you gave by *obligatio externa*, this is a violation of your civil Community's social contract and so is *unjust*.

The idea of "freedom of religion" in any context of civil Community can mean nothing else than "civil liberty to observe whatever religious articles of faith you choose to hold *and* to practice your religion however you wish *within limitations imposed by your civil Community's social contract*. The term "civic" means applying or pertaining to the conduct or behavior of individuals in civil social interactions. *Civic conduct* means conduct that is not-hostile to the civic interests of another person in the Community. A *civic interest* is an interest not-contradictory to Duty and Obligation under terms and conditions of a civil Community's social contract. An *interest* is an anticipation of a satisfaction or dissatisfaction combined with a representation of the *Existenz* of some object of desire.

Now, civil Communities are composed of civil mini-Communities and every person is simultaneously a member of multiple mini-Communities. If a person is a person of faith, one of these mini-Communities is often (although not always) a religious mini-Community, e.g. a church. Because of this, there must be made an important distinction between civic interactions occurring *strictly* among members of the same religious mini-Community and interactions occurring among people who belong to *different* religious mini-Communities. What is or is not a civil liberty in the first case can be quite different from what is or is not a civil liberty in the second. Jurisdiction, i.e. power to exercise authority over all persons and things within a prescribed scope of authority, is justly different in these two cases. In the first case, jurisdiction justly belongs to whoever the religious mini-Community appoints to authority figure positions. In the second, it justly belongs to whoever is appointed to authority figure positions in the general Community of which the mini-Community is one part.

Generally speaking, Societies fail to mark distinctions among mini-Communities and this neglect must be regarded as an imperfection of the governance of the Society. Social problems ensue from such a lack of perfection; these make up most of what I call "the challenge of mini-Community." Using the United States as an example once more, "freedom of religion" is not a term found in its Constitution. The *idea* of freedom of religion is derived from the First Amendment of the Constitution: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . ." The first part of this sentence is called the Establishment Clause. The second part, "or prohibiting the free exercise thereof," is called the Free Exercise Clause.

Over the years, a number of precedents have been used to more crisply define the purpose, intent, and application of the Establishment Clause. Today it is interpreted to mean: (1) the Congress of the United States is prohibited from passing legislation that would establish a state religion; (2) Congress is prohibited from preferring one religion over another; and (3) the U.S. government is *not* prohibited from entry into the domain of religion to make accommodations for religious observances and practices for the purpose of *protecting* people's religious civil liberty.

But there is a flaw in the Free Exercise Clause, and this flaw follows directly from the lack of distinction between exercise within a particular mini-Community and an exercise that goes beyond this mini-Community and affects members of other mini-Communities. If this distinction was recognized, the clause would read "or prohibiting the *civil* free exercise thereof."

An example will help to make this more clearly understandable. A law is uncivic, and therefore unjust, if its enforcement harms or hinders a civic interest of a citizen or mini-Community of citizens. Such harm or hindrance is nothing else than a hindrance of his or their civil liberty regardless of whether this is an intentional or unintentional hindrance of civil liberty. An example of such a law *and its uncivic institution by the U.S. Supreme Court* is provided by the Court's 1961 ruling in the case of *Gallagher v. Crown Kosher Supermarket of Massachusetts, Inc*. In this case, the Court ruled that a kosher butcher shop had to abide by a Massachusetts state law that prohibited them from selling on Sundays. The owners of the butcher shop were Orthodox Jews whose religion forbids them to shop or sell from sundown on Friday until sundown on Saturday (the Jewish Sabbath). The shop had been open on Sundays and did about a third of its business on that day. The Massachusetts law made it unlawful for them to continue this.

The owners argued that it was economically impractical for them to comply with this law and, furthermore, many of its customers would not have been able to get meat from Friday afternoon until Monday morning. By a 6-3 ruling, the Court upheld the constitutionality of the Massachusetts law and ruled the law did not violate the Establishment Clause of the Constitution. The majority opinion stated,

> An examination of recent Massachusetts legislative history bolsters the state's position that these statutes are not religious. . . . In general, Sunday laws protect the public by guaranteeing one day in seven to provide a period of rest and quiet. Health, peace, and good order of society are thereby promoted. Such provision is essentially civil in character, and the statutes are not regarded as religious ordinances. . . .
>
> Secondly, appellees Orthodox Jewish customers allege that, because their religious beliefs forbid their shopping on the Jewish Sabbath, the statute's effect is to deprive them, from Friday afternoon until Monday of each week, of the opportunity to purchase the kosher food sanctioned by their faith. The orthodox rabbis allege that the statute's effects greatly complicates their task of supervising the condition of kosher meat because the meat delivered on Friday would have to be kept until Monday. Furthermore, appellees contend that, because of all this, the statutes discriminate against their religion.
>
> These allegations are similar, though not as grave, as those made by appellants in *Braunfeld v. Brown*, ante p. 366 U.S. 599. Since the decision in that case rejects the contentions presented by these appellees on the merits, we need not decide whether appellees have standing to raise these questions.

It does not matter whether or not the legislature of Massachusetts *intended* for this law to discriminate

against the Jewish faith. Neither does it matter whether or not legislators *say* a law is "not regarded as a religious ordinance." The *effects* this law had on the shop owners, their customers, and the rabbis were just the same as if this law *had* been a religious ordinance. This law is deontologically unjust because its effect *is* discriminatory regardless of whether any discrimination was intended. How, I wonder, would the citizens of Massachusetts react if the legislature passed a law decreeing *no one* could buy meat from sundown on Friday until Monday morning? I suspect it would not be warmly received. The error the Court made was that it ruled on a matter of *legality*, not on a matter of *deontological justice*. It is not one of the objectives of U.S. government "to establish legality"; the objective is "to establish *justice*."

The U.S. Supreme Court has upheld "Sunday laws" (also known as Blue laws) by majority vote several times since 1961, frequently citing a landmark case, *McGowan v. Maryland* (1961), to dismiss challenges to these laws. In that case, the Court ruled that laws with religious origins are not unconstitutional if they have a secular purpose. *Secular purpose is a necessary condition for a just law, but it is* ***not*** *a sufficient condition*. Other significant rulings include *Braunfeld v. Brown* (1961) and *Two Guys from Harrison-Allentown v. McGinley* (1961). A recurring theme in these rulings is that where

> the State regulates conduct by enacting a general law within its power, the purpose and effect of which is to advance the State's secular goals, the statute is valid despite its indirect burden on religious observance unless the State may accomplish its purpose by means which do not impose such a burden. [*Braunfeld v. Brown* (1961)]

The "indirect burden on religious observation" imposed by U.S. Sunday laws usually have the most obvious effects on people of Jewish or Muslim faith. Some of them, e.g. prohibitions against selling alcoholic beverages on Sunday, impose inconveniences on people for whom consumption of alcohol is not contrary to religious tenets they might hold. Imposing a mere inconvenience is not as burdensome as the actual burdens imposed by *Gallagher* and *Braunfeld*. In the U.S., despite specific wordings of legislative acts, strong historical factors point to legislative favoritism of Protestant doctrines. It is not difficult to conceal such favoritism by language; and "secular purposes" most such laws claim can *always* be effectively accomplished "by means which do not impose" burdens on people *if these purposes are just*. For example, one popular secular purpose often cited is to give people a day off from being required to work. But this purpose could be accomplished with equal effect simply by laws that require it *and* do so in such a manner that employees are not required to incur a burden on the ability to practice whatever religious faith they follow. Singling out Sunday is institutionalized bigotry favoring mostly Christian religions at the expense of religious civil liberties of Jewish and Muslim people.

If a *legitimate* secular purpose is the actual ground of a Sunday law (rather than some covert religious ground) there are always ways to satisfy the purpose without infringing on civic free exercise of *anyone's* religion. Today most Blue laws in most states have been repealed (some do remain in some states) and these repeals do not appear to have injured legislatures' purported secular purposes. Wherever support for legislation of a Blue law (or one's equivalent in other countries) is motivated by religious reasons peculiar to particular species of religious faith, the reasoning behind it exhibits extravagance in reasoning.

The sects who have most often agitated or lobbied for laws that have the effect of enforcing peculiar articles of religious doctrines, which constitute special interests of these sects, have often been sects who are self-described as "fundamentalist." The term "fundamentalism" is most often applied to groups of people who can be characterized as: applying a markedly strict literalism to specific scriptures, dogmas, or ideologies; and rejecting diversity of opinion about what fundamentalists regard as "fundamentals" and their accepted interpretation of them. When such a group of people attempt to legislate their special interests to force other people to comply with them, this is religious extravagance in reasoning. Within every genus of religion – Christian, Islamic, Hindu, Buddhist, Jewish, etc. – can be found fundamentalist mini-Communities whose members think their doctrine should be imposed upon people who are outside their mini-Community but who are still members of a greater civil Community in which the fundamentalist mini-Community is embedded. When a mini-Community attempts such an imposition,

that attempt is a deontological moral transgression. When such a mini-Community holds that authority of the general governance of the larger civil Community is inferior to the authority of their religious doctrine, the attempt constitutes a deontological moral crime because it is *intentionally* contrary to Duty under the social contract. The general civil Community *allows* the religious mini-Community to become *part* of its body politic; the mini-Community's membership in it is a privilege extended to it, not a right owed to it.

6. Relationship of These Factors in Regard to the Problem of Justice

The human factors discussed in this chapter are all factors that pose difficult challenges to solving what chapter 4 called The Problem of Justice ("Can the idea of justice have practical objective validity? If so, how?"). The Problem of Justice arises out of *subjective* considerations of each person's interests and Duties-to-self when those interests and Duties are incongruent with those of other people. Interest, you will recall, is anticipation of a satisfaction or dissatisfaction combined with the representation of the *Existenz* of some object of desire; satisfaction and dissatisfaction are affective perceptions. Adams' passion for distinction is one species of interest although, of course, not the only species of human subjective interests. Bigotry is likewise a passion and not without similarities to Adams' Vanity, Jealousy, and Envy.

These affective motivators are examples (species) of a *noumenon* Kant called *elater animi* ("drivers of mind"). The definition of this term is "a ground of determination or a source of the possibility for producing represented, determining, or impelling causes." The phenomenon of stereotyping, although it is a product of spontaneity in cognition of an object, likewise fits the definition of *elater animi* because *some* stereotypes, when their concepts are reintroduced into the synthesis in sensibility, cause changes in affective perceptions of interests and passions, which in turn affect human appetition. Unlike bigotry, stereotyping is in itself neither good nor bad; but interests and passions stimulated by it can sometimes be labeled as good or bad. Extravagance in reasoning is a species of stereotyping in general just as the passion for distinction is a species of interest.

While I am reluctant to use the phrase "it is obvious," I hope that, with some reflection on this, you might find it obvious that solving the Problem of Justice implies finding ways to deal with, or at least moderate, issues arising from affective motivators or, more generally, from subjective *elater animi*. The specific ones we have been discussing are not, of course, *all* of the ones manifested in human behaviors. Like any merely empirical list, it cannot be concluded that the list is *complete* because lists represent "what is clearer to us" rather than "what is clearer by nature" (as Aristotle put it). But they will do for getting us started on our initial course.

In chapter 4 we discussed at length the idea of Enlightened institution of justice systems and saw that its principles of institution design are fourfold (at the 2LAR level): the principle of justifiable institutions; the principle of Progressive education; the principle of human determinability of Progress; and the principle of the necessity for flexible institutions. We also saw that the principal *elater animi* behind human voluntary associations in a Community is the interest each associate has or develops in effecting better satisfaction of his interests, and reducing dissatisfactions of those interests, by means of gaining cooperation from his fellow associates. The notions "just," "unjust," "justice," and "injustice" simply have no context in regard to a person's actions that affect himself *and no one else* because every person *makes his own interests*. In regard to a person's actions that affect himself alone, these notions are non-real. Mill said as much using other words:

> The object of this Essay is to assert one very simple principle, as entitled to govern absolutely the dealings of society with the individual in the way of compulsion and control, whether the means used be physical force in the form of legal penalties, or the moral coercion of public opinion. That principle is that the sole end for which mankind are warranted, individually or collectively in interfering with the liberty of action of any of their number is self-protection. That the only purpose for which power

> can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. [Mill (1859), pg. 8]

A person's *commitment* to cooperation is grounded in the *elater animi* of his interests. His feeling of injustice is aroused when his *expectations* for the benefits of cooperation are not actualized through his interactions and relationships with others in his Community. Long before the invention of political science, people have been finding ways of cooperatively getting along peacefully with each other. Indeed, what else do mores and folkways represent but successful ways they have discovered for doing so? As so-called "primitive" Societies, e.g. the BaMbuti, demonstrate, laws and legal systems *are not necessary* in all cases to achieve cooperation among the members of a Society. Laws, lawmakers, and legal systems only *support* administration of justice when the size of the population makes *Gemeinschaft* Community impractical, and they only do so when the practices of laws and legal systems are not unjust, and unjust is anything that breaches or contradicts the condition of a social contract. *Justice*, then, *is the negating of anything that is unjust*, and a justice system is *the institution of mechanisms of governance for the purpose of realizing justice within a Community or a Society*.

These considerations lay out the goals for solving the Problem of Justice in more detail. The task must next turn to details for accomplishing these goals.

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