

Chapter 11 Civil Rights

1. Notions of "Right"

Notions of "right" in moral, political, and legal contexts are so key and fundamental to the Idea of Justice one might reasonably think a clear and distinct definition of what "right" means in these contexts would have been settled long ago. The nature of human languages, however, has a pronounced empirical tendency to work against such clean and clear understandings for important words. The word "right" is one of the best examples of this. The first time a word is invented its meaning usually is distinct, clear, and often technical; but as the word gains in popularity, it tends to acquire metaphorical and slang usages that blur and sometimes render obsolete the original meaning. Differing usages are applied in different contexts and one must know the context to understand the usage.

Such seems to be the case with the English word "right." This word appears to descend, by some obscure path, from an ancient Proto-Indo-European verb that meant "to straighten, to direct." Somewhere along this path, it started being used as a noun (Old English "*riht*") that meant "that which is morally correct; duty; obligation"; we still can see a connection with the original verb in the slang phrase "walk the straight and narrow" ("to maintain a morally upright way of life; to only make choices that are morally and legally correct")¹. Also somewhere along this pathway, its usages split into two distinct classes of connotations: 1) moral and legal connotations; and 2) directional or geometric connotations (e.g., "right hand vs. left hand" or "right angles").

The moral and legal connotations of "right" also bifurcated into two classes: "natural rights" and what are sometimes called "legal rights" and sometimes called "civil rights". These divisions are neither crisp nor clean, however. Closely allied to "natural rights" - but not always precisely the same as them - are what are called "human rights." "Legal rights" and "civil rights" are also closely allied but, again, do not always mean precisely the same thing.

It has often been supposed, dating back to antiquity, that "natural rights" are of divine origin or exist as consequences of divinely established "natural law." Christian theologians often cite Romans 2:14-15 as "evidence" of this:

For when people of the nations, who do not have the law, do by nature the things of the law, these people, although not having the law, are a law to themselves. They are the very ones who demonstrate the matter of the law to be written in their hearts, while their conscience is bearing witness with them, and by their own thoughts they are being accused or even excused. [Romans 2: 14-15]

Even Kant endorsed this view (without citing Romans) in his explanation of "conscience", although in this he strayed into his un-Critical transcendent error of "the moral law within me." Psychology has empirically refuted Kant's theory of "conscience" [*cf.* Millon & Davis (2000), pp. 118-119]. Other thinkers have tried to retain the idea of "natural rights" but divorce it from any divine explanation. Hobbes, for example, wrote,

The Right of Nature, which writers commonly call *Jus Naturale*, is the liberty each man has to use his own power, as he will himself, for the preservation of his own Nature, that is to say, of his own Life; and consequently of doing any thing, which in his own judgment and reason, he shall conceive to be the aptest means thereunto. [Hobbes (1651), pp. 79-80]

But, rather clearly, this "definition" of "natural right" not only confounds the ideas of "right" and "liberty" but also makes it synonymous with "ability." Boiled down to its essence, it is to say, "If I *can* do it then I have a *right* to do it." Rousseau rather handily argued this is nonsense, that might does not make right. As

¹ In Critical Epistemology, all meanings are, at their roots, practical. Verb phrases express practical meanings.

Lincoln reportedly said, "Calling a tail a leg doesn't make it a leg," and the formula "right = ability" is fairly obvious nonsense.

Black's Law Dictionary lists *seven* usages for the word "right" with an additional 71 "species" of "right" defined under these. Could one ask for better evidence of the ambiguity that attends the idea of "right"? *Black's* seven main usages ("definitions") are:

1. That which is proper under law, morality, or ethics;
2. Something that is due to a person by just claim, legal guarantee, or moral principle;
3. A power, privilege, or immunity secured to a person by law;
4. A legally enforceable claim that another will do or will not do a given act; a recognized and protected interest the violation of which is a wrong;
5. (often plural) The interest, claim, or ownership that one has in tangible or intangible property;
6. The privilege of corporate shareholders to purchase newly issued securities in amounts proportional to their holdings;
7. The negotiable certificate granting such a privilege to a corporate shareholder.
[Garner (2019), under "right"]

The first five of these usages *do* characterize essential *features* descriptive of *practical* millennia-old notions of rights-in-general. Usage 6 is too specialized to really be placed in this primary list; its inclusion here is an artifact of the peculiarity and economic significance of the invention of stock corporations in business and commerce. Usage 7 doesn't belong in this primary list at all; it is merely a name or label of a document. Usages 6 and 7 should properly be lumped in with the flock of 71 other specialized "definitions" listed in *Black's* because both usages merely serve to clarify points of *law*.

Black's does contain, among its 71 special definitions, an entry for "natural right":

natural right. A right that is conceived as part of natural law and that is therefore thought to exist independently of rights created by government or society, such as the right to life, liberty, and property. [*ibid.*]

As for "natural law", *Black's* defines this as

natural law. (15th century) 1. A physical law of nature. 2. A philosophical system of legal and moral principles purportedly deriving from a universalized conception of human nature or divine justice rather than from legislative or judicial action; moral law embedded in principles of right and wrong. [*ibid.*, under "natural law"]

There is really no argument against usage 1 in this definition, although this usage has nothing whatsoever to do with the idea of *justice*. Ask yourself: Is water "justified" in boiling at 212° Fahrenheit or freezing at 32° Fahrenheit? Is a toaster "evil" if it burns the toast? Nonsense. Usage 2 is entirely based on metaphorical reasoning in analogy with usage 1 and is an extravagance of reasoning. This should be enough for us to rule out entirely the notions of natural rights and usage 2 of natural law.

But what about the "certain unalienable rights" of "life, liberty, and the pursuit of happiness" claimed and highlighted in the American Declaration of Independence? These rights need no divine sanctification or supernatural law to explain or justify them because they are a practical necessity of civil Society. The key word here is "unalienable." In Critical Epistemology, the term "unalienable" means *the condition of being something a person is unwilling to alienate although it is potentially within his capacity to do so*. Human beings have no innate social instinct and willingly join in civil associations with others as means of better satisfying their Duties-to-Self. In Shakespeare's words, "they purpose not their deaths when they purpose their services" [Shakespeare (1599), Act IV, scene I]. Neither does a person willingly associate himself with others so that these others might enslave him. Neither does he do so in order that his efforts to achieve happiness be proscribed and thwarted. However, this last point, the "pursuit of happiness,"

requires clarification because the idea of "happiness" is such a vague notion that philosophers and psychologists alike have long struggled without success to agree on what it means [Blackburn (1996), under "happiness"]. A legal meaning for the phrase *is* provided in *Black's*:

happiness, right to pursue. (1829) The constitutional right to pursue any lawful business or activity - in any manner not inconsistent with the equal rights of others - that might yield the highest enjoyment, increase one's prosperity, or allow the development of one's faculties.² [Garner (2019)]

In Critical terminology, an ***interest*** is "anticipation of a satisfaction or dissatisfaction combined with the representation of the *Existenz* of some object of desire" [Kant (1790), 5: 204]. *Black's* legal definition is in concordance with *pursuit of Critical interests* subject to the constraint that satisfaction of such interests are achieved congruently with differing but likewise civic interests of others, and assuming the law that authorizes the activity is not itself unjust.

A civil Community that demanded any of these things be alienated would never be able to form or to sustain its *Existenz*. They are unalienable because the association *dares not ask* that they be alienated. They are authentic *civil* rights because a civil Community owes its very existence, in part, to an *obligatione externa* entered into by *all* its members to insure and protect these conditions *for every one of its citizens*. *Civic Duties* are born out of this *obligatione*. It is a puzzle and a symptom of a shortcoming of justice in America that *Black's* has no entry for "civic Duty" and it is not a legal term in U.S. law.

Black's does have an entry for "civil right" but, again peculiarly, this term is listed separately from the 71 sub-terms listed under its entry for "right." *Black's* entry is:

civil right. (usually plural) (17th century) 1. The individual rights of personal liberty guaranteed by the Bill of Rights and by the 13th, 14th, 15th, and 19th Amendments, as well as by legislation such as the Voting Rights Act. Civil rights include especially the right to vote, the right to due process, and the right of equal protection under the law. 2. CIVIL LIBERTY. [*ibid.* under "civil right"]

This *legal* definition points squarely at a fundamental shortcoming in and misunderstanding of American justice. It is a definition contrary to the principle of sovereignty of the people and is a recipe for rulership. The sovereignty principle holds that "to secure these [civil] rights governments are instituted among men, *deriving their just powers from the consent of the governed*" [Declaration of Independence (1776)]. It is not a justifiable part of popular government to tell a sovereign people what their civil rights are. Rather, it is up to that sovereign people to determine among themselves (by means of social contracting) what civil rights they choose to reserve unto themselves and then for *them to tell the government* what these are and *require their laws* to respect, uphold, and defend these rights *with justice for all*. To do otherwise is to institute rulership and to subjugate the people to the will of the rulers. Boards of Right and writs of Mandamus are aimed at securing the sovereignty principle.

In *Black's* definition of civil right we see the source of the injustice in the Supreme Court's *Dobbs* decision. The court acted *legally* but without *justice*. The legal definition errs a second time by making "civil right" and "civil liberty" synonyms. *Black's* does have a separate entry for "civil liberty"; it is:

civil liberty. (usually plural) (17th century) Freedom from undue governmental interference or restraint. This term usually refers to freedom of speech, freedom of the press, freedom of religion, freedom of association, and other liberties associated with the Bill of Rights. [*ibid.* under "civil liberty"]

² I note in passing that, although the *Black's* entry calls the pursuit of happiness a constitutional right, in point of fact the U.S. Constitution nowhere explicitly mentions "the pursuit of happiness" although it does explicitly protect life and liberty. If the U.S. Supreme Court were to follow the precedent of its *Dobbs* reasoning, they would seem to be obliged by precedent to strike down "the pursuit of happiness" as a civil right. Some might argue *Dobbs* has already done this.

What, I wonder, is "undue interference"? As for "freedom," *Black's* defines this as

freedom. (before 12th century) 1. The quality, state, or condition of being free or liberated; especially the right to do as one wants without being controlled or restricted by anyone. 2. A political right. [*ibid.* under "freedom"]

As discussed much earlier in this treatise, deontological **freedom** is the *capacity* for one's Self-determination to take action. *Liberty* is freedom *plus* the ability to realize (make actual) the action undertaken. Black's definition 1 above is properly called "natural liberty in state-of-nature conditions."

Henry Campbell Black (1860-1927), the original author of the dictionary that today bears his name, did not invent or dictate the definitions found in *Black's Law Dictionary*. Rather, these are gleaned from legal research and reflect how they have been used in specific instances and cases. The U.S. Library of Congress tells us,

Legal dictionaries provide definitions of legal terminology and words in their legal sense or use. They typically provide a short definition with reference to cases and other legal sources for authority, and frequently give examples of word usage in various legal situations. *Black's Law Dictionary* is the leading legal dictionary in the United States. [<https://guides.loc.gov/law-secondary-resources/definitions#s-lib-ctab-30145554-0>]

Put in other words, *Black's* (and other legal dictionaries) *compile* the definitions they contain from 'legal research activities', i.e., "the process of identifying and retrieving information necessary to support legal decision-making." Put perhaps less kindly, it is a compendium of terminology that comes out of the same sort of *ad hoc* practices and activities characteristic of the ancient legal codes we reviewed in chapter 1. The "ways of looking at the world" (metaphysics) under which such a process is carried out necessarily reflects an accidental hodge-podge of the divers personal metaphysics of the practitioners - almost all of which are, historically, ontology-centered. The contradictions and misunderstandings detailed above are a very human-natural and practically unavoidable outcome of such a process. Such a process might, perhaps, be adequate for lawmaking (though I doubt it) but *justice* requires and deserves better. What Antoine Lavoisier said of physical science is equally true for social-natural (human) science:

The impossibility of separating the nomenclature of a science from the science itself is owing to this, that every branch of physical science must consist of three things: the series of facts which are the object of the science; the ideas which represent these facts; and the words by which these ideas are expressed. Like three impressions of the same seal, the word ought to produce the idea, and the idea to be a picture of the fact. And, as ideas are preserved and communicated by means of words, it necessarily follows that we cannot improve the language of any science without at the same time improving the science itself; neither can we, on the other hand, improve a science without improving the language or nomenclature which belongs to it. However certain the facts of any science may be, and however just the ideas we may have formed of these facts, we can only communicate false impressions to others while we want words by which these may be properly expressed. [Lavoisier (1789), pp. xiv-xv]

It is not the fault of Henry Black or any other single individual (save, perhaps, deontological outlaws in politics and propaganda) that justice today is in such a shape as led Clarence Darrow to declare that there is no justice. Nor is the *ad hoc* character by which legal codes are produced and developed something that can ever be entirely eliminated. Empirical nature is contingent, future circumstances are largely unpredictable, and some amount of "muddling through change" is inevitable in the never-ending saga of making one's Society *more perfect* than it is today. But this does not mean we cannot do better.

As already noted earlier in this treatise, the idea of Justice has objectively valid context only within the context of a civil Community. The idea of civil rights, likewise, takes its context from living in a state of civil Community. The three fundamental or "generic" civil rights of life, liberty, and pursuit of happiness

can appear at first glance as if they make up part of an incomplete list of civil rights, or as if they are far too overgeneralized ideas to be practically useful. But from the viewpoint of Critical Epistemology these three ideas are subjective perspectives for evaluating our concepts of living in civil Community. Critical Epistemology calls such perspectives *Standpoints*, and there are always three of them: the theoretical Standpoint; the practical Standpoint, and the judicial Standpoint. Life, liberty, and the pursuit of happiness are, philosophically, *Standpoint labels* for the Idea of Justice. The idea of liberty belongs to the practical Standpoint because the concept of liberty pertains to *actions* people take. The idea of pursuit of happiness belongs to the judicial Standpoint because the notion of pursuit of happiness is tied to human interests, and interests are fundamentally subjective anticipations of satisfactions and dissatisfactions. This leaves for the idea of life as a civil right the theoretical Standpoint, which is the Standpoint from which objects are understood *as* objects. Individual human beings are the "social atoms" of a Society and, regarded as such, "life" is one of the ideas used to characterize human beings as objects.

2. Property Rights

Property rights are one of the oldest species of rights contained under the general civil right of pursuit of happiness. Recall the stanzas quoted earlier from the Sandburg poem,

In the night and the mist
the voices meet
as the clash of steel on steel
Over the rights of possession and control and the points:
what is mine? what is yours?
and who says so? [Sandburg (1936), pg. 72]

Property rights are a civil Society's answers to these questions. But how does human nature answer them?

Under state-of-nature conditions there are no property rights. This is another fact the poet very neatly illustrates:

"Get off this estate."
"Why?"
"Because it is mine."
"Where did you get it?"
"From my father."
"Where did he get it?"
"From his father."
"And where did he get it?"
"He fought for it."
"Well, I'll fight you for it." [Sandburg (1936), pg. 75].

Different civil Societies often have different sets of property rights. For example, the Aztecs, Incas, and many other Native American tribes encountered by the Spanish regarded land as belonging in common to the entire clan. This astounded Columbus:

The ownership of things in common had been noticed from the first. Columbus wrote, "Nor have I been able to learn whether they hold personal property, for it seemed to me that whatever one had, they all took shares of . . ." Even the simmering pepper pot, Columbus noted, seemed to be free to any neighbor who wanted to fill a gourd, even - to his amazement - in starving times. But it struck too deep a root of difference to be grasped. Europeans simply could not comprehend it. [Brandon (1987), pg. 99]

The simple fact is that the ideas of property and ownership are creations of social contracting and have no meaning or context outside that of a social contract [Wells (2017), chap. 2]. In Western civilization,

and in *Black's Law Dictionary*, the ideas of "property" and "ownership" become confounded with another idea, namely, that of "possession." The idea of possession has likely been around as long as there have been human beings, but those of property and ownership seem to have arisen with the invention of civilization. "Possession" is an idea that has context both in state-of-nature and civil-state conditions. Its real meaning is "the fact of having or holding something in one's power." But, epistemologically, the ideas of property and ownership are quite nuanced [Wells (2017), chap. 2] and culturally dependent. In a large and diverse civil Society, different mini-Communities can even have different ideas of property and ownership according to differences in mini-Community social contracts.

It is a grave error to think that there is, or that there should be, one universal set of property rights uniformly applied to every mini-Community that makes up the Society. The pursuit of happiness is grounded in human interests and its *civic* pursuit is grounded in congruent common interests of a Community. As mini-Communities conglomerate to form larger civil Communities, the pool of congruent common interests shrinks and some of what were congruent interests in smaller mini-Communities become special interests within larger ones. One significant challenge conglomerating mini-Communities into larger ones brings out is the task of justifiably identifying those interests that remain common - and are therefore justly held *intelligible* possessions of every member of the larger social entity - and those that are special mini-Community interests - and therefore are justly held intelligible possessions of only *some* of the larger entity's members and only within the context of a particular mini-Community.

Kant introduced the idea of "intelligible possession" and its distinction from "physical possession." Intelligible possession is the idea that something is *rightfully mine*, i.e., that my possession of the object is not based merely on physical possession but, instead, is based on the abstract idea that I have *a right to possess it*, this right being under the approval and protection *of the Society* in which I am a citizen. The conventional foundation of this is deontological and pertains immediately to reciprocal Duties that establish a social compact and make it possible. It was Kant who first set out deontological conditions for the idea of "that which is rightfully mine":

That is rightfully mine . . . with which I am so linked that another's use of it without my consent would injure me. The subjective condition of any possible use in general is possession.

But something external would be mine only if I may assume it to be possible that I could be injured by another's use of it *even though I am not in possession of it*. [Kant (1797), 6: 245]

He goes on to say,

The nominal explanation [of what is externally mine] . . . would be: that [which is outside me] is externally mine [which is such] that to interfere with my any use of it would be an encumbrance to me (be prejudicial to my freedom that can coexist with the freedom of everyone according to a universal law). But the material explanation . . . runs thus: that is externally mine which to disturb my any use of it would be an encumbrance *even though I am not in possession of it* (not holding the object) . . .

For this very reason one justly should say not: a right of possession of this or that object, but, rather, possession of it *merely rightfully*; for the right is already an intellectual possession of an object; possession of a possession would be a nonsense expression. [*ibid.*, 6: 248-249]

The idea of merely rightful possession is no empirical concept . . . and yet it has practical reality, i.e., it must be applicable to objects of experience . . . The idea of right lies merely in reason, cannot immediately be applied to objects of experience and to the empirical idea of *possession* in general . . . but must be applied to a pure idea of understanding possession in general [*ibid.*, 6: 252-253].

In its essence, a property right is an intangible *mathematical* idea of possession of something "merely rightfully." That which is possessed is properly called an "item of property" [Wells (2017), chap. 2]. As a "pure idea of understanding" a property right springs from what Santayana called "the genius of the

[human] race."

What Kant did not cover in these explanations is the question: *who or what determines* when possession of something is "rightful possession"? He undertook a somewhat lengthy discussion of this [Kant (1797) 6: 253-257] that he summarized thusly:

It is possible to have something external as one's own only in a rightful condition under a public-lawgiving authority, i.e., in a civil condition. [*ibid.*, 6:255]

In a state of nature something external can actually be mine or yours but only *provisionally*. [*ibid.*, 6:256]

In other words, property rights are determined and assigned by social contract and as sanctioned by the approval of public laws that are *just* (congruent with the terms and conditions of the social contract). After centuries of tradition and habit, this hardly seems to us like a deeply profound conclusion. What Kant did was provide a *moral deduction* - more accurately, a deduction from moral customs - for it and to point out that there are no *rightful* conditions for it in a state of nature. Hence, in that state *I* can claim anything to be "mine" provisionally, i.e., provided that I can prevent *you* from taking it any from me. The Europeans of Columbus' day had their way of doing this; the Native Americans he encountered had their way of doing it; and the Native American way of doing it astonished the Europeans. Columbus' idea of rightful possession was likely as incomprehensible to them as theirs was to him.

The challenge of sorting out *just* property rights when conglomerating mini-Communities is another reason why hierarchy organization of institutions is ill-suited for large Societies and why heterarchy organization and institution is preferable. The sorting process is a design process prone to extravagances of reasoning by specification and by generalization. Licentiousness through incongruity with other civil rights and institutionalized bigotry are two of the many possible outcomes of errors in this design process. For example, some Americans support a licentious policy of allowing every adult to carry a firearm anywhere and everywhere they wish, and argue for this policy on the grounds of the 2nd Amendment to the U.S. Constitution - which *only* placed restrictions on the general government of the United States and *not* on local governments. The policy is licentious because it is incongruent with an essential condition of all social compacts, i.e., to protect the person of every citizen. The policy does not, of course, *permit* any individual to shoot another person, but it *does* provide both means and opportunity for anyone to do precisely that. "Guns don't kill people; people kill people" is nothing but a sophism of propaganda. Segregation - the policy of separating people on the basis of color, nationality, religion, or the like [Garner (2019), under def. 2 of "segregation"] - is an example of institutionalized bigotry *as well as* licentiousness through incongruity with other civil rights. Historically, Societies tend to form in rather casual and *ad hoc* ways; but designing and maintaining a *just* Society is very difficult and technical. It is folly to leave this crucial task to people who lack knowledge, skill and interest in doing it.

3. Other Civil Rights Contained Under the Pursuit of Happiness

The principles and ideas of property rights - especially those in regard to tangible items of property - have a long history in Western civilization, and property rights are perhaps the most thoroughly debated and legislated set of civil rights of all. In comparison, other civil rights under the umbrella of the pursuit of happiness are of a much more *ad hoc* - and often controversial - character. For example, *Black's Law Dictionary* contains an entry for a "right to travel":

right-to-travel. (1838) A person's constitutional right - guaranteed by the Privileges and Immunities Clause - to travel freely between states. [Garner (2019), under "right to travel"]

The Privileges and Immunities Clause is in Article IV, Sec. 2 of the U.S. Constitution. It states, "The citizens of each State shall be entitled to all privileges and immunities of citizens in the several states."

What these "privileges and immunities" are is not clarified in Article IV, nor does the Article tell us who is a citizen of the United States. In 1787 being a "citizen" more or less meant that you lived in the United States and were not a slave or an Indian. It took a civil war and the 14th Amendment to *somewhat* clarify these questions:

Article Fourteen, Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State where they reside. No State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States, nor shall a State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. [U.S. Constitution]

I call this a "somewhat" clarification because it still does not clearly explain what those "privileges and immunities" are but suggests that they include immunity from deprivation of life, liberty, or property without due process of law and the privilege of equal protection of the laws. This still leaves a lot of "night and mist" in which extremely controversial laws can be planted. For example, at the time of this writing, states cannot prohibit a woman from traveling to another state to have an abortion; but some states have passed statutes making it a crime for any person in that state to *advise* a woman to do so or to give her any aid by which she might be *able* to do so. At the same time, none of these states prohibit a politician from telling public lies, or accepting monetary contributions from unknown sources for their political campaigns, or from accepting aid from so-called "political action committees" who, for whatever reason, would like to see a politician elected to office. Personally, I regard giving advice or helping a person to travel to another state as *at least* a civil liberty, and that criminalizing it by statute elevates it to a question of civil right.³

In the United States, understanding of what should or should not be a civil right under the umbrella of pursuit of happiness is in a condition I would call dreadful. Debates and arguments over whether there is or is not a civil right to something are often as *ad hoc* as the provision in the laws of Ur-Namma stating, "If a slave woman curses someone acting with the authority of her mistress, they shall scour her mouth with one sila of salt" [Roth (1995), pg. 20]. Does a citizen have a civil "right to privacy"? Does a citizen have a civil "right to vote" and a civil right to "accessibility to vote"? Does a citizen have a civil "right to healthcare"? These, and many similar questions, are currently matters of debate and argument in the United States. What distinguishes a civil "right" from a civil "desire"?

A significant part of the problem is this: civil *rights* and civil *liberties* are not the same thing. But habits of thinking, fostered by long-standing traditions and habits of speech, tend to blur and obscure the distinction between them. Indeed, confounding the idea of civil rights with the idea of civil liberties goes back at least as far as Hobbes' *Leviathan*. The psychological phenomenon of adult moral realism - which is a product of adult egocentrism, i.e., the presupposition that *you* think and understand things in the same way *I* do [Piaget (1932); Piaget (1928), pp. 195-198, 205-209] - also tends to muddy the water.

A civil liberty is a natural liberty that the civil association does not require its members to alienate (give up) as one of the terms of admission to membership in the association. A civil right, in its essence, is *a protection demanded by the individual of the members of a civil association as a condition for his agreeing to join the association and submit himself to its general will*. A civil liberty is an action *you* can choose to undertake but: which *I* am under no obligation to help you carry out; and *our* joint civil association, as a body politic, *is* under obligation to not-hinder. Perhaps the most frequent characteristic of a civil liberty is that *the action does not cause harm to others* who are members of our civil association. For example, neither you nor I is at civil liberty to murder someone. But if either of us were soldiers in a time of war and engaged in battle with the enemy, we would not only be permitted to kill enemy soldiers but, in fact, would be expected to do precisely that. If we did, we would not be criminals; we'd be heroes.

³ I also do not think money is speech despite the old adage "money talks" and a Supreme Court decision from a few years ago declaring money *is* protected free speech.

A civil liberty is always understood in a context and has limitations set on it by that context.

A civil right is an *intangible* property, "possessed rightfully" by every member of a civil association, that *every other member is under obligation to defend and protect* from infringement or abridgement as a condition of the social compact. Every civil right always implies a reciprocal *civic Duty* that every citizen rightfully owes to his fellow citizens and is under *obligatione externa* to fulfill. Civil liberties are often matters of expedience; civil rights are principal social defenses against those who would make themselves rulers and masters of a subjugated people, whether this be by means of force, wealth, or deception.

The world's major "rights" documents - including the U.S. Bill of Rights, the French Declaration of the Rights of Man and the Citizen, and the United Nations Universal Declaration of Human Rights⁴ - have a pronounced focus on actions *governments* are to be prohibited from taking. This is quite reasonable when one considers that the Bill of Rights and the French Declaration came after revolutions that overthrew monarchy governments, and the UN Declaration came after the defeat of the authoritarian governments of Germany, Italy, and Japan in World War II. There are specific articles in each that very clearly are reactions to atrocities and enormities committed by those overthrown or defeated governments. They do, in this sense, contain at least some aspects of what in this treatise are understood by "civil rights." They do not, however, go beyond the prohibitions and restrictions laid upon governments and extend their scope of prohibitions to interactions among *individuals* living in Societies other than by vague references to "the law." The French Declaration does state that "the law is the expression of the general will" - a reference to the Idea of the social contract - and perhaps this might be true if representative governments were not predicated on a principle of "majority rule" that nominally makes "the law" the expression of the majority will and disenfranchises the minority⁵. I suggest for your consideration that these official "rights" documents aim more at limiting, but not eliminating, rulership than at civil rights in a body politic.

This is not to say these historical rights documents are wrong to focus upon prohibitions and restrictions on the power of government. Agents of government are, by the nature of their appointments, in a position to potentially be the worst violators of civil rights. It is necessary to have means for, as Madison put it, "obliging government to control itself." It is to say that current theories of civil rights are extravagances of reasoning by specification. At their practical roots, all civil rights are grounded in deontological *moral* Relations of one person to the situation of another in a civil Community.

But, although this is a practical characterization of civil rights, it understands them at a high level of abstraction and co-involves many *noumenal* Objects: obligations; duties; intentions; satisfactions and dissatisfactions; appetitions. It is not an explanation that sheds sufficient light on a root-causal "because" standing behind the phenomenon of human *demand* for civil rights. Here a remark made by Mill has some direct pertinence to the question of civil rights:

There is a limit to the legitimate interference of collective opinion with individual independence; and to find that limit, and maintain it against encroachment, is as indispensable to a good condition of human affairs as protection against political despotism. . . . [The] practical question, where to place the limit - how to make a fitting adjustment between individual independence and social control - is a subject on which nearly everything remains to be done. All that makes existence valuable to anyone depends on the enforcement of restraints upon the actions of other people. Some rules of conduct therefore must be imposed . . . What these rules should be is the principal question of human affairs [Mill (1859), pg. 4].

Social-natural science today is really not much closer to finding an answer to this "principal question of human affairs." Let us see if we might be able to get at least a little closer to finding that answer.

⁴ Despite the title, the UN Declaration is not "universal" because some UN member nations refuse to sign it.

⁵ And, as Mill pointed out, in representative legislatures it is not necessarily true that a law reflects the will of a majority *of the people*. Rather, it hands the decision to a majority of a majority, which is sometimes only a representation of a minority of the citizens.

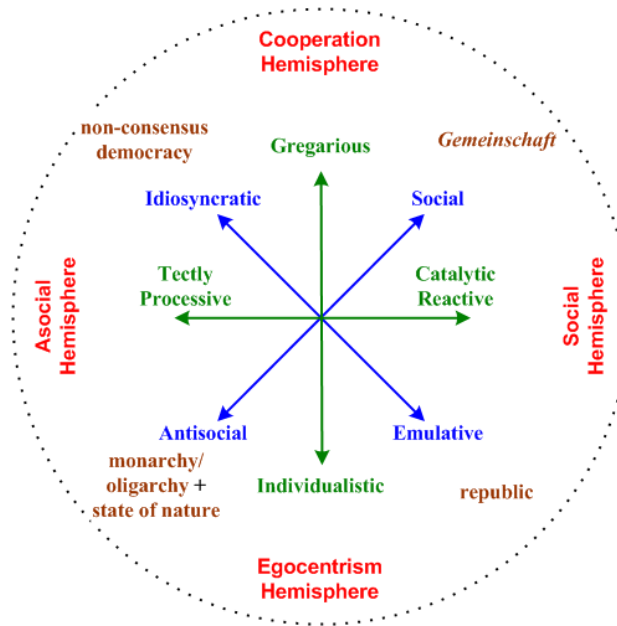


Figure 1: Circumplex model of historical systems of government.

4. The Empirical Origins of Civil Rights

Let us recall Durant's comment that

Man is not willingly a political animal. The human male⁶ associates with his fellows less by desire than by habit, imitation, and the compulsion of circumstance; he does not love society as much as he fears isolation. . . . in his heart he is a solitary individual, pitted heroically against the world. . . . privately he is an unphilosophical anarchist [Durant (1935), pg. 21].

There is strong empirical support for this comment in social psychology. Human beings do in fact exhibit in behaviors mixed feelings about Society; psychologists call this "ambivalence." Not everyone feels this to the same degree and relatively few people consciously feel it all the time, but everyone feels it to some degree sometimes.

Psychologists often study human social behavior using a method called "factor analysis" based on particular "social dimensions" correlated with the types of behavior under study [Wells (2012), chap. 8]. Figure 1 depicts one such model useful for analyzing governance of mini-Communities and political governance of entire Societies [Wells (2012), chap. 8; Wells (2012) chap. 11]. The psychological dimensions used in this model are called the asocial-social dimension and the cooperation-egocentrism dimension. These axes divide the model into four quadrants with approximately the same number of people found in each of them. This model is useful for analyzing historical forms of government and it is also useful for analyzing people's interpersonal relationships with others in their Societies.

Now, I said earlier that civil rights are social defenses. What, though, do people use civil rights to try to protect? If that question can be answered then we can move closer to the root *human* meaning behind "civil rights." To examine and analyze it, let us use the model of figure 1 to understand the differing interpersonal social styles most conformable to each of its four quadrants.

⁶ There is really no good reason to restrict Durant's comment to "the human male." In 1935 the movement some call the "second wave of feminism" was still nearly three decades away, and I regard Durant's comment as merely an habitual reflection of the institutionalized bigotry of "male chauvinism" that dominated most of the world for centuries and, in many quarters, still does. The human female is also not willingly a political animal.

Behaviorally, the four quadrants characterize different kinds of leader-follower dynamics intended to achieve and maintain relationships of Community. People in the asocial-cooperative quadrant tend to value rule by well-crafted and sufficiently codified rules agreed upon by a majority. Majority rule gives it its asocial character (because the minority is subjugated to the rule of the majority), while majority agreement provides it with its cooperative character. Hence this style of leader-follower dynamic is called *non-consensus* democracy. People in the social-cooperative quadrant value loosely organized cooperations by groups of individuals on specific matters of direct interest to them. Social cohesion is primarily reliant upon conformity to Community mores and folkways. This style of leader-follower dynamic can be called *consensus* democracy or, by another name, *Gemeinschaft* Society.

People in the social-egocentrism quadrant tend to value *rule by well-codified laws and procedures* that have the consent of everyone; by consent I mean people either agree with the law or, at minimum, do not oppose the law. The social bonds are by consensus, like those of consensus democracy, but much more formal and codified than in *Gemeinschaft* Society. This style of leader-follower dynamics operates without rulers - i.e., this Society is *administered* rather than *ruled* - and is called a *republic* in a sense very much like what the Romans meant by *res publica* ("public affairs"). Finally, people in the asocial-egocentrism quadrant tend to value rulership of the majority by a small caste of rulers - what Toynbee called a "dominant minority." The ruling caste tends to regard itself as the "elite" of Society and to presume the wisdom and judgment of these elites is superior to that of the ruled. The style of leader-follower dynamics is called monarchy/oligarchy⁷ and it produces state-of-nature relationships (rather than civil relationships) between the dominate minority and the dominated majority.

Perhaps it is already clearly apparent to you that these descriptions are idealized to a high degree, and that actual Societies only *approximate* these idealizations. Even a Society that closely approximates its ideal, such as the *Gemeinschaft* BaMbuti group studied by anthropologist Colin Turnbull, exhibits some deviations from that ideal. For example,

This particular [BaMbuti] group was a rather large one, consisting of two main families - that of Njobo and Masisi, Tungana and Manyalibo; and that of Ekianga and his relatives . . . But to add to the tensions there was a third group which was constantly trying to attach itself. It was intermarried heavily with the other two, as often happens in an attempt to strengthen the bonds and establish an unbreakable relationship.

The leader of this group - although with Pygmies it is always unwise to speak of single "leaders" - was a wily but rather naive Pygmy by the name of Cephu. . . . Cephu's family was large, but not large enough, even with all his in-laws, to form a hunting group of his own. To do this you have to have at the very least six or seven individual families, each with its own hunting net; only in this way can you have an efficient net-hunt . . . Cephu's group was usually not more than four families, and so he tacked himself onto Njobo and Ekianga. Sometimes this worked out well . . . But at other times they would have a number of families visiting them, and then the addition of Cephu and all his relatives made the whole group far too large and unwieldy. But as he had taken the precaution of exchanging sisters, he could not be refused, and so he would make his own little camp close by connected with a narrow trail. . . . At night he and his family kept to themselves, seldom venturing into the main camp. They sat around their own fire, offended, aloof, and rather unhappy [Turnbull (1962), pp. 36-37].

In no actual Society is everything all and always peace, love, and kumbaya.

Instead, actual Societies are composed of a mix of people whose interpersonal social styles include all four of the main quadrants of figure 1. Those separated by 180° in figure 1 are termed "poison relationships" because these people's opposite interpersonal social styles produce tensions in their interrelationships [Wilson Learning Corporation (2004)].

Another potent factor enters into the analysis when a population becomes large enough so that no

⁷ This label does not apply to modern *constitutional* monarchies, which are forms of representative government.

individual knows everyone else through direct personal experience. Under that condition, what one person "knows" about most other individuals is a *stereotype*, and every stereotype is a mathematical caricature, not a real person. At the same time, the more-or-less uniform distribution of interpersonal styles found even in modest populations makes it almost certain that every person will have encounters with others who do not habitually exhibit the same interpersonal style as he does. More specifically, he comes to experience social transactions with others whose habitual interpersonal style is in a "poison relationship" with his own. Some of these result in unpleasant experiences, and some of these can be harmful experiences. At a very young age, children learn to stereotype other people, even people they do know from personal experience, as "good guys and bad guys." They become cognizant that other people are one of the sources of dangers in the world. Fears and anxieties, especially those concerning people one does not know personally but does know exist in Society, grow out of such situations and circumstances. Reber & Reber describe fear and anxiety as,

fear An emotional state in the presence or anticipation of a dangerous or noxious stimulus. . . . Fear is often differentiated from ANXIETY on one (or both) of two grounds: (a) fear is treated as involving specific objects or events while anxiety is regarded as a more general emotional state; (b) fear is considered as a reaction to a present danger, anxiety to an anticipated or imagined one. [Reber & Reber (2001)]

Merely not knowing "What should I do?" in some given situation is a source of anxiety because not knowing how you should respond, what you should say, etc. is a disturbance to mental equilibrium that the process of practical Reason will not tolerate under its categorical imperative. We often see appearances of this in very young children (around the age of three years) when encountering a stranger or someone they are merely not accustomed to seeing. When a mother or father suggests, "Can you say 'hi'?" this *gives* the child a way to respond. Its more likely than not the parent thinks he or she is "teaching the child good manners" or "how to be sociable"; but, at the same time, Mommy or Daddy is also providing the child with a psychologically important anxiety-reducing action scheme.

The social world is well stocked with anxiety-producing situations and circumstances. Is it, then, any great wonder why "Man is not willingly a political animal"? Emerson wrote,

In the occurrence of unpleasant things among neighbors fear comes readily to heart, and magnifies the consequence of the other party; but it is a bad counsellor. Every man is actually weak and apparently strong. To himself, he seems weak; to others, formidable. You are afraid of Grim⁸; but Grim is also afraid of you. . . . and the peace of society is often kept because, as the children say, one is afraid and the other dares not. Far off, men swell, bully, and threaten; bring them hand to hand and they are a feeble folk. [Emerson (1841), pg. 116]

Moral customs (mores, folkways, manners, rituals) are ways and means a Society works out among its members in order to deal with such fears and anxieties. Most people most of the time do not consciously think about them or feel their effects until and unless someone *violates* them. Then the shock and anxiety such an event produces is a great stimulus for calls to codify restrictions on natural liberties and proclaim expectations for protections for each individual to be provided by the body of the civil Community itself. These latter proclamations are the empirical origins for declarations of *civil rights*. Connections between *civil rights* and *moral* customs might be well-nigh invisible, but they are always there.

A civil right, regarded as an Object, is always a *noumenal* Object and, as an ontological thing, is a transcendent illusion. The actual essence of a civil right is always practical, i.e., describable only through maxims of action. Because the stimulus for any civil right arises out of empirical experience, the *logic* of identifying and understanding any civil right is inherently dialectical, not demonstrative. Its Modality is always contingency, not necessity. As such, one should never expect any civil right to be eternal or

⁸ "Grim" was nineteenth century American slang for an angry neighbor.

unchanging. The task of instituting a justice system must always include investigation and refinement of *practical meanings and effects* civil liberties have for or on civil rights. This is one of the reasons neither constitutions nor governments can *grant* civil rights but must, instead, *receive them as instructions* from their citizens. It is also one of the reasons why civil rights in one mini-Community might *justly* be different from those in another. As Emerson also said,

Wisdom will never let us stand with any man or men on an unfriendly footing. . . . Undoubtedly we can pick faults in our company, can easily whisper names prouder, and that tickle the fancy more. Every man's imagination hath its friends; and pleasant would life be with such companions. But if you cannot have them on good mutual terms, you cannot have them. If not the Deity but our ambition hews and shapes the new relations, their virtue escapes, as strawberries lose their flavor in garden-beds. [Emerson (1841), pg. 117]

5. The Power of a Person

Civil rights, and the demand for them, are products of human judgmentation and appetition. Is there something in the human nature of these processes that might guide us to deeper levels of understanding of what can be called "the human nature of civil rights"?

There is. We find the clue to it in an idea Kant tossed out, almost *en passant*, in his "Doctrine of Virtue." He did not adequately or fully develop this idea [Wells (2012), chap. 11, pp. 260+] but it has undergone additional development since Kant's day. Critical Epistemology calls this idea *the power of a person* or "*Personfähigkeit*". Kant introduced the idea as part of his discussion of a person's Duties-to-Self and in the context of "the right of man in his own person" [Kant (1793-4), 27: 593-602]. *Personfähigkeit* is *the capabilities of a person for making actual the Objects of his appetites*. A person is capable of the pursuit of happiness only to the extent of his or her *Personfähigkeit*. The word "power" in "power of a person" refers to one's physical, mental, material and social capabilities.

At the second level of analytic representation, the 2LAR headings of *Personfähigkeit* are:

Quantity - the person's physical power, which subsists in the capacities of his or her body;

Quality - the person's intellectual power, which subsists in his or her knowledge, intelligence, and judgment;

Relation - the person's tangible power, which subsists in his or her stock of material goods (property), fungible skills, and the span of his or her lifetime; and

Modality - the person's persuasive power, which subsists in his or her ability to communicate thoughts and ideas to other persons in a way sufficient to gain their consent and cooperation. [Kant (1793-4), 27: 593-608], [Kant (1797), 6: 444-445], [Wells (2010), chap. 7, pp. 260-267], [Wells (2012), chap. 11, pp. 360-366]

Judging by occasional remarks he made, Kant seems to have hit upon his notions of *Personfähigkeit* from Cicero's *De Officiis* [Cicero (44 BC)], regarded by many to be one of the best treatises on morals and duties to come out of classical antiquity. The shortcomings in Kant's treatment of the topic seem to stem from: not giving the topic its own specific treatment but, rather, edging it into his discussions of other topics; his theocentric orientation in trying to tie it in with his notion of "the humanity in one's person"; and general over-brevity of his treatment of its topics.

Several times Kant expresses his opinion that a person *ought to* make perfecting his *Personfähigkeit* a Duty-to-Self; other times, he opines that perfecting it is a reciprocal Duty-to-others. In another place he acknowledges that many people *do not* seem to put much effort into self-perfecting their *Personfähigkeit* except, perhaps, to a very limited scope. (Many of us know people who, as the saying goes, "peaked in high school"). Nonetheless, it is clear enough from what Kant did say about the topic that it is one of very significant importance in the making of social compacts and, as I will now argue, in understanding ideas

of civil rights and civic Duties.

In the first place, all possibility and extent of an individual's ability to engage in pursuit of happiness is wholly dependent upon his or her *Personfähigkeit* in each of the four headings. An individual's cognizance of the power of his person plays a leading role in what he chooses to pursue as well as in his choices of what capabilities he might choose to improve in himself (so that he might undertake some other particular pursuits that might presently lie beyond his capability or confidence in his capability). His physical, intellectual, tangible, and persuasive capabilities determine and limit his ability to *succeed*.

How a person employs *Personfähigkeit* always has a reference to his appetites and his maxims of prudence. In a state of nature he considers only himself in making these choices, but in the civil state these maxims of prudence are multiplied and extended, and his prudent actions are limited, by the relationships he has with other members of his civil association. If he finds these limitations unacceptable then he either withdraws from the civil association or never joins it in the first place. This is the essence of the idea of social compacting. It is also the point of origin for civil rights. Kant said,

*In statu civili*⁹, therefore, there is always the thought of a multitude of men, who stand under a public law and authority, whereby the determination of their actions is guided and restricted, as it is no longer by their private judgment. This relationship under public laws provides them with public rights against one another, since these are publicly decided and protected. [Kant (1793-4), 27: 590]

This quote does not bring up *who decides* what these public laws say, and in the answer to this we find the difference between rulership and citizen sovereignty. In the latter, the authority resides with the Society's deontological citizens who *authorize* what the government may and may not do. Under rulership it is possessed by the ruler or rulers¹⁰. Let us, then, examine the question of civil rights within the context of human *Personfähigkeit*.

5.1 Physical *Personfähigkeit*. "The health of the people is really the foundation upon which all their happiness and all their powers as a state depends" - Benjamin Disraeli, July 24th, 1877. "There is no protection stronger than good health" - Ali ibn Abi Talib, 7th century AD.

Kant said,

cultivating the *powers of the body* (gymnastics, strictly) is looking after what makes the equipment (the matter) in men¹¹, without which the purposes of men could not be fulfilled. [Kant (1797), 6: 445]

Physical exercise does indeed "cultivate the powers of the body" and, certainly, without one's body a person is incapable of "fulfilling any of his purposes." Brain is part of the body and, by the Critical theorem of *nous-soma* reciprocity, one's physical condition and one's mental condition are inseparably connected in a human being. The state of this condition is called one's "health-in-general." According to the definition given by the World Health Organization (WHO) in 1948,

Health is a state of complete physical, mental, and social well-being and not merely the absence of disease or infirmity. [Preamble to the Constitution of WHO (1948)]

Although WHO holds that "The attainment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic

⁹ "in the civil state"

¹⁰ Kant lived in 18th century Prussia, which was under monarchy rule. Rather prudently, he chose to subjugate himself to the rule of its king [Kant (after 12 Oct., 1794), 11: 527-530]. By doing so he avoided, as the king put it, "consequences unpleasant to yourself."

¹¹ Stated correctly, he should have said "in human beings" because his statement is as true for women as for men. We can, again, attribute Kant's wording to the long-standing chauvinism of habits of language.

or social condition" [*ibid.*], there certainly is no shortage of people who dispute this principle as an extravagance of reasoning arising out of the disputed idea of "natural rights." But let us ask: is it a *civil* right necessitated by "the nature of social contracts"? Analysis of this question begins with the terms and conditions of all social compacts:

condition: the association will defend and protect with its whole common force the person and goods of each associate in such a way that each associate can unite himself with all the other associates while still obeying himself alone.

terms: each associate is to put his person and all his power in common with those of the other associates under the supreme direction of the general will, and that each associate, in his corporate capacity, will regard every other associate as an indivisible part of their whole body politic.

Physical *Personfähigkeit* is an inherent part of every human being. It follows at once that assistance and aid defending and protecting his health - that is, *public healthcare* to the extent members of the civil Community or mini-Community are capable of providing it - **is** a justifiable civil right. *Acting* to provide it is a **civic Duty** for every citizen of their association under the terms of a social compact. If a civic mini-Community has a formal institution of *government* established to better administer and manage its mechanisms of self-governance, then providing for public healthcare by *law* is, by necessitation, a mandate of the general will¹². A mini-Community that does not have a formal institution of government of its own, but is embedded within a larger civil Community that does have such institutions, is bound to its public healthcare laws by the terms of its membership as a corporate part of that larger Community.

There will likely always be people who do not agree with this conclusion upon first encounter and, among them, some number will be actively opposed to it. Opposition manifests a rational tension common to humankind in a tug o' war between private Duties-to-oneself vs. reciprocal Duties-to-others. Here we must always keep in mind that a person commits himself to Duties-to-others *because* by doing so he better serves in some way his own Duties-to-himself. The process of pure Reason exhibits what Kant called a dialectic of Reason and, in our present topic of discussion, this dialectic exhibits an internal tension between ideas of civil rights and ideas of civic Duties. "Man is not willingly a political animal," and the strongest counterarguments against a civil right to public healthcare are predicated on premises of a *self-reliance* principle.

In truth, individuals' self-reliance *is* an *essential* commodity in the making of any civil union. Why would the members of a civil association accept as a new member a person *D* who relies upon himself for nothing and relies on others for everything? Such a person is one who does not contribute to, or makes himself incapable of contributing to, the overall corporate power of the Community. At the same time, he would demand satisfaction of the condition of the social compact but contribute nothing to fulfilling its terms. He would be a person who demands civil rights but refuses to or is incapable of performing civic Duties. ***Civic Duties are the purchase price of civil rights.*** This is a social fact of human nature found in all four headings of the idea of *Personfähigkeit*. For example, in his great classic Adam Smith wrote,

In civilized society [a person] stands at all times in need of the cooperation and assistance of great multitudes, while his whole life is scarce sufficient to gain the friendship of a few persons. . . . [Man] has almost constant occasion for the help of his brethren, and it is in vain for him to expect it

¹² Every civil mini-Community has its own ways and means of co-determining its social dynamics in maintaining and perfecting its *Existenz* as a civil mini-Community. These ways and means constitute *de facto* mechanisms of its self-governance. But not every mini-Community needs or requires a *formal* institution of self-government. Examples include such mini-Societies as a private card club, a parish church, or a company softball team. In contrast, a civil municipality with established public utilities (e.g., sewer, water, power, lighting, law enforcement, a fire department, a municipal hospital, etc.) usually does require, as a matter of public convenience and Order, a formal institution of municipal government charged by the public with an *expectation of authority* to safeguard and promote the public good.

from their benevolence only. He will be more likely to prevail if he can interest their self-love in his favor, and show them that it is for their own advantage to do for him what he requires of them. Whoever offers to another a bargain of any kind proposes to do this. Give me that which I want, and you shall have this which you want, is the meaning of every such offer; and it is in this manner that we obtain from one another the far greater part of those good offices which we stand in need of. It is not from the benevolence of the butcher, the brewer, or the baker that we expect our dinner, but from their regard for their own interest. [Smith (1776), pp. 12-13]

Extending the protections and succor of the civil Community to the above-named person *D* is justified for the case of the dependent children of citizens - because this falls under the 'person and goods' clause of the compact and is a civic Duty owed *to the parents* - but *admission* cannot be justified for the case of adults who lack all self-reliance yet are seeking *to be made* deontological citizens of the civil association. It is different in the case of a person who is already a citizen because that person is covered by the 'regard every other associate as an indivisible part of the whole body politic' clause. He cannot be cast out the association because he *becomes* dependent by aging, accident, illness, or misfortune not of his own doing.

Self-reliance is an idea of which may truly be said that its virtue is found in a mean between two vices: a vice of lack and a vice of excess. Total lack of self-reliance is, with good reason, regarded as unmanly character. On the other hand, absolute self-reliance is the ideology of a predatory hermit. Life lived in a social environment tends to tug people by turns in opposing directions and creates social ambivalence. This dual character of self-reliance makes its appearances in Emerson's essay on the subject:

Trust thyself: every heart vibrates to that iron string. . . . What pretty oracles nature yields us on this text in the face and behavior of children, babes and even brutes ! That divided and rebel mind, that distrust of a sentiment because our arithmetic has computed the strength and means opposed to our purpose, these have not. Their mind being whole, their eye is as yet unconquered; and when we look in their faces we are disconcerted. Infancy conforms to nobody; all conform to it, so that one babe commonly makes four or five out of the adults who prattle and play with it. . . . The nonchalance of boys who are sure of a dinner, and would disdain as much as a lord to do or say aught to conciliate one, is the healthy attitude of human nature. How is a boy the master of society ! Independent, irresponsible, looking out from his corner on such people and facts as pass by, he tries and sentences them on their merits, in the swift summary way of boys, as good, bad, interesting, silly, eloquent, troublesome. He cumpers himself never about consequences, about interests; he gives an independent, genuine verdict. You must court him; he does not court you. But the man is, as it were, clapped into jail by his consciousness. As soon as he has once acted or spoken with éclat, he is a committed person, watched by the sympathy or the hatred of hundreds, whose affections must now enter into his account. . . . These are the voices which we hear in solitude, but they grow faint and inaudible as we enter into the world. Society everywhere is in conspiracy against the manhood of every one of its members. Society is a joint-stock company, in which the members agree, for the better securing of his bread to each shareholder, to surrender the liberty and culture of the eater. The virtue in most request is conformity. Self-reliance is its aversion. It loves not realities and creators, but names and customs. [Emerson (1841 b), pp. 24-26]

On-going internal tension between Duties-to-Self and Duties-to-others exists in every deontological citizen. In some circumstances one of these will prevail; in other circumstances the other must prevail or the civil Society is doomed to breakdown and disintegration. It is therefore a *deontological principle of Justice* that ***every civil right is inseparably paired with one or more civic Duties*** to which the right-holder must oblige himself to observe and fulfill *as a deontological citizen*. A vital and perennial task and challenge for every civil Community is to constantly strive to understand these necessitated pairings in order for it make itself a better a Society in which is satisfied the ideal of *liberty with justice for all*.

Related to the civil right to public healthcare are questions and issues involving food, clothing, and shelter. These are basic human necessities, and I think it likely you find it intuitively clear that attaining them is an object of Duties-to-Self we might classify as "private healthcare." But are there occasions and

circumstances in which they might also be matters of *public* healthcare? and, if so, upon what occasions and circumstances do they become so? and what sorts of civic Duties are therein implied?

Cicero counseled

The private individual ought first, in private relations, to live on fair and equal terms with his fellow citizens, with a spirit neither servile and groveling nor yet domineering; and second, in matters pertaining to the public, to labor for her peace and honor; for such a man we are accustomed to esteem and call a good citizen. [Cicero (44 BC), pp. 126-127]

He was, of course, speaking of a citizen in a republic as Rome had been and in some ways still was during its decline five years into the dictatorship of Julius Caesar and seven months after Caesar's assassination. Even so, four centuries later *De Officiis* was proclaimed to be the moral authority in the European Middle Ages after St. Ambrose legitimized it and its moral teachings were propagated through the writings of St. Augustine, St. Jerome, and St. Thomas Aquinas. If the "spirit" of the above quote seems familiar to you, this is because Cicero's work bequeathed a profound legacy to Western civilization¹³.

Cicero's "private relations" refers to relationships with other people; it is not a Relation of Duty-to-Self but, rather, a *more* for the individual to follow in his capacity as a deontological private citizen. His "matters pertaining to the public" pertains, on the other hand, to Duties to others in a person's role *as part of the Sovereign* of a republic. It is a partial characterization of social norms in regard to civic Duties.

In regard to the more immediate questions under analysis here, there is a long-lived traditional habit of confounding the notion of "charity" with notions of civic Duties pertinent to the "protect and defend" clause as it relates to issues of food, clothing, and shelter. Frequent connotations of "charity" include generosity, benevolent good will, and love of humanity. Above all, charity is a *voluntary* provision of aid. These connotations tend to imply that acts of charity are carried out from private motivations and the "good graces" of the charity-giver. Such acts pertain to *obligatio interna* rather than *obligatione externa* and the person is, for this reason, called a "charitable person."¹⁴

Civic Duties are never *obligatio interna*; they are always *obligatione externa* necessitated by social compacting. A charity-giver might expect a recipient of his charitable action to be grateful to him (and be disappointed or even angry if he is not). But a civic Duty, because it is an *obligatione externa*, is an action in fulfillment of the terms of a social compact and the recipient of the benefit of the action is receiving the benefit of a *civil right*.¹⁴ This is *not* charity.

Ask yourself: when fathers and mothers provide their children with food, clothing, and shelter, is this "charity"? If your answer is "no" I wouldn't be surprised in the least¹⁵. Although there are people who would answer differently (if their answers were truthful; see footnote 15), the simple fact is that the vast majority of parents do this out of love for their children. Practical Reason, by means of the process of judgmentation, transforms this affective stimulus into structured tenets of practical action schemes in the manifold of rules. These structures constitute tenets of *obligatione interna* (practical hypothetical imperatives of Reason). These tenets make up part of the parent's private moral code.

The situation is entirely different when the person wanting for food, clothing, or shelter is not a member of one's family and, as is often the case, is a stranger. He or she is then known to most people only as a stereotype (a mathematical, not a real, person). Furthermore, in Societies of even modest size the social environment of each person is granulated, as illustrated in figure 2 [Wells (2012), chap. 10].

¹³ It is erroneous to presume this "spirit" of Cicero's text is absent in non-Western cultures. It is found in Hinduism's Bhagavad-Gita, the texts of Taoism and Confucianism, in Buddhism, and in Islamic moral writings as well. It is, in a manner of speaking, "built into" the human nature of social compacting.

¹⁴ See the chapter appendix for definitions of this terminology.

¹⁵ It wouldn't surprise me despite the fact that the Texas Department of Family and Protective Services investigated 22,608 reports of physical neglect of a child in fiscal year 2022. [source: Texas DFPS website]

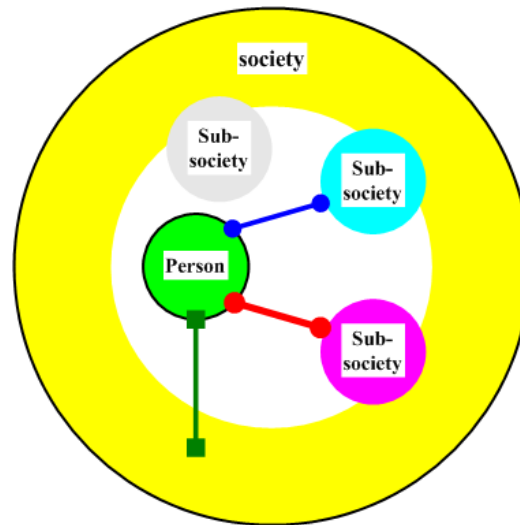


Figure 2: Illustration of a granulated social environment. In this figure, Person is a member of a society in which there are many other members not known to him personally. He knows and is socially bonded to some of its members (the Sub-society shown in blue). He knows and is anti-bonded, i.e. has antagonistic relationships, with other members of it (the Sub-society shown in red); and he is socially unconnected with still other members of it (the Sub-society shown in gray). Although he acknowledges all these other people are fellow members of "his" society, he "knows" most of them only as stereotypes. He is also aware that other people exist in his society who he does not know anything at all about, not even as stereotypes, except that they exist and are "part" of his society. Person is also typically a member of several mini-Communities within his bonded Sub-society.

Granulated society tends to subdue a person's consciousness of social compacts. There are many things that can cause a deontological citizen of a Society to fall into want of food, clothing, or shelter. Things like job layoffs, natural disasters, fires, aging, and medical casualty are well known examples where this happens. It is not-uncommon when these occur for other people to have feelings of sympathy and compassion for the victims, nor is it uncommon for some to voluntarily render aid and assistance to victims. In their actions we see a living embodiment of the spirit of compassion and empathy expressed in John Bradford's famous quote, "There but for the grace of God go I," and the individuals who unselfishly come to the aid of victims are, as Cicero put it, "esteemed and called good citizens."

But granulated Societies do exhibit the unintended effect of blurring distinctions between civically meritorious actions and "charity," and mistaking a civic Duty for an act of charity. Habits of thinking that evolved from bygone institutions of monarchy and feudalism contribute to this, as do religious teachings. Historical examples are provided by the diverse institutions of welfare systems in 17th through 20th century Europe and America. In most cases, and especially those with roots in religion and attitudes of state paternalism, these welfare institutions started as some kind of "poor relief" and the subject has always had a strong bias for being seen as a "poverty" issue with additional charitable and moral considerations involving caregiving for children without parents or guardians and the elderly. Oftentimes, the "moral" connotations of "poor relief" originate out of religious doctrines of "natural law." In other cases, seen less often, a Society institutes its policies and approaches to the issue more clearly and firmly on a social contract basis. Sweden provides an example of the latter.

Although it is quite true that poverty (inadequate tangible *Personfähigkeit*) is a condition often found to accompany want of food, clothing, and shelter, I offer for your consideration the proposition that it is an error to confound "poverty" and "welfare" (the state of being or doing well in life), and that doing so leads to a transferal of the issue from one of civil rights to one of charity. One of the absurdities often produced by such a transferal is institution of "involuntary charity" - an idea that is self-contradictory at its root and is contrary to the "unite himself with all the other associates while still obeying himself alone" clause of the social compact condition. The social *root* of the question of whether food, clothing, and shelter carries

implications of civil rights is the individual's **overall** *Personfähigkeit* - physical, intellectual, tangible, and persuasive - which is, ultimately, the ground for a person choosing to unite with others in civil association and for those others to accept him as a member of their association. Shortcomings in intellectual, tangible, and persuasive *Personfähigkeit* can and do all contribute to shortfalls in physical *Personfähigkeit* when these shortcomings mean a person is unable to tolerably well feed, cloth, and house himself and/or those who depend on him. So can shortcomings in the capabilities of others, such as when poor management forces a factory to lay off large numbers of its employees.

Institution of a justice system involves many nuanced considerations, and understanding how to institute one calls for clarity of understanding in how these four headings of *Personfähigkeit* are to be factored into it. This factoring must also remember, as Mark Twain famously said,

Don't go around saying the world owes you a living. The world owes you nothing. It was here first.

The issue is not one of what a person is owed simply because he is a human being. It is one of how in a civil association one can gain the *civic* "cooperation and assistance of others" he needs *to* live while, at the same time, the civil association overall can reasonably be committed to providing it. As Adam Smith put it,

Is this improvement in the circumstances of the lower ranks of the people to be regarded as an advantage or as an inconveniency to the society? The answer seems at first sight to be abundantly plain. Servants, laborers, and workmen of different kinds make up the far greater part of every great political society. But what improves the circumstances of the greater part can never be regarded as an inconveniency to the whole. No society can surely be flourishing and happy of which the far greater part are poor and miserable. It is but equity, besides, that they who feed, clothe, and lodge the whole body of the people should have such a share of the produce of their own labor as to be themselves tolerably well fed, clothed, and lodged. [Smith (1776), pp. 69-70]

Finding and attaining a *just* balance between the tensions of self-reliance and civic Duty, so that these are in a condition of stable equilibrium, is never simple nor easily accomplished. This is especially so when there are centuries of habits-of-thinking and cultural customs standing behind (or against) the traditional practices of a Society vs. ideas of Progress and reform. A small taste of this can be provided by looking at the Poor Relief Act of 1601 for England and Wales. The first thing we can see at once is that this legislation is aimed at providing "relief" for "the poor" and not at any question of civil rights. This act replaced more than a century of previous church-instigated institutions of charity that had grown more penal and punitive than charitable after the end of serfdom and collapse of the feudal system in England. The Act of 1601 established a four-fold classification of "the poor":

1. The "impotent poor" made up of people who were unable to work (chiefly people who were "lame, impotent, old or blind"); these people were to be cared for in a poorhouse;
2. the "able bodied poor" (people who could perform physical labor); these people were to be sent to work, as laborers, in a workhouse;
3. the "idle poor and vagrants" who were sent to a "house of correction"; the very terminology tells us that chronic poverty and unemployment was regarded as if it was a crime to be poor and unemployed;
4. the children of "paupers"; as a matter of policy, this also included orphans who had not been placed with guardians of sound financial status; these children were to be indentured and set to work as apprentices.

The dominance of principles of self-reliance is evident here. So is the attitude of paternalism. The "impotent poor" were obviously regarded as "charity cases." The "able bodied poor" were normally people who were unable to find work (for whatever reason, including cyclical unemployment or lack of skills); they were often stereotyped as being "lazy" - i.e., that it was entirely their own fault they were

poor. Workhouses were intended to be means of preventing them from becoming vagrants, beggars, or vagabonds. "Pauper" children were indentured to work for a "master" and were sometimes "auctioned off" to employers almost like slaves. The "master" was expected (by parish authority figures) to provide these children with food, clothing, and shelter as "members of the master's household" but not required or expected to pay them wages. The "idle poor and vagrants" *were* slaves, plain and simple. It was a system that placed wholesale blame for poverty on the poor, a proposition that at face value is preposterous.

1601 was four centuries ago but presuppositions, attitudes, and stereotypes really haven't changed very much since then. The so-called "war on poverty" and paternalistic mechanisms of social welfare passed during the Johnson administration in the mid-1960s featured many of the same presuppositions - clothed in gentler language, perhaps - as the Poor Relief Act of 1601. Many of the so-called "welfare reforms" of the Reagan administration in the 1980s bore presuppositions similar to those behind the class of "able bodied poor" in 1601 England and Wales. American government does not send "the idle poor" to "houses of correction" (although it does sometimes jail "vagrants"); instead it leaves them to live under bridges or in alleyways, scrounge for food in garbage cans, or prostitute themselves. It also resists any notion that food, clothing, and shelter might have any kind of connection with civil rights.

Nor do those who support the extreme opposite view, i.e. the so-called socialists and Progressives, show any real evidence of having new ideas. For example, there are calls in the U.S. for a "guaranteed income" for all people living in the United States - a proposal that obviously is aimed at poverty and is buttressed by "charitable" arguments with vague references to "civil rights" often tossed in for good measure. In point of fact, a law very much like the current-day discussion was tried in Britain in 1795. It was called the Speenhamland Law, and it proved to be a colossal failure that came close to collapsing the entire economy of Great Britain [Polanyi (1957), pp. 81-107]. The vocal champions of the so-called "Left" seem incapable of doing much more than resurrecting past ideas from the graveyard. And, as Santayana warns us, "Those who cannot remember the past are condemned to repeat it" [Santayana (1905), pg. 284].

Let us analyze the questions of whether a deontological citizen rightfully possesses tolerably adequate access to food, clothing, and shelter as a civil right. Suppose Person *C* petitions civil Society *S* for acceptance as one of its citizens, and that civil Society *S* grants his petition. Person *C* thereby commits himself *obligatio externa* to a civic Duty to put his person and all his power (all his *Personfähigkeit*) in common with those of all the other deontological citizens under the supreme direction of the Community's general will. In its turn, civil Society *S*, in its corporate capacity as a body politic, commits itself *obligatio externa* to defend and protect with its whole common force the person and goods (*Personfähigkeit*) of Person *C*. It further commits, again by *obligatio externa*, to provide this protection, under the laws of its Society, in such a way that Person *C* enjoys exactly the same civil liberties - no more and no fewer - as all its other deontological citizens in accordance with the condition of their social contract. Thus there is established between Person *C* and Society *S* a bilateral moral compact. Kant noted,

Moral custom is founded on the rule of acts from the viewpoint (station) of the common participant or representative:

1. of the participant in nature with regard to himself;
2. of the participant in freedom with regard to others. In the latter case, from the viewpoint of either the representative of the choice of others or of their welfare.

The commonality is either of the property or of the things that have a certain property. *Universalitas interna or externa*¹⁶. [Kant (c. 1764-1800), 19: 163-164]

Now suppose that, while having met and been faithful to all his civic Duties, Person *C* encounters circumstances in which he finds himself unable to keep himself and his non-citizen dependents (e.g., his minor children) adequately and tolerably stocked with food, clothing, or shelter. In such a circumstance

¹⁶ "generally applicable to the private or the external"

his physical *Personfähigkeit* clearly is adversely affected and *he has a civil right under the terms and conditions of the social contract to petition his Society for aid and assistance*. The proper mechanism for doing so is a Petition of Right. Society *S* is under *obligatione externa* to render this assistance. If it fails to do so, Society *S* perpetrates an injustice on Person *C*. For a deontological citizen true and faithful to performance of his civic Duties, tolerably adequate access to food, clothing, and shelter *is a civil right*. QED. The only lingering question is: What constitutes "tolerably adequate"?

Now suppose Person *C* encounters the same circumstance but that he has been derelict in performance of his civic Duties and, therefore, his past actions have been in violation of the social contract. He is then culpable of either a moral fault (if the dereliction was unintentional) or a moral crime (if the dereliction was intentional). In the case of moral crime, Society *S* is released from its contractual obligations and Person *C* has forfeited his civil right. In the case of moral fault, Society *S* has a warrant to require Person *C* to compensate Society *S* for the consequences of his dereliction in exchange for rendering its aid and assistance.

In any individual case, someone must decide which of these three possible situations applies. This is a matter for a judicial panel or court to adjudicate. What I have particularly in mind here is a function for Boards of Right to decide. Furthermore, the matter is not one for which adjudication by an adversarial system is suitable. Rather, it is a matter properly adjudicated under an inquisitorial system.

One of the things this dialectic argument brings out is this: A civil Society acts in a dangerously imprudent way if it does not place as much attention and consideration on civic Duties as it does on civil rights. Elected politicians in non-consensus democracies operating under the maxim of majority rule have no political incentive to make laws or resolutions about civic Duties. Indeed, they have great incentives to willfully ignore them. Non-consensus democracies breed Toynbee proletariats. "Man is not willingly a political animal," and people tend to resent being reminded that civic Duties are the purchase price of civil rights. But failure to remind them of this is an invitation to perpetuate injustice.

5.2 Intellectual *Personfähigkeit*. "When I speak of a diffusion of knowledge, I do not mean merely a knowledge of spelling books and the New Testament. An acquaintance with ethics, and with the general principles of law, commerce, money, and government is necessary for the yeomanry of a republican state." - Noah Webster (1788). "Freedom can exist only in the society of knowledge. Without learning, men are incapable of knowing their rights, and where learning is confined to a few people, liberty can neither be equal nor universal." - Benjamin Rush (1786). "Education . . . engrafts a new man on the native stock, and improves what in his nature was vicious and perverse into qualities of virtue and social worth." - Thomas Jefferson (1818).

If you will, reflect a moment on what truths there are in the popular aphorism, "knowledge is power." Intellectual *Personfähigkeit* subsists in a person's knowledge, intelligence, and judgment. It manifests most especially in the skills a person exhibits as he pursues fulfillment of his purposes. Human beings are born without *a priori* objective knowledge. All our *objective* knowledge is built up gradually on a foundation of the unconscious *practical* "know-how" of our innate sensorimotor reflexes given their orientations by *subjective* affectivity. We call the outcomes of this one's "learning" and "experience." Any activity productive of such outcomes can properly be called an educational activity [Wells (2012 b), chap. 1]. A human infant is born completely helpless and perishes without the nurturing of a caregiver. As it grows and, with help from others, acquires objective experience, it gradually becomes increasingly self-sufficient and better capable of exercising "self-reliance."

Kant wrote,

The human being must be *cultivated*. Culture includes teaching and instruction. It is the procurement of skill. This is possession of a capacity which is sufficient for any arbitrary purpose. It determines no ends at all, but leaves this to the later circumstances. [Kant (1803), 9: 449]

Kant saw the individual's *Personfähigkeit* as something so important that perfecting it was a Duty-to-Self. He wrote,

Cultivation (*cultura*) of his natural powers (powers of intellect, powers of mind, powers of body) as means to all possible ends is man's Duty to himself. Man is culpable to himself (as a rational being) not to leave his natural gifts and capacity unused and rusting, as it were, of which his reason can someday make use [Kant (1797), 6: 444].

Obviously, though, this is one of Kant's "ought to" imperatives since, like all of us, he was well aware that some people do not undertake such "self-cultivation." Just as a glutton might eat himself into such a state of morbid obesity that he is barely able to move from table to couch, there are many more people who put very little effort into learning anything beyond the immediate needs of their circumstances. Kant knew this and was critical of the educational institutions of his day:

Since the development of natural aptitudes in human beings does not happen by itself, all education is an art. Nature has placed no Instinct in him for this. The origin as well as the continuation of this art is either *mechanical*, without a plan and ordered by given circumstances, or *judicious*. The art of education arises mechanically only in those occasions cropping up when we experience whether something is detrimental or beneficial to people. All educational art which arises merely mechanically must carry with it many shortcomings and lacks because it has no plan for its basis. The art of education or pedagogy must therefore become judicious if it is to develop human nature so that the latter can reach its destination. Parents who are already educated are examples according to which children model themselves¹⁷. But if this is to become better, pedagogy must become a study; otherwise there is no hope from it, and one whose education is tainted will educate another. The mechanism of education must be transformed into a science; otherwise it will never become a coherent endeavor, and one generation is inclined to tear down what another has already built up. [Kant (1803), 9: 447]

In Critical Epistemology, **education** is the acquisition, development or perfection of knowledge, skill, mental capability, practical character, or aesthetical taste by an individual. To **institute** education is to set up or establish ways and means by which education occurs. Both ideas are at root practical and institution of education has many forms: instructional (e.g., schools); vocational (e.g., apprenticeship); unintentional (e.g., through the actions and operations of agencies of government not intentionally established for educational purposes¹⁸).

Among people who see institution of public education as a "good" of some kind, history has exhibited a dichotomy between people who see education as a "private good" and those who see it as a "public good." The first group has, historically, represented the greater majority of humankind [Wells (2012 b), chap. 1, pp. 16-25]. A person who *receives* a formal or organized education generally acquires a "private good" inasmuch as its contribution to his intellectual *Personfähigkeit* provides him with means of attaining greater personal economic or spiritual welfare. But when is education to be considered a "public good"? What makes an educational benefit for an individual *also* beneficial to a Society and, hence, a "public" good? This is less easy or obvious to answer. But the question is pertinent because a "private good" carries no implication of civic Duty, and without civic Duty attaching to it there is no justification for attaching a civil right to education.

No small part of this difficulty lies in the fact that education improves intellectual *Personfähigkeit* but this power of a person lies hidden and dormant until and unless it is *put to use* by means either of

¹⁷ I would add here that parents who are uneducated and/or openly exhibit contempt or merely lack of enthusiasm for education are also "examples according to which children model themselves."

¹⁸ "Government is at once a great influence on the human mind and a set of organized arrangements for public business" [Mill (1861), pg. 21]. As an illustration of a socially detrimental and unintentional institution of education, the U.S. penal system has been called by some of its critics "college for criminals."

physical, tangible, or persuasive *Personfähigkeit*. Most vocational education - and especially that applied to the manual arts - is strictly a private good in a Society. However, this is not *always* the case. One example was the Spartan *agoge*, which was the education institution of ancient Sparta [Kennell (1995)]. Sparta was an unusual Society in ancient Hellena because the Spartans had subjugated and enslaved an entire people - the Helots - whose population outnumbered them by an estimated ratio of 20 to 1. Consequently, the Spartans always had to fear the Helots might rise up and slaughter them. In essence, Spartan Society had to become an army that owned a state (rather than a state that owned an army), and the *agoge* existed to make sure they were the toughest, most skilled, and most feared army in ancient Hellena. They were certainly the most disciplined Society in Hellena and, interestingly, the other Hellenic Societies generally regarded them as the most *moral* Society in their world. We find Athens and the other Greek city-states highly praising Spartan morals while, at the same time, thanking their gods that *they* were not born Spartans [Plutarch (late 1st cent. AD), pp. 413-415]. *Agoge* education was much more than simply military training and was singularly intended as a *public* good for Spartan Society.

Instructional education was instituted in the earliest civilizations as well as the later classical civilizations. For the most part, this education appears to have been aimed at producing civil servants to serve the administrative and religious needs of the state [Marrou (1948)]. However, since these needs were those of the king and his government, and not very directly aimed at the needs or desires of their subjects, it is difficult to really see those institutions as serving a public good. The same was true of education during the Carolingian Renaissance of Charlemagne in Dark Age Europe and of Scholasticism as Europe emerged from its Dark Ages [Pedersen (1997)].

Institutions of education continued to aim more or less exclusively at personal, religious and civil service purposes until after the American Revolution at the end of the 18th century. Where its institution was regarded as serving a general good, this good was widely seen as religious in its nature [Wells (2013)]. In the new United States of America, education was not an issue foremost in the minds of most people, but it *was* recognized by some of America's Patriot leaders that their new Constitutional government established in 1789 *did* imply new requirements for *public* education if their radical new kind of government was going to fulfill Americans' hope for it [Wells (2013), chap. 6]. These leaders included such notables as Thomas Jefferson, James Madison, Benjamin Rush, Robert Coram, James Sullivan, Nathaniel Chipman, Samuel Knox, Samuel H. Smith, and Noah Webster. Montesquieu was the Enlightenment Age "oracle" who can be credited with raising their consciousness of this:

It is in a republican government that the whole power of education is required. The fear of despotic governments naturally arises of itself amidst threats and punishments; the honor of monarchies is favored by the passions, and favors them in its turn; but virtue is self-renunciation, which is ever arduous and painful.

This virtue may be defined as the love of the laws and of our country. As such love requires a constant preference of public to private interest, it is the source of all private virtues; for they are nothing more than this very preference itself.

This love is peculiar to democracies. In these alone the government is entrusted to private citizens. Now, a government is like everything else: to preserve it we must love it. Has it ever been known that kings were not fond of monarchy, or that despotic princes hated arbitrary power?

Everything, therefore, depends on establishing this love in a republic; and to inspire it ought to be the principal business of education: but the surest way of instilling it into children is for parents to set them an example. People have it generally in their power to communicate their ideas to their children; but they are still better able to transfuse their passions. [Montesquieu (1748), vol. I, Bk IV, pg. 34]

It cannot be seriously said that American ideas and proposals for public education were grounded in *science*, but these ideas did reflect their understanding of human social nature and an understanding that public education must be viewed in two dimensions: 1) the dimension of the-learner-as-a-free-person; and 2) the-learner-as-a-member-of-the-civil Community. The first dimension concerns the *Personfähigkeit* of

the learner and, rather obviously, benefits his private good. The second dimension is aimed at increasing the civil Community's corporate *Personfähigkeit*, and this dimension is where public education is rightfully to be seen as a public good. The prime objective of a civil Society's system of public education is *protection* of the Society's *Existenz* and its *continuation* as this is afforded by the protection of the citizens' *civil rights* [Wells (2012 b), chap. 5]. Figure 3 below illustrates the mathematical 3LAR of the objectives of public education. Detailed explanation of this structure is provided in the reference just cited.

That the objectives of *public* education necessarily include the "private good" dimension of the learner is due to one simple and inescapable fact of human nature. A person will not become a *learner* if what he is expected to learn *holds no interest for him*. His interests are in this sense the "matter" of which his educational self-development is the form. An inherent - and too often unappreciated - task for institutions of public education is to *stimulate the interests of the learner in the topics Society needs him to learn*. A teacher must always be a catalyst for stimulating these interests. A useful analogy for education is the analogy of *agriculture*. A farmer does not "grow the corn". Instead, the corn grows itself; the farmer provides the conditions under which the corn can best do so. So too a teacher cannot "learn his student some math"; it is the student who learns. The "manufacturing" analogy so popular with many people - which envisions education as being a process of "pouring knowledge into the (presumably) empty skulls of the students" like pouring beer into a bottle - is an egregious error.

Civil rights cannot be adequately protected if the citizens are ignorant of what their civil rights are and are not, and if they do not understand the scopes and limitations of these rights. Neither can they be protected if deontological citizens do not recognize and acknowledge a *civic Duty* to provide this protection. This Duty arises from the "each associate is to put his person and all his power in common with those of the other associates under the supreme direction of the general will" clause of the social contract terms. It is part of the common interests core of a civil Society that its citizens make it a civic Duty to comprehensively understand their civil rights and their Duty to protect them for every deontological citizen.

But accepting a maxim of civic Duty is an act that only the individual himself can make. No one can externally impose a Duty or an Obligation on anyone; that always comes only from within. For this reason, one of the most important functions of public education is to *stimulate* learners' interests in and understanding of their civic Duties. And the necessity for this function makes public education *a civil right* because of the *common* interest in preserving and promoting the civil Community. This is neither an executive nor a legislative function because civil rights questions and issues properly belong to the justice system. This further means that public education *is a principal responsibility of a Society's justice system*.

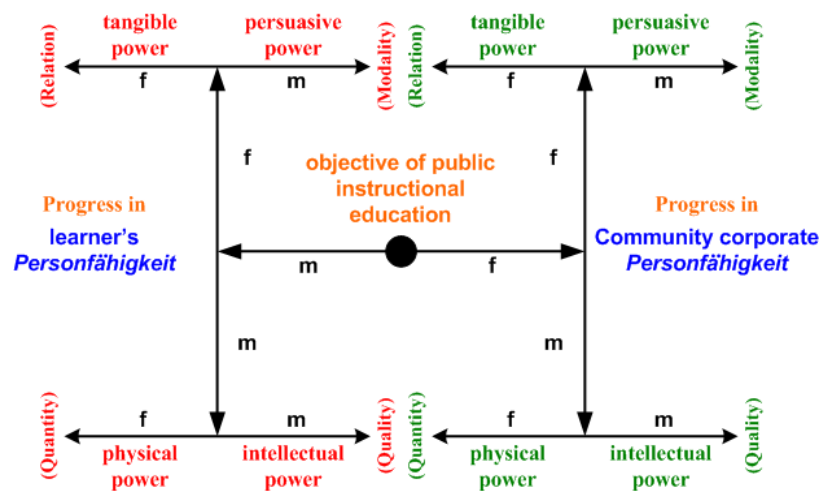


Figure 3: 3LAR mathematical structure of the objectives of public education. [Wells (2012 b), chap. 5]

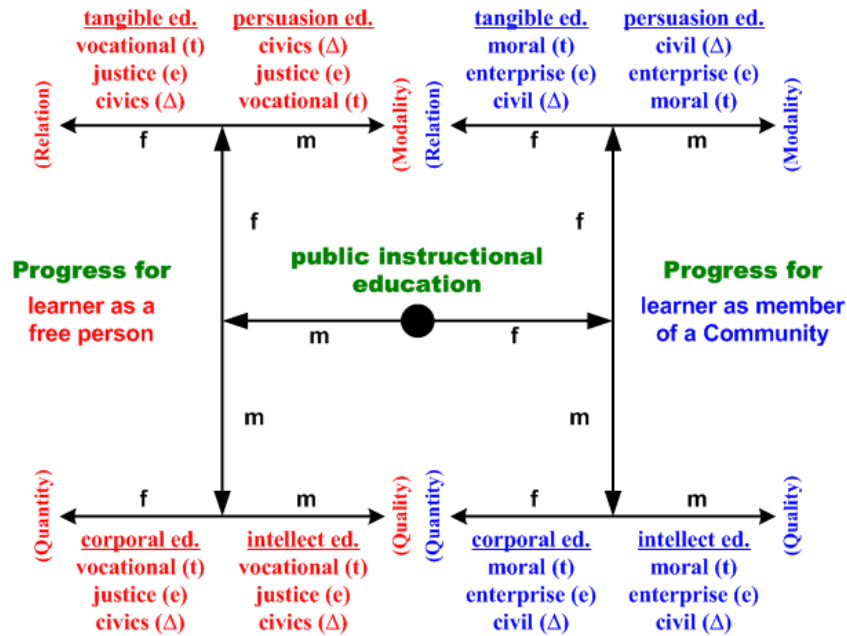


Figure 4: 3LAR organization of the functional classifications of Progress-oriented public instructional education [Wells (2012 b), chap. 5]

Instructional education is one important kind of education (the one most typically associated with formal schooling). To meet the objectives structure of figure 3 through public instructional education requires particular functionals of instruction, each designed in congruence with human *Personfähigkeit*. Figure 4 illustrates this functional organization at the 3rd level of analytic representation (3LAR). This structure is deduced and derived in Wells (2012 b). Note that it, too, has two dimensions of instruction: one for the learner as a free person; the other for the learner as a member of the civil Community.

5.3 Tangible *Personfähigkeit*. "Every man endeavors to supply by his own industry his own occasional wants as they arise" - Adam Smith, 1776; "In a word, you reproach us with intending to do away with your property. Precisely so; that is just what we intend" - Karl Marx, 1847; "If you want to go fast, go alone. If you want to go far, go together" - African Proverb, date unknown.

Tangible *Personfähigkeit* is the power of a person to realize or attempt to realize the objects of his appetites by means of his stock of tangible personal goods, fungible skills, and the time he has to devote to this realization (stock-of-time). In a corporate person it subsists in the tangible assets available for use by the association and the intangible personal skills of its members that are used to accomplish the objectives of the association. The first two quotations above represent polar opposite views of rightful possession of property (in the deontological context of "property" described earlier in this chapter under Property Rights). The third quote, as metaphor, describes the typical actual situation and circumstances of most actual Societies.

Extravagance in reasoning in regard to the first quote implies state-of-nature conditions where the idea of "rightful possession" has no real meaning. Extravagance of reasoning in regard to the second quote likewise leads to uncivic relationships by subjugation of the majority of people in a Society by a dominant minority. This minority usurps rulership in regard to decisions about who is to be allowed to possess what property, and who is to be required to provide what assets this minority makes decisions about in regard to its dispositions. "From each according to his ability, to each according to his needs" is a pretty propagandist slogan and in a small and intimate *Gemeinschaft* Society it can have possible practical implementations under limited circumstances. Such appeared the case to Columbus' bewildered eyes when he first encountered a Native American Community, although I personally think it likely that the

African proverb would be the more truly accurate description from the viewpoint of those people.

But more generally, as stereotyping becomes increasingly more unavoidable in a Society, then the old and still unsolved Roman problem of *Quis custodiet ipsos custodes?* re-arises. Russia's Mensheviks were in many ways more "Marxist" than Lenin and his Bolsheviks, but it was the more ruthless Bolsheviks who prevailed in the end. The disillusioned George Orwell's *Animal Farm* weaves for us a cautionary tale pertinent to this. Disillusioned ex-socialist turned neoconservative Joshua Muravchik has presented an excellent history of socialism and communism, and its unbroken record of failure [Muravchik (2002)]. In colonial America's Plymouth Colony, the colonists set up a communist system in 1620. Jernegan tells us,

In the summer of 1623 the common labor and land system broke down. The older men disliked working in a common gang, while the younger were dissatisfied because their labor was no better rewarded than that of the old and infirm. Husbands disliked having their wives act as public servants and having them wash and cook for any member of the community. So an individual allotment of land was made, extended in 1624 to one acre each. Soon all became industrious and more corn was planted. Women went into the field to set corn "whom to have been compelled would have thought it tyranny and oppression." [Jernegan (1929), pg. 121]

In 1623, when their communist system collapsed, the population of Plymouth Colony was only around 180 people. It also doesn't take a very large population before socialism breaks down. In 1825, Robert Owen (the man who invented the word "socialism") launched an ambitious project in New Harmony, Pennsylvania, that he thought would remake the character of humankind. What he intended as a socialist paradise collapsed and disintegrated in 1827 [Muravchik (2002), pp. 31-51].

At the other end of the spectrum, extravagance in reasoning that recognizes no limitations, boundaries or conditions on the scope of justifiable tangible *Personfähigkeit* in a Society produces what I have elsewhere called *uncivic free enterprise* [Wells (2017), chap. 1]. In Critical Epistemology, an *enterprise* is *any undertaking actualized by an individual for reasons grounded in duties to himself or Duties to himself reciprocally with others to whom he had bound himself by Obligation*. An *economic enterprise* is an enterprise carried out for the purpose of obtaining a revenue income of economic wealth assets. A *commercial enterprise* is any economic enterprise involving commerce. Economic enterprise is the principal means by which an individual gains and improves his tangible *Personfähigkeit*. An *entrepreneur* is *any person undertaking personal enterprise activity for the purpose of satisfying a Duty-to-himself in regard to the tangible power of his person*.

The closely related term *Enterprise* means the common Object of all the individual instantiations of personal enterprises carried out by a group of people associated with each other in a united Community. An *economic Enterprise* is an Enterprise in which obtaining a revenue income of economic wealth assets is a purpose that is common to all the entrepreneurs in the Enterprise Community. *Free enterprise* is a *personal enterprise or an Enterprise conducted within a civil Community with a relationship to the social contract of that Community*. In Wells (2017) it is shown that there are two distinctly different types of free enterprise. *Civic free enterprise* is free enterprise in which the enterprising agent or agents demand and accept the protections and civil rights of the Enterprise Community and in exchange commit to social Obligations and reciprocal Duties of citizenship it pledges to that Community. *Uncivic free enterprise* is free enterprise in which the enterprising agent or agents demand and accept the protections and civil rights of the Community but either refuse to pledge commitment to reciprocal social Obligations and Duties of citizenship (under the social contract of the Community) or breach or violate the terms of the social contract by acts of commission in violation of the social contract or by acts of omission in failing to fulfill civic Duties that the social contract requires to be pledged. Uncivic enterprising actions are either *outlaw actions* (if no real commitment to the social contract was made) or *crimes* (if a commitment to the social contract was originally made and later broken).

These practical real definitions are not found in *Black's Law Dictionary*. *Black's* does contain a legal definition of "enterprise", i.e., "an organization or venture, especially for business purposes." It contains a

legal definition of "entrepreneur", i.e., "one who initiates and assumes the financial risks of a new enterprise and who, usually, undertakes its management." As I discuss and explain in Wells (2017), these legal definitions grew out of *licentious* usages of the term "free enterprise" - which is not a legal term defined in *Black's* - [Wells (2017), chap. 1]. These licentious usages are, unfortunately, the most widespread ways in which all these terms are and have been used since the reinvention of capitalism¹⁹ in 15th century Britain. Practices of uncivic free enterprise underlie a great many perpetrations of violations of the social contracts in Western Societies, and the licentious language used in commerce and business further promotes *perpetuation* of unjust practices and leads to the formation of Toynbee proletariats within civil Communities. Plainly put, perpetuated practices of uncivic free enterprise lead to the breakdown and eventual disintegration of civil Communities. Legendary IBM CEO Thomas J. Watson, Jr., wrote,

What we must always remember is that countries and systems exist for the benefit of their people. If a system does not measure up to the growing expectations of those people, they will move to modify or change it. To keep faith in our business system and to help build our country, the best thing we can do is to make our system work so that everyone shares fairly in it. We won't build good citizenship and we won't build a strong country by holding people back. We will build it by helping people to enlarge their goals and to achieve them. [Watson (1963), pg. 94]

In the United States, many of the most frequently occurring practices of uncivic free enterprise started or grew out of a pre-Revolutionary economy revolution in America that happened roughly from 1750 to 1800 [Wells (2013), chap. 5]. Prior to this, business and commerce practices in the American colonies conformed much better with the conditions of civic free enterprise (with the obvious exception of the institution of slavery and various actions American entrepreneurs took in violation of British commerce laws Parliament had passed for the purpose of exploiting her American colonies) [*ibid.*]. Among the moral, social, and economic changes that took place, Salinger found the following:

The transition brought changes in the relations between artisans and their workers even before indentured labor gave way to wage labor. The first sign was the changing contractual relationship of masters and apprentices. Although during the colonial period masters and apprentices signed formal agreements to specify the length of the indenture and some of the apprentices' responsibilities, they relied for the most part on unwritten understanding of mutual obligations. As the century progressed, such items as the nature and amount of work expected from the apprentice and arrangements for education and clothing were translated into monetary values and specified in greater detail.

More dramatic, as wage labor rose, were changes in the character of the colonial workplace. In the colonial shop, the master craftsman labored alongside his servants or slaves, perhaps an apprentice or two, and an occasional journeyman. Stability resulted because it took four to five years for a servant to work out his indenture term and even longer for an apprentice to learn the craft. . . . The unfree workers of the city were forced to share the workbench with their artisan owners, but the relationship was stable and, by eighteenth-century standards, long lasting.

When the master left the workbench to his employees, labor relations in Philadelphia changed markedly. The early colonial labor market encouraged the city's master craftsmen to rely heavily on skilled bound workers, both indentured servants and slaves. As the eighteenth century progressed, this coercive, paternalistic labor arrangement revealed increasing social conflict. However, relations among free workers, masters, and journeymen were based on shared goals. A mutuality existed . . . because for artisans, belonging to a trade carried with it more than working at a craft. It meant a sense of obligation, and masters and journeymen were bound "in service to themselves, each other,

¹⁹ *Capitalism* is employment of part of one's personal stock of goods-in-general for the purpose of producing personal revenue. Any person who so employs a part of his stock of goods is a capitalist. This is something quite different from the propaganda use Marx made of this term in his *Manifesto of the Communist Party* and *Capital*.

and the community." Workers did not work just to earn a living; they internalized a collective "trade identity and commitment to the community in which they labored." . . .

The traditional outlook, in which this mutuality and communal spirit dominated, began to collapse during the late colonial period. The accumulative entrepreneurial spirit replaced the "moral economy," and social responsibility in economic activity was lost. Individual acquisitiveness replaced the ideal of the good of the community. It is impossible to say when the new ethos emerged and then dominated, but it seems to have coincided with the decline of unfree and subsequent rise of wage labor and to have been tied to an economic barometer. [Salinger (1987), pp. 161-163]

One of the evolutions in thinking (or, perhaps more accurately, *devolutions* in thinking) was the transition in which the "master of the business" came to be regarded as a sort of petty king. All by itself, this was enough to transform what had been, by and large, *Gemeinschaft* commercial Communities into a monarchy & state of nature rulership form of business governance. In a somewhat ironic twist, by the time the colonies revolted against British rule and tossed out monarchy in government in the United States, monarchy-like rulership in commerce had become settled habit that was *not* altered by America's revolution. It persists in American business to this day despite the fictions that stockholders "own the business" and it is governed by a democratically elected board of directors²⁰. Robert Townsend wrote,

While ostensibly the seat of all power and responsibility, directors are usually the friends of the chief executive put there to keep him safely in office. They meet once a month, gaze at the financial window dressing (never at the operating figures by which managers run the business), listen to the chief and his team talk superficially about the state of the operation, ask a couple of dutiful questions, make token suggestions (courteously recorded and consequently ignored), and adjourn until next month. [Townsend (1970), pp. 31-32]

Licentious language usages in the traditions of uncivic free enterprise even combine with John Adam's passion for Vanity to produce misleading word connotations. One example of this "entrepreneur." *Black's* legal definition is only one example of an entrepreneur - and happens to be an example intended to flatter a proprietor of a business. Deontologically, the person who sweeps up at the end of the business day or greets visitors in the lobby is equally an entrepreneur because this person invests part of his or her stock-of-time *as a personal economic enterprise* in those activities. Just as a boy who operates his own lawn mowing enterprise and deposits \$1 a week in an interest-bearing savings account *is just as much a capitalist* as Andrew Carnegie, the clerk who processed your driver's license application at the Department of Motor Vehicles *is just as much an entrepreneur* as Bill Gates. The only difference is the scale of tangible *Personfähigkeit* resulting from their enterprises.

A person's tangible *Personfähigkeit* is enhanced and augmented by living in a Society through an economic phenomenon called *the division of labor*. Society makes this possible. Indeed, this possibility is one of the principal attractions that motivate human beings into voluntarily alienating part of their natural liberty and putting up with being "a willing political animal." Outside the environment of a Society, a human being must, by necessity, provide for himself every tangible good he requires just in order to meet basic human survival needs.

Four or five [people] united would be able to raise a tolerable dwelling in the midst of a wilderness, but *one* man might labor out the common period of his life without accomplishing anything; when he had felled his timber he could not remove it, nor erect it after it was removed; hunger in the meantime would urge him from his work, and every different want call him a different way. Disease, nay even misfortune would be death, for though neither might be mortal, yet either would disable him from

²⁰ To head off a possible misunderstanding, I disclose that I am myself a capitalist, expect to be one until my final day, and have been one since I was a young boy. This is a tradition in my family dating back 600 years to before we left England for Pennsylvania in 1685. I am *also* a (retired) member of a labor union (the American Federation of Teachers). There is no conflict in being both at the same time because capitalism is not what Karl Marx said it was.

living and reduce him to a state in which he might rather be said to perish than to die. [Paine (1776), pg. 252]

But life in a Society provides advantages through division of labor that frees up more time that can then be employed in following the pursuits of their happiness. Adam Smith wrote,

It is the great multiplication of the productions of all the different arts, in consequence of the division of labor, which occasions, in a well-governed society, that universal opulence which extends itself to the lowest ranks of the people. Every workman has a great quantity of his own work to dispose of beyond what he himself has occasion for; and every other workman being exactly in the same situation, he is enabled to exchange a great quantity of his own goods for a great quantity, or, what comes to the same thing, for the price of a great quantity of theirs. He supplies them abundantly with what they have occasion for, and they accommodate him with what he has occasion for, and a general plenty diffuses itself through all the different ranks of society. [Smith (1776), pg. 10]

What Smith says here is, of course, a bit oversimplified. In modern Societies, the "good" most people supply is more often labor and time rather than this or that tangible thing their labor and time mediately contribute to the making of. This was true to a degree even in Smith's day and he knew that. If I could hire your son to mow my lawn for me so that I have more time to devote to pursuits I value more highly than the price of his services, then that is exactly what I would do.

Seen from the viewpoint of Critical Epistemology, an *economy* is *the general social dynamic of entrepreneurial interactions within a Society or between Societies due to commerce based on division of labor*. The solitary "mountain man" so beloved in western U.S. folklore participated in an economy only on those occasions when he visited trading posts or Native Americans to exchange furs, pelts, or some other commodity he had for something he could not make for himself. A *market* is the population of people who regard a particular economic good as a wealth-asset²¹ and are willing to exchange some part of their own stock-of-goods for it.

Economies are very complicated phenomena²². Because our topic here at present is civil rights, I defer more in-depth questions about economies to my earlier work, *Civic Free Enterprise* [Wells (2017)]. Here the focus will remain on civil liberties, civil rights, and civic Duties regarding the pursuit of happiness in terms of tangible *Personfähigkeit*. In these regards, one of the benefits of civil Society is that a Society promotes and stimulates cooperations in civil mini-Communities (Enterprises) that improve tangible *Personfähigkeit* for all their members and stakeholders [Wells (2017), chaps. 5-6]. Whether we're speaking of a BaMbuti net-hunt or a 500-employee manufactory, commercial Enterprises are capable of providing for every one of its members greater beneficial returns for investments of their time and labor than can generally be achieved by one person working alone [Smith (1776)]. *Civic* commercial Enterprises are organized and designed to do so. *Uncivic* commercial Enterprises are designed to benefit only *some* of their members and stakeholders and, because of this, they are incongruent with the terms and conditions of the social compact of the civil Community from which they draw their employees.

Social contracting terms and conditions for civic Enterprises are developed and discussed in greater detail in the Wells citation just given above. Because an economy is a very complex social dynamic, differing particular circumstances require particularities of civil rights answering to these circumstances. This is no different from the case of particular civil mini-Communities whose particular social contracts *justly* respond to those Communities' special interests. However, just as civil mini-Communities do share

²¹ See the chapter appendix for the definitions of wealth-in-general, unwealth, and wealth-asset.

²² Complicated enough that the scholarly field called "economics" does not have a definition for what an "economy" is, although economists aren't hesitant to talk about numerous *species* of economies ("economy systems"). Economics textbooks are quite skilled in slipping past this lack of definition for the Object of the science without the student noticing it. This is one of several characteristics that makes present day economics a mathematical science but not a natural science.

with all other civil mini-Communities in the general Society in which they coexist the *common* interests of that civil Society, so too do all entrepreneurs share a set of common civil rights, arising from the terms and conditions of the general social contract, in regard to tangible *Personfähigkeit*. Among these are:

1. A civil right to engage, or apply to engage²³, in civic free enterprises of his or her choosing;
2. a civil right to bargain or negotiate, individually or collectively as a civil mini-Community, terms and conditions of employment;
3. a civil right to petition for redress of grievances by means of a Petition of Right to a Board of Right with immunity from retaliation by the persons, or their agents, of whom circumstances of grievance are alleged;
4. a civil right to security of employment based on good and competent performance of enterprise Duties;
5. a civil right to equitably share in the profits and successes of a civic Enterprise which the entrepreneur helps make possible;
6. a civil right to call for, and receive from, the general civil Community aid and succor under circumstances that leave the citizen not-at-liberty to support himself by means of personal civic free enterprise.

In exchange for these civil rights, the person must oblige himself, *obligatione externa*, to a civic Duty to alienate all and any natural liberties that infringe upon these same civil rights of others.

5.4 Persuasive *Personfähigkeit*. "There is to my mind no more excellent thing than the power, by means of oratory, to get a hold on assemblies of men, win their good will, direct their inclinations wherever the speaker wishes, or divert them from whatever he wishes" - Cicero (55 BC); "He who seeks to deceive will always find someone who will allow himself to be deceived" - Machiavelli (1513); "The great masses of the people . . . will more easily fall victims to a big lie than to a small one" - Adolf Hitler (1933).

In a number of important ways, a person's persuasive *Personfähigkeit* can be the most potent capability he or she possesses. It is used to build bonds of trust and cooperation. But it has also been used to ignite wars and pogroms that have destroyed uncounted tens of millions of lives and exterminated uncounted many Societies, to swindle people out of their rightful possessions, and to induce them to lay down their liberties at the feet of despots. All commerce is based upon cooperation and trust, as are all civil Societies. Persuasive *Personfähigkeit* is the active and necessary ingredient in synthesizing cooperations and incubating trust. It is so essential to the formation of Societies that every major religion holds truth-telling to be a virtue and lies to be sinful. Yet, malevolent misuse of persuasive *Personfähigkeit* is so frequently encountered in human experience that maxims of prudent *mistrusting* in *Bartlett's Familiar Quotations* outnumber maxims of trusting in its pages.

Every social compact depends, at its essential roots, on exchanges of *obligatio externa* by the contracting parties. But how is one person to know that the other is making a true commitment to doing what he is pledging to do? and is not making deontologically criminal false promises he has no intention of keeping? The answer, of course, is *he cannot know this for certain*; he can only find out later when the

²³ If the civic free enterprise involves enterprise as a member of an Enterprise, the present members of that civic Enterprise have a civil right to admit or refuse admission to an applicant seeking to join their civil mini-Community. However, this civil right does not extend to uncivic discrimination contrary to the "regard every associate as an indivisible part of the whole body politic" term of the common social compact with their overall Society. A civic Enterprise can require particular fungible skills be possessed by its members such that its corporate *Personfähigkeit* is strengthened, but it cannot institutionalize any form or type of bigotry unrelated to fungible skills.

other party either keeps or fails to keep his pledges and commitments. He is prudent if he maintains some degree of wariness, but this does not mean it is prudent for him to retreat into an attitude of cynical mistrust. As Oscar Wilde said, "A cynic is one who knows the price of everything and the value of nothing." If a civil Community is to know Order and Progress this implies and requires that every one of its citizens possess *a civil right to protection* from malevolent employments of persuasive *Personfähigkeit* by others. Such a civil right of protection, in its turn, implies and requires alienation of certain natural liberties in regard to methods and means of persuasion.

One perniciously uncivic application of *Personfähigkeit* is propaganda. There was once a time when the word "propaganda" carried a neutral connotation - namely "getting one's message out" - but after World War II the word lost this neutrality as a result of the uses the Nazi Ministry of Propaganda made of it. The word now carries such a wholly negative connotation that if you call someone's message "propaganda" you are more or less calling that someone a liar or deceiver. Merrill & Lowenstein wrote,

Regardless of which of the many definitions [of propaganda] one is examining, he finds certain core ideas about propaganda: "manipulation," "purposeful management," "pre-conceived plan," "creation of desires," "reinforcement of biases," "arousal of preexisting attitudes," "irrational appeal," "specific objective," "arousal to action," "predetermined end," "suggestion," and "creation of dispositions."

Out of all these terms one may gather a certain impression about propaganda. It seems that propaganda is related to an attempt (implying *intent*) on the part of somebody to manipulate somebody else. By manipulation we mean *to control* - to control not only the attitudes of others but also their actions. Somebody (or some group) - the *propagandist* - is predisposed to cause others to think a certain way, so that they may, in some cases, take a certain action. Propaganda, then, is the effort or activity by which an initiating communicator intends to manage the attitudes and actions of others by playing on their preexisting biases with messages designed largely to appeal to their emotions and/or irrationality.

The propagandist does not want his audience to analyze or think seriously about his message. He does not want to be questioned about his remarks. He does not want to be forced to deal in specifics or to present evidence. He has what Harold Lasswell has referred to as a noneducational orientation; by this he meant that the ends or solutions had already been determined before the search for truth began. . . . Propaganda is not an invitation to the audience to contemplate, to analyze, to think, to question. It is an invitation to come to rather quick conclusions or to reinforce existing conclusions. It is an invitation to change or strengthen one's attitudes and to involve oneself in an action of some type. . . .

Before looking more specifically at propaganda . . . perhaps it would be well to make these points about the propagandist: 1. He is *not* disinterested, 2. he is *not* neutral, 3. he *has* a plan, a purpose, a goal, 4. he *wants* to influence, to persuade, to affect attitudes and action, and 5. he is not interested in his audience members making up their own minds on the basis of a fair and balanced presentation of information. [Merrill & Lowenstein (1971), pp. 214-215]

The "craft" or "skill" or "art" of propaganda has been around for a very long time. Aristotle wrote the first scholarly manual for it [*Rhetoric* (c. 335-330 BC)] but the "graduate level textbook" for it was penned by Cicero [*De Oratore* (55 BC)]. Originally it was primarily a language art associated with speech-making or arguments in the classical Roman and Greek courts. However, in the twentieth century, with the advent of mass media, television, and commercial advertisement, propaganda techniques even began misusing and abusing statistics to convey deceptive and misleading impressions to the general public [Huff (1957)]. In today's United States, every citizen is bombarded all day every day with propaganda in the form of political campaign slogans, commercial advertisements, "political action committee" messages, and even news broadcasts. And, of course, lawyers still use it to make arguments on behalf of their clients outside of courtrooms in the so-called "court of public opinion." Propaganda today is so omnipresent that elsewhere I have argued that public instructional education should include in the language arts some self-defense training against the deceptive tactics of propaganda [Wells (2014), chap. 13, pp. 424-426].

Human beings tend to have a regrettable habit, arising from adult egocentrism, of using language carelessly. Often this only creates minor problems and issues, if it creates them at all. But sometimes the effect is far more serious. Such is the case for the topic popularly called "free speech." This is almost a holy phrase in such venerated documents as the French *Declaration of the Rights of Man and the Citizen* and the Bill of Rights in the U.S. Constitution. To partially quote Article One of the latter, "Congress shall make no law . . . abridging the freedom of speech, or of the press . . ."

Regarded as a statement of a civil right, this wording is unjust - although my saying this is likely to be regarded as heresy by news organizations, the Civil Liberties Union, politicians, political action committees, and advertising firms. I answer: it has already been found unworkable as a civil right by the simple fact that the U.S. Supreme Court found itself compelled to distinguish *two* kinds of "free speech." These are "protected free speech" and "unprotected free speech." Yet Article One stipulates "make *no* law" abridging "free speech." Ask yourself: why should lying to a police officer be "unprotected free speech" and unlawful while lying to *you* should be "protected" free speech? Abraham Lincoln said,

If you once forfeit the confidence of your fellow citizens, you can never regain their respect and esteem. It is true that you may fool all of the people some of the time; you can even fool some of the people all the time; but you can't fool all of the people all the time. [McClure (1904)]

In point of fact, the so-called civil right implied in Article One is a deontological moral fault since it unintentionally protects the telling of lies and deceptions of propaganda. The deontologically correct statement should be one that protects *civil liberty of speech* with alienation of *uncivic liberty of speech* the corresponding civic Duty. (The same is true for other "freedom of" statements in the Constitution).

Tangible *Personfähigkeit* and persuasive *Personfähigkeit* can be formidably combined by associations of a deontologically criminal nature who seek to establish unjust laws or even to overthrow the general will of a civil Community in which they are embedded. If we regard any attempt to break the social compact binding the civil Community together as "an unlawful act" or "unlawful purpose," then any such association fits the definition in *Black's Law Dictionary* of a **conspiracy**, i.e., "an agreement by two or more persons to commit an unlawful act, coupled with an intent to achieve the agreement's objective, and (in most states) action or conduct that furthers the agreement; a combination for an unlawful purpose." When tangible *Personfähigkeit* is employed to support deceptive propaganda, this reveals the *Dasein* of such a deontologically criminal conspiracy. Although he was speaking specifically of "the baneful spirit of [political] parties," what Washington said applies just as strongly to other conspiratorial associations:

It serves always to distract the Public Councils and enfeeble the Public administration. It agitates the Community with ill-founded jealousies and false alarms, kindles the animosity of one part against another, foment occasionally riot and insurrection. It opens the door to foreign influence and corruption, which finds a facilitated access to the government itself through the channels of party passions. Thus the policy and will of one country are subjugated to the power and will of another. [Washington (1796), pg. 970]

It is almost always crucial to the success of a conspiracy that the conspiracy itself, or its principal sponsors, remain hidden from public sight during the lead up to the time for the conspirators to strike. One powerful tool for combining tangible *Personfähigkeit* with deceptive propaganda is so-called "dark money" (money from undisclosed sources spent to influence public elections, public policy, and political discourse). Someone, of course, has to "front" the spending of this money, and the ability to shield the sources of it typically hide behind an extravagance of reasoning called "freedom of association."

Black's defines this phrase to mean "the right to join with others in a common undertaking that would be lawful if pursued individually." But "lawful" does not necessarily mean *just*, and there is no deontological "right" to form *uncivic* associations. Citizens do have a *civil liberty of association* but this liberty does not extend to *uncivic* associations. Again we have an instance of badly worded language in understanding

what is and what is not a civil right. Civil liberty of association is properly regarded as a civil right but with it there is an attendant civic Duty to alienate the natural liberty of uncivic associations.

As for so-called "dark money," it might be metaphorically true that "money talks" but *money is not speech*, and any law, regulation, or court decision that equates money with speech is, at minimum, a deontological moral fault and, at worst, a deontological crime.

Kant, like other philosophers before him, used the word "freedom" as a synonym for "liberty." His phrase "freedom in accordance with universal law" *means* "civil liberty." He used this phrase to define what he called "the general principle of right":

"An act is *right* if it can coexist with everyone's freedom in accordance with universal law, or if on its maxim the freedom of choice of each can coexist with everyone's freedom in accordance with a universal law" [Kant (1797), 6: 230]

Replace the word "freedom" with the word "liberty" in this quote and you have a deontologically correct statement of the principle. In a civil Community, the "universal law" is nothing else than the Community's social contract. All civil rights are to be judged according to this general principle of right.

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Chapter Appendix

civic action: an action operationalized by an individual that is congruent with his Duties under the terms of a social contract.

civil: applying to the collective conduct or behavior of a Community as this conduct or behavior affects one or more individual persons in the Community.

civil liberty: a liberty bound by deontological Obligation to participate as a citizen in a civil Community.

dynamic: a representation of the *Existenz* of a potential power of organization for a particular type of spontaneity. *See also* social dynamic.

fungible skill: a skill an individual can employ as an economic good by means of providing a labor service such that he can exchange this service for some other economic good. Examples of the good for which it is exchanged include wages, a salary, a barter good, or another person's labor service.

merit: 1) the quality of an action whereby more good occurs from it than that for which the actor was morally responsible; 2) an action taken in accord with either *obligatione externa* or *interna* that is such that the action could not have been externally compelled in the measure to which it actually took place (an action said to be "above and beyond the call of duty").

obligatio: pledging that binds the pledger to fulfillment of a specific or specified obligation.

obligatio externa (outward pledging): a form of pledging in which the pledgee is another person or group of persons. The matter of duty for *obligatio externa* is a reciprocal duty to oneself (the pledger) with respect to the situation of others. The form of *obligatio externa* is logically disjunctive, which means in this case that the pledger regards the determination of his duty as co-determined with a duty pledged to him by the pledgee that he can require the pledgee to fulfill.

obligatio interna (internal pledging): a form of pledging in which pledger and pledgee are one and the same person, the matter of duty is a duty-to-Self with regard to one's own personality, and the obligation is an obligation-to-Self with regard to one's own personality. The form of *obligatio interna* is logically categorical pledging.

obligatione: legal liability.

obligatione externa: outward legal liability. A liability attached to any failure to perform some action the person has pledged to perform and for which failure others can justly hold him culpable and justly compel him to negate the injustice perpetrated by his deed.

obligatione interna: inner legal liability. This is a wholly subjective internal liability subsisting in a dissonance between a representation of a theoretical imperative in the manifold of concepts and a practical tenet in the manifold of rules in which either the concept of an action or cognizance of the result of that action after it is expressed provokes a feeling of *Unlust* in reflective

judgment. Perception of such a feeling is called conscience.

skill: ability to practice a craft.

social dynamic: the totality of interacting spontaneous actions of two or more persons.

uncivic: pertaining to conduct or behavior by an individual that is contrary or contradictory to civic action.

uncivic social interaction: a social transaction in which a person transgresses a civic Duty, to the fulfillment of which he is pledged by the terms of a social contract.

unwealth: lack of what is practically needed to attain a state of satisfaction.

wealth-asset: any good for which its use negates unwealth.

wealth-in-general: that which is not unwealth.