

Chapter 9 Justice and the General Will

1. The Problem of "the General Will"

Injustice is universally possible because, as the previous four chapters have explained, it is a feeling of *Unlust* every human being is capable of feeling. The idea of justice, on the other hand, is the idea of a *noumenon* arising from psychological processes of transference by which some Object is conceptualized and blamed for that feeling of *Unlust*. The affected person then seeks for ways and means of relieving or redressing or compensating for that feeling. Injustice is possible in every social circumstance human beings might find themselves in, including life in a state of nature. Justice, on the other hand, is a *noumenon* that can occur only *by conventions* established in civil Communities. What those conventions are to be is one of the central questions for all institutions of government in all its parts.

Outside of civil circumstances, actions taken by people in reaction to their feelings of injustice are properly known by such names as revenge and retaliation. Passions for revenge and retaliation are so common that we see retaliation and retribution given places in all the ancient legal codes, although these codes try to discourage acts of revenge. *Laws* contain pronouncements of a Society's codified rules intended to: 1) proscriptively define what sorts of actions will be deemed unlawful and culpable; 2) establish penalties for committing those actions; and 3) set up procedures and mechanisms to determine guilt or innocence and to enforce a Society's proscriptions of actions deemed unlawful and culpable.

The first two chapters of this treatise presented brief historical summaries of how human Societies have tried to institute approaches to establishing justice by means of legal codes. In those chapters, we looked to see if their examples could provide us with basic principles by which "justice" might be understood and established. What we found, however, were merely examples of what sorts of ways these peoples, or their rulers, attempted to control and regulate conduct by means of their codified laws. We found that ancient legal codes were more or less *ad hoc* collections of rules established after, and in response to, specific instances ("cases") of actions or circumstances where feelings of injustice were given expression through disputes or domestic disturbances. Retaliation and retribution were common effects legally sought. Various other results were also sought, such as: protection of personal property; proscription of malice; preservation of social order; fairness; equity; providing incentives for individuals to fulfill their personal or public obligations; and charity. All of these goals, though, had vague, ambiguous meanings.

Of practical necessity, the goals of legal systems are understood objectively - that is, understood in terms of objects to be effected. However, as explained in chapter 8 (figure 1 and accompanying text), objectification is the outcome of a process of mental synthesis involving aesthetical reflective judgments of anticipations of values and expedience for happiness. These processes are subjective and, in great degree, autistic. And if the Objects so produced are foundationally subjective, then it follows that they are not universally agreed upon by all the members of a Society. To one person, capital punishment is just; to another it is not. To one person, a term of years of confinement in prison is just; to another it is too lenient. To one person, "it is better that ten guilty persons escape than that one innocent suffer"; to another this notion, known as Blackstone's ratio, is folly. To one person, lopping off the hand of a thief is a fitting punishment; to another it is horrifying, barbaric and cruel.

How, then, can one speak of an idea such as that of "the general will" with any sort of objective validity? Is the notion of a "general will" nothing but the idea of a transcendental illusion?

This is not a minor question. If the idea of justice lacks objective validity outside of the context of a civil Community and if its Object (Justice) has no real meaning apart from a Society's civil conventions, does not the subjective origin of feelings of injustice imply Justice is a will o' the wisp? Rousseau's entire thesis in *The Social Contract* makes the idea of "the general will" central to the most fundamental term of any social compact, i.e.,

If we discard from the social compact what is not of its essence, we shall find that it reduces itself to

the following terms: "Each of us puts his person and all his power in common under the supreme direction of the general will, and, in our corporate capacity, we receive each member as an indivisible part of the whole." [Rousseau (1762), pg. 14]

The phrase "general will" was more or less verbal common currency during the Enlightenment but this does not mean everyone who was using it meant the same thing by it. Phrases like "this term being well known to all" were used in many Enlightenment writings; the *words* might have been "well known to all" but, unfortunately, the *meaning* often was not. Rousseau never offered a clear and distinct *Realerklärung* (real explanation) of what *he* meant by "the general will." At best, he left us with just a description:

As long as several men in assembly regard themselves as a single body, they have only a single will which is concerned with their common preservation and general well-being. In this case, all the springs of the state are vigorous and simple and its rules clear and luminous; there are no embroilments or conflicts of interests; the common good is everywhere clearly apparent, and only good sense is needed to perceive it. Peace, unity, and equality are the enemies of political subtleties. Men who are upright and simple are difficult to deceive because of their simplicity; lures and pretexts fail to impose upon them, and they are not even subtle enough to be dupes. . . .

A State so governed needs very few laws; and as it becomes necessary to issue new ones, the necessity is universally seen. . . .

But when the social bond begins to be relaxed and the State to grow weak, when particular interests begin to make themselves felt and the smaller societies to exercise an influence over the larger, the common interest changes and finds opponents: opinion is no longer unanimous; the general will ceases to be the will of all; contradictory views and debates arise; and the best advice is not taken without question. . . .

Does it follow from this that the general will is exterminated or corrupted? Not at all: . . . but it is subordinated to other wills which encroach upon its sphere. Each man, in detaching his interest from the common interest, sees clearly that he cannot entirely separate them; but his share in the public mishaps seems to him negligible beside the exclusive good he aims at making his own. Apart from this particular good, he wills the general good in his own interest as strongly as anyone else. . . . The fault he commits is that of changing the state of the question, and answering something different from what he is asked. Instead of saying, by his vote, "It is to the advantage of the State," he says, "It is of the advantage to this or that man or party that this or that view should prevail." Thus the law of public order in assemblies is not so much to maintain in them the general will as to secure that the question be always put to it, and the answer always given by it. [Rousseau (1762), pp. 112-113]

The last sentence in this quote is subtly crucial. The "law of public order" is his way of saying that any particular question or issue to be decided is minor in relationship and subordinate to the always-greater issue of answering *what is the general will in this case?* As I will soon be arguing, no static idea or old precedent by analogy can contain this illusive Object called "the general will." The question "what is the general will" will keep coming up over and over in an *on-going process* of seeing justice is done.

When the circumstance is one of "several men in assembly," Rousseau's point is well taken. But what about when it is several *hundred* "men in assembly"? Then, clearly, "the social bond begins to be relaxed" because to every person *most* of the other persons are, to him, *stereotypes* (abstract persons) rather than *real* persons well-known by him through direct experience. What Rousseau says about "the general will" is true enough in small *Gemeinschaft* consensus democracies; BaMbuti Pygmy groups demonstrated this for thousands of years because their "civilized" neighbors stayed out of the Ituri Forest. But large groups?

Bealey remarks,

In order to express the general will everyone in the state should participate in its articulation. People should not consider their own interests; that would only ascertain the 'will of all'. Instead they should voice a preference for the good of the whole community. When they did this they would vote for the

General Will. Rousseau made the assumption that such activity would take place in small communities like his native Geneva. Yet his idea inspired the insurrectionist nationalism of revolutionary France and its belief in popular sovereignty. He disliked factions and their sectional wills and he believed the community should speak as a whole. Thus he is an early supporter of direct democracy. [Bealey (1999), "general will"]

His first sentence here seems true enough to be held as at least highly plausible. The first three sentences are congruent with what Rousseau was trying to express in the previous quote. But then, when the *means* of deciding upon things by *voting* enters in, both he and Rousseau fall into a long-practiced habit and tradition of "civilized" Western Societies. Most people will almost automatically say, "Well, *of course* we should decide things by taking a vote. There isn't another way to do it under popular governance!" Well, that isn't true. Turnbull expressed wonder and amazement that the BaMbuti group he lived with and studied *never once decided things by voting* [Turnbull (1962)]. They were, truly, a *consensus* democracy, not a "direct" democracy.

This incident illustrates one of the most remarkable features of Pygmy life - the way everything settles itself with apparent lack of organization. Cooperation is the key to Pygmy society; you can expect it and you can demand it, and you have to give it. [Turnbull (1962), pg. 124]

Traditional voting tends to fall into an adversarial pattern of "aye vs. nay"; consensus, however, admits a third possibility, namely that of "yeah, okay; I'll go along with it for now." Consensus doesn't require agreement with a proposal; it only requires agreement to *try* the proposal. *It admits trial and error processes and experimentation* with a tacit recognition that if one expedient fails to work satisfactorily then we try another. It does not force people to stake out positions and "stand their ground." Consensus is not "compromise"; it is *cooperation*. Consensus-building *processes* are refineries for ideas.

There has been no shortage of scholars fully prepared to dispute the implicit "psychology" and ontology-centered "morality" in Rousseau's thesis. Ginsberg, for example, wrote,

If by the term sovereignty is meant supreme or unlimited coercive power vested in determinate persons, then clearly the notion is no more than a convenient fiction of jurisprudence since no determinate person ever had such power. The attempt to place sovereignty in the general will in the sense of congeries of vague psychological elements underlying common or joint action must fail, since in this sense the general will is indeterminate and therefore cannot be vested in a person or persons. [Ginsberg (1957)]

Ginsberg argued for a more pragmatic and practical approach to the issue. On some points he draws close to the same conclusions as Thoreau did. He wrote,

The organized efforts of society should be directed at securing the minimum conditions requisite for the realization of the good. The duty of the social authority is accordingly: (1) to utilize the collective resources for the promotion of the good of the associated members in the sense of securing to each individual the minimum facilities for the fulfillment of his capacities for good; (2) to control such differences in power and possessions as arise in a society with the object of preventing those who have acquired excess of power from abusing it and forcing others into conditions incompatible with the requirements of the good life. [*ibid.*]

The obvious points left hanging here are: (1) what is "the good" for a member of the community? and (2) what is "the good life"? Words like "should" and "ought to" warn us that concepts of morality have slipped into the discussion. Critical Epistemology teaches that, once this has happened, ontology-centered theories of morality will not help solve the problem and often make the situation worse. On a practical basis, morality issues can only be successfully dealt with *deontologically* [Wells (2010), chap. 6].

How, then, are we to understand the meaning of the idea of "the general will"? One thing is clear from

the contexts in which Rousseau employed this term: he was using it as a *metaphor* and using it in conjunction with another metaphor - namely, the metaphor of a *body politic*. Rousseau, of course, was not unique in doing this. The body politic metaphor dates back to at least Solon and the classical Greeks in the 6th century BC. It was and is a homologue regarding a civil Society as if it were a human body. The idea of the general will is a metaphor inside a metaphor (or, if you prefer, a homologue inside a homologue). Just as a human being is considered to "have a will" or possess "willpower", so too is a body politic metaphorically regarded as possessing in some way this same power of determining its corporate "appetitive power." Let us take a closer look at this metaphor.

2. The Idea of General Will as a Homologue

The Romans made what was likely the greatest effective use of the body politic metaphor. In 494 BC, according to the Roman historian Livy,

There was great panic in the City, and mutual apprehension caused the suspension of all activities. The plebians, having been abandoned by their friends, feared violence at the hands of the senators; the senators feared the plebians who were left behind in Rome, being uncertain whether they had rather they stayed or went. Besides, how long would the seceding multitude continue peaceable? . . . They therefore decided to send as an ambassador to the commons Agrippa Menenius, an eloquent man and dear to the plebians as being one of themselves by birth. On being admitted to the camp he is said merely to have told them, in the quaint and uncouth style of that age: In the days when man's members did not all agree amongst themselves, as is now the case, but had each its own ideas and a voice of its own, the other parts thought it was unfair that they should have the worry and the trouble and the labor of providing everything to the belly, while the belly remained quietly in their midst with nothing to do but to enjoy the good things they bestowed upon it; they therefore conspired together that the hands should carry no food to the mouth, nor the mouth accept anything that was given to it, nor the teeth grind up what they had received. While they went in this angry spirit to starve the belly into submission, the members themselves and the whole body was reduced to the utmost weakness. Hence it became clear that even the belly had no idle task to perform, and was no more nourished than it nourished the rest, by giving out to all parts of the body that by which we live and thrive, when it has been divided equally amongst the veins and is enriched with digested food - that is, the blood. Drawing a parallel from this to show how like was the internal dissension of the bodily members to the anger of the plebs against the Fathers, he prevailed upon the minds of his hearers. Steps were then taken towards harmony, and a compromise was effected on these terms [Livy (date uncertain), Bk II, pp. 323-325].

Agrippa is credited in this way with saving the Roman Republic from civil war and possible destruction by talking the plebians out of seceding from it because of perceived injustices their class was suffering at the hands of the patricians. His metaphorical fable also helped produce moderation of the oppressiveness of patrician rule.

The validity of reasoning by any metaphor crucially depends on understanding it in a restricted context. All metaphors extended beyond contextual restrictions lead to fallacious reasoning. Agrippa's metaphor is limited to the sphere of a body politic. He made a fabulous analogy between parts of the human body (hands, mouth, belly, etc.) and the "members" (classes of people) in Roman Society. The element of fable is in his "in the days when men's members did not all agree amongst themselves, as is now the case, but each had its own ideas and a voice of its own." It is apparent that he was able to make the plebs "get" his meaning because he was successful in quelling their secession and bringing the two sides together enough to strike compromises with the senators that ended the dispute. Agrippa was clearly speaking in non-technical language to his hearers; but some 150 years later Aristotle began to use a technical idea of body parts as "members" of a whole body. In his case, the word he used, both in *History of Animals* and *On the Parts of Animals*, was *μόριον* (*morion*, "constituent part"; "member"). Aristotelian biology helped further "cement" the "body politic" metaphor in political philosophy two millennia later.

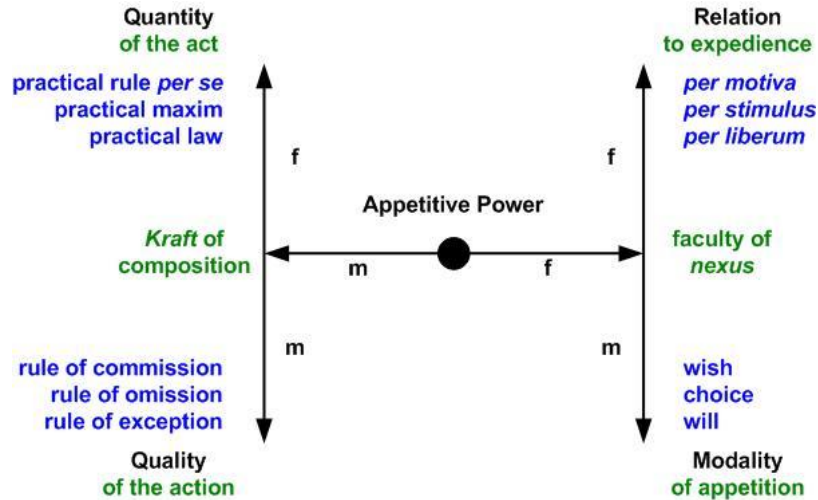


Figure 1: 2LAR description of appetitive power in practical Reason. Note that "will" is the logically apodictic and transcendently necessitated *momentum* of Modality; "choice" is the logically assertoric *momentum*.

The element of fable in Agrippa's metaphor inclines some people to dismiss it out of hand. It is a sufficient reason to always be cautious when using it because potential for extravagances in reasoning lie within metaphors and reasoning by analogies. As Bacon said,

Substitution by analogy is useful, but less sure, and therefore to be adopted with some judgment. It serves to reduce that which is not the object of the senses to their sphere, not by the perceptible operations of the imperceptible body, but by the consideration of some similar perceptible body. [Bacon (1620), pg. 227]

The risk of extravagant misuse of the "body politic" metaphor could hardly be greater than when it is used as a basis for political ideas of "the general will." The "general will" of a body politic is not the same thing as "will" in the process of pure practical Reason of a human being [Wells (2009), chap. 9]. How are the two ideas similar and, just as importantly, how are they different?

From the practical Standpoint of Critical Epistemology, "will" is a *momentum* of Modality in the appetitive power of practical Reason. Its functioning is logically apodictic and transcendently necessitated in regard to the manifold of practical rules [Wells (2009), chap. 9]. Figure 1 depicts the mathematical 2LAR structure of appetitive power. Its *momenta* are, from the theoretical Standpoint of Critical Epistemology, mathematical *functions* ordering different practical representations under one common and unified appetite. This is to say they are defined by what action expression they produce and how they produce it. Appetitive power is a synthesis of activity regarded as the ability of a human being to be Self-determining in his actions. The functional role of the *momentum* of will is that of the *determining factor*, i.e., that which constitutes the reason for expressing one determination of appetite rather than a different one. The *momentum* of "choice" is that determination itself. One can say "choice" is "the what" and "will" is "the why" of a person's action expressions [Wells (2009), chap. 9, pp. 355-357].

It should be clear that a body of people (a body politic) does not have a single appetitive power nor do its "social atoms" (the individuals) all construct identical manifolds of practical rules. Furthermore, any large civil Community, in the political context of heterarchy, is comprised of its mini-Communities (the "social molecules" of a Society), and these mini-Communities each have their own set of interests, not all of which are entirely congruent with those of other mini-Communities. Furthermore, every human being is a *Self-determining* agent of his own actions. The *practical* validity of any ideas of "general will" and "common choice" can, therefore, only be looked for in *activities* undertaken and expressed by the members of the group. "Common choice" is expressed by actions they undertake that do not disrupt the

tranquility of civil Society. But what is "tranquility"? From the dictionary we have

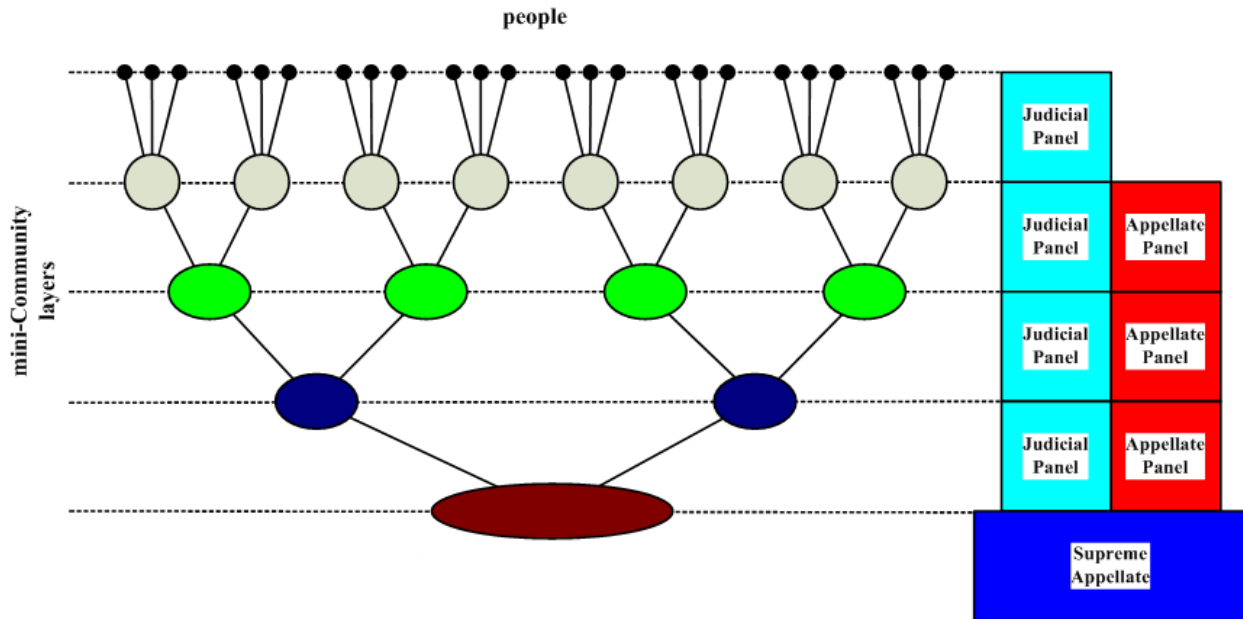
tranquility [L. *tranquillitas* (-atis), quietness, stillness, from *tranquillus*, tranquil.] quietness; a calm state; freedom from disturbance or agitation; the state or quality of being tranquil. [Webster (1962)]

Tranquility is not a rare word, nor is the concept unfamiliar to most people, nor is a state of domestic tranquility unimportant to Societies. "Insuring domestic tranquility" does pose great challenges to good government [Wells (2010), chap. 6]. I think it is more than a little surprising that "tranquility" does not appear as a technical term in *Black's Law Dictionary*, in Reber & Reber (2001) as a technical term in psychology, nor as one in *The Blackwell Dictionary of Political Science*, nor in either Blackburn (1996) or Mautner (1997) as a technical term in philosophy. There seems to have been no "philosophy of tranquility" since the time of the ancient Greeks and Romans when notions of tranquility were at the core of philosophies of *αταραξία* (*ataraxia*, a lucid state of robust equanimity characterized by freedom from distress and worry), *εὐθυμία* (*euthymia*, gladness, good mood, serenity), and *ἀπαθεία* (*apatheia*, a state of mind in which one is not disturbed by passions). When "modern" Western philosophy awakened in the days of Descartes, "tranquility" slumbered on.

For Kant a notion of tranquility is embedded in his descriptions of phenomena of happiness and contentment. Contentment and happiness are closely bound up with each other. Happiness, Kant tells us, is "a person's consciousness of the pleasantness of life uninterruptedly accompanying his whole *Dasein*" [Kant (1788), 5:22] and "the gratification of all our inclinations" [Kant (1787), B: 834]. He also said, "Happiness is contentment with the state of the world in which I find myself, in relationship to other things outside me" [Kant (early 1790s), 28: 770]. To be contented is "to be satisfied enough with what one has or is, and to not desire something more or different" [Webster (1962)].

Expressed actions are observable. Those which disturb or perturb tranquility in a Community get noticed while those that do not stay in the background of "common choices" people make and externalize. The latter can be regarded as manifesting activities meeting with the approval - or, at least, non-disapproval - of the public. Recall that, in Critical Epistemology, it is more correct to regard practical Reason as a mental process that exhibits a "free won't" rather than a "free will." If, then, we seek in Society for a social homologue of human "will" we must look at manifest human actions. "The general will" then will subsist in those actions that are not-disapproved by other associates in the civil Community. Those actions that are disapproved will be those contrary to "the general will." It follows, then, that "the general will" can mean nothing else than *processes by which actions undergo review, evaluation, selection, or amendment* by members of civil mini-Communities at various levels in a social heterarchy structure such as that of the inverted pyramid presented in chapter 8 (see figure 2 below).

The idea of a heterarchy organization of Society governance *does not* require universal agreements on *all* judgments of "political will" at every level in the heterarchy because the set of *common interests* is not the same at every level of an inverted pyramid. Mini-Communities occupying the higher levels generally find more interests common to its fewer members than mini-Communities occupying the lower levels. There are, of course, *some* interests that *are* common - hence "universal" - throughout all levels of the overall civil Community. Preserving the social compact, for example, is one of these because the survival of the smaller-populace mini-Communities depends on support and mutual protection obtained from other mini-Communities and the general Community. That, after all, is the core idea at the center of Montesquieu's theory of the confederated republic. The basic term and the basic condition found in every social compact are interests common to the entire body politic. But localized interests - which are special interests not commonly shared by every mini-Community - that do not hinder interests of other mini-Communities need not meet with the approval of all. For example, people living in the city of Los Angeles could not care less if the people of tiny little Maquoketa, Iowa, prefer a mayor-and-city-manager form of city government over the charter city/mayor-and-city-council government Los Angeles prefers. Put more generally, determinations of "the general will" must recognize and allow for *neutral* interests.



Note: The number of mini-Communities in any layer is not fixed, and people can be members of more than one mini-Community at the same time. The number of layers is not necessarily fixed. This requires flexible institution of the heterarchy structure.

Figure 2: An example of inverted pyramid heterarchy organization.

"All politics is local" is a popular saying among American politicians. However, it is not true and is an extravagance of reasoning by overgeneralization. *Some* politics is local; some politics is not. If the phrase "the general will" is understood to mean universal agreement of a Society's entire citizenry in regard to all questions or issues then there is no such thing as "the general will." Institution of processes for determining "the general will" must be made such that *indifference* to an issue is factored in to its reviews, evaluations, selections, and amends. *Consensus* rather than agreement is the practical objective.

3. The Phenomenon of Mind as a Homologue for General Will

Critical understanding of the general will homologue is subtly but importantly different from the ways we see Rousseau and others interpreting it; yet, at the same time, it is not *entirely* different. After all, what is Rousseau's "voting" but a *process* of selection from among alternatives? What is missing in the earlier ideas is not selection but, rather, review, evaluation and civil consensus-building directed at maintaining tranquility (or at re-establishing it when it is lost) among the Community's deontological citizens.

As we move from tranquility for an individual to a notion of tranquility for the body politic, we move into the topic of what is broadly called "domestic" tranquility. By simple extension of the foregoing arguments, *domestic tranquility is a general mood of the membership of the body politic that results from its membership at large being satisfied enough in their relationship to the general state of life in the political Community and desiring nothing more or different in this relationship.* Perfect domestic tranquility is then the *ideal* of every member of the body politic being satisfied in this sense. Like every ideal, perfect domestic tranquility must be seen as a goal a progressive Society strives to reach, rather than an actual state of being, because it is impractical to suppose every citizen of this body can or would enjoy this state of satisfaction at the same and for all times - if for no other reason than because of the presence of outlaws and criminals embedded in and infecting Society like a social disease.

By calling domestic tranquility a "mood" just now, my intention is to bring up an important practical issue. Psychologists describe a "mood" as "an emotional state"; but, at the same time, modern psychology finds the notion of emotion to be a term that historically "has proven to be utterly refractory to

definitional efforts; probably no other term in psychology shares its combination of nondefinability and frequency of use" [Reber & Reber (2001), "emotion"]. Everyone knows what an emotion is until they try to define it; then they find they cannot do so. That being the case, does not "domestic tranquility" face the same problem? It does if we approach the question using an ontology-centered metaphysic. When considered *ontologically*, domestic tranquility is an illusory *noumenon* far beyond the horizon of possible human experience. To obtain a *practical* understanding of the term we must, once again, approach it *deontologically* and from an epistemology-centered metaphysic.

In most ways, it is easier to say what domestic tranquility is *not* than to say what it *is*. It is easier to discern its absence than to ascertain its presence. For example, a street riot is a fairly obvious sign of unrest in a population. However, an *individual* can feel resentment and injustice over some real or imagined hindrance to satisfaction of his interests *without* any overt outward expression of his resentment. When he transfers his feelings to an external source that he blames for them, his "mood" is not a tranquil one. He is dissatisfied regardless of whether he actively externalizes his dissatisfaction by his actions, whether he is confrontational and surly, or whether he just "simmer about it" in silence. When many people simmer in dissatisfaction - even if they are not dissatisfied for the same reason - there can be a facade of domestic tranquility when in fact there is widespread discontent.

The technical terms Kant used that are translated into English as "satisfaction" and "dissatisfaction" were *Wohlgefallen* and *Mißfallen*. In German these words have a subtly different connotation than their English counterparts. *Wohlgefallen* is "satisfaction" carrying a connotation of "oh, this is not-bad"; *Mißfallen* is "dissatisfaction" carrying a connotation of "oh, this is not-good." One can readily see how this "not-bad" connotation of *Wohlgefallen* fits well with psychology's characterization of human beings as "satisficing problem solvers." It also fits the nature of appetition in practical Reason.

"Not-bad" doesn't mean "good"; it means that, whatever else "it" might be, the Quality of "being bad" isn't one of "its" predicates. Kant calls the *momentum* of this logical Quality of judgment the "infinite" logical *momentum* and it is one of the important subtleties of Kantian Logic:

The infinite judgment indicates not merely that a subject is not contained under the sphere of a predicate, but that it lies somewhere in the infinite sphere outside [the predicate's] sphere; consequently, this judgment sets limits to the sphere of the predicate. [Kant (1800), 9: 104]

The capacity for this logical Quality in the process of *practical* judgment is essential for a human being's ability to *build* a manifold of practical rules such that: 1) this manifold is always conditioned by the categorical imperative of pure practical Reason; and 2) this manifold is *experience-driven* beginning from an initial state in which an infant has *no a priori* manifold of practical rules and must *construct* one from a basis in sensorimotor reflexes by trial and error. That this is a fundamental characteristic of human nature was demonstrated by Piaget and his coworkers in a brilliant series of experiments:

Considered first from the point of view of the material action, before going on to that of thought (or interiorization of these actions), the general law that seems to emerge from our findings is that cognizance proceeds from the periphery to the center - these terms being defined as a function of the path of a given behavior. This behavior begins with pursuit of a goal . . . which can be termed peripheral because they are linked to the triggering of the action and to the point of its application: consciousness of what this goal is - in other words, awareness of the general direction of the action needed to attain it (intention) - and cognizance of its result, either failure or success. More precisely, the periphery is not defined either by the subject, but by the subject's most immediate and external action when faced with the object: using it according to a goal (which, for the observer, amounts to assimilating this object into a previous action scheme) and recording the result obtained. These two aspects of the immediate action are conscious in every deliberate activity, while the fact that the scheme that assigns a goal to the action immediately triggers off the means of effecting it (regardless of how appropriate these may be) may remain unconscious, as is shown by the multiple situations studied in this book where the child achieves his goal without knowing how he did so. Thus

cognizance, starting from the periphery (goals and results), moves in the direction of the central regions of the action in order to reach . . . recognition of the means employed, reasons for their selection or modification en route, and the like. [Piaget (1974), pg. 334]

What Piaget generally refers to as "the goal" here is expressed by teleological reflective judgment, and what he calls "the result" is "recorded" by the sense of satisfaction or dissatisfaction judged by aesthetical reflective judgment. As I am about to argue, this mental nature of being a human being provides an idea for a homologue of "the general will" in a body politic.

Figure 3 illustrates the mathematical organization of information processing in practical Reason (synthesis of appetite, practical judgment, and the manifold of rules) and reflective judgment (manifold of Desires) according to Critical Epistemology [Wells (2009), chap. 9]. Possible motoregulatory action expressions are presented by teleological reflective judgment in the manifold of Desires, and these impulsive expressions are presented for the synthesis of appetite and to the process of practical judgment, which judges them under the conditions represented in the practical manifold of rules. Figure 3 expresses Piaget's rather abstract finding described above with more mathematical rigor. Neural network theorists call this type of information processing an "actor-critic model" of "reinforcement learning" [Barto (2003 a)], [Barto (2003 b)]. The manifold of rules is the representation of what neural network theorists call "the policy function" in an actor-critic system, and practical judgment represents what they call its "value function" [Barto (2003 a, b)].

The general depiction in Figure 3 is contextually understood in the context of the general organization of *nous* presented by figure 4 in chapter 3. For our present purposes, though, our discussion is concerned with how we might use figure 3 to obtain homologues for "the general will" and "domestic tranquility." To do this, let us turn to the *momenta* of Quality in practical judgment (previously presented in figure 12 of chapter 3 and reproduced for convenience in figure 4 below).

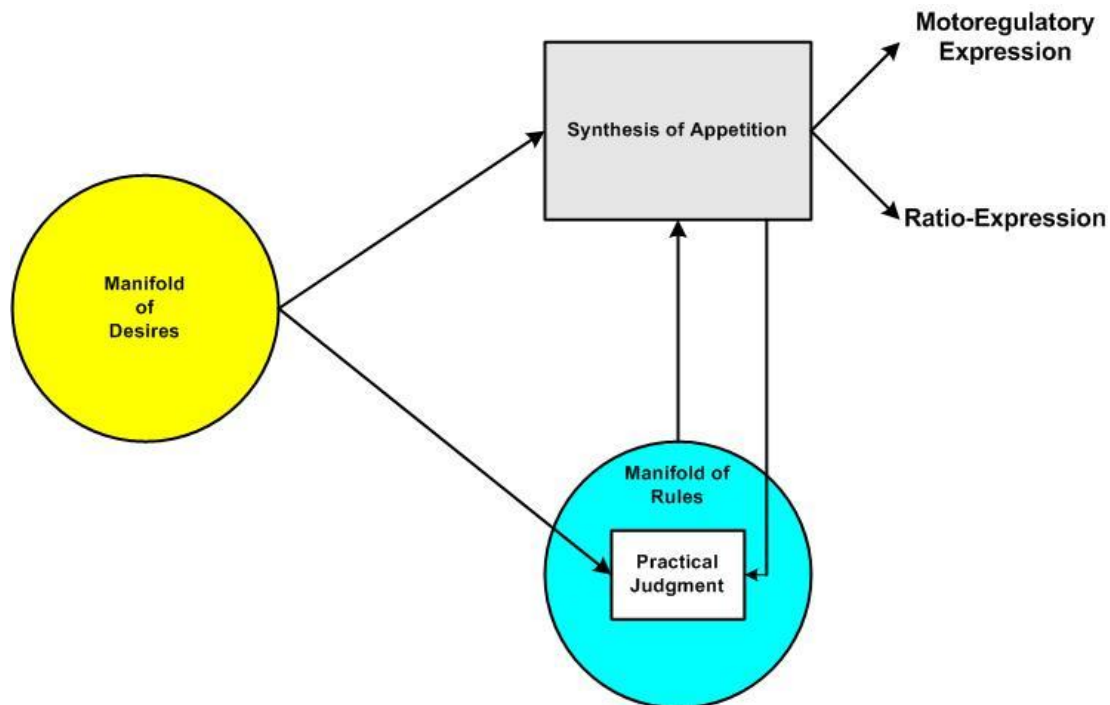


Figure 3: Detailed illustration of information processing in the synthesis of appetite in practical Reason. Neural network theory calls this sort of organization an "actor-critic" model of "reinforcement learning." The information processing described by this structure is congruent with the findings of Piaget [1974] but does not show Piaget's "cognizance" component (which is the task of the process of determining judgment and the manifold of concepts).

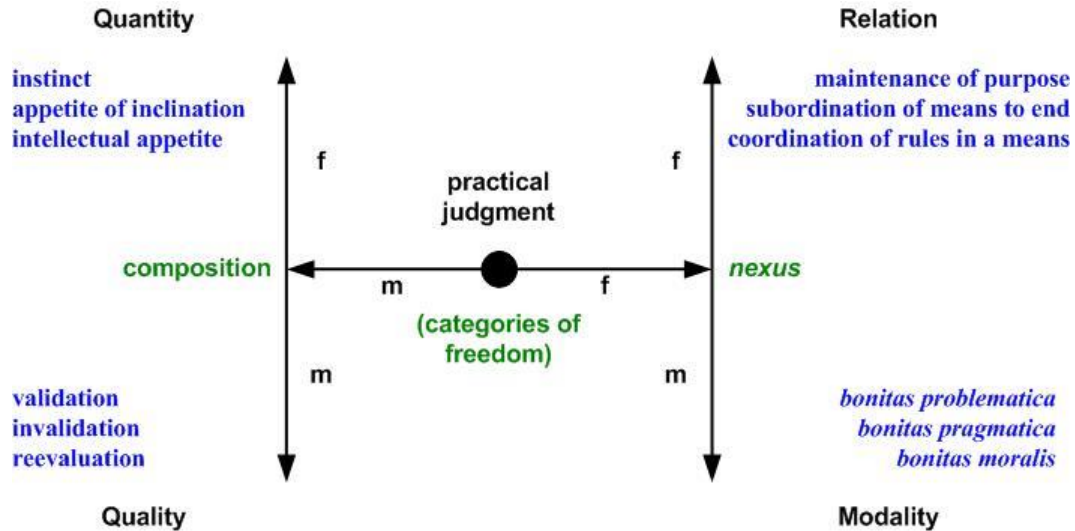


Figure 4: 2LAR structure of practical judgment.

In the 2LAR of general representation (chapter 3, figure 3), the *momenta* of Quality are synthetical general functions of agreement, opposition, and subcontrarity [Wells (2009), chap. 2, pp. 43-46]. In practical judgment these specialize to synthetical functions of validation, invalidation, and reevaluation, respectively, according to agreement, opposition, or subcontrarity of the expression of teleological reflective judgment with the formula of the categorical imperative of practical Reason. The detailed Critical metaphysic and deduction of these functions is found in Wells (2006), chapter 20, and summarized in Wells (2006), pp. 2360-2361; but for our purposes in this treatise they can be sufficiently described as follows. **Validation** means that the action expression of reflective judgment does not contradict the manifold of rules (in its current state) and so is apparently congruent with the categorical imperative. Appetition therefore allows its expression to proceed. **Invalidation** means that reflective judgment's action expression contradicts the manifold of rules, is therefore incongruent with the formula of the categorical imperative, and reflective judgment's action expression is vetoed by practical Reason. **Reevaluation** means the action expression is contrary to the categorical imperative in the form expressed by reflective judgment and that some accommodation is to be made to it to bring it into congruence with the categorical imperative. To effect this, practical Reason commands an act of ratio-expression by speculative Reason. This summons into action the process of determining judgment to alter the synthesis in sensibility and thereby modify reflective judgment's manifold of Desires [Wells (2016)] (see the illustration provided by figure 5 below). It is ratio-expression through reevaluation that eventually gives rise to the entirety of a human being's objective cognizance. But the *practical value* of reevaluation is equilibration under the categorical imperative and is the *practical* reason for why people think.

Kant often described practical Reason as "legislating" the self-made laws a person obeys, as, e.g. in his statements of these *theoretical* categorical imperatives:

Act only in accordance with that maxim through which you can at the same time will that it become a natural law.

Act as if the maxim of your act were to become by your will a universal natural law. [Kant (1785), 4: 421]

We have here a sort of body politic metaphor-in-reverse. Although Kant would have an individual make himself obey these imperatives, his theoretical point was that *everyone ought to* follow these imperatives. In them we can detect, as Santayana did, the shadow of Christianity's "Golden Rule." Given the theocentric orientation of Kant's philosophy, it seems likely that this was intentional on Kant's part.

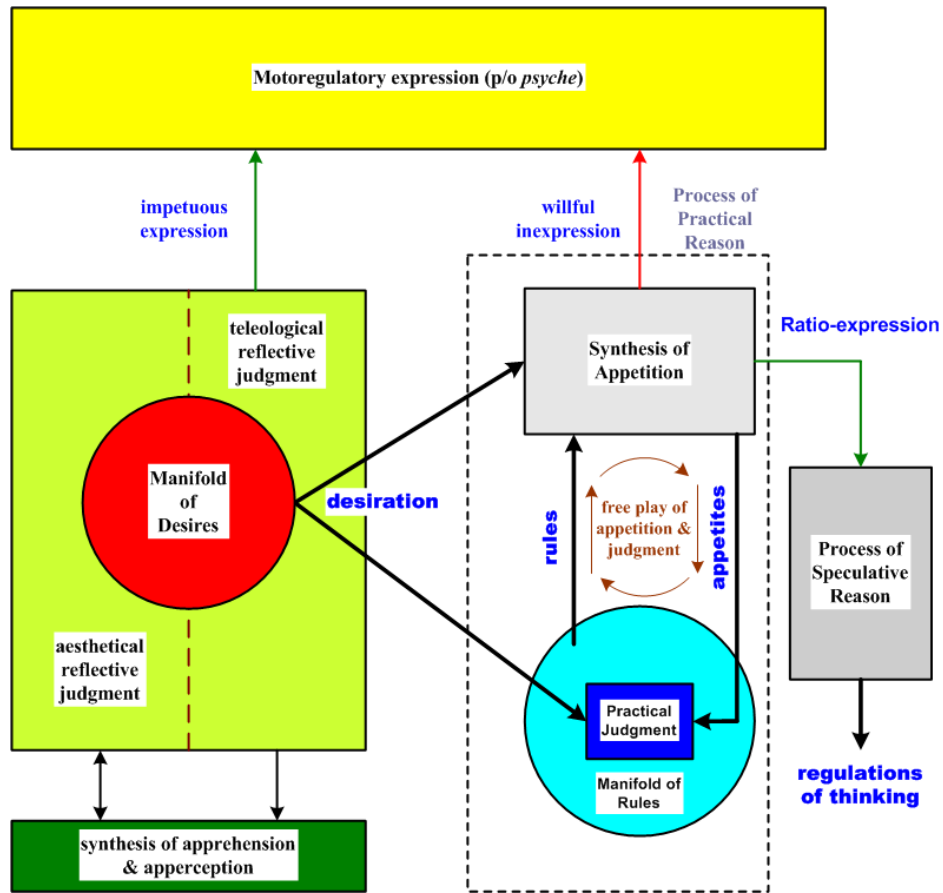


Figure 5: Interplay of affective and practical processes in action assimilation into sensorimotor schemes, accommodation of action schemes, and objective cognizance through thinking. The free play of appetite and judgment in practical Reason plays a functional role in practical Reason similar to the role that the free play of imagination and understanding plays in cognition.

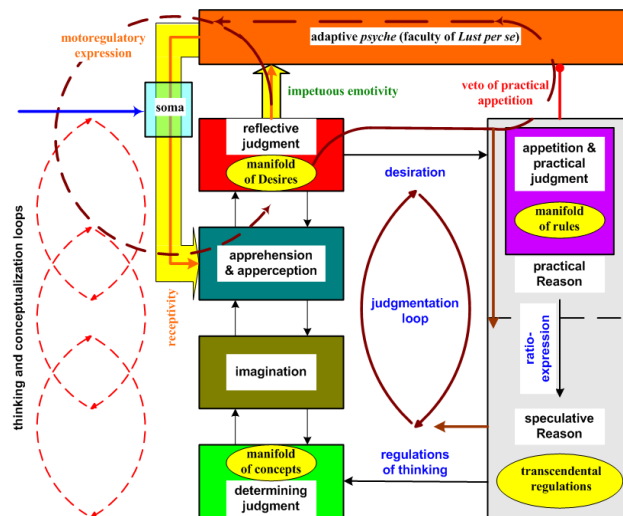


Figure 6: Information flows initiated by a practical judgment of reevaluation.

Figure 5 is a more detailed mathematical description of interacting processes in practical Reason, but it should be kept in mind that these are pieces of a larger psyche-noetic-somatic context shown in figure 6.

If we are to make a body politic homologue using the phenomenon of mind, this context is important. We can already see, in figure 6, that the subjective factor in feelings of injustice is presented in the manifold of Desires and the process of reflective judgment. The process of transferal of feelings of injustice to objectified concepts is likewise presented by the manifold of concepts, determining judgment, imagination, and the motoregulatory feedback loop from reflective judgment to *psyche* to apprehension & comprehension. We can also make note of information-processing cycles that, collectively, lead the human being to a state of mental equilibrium - the human-natural counterpart of "tranquility." What we seek to do with a mathematical homologue is to liken parts of a justice system to the functions, processes and cycles depicted in figures 5 and 6. At the same time, though, we must guard against extravagances in our reasoning, both those of overgeneralization and those of overspecification.

4. General Considerations for a General Will Homologue for Justice Systems

Perhaps the first and most obvious homologue is that of a Society's body of laws (statute laws, common laws, and regulatory laws) compared to a human being's manifold of rules in practical Reason. Both are "legislated" in some sense because neither is aboriginal and both are constructed and modified over time in reaction to new experiences and new situations. There are, of course, a number of essential differences between them. Foremost is this: a manifold of rules is the construct of one specific individual human being; and all its maxims, tenets, and imperatives are *always* "obeyed" by that person when they are evoked or provoked. The legal codes of a Society, in contrast, are not necessarily obeyed by *every* member of a Society. For that reason Societies institute means and mechanisms for law enforcement.

Nonetheless, an individual human being does have a "law enforcement" mechanism for his manifold of rules through which obedience to the "legislation" presented by this manifold is enforced. It is here especially where an analogy between a "body politic" and a human body can be well appreciated. That in human nature which acts as a function homologous to law enforcement in a Society is called *motoregulatory expression* - the co-determined capacities of *nous* and *soma* for realizing (making actual) the ability of a human being to be the agent of his own actions [Wells (2006), chap. 16, §7.5 ff]. Figure 7 depicts the second-level analytic representation (2LAR) of motoregulatory expression. Motoregulatory expression is an idea of *nous-soma* reciprocity and, so, is part of the logical division of *psyche* in Critical Organized Being. The twelve synthetic functional *momenta* in figure 7 are explained in the Wells (2006) citation in terms of sensorimotor appearances of an individual's behaviors. The homologous relationship we are interested in for this treatise is that of the members of a Society as *parts of its organic whole* in relationship to its other members ("parts") *as a whole*.

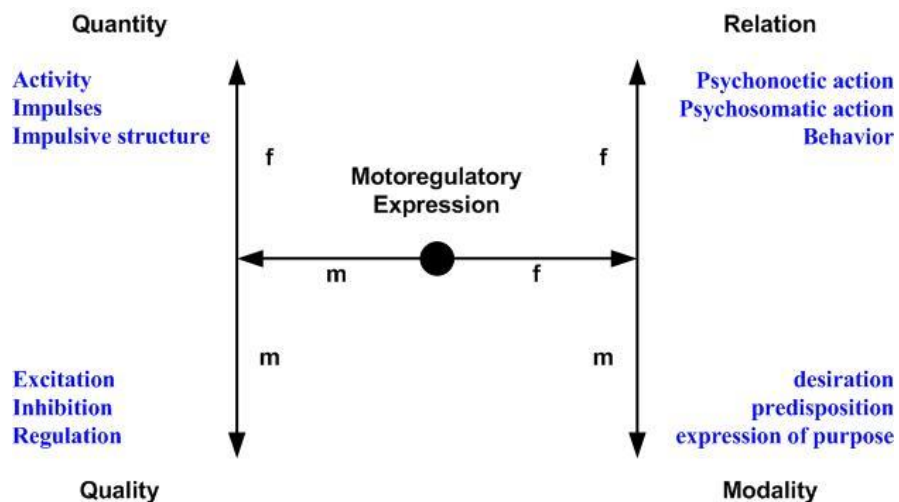


Figure 7: Second-level analytic representation (2LAR) of the human capacity for motoregulatory expression.

The "law enforcement function" of motoregulatory expression in *psyche* is not entirely "without passion or prejudice." Epistemologically, a passion is an habitual sensuous purpose a person has made into a maxim in his manifold of practical rules. A prejudice is the product of stereotyping in a person's manifold of concepts. In the 2LAR of motoregulatory expression, the Modality *momentum* of predisposition is a metaphysical *nexus* of perception with motoregulatory action such that a perception is viewed as having an immediate connection with some specific expression of activity in which the activity is not regarded as a matter of choice but, rather, that the perception is an actual ground for some appetite under the Critical principle of self-love. Predispositions provide matter for the manifold of Desires and in some cases the corresponding activity expressions do become maxims in the person's manifold of rules and thereby are made purposes of passion. Concepts of stereotypes, reintroduced into sensibility during thinking, do likewise alter perception and thus can give rise not only to expressions of passion but, also, to prejudicial expressions of activity [Wells (2006), chap. 16, pp. 1504-1505].

Neither passionate expressions nor expressions of purpose, once structured into the individual's manifold of rules, are necessarily inalterable. Many traditions fall into the passion or prejudice classes of maxims; but, over the course of time and experience, a Society's traditions can and are changed. For example, it was once accepted, as a practice of U.S. law enforcement, that a police officer could shoot a fleeing suspect, regardless of other circumstances, in order to prevent his escape. Flight was itself regarded as a form of crime because submission to the orders of a law enforcement officer is socially regarded as a Duty and resisting arrest is itself regarded as a crime. In the United States today, there are a number of restrictions that have been placed on when a police officer is permitted to use deadly force to subdue or prevent the escape of a suspect. These restrictions did not exist in the U.S. a century ago. U.S. social traditions attending capture and arrest of a suspect have changed over time and "flight" is no longer *necessarily* considered proof of a suspect's guilt. Today one rarely hears the once popular maxim, "An innocent man doesn't run."

It is not-incorrect to regard a Society's widely followed traditions and social folkways as particular expressions of its general will. This is so even in the case of those with more of the character of a "free won't" rather than a "free will." It *is* incorrect to regard them as immutable and unchangeable; that is the attitude of adult moral realism lingering on from the moral realism stage displayed by small children. A necessary part of any *process* for determination of general will in a Society must include processes for on-going reexamination, criticism, and, as appropriate by means of consensus, *changing* the understanding of it. The relationships between customs, traditions, folkways, and laws are nuanced, delicate, and conjointly establish what Montesquieu called "the spirit of nations." He properly pointed out,

There are two sorts of tyranny: one real, which arises from oppression; the other is seated in opinion, and is sure to be left whenever those who govern establish rulings shocking to the existing ideas of a nation. . . .

Mankind are influenced by various causes: by the climate, by the religion, by the laws, by the maxims of government, by precedents, morals, and customs; whence is formed a general spirit of nations.

In proportion as, in every country, any one of these causes acts with more force, the others in the same degree are weakened. . . .

I would only make my readers comprehend that all political are not all moral vices; and that all moral are not political vices; and that those who make laws which shock the general spirit of a nation ought not to be ignorant of this. . . .

Laws are established, manners are inspired; these proceed from a general spirit, those from a particular institution: now it is as dangerous, nay more so, to subvert the general spirit as to change a particular institution. . . .

We have said that the laws were the particular and precise institutions of a legislator, and the 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 the air of tyranny; it would be better to change them by introducing other manners and other customs. [Montesquieu (1748) vol. I, pp. 293-298]

Lawmaking itself, as a process, exhibits features homologous to mental activities by which a human being expresses actions, constructs his manifold of rules and manifold of concepts, and generates his manifold of Desires. Critical metaphysics calls these co-determining activities the *synthesis in the motivational dynamic* [Wells (2009), chap. 10]. Figure 8 illustrates the flow of information in this synthetic dynamic. Its second level analytic representation (2LAR) is shown in figure 9.

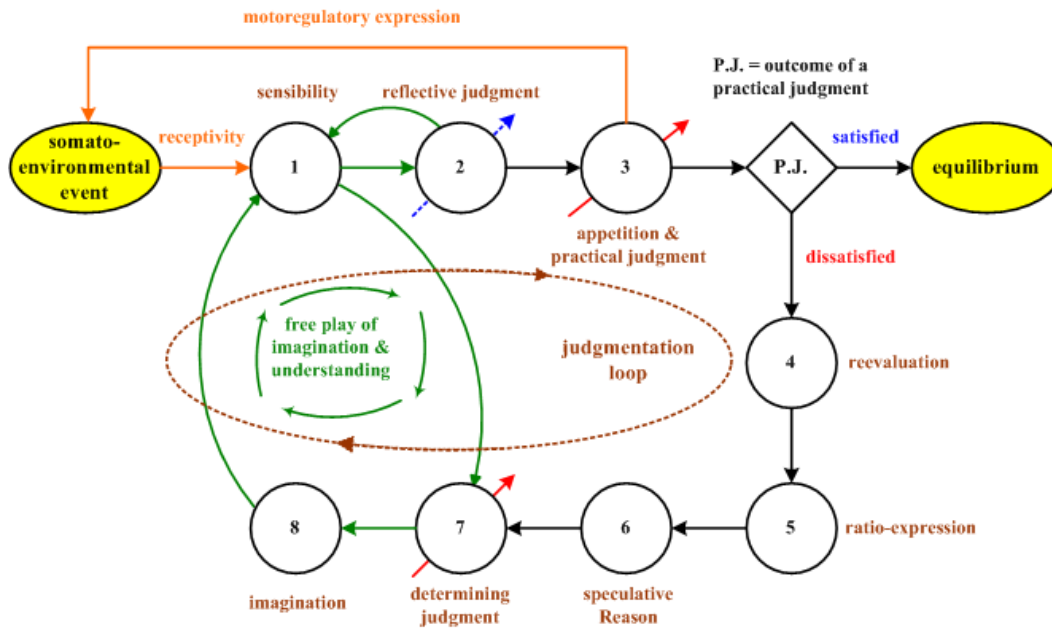


Figure 8: Synthesis of information in the motivational dynamic. The arrows shown in nodes 2, 3, and 7 denote changes made in the manifolds of Desires, rules, and concepts, respectively. The cycle is initiated by feelings of *Lust* or *Unlust* judged by aesthetical reflective judgment and completes when feelings of *Lust* and *Unlust* negate each other. Practical judgment judges this negation as achievement of a condition of equilibrium.

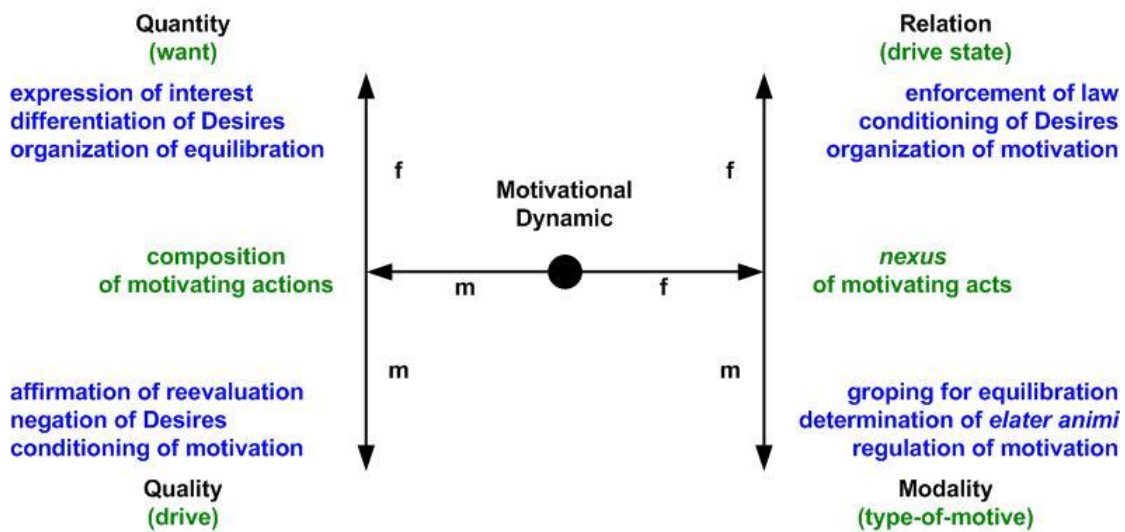


Figure 9: Second level analytic representation of the motivational dynamic.

It is not especially difficult to find analogies between the motivational dynamic and processes of law-making by legislatures, regulatory agencies, and the courts. The satisficing condition sought in the motivational dynamic is *equilibrium*, the achievement of which is signaled by the mutual negation of feelings of *Lust* and *Unlust* in affective perception. The feeling of *Lust* was described by Kant as a "life promoting" feeling, the "flavor" of which is well described by the American idiom "I'm up for that!" Its contradictory opposite, the feeling of *Unlust*, Kant described as a "life hindering" feeling that Americans sometimes describe by saying, "That's a drag" or "That's a bummer." When the intensive magnitudes of these opposite feelings cancel out each other *tranquility* is the result. Thus equilibrium in the motivational dynamic and domestic tranquility in civil living are natural homologues.

As for the lawmaking (political) side of the picture, Emerson wrote,

In dealing with the State, we ought to remember that its institutions are not aboriginal, though they existed before we were born; that they are not superior to the citizen; that every one of them was once the act of a single man; every law and usage was a man's expedient to meet a particular case; that they are all imitable, all alterable; we may make as good; we may make better. Society is an illusion to the young citizen. It lies before him in rigid repose, with certain names, men, and institutions rooted like oak trees to the center, round which all arrange themselves the best they can. But the old statesman knows that society is fluid; there are no such roots and centers; but any particle may suddenly become the center of the movement, and compel the system to gyrate around it, as every man of strong will, like Pisistratus or Cromwell, does for a time, and every man of truth, like Plato or Paul, does for ever. But politics rests on necessary foundations, and cannot be treated with levity. Republics abound in young civilians, who believe that the laws make the city; that grave modifications of the policy and modes of living, and employments of the population; that commerce, education, and religion may be voted in or out; and that any measure, though it were absurd, may be imposed on a people if only you can get sufficient votes to make it a law. But the wise know that foolish legislation is a rope of sand which perishes in the twisting; that the state must follow, and not lead, the character and progress of the citizen; the strongest usurper is quickly got rid of; and they only who build on Ideas build for eternity; and that the form of government which prevails is the expression of what cultivation exists in the population which permits it. The law is only a memorandum. [Emerson (1844)]

The lawmaking and law-enforcing syntheses carried out in the motivational dynamic co-involve all three processes of judgment: 1) reflective judgment (feelings of *Lust* and *Unlust* by aesthetical reflective judgment; impulsive expressions of actions by teleological reflective judgment); 2) practical judgment (precedents of prior constructions in the manifold of rules); and 3) determining judgment (cognizance of objective experience and the construction of new experience by and in the manifold of concepts). *Motivation* in Critical Epistemology is accommodation of perceptions because changing perceptions in sensibility alters the manifold of Desires and possibly-expedient actions of motoregulatory expression. The motivational dynamic is the representation of the *Existenz* of a human being's ability to organize and regulate perception as well as to undertake actions in pursuit of an end.

For purposes of finding a natural homologue for the notion of "the general will," one can approach this end by examination of what the motivational dynamic is doing. One can gain a first notion of this from the descriptive labels given to four general titles and twelve synthetic functions in figure 9. (More thorough explanations of these functions is provided in Wells (2009), chapter 10). Under the title of *want* the *momenta* make reference to interests, Desires, and achievement of equilibrium - the logically singular, particular, and universal functions of Quantity. Under that of *drive* they make reference to reevaluation, negation of (that is, satisfying) Desires, and conditioning of motivations - the logically affirmative, negative, and infinite functions of Quality. Under *drive-state* we find enforcement of law, conditioning of Desires, and organization of motivations - the logically categorical, hypothetical, and disjunctive functions of Relation. Finally, under *type-of-motive* we have groping for equilibration, determination of *elater animi* ("drivers of mind"), and regulation of motivation - the logically problematic, assertoric, and apodictic functions of Modality.

Let us start with a closer look at the problematic Modality of groping for equilibration. The process of practical Reason is the master regulator of all non-autonomic human actions. This is a process that knows no objects of sense and feels no feelings of *Lust* or *Unlust*. It utterly lacks the innate ideas that Rationalist philosophers once believed man to possess. It has one absolute natural law governing its process, and this law is the categorical imperative of pure practical Reason which regulates for achieving and maintaining *Existenz* in a state of equilibrium. The manifold of rules is a structured organization of maxims of action with conditions placed upon impetuous action expressions of teleological reflective judgment when those expressions failed to bring about equilibration of past disturbances in particular circumstances and situations. Reflective judgment, being entirely non-objective, does not "know in advance" what action *will* achieve a condition of equilibrium in a particular circumstance; its judgments are what Kant called "judgments of technique" because their character and nature is

as if their possibility is grounded in art¹, in which case the judgments are neither theoretical nor practical since they do not *determine* anything about the constitution of the object nor the way in which to produce it, but merely after analogy with an art, and indeed in subjective regard to our faculty of knowledge [Kant (*c.* 1789), 20: 201-202].

Judgments of technique are founded upon basic sensorimotor reflexes from which sensorimotor habits and what Piaget called "sensorimotor schemes" [Piaget (1952)] are developed in the manifold of rules beginning in infancy.

Consequently, under the drive of an affirmation of reevaluation, the acts of practical Reason can only be logically problematic acts which summon up (by ratio-expression) determinable matter from the manifold of concepts with the ultimate aim of accommodating the manifold of rules [Wells (2016)]. It must, in other words, *grop* for a way to respond to a disturbance and recover a state of equilibrium. This groping is a search for means to satisfy an end (equilibrium). It can (and often does) require multiple judgmentation loop *cycles* (figure 8) before equilibrium is effected.

Because justice systems are developed, designed, instituted, and operated by human beings, it should come as no surprise that the characteristics of these systems must reflect the human nature of the motivational dynamic. One need only review the historical development of the American justice system to see this character of groping-for-a-system in action [Friedman (2005), chap. 1]. For example,

The law of evidence seemed to tighten up considerably in the first generations after the Revolution. Surviving transcripts of criminal trials suggest rather loose attitudes toward evidence around 1800. In the trial of the so-called Manhattan Well Mystery . . . hearsay was freely admitted; and some of the most important testimony was not elicited by questions from the attorneys, but rather "by allowing the witnesses to give a consecutive and uninterrupted account." Opposing counsel did not meekly wait their turn to cross-examine. Rather, they broke in with questions whenever they wished. . . .

The American political public has always resisted strong, central authority. Power tends rather to be fragmented, balkanized, dispersed. This attitude found expression in the theory of checks and balances; but it stained the law of evidence deeply as well. The modern European law of evidence is fairly simple and rational; the law lets most everything in, and trusts the judge to separate good evidence from bad. But American legal culture tends to distrust the judge; and, of course, American law has the jury. The jury has power to find the facts, and it has, in criminal cases, the final word on innocence or guilt. Yet, the system obviously trusts the jury even less than it trusts the judge. The rules of evidence grew up as some sort of countervailing force. [Friedman (2005), pg. 101]

While Americans were not completely lacking in experience with courts and lawmaking in 1776, they were *relatively* inexperienced. "Legal systems" and legislatures varied from one colony to the next, and in no colony did these approach the formalities of their counterparts in Great Britain. Friedman tells us,

¹ By "art" Kant is referring to what are called "the technical arts"; e.g., skilled crafts.

Generally speaking, court organization in the colonies followed one fundamental social law. The colonies began with simple, undifferentiated structures and developed more complex ones, with more division of labor. England boasted an amazing, cumbersome collection of courts, at the same time highly specialized and wildly overlapping. . . . That 100 settlers huddled on an island near what is now the city of Newport, or freezing in the Plymouth winter, should have reproduced this system exactly would have been miraculous and insane. And indeed no such thing happened. Life in the colonies was precarious at first. Necessity was the supreme lawmaker; the niceties came later. The "laws" laid down in some of the early settlements, such as Virginia, were something like military orders, and indeed, were modeled on martial law. In the beginning, in tiny, starving, beleaguered settlements, there was nothing like the sophisticated notion of separation of powers. The same people made rules, enforced them, handled disputes, and ran the colony. A special court system grew up, and divided into parts, only when there were enough people, problems, and territory to make this sensible.

The government and law of Massachusetts Bay went through many convulsions between 1630 and 1639, when a more permanent scheme of courts was established. The charter of Massachusetts Bay (1629) was typical of charters modeled after those of trading companies. It granted a tract of land, and recognized that the land had to be governed. But in other respects it was much like the charter of a business corporation. . . . The officers and all the freemen constituted the general court, more or less equivalent to the meeting of stockholders in a corporation. [Friedman (2005), pp. 7-8]

Given these unsophisticated and *ad hoc* experiences with establishing and instituting justice systems, it is hardly surprising that considerably less debate and deliberation went into Article III of the U.S. Constitution at the 1787 Convention than went into the other two branches of the general government. The result was a Supreme Court that was enfeebled and under the thumb of Congress until *Marbury v Madison* established the principle of judicial review and gave the court some independence in 1803.

The ability to think and to form generalizing concepts in the manifold of concepts is the mental capacity by which inexperienced groping behavior gives way to regulating, conditioning, and organizing behaviors in the motivational dynamic [Wells (2009), chap. 10]. Here is where the process of determining judgment in the motivational dynamic (figure 8) makes its key contribution to behaviors. These more-refined behaviors, to which Piaget gave the name "compensations" [Piaget (1975)], lead to and produce better and more stable equilibration of disturbances. Societies in general, and justice systems in particular, also exhibit such refinements as time goes by and the Society gains a broader scope of experiences.

For example, in chapter 1 we saw that many of the laws in ancient legal codes were very simple and of an *ad hoc* character. For instance, in the Code of Ur-Namma we find

If a man shatters the bone of another man with a club, he shall weigh and deliver 60 shekels of silver.
[Roth (1995), pg. 19]

I wonder what the fine was (or if there was one) when a *woman* shattered the bone of a man with a club? Or if the weapon was a rock instead of a club? Apparently shattering a skull bone was accounted the same as shattering an arm or a leg bone? Perhaps none of these cases had ever actually come up? A few centuries later, Hittite law showed a somewhat greater degree of generalization as well as a wider scope of criminal variety, e.g.,

If anyone breaks a free person's arm or leg, he shall pay him 20 shekels of silver. He shall look to his house for it. . . .

If anyone bites off the nose of a free person, he shall pay 40 shekels of silver. He shall look to his house for it. [*ibid.*, pg. 219]

Roman law was notable for its efforts to be less *ad hoc* and more "scientific" in its codifications. Such more sophisticated codifications demonstrate invention and employment of progressively more abstract object concepts. For instance, horse theft was once fairly common in the United States. Today it is a rarer

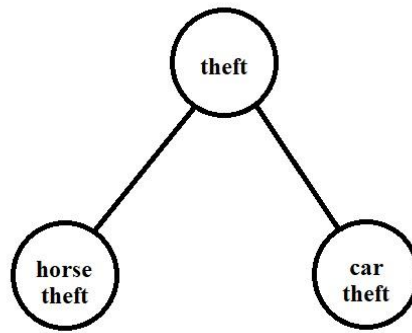


Figure 10: Illustration of the manifold of a generalizing concept of "theft" from two lower specific concepts of theft.

crime. Car theft was, of course, completely unknown in the 19th century but is common today. A higher concept of both - i.e., "theft" *per se* - nonetheless covers both cases (and others as well). Figure 10 is a very simple illustration of this process of abstracting from the concepts of "horse theft" and "car theft" to a higher concept of "theft" in general. Abstraction is made of the stolen object - a horse or a car - to arrive at a more general concept of theft. This higher concept is the concept of an action but the lower concepts combine the action with an object of the action; in the higher concept the specific object that is stolen has no bearing on the meaning of the concept.

Involvement of the process of determining judgment in the motivational dynamic marks the point where the transference process from a feeling of *Lust* or *Unlust* to cognizance of an object *made to be associated* with this feeling takes place. However, this judgment of association is rendered by reflective judgment, not by determining judgment, on a representation in sensibility. Kant tells us,

If, then, the form of a given Object in empirical intuition stands thus that the *apprehension* of its manifold in imagination comes to agreement with the *presentation* of a concept of understanding (indeterminate of which concept), then in the mere reflexion understanding and imagination come to so harmonize for the advancement of their business, and the object will be perceived as expedient merely for the power of judgment, hence the expedience itself will be regarded as merely subjective; for which, further, no determinate concept of the Object at all is required nor is one thereby produced, and the judgment itself is not a judgment of cognition - Such a judgment is called an *aesthetic judgment of reflexion*. [Kant (c. 1789), 20: 220-221]

It is this feature in the human nature of the process of judgmentation whereby *errors in judgment* become possible; the transference from feeling to Object comes about merely because the operations of reflective and determining judgment *happen to harmonize* with each other. The human being *believes* his judgment; **belief** is unquestioned holding-to-be-true on the basis of a subjective judgment². But belief that the object is the cause of a feeling of *Unlust* is not the same thing as *knowing* this is so, and later experience can come to introduce consciousness of *doubt* about this original judgment when that experience gainsays (does not harmonize with) the judgment. Psychologists call this "cognitive dissonance." This aspect of the phenomenon of mind is why science requires experiments to be verified and propositions to gain acceptance by multiple scientists before a proposition is advanced from the status of hypothesis to the loftier status of theory. It is also why trials are a necessary part of any justice system.

In the context of the idea of "the general will," there are two types of error in judgment that are

² Holding-to-be-true on a subjectively sufficient ground *with consciousness of doubt* is called **faith**. In Critical Epistemology, belief and faith are not at all the same.

especially important. The first is the error of overgeneralization; the second is the error of over-specification. In Roman law, the testimony of a slave was not regarded as trustworthy unless that testimony was obtained through torture "because slaves could not be trusted to tell the truth"; this is an example of the error of overgeneralization. In the Code of Ur-Namma, the "if a man shatters the bone of another man with a club" law is regarded (by modern standards) as an error of over-specification.

Again, the political idea of "the general will" is based upon regarding a body politic as if it were a single person. General will is then something homologous to a person's will. But when we look to the human nature of the motivational dynamic as a homologue for instituting processes for determining "the general will," there is one very large and obvious difference that must be factored into the latter institution. A human being is a *singular* and holistic being possessing *one* manifold of rules, *one* manifold of concepts, his or her own unique "way of looking at the world" (metaphysic), and his or her own set of special interests. A body politic, on the other hand, is made up of a plurality of human beings, each bringing with them their own unique manifolds, perspectives, and interests. The *unity* we find in one human being is not necessarily found in *associations* of human beings. Heterarchical social organization recognizes this fact. Benjamin Franklin could have almost been speaking of heterarchy governance when, on September 17th, 1787, he said,

I doubt too whether any other Convention we can obtain may be able to make a better Constitution. For when you assemble a number of men to have the advantage of their joint wisdom, you inevitably assemble with these men all their prejudices, their passions, their errors of opinion, their local interests, and their selfish views. From such an Assembly can a perfect production be expected? [Farrand (1911), vol. II, pg. 642]

The alternatives to *civic* heterarchy are either anarchy or the corrupting despotism of rulership, in both of which there is no civil Community, no social compact, no body politic, and the notions of general will and justice are empty and meaningless concepts. Franklin hinted as much in the same speech, and Mill later even more plainly wrote,

[A] people may prefer a free government, but if, from indolence, or carelessness, or cowardice, or want of public spirit, they are unequal to the exertions necessary for preserving it; if they will not fight for it when it is directly attacked; if they can be deluded by the artifices used to cheat them out of it; if by momentary discouragement, or temporary panic, or a fit of enthusiasm for an individual, they can be induced to lay their liberties at the feet of even a great man, or trust him with powers that enable him to subvert their institutions; in all these cases they are more or less unfit for liberty; and though it may be for their good to have had it even for a short time, they are unlikely to long enjoy it. Again, a people may be unwilling or unable to fulfill the duties which a particular form of government requires of them. A rude people, though in some degree alive to the benefits of civilized society, may be unable to practice the forbearance which it demands; their passions may be too violent, or their personal pride too exacting, to forego private conflict and leave to the laws the avenging of their real or supposed wrongs. In such a case, a civilized government, to be really advantageous to them, will require to be in considerable degree despotic; to be one over which they do not themselves exercise control, and which imposes a great amount of forcible restraint upon their actions. [Mill (1861), pg. 5]

For a human being, "will" is the logically apodictic Modality function of appetitive power (figure 1), e.g., an "x **must be** y" form of proposition. "Choice" is the logically assertoric function, e.g., "x **is** y." The latter is determination by fiat - e.g., as when a parent responds to a child's "why?" with "because I *said so*." The former is what Critical Epistemology calls a "determining factor" - that which constitutes the reason for making one determination (choice) rather than another [Wells (2006), chap. 3, pp. 171-172]. The distinction between "will" and "choice" is perhaps a subtlety of Kantian Logic, but it is nonetheless an important distinction. It is an ontology-centered error to mistake "will" for "choice" or vice versa.

For the body politic of a Society, a statement of *a* law (statute, common, or civil) is homologous to a particular human "choice"; but human "will" has for its homologue *processes* for making, interpreting,

and applying laws, especially when ambiguity or incongruence is found within the *corpus* or *body* of the Society's laws and regulations. We traditionally regard making of statute and civil laws as the province of a legislature, and common laws as the province of a judge, but determining the "general will" of a body politic involves rational and *interacting* processes for making this determination. An analogy with legal systems can be drawn from the contrasts between "adversarial" legal systems and "inquisitional" legal systems.

In an adversarial system, advocates represent their parties' "case" or "position" to an impartial person or group of people (e.g., a judge or a jury), who then decide which party prevails in the dispute. In an inquisitional system, the court (or part of the court) is actively involved in investigating the case. The first system is principally used in the United States and in other countries whose legal systems were derived from the common law system of Great Britain. The second system is principally used in continental Europe, Latin America, and many parts of Africa and Asia, and its European roots lie in Roman civil law and the Napoleonic Code. But in point of fact, one almost always finds a *mix* of adversarial and inquisitional elements in any country's legal system; the terms adversarial or inquisitional refer just to the principal character or manner of that system. As you can see, characterization of a legal system as "adversarial" or "inquisitional" refers to its processes and procedures rather than to its rulings and decisions. So too it is with the ideas of "will" and "choice."

5. The Social Contract and the General Will

Most people most of the time use phrases like "the benefits of society" or "the benefits of civilization" in a generally positive way but without being very specific about what these benefits are or who receives them. If asked, they readily answer with a few specifics, such as "safe and peaceful commerce" or "public safety," and "stuff like that." As to who receives these benefits, a typical answer might be "everyone," although this answer more accurately is expressed as "potentially everyone" since it does not extend to those people from whose menace "public safety" guards "everyone." Or, as Thomas Paine put it,

Great part of that order which reigns among mankind is not the effect of government. It has its origins in the principles of society and the natural constitution of man. It existed prior to government, and would exist if the formality of government was abolished. The mutual dependence and reciprocal interest which man has upon man, and all the parts of civilized community upon each other, create that great chain of connection which holds it together. The landholder, the farmer, the manufacturer, the merchant, the tradesman, and every occupation, prospers by the aid which each receives from the other, and from the whole. Common interest regulates their concerns, and forms their law; and the laws which common usage ordains have a greater influence than the laws of government. In fine, society performs for itself almost everything which is ascribed to government. [Paine (1791-1792), pt. 2, pg. 131]

One should not read into Paine's "the natural constitution of man" any supposition that this constitution is given to Man by a divine "natural law"; the natural constitution of a human being is one which impels him to pursue his personal interests and act upon his self-made Duties-to-himself. Human beings have no innate social instinct. But we discover that our own interests and Duties-to-self can be *served* by making and adopting reciprocal (social) Duties in association with others, and that some of our personal interests are congruently shared by others. These are the common interests which, as Paine put it, creates "that great chain of connection which holds" Society "together." These reciprocal Duties and Obligations define for any Society its only deontologically real and practical "morality."

But, of course, human beings - or some of them at least - also discover that their own interests and Duties-to-self can potentially be served by feigning commitment to all or some of the mutual Duties and Obligations, to which the citizens of a civil Community voluntarily commit themselves, and by betraying those Duties and Obligations when occasion so suits their personal interests. These people are the deontological outlaws and criminals "in but not of" every civil Community-at-large. Quoting again from

Santayana,

The sad business of life is rather to escape certain dreadful evils to which our nature exposes us - death, hunger, disease, weariness, isolation, and contempt. By the awful authority of these things, which stand like specters behind every moral injunction, conscience in reality speaks . . . The moment, however, that society emerges from the early pressure of the environment and is tolerably secure against primary evils, morality grows lax. The forms that life will farther assume are not to be imposed by moral authority, but are determined by the genius of the race, the opportunities of the moment, and the tastes and resources of individual minds. The reign of duty gives place to the reign of freedom, and the law and the covenant to the dispensation of grace. [Santayana (1896), pg. 17]

This "reign of freedom" can also, and often does, include a reign of *licentiousness* in contradiction to the reciprocal Duties and Obligations upon which the Society itself is founded. Every place it does is a bleeding wound inflicted upon the body politic of a civil Community.

The deontologically real role of government, and only justification for its existence, is to staunch and, better, prevent inflictions of these bleeding wounds, lest the body politic die of a thousand cuts. A *justice system* is a civil Society's justifiable means of treating and preventing these social wounds. As Emerson said above, it is not aboriginal even though it existed before we were born; every empirical principle of justice was once the act of a single man; every law and usage was a man's expedient to meet a particular case; all laws are imitable and all are alterable. A people without an institution of a deontologically justifiable justice system can be a Society but they cannot remain a civil Community; and any Society they might temporarily form will perish as inevitably as the sun sets in the evening. The BaMbuti Pygmies have a justice system; it is simple, informal and entirely unwritten [Turnbull (1962), pp. 110-125]. The Roman Republic and ancient Imperial China each developed sophisticated and complex systems of written laws and law enforcement, although it is perhaps more accurate to call these "legal systems" rather than justice systems. Deontologically, "justice" is the negation of anything that is unjust, and "unjust" is anything that breaches or contradicts the terms and conditions of a civil Community's social contract. Written laws are memoranda of past expedient means for resolving past cases of injustice when these laws are themselves *just*. An action or institution is "just" if it is not-incongruent with the Community's social contract.

But what *is* the specific social contract of a civil Community? Where does one turn to find explanations of his Society's "general will"? Here we encounter an inconvenient fact: in almost every case, no civil Community ever commits to writing any detailed declaration of terms and conditions explaining its specific social contract. Small *Gemeinschaft* mini-Communities (e.g., a private card club) seem to get by quite well without one and are able to satisfactorily resolve any issues that might come up in an amicable *ad hoc* manner. In other cases, a formal pledge of some sort, such as the Mayflower Compact of 1620, serves as a commitment to agree. For example, the signers of the Mayflower Compact pledged to

covenant and combine ourselves into a civil Body Politic, for our better ordering and preservation, and furtherance of the Ends aforesaid; and by virtue hereof do enact, constitute, and frame such just and equal laws, ordinances, acts, constitutions, and offices, from time to time, as shall be thought most meet and convenient for the general good of the colony; unto which we promise all due submission and obedience.

Sometimes a few explicit conditions are set down in writing. An example of this is the set of amendments to the U.S. Constitution. Another and fuller set is provided by the Declaration of the Rights of Man and the Citizen set by France's National Constituent Assembly in 1789, the first year of the French Revolution. This document contains the following 17 articles:

I. Men are born free and equal in rights. Social distinctions may be founded only upon the general good.

- II. The goal of any political association is the conservation of the natural and imprescriptible rights of man. These rights are liberty, property, safety, and resistance against oppression.
- III. The principle of any sovereignty resides essentially in the Nation. No body, no individual may exercise any authority which does not proceed directly from the nation.
- IV. Liberty consists of doing anything which does not harm others: thus, the exercise of the natural rights of each man has only those borders which assure other members of the society the fruition of these same rights. These borders can only be determined by the law.
- V. The law has the right to forbid only actions harmful to society. Anything which is not forbidden by the law cannot be impeded, and no one can be constrained to do what it does not order.
- VI. The law is the expression of the general will. All the citizens have the right of contributing personally or through their representatives to its formation. It must be the same for all, either that it protects or it punishes. All the citizens, being equal in its eyes, are equally admissible to all its public dignities, places, and employments, according to their capacity and without distinction other than that of their virtues and of their talents.
- VII. No man can be accused, arrested, nor detained but in the cases determined by the law, and according to the forms which it has prescribed. Those who solicit, dispatch, carry out or cause to be carried out arbitrary orders must be punished; but any citizen called or seized under the terms of the law must obey at once; he renders himself culpable by resistance.
- VIII. The law should establish only penalties that are strictly and evidently necessary, and no one can be punished but under a law established and promulgated before the offense and legally applied.
- IX. Any man presumed innocent until he is declared culpable if it is judged indispensable to arrest him, any rigor which would not be necessary for the securing of his person must be severely reprimanded by the law.
- X. No one may be disquieted for his opinions, even religious ones, provided that their manifestation does not trouble the public order established by the law.
- XI. The free communication of thoughts and of opinions is one of the most precious rights of man; any citizen may thus speak, write, print freely, except to respond to the abuse of this liberty, in the cases determined by law.
- XII. The guarantee of the rights of man and of the citizen necessitates a public force: this force is thus instituted for the advantage of all and not for the particular utility of those in whom it is trusted.
- XIII. For the maintenance of the public force and for the expenditures of administration, a common contribution is indispensable; it must be equally distributed to all the citizens, according to their ability to pay.
- XIV. Each citizen has the right to ascertain, by himself or through his representatives, the need for a public tax, to consent to it freely, to know the uses to which it is put, and of determining the proportion, basis, collection, and duration.
- XV. The society has the right of requesting an account from any public agent of its administration.
- XVI. Any society in which the guarantee of rights is not assured, nor the separation of powers determined, has no Constitution.
- XVII. Property being an inviolable and sacred right, no one can be deprived of private usage, if it is not when the public necessity, legally noted, evidently requires it, and under the condition of a just and prior indemnity.

Although this declaration was made for the nation of France, its statements of contract are more or less practiced, at least in theory, by all Western nations today. It was heavily influenced by Enlightenment authors as well as by leading American political scientists including Adams and Jefferson. Its seventeen articles took aim at many of the major grievances that contributed to the French Revolution. In this its

origin is not unlike the U.S. Bill of Rights. It was adopted by the Assembly *before* that body turned its attention to drafting a French Constitution. Overall, it is one of the best written social contracts we have seen as of yet even though it isn't perfect.

The influence of the notion of divine "natural law" can be noted in the Declaration. This can be seen in Article II in the phrase "natural and imprescriptible rights of man." The American Declaration of Independence has a similar reference, i.e., that men "are endowed by their Creator with certain unalienable rights" to "life, liberty, and the pursuit of happiness." Locke, too, had emphasized this notion of divinity in his *Second Treatise on Government*. Rousseau, on the other hand, declined to suggest a divine source of "natural rights"; he placed the source in the nature of being-a-human-being.

The French Declaration does not contain explicit prescriptions of laws; instead it prescribes principles just laws are expected to adhere to and by which all agents of government are to be guided. At the same time, some of the articles' wording contain ambiguity, e.g. Article XI and its "except to respond to the abuse of this liberty" clause. Ambiguity also attends its notions of "the general good", "actions harmful to society", "public order", and "property." These are ideas of *noumena*. Although everyone thinks he knows what they mean, in fact disputes and disagreements - even violent ones - over what they mean do happen from time to time. They lack *practical* definitions, and it is up to agents of government to provide ones, by laws, that achieve a consensus of the citizens in accordance with the principle of Article III.

A key element is missing from the French declaration; namely, the necessary role of education as the principal tool for achieving such a consensus among free citizens. For laws as much as for institutions,

When an institution, or a set of institutions, has the way prepared for it by the opinions, tastes, and habits of the people, they are not only more easily induced to accept it, but will more easily learn, and will be, from the beginning, better disposed, to do what is required of them both for the preservation of the institutions and for bringing them into such actions as enables them to produce their best results. It would be a great mistake in any legislator not to shape his measures so as to take advantage of such pre-existing habits and feelings when available. On the other hand, it is an exaggeration to elevate these mere aids and facilities into necessary conditions. People are more easily induced to do, and do more easily, what they are already used to; but people also learn to do things new to them. Familiarity is a great help; but much dwelling on an idea will make it familiar, even when strange at first. . . . The amount of capacity which a people possess for doing new things, and adapting themselves to new circumstances, is itself one of the elements of the question. It is a quality in which different nations, and different stages of civilization, differ much from one another. The capability of any given people for fulfilling the conditions of a given form of government cannot be pronounced on by any sweeping rule. Knowledge of the particular people, and general practical judgment and sagacity, must be the guide.

There is also another condition not to be lost sight of. A people may be unprepared for good institutions; but to kindle a desire for them is a necessary part of the preparation. To recommend and advocate a particular institution or form of government, and set its advantages in the strongest light, is one of the modes - often the only mode within reach - of educating the mind of the nation not only for accepting or claiming, but also for working the institution. [Mill (1861), pp. 7-8]

Neither the French nor the Americans adequately grasped the criticality and centrality of education as an institution of their new popular governments although *some* of their revolutionary founders did. American Founding Father Benjamin Rush wrote,

The business of education has acquired a new complexion by the independence of our country. The form of government we have assumed has created a new class of duties to every American. It becomes us, therefore, to examine our former habits upon this subject, and in laying the foundations for nurseries of wise and good men, to adapt our modes of teaching to the peculiar form of our government. [Rush (1798), pg. 87]

Nowhere is it more important in a civil Community with popular government for persons to be educated in "nurseries of wise and good men" than it is for those persons who are to be agents of government. But even more than this, *every* citizen will undergo educational self-development *as an unavoidable consequence of his experiences with any and all of the institutes of government* [Wells (2012), chap. 1]. This is not to say every particular institute of government is a public school; but it *is* to say that citizens *learn lessons* from their observations of and interactions with every governmental institute whether that institute intends for this to happen or not, and whether its agents desire to have this effect on them or not. Mill wrote,

The first element of good government, therefore, being the virtue and intelligence of the human beings composing the community, the most important point of excellence which any form of government can possess is to promote the virtue and intelligence of the people themselves. The first question in respect to any political institutions is how far they tend to foster in the members of the community the various desirable qualities, moral and intellectual, or rather . . . moral, intellectual, and active. The government which does this the best has every likelihood of being the best in all other respects, since it is on these qualities, so far as they exist in the people, that all possibility of goodness in the practical operations of the government depends.

We may consider, then, as one criterion of the goodness of a government, the degree in which it tends to increase the sum of good qualities in the governed, collectively and individually; since, besides that their well-being is the sole object of government, their good qualities supply the moving force which works the machinery [of government]. This leaves, as the other constituent element of the merit of government, the quality of the machinery itself; that is, the degree in which it is adapted to take advantage of the amount of good qualities which may at any time exist, and make them instrumental to the right purposes. . . .

We have now, therefore, obtained a foundation for a twofold division of the merit which any set of political institutions can possess. It consists partly of the degree in which they promote the general mental advance of the community, including under that phrase advancement in intellect, in virtue, and in practical activity and efficiency; and partly of the degree of perfection in which they organize the moral, intellectual, and active worth already existing, so as to operate with the greatest effect on public affairs. A government is to be judged by its actions upon things; by what it makes of the citizens, and what it does with them; its tendency to improve or deteriorate the people themselves, and the goodness or badness of the work it performs for them and by means of them. Government is at once a great influence acting on the human mind and a set of organized arrangements for public business[.] [Mill (1861), pp. 18-21]

Regardless of its explicitly intended functions, every agency and institute of government *is also an agency of public education*. And, as Mill also said,

Let us remember, then, in the first place, that political institutions . . . are the work of men; owe their origin and their whole existence to human will. Men did not wake on a summer morning and find them sprung up. Neither do they resemble trees which, once planted, "are aye growing" while men "are sleeping." In every stage of their existence they are made what they are by human voluntary agency. Like all things, therefore, which are made by men, they may be either well or ill made; judgment and skill may have been exercised in their production, or the reverse of these. . . . On the other hand, it is also to be borne in mind that political machinery does not act of itself. As it is first made, so it has to be worked by men, and even by ordinary men. [*ibid.*, pp. 3-4]

If we regard practical Reason in the judgmentation cycle as a homologue for how the Community gropes for ways and means to achieve and maintain domestic tranquility, then we can also regard the process of determining judgment and its manifold of concepts, in the free play of imagination and understanding (figure 8), as providing a homologue for the intrinsic education function of government institutions. In establishing and developing its system of justice, in congruence with the Community's social contract, this consideration is an important one for institutors and agents to constantly bear in mind.

Citizens' educational self-developments are principal factors acting to establish or oppose domestic tranquility, and a Society's justice system has great effect upon these educational self-developments.

6. Understanding and Identifying the General Will

It was explained earlier that necessity for flexible institutions is the principle of Modality in the empirical theme of the Enlightened perfectibility of mankind's institutions. The *practical meaning* of the general will of a civil Community's body politic subsists in on-going *processes* of review, evaluation, and refinement which take as their aliments all factors pertinent to the maintaining and sustaining of civil tranquility within the Community (i.e., domestic tranquility). For a justice system these processes, singly and collectively, are tasked with effecting a "transferral process" necessary for transforming affective feelings of injustice into cognizance of objects and actions aimed at negating injustice.

There are several important goals to be met by a system of such processes in order for it to be successful and satisfactory. Here brief outlines of the goals are presented; in the following chapters we will go into them in greater detail. As goals of perfectibility, the processes described by each are aimed at making the justice system more perfect, i.e. at perfecting it, in the light of changes in Society, new empirical facts and discoveries, and evolving social mores and folkways.

Goal 1: To provide agencies and mechanisms for on-going surveillance, assessment, and updating of the effects of existing policies and laws, and for assessing and understanding evolving needs for new policies and laws. The desired outcomes from meeting this goal are Order, Progress and achieving, maintaining, and improving the state of domestic tranquility through institutionalized adaptation of the methods and means employed by government. As this treatise has found, the functions of justice broadly encompass all the traditional ideas of branches of government: legislative, executive, and judicial. Means and methods of meeting Goal 1 amend the organizations of these branches by adding to the overall heterarchical structure three specific new processes first introduced in chapter 6 of Wells (2010): (1) Petitions of Right; (2) Boards of Right; and (3) a Process of Mandamus.

What these entail are discussed later. For now it is enough to say that it is necessary for agents and agencies of government to have proactive ways and means of listening to the people - that is, to the voice of the Sovereign those agents and agencies serve - in order to hear the voice of that *noumenal* ghost, "the general will." But, as Thoreau complained, popular government is notorious for *not* listening to the people it serves. Perhaps this might be because when *one* person registers a complaint or grievance he might or might not be representative of his other fellow citizens? Or perhaps the agent who hears the complaint is not empowered to do something about it ("sorry, that's not my department")? Or perhaps the agent is biased or corrupt? Whatever reasons there might be in particular cases, one fact has become empirically clear through repeated experiences: *voting* is not an adequate means of communicating something as detailed and complex as the general will to those whose Duty it is to carry it out. Rousseau could not have been more mistaken when he thought it was.

Order and Progress in a Society are inseparably linked ideas. Mill argues,

If we intend to comprise in the idea of Order all that society requires from its government which is not included in the idea of Progress, we must define Order as the preservation of all kinds and amounts of good which already exist, and Progress as consisting in the increase of them. . . . We cannot say that, in constituting a polity, certain provisions ought to be made for Order and certain others for Progress since the conditions of Order, in the sense now indicated, and those of Progress are not opposite but the same. The agencies which tend to preserve the social good which already exists are the very same which promote the increase of it, and vice versa . . . If there is anything certain in human affairs, it is that valuable acquisitions are only to be retained by the continuation of the same energies which gained them. Things left to take care of themselves inevitably decay. Those whom success induces to relax their habit of care and thoughtfulness, and their willingness to encounter disagreeables, seldom long retain their good fortune at its height. [Mill (1861), pp. 13-14]

One might call Mill's argument here his "second law of thermodynamics for Societies" insofar as that law of physics implies that systems become more disordered as time goes on. In American politics, a political conservative is one who is seen as valuing preservation of things as they are, i.e., valuing Order over Progress. A political progressive, on the other hand, is one who is seen as valuing making *some* things better even if it means that other old or traditional things have to be sacrificed to some degree. What could conduce more to adversarial conflicts of interest? In reality, neither political persuasion is tenable by itself. Over-enthusiasm for Order ignores the fact that a great many people make Duties-to-themselves to better their lot in life (personal Progress) and will never be content living in what Toynbee called an "arrested society." Over-enthusiasm for Progress ignores the fact that personal Progress for *some* is often accompanied by personal *loss* by others that the latter will not passively accept. As Mill pointed out,

Progress includes Order but Order does not include Progress. Progress is a greater degree of that of which Order is a less. . . . Order would find a more suitable place among the conditions of Progress; since, if we would increase our sum total of good, nothing is more indispensable than to take due care of what we already have. [*ibid.*, pg. 16]

Petitions of Right, Boards of Right, and Process of Mandamus jointly institute what an engineer would call a "feedback system" for stabilizing and regulating Society in the face of social disturbances. Its means are the Society's overall political and legal systems.

Goal 2: To provide mechanisms for qualifying candidates for offices of authority to better insure that the choices of elected or appointed officers presented to the citizens of the Republic are drawn from the most meritorious citizens available and willing to accept the call to public service. The basic idea behind this goal is drawn from the example of ancient Athens and its process of merit review and evaluation. The purpose, of course, is "to keep the rich from buying and the knave from smiling his way into office." It is, I hope and presume, obvious enough that an agent of authority must be competently skilled enough to carry out the Duties of his office and meet the Sovereign's expectation of authority for that office. It is also obvious, I again presume, that the agent *must be personally committed* - by *obligatio* - to do so and "to serve well and faithfully" in the meritorious performance of his Duties of office.

Deontological merit is a quality of an action and, from the practical Standpoint, an action taken from either *obligatione externa* or *interna* such that the action could not have been compelled externally in the measure to which it actually took place. It is to such actions that the phrase "above and beyond the call of Duty" is applied. A meritorious person is a person whose action has the quality of merit and who consistently exhibits virtue in his attention to his Duties. Deontological virtue is the individual's constant disposition to carry out his Duties.

But here is encountered the very old riddle of the Roman question, "*Quis custodiet ipsos custodes?*". Can unmeritorious people sit on boards of merit review and evaluation? Who judges the merit of agents appointed to merit evaluation and review boards? Is it possible to apply checks and balances concepts to such boards? How can it be insured that agents of such boards, once appointed, *remain* meritorious? Like the Romans, Adams wrestled unsuccessfully with this question:

There is a voice within us which seems to intimate that real merit should govern the world; and that men ought to be respected only in proportion to their talents, virtues, and services. But the question has always been, how can this arrangement be accomplished? How shall the men of merit be discovered? How shall the proportions of merit be ascertained and graduated? Who shall be the judge? When the government of a great nation is in question, shall the whole nation choose? Will such a choice be greater than chance? . . . There is no individual personally known to an hundredth part of the nation. The voters, then, must be exposed to deception, from intrigues and maneuvers without number, that is to say, from all the chicanery, impostures, and falsehoods imaginable, with scarce a possibility of preferring real merit. [Adams (1790), pg. 357]

The American and French republics are both examples of *experimenting* with how to solve this problem and address this question. Both have seen some successes and both have, without any doubt, experienced some failures. And neither can say truthfully that real merit is consistently found in its agents of authority. The present day (2023) U.S. Congress and U.S. Supreme Court are both examples of what harm lack of real merit in authority figure agents can do to a Society. At stake is preservation of popular Sovereignty and civil Liberty. Therefore ways and means of insuring merit in those agents whose Office is assessing and passing judgment on the merits of others is essential to pursuit of this Goal.

Goal 3: To provide mechanisms for insuring good citizenship in the conduct of all aspects of life in the civil Community in all matters affecting the general welfare. Any civil Community predicated upon and dedicated to the Sovereignty of its citizens requires more than merit in its agents of authority, who are merely the servants and not the masters or rulers of its Society. It requires at its core *citizenship*. Deontological citizenship is *the actuality of individual actions congruent with conventional general standards of expectations for civic actions*. A civic action is an action operationalized by an individual that is congruent with his Duties under the terms of a social contract. Real citizenship is a social dynamic and something quite different from mere entitlement citizenship, which is nothing but a title bestowed upon a person by legal fiat that carries with it particular legal privileges, rights, and liberties.

To be a deontological citizen is to be a member of the Community who accepts and commits to mutual Obligations to-and-with its other members, and who accepts and commits himself to performance of acts of citizenship as a reciprocal Duty he owes to the civil Community. This commitment extends and applies to every aspect of Community life and includes its commercial as much as its political aspects. It extends to commitments to public health and safety, public education, and public economic welfare. It is a marvel and a puzzle that, while banishing the rulership of monarchy from political life, the Americans retained it in their habits and traditional ideas of commercial life [Wells (2017)]. Citizen sovereignty is possible only where there is deontological citizenship. Where there is not, the Community undergoes breakdown.

The conventional general standards of expectations for civic actions just referred to have their source in a civil Community's explicit and implicit understandings of its social compact. An example of the explicit part of this understanding is what a document such as the French Declaration is intended to explain to the members of the Community. Beginning in 1215 and continuing through many later amendments, England's Magna Carta³ filled a similar role in English and colonial America's histories. Germany's Basic Law⁴ fills this role for the German Federal Republic; and, indeed, almost all present day nations either have a similar document or declaration or else are at least formal signatories of United Nations versions of these (regardless of whether or not their governments are actually committed by *obligatio externa* to the pledges they claim to have made). The world does not lack examples of formal attempts to explain and/or codify explicit articles of social compacts; these can be called "laws about laws" or "meta-laws." What the world does seem to lack, by and large, are credible efforts to secure pledges of *obligatio externa* to these articles *by the people* of individual nations - without which these articles lack deontological justification and leave the great majority of the people of the world in *outlaw status* in relationship to these codifications.

The *implicit* understandings of social compacts are more difficult to identify and more problematic from a logical perspective. This is because these implicit understandings are exhibited by mores and folkways of the Community. Again quoting Montesquieu,

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 the air of tyranny; it would be better to change them introducing other manners and customs. . . . There is this difference

³ <https://avalon.law.yale.edu/medieval/magframe.asp>

⁴ https://www.constituteproject.org/constitution/German_Federal_Republic_2014

between laws and manners: that the laws are most adapted to regulate the actions of the subject, and manners to regulate the actions of the man. There is this difference between manners and customs: that the former principally relate to the interior conduct, the latter to the exterior. [Montesquieu (1748), pp. 298, 300]

There are many people who hold an opinion that mores and folkways (manners and customs) ought to be universally the same for every Community. Not infrequently such opinions are grounded in personal faith in the truth of some *noumenon* of religious faith or from faith in some kind of supernatural "natural law." However, this is a badly flawed opinion. Mores and folkways arise in response to special circumstances and conditions faced by specific communities; they are specific means people adopt to deal with factors in their environments and situations that would otherwise, as Santayana put it, "expose them to certain dreadful evils" they must overcome to live and prosper. Montesquieu said,

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 law unless he would lay a constraint on their virtues. If in general the character should be good, the little foibles that may be found in it are of small importance. [*ibid.*, pg. 294]

The notion of heterarchical institutions includes the tolerance of local diversities and variations in customs, manners, mores and folkways in laws and justice administration. This does not imply or mean a condition of complete licentiousness. It means tolerance of mini-Community special interests when those interests do not conflict with common interests of the greater civil Community. The most basic of these is stated in the general term of every social compact, i.e., that each associate, in his corporate capacity, regard every other associate as an indivisible part of their whole body politic. For instance, segregation law are transgressions of the social compact. So too are religious laws in any Society that claims religious *civil* liberty is an essential part of their social contract.

The Duties referred to above are, one and all, reciprocal Duties of one person to the situation of another (the logically disjunctive Relation in Kant's moral categories). Social morality has no deontologically valid meaning outside of this category of Relation. Its foundation is the social compact which takes a mere community and forms it into a civil Community. Heterarchical institution is, again, the means for resolving the issues and problems raised by the phenomenon of mini-Community. *Rulership*, either by monarchy or by oligarchy, dooms a Society to eventual extinction.

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