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## What is it to Wrong Someone? A Puzzle about Justice

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This will be the best way of explaining ‘Paris is the lover of Helen’, that is, ‘Paris loves, *and by that very fact* [*et eo ipso*] Helen is loved’. Here, therefore, two propositions have been brought together and abbreviated as one. Or, ‘Paris is a lover, and by that very fact Helen is a loved one’.

—Leibniz, ‘Grammaticae cogitationes’<sup>1</sup>

*Definition:* ‘X has a right [against Y]’ if and only if X can have rights, and, other things being equal, an aspect of X’s well-being (his interest) is a sufficient reason for holding [Y] to be under a duty.

—Joseph Raz, *The Morality of Freedom*<sup>2</sup>

### 1. The Normativity of Considerations of Justice is an Intrinsically Relational, or ‘Bipolar’, Normativity

Consider some one human being. Let us adopt the manner of contemporary academic moralists and give her a name: let us call her ‘Sylvia’. Now,

<sup>1</sup> G. W. Leibniz, *Logical Papers*, ed. G. H. R. Parkinson (Oxford: Oxford University Press, 1966), 12. See also a passage from a letter to Des Bosses: ‘You will not, I believe, admit an accident which is in two subjects at once. Thus I hold as regards relations, that paternity in David is one thing, and filiation in Solomon is another’, quoted in Bertrand Russell, *A Critical Exposition of the Philosophy of Leibniz* (Cambridge: Cambridge University Press, 1900), 201.

<sup>2</sup> *The Morality of Freedom* (Oxford: Oxford University Press, 1986), 166; the second bracketed expression replaces Raz’s ‘some other person(s)’.

even the coarsest utilitarian consequentialist, the scary monster of modern moral philosophy, will side with common sense on this one point: that it would be wrong for you or me or anyone to kill Sylvia on any ordinary prudential ground. For example, it would be wrong for *you* to kill *Sylvia* on the ground that she is just ahead of you on the waiting list for admission to law school. But, unlike that coarse consequentialist (who may in any case be imaginary), common sense will also insist that we do not really alter the case if we replace the prudent hope of law school with some more exalted charitable aim. For example, it changes nothing in the moral equation that you are proposing to harvest Sylvia's internal organs in the hope of saving five transplant patients with suitably diverse organ needs. And this is not, we affirm, because the occurrence of one murder, or one death-by-murder, or one 'active' killing, is somehow a worse sort of happening than the occurrence of several purely natural deaths. For common sense also teaches that the case remains unaltered even if your killing Sylvia is aimed at saving several other people precisely from being murdered—perhaps by a perverse tyrant who has forced this choice upon you.<sup>3</sup>

Your moral relation to Sylvia seems to survive intact in all of these cases; it has a certain robustness; there is, we think, something there. Sylvia and you have fallen into a peculiar nexus which limits your pursuit of objectives of any kind, even the beautiful objectives of charity and the love of justice. The consideration operates pairwise, and the rest of the world is, at least to a certain extent, closed out.

You have, as we sometimes say, a duty 'to Sylvia' not to kill her. You 'owe' it to her not to kill her. Such language is perhaps a bit stiff, but we can put the same point more colloquially. We can say, for example, that in killing Sylvia *you* would wrong *her*: you would do wrong precisely 'to' her, or do wrong 'by' her. And, though it opens something of a Pandora's box, we might reverse terms in the relation, saying, I think quite aptly, that Sylvia has a *right*, morally speaking, precisely *against you*. She has a right, namely, not to be killed by you, and a claim to something better. You, on the other hand, have *no right*, in respect of her, to do what will kill her. What we have said of the ordered pair of you and Sylvia, we might equally have said of the ordered pair of Sylvia and you, of course, or of the ordered

<sup>3</sup> These examples are taken from Philippa Foot's 1968 paper 'Abortion and the Doctrine of Double Effect', reprinted in *Virtues and Vices* (Berkeley: University of California Press, 1978), 19–32.

pair of either of you and anyone else, and so on. The class of pairs of potential mutual wrongers is unlimited or indefinitely extensible.

Common-sense meditation on our murderous materials thus seems, upon reflection, to trigger deployment of a collection of abstract forms of judgement. These forms of judgement express what we might call *forms of bipolar normativity*, or *forms of relation of right*. Counting internal negations as distinct types, we might tabulate them as follows:

X wronged Y by doing A	X wronged Y by not doing A
X has a duty to Y to do A	X has a duty to Y not to do A
X has a right against Y	X has a right against Y
—that he do A	—that he not do A
—to do A	—not to do A

The propositions in the first row express forms of Aristotle's '*X adikei Y*'; those in the last two rows express Hohfeldian 'claim' and 'privilege' respectively. The concrete judgements that come under these abstract headings can be quite various. Murdering and maiming people and breaking promises made to them are among the traditionally accredited content-providers under the heading in the upper left, suitable readings of 'doing A'; they are specific 'wrongs' or concrete ways of wronging someone.

But I am interested in the form that is, I believe, shared by all of the tabulated judgements, irrespective of the particular heading (and in the corresponding form of fact). A further act of reflection ought, I think, to bring us to see that a special way of coupling representations of agents runs throughout our table. In all such judging, whatever the determinate form, I may be said to view a pair of distinct agents as joined and opposed in a formally distinctive type of practical nexus. They are for me like the opposing poles of an electrical apparatus: in filling one of these forms with concrete content, I represent an arc of normative current as passing between the agent-poles, and as taking a certain path. My aim is to think out some of the peculiarities of this form of representation.

The 'bipolarity', as I will sometimes call it, of the judgements that come under these several headings is something more determinate than the form of coupling of singular terms in a Fregean two-place relational judgement. Merely relational judgements like *Everest is taller than McKinley and 143 is divisible by 11* contain two singular representations; if we remove each of them in sequence, viewing its position in the judgement as replaceable by other singular representations, we arrive at the relational judgement-types

$\xi$  is taller than  $\zeta$  and  $\xi$  is divisible by  $\zeta$ . If, then, we similarly remove the relational material that at the outset joined those singular representations, we arrive at a form that the two original judgements share—the general form of a two-place relational judgement,  $\Phi(\xi, \zeta)$ , as Frege would write it, or  $\xi\Phi\zeta$ .<sup>4</sup> This arrangement of schematic letters captures a certain fundamental ‘posture of the mind’, in Locke’s phrase, a posture that is adopted in the framing of any given relational judgement.<sup>5</sup> It is plain, then, that any concrete judgement that exhibits a form found on our table must exhibit this merely Fregean ‘relationality’ as well: a ‘bipolar’ practical judgement will after all always contain two singular representations—representations, namely, of two agents, substituends for ‘X’ and ‘Y’.

But note that any concrete judgement that exhibits Fregean relational form must exhibit Fregean *subject–predicate form* as well, and in at least two different ways. For what can be viewed as bearing the form  $\Phi(\xi, \zeta)$  can equally be viewed as bearing either the form  $\Psi(\xi)$  or the form  $\theta(\zeta)$ . In thinking that Everest is taller than McKinley, I think *of* Everest (as I think of K2) that *it is taller than McKinley* and of McKinley (as again of K2) that *Everest is taller than it*. But the reverse is not the case: reflection will find subject–predicate form,  $\Psi(\xi)$ , in the judgement that *Everest is a mountain*, but not relational form. The relational form of a given relational judgement is thus *more determinate* than the subject–predicate form it inevitably also exhibits.

My thought, then, is that there is something still more determinate, but something belonging nevertheless to the form of thought, or to the ‘posture of the mind’ in judging, that any instance of the tabulated judgement-type *X wrongs Y* has in common with any instance of *X has a right against Y*, or *X has a duty to Y*, or indeed *X promised Y* and a number of other judgement-types. This is the practical-bipolar form,  $J(X, Y)$  or  $XJY$ , as we might write it (switching from Greek to Latin, as suits our incipiently juridical material). This practical bipolarity is something that judgements coming under these headings do *not* share with instances of, say,  $\xi$  is taller than  $\zeta$ , much less  $\xi$  is divisible by  $\zeta$ . The instruments devised by Frege will obviously not distinguish the former class from the latter; if then, by the ‘logical’

<sup>4</sup> See F. L. G. Frege, *Grundgesetze der Arithmetik*, vol. 1, part 1, §§ 1–4, trans. in Michael Beaney (ed.), *The Frege Reader* (Oxford: Blackwell, 1997), 211–15. See also the essays ‘Function and Concept’ and ‘Concept and Object’ in the same collection.

<sup>5</sup> John Locke, *An Essay concerning Human Understanding*, ed. P. Nidditch (Oxford: Oxford University Press, 1975), 472 (bk. III, ch. VII).

form of a judgement we mean its ‘Fregean’ form—a very reasonable use of the honorific term ‘logical’—then we will speak of the practical bipolarity of a judgement as a matter of, say, ‘categorical’ or ‘intellectual’ form. For, as I will argue, thought takes a distinctive turn here, a turn which cannot simply be reduced to its taking a certain body of concrete relations, practical ones, as its theme—and still less by making reference to a special class of objects: namely, agents. Such thought has, among other things, a novel and particular relation to what it is about.<sup>6</sup>

This special posture of the mind in coupling certain representations of agents marks the resulting judgements as belonging to the element of *justice*.<sup>7</sup> Here ‘justice’ bears its traditional sense, naming a virtue of individual humans like you and me, and not a feature of the larger social structures into which we fall. The mark of this special virtue of human agents, as Aristotle says, is that it is ‘toward another’, *pros heteron* or *pros allon*;<sup>8</sup> it is, as St Thomas says, *ad alterum*,<sup>9</sup> or as Kant says, *gegen einen Anderen*.<sup>10</sup> It is characteristic of the individual bearer of justice, in this traditional sense, to apprehend this order of thought and to deliberate with *first-person* judgements of the bipolar types found on our table—and thus to view *herself* as related to others, and as other to others, in this peculiar way.

My chief aim in this paper will be to find where this genuinely just agent, our heroine, locates herself in the ‘space of reasons’ as she thinks these thoughts of justice. How are we to understand this being-toward-another of her thoughts? The ‘puzzle’ I mean to identify is a difficulty in saying what could make her bipolar moral thoughts *true*.

<sup>6</sup> Elizabeth Anscombe, thinking of propositions like ‘You can’t take that, it’s for N’ or ‘You can’t do that, it’s N’s to do’, writes: ‘We have here a very special use of the name of a person, or a very special way of relating something to a person, which explains (not is explained by) the general term “right”. . . . The general term “right” is constructed because, as it were, our language feels the need for it. As for example, a general term “relation” was invented’ ‘The Source of the Authority of the State’, in *Collected Philosophical Papers*, vol. 1 (Minneapolis: University of Minnesota Press, 1981), 130–55, at 142.

<sup>7</sup> Or, more precisely, they belong under this heading given the ‘moral’ atmosphere my remarks have so far generated. I will suggest in section 5 that practical bipolarity, or relational ‘deonticity’, is found in extra-moral departments of thought.

<sup>8</sup> Aristotle, *Nicomachean Ethics*, book V, ch. 1.

<sup>9</sup> Aquinas, *Summa Theologiae*, IIa, IIae, q. 57.

<sup>10</sup> *Metaphysics of Morals*, e.g. *Doctrine of Virtue*, § 16, (*Akademie*, 442) in M. Gregor (ed.), *Practical Philosophy* (Cambridge: Cambridge University Press, 1996).

## 2. Bipolar Normativity may be Distinguished from Merely Monadic Normativity

We can sharpen the idea that these many types of judgement exhibit a single practical ‘bipolar’ form, distinct from, but subordinate to, the general form of a Fregean relational judgement, if we oppose our table of forms of judgement to a parallel array of *non-relational*, *monopolar*, or, as I will mostly say, *merely monadic* forms:

X did wrong in doing <i>A</i>	X did wrong in not doing <i>A</i>
X has a duty to do <i>A</i>	X has a duty not to do <i>A</i>
X has a right to do <i>A</i>	X has a right not to do <i>A</i>

These propositional forms provide the usual theme of ethics and meta-ethics, and are typically assigned a distinctive status within the totality of propositions. But tradition and intuition alike assign them a place very different from that occupied by our bipolar forms. Aristotle and St Thomas would, if I understand them, place the categories of this merely monadic table under the general heading of *to nomimon* or *lex*—that is, ‘what is lawful’ or ‘law’. (Here, the idea of law is, I think, to be taken very broadly, as covering *inter alia* any principles of what we would call morality.) The categories of our properly bipolar table they would place under a heading of *to dikaion* or *ius*—that is, of ‘what is just’ or ‘fair’, or of ‘right’. Thomas’s discussion of *ius*, or bipolar normativity, appears several hundred octavo pages after his famous discussion of merely monadic *lex*.<sup>11</sup> Aristotle expends much thought distinguishing the ‘unjust’ man in the thin, ‘general’, monadic sense of the lawless, unruly, unprincipled, unrighteous, immoral man—the *paranomos*—from the unjust man in the properly bipolar sense of the unequal, unfair, and grasping man—the *anisos* or *pleonektēs*.<sup>12</sup> The latter and his virtuous opposite—our heroine, the bearer of justice properly so-called—are the principal theme of book V of the *Nicomachean Ethics*. If, following Bentham, we call moral judgements of the monadic sort ‘deontological’, we might, in homage to Aristotle, call those of our bipolar sort ‘dikaiological’. If the study of the monadic type of judgement is meta-ethics, the study of the bipolar type is the little practised meta-dikaiology.

<sup>11</sup> The question on *lex* is Iallae, q. 90; the question on *ius* is IIallae, q. 57.

<sup>12</sup> Aristotle, *Nicomachean Ethics*, book V, chs. 1 and 2.

In the course of objecting to it, Kant dignifies what amounts to the conflation of our two tables with the title of the ‘amphiboly of the moral concepts of reflection’.<sup>13</sup> This amphibolical assimilation might run in either direction, and it seems to appear in even the most intuitively hostile environments. A. I. Melden and T. M. Scanlon have, for example, found it in John Rawls’s theory of the obligation of promises. Rawls’s account clearly puts *every* bearer of a ‘practice’ of promising into the position of *the one to whom the promise is made*. All alike are positioned to charge the promisor with a violation of merely monadic ‘moral duty’ should he fail to carry through. The account does not single out the unhappy promisee as one who is *wronged* in a way others are not—or, equivalently, as the one *to whom* the promisor had a duty. Rawls, according to these writers, misperceives the merely monadic requirement that his theory is equipped to explain as amounting to the evidently bipolar obligation of promises, which thus remains unexplained. His uniformly monadic vocabulary seems to leave something out.<sup>14</sup>

It seems equally plain, to consider the other direction of possible assimilation, that our monadic table of moral categories is not reducible to the bipolar in any straightforward way. It is presumably true that I ‘act wrongly’, monadically, whenever I wrong another. But justice isn’t the *only* virtue, and so I can intelligibly be said to do wrong or go wrong or act wrongly, morally speaking, even when no one is wronged. If, for example, you are making an unjustly intrusive enquiry, and I tell you a lie in response, it certainly doesn’t seem that *I* wrong *you*. But a lie would cover me with shame nevertheless. The claims of honesty thus seem to outrun

<sup>13</sup> Kant, *Metaphysics of Morals*, §16.

<sup>14</sup> John Rawls, *A Theory of Justice* (Cambridge, Mass.: Harvard University Press, 1971), § 52. The source of the trouble is Rawls’s reliance on H. L. A. Hart’s ‘Principle of Fairness’ (or of ‘Fair Play’). This principle assimilates practices which intuitively bind us to one another to practices which, like recycling, bind us to the production of some public good. The principle says that, where I have voluntarily accepted the benefits of a fair practice of any kind, I am ‘morally required’ to do ‘what the practice requires’. It is in the nature of the case, then, that the form of moral requirement that figures in the principle is merely monadic. Rawls thus misses the directed character of the obligation of promises. See A. I. Melden, *Rights and Persons* (Berkeley: University of California Press, 1977), 87–104, and T. M. Scanlon, ‘Promising’, in the *Routledge Encyclopedia of Philosophy*, vol. 7 (London: Routledge, 1998), 740–2. These writers seem to think that their objection runs against any ‘social practice’ conception of the obligation of promises. But it seems plain that Rawls could easily meet it by distinguishing two types of practice, one type merely monadic and the other directed or bipolar, and two corresponding ‘principles of fairness’.

those of justice. The intellectual content of my feeling of shame is a deontological, not a dikaiological, judgement. ‘I did wrong in that I lied to you’ contains representations of a pair of agents, indeed, but the combination is not properly bipolar: the representation of *you* falls inside the scope of the action description that is fitted into this monadic normative form; it does not go to characterize the form of normativity itself. You are the occasion, not the victim, of my fall.

Perhaps I would be mistaken to think and feel these things in the case I have imagined. But, as Joseph Raz forcefully argues, a blanket denial of the possibility of acting wrongly, or ‘immorally’, where no one is wronged, would be a strong and implausible *substantive* claim, amounting, I suppose, to a sort of moral libertarianism.<sup>15</sup>

### 3. The Opposition between Bipolar and Merely Monadic Deonticity Extends beyond Morality

My suggestion has been that the opposition between our two tables is a matter of the form of thought, of categorial or intellectual form. We reached those tables by framing and reflecting on judgements with a ‘specifically moral’ content, as I will put it. We imagined certain killings and certain lies, and then let our moral intuition take them where it would. But, having come upon our second, merely monadic, table, we can see, I think, that we have latched on to a distinction that transcends the purely ethical sphere and the particular locutions we have chosen to express the contrast. Meditation on this fact should make the purely formal character of the opposition quite plain.

Wherever a philosopher is inclined to speak of normativity or deonticity and of practical or deontic ‘norms’, ‘standards’, or ‘principles’, we will have an interpretation of our merely monadic forms of judgement. The *specifically moral* interpretation of our six monadic forms is just an example: on this interpretation, the relevant ‘norms’ are, let’s suppose, the so-called principles of the various true virtues taken together as one body. But the standards that give sense to a merely monadic employment of deontic vocabulary might instead be purely instrumental or technical. They might be the broader counsels of prudence. They might belong to a system of

<sup>15</sup> Raz, *Morality of Freedom*, ch. 5.



criminal legislation or to a logical calculus. They might be the rules of a game or the canons of etiquette.

It would of course be a bit strange to use the words 'duty' or 'right' in some of these connections—for example, in issuing counsels of prudence. But the common underlying logical structure is clear and familiar, whatever words we may use to decorate it. A merely monadic 'duty' is simply the deontic necessity or requirement or 'must' that is constituted by the underlying norms or standards, whatever they are. A merely monadic 'right' is what these requirements leave open, a deontic possibility or permission or 'can'. They are thus respectively what deontic logicians express by their operators O and P, which they grant have innumerable many interpretations and enter into many different departments of thought. 'X O to do A' means that X is required to do A or is committed to doing it—or has a 'duty' to do it; 'X P to do A' means that X is permitted or entitled to do it—or has a 'right' to do it.

Once we see that our 'merely monadic' forms of deontic judgement may be read as empty logical forms admitting many radically different interpretations or schematizations, only one of them specifically moral—that the O's and P's are apt to receive numerous indices or subscripts, so to speak (as they do in some attempted formalizations)—we will, I think, see that the same holds of their dikaiological or bipolar counterparts.

We speak, as we saw, of your moral duty 'to' Sylvia. But we can also speak of your *legal* duties 'to' her. These might arise from a valid contract with her, for example. Moreover, legal duties binding one agent to another can be judged according to different and even overlapping legal systems. You may be bound to Sylvia in one way under the laws of the United States, for example, and in another way under the laws of Pennsylvania. Each legal system is associated with a different rendering of our tabulated bipolar judgements, a *different* way of schematizing the abstract relational O's and P's of the bipolar deontic logic we are implicitly imagining. Where the 'subscript' needs to be made explicit, it will be by use of such an expression as 'under L', 'according to L', 'at L', or 'in L', where L is the legal system in question.

But the contrast between *properly bipolar* and *merely monadic* deonticity is a precipitate of other conceptual atmospheres, not merely those of morals and law. Customs, practices, and institutions of quite various sorts can give sense to our bipolar linkages.

Think, for example, of an absurdly exploitative pre-legal system of property relations. The pairwise linkages it constitutes are not legal, for there is no institution of appeal to an independent judge. And they are not moral linkages because morals, by hypothesis, say something different. As a fellow ‘free’ man under this system, perhaps you ‘wrong’ me and my house, if you kill my brother or take our cattle or burn down our dwelling-place—but not if I’ve been found helping your slaves to liberate themselves.

And if there can be such a thing as a system of *etiquette*, why should there not be a *petite justice*—a space within which even etiquette reaches intelligibly for our bipolar deontic grammar? *Petite justice* would seem to be most of what etiquette is.

And David Hume, in the course of making what is essentially my present point, argues that *competitive games* like chess and chequers may be said to attract thoughts in these same logical shapes.<sup>16</sup> The tabulated forms of dikaiological judgement are thus no different from the merely monadic forms in this one central respect: if we are to get anywhere with them in thought—if they are to register truth or even falsehood—then they must first be shifted into a particular gear. Or, if you prefer, they must be sung in a particular key. In addition to a pair of relata, our *relational* O’s and P’s must always at least implicitly be supplied with an index or subscript. One of these is specifically moral, or, as we might say, directly normative: namely, the one with which our heroine the just agent distinctively operates.<sup>17</sup>

<sup>16</sup> David Hume, *An Enquiry concerning the Principles of Morals*, ed. P. A. Nidditch, 3rd edn. (Oxford: Oxford University Press, 1975), 210.

<sup>17</sup> Let us leave aside the question of indices, gears, and keys. If we use ‘X P to do A’ and ‘X O to do A’ to symbolize the usual monadic cases—respectively permission and obligation, ‘may’ and ‘must’, monadic right and duty—then ‘<X,Y> P to do A’ and ‘<X,Y> O to do A’ could symbolize the properly bipolar cases: respectively Hohfeldian privilege and directed duty or owing. A substitution instance of the latter would be ‘<Jones, Smith> O to mow Smith’s lawn’: i.e., ‘Jones owes it to Smith to mow his lawn’. An advantage of taking both forms, ‘O’ and ‘P’, as primitive in the monadic and relational cases alike is that we then need not take either the idea of omission or that of an ‘internal’ negation, as basic: ‘X P not to do A’ would be defined as ‘Not X O to do A’, and ‘X O not to do A’ would be defined as ‘Not X P to do A’ (and similarly for the relational cases).

Notice that if we fix the second variable in ‘<X,Y> O to do A’, so that we have, say, ‘<X, Sylvia> O to do A’, then we are left with an ordinary monadic deontic operator which needs one agent-term and one action-term for completion. It is thus in the nature of a form of bipolar deonticity to constitute a type or form of merely monadic duty or requirement associated with each agent in the system. Where our bipolar categories get a grip, each agent is as it were a law, a monadic *lex*, for all the others.

What particular acts count as wronging someone, what things may be called duties to him, will of course depend on the particular gear into which the dikaiological conceptual machinery is shifted. Private law and true justice do not much concern themselves with modes of greeting people or the movements of very small pieces of wood. On the other hand, chequers, chess, and etiquette do not have much to say about killing people—unless perhaps duelling rules count as a sort of etiquette.

#### 4. Positive Law Encodes our Opposition in the Distinction between Private Law and Criminal Law

In order to develop the contrast between *properly bipolar* and *merely monadic* forms of deonticity, let us tarry briefly with the narrowly legal material.

The zone in which juridical practices *paradigmatically* generate bipolar deonticity—‘legal relations’ as Wesley Hohfeld called them, translating the *Rechtsverhältnisse* of Kant, Fichte, and the German legal tradition—is of course so-called private law, the sort carried on under headings of contract, property, tort, and so forth. Indeed, in our system the names of particular private-legal proceedings already exhibit the peculiar nexus of representations that interests us: *Mr X v. Ms Y*, we call them, or [*your name here*] v. *Sylvia*. The atmosphere of a lawsuit is saturated with judgements of our type: ‘She’s done me wrong,’ we say, ‘She owes me,’ and so forth. Wherever customs and institutions take this turn—which is of course much more ancient and simple than our lawyers are likely to let on—all of our abstract bipolar forms of judgement are given a sense and thrown into a particular gear.

This thought suggests a possible response to the difficulties Samuel Scheffler has raised about one of the moral intuitions with which we began: namely, that you would wrong Sylvia in killing her, even if it were to save several others from being killed. If a form of deontic requirement sets its face against killing, Scheffler suggests, surely it does so incoherently and self-defeatingly if it makes no exceptions for killings that save numerous others precisely from being killed.

But in a bipolar conceptual scheme, we have in a sense not one but many parallel forms of monadic deontic requirement, one for each agent. It doesn’t seem that a properly Schefflerian incoherence can be found in connection with any *one* of these—for example, the one ‘indexed’ by Sylvia. Our obligations-to-Sylvia are easily made coherent with each other by appeal to Sylvia’s interest and will. (See especially Scheffler’s helpfully clarifying response to the arguments of Philippa Foot in ‘Agent-Centred Restrictions, Rationality and the Virtues’, in S. Scheffler (ed.), *Consequentialism and its Critics* (Oxford: Oxford University Press, 1988), 243–60.)

The interpretation of ‘X wrongs Y’ forged by these customs is precisely that attached to the words of the plaintiff, ‘He’s done me wrong.’ And in recognizing a particular collection of grounds for such complaint, or ‘causes of action’—*dikai*, as they were called in Athens—private-legal institutions must at the same time implicitly generate a collection of directed or bipolar duties and rights. The violation of such a duty or right is the plaintiff’s theme. And, of course, the result of a successful complaint is itself to be described in our terms: the plaintiff gains a right against the defendant to receive restitution, perhaps, and the defendant acquires a correlative duty to ‘make her whole’.<sup>18</sup>

The zone in which juridical institutions paradigmatically generate merely *monadic* deonticity, by contrast, is of course criminal law—that is, in institutions of punishment and sanction, not those of restitution and compensation. The verdict of the jury, ‘Guilty!’, expresses a property of one agent, not a relation of agents. If another agent comes into the matter—if there is, as we say, a ‘victim’—it is, so to speak, as raw material in respect of which one might do wrong. The position occupied by other agents in the associated legal facts might equally be held by rare birds or old buildings. Much criminal law pertains after all to acts involving no other agent at all. Though the criminalization of murder in ancient Athens kept each Athenian off the rest of them to a certain extent, it turned their specifically

<sup>18</sup> The relational character of private law is emphasized by Evgeny Pashukanis, *General Theory of Law [i.e., Right] and Marxism* (London: Pluto Press, 1983), in which the legal equivalent of Kant’s amphiboly is attacked under the title of ‘normativism’, or, as we might call it, monadicism or lexism. It is also emphasized in Giorgio del Vecchio, *Justice* (Edinburgh: University of Edinburgh Press, 1955), and more recently by Ernest Weinrib, *The Idea of Private Law* (Cambridge, Mass.: Harvard University Press, 1996), from whom I take the expressions ‘bipolar’ and ‘bipolarity’.

The idea of a bipolar legal relation is so much taken for granted by Wesley Hohfeld that its opposition to monadic legal requirement is not thematized by him; monadic notions are nowhere in view in his text. It is a mistake to use Hohfeld’s notion of correlativity as if it involved any substantive idea; if he had read Russell, he would have used the idea of a logical converse to express his ideas. The thought that one kind of right ‘correlates’ with duty means that the two general relations—namely, those on the second and third lines of our first table—are logical converses, like ‘less than’ and ‘greater than’, or ‘kisses’ and ‘is kissed by’. They are, if you like, the same concept, the same ‘fundamental legal conception’, the only difference being the order in which the terms are taken. Where writers say that ‘some duties correlate with rights’, what they seem to mean could as well be expressed by a Hohfeldian by saying that some monadic duties ‘correlate’ with bipolar or directed duties; they are thus using the word in a completely different sense, and expressing a form of thought nowhere present in Hohfeld, who does not use the conception of a monadic duty. See the title essay of Wesley Hohfeld, *Fundamental Legal Conceptions* (New Haven: Yale University Press, 1923), 23–114.

juridical *Achtung* toward ‘the State and the Laws’ themselves, as Socrates puts it in the *Crito*, and not, at least in the first instance, *toward one another*. As the Athenians distinguished *dikē* and *graphē* as forms of legal proceeding, we distinguish ‘*Mr X v. Ms Y*’ from ‘*Mr X v. The State of Y*’ as types of case. The form of criminalization is in this sense ‘merely monadic’, and criminal law is for this reason, I think, the implicit model of much philosophical discussion of normativity and deonticity.<sup>19</sup>

### 5. Excursus: Because Moral Bipolarity Extends beyond the Forms Listed on our Table, Received Reductions of that Table may not Dispense with Moral Bipolarity in General, but rather Presuppose it

I have been suggesting that the categories of our first, dikaiological or bipolar table are very abstract; they may be shifted into various gears, or

<sup>19</sup> The private-legal employment of our bipolar notions can hardly be supposed the most primitive type. The existence of such institutions evidently presupposes that the agents who meet in it also meet in exchange, in some measure, and thus also as bearers of private property; Aristotle notes that ideas of market value and equivalence must have a foothold among the bearers of such a practice (*Nicomachean Ethics*, book V, ch. 4, 1132b13). It is striking, though, that as soon as Aristotle begins to touch on our bipolar, commutative, or ‘synallagmatic’ ethical material, his attention is immediately absorbed in an abstract characterization of this sort of ‘corrective’ institution, in terms of ‘arithmetical equality’. This has led some to think that the part of virtue of justice that ‘corrects interactions’ (*to en tois sunallagmasi diorthōtikon* (1131a1), also known as *to en tois sunallagmasi dikaion* (1131b33))—i.e., the part of justice Thomas calls *commutative*—can show itself *only* in independent judicial operations correcting past disasters. But why not in the just agent’s getting things right in the first place, e.g., by not killing other people, keeping agreements, returning deposits, and taking due care not to injure? She operates with a view of what’s right as between herself and another, and this same view operates in the just judge where agents differ and things go awry.

That Aristotle should suddenly move to the contemplation of corrective institutions in the course of a discussion of *justice as a virtue of individual human beings* might be thought to betoken an optimistic conflation of what we distinguish as the legal and moral orders. But, like his use of mathematical analogies, it might equally be taken to express the idea we are propounding: namely, that the moral virtue that interests us operates with a very abstract collection of categories, categories that can find application elsewhere. Following Aristotle’s example, I will take the peculiar yoking of agent to agent that is constituted by this sort of institution as a paradigmatic realization of the idea of a dikaiological nexus, but I will not assume that these institutions have any specifically moral significance at all. For all I pretend to know here, private law and etiquette and competitive games are all alike the devil’s work. Perhaps our ideal heroine, the bearer of true justice, rejects them all.

sung in various keys, as I have put it, only one of them specifically moral. But note that once we fix upon a particular gear setting or schematization, we will be inclined to think that the forms our table tabulates are really only examples chosen from a wider class. Reflection on this fact will provide some insight into received accounts of rights.

The further untabulated elements will of course differ according to the gear setting selected—etiquette or Pennsylvania law, as it might be. For example, a developed system of private law will constitute a vast range of concepts pairing one agent off with another—for example, *X has a contract with Y* or *X has an action in trespass against Y*, and so forth. Judgements deploying these concepts will exhibit the specific form of bipolarity or pairing that is associated with the legal system in question. So it is with the specifically moral case. For example, the judgement-type *X promises Y that he'll do A* would seem to capture a more determinate form of *X has a moral duty to Y to do A*; this is more or less what Melden and Scanlon accused Rawls of missing. The former judgement-type would thus seem also to exhibit the bipolarity of the latter. In framing a representation of a promise, the mind adopts our special posture,  $J(X,Y)$  or  $X]Y$ , and shifts it into a specifically moral gear.<sup>20</sup>

And suppose I represent *you* as having, say, turned left rather than right because you knew that turning right might kill *Sylvia*. Here I link representations of *you* and *Sylvia* in another untabulated form of Fregean relational judgement. It is a representation, true or false, of an explanatory reason. But where I am amassing a record of your sterling justice, my judgement still exhibits, I think, the generic 'bipolar' form we are investigating. For in that case my account is not intended to abbreviate a more involved aetiology referring, say, to your fear of the inevitable manslaughter prosecution or wrongful death suit. Nor am I implicitly alluding to your *general* horror of moral wrongdoing or violation of God's law, though these things may be present in the case as well. My action-explanation purports rather to record the special sort of dent that *Sylvia herself* is making on your agency. *Sylvia* is, as I judge the matter, appearing on your practical radar in a quite particular way; current is passing between opposed prac-

<sup>20</sup> Note that in framing an instance of the judgement-type *X promises Y he'll do A*, I implicitly represent the parties themselves as operating with the same judgement-type, each putting the first person where I put a representation of her. The conceptual difficulties this fact poses for an account of promising, and of the concept of promising, provide a rough model of difficulties pertaining to dikaiological judgement generally.

tical poles. The same intuition that leads us to insist upon the distinctiveness of moral duties ‘to’ others thus seems implicitly to contain a conception of a special possible *mode of dependence* of the actions of one agent on facts it apprehends about another. The deployment of this conception of dependence in a particular case will exhibit Fregean relational form, indeed, but also, I think, our sub-Fregean categorial form  $J(X,Y)$  or  $X|Y$ , shifted, again, into a specifically moral gear.

If that is right, then this same bipolarity, and a similarly distinctive mode of dependence, must surely be exhibited in the corresponding *normative* reasons-judgement, a judgement we might have framed in advance of your heroic left turn: namely, that *you* ‘had reason’ to turn left rather than right, in that turning right might have killed *Sylvia*. For the reasons why a virtuous agent does what virtue requires are presumably among the reasons she has to do it. The bipolar conceptual atmosphere of the former reasons-judgement will thus also surround the latter.<sup>21</sup>

And it is the same where I represent *Sylvia* as, say, *consenting* to your turning right, perhaps despite the fact that it might kill her. This judgement is neither normative nor explanatory; it is a representation of an ‘act of mind’, a state of *Sylvia*’s will, but in framing it I enter the same bipolar conceptual element that is our theme. This becomes clearer if we consider a proposition involving a third party: for example, ‘*Sylvia* consented to your telling *Meredith* her secret.’ If this is true, then *Sylvia* has indeed entered into a certain Fregean relational nexus with *Meredith*: namely,  $\xi$  *consented to your telling*  $\zeta$  *her secret*. But *Sylvia* has entered into a formally more special nexus with *you*—one of the type,  $J(\text{Sylvia}, \text{you})$  or *Sylvia-J-you*, the representation of which I am calling bipolar. Current is again passing between opposed practical poles. *Meredith*, after all, occupies the position held by the road to the right in the other example of consent.

I said above that it is characteristic of the just agent to operate with certain first-person judgements of this bipolar form—judgements of the form  $J(I,Y)$ , shifted into the specifically moral gear setting. But my representation of the just agent as effecting suitable couplings in thought will

<sup>21</sup> The bare proposition ‘You have reason to turn left rather than right’ contains an implicit existential quantifier ranging over possible reasons or considerations; it is only in the proposition that validates it, and states what your reason is, that we see its underlying bipolarity, directedness, or orientation. Thus, just as we speak of an agent’s duties *simpliciter*, but also of his duties ‘to’ another, we might speak of an agent’s reasons *simpliciter*, but also of his reasons ‘toward’ or ‘in relation to’ another.

itself, I think, be a case of such coupling. So, for example, instances of the judgement-type *you know that Sylvia has right against you that you do A*, will exhibit our general bipolar shape,  $J(X, Y)$ —here,  $J(\text{you}, \text{Sylvia})$ . We will later see, I think, that the possibility of facts corresponding to such judgements—facts about people’s first-person bipolar practical knowledge and judgement—is crucial to the constitution of the material we are treating, on both moral and non-moral constructions of it. That is, the possibility of such couplings in judgement, in the minds of the parties, is internally related to the possibility of such couplings in fact. Or again, what brings agents together in reality in these peculiar ways, must at the same time potentially bring representations of themselves together in their first-person thoughts. This is part of the ground for my confidence that we should speak not only of a special practical-bipolar form of fact, but should enter competition with Frege and speak of a special practical-bipolar form of thought.<sup>22</sup>

In all of these thoughts, tabulated and untabulated, I seem to view *you* and *Sylvia* as points or bodies moving in a special moral space. You have fallen, namely, into a space of moral *ius* or ‘right’, as we might say; the intrinsic geometry of this space makes possible the various specific relations that I have mentioned. The class of such ‘moral relations’ extends well beyond the rather rarefied class I have tabulated.

Now, let us apply this thought. I mentioned above that Joseph Raz’s critique of ‘rights based’ moral theories may be viewed as opposing a reduction of our monadic to our bipolar table. On the other hand, though, the quotation from Raz with which I began this essay might be said to outline a sophisticated reverse reduction: a reduction of moral *ius* to *lex*, of dikaiology to deontology, of our bipolar to our merely monadic table. Raz intends, if I understand him, for the concept of a *right against someone* to be explained in terms of a merely monadic concept of duty: we are to speak of a ‘right’, on his account, where merely monadic duties—cases of moral requirement *simpliciter*—are apt to have a specific sort of ground. And, though Raz does not make it explicit, the associated concept of a duty ‘to’ someone would *a fortiori* have to be reduced to the concept of moral requirement period: the prepositional phrase would simply be used to

<sup>22</sup> The bipolarity that interests us might also be found in the representation of certain of the states of *directed feeling* that you might bear toward Sylvia, or Sylvia toward you. Judgements employing the concepts of grievance, grudge bearing, and resentment would be clear examples. A philosophical comprehension of these concepts of feeling presupposes a grasp of this formal feature of the judgements in which they are exercised.



mark off the special case in which a duty is founded on the interest of another agent. For you to wrong someone, on such an account, would be for you to cross an interest of *hers* that grounds a moral requirement attaching to *you*.

Thus, in a Razian framework, any moral fact which may be captured in our tabulated dikaiological forms may as well be represented without them. I do not mean to oppose this reduction; to prove that it fails as an account of ‘right against’, ‘duty to’, and ‘wrongs’ would involve delicate verbal reflection that is not to the present point. I will for the moment only pose the question whether, if such a reduction is legitimate, it amounts to a reduction of *moral bipolarity in general* to something else. This is not a matter of vocabulary, I think, but of the fundamental structure of the thoughts in question.

Certainly Leibniz’s remarks, which I paired with Raz’s definition at the outset, fail to provide a reduction of *Fregean relational judgements in general* to logically merely monadic ones. After all, ‘ $\xi$  loves, and by that very fact (*et eo ipso*)  $\zeta$  is loved’ is as much a Fregean ‘relation word’ as ‘ $\xi$  loves  $\zeta$ ’ is; it is the result of deleting two singular representations from a complete proposition. *The propositions conjoined are (logically) monadic, but the proposition conjoining them is not.* Leibniz may thus successfully reduce other forms of relationality to that contained in his special conjunction ‘ $\xi$  is F *et eo ipso*  $\zeta$  is G’; but if there is some difficulty about relational propositions in general, we have clearly not evaded it. Perhaps the monadologist’s conceptual knot has only been tightened.

Is Raz, then, a sort of moral monadologist? Certainly, if anything like Raz’s ‘X has an interest *and for that very reason* Y has a duty’ is to amount to an elucidation of anything like ‘X has a right against Y’ or ‘Y has a duty to X’, then it may be wondered whether something in the use of the connective, the other element in Raz’s definition, is not doing the work of importing bipolarity into the equation. The agents X and Y are brought into connection by the proposition as a whole: is it a merely Fregean relation, like that between Sylvia and Meredith in our example of consent; or is it something more, something specifically dikaiological? The propositions conjoined may be (morally) monadic, but perhaps the proposition conjoining them is not.

It does seem that Raz’s definition must implicitly presuppose a *distinctive mode of dependence* of duties in one agent on facts about another. I spoke above of a distinctive bipolar mode of dependence of a just agent’s action,

and of his 'reasons', on facts about another agent. A similar thought must surely hold here, for in speaking of *reasons why I am morally required to do something*, we must also be speaking of *reasons for doing the thing required*, and thus also of *reasons why the morally virtuous agent does it*. The bipolarity, the form of pairing of representations of agents, that is exhibited by the complete judgement formulating either of the latter reasons must also infect any formulation of the former. As Frances Kamm notes, it is easy to generate what strike intuition as counterexamples if the notion of rational grounding that Raz presupposes is assigned an uncharitable breadth.<sup>23</sup>

A 'choice theory' of moral rights of the type associated with the name of H. L. A. Hart will face a similar difficulty if it too is taken in a boldly reductive spirit.<sup>24</sup> On such an account, to simplify, a moral duty 'to' someone, in the sense that interests us, is again held itself to be a merely monadic duty, or a moral requirement, period. The prepositional phrase merely marks the fact that this monadic duty is responsive to, or dependent on, the choice, will, or consent of the one to whom we thereby declare the duty to be directed. It is in such cases that we speak of the other, the *heteros*, as having a 'right'. Here, as with Raz, we might query the proposition expressing this dependence: if *it* exhibits the form of pairing in question, then the fly-paper of bipolarity has merely been moved from one hand to the other. But consider instead the form of choice or willing that is at stake. For surely the all-important potentially duty-cancelling state of will is a matter of *directed consent* of the type discussed above. There is an obvious intuitive difference between *Sylvia consents to your doing B* and *Sylvia doesn't mind that you're doing B*, the latter being a species of the more general

<sup>23</sup> Frances Kamm, 'Rights', in Jules Coleman and Scott Shapiro (eds.), *The Oxford Handbook of Jurisprudence and Philosophy of Law* (Oxford: Oxford University Press, 2002), 476–513, esp. 483–7. 'For example, if I have a duty to help you by praying to God for your recovery, you still might not have a right that I relate to God in this particular way' (p. 483). After canvassing a number of such objections, Kamm reaches the heart of the matter, noting that 'these problems arise because in both accounts of rights that Raz offers the duty is not described as a directed duty owed to the person with the right' (p. 484).

My only complaint against Kamm's discussion is that she takes the notion of 'directed duty' or 'owing' for granted, as not needing explanation or philosophical elucidation. We might boldly accuse her of lacking the general conception of practical bipolarity, just as she accuses Raz of blindness to the more specific conception of bipolar directed duty or owing. For this reason she is unable to supply a more charitable reading of Raz in which the concept of interest dependence is taken narrowly, as itself exhibiting practical bipolarity.

<sup>24</sup> H. L. A. Hart, 'Bentham on Legal Rights', in A. W. B. Simpson (ed.), *Oxford Essays in Jurisprudence: Second Series* (Oxford: Oxford University Press, 1973), 171–201.

type found in *Sylvia doesn't mind that E is happening*. The contrast between these judgements is evidently an instance of the general contrast we are pursuing. It seems that no description of *what Sylvia doesn't mind* or *what she would very much like to be the case* will ever add up to your *having her consent* to your doing something. Thus, though it may supply an adequate elucidation of the particular locutions 'right against' and 'duty to', a Hartian account appears to move the larger question of bipolarity from the forms found on our table to the form of willing that is at stake.<sup>25</sup>

## 6. The Practical-Philosophical Conception of a Person must be Distinguished Formally from the Concept of an Agent

It has emerged that our topic is not just the specifically moral form of bipolarity or dikaiology, but the dikaiological character of judgement taken generally, whatever the gear setting or key, and the conditions of its possibility and truth. I want to prove various lemmas about *any* such thing, or anyway to envisage them. The point of the lemmas, though, would be in application to the specifically moral, or directly normative, case: the bipolarity or being-toward-another that we found at the outset in the thoughts of our heroine and in your self-conception as bearing certain duties to Sylvia. The 'puzzle about justice' that I mean to present will be a difficulty in the interpretation of these specifically moral pairings and of the conditions that could make *them* true.

The chief question before us in 'general meta-dikaiology' is this: what beyond a mere 'system of norms' must be in place before we can advance from merely monadic deontic propositions of the types found on our second table to properly bipolar propositions of the type found on the first? What gives this dyadic grammar a foothold? What moves Sylvia out of the worldly materials which ground a particular monadic deontic judgement, and carves out a place for a representation of her in the form of

<sup>25</sup> In a traditional Jewish wedding, the bride is not among the signatories of the *ketubah*, but she is studied for signs of despair or opposition to the advancing proceeding. If they are found, the wedding is off. Though everything depends, in a sense, on the bride's will, the arrangement seems not to give her a (Mosaic-legal) *potestas* over the groom and her father. Her will does not enter into the matter in the right sort of way, as directed consent.

deontic judgement itself (whether it belongs to morals or law or etiquette)? What makes her not just *raw materials for wrongdoing*, but *someone whom someone might 'wrong'*, in one sense or other?

Let us introduce the following terminology: wherever a couple of agents are apt to be represented in true bipolar deontic judgements of one type or other, in one gear setting or another, we will say that they stand together under a particular *dikaiological order* or a particular *order of right*—that is, a particular form of *dikaion* or *ius* (though, unlike Aristotle and Thomas, but like Hume, we will recognize ludic *iures* and an occasional *ius* of etiquette). A dikaiological order is simply the objective correlate of a particular 'gear' into which dikaiological judgement can be shifted or a particular 'key' in which it, or its language, can be sung.

We may also say, to continue with mere definitions, that where a particular agent does fall under a dikaiological order, or under a particular *ius*, the agent is thereby rendered a *person*. This is a straightforward generalization of the concept of a person forged by classical jurisprudence, in which, not to put too fine a point on it, persons are defined as possible parties to a lawsuit, possible terms of legal nexuses.

This practical-philosophical conception of a person is to be distinguished, at least notionally, from that of an agent simply, or anyway from a certain conception of an agent. An *agent*, we may say, is something that operates on the strength of practical reasons or thoughts or considerations. It is something that can be viewed as doing one thing for the sake of another, according to concepts, or equivalently, I think, simply as a realizer of concepts. I see a process as a phenomenon of agency, in this sense, when I see the concept through which I describe or represent the process as itself at work in the genesis of the process I describe or represent.

The conception of an agent as a subject of concept-realizing processes, or of concept-governed teleology, is thin in certain respects. If we suppose that communicability is a defining feature of properly conceptual representation, there would seem to be no impediment to speaking, for example, of *collective* agents in this thin sense, and of their collective practical operations. Donald Davidson can write the word 'action' by typing each letter in sequence; here the concept or conceptual structure *writing the word 'action'* is suitably in play; it is under realization. But the high school football team in Action, Arizona, might write the word 'action' on the hillside above town, in gypsum dust or chalk, each member taking a letter for himself. The conceptual structure *writing the word 'action'* is then held in common by

the various members of the team, and it is here again in play in a process that falls under it, but in another way.

This notion of an agent, consequently, is thin in a further sense, and this is my present point. A couple of mere agents, a couple of ‘concept-realizers’, might find that their concepts are crossed a bit, that they are moving in different and incompatible directions, trapped together in a single natural world. We need only suppose that, as an agent, each is in possession of the concept of an agent or a concept-realizer, that each brings the other under it, and that each is in a position to attribute determinate conceptually apprehended objectives to the other. In such an unhappy meeting, the practical representations that either agent works with will of course differ from those it applies in interaction with non-rational animals or with minerals or vegetables; they will perhaps be, as we say, more complex. But this is *only* because the object with which it interacts moves in higher categories than animals, minerals, and vegetables do. The other agent is sunk in the materials with which either agent operates, as old buildings and rare birds are in criminal law. The other agent is something in respect of which either agent might ‘mess up’ instrumentally. All of the normativity in the case derives from the agent’s own ends, and is thus merely monadic.

This, it seems, is how things stand if we cleave to the materials analytically contained in the thin idea of an agent or concept-realizer. If all else is left out of account, pairs of agents will at best provide materials adequate for an application of game theory. That game theory operates with something like our thin conception of agency emerges in the fact that its practitioners move indifferently from assignments of pairs of individual rational animals to the variables contained in their theories—assignments like Prisoner *X* and Prisoner *Y*, say—to assignments like *X* Inc. and *Y* Ltd., or the USA and the USSR.

So much for abstract agency; let us turn again to abstract right and to the concept of a person—which, I want to say, is formally something quite different or more. The judgement *X is a person*, as I explained it, is essentially a ‘de-relativization’ of the prior bipolar judgement *X is a person in relation to Y*. Similarly, *X is a sister* is a de-relativization of *X is a sister of Y*. ‘Recognizing someone as a person’ is registering her as a person in relation to yourself; it is the appropriation of such a proposition in the first person. Similarly, recognizing someone as a sister—saying ‘Hey, sister’, maybe—is registering her as your own sister.

The underlying judgement *X is a person in relation to Y* is the minimal judgement that is contained in all of the forms represented on our table. It expresses a ‘determinable’ of which all these dikaiological judgements express possible ‘determinates’. As the Fregean judgment  $\xi$  is an object expresses the bare possibility of  $\xi$ ’s entering into facts of the form  $\Psi(\xi)$ , so we might say that *X is a person in relation to Y* expresses the bare possibility of *X*’s and *Y*’s entering into facts of the form  $J(X,Y)$  or  $X|Y$ .

As a de-relativization of a prior relational concept, the practical-philosophical conception of a person is formally unlike any monadic ‘concept of a person’ that might be found in theoretical philosophy: for example, that of Boethius, Strawson, or Frankfurt. This would be clearer if I were to replace the word ‘person’ with something like Aristotle’s *isos*, an ‘equal’, or *heteros*, an ‘other’—though each of these would be misleading in its own way. Nothing can be in any sense an ‘equal’, or an ‘other’ in isolation, unless perhaps prospectively or retrospectively. The concept *person* as I am explaining it is a concept of this kind. It is not attained by enriching the thin conception of an agent with further monadic properties.

But the fact of diverse and overlapping dikaiological orders (a fact upon which my whole argument will turn) shows that the present conception of a person is doubly relational: it can *itself* be shifted into various gears, or sung in different keys, or supplied with various subscripts. And, as an agent might enter as a person, *isos*, or *heteros* into several such forms of dikaiological nexus, so she might be related to a different class of ‘persons’ or *isoi* or *heteroi* under each of them. It will economize discussion if I introduce a concept to express this: namely, that of *the manifold of persons induced by a given dikaiological order*. This is the whole class of agents apt to be joined pairwise by concrete dikaiological relations of the type that the particular order makes available. Given a suitable gear-shift for ‘*X* wrongs *Y*’, they are the potential mutual wrongers in that sense.

Thus, supposing that a given system of etiquette can intelligibly be seen as constituting a *petite justice*, the induced manifold of persons will be coextensive with what is called ‘polite society’, the upper crust. The manifold of persons under chess, by contrast, is the class of players of chess, the possible poles of a chess game.

Our thinly defined conception of an *agent* indifferently covered individual human beings and various sorts of collective agent. The practical-philosophical conception of a *person* must also be explained so as to admit various types of collective or corporate person, depending on the order of

right in question. Lawyers speak of corporations as jural or legal persons and of states as persons under international right. Kant speaks of families as 'moral persons'. And we may speak of baseball teams as ludic persons: just as a lawsuit might go by the name of *X Inc. v. Y Ltd.*, so a baseball game might go by the name of the *X Sox v. the Y Sox*.<sup>26</sup>

## 7. A Modified Roman Empire Illustrates the Concepts so far Expounded

To illustrate the relativity of the concepts of a *ius*, a person, and a manifold of persons, and to prepare the ground for our principal argument and puzzle, let us consider a somewhat fantastic rendering of the Roman Empire in certain periods. Different orders of positive right were abroad in that empire, and the connection between them was peculiarly simple and clear.

In the city of Rome itself, there was the ancient civil law, or *ius civile*, some of it derived from the Twelve Tables, which bound Roman citizens with Roman citizens. No foreigner could possibly be linked with a Roman by this *ius*. At early stages, for example, no foreigner could sue a Roman in the associated tribunals with their quasi-religious procedure; none could join with a Roman to perform the picturesque ritual which inaugurated a traditional Roman contract.

Meanwhile, out in the provinces, in Palestine, say, or in Greece or Asia Minor, there were other equally traditional private-legal systems adjudicated by traditional local authorities—here again frequently with a religious coloration. No Roman citizen would sink to such a debased level, of

<sup>26</sup> Impatience with the idea of collective agents and corporate persons often parades as a sort of metaphysical hard-headedness, but I think that its real source, laudable in itself, is in intuitions belonging to the *specifically moral* case, in which individual reasoning animal agents—each with two eyes and two ears—are the real business. It is these especially whom our heroine, the bearer of the virtue of justice, herself two-eyed and two-eared, takes 'into account' or takes 'seriously'; it is these especially whom she opposes to herself, each as 'another' in thinking the thoughts of true justice. For her, unlike a lawyer or a game theorist, a corporation or state will seem to be something in the nature of a 'fiction'. It will fall off her specifically moral radar. She will meet the claims of any such thing with a certain impatience, wondering how things stand with the *people* in question. All of this is a consequence of the particular gear setting our heroine distinctively deploys, and has nothing to do with metaphysics.

course, nor would it make much sense for an Athenian to bring complaints to the authorities in Jerusalem. Most such local systems would, for example, have instituted their own equally picturesque formalities for the formation of a contract, quite different from those prevailing in Rome.

But finally, for the empire as a whole, there was the so-called *ius gentium*, the law of peoples, the private law originating under the authority of the *praetor peregrinus*. This more ‘rational’ and less procedurally grotesque system is the Roman law so much praised by our ancestors. It was a non-religious commercial necessity, one supposes, and a product of imperial expansion. This *ius*, this dikaiological order, indifferently bound Roman with Roman and Jew with Greek and Greek with Roman and Greek with Greek.

We may suppose, now crudely simplifying, that women and slaves fall entirely outside all of these specifically legal practical relations. But we may also suppose that a local form of etiquette exists among the upper class of citizens in Rome, and another in Athens, and so forth. Each forms a *petite justice* binding the men and women there alike with men and women. In each city the local *petite justice* allots its bearers distinct positions according to gender and age.

To complete our picture—at least for the moment—we may also suppose that some particular competitive game has overtaken the empire, a little known ancestor of chess, let’s say. Its following includes members of all nations and classes: in chess, as we know, there is neither Jew nor Greek, man nor woman, freeman nor slave.

We have thus imagined a plurality of dikaiological orders and a corresponding plurality of manifolds of persons or *isoi* or mutual *heteroi*. A slave in Rome, a captive Scythian, might be a person under chess or a chess-person—a chess-player, as we say. He is apt to fall into chess-governed, or chess-indexed, bipolarity with his master or with a visiting Athenian notable, assuming they too know how to play. A Roman wife might be a ‘player’ and moreover also a ‘lady’—a special type of person-under-the-local-*petite-justice*. A male head of a family in particular might wear many hats or crowns, and command the attention or *Achtung* of ‘others’ in several different ways, practically speaking. At least two of these will be private-legal: one type provincial, the other cosmopolitan.

But the class of attending ‘others’, the associated manifold of persons or *heteroi*, will differ according to the hat or crown worn. If he is to grasp his situation, each agent will himself have to operate our forms of judgement first-personally in several different gears and identify a suitable range of



'others' corresponding to each gear. It should be noticed that each manifold of persons we have considered is in a sense indefinitely extensible. The rules of chess do not need to be rewritten when the number of players doubles, nor does a profound understanding of Athenian private law depend on any knowledge of the number of persons who are related to one another under it.

Manifolds of persons expand and contract according to the form of dikaiology in question, but this need not just be a matter of the crowning and uncrowning of individual natural human agents, as a woman might be crowned in chess and etiquette and uncrowned in provincial and cosmopolitan private law. For we may also suppose that non-human, non-two-eared agents appear under some regimes and disappear under others. Anything we would ordinarily call a 'corporate' agent is, we may suppose, completely invisible to the traditional local systems, below their radar. But let us suppose that certain sorts of corporation do appear—through representatives—in the general courts of the empire.<sup>27</sup> The workings of the system involve the deployment of propositions assigning corporate agents legal duties to, and rights against, other corporate agents, and also toward individual 'natural' persons or human beings. 'Wrongs' can be committed against them, debts left unpaid, and contracts violated. Certain corporate agents, then, belong to the manifold of persons induced by that particular order. We might similarly complicate our empire by imagining, say, a cosmopolitan team sport.<sup>28</sup>

<sup>27</sup> In actual Roman antiquity there was apparently comparatively little of this, but examples are sometimes found, for instance, in the treatment of municipalities and of the burial societies as instances of which many primitive Christian churches are said to have originated. See P. W. Duff, *Personality in Roman Private Law* (New York: A. M. Kelley, 1971).

<sup>28</sup> If in Roman antiquity corporate 'personality' was little developed, this is presumably because such a thing awaits the development of deeper forms of market relationship than existed in antiquity. The thought might naturally form, then, that primitive legal systems look to natural persons, whereas more advanced systems recognize corporate persons. But if the notion of a corporation is taken less narrowly, something close to the reverse comes to seem the case. It is often said that in primitive legal institutions the typical term of a private-legal relation of right is a household, a *domus*, an *oikos*; the *paterfamilias* merely represents this collective. In so far as this is a reasonable interpretation of the traditional local Roman institutions, then it is not true that the *ius gentium* was the first among Roman systems to 'see' corporate agents, however obscurely; we could as well say that it was the first to see the *individual human being* or 'natural' person, and to bind one of them to another after the fashion of a private-legal system. Within the traditional system, the family or household was the real

A person is indeed *one among many, all equally real*, as the *Nagelsatz* runs,<sup>29</sup> but there are many ‘many’s, many manifolds of persons, into which concept-realizing agency of one type or other can be inserted. The existence of any such manifold, as such a manifold—its distinctness from some arbitrary set of agents of one type or other—has certain metaphysically distinctive conditions, as we will, I think, see.

## 8. Three Possible Theories of the ‘Specifically Moral’ Case: Hume, Aristotle, and Kant (Our Puzzle will be This: That None of Them Seems to Work)

Armed with these thoughts, let us remember that in our picture of this imagined empire we have left something out. We have left one type of crown undescribed, one shape of yoke unhewn, one form of pairing unconsidered, one manifold unsynthesized. A bearer of the virtue of justice, we have supposed, operates with our bipolar forms of judgement and throws them into a particular gear. Our heroine thinks ‘I can’t do *A*, it might kill *Sylvia*; I have a duty to her’, and she thinks it in a specific way. Or she thinks what might be made articulate in that way. She has given our bipolar forms a new, specifically moral turn. How, though, are we to interpret this intellectual phenomenon, this solid crystal buried among the coarser overlapping dikaiological strata of our imagined empire?

If our virtuous agent is lucky enough to have legal relational duties as well, and maybe ludic relational duties and duties under a *petite justice*, then representations of these might of course provide *grounds* for some of these ‘specifically moral’ bipolar judgements, which nevertheless should be distinguished from them. If justice is a genuine virtue, if it is not a sham or a kind of practical idiocy, then some of these *specifically moral* dikaiological thoughts must be true.

Let us pose the interpretative question in this way, approaching it perhaps a bit indirectly: Where is the new line to be drawn? What *manifold of persons* is induced by the form of bipolarity or being-toward-another and other-to-each-other that is at issue in the thoughts of our heroine, the

proprietor and could be made to answer with its property for delicts arising from the operation of father, son, daughter, slave, and cattle alike.

<sup>29</sup> Thomas Nagel, *The Possibility of Altruism* (Oxford: Oxford University Press, 1970), chs. 9–12.

genuinely just human being, and in our own representation of her as acting from ‘reasons of justice’ in a particular case? In what ‘many’ does our just agent implicitly locate herself as ‘one’ in thinking the thoughts of justice? What puts her into connection with Sylvia, thereby inducing a class of others to whom she might intelligibly be similarly linked?

Three traditionally accredited conceptions of the matter compete for our allegiance. There is, first, the doctrine of *Hume*, that justice is an artificial virtue, as he puts it. It rests on a convention, as he says, or on a ‘social practice’ as we might say.<sup>30</sup> For Hume, then, there is no great break between the sort of bipolarity our heroine distinctively registers—that is, the type of pairing of representations that she characteristically effects—and the sort found in more sophisticated later developments like private-legal institutions, in which appeal is made to an independently isolated judging agent and to a notion of market equivalence. Both alike are matters of custom, or ‘artifice’—as also are the still more advanced properly political institutions, in which rules of positive right are consciously altered and adjusted, and merely monadic norms adopted for the solution of large-scale collective action problems. If the Humean conception of the matter is right, then the manifold of persons into which our heroine implicitly inserts herself will at best (I will suggest) be the class of bearers of the specific historically developed right-making practice under which she falls and which she has, as we say, ‘internalized’.

There is, secondly, the view of *Aristotle* and *St Thomas* and lately, I think, of *Philippa Foot*,<sup>31</sup> that justice is a ‘natural’ virtue, a ‘natural’ excellence: it is something that makes a human being good or excellent or sound *as a human being*—that is, as a bearer of the particular life form it bears. The formation of the associated type of representation of others as ‘others’, or as persons—the comprehension of ‘oneself’ as ‘one among many’ after the manner of our heroine—would on such a teaching be accounted an aspect of sound *specifically human* development. It is to be compared—but also of course in many ways contrasted—with the mastery of a language (of *some* human language), or even with the formation of eyes and optic nerves, and of the parts of the brain that figure in, say, the recognition of human faces. The individual human is seriously damaged, as a human, if it lacks

<sup>30</sup> David Hume, *A Treatise of Human Nature*, ed. L. A. Selby-Bigge (Oxford: Oxford University Press, 1988), book III, part II, §§ I–VI; *idem*, *An Enquiry concerning the Principles of Morals*, § III.

<sup>31</sup> Philippa Foot, *Natural Goodness* (Oxford: Oxford University Press, 2001).

any of these things. Human action and life, detached from the peculiar representation of oneself as ‘one among many’ that is characteristic of the just agent, might on such a view be compared, at a rather high level of abstraction, to the ‘movement’ of a detached frog’s leg.

A teaching of this type might be developed in a number of ways. It is of course consistent with its central thought that the dictates of this virtue might, in respect of a given pair of agents, be massively affected by some of the so-called social practices under which the pair happen *together* to fall. Similarly, Hume’s doctrine is consistent with the idea that some fundamental justice-inducing customs should have grown to encompass an extensive empire (non-politically speaking), but that their dictates in the case of a *given* pair might be massively affected by some of the more local and determinate justice-inducing ‘practices’ that the agents in question happen both to bear. On an Aristotelian account, though, every bipolarity-inducing *custom* will be understood as either determining, decorating, or competing with a deeper form of dikaiology of a categorially distinct type, not merely a more extensive form of the same basic customary type. On such a conception of the matter, it is thus intelligible to speak of relations of ‘moral right’ as joining pairs of individuals who share no social practices or institutions nor suffer any one common *Bildung*. In this it contrasts, I think, with the Humean doctrine, properly understood. Nevertheless, the class of individual ‘persons’ with whom a just agent is prepared to reckon pairwise will, on this view, at best (I will suggest) be the class of bearers of the nature or life form in question, the class of all human beings.

## 9. Excursus on the Concepts Life Form and Practice

Before describing the third competing conception of the manifold of persons into which our heroine inserts herself—the view, namely, of *Kant*—it may be well to emphasize three points about the leading concepts on which the Humean and Aristotelian doctrines turn. These are the concepts *practice* and *species*, respectively—or *form of life* and *life form*, as we might better call them, or again *second nature* and *first nature*, as we might equally well call them.<sup>32</sup>

<sup>32</sup> I discuss the concepts *life* and *life form*, and their relations, in my paper ‘The Representation of Life’, in Rosalind Hursthouse, Warren Quinn, and Gavin Lawrence (eds.), *Virtues and Reasons* (Oxford: Oxford University Press, 1995), 247–96. I discuss the concept *practice* or *social*

Consider first the concept *species* or *life form*. The first point to emphasize is that it is perfectly intelligible to speak of a *pair* of occupants of this category which are exactly the same in their inner constitution, but are nevertheless *distinct species* or *distinct life forms*. Such is the relation that the life form you and I share bears to the life form shared by all the exactly similar humanoids up on the philosopher's Twin Earth: they are on all accounts properly 'twin humans', not humans; their form is not human form but twin human form. The anatomical, pathological, and cardiological textbooks published up there may say exactly the same things as ours do, and the diagrams may look exactly the same, but their treatises are speaking of and diagramming something else. Any other view would make the content of the treatises analytic. The distinction appears to hold despite the fact that a life form is in some sense something universal or general or indefinitely extensible, or is internally related to something that is.

Occupants of the category *social practice* may likewise be the same in their inner constitution, though they are, again, *distinct practices*. So it would be with an independently developed Twin English spoken somewhere in the South Seas: it would be a different language. If Captain Cook, overhearing the locals, mistakes them for fellow English speakers—descendants perhaps of earlier shipwrecked Englishmen—he will be wrong. And if he asks (in English), 'Do you know where I can get a shave?' and they answer (in Twin English), 'Go up Mindanao Avenue three blocks, turn left on to Fiji and you'll see it on your right,' and in the end he even gets a shave, still this will not be a conversation; nor, more obviously, will Cook be gaining testamentary knowledge about the places of things. Grammars and dictionaries of the two languages (written, let's suppose, in a third language) will say all the same things, but they will once again say them about different things. This again holds, despite the fact that an individual language is something universal or general or indefinitely extensible.

Similarly, anticipating a bit, we may suppose that on the frontiers of our empire some class of people, call them the Lombards, have a system of personal private law—a not specifically moral form of right-inducing 'social practice'. The system is completely decentralized and traditional; it does not put its bearers into 'political society' with one another, constituting

*practice* in my paper 'Two Forms of Practical Generality', in Arthur Ripstein and Christopher Morris (eds.), *Practical Rationality and Preference* (Cambridge: Cambridge University Press, 2001), 121–52, and more extensively in my forthcoming book *Life and Action* (Cambridge, Mass.: Harvard University Press).

government proper. When disputes arise, a jury of fellow Lombards is empanelled according to fixed rules, and the case is decided according to time-honoured principles which one learns along with one's language and religion.

Meanwhile, across the Alps, philosophers have arranged that by a freak accident unrecognized on either side, another people, the Schlombards, can be found working with a sub-political system of private right that is exactly the same in every respect. The formalities necessary to the formation of a contract are the same, as is the age at which the capacity to contract is acquired, etc.

Still it seems plain that the two peoples will not share a common system of personal private law. They do not appeal to the same time-honoured principles to settle disputes, but to *different principles with exactly the same content*.<sup>33</sup> We may suppose that the languages these peoples speak are also exactly alike, a member of either crowd calling herself (in her language) a 'Lombard'. In that case, if a pair of agents from the opposing groups meet by chance in the Alps, they would both have every reason to think that they are both (as each would put it) 'Lombards' and that they are, say, *concluding a valid contract* with this particular assemblage of song and dance. Again, though, it seems plain that they are not—no more than they are engaging in a genuine conversation in the process of 'bargaining' that leads up to the seeming contract-sealing ritual. I will try to say more about why this is so a bit later.

Another example: suppose that many of the Lombards have learned to play chess from wandering Roman soldiers, but that the Schlombards have an independently evolved game that is exactly the same—a twin chess or tzsches. Chess and tzsches are, once again, *different games with exactly the same rules*. As a result, at least on first meeting, in ignorance of these facts, there will intuitively be nothing that the ostensibly opposed players are playing.<sup>34</sup>

<sup>33</sup> The Turkish Ministry of Foreign Affairs writes as follows: 'In 1926, the Swiss Civil Code and the Code of Obligations were adopted by the Turkish Parliament with minor modifications as the Turkish Civil Code and Turkish Code of Obligations. The Code of Civil Procedure, brought into force in 1927, was adopted from the law of the Swiss Canton Neuchâtel' (see <http://www.mfa.gov.tr/grupe/eg/eg27/11.htm>). Here it is clear that the Turkish Republic is instituting its own laws, but that some of them are *the same in content* as some of those of the Swiss Federation and one of its cantons. It is not that the territory governed by the procedural laws of Neuchâtel was extended to cover Asia Minor.

<sup>34</sup> We might introduce a systematic way of representing these distinctions. Given the name of any practice or life form, we suffix an asterisk to it, writing 'English\*', 'human\*', 'Lombard

A second point to be emphasized is that occupants of either category supply a kind of background for the interpretation of particular phenomena pertaining to their individual bearers. Thus, for example, it is because this pair of speakers speak and are speaking *English* that the one, in saying ‘Cut it out’, can be read as having *told the other to cut it out*. In another language the same might be said in different sounds; in yet another, the same sounds might say something different. And it is because the players are playing *chess* that this distribution of pieces can count as *Black’s king’s being in check*. In an unorthodox chess some of the pieces might have different powers, so that other distributions of them count as ‘check’. And it is because of its connection to the practice of playing *baseball*, as Rawls says, that this ‘peculiarly shaped piece of wood’ is a *bat*.<sup>35</sup>

On the other hand, but similarly, it is because this is a *sugar maple* that this mass of cells amounts to a *leaf*; in another form of vegetative life, any such thing would constitute a cankerous excrescence, and something quite different would count as a leaf. And so, likewise, it is because this is a *moon jellyfish* that these bits can be understood to be *tentacles*. And, finally, it is because I am a *human being* that these aggregates of flesh and bone add up to *arms*, not excrescences—and these movements to *my moving my arms*, and this pallor to *an expression of fear*. A life form is in this respect like a language that physical matter can speak.<sup>36</sup>

A third point to emphasize is that there is no reason to think—and it is no part of either theory, Humean or Aristotelian, to hold—that a shared practice or a shared (intelligent) life form must *be* right-inducing or justice-inducing; no more than a form of animal (i.e., sentient) life must be sighted, and no more than a language must contain an expression for *Schadenfreude*. The English language and ‘solitaire’ are practices or customs in the sense that Hume is using. But neither of them is intuitively right-inducing;

law\*, ‘chess\*’, etc.; the resulting term covers any practice or life form with exactly the same inner content as the one covered by the unasterisked name. Captain Cook’s islanders speak Twin English, which is an English\* and of course a Twin English\*; Captain Cook speaks English, which again is an English\* and a Twin English.\* The exactly similar Twin Earthers are twin humans, unlike us, but they are bearers, like us, of a human\* life form and a twin-human\* life form. Tzschess, like chess, is a chess\* and a tzsches\*. In general X\* and Twin X\* are the same, though X and Twin X are distinct.

<sup>35</sup> John Rawls, ‘Two Concepts of Rules’, in *Collected Papers*, ed. Samuel Freeman (Cambridge, Mass.: Harvard University Press, 2000), 20–46.

<sup>36</sup> This feature of the concept *life form* or *species* is developed at length in my essay on ‘The Representation of Life’, part II: ‘The representation of the living individual’.

certainly *solitaire* isn't. Similarly, on Foot's view, though she does not emphasize it, there is no reason a priori to say that an intelligent life form could never be one of which Hobbesianism, say, is true, and thus one for which prudence is the only really fundamental virtue. Nor does she suggest that there could not be a life form in which the arguments of Callicles—that what is praised hereabouts under the name of 'justice' in fact drags its bearers down and declaws them and renders them harmless, and so on—would be sound. Why shouldn't that be possible? It is just that it isn't so with specifically human beings, she thinks: for us there is justice.<sup>37</sup>

## 10. The Received Conception of the Manifold of Moral Persons is Abstract

But let us return to our three conceptions of the manifold of persons in which our heroine is lodged. In addition to the Humean and Aristotelian conceptions, there is, finally, the received conception, the Kantian and neo-Kantian conception (though it is not only Kantian and neo-Kantian). This should perhaps be called, rather, a family of conceptions. The mark of membership in this family of conceptions is that the specific 'many' of which our heroine sees herself and Sylvia each as 'one' is identified with the something like the class of *all agents*, or *all rational animals*, or *all rational animals who can act on principle*, or *all 'persons' in the monadic sense of Boethius or Strawson or Frankfurt*.

One feature that all of these concepts share is that a pair of agents can come together to fall under any one of them in complete natural-causal independence of one another, without any shared dependence on *anything* we can understand as a common source. There need be no one common account of it that practical reasoning or principled action or second-order desire goes on in this two-eared animal here on Earth, say, and can also go

<sup>37</sup> Foot's book has two components. One component, which we might call formal Footianism, is an analysis of the concepts of genuine 'reasons', ultimate 'normativity', and true 'value'; all are brought into connection with 'natural goodness'. The analysis holds, if it holds, wherever in the cosmos these concepts gain a foothold in discursively thinking agents. But a different component of her theory—substantive or local Footianism—appears in her arguments that justice and prudence are, as a matter-of-fact, genuine virtues among human beings. The interest of her book does not stand or fall with these latter claims: the exposition of formal Footianism might rather have been annexed to a sort of substantive Hobbesianism in which, say, prudence alone is human virtue.



on in *that* two-eared one on Twin Earth and in that two-antennaed one up there on Mars. Developments have perchance taken this turn in each case; the capacity for the phenomenon in question has come to be on these three planets—as vision has come to be independently several times on this one planet—by familiar processes of variation and selection.

Let us elaborate the point by considering the classical definition of Boethius: a person, he says, is an ‘individual substance of a rational nature’.<sup>38</sup> Well, *human*, *twin human*, and *Martian* are three ‘rational natures’, we may suppose; they are three ‘forms of intelligent life’. Since the origins of these species or natures or life forms are, by hypothesis, entirely independent, the hypothetical homogeneity of the agents, as reasoning, would appear to be entirely accidental. Yet individual bearers of these several life forms will all alike be ‘united’ under the one concept *person* that Boethius is forging, even including Martian babies and Twin Earth idiots.

It is the same, I think, with any grand abstract concept under which a philosopher might bring herself and her friends—say, *self-constituting self-conscious subjecthood under a practical identity*. That sort of thing might chance to break out in the Andromeda galaxy quite as well as it might down here.

It cannot be so, though, with the class of co-practitioners of a single practice like *the English language*, or *Lombard law*, or *chess*. The homogeneity of the agents who come under any one of these is not an accident. Nor can it be so with co-bearers of a single genuine life form like *red oak*, *Norway rat*, *human*, *twin human*, or *Martian*. An individual object’s falling under any one of the italicized concepts is always a matter of its falling into a single, naturalistically intelligible, trait-transmitting historical succession. Or rather, this is the only way we can understand these categories—life form and form of life—to be realized in nature as we know it to be. Falling into a succession of processes of *reproduction of a life form* and of *habituation into a practice* are respectively schemata of these categories, as we might say.<sup>39</sup> In bringing a *pair* of individual objects together under one *such* concept we bring them

<sup>38</sup> Boethius’s definition is discussed and defended by Aquinas, *Summa Theologiae*, Ia, q. 29, art. 1. The concept is of course intended to cover not just people, but God and angels.

<sup>39</sup> Perhaps other schemata could be imagined: for example, on theological hypotheses. Perhaps God, operating in accordance with *one* divine idea, could people each of several planets with an original pair: Adam and Eve, Adam\* and Eve\*, etc. In that case we might perhaps speak of them all as sharers in some one single life form, interpreted as a sort of divine archetype. Similarly, God might perhaps be said to teach agents in diverse galaxies some one language, or some one game; ‘the language’ or ‘the game’, considered as something present in many, would then itself be identified with the archetypal idea. But our point about

under a common interpretative background, and we bring their homogeneity under a single common account. We can thus see this homogeneity as ‘no accident’ in a perfectly intelligible way. It seems plain that any concept under which I fall together with a twin human will not have these features.

There would thus appear to be a radical distinction between concepts like *animal*, *rational animal*, *Boethian person*, *agent*, and *speaker*, on the one hand, and those like *Norway rat*, *human*, *twin human*, *speaker of English*, *player of chess*, and *Lombard*, on the other. The former we might call ‘abstract’ class concepts, and the latter ‘concrete’. The mark of a Kantian or neo-Kantian or ‘received’ type of account can then more clearly be stated: it uses an ostensibly abstract class concept to identify the manifold of persons in which our heroine implicitly locates herself. Just for this reason, though, received views are all very difficult to maintain once the nature of our bipolar nexuses is properly grasped; the metaphysical consequences of all such views are quite extraordinary. Of course, the other two views, the Humean and Aristotelian, face difficulties of their own. And this is my puzzle: we seem to be unable to supply an unproblematic interpretation of the thoughts that are distinctive of our heroine.

## 11. Apprehension an Order of Right within the Manifold of Persons it Induces: Our Chief Lemma

To see the difficulties, let us return to the question of practical bipolarity in general. Suppose that I am drifting through the empire we imagined, saturated as it was with overlapping dikaiological orders, diverse gear settings, and expanding and contracting manifolds of persons. I now overhear the words ‘You’ve done me wrong’. The context makes it plain that this could be expanded into ‘You’ve done me wrong, *legally* speaking’. We will not concern ourselves with the particular contents. Our abstract forms are

life forms and practices as supplying a common account of the homogeneity of many bearers would still, I think, have to hold. It is a central feature of a life form or practice, I think, that it should in some sense account for individual bearers’ coming under it: each life form or practice is a ‘concept that procures its own existence’, as Hegel often says, or a ‘universal that provides its own instance’. On naturalistic assumptions, it would seem that this structure can only be realized where a thing’s coming under this form or universal arises through the operation of prior bearers of the form—that is, through reproduction or habituation.

being deployed, and in a specifically legal or juridical sort of way. In interpreting such words, and appraising them for truth, I must link them first with a particular order of private right. Is it the local provincial one, or the general imperial one? In which manifold of persons is he implicitly locating himself and his interlocutor?

If our speaker actually names one of these regimes of positive private right in the discourse we are trying to interpret, then that will decide the matter: 'I have a contract with you, Marcus, under the *ius civile* of our immortal Roman forefathers,' he says. Fine, he means the local system; the dikaiological thought he is expressing has been shifted into the local gear. But why does that decide the matter? It is presumably because his use of this name, *ius civile*, bears some relation of dependence, perhaps causal dependence, on the particular regime of right named. Of course, we can say as much of the relation that the name of a lake bears to the lake it is the name of. My thoughts of Lake Michigan, are about Lake Michigan because they somehow depend on it. But it seems that an order of private-legal right is not something that just stands there like a lake. It is not something to which an agent might just happen to refer in making judgements about 'rights' and 'duties'. That is admittedly how things would stand with a comparative jurist or legal anthropologist who happens upon the scene. But (I want to suggest) the bearers of the system cannot intelligibly be supposed *generally* to relate to it in that sort of way.

I have maintained all along that a deployment of our bipolar deontic machinery is empty thought, spinning in a frictionless void, if you like, until it has been thrown into a specific gear attaching it to a definite dikaiological order, or *ius*. My present thought is that we must also hold the converse: a dikaiological order cannot exist unless the manifold of 'persons' or *isoi* or *heteroi* it joins and opposes manage to throw these abstract forms of judgement into a gear that refers to or expresses it, even if they are not in a position *explicitly* to name it with a phrase like '*ius civile*'. A *ius* and the concepts through which the associated nexuses are expressed must come into the world together.

This of course does not mean that any single agent who comes under such an order, and is a 'person' under it, is in actual possession of suitably adjusted dikaiological concepts or the associated person conception. He might be too young or too dim or too mad to grasp such things. How befuddled and ignorant an agent can be and still count as a 'person' under a given order will depend on the order in question, just as the range of

potential ‘wrongs’ and the conditions of their imputability will. In a competitive game like chess the requirements are comparatively high. To count as a chess-player, or as a ‘person under chess’—and thus to be positioned to fall into chess-governed bipolarity with another similarly positioned—an agent must know or at least be learning something about how one plays chess. She, or her teacher, must know something about the moves one ‘can’ and ‘can’t’ make in a chess game played with, or rather against, another chess-player. This knowledge will deploy our directed deontic machinery in a chess-related gear: homogeneous dikaiological thought will thus appear on both sides of the chess-board. In what we are calling the ‘specifically moral’ gear setting, by contrast—the one distinctively deployed by our heroine—it would seem that even the dullest infant will count as a person and be wrongable in many of the ways in which Sylvia, a highly reflective grown-up, is.

We must content ourselves, then, with a rather weak proposition: the real existence of a dikaiological order, and thus of a contentful deployment of bipolar deontic concepts, presupposes this much, that the apprehension of the appropriate deployment of bipolar deontic concepts—and the same deployment, in the same gear setting—is a *typical attainment* within the associated manifold of persons. Otherwise no dikaiological nexuses can join any of them to any of them; we would have a mere set of agents, not a manifold of persons. And so too the imagined deployment of dikaiological concepts will be contentless. A manifold of persons must be a genus, an indefinitely extensible class, within which apprehension of the associated form of practical opposition holds typically or ‘as for the most’, *hōs epi to polu*, as Aristotle says. This weak lemma is enough, though, to introduce numerous metaphysical subtleties into our enquiry.

In fact, a parallel claim would seem to hold for all forms of deonticity, bipolar or not. Consider the classical formulae ‘A law must be promulgated’ and ‘Ignorance of law (or of “principle”, or of “the universal”) does not excuse’. These propositions must no doubt be qualified, especially in their application to positive law; but we can, I think, see that they rest on deep features of deontic judgement in general, and in fact express the same fundamental idea. Each means that *deontic truth of a given type is not there to be apprehended or to bind until ignorance of it among those whom it binds is rendered exceptional*. Apprehension of it must be ‘no accident’ or somehow typical. This is the state of things that the Greek tyrant intuitively failed to effect—the one, namely, who is said to have placed his ‘criminal legislation’ on the top

of a high pillar, so that it would be impossible to read. Again, though an agent's grasping his deontic situation must in some sense be the standard case, whatever form of deonticity we may have in view, it may of course be that the 'standard' case is statistically rare, and that valid excuses are very common.

What is distinctive of our bipolar deonticities is that this weak condition applies at *both* poles of the typical, or 'standard', dikaiological relation. Their relation must be something that the agents at either pole can be wrong about, of course, but it must be something upon which they can be in agreement, and in suitably *non-accidental* agreement. The fundamental question of general meta-dikaiology is this: What can put such a structure in place?

## 12. Illustrative Theological Application of our Lemma

We might elaborate on these ideas by again moving outside our empire and adding one more spectacular thought experiment to our collection. Suppose that God gives a positive law, a list of ten 'commandments', to all the Hebrews. All of the actions that this Law requires will be 'required by reason' as well, on ordinary theological premisses. But we can distinguish two senses of 'necessity' in the matter: only one of them, rational requirement, had application to anything before the appearance of the Law. Individual Hebrews were *rationally required* to do various things before the appearance of the Law—to brush their teeth, for example—but they were not *bound by the Law* to do anything.

Let us consider now a heretical variant in which lists of ten commandments are given *separately* to the heads of each household, as separate acts of revelation, separate cases of divine fiat. We can make the same twofold conceptual distinction in each household's case: there is what reason requires, and there is what the Law given to it requires. The latter, we piously affirm, is always included under the former. It will seem a somewhat academic question whether the forms of 'deonticity' inaugurated by these several hundred acts of divine legislation and domestic reception are the same or different. If we suppose that the different lists have different ingredients, and that each is to govern its recipient's household and the households of all its male descendants, then it is clear that we have imagined something like the inauguration of several hundred nations all with

the same divine sovereign, but each with a separate divine positive law and a different theological gear setting for deontic vocabulary.

If now it perchance happens that, though they are otherwise different, several or indeed all of these lists have some one item in common—not to kill any ‘reasonable creature *in rerum natura*’, for example—then, in acting in obedience to this item on its own list, the members of different households will be *acting on different principles, but principles with the same content*.<sup>40</sup> Any ‘reasonable creature *in rerum natura*’, a visiting angel or a Martian, for example, will be relieved to learn that a household nearby is subject to such a constraint, and may come to reckon on the impediment. But it is no part of the constitution of that constraint and the genus of deonticity contained in it that those extra-domestic reasonable creatures should happen to know this, as it *is* part of the constitution of the divine law of a given house that it should be *no accident* if its members grasp its terms. In particular, it is no part of the constitution of the constraint attaching to any one household, that *it* is grasped or tends to be grasped by the members of other nearby *households* which live under similar such Laws. Indeed, it might be legitimate and reasonable to try to keep it a secret that one is thus bound.

So, now, though members of each household are kept from killing members of any household, as well as any ‘reasonable’ space aliens who might happen by, they are all operating on different principles and are under different Laws. The explanations of the apparently similar thoughts ‘I’m forbidden . . .’ will be different in different households, and the index of the deontic operator will be different as well: the several Laws are as different as the ‘Old Law’ and the ‘New’ are supposed to be. But just for this reason, I want to say, it is impossible to view the situation as one in which the members of the different households have fallen into relations of right.

Wesley Hohfeld, in his discussion of ‘legal relations’, affirms the proposition that our two forms, ‘X has a duty to Y to do A’ and ‘Y has a right against X that he do A’, in its ‘claim’ use, represent the same ‘legal’ or ‘jural’ relation from the different points of view of the legal persons caught up in it.<sup>41</sup> His implicit thought, I think, was that the possibility of such a

<sup>40</sup> I am presupposing, for purposes of argument, a ‘divine command theory’ positivism, which would hold that no one has any special reason to avoid this apart from divine legislation.

<sup>41</sup> Hohfeld, *Fundamental Legal Conceptions*, 40.

bipolar nexus *presupposes* that someone in the position of *X* can potentially think: *I have a duty to Y to do A*, and someone in the position of *Y* can think: *I have a right against X that he do A*. To speak of a ‘possibility’ of such convergence might perhaps be too weak, as we have already noted; rather, there must in the nature of the case be a tendency for each side to grasp the appropriate first-personal thought. This type of relational fact is generally internally related to two points of view that might be taken on it; it is such as to be registered by each of its poles. In this it differs from facts of the type *X is taller than Y*, and spatial relations generally; such relations are completely indifferent to conceptual apprehension by their terms. But, now, if there is to be such a harmony of judgement, there must be identity in the chief concepts the judgements deploy: namely, those expressed in our tabulated abstract forms, considered as shifted into a particular gear. It is the same with the deeper thought form implicit in all of these forms: *X is a person in relation to Y*, again considered as set in a particular gear. This concept, as Fichte says in *Foundations of Natural Right*, is a concept for two.<sup>42</sup> It cannot generally be left to the relata to grasp the appropriate gear setting, the appropriate form of pairing, through abstraction from (say) external anthropological experience—for deployment of the gear setting in question must already be present in the materials from which an external anthropological conception of it might be abstracted. Our non-external-anthropological account of a determinate dikaiological gear setting’s arising in one agent, or of one agent’s thoughts as set in it, must exhibit a source through the operation of which the same gear setting might figure in the thoughts of the other agent—even, and especially, if the pair now go on to conflict in the particular judgements they frame in terms of it. And because a dikaiological order is indifferent to the number of persons who fall into the manifold associated with it, and are potentially joined in the nexuses it constitutes, the source in question must potentially be such as to operate in indefinitely many agents.

<sup>42</sup> J. G. Fichte, *Foundations of Natural Right*, trans. Michael Baur (Cambridge: Cambridge University Press, 2000), 45. Using the concept ‘individual’ where I would use the word ‘person’, and exaggerating matters somewhat, Fichte writes: ‘the concept of individuality [personality] is a *reciprocal concept*, i.e. a concept that can be thought only in relation to another thought, and one that (with respect to its form) is conditioned by another—indeed by an *identical*—thought. This concept can exist in a rational being only if it is posited as *completed* by another rational being. Thus this concept is never mine; rather, it is . . . *mine and his, his and mine*; it is a shared concept within which two consciousnesses are unified into one.’

These criteria are not met at our heretical Sinai, with its hundred separate tablets and manifold acts of domestic divine legislation and reception. But notice that they already fail at the orthodox Sinai, where a Law is put to all of the Hebrews at once, *given* the content we assigned to that law (interpreting the text a bit): namely, not to kill *any* ‘reasonable creature *in rerum natura*’. It is indeed part of the constitution of the deonticity attaching to the ten common orthodox formulae that the Hebrews should come to be in regular possession of a concept of it—that is, a new gear setting for deontic judgement. Individuals who come under the Law will only lack this gear setting *per accidens*, by infancy, idiocy, stopping up of ears, forgetfulness, parental flakiness, etc. God has arranged that *Hebrew* is a genus within which such apprehension holds as a rule. But it is no part of the constitution of this form of deonticity that any non-Hebrew reasonable creatures should ever have any conception of it at all, even though they are, as we say, ‘protected’ by it. Alien others are in this respect formally like rare birds protected by environmental legislation: not dikaiological wrongables, but raw materials for wrongdoing. If other reasonable creatures do come to be aware of the constraint, it will be as a matter of comparative divine jurisprudence or theological anthropology. Knowledge of the Law, whether anthropological or not, is thus *per accidens* within the protected genus; and so this genus is not constituted as a manifold of persons by divine operations of the type we are imagining.

It may be, of course, that other classes of reasonable creatures have been given their own respective divine laws, and it may by chance be that each of these contains the precept not to kill other reasonable creatures. This does not affect the relation of these outsiders to the specifically Hebrew Law. *They do not act on the principle the Hebrews act on, but on another principle with the same content.* The structure of things is thus as it was at our heretical Sinai, but writ larger.

Where it is a question of constituting merely monadic duty, the distinction between a number of people acting under *common norms or principles* and a number of people acting under *norms or principles with the same content* will inevitably seem subtle and academic. Where it is a question of constituting an order of right, it is decisive. A manifold of ‘persons’ must together come under a genuinely common, not merely similar or parallel, form of deonticity. This is not all that is necessary to make the step from *lex* to *ius*, of course, but it is enough to make the trouble I am proposing to make about the ‘specifically moral’ case.



Let us return to our Lombards and Schlombards. Though hitherto there has been no connection between the different tribes, a pair of them, we supposed, might meet high in the Alps, the Lombard inevitably mistaking the Schlombard for a Lombard—after all, he calls himself by the name ‘Lombard’—and the Schlombard mistaking the Lombard for a Schlombard. We asked: can such agents constitute a contract, and thus legal duties of one to the other and the other to the one? We can now see more clearly why not. When the songs and dances and handshakes have been completed, each will indeed think he has a legal obligation of some sort to the other and a legal claim of the same sort upon him. In fact, if the putative terms of the putative contract are symmetrical (‘If you do *A* for me, I’ll do *A* for you’), there may be no difference at all between the agents viewed physically, functionally, dispositionally, etc. But our hypothesis in this thought experiment is precisely that this homogeneity is sheer accident, and just for that reason it is not a Hohfeldian homogeneity of *thoughts*: our agents are in fact thinking different things. In assigning a determinate content to the dikaiological thoughts of either agent—that is, in seeing the pairings he frames as set into some one among the many particular gear settings the cosmos makes available—we must indeed advert to something through which we can see another agent’s correlative or mirroring thought as no accident. And this is in each case the wider juridical practice of which the agent in question is a bearer, and which is in some sense the source of these thoughts and manifested in these thoughts. The existence of such an account explains why phenomena can be interpreted as containing genuinely bipolar contractual obligations of Lombard to Lombard or Schlombard to Schlombard and parties who register such facts in thought. But on our high Alpine hypothesis, the account that applies to the one does not extend to thoughts of the other; a contract-admitting gear setting is available on each side, but no contract-admitting gear setting is available on both sides. If the Roman Empire had extended far enough, and our agents had performed the formalities necessary for a contact *iure gentium*, then a common account and thus a common index for dikaiological thoughts might be found at both ends of the handshake. As it stands, though, there is nothing on both sides of the handshake: the type of claim the Lombard thinks he has is a claim ‘under Lombard private law’, as we might say, making the gear setting explicit; the type of ‘correlative’ duty the Schlombard thinks he has is a duty ‘under Schlombard (“Lombard”) law’. They are like ships passing in a juridical night.

### 13. Preliminary Application of our Lemma to the Specifically Moral Case

But enough of Law Positive, divine and human alike; enough, too, of games and *petite justice*. Here again is our heroine, the bearer of true justice, acting on the strength of her recognition of a duty *to Sylvia*, a duty which she knows has no legal or ludic representation. Our *abstract* bipolar categories have thus been brought into play. But if there is to be any truth in this pairwise representation, if it is not idle thought, then it must be linked to some specific dikaiological order. We are supposing that this is the order of ‘true justice’, so to speak, or the order of ‘moral rights’. And if there is to be any truth in this representation, then it must be linked indirectly to some specific manifold of persons, the manifold into which our heroine sees herself and Sylvia as inserted. We may suppose, if you like, that the elements of this manifold are the true or real or equally real persons, and that together they constitute what is called the moral community—or rather, that these are the ‘true’ persons *in relation to our heroine*, and this is the moral community *to which she belongs*.

And if there is to be any truth in this pairwise representation, there must be a possibility of a correlative representation in the agent our agent is thinking of, or rather a tendency for such thought to appear in her. Or rather, our pair must come together under an indefinitely extensible genus within which such a tendency prevails. The tendency must be for *the same thought*, modulo a reversal of first-person polarity, to appear in *the same gear setting* at both poles of the nexus in question. But, on the other hand, it is only given this tendency for suitable thought to appear at both poles of the moral relation it registers that there is any contentful thought available to appear, and any moral relation for it to register. This tendency might not often be realized, but it cannot generally be an accident that these correlative representations coincide. If this sometime community of minds *is* to be possible, there must be a possible *account* of the agents’ agreement with one another, of the might-be meeting of their minds.

### 14. The Humean View has Intolerable Moral Commitments

The natural way of finding a determinate content for our heroine’s thought is Hume’s. The thoughts of co-practitioners of a single practice or

custom do indeed come under a common source and a common background of interpretation: namely, the practice itself—a practice supplies a wavelength for everyone to be on, if you like. In the light of a suitably structured practice in which a pair of agents are together sunk, we can see the pairwise thoughts of either as reaching out toward completion, so to speak, by converse thoughts in the other, even if this homogeneity fails often to be realized. So a practice or custom can easily meet the criteria we have been attempting to articulate for the constitution of a determinate dikaiological gear setting and a corresponding order of right—as was plain all along from the examples of chess and *petite justice* and private law, which are all matters of custom or institution. Hume's thought is simply this: that the form of practical bipolarity with which our just agent operates has this same fundamental customary character. She has acquired her thoughts with her upbringing, her *Bildung*, on any account; why should we not characterize this upbringing as habituation into, or initiation into, a special 'moral' practice, distinct from those of chess and etiquette and private law?

But remember that if a given practice or custom 'protects' non-bearers as much as it does bearers, and in just the same way, then its dikaiological character collapses: it acquires instead the merely monadic aspect of criminal law or of the various divine commandments 'not to kill' that we considered. Possession of the associated conceptual machinery will be *per accidens* within the protected class. If the deontic thoughts in question are to be genuinely dikaiological, then the associated manifold of persons can only be the class of bearers of the practice, in whom the emergence of correlative thoughts will be non-accidental. Hume's conception of the matter entails that the manifold of persons associated with our heroine's distinctive, specifically moral form of thought can only be the class of bearers of that same practice—the class of those in whom thoughts mirroring hers are typically induced.

Hume no doubt thought that it was enough that our relation to outsiders is governed by benevolence or natural sympathy. It simply did not occur to him, as a naïve eighteenth-century writer, that apart from justice one might, out of natural sympathy, kill one person to remedy the plight of several others, or for any number of other beautiful purposes. A theory like Hume's can of course explain why *you* should not kill *Sylvia* even in order to save five others, where you and *Sylvia* are bearers of a single dikaiological practice; it need only be that the practice constitutes a

directed duty not to kill and a claim not to be killed among its bearers. But he forgot that you might kill several recalcitrant practice-outsiders in order, from the deepest sympathy, to introduce your more advanced system of practices to their more numerous backward compatriots. And this is what we cannot bear to think; and this, we cannot help but think, is what our just agent cannot bear to think. Our heroine purports to see farther than the specific practices she bears, and views her connection with outsiders in dikaiological terms. She sees herself as bound to, and as owing something to, and as a 'person in relation to', each single one of them.

Sophisticated wisdoms will inevitably teach us that a 'common sense' that condemns our imagined benevolent imperialist is a refined product of certain sophisticated 'social practices', practices which these wisdoms may or may not feel inclined to praise. But we can now see that this same so-called common sense must reject all such accounts of itself. In seeing the practice-outsider as making as good an example of a murderable as any practice-insider, we plainly put ourselves into dikaiological connection with her and commit ourselves to the falsehood of any such account.

## 15. The Aristotelian View has Difficult Epistemological and Moral Commitments

We thus feel compelled to reject Hume's doctrine as immoral and wrong, though it may in the final analysis be the only account we can make any sense of. Where else can we turn? On an Aristotelian account, the generic unity of agents that makes for the possibility of 'specifically moral' bipolar nexuses is provided not by a shared practice, but by their shared specifically human life form itself. It is characteristic of the human being, on such an account, to develop the capacity to pair itself off dikaiologically with others, and others with others—even if this development is unfortunately often impeded, as the development of hands is unfortunately often also impeded. But if something like this is characteristic of the kind, then it will be no accident if a pair who come under this kind exhibit correlative forms of such thought—even if, again, this possible harmony should often break down. The non-accidentality of the convergence is underwritten by the shared life form. Thus our general criteria for genuinely dikaiological judging might be met, and there could be something for these correlative

dikaiological judgements to be about. The concept of the human would be the concept of a manifold of persons.

What are we to think of such a construction of our heroine's thoughts? It is often complained that reference to the human form or 'species' or to human 'nature' will introduce an unwanted empirical element into moral philosophy. It is supposed to make things somehow 'biological', and thus to violate the autonomy of the ethical. Kant is especially alarmist on this point. The Aristotelian's first difficulty is to show that this supposed threat expresses a distorted conception of our relation to our own life form or nature. It is in fact clear, I think, that one representation of this particular form or nature is entirely a priori: namely, the representation of it as my kind, or as my form. If I am thinking a thought of it, I might think of it as *the life form manifested in this very thought, which is a bit of life*, to which I might rightly attach the predicate *has thousands of bearers*. The question who else does come under this a priori representation, and thus how many do, is indeed empirical; but so is the question what things and how many come under such plainly 'pure' concepts as *agent* or *rational being*.

But if each of us is in possession of a non-empirical, and thus non-'biological', representation of the specifically human life form, it might be doubted whether we have any substantive knowledge *about it* that is not empirical, as our knowledge of the existence and operation of the human liver is empirical. It may thus be doubted whether the substantive knowledge our heroine applies in particular dikaiological moral judgements can be given the construction we are considering. For we do not want to call this knowledge empirical. The Aristotelian's second difficulty is thus to develop an epistemology to match her conception of the matter at hand.

Let us illustrate the difficulty by contemplating a particular case. I have what we may call a 'moral intuition' that on the fateful day when Stalin ordered all of the blind wandering minstrels of the Ukraine shot, he wronged them all.<sup>43</sup> It was a horrible injustice. Of course, I might be wrong about this. But what does my thought contain? In so reckoning, I do not look to the laws or customs of the Soviet Union in the Thirties, if we can speak of laws and customs in such catastrophic circumstances. Nor do I contemplate the credentials of the particular further ends that Stalin had in view. I do not, for example, enquire how beautiful true

<sup>43</sup> Dmitri Shostakovich, *Testimony*, ed. Solomon Volkov (New York: Harper and Row, 1979), 214–15.

communism was going to be once the minstrel question was resolved. I view the matter in dikaiological categories, but in dikaiological categories that purport to outstrip any conventions, institutions, or laws. On the present view, then, my supposed ‘intuition’ is latently about the human form which Stalin and I and the minstrels all share: *in it*, I am thinking, this counts as injustice, as *in chess* moving a pawn three squares forward is cheating. In thinking this thought that is implicitly about the human form or human nature, I must further implicitly think that this thought itself is an apt expression of precisely the nature it is implicitly about, and that it would as such aptly appear at each pole of the Stalin–minstrel pairs I am considering. And thus I must implicitly think that wherever this thought is rejected, the processes typical of that form of life have been impeded. In thinking this thought, then, I must think of this thought as something other than the product of field-work or empirical investigation: where ignorance of liver function prevails, we need not suppose that processes typical or characteristic of specifically human life have been impeded. I must, that is, think of *certain* features of my life form as given to me in some other way, even if they might be given to, say, Martians by a subtle sort of field-work. But, of course, I do think this thought: Stalin did them all wrong.

The Aristotelian, I am suggesting, must articulate an epistemology according to which all of this can make sense: she must show how some life forms might be such that *some* substantive knowledge of them is non-empirical among their bearers; she must show how it can be that an intellectual life form might in certain of its aspects be known ‘from the inside’, if you like.

But isn’t there a further difficulty? What about our practical relation to the Martians and the Twin Earthers? Can’t we frame a moral complaint against an Aristotelian account that is structurally akin to the one we raised against the Humean teaching? A human and a Martian are outsiders in relation to one another in respect of life form, and someone might have the intuition that a Martian is as much wrongable by a human being as another human being is. Here there are various avenues of defence, none perhaps completely satisfying. We must first note the differential status of the two intuitions. Reflection on the twentieth century presents us, I am thinking, with a kind of established fact about inter-human right: we can now see, for example, that every human who ever thought it was a good idea for one human being to kill another human being for beautiful

purposes was wrong. It is not simply a question of a private intuition. There is no such established fact pertaining to how things should go with Martians: there are only intuitions about science fiction cases which it is very difficult to think about at all. Further, we should remember that it is of course possible for items in the category 'social practice' to come to hold among bearers of different intelligent life forms; through them something in the nature of a Humean justice might come to bind intelligences falling under various natural forms. But such practices would not unite our mutual 'aliens' on first meeting. This, then, is really the case we are considering. And here, I think, the Aristotelian can do no more than plead, as a Humean would in the parallel place, that there are other virtues besides justice, virtues that might protect space aliens even on our first meeting with them; our intuitions about these cases are intuitions about those virtues; they are not intuitions about that elementary justice, claims of which permeate specifically human life.

## 16. The Received Kantian View has Alarming Metaphysical Commitments

Let us consider finally the received view, which is that the order to which our just agent adverts in the thoughts of true justice induces a manifold of persons that is essentially coextensive with the class of *all agents*, or some slightly narrower class: for example, that of *all rational animals*, or *all Boethian persons*. The just agent, on such a view, looks past the Humean practices into which she and others are sunk; she sees through the particular Aristotelian nature she and others bear; she attaches herself simply to the agency or the rationality of the one *by* whom she proposes thereby to 'do right', or *to* whom she has a horror of doing wrong. It sounds good on paper, it is the currency of academic moral theory, but what are its metaphysical presuppositions?

Let us suppose our heroine, reflecting on the nexus that she registers as binding her to Sylvia, imagines that she is also bound in just the same way not to destroy *any agent*, where the concept 'agent' is taken in the thin and broadly extended sense I explained above, so that it includes Martians and Twin Earthers, but also ExxonMobil and the football team of Action, Arizona. She won't destroy any of them. Can she then view her response

to Sylvia as a *response to right*? It seems not. It seems that she cannot reasonably understand *agency* in this exceptionally thin sense to be combined with any tendency, however often its operation is impeded, to register the thoughts she has in imagining these duties. There seems, after all, to be no reason why concept-realizing agency might not sometimes be entirely devoid of dikaiological concepts and incapable of attaining them—or, indeed, corrupted where it does attain them. If a member of this extensive class happens to have otherwise suitable ‘correlative’ representations, this will just be an accident. It thus seems that a form of deontic thinking that ‘protects’ *this* entire class will not be a form of dikaiological thinking.

It is the same with the thicker concepts of animal agency, rational animality, Boethian personality and what Kant calls ‘humanity’. Given that a suitably robust principle of plenitude operates in the universe in which they are applied, these abstract ideas will determine classes in which *some* have bipolar concepts, some don’t. Among those that don’t, some indeed will only fail to have them *per accidens*, by youth or idiocy, say; but others, it seems, could only ever *come* to possess such ideas by freak accident or not at all. The virtue that protects this whole class is no doubt very beautiful, but again it seems that it is not justice, the virtue we are analysing.

Let us suppose instead that our heroine attempts to avoid the problem of an over-extensive protected class by definitional fiat, thickening the concept which covers the ‘many’ of which she sees herself as ‘one’ by explicit appeal to the idea of bipolar conception. Suppose she imagines that she is bound in ‘moral right’ not to destroy *any rational animal who deploys concepts of right*. (Or rather, as it would have to be if the supposed manifold is to cover the rights of, for example, the young human beings with whom she is familiar: *any animal which falls under a genus associated with a tendency to deploy concepts of right*.) But of course it is not enough that potential others deploy dikaiological concepts; they must deploy the *same* dikaiological concepts. It is not enough that they are deploying, or tend to deploy, *legal* concepts of right, for example. They must be able to shift, and tend to shift, abstract bipolar deontic vocabulary into the same gear she does.

Perhaps she can do better by attempting to specify the form of bipolar judging in question. But how is she to specify it? It is no use saying that the ‘many’ of which she sees herself as ‘one’ is the class of *all rational animals who deploy (or would tend to deploy) not just any conception of bipolarity, but a conception of bipolarity which (say) encompasses all rational animals*. There is no such form of bipolarity, as we have already seen.



It is clear that she cannot specify the form of bipolarity that is to prevail in her imagined manifold by reference to the manifold it induces, since this manifold is the one she is attempting to specify. We are clearly falling into a circle. Can our heroine break out of it by isolating the intended class as that of *all rational animals who grasp or tend to grasp 'this very form of bipolarity'*—namely, the one contained in her thought of Sylvia? Yes, but only because the thought of a 'many' so defined is implicit in every form of dikaiological judgement, legal, ludic, or moral. So this conception of the manifold cannot help to specify the form of dikaiology in question. If the true theory of justice is Humean, then our heroine in so thinking will be thinking of the bearers of her 'moral' practice—for these are the ones in whom operates a tendency to grasp 'this very form of practical bipolarity'. If the true theory is Aristotelian, then she will be speaking of all human beings.

The same difficulty would evidently beset the attempt to specify the manifold as the class of *all rational beings who grasp or tend to grasp the 'specifically moral' form of bipolarity*. Here the trouble is with the definite article. On a Humean or Aristotelian theory, the idea of moral bipolarity is akin to the idea of private-legal bipolarity: moral bipolarities might arise independently, and will therefore be different bipolarities, even if they are very similar. To insist that there is just one such form of pairing is to beg the question against them. The class of *all rational beings who grasp a specifically private-legal form of bipolarity* is not a private-legal manifold of persons unless it happens that there is as yet only one system of private law in the universe, as no doubt once there was.

The core question is this. Let our heroine, framing a particular dikaiological judgement, reflectively form the thought of 'this very form of bipolarity' and 'the manifold within which this very form of bipolarity prevails'. And let another agent capable of reflection do something that is qualitatively exactly the same—the person next door or a human on another continent or a twin human or a humanoid in a distant galaxy. What now will make it the case that they are reflectively apprehending the *same* form of bipolarity and through it the same manifold of persons? If we cannot see these thoughts as manifestations of a common practice or a common life form—if we grant that the homogeneity is a mere accident of cosmic history—we seem to have no way of perceiving it as an *identity*; we can only see different forms of practical bipolarity that are as alike, qualitatively, as one pleases. Our heroine and her radically alien science fiction

'other' are in the position of the Lombard and the Schlombard, or the many houses of our heretical Israel.

This conclusion seems to follow if we consider the matter in an even mildly naturalistic way. But perhaps another way of considering things is available. An idealism like Kant's might let us find a suitable common account or ground of our heroine's and the alien's radically separate mental operations—a single intelligible cause hidden below this superficial diversity of crude, empirically given mechanical causes. Thus could the thoughts of our heroine and her alien be opposite poles of the same thought and a true thought. This is indeed how Kant conceives of 'pure practical reason', if I understand him: it is like a Platonic Form which shows itself in the diverse thoughts of many rational beings. Wherever practical reasoning happens in an individual animal, PPR has a foothold, just as it does in me.

On such an account, the idea of an agent not under the 'formula of humanity', is indeed coherent, and thus *logically* possible—and is outlined in the *Religion* discussion of the 'most rational mortal being'.<sup>44</sup> But we were wrong to infer from this abstract conceptual possibility that any such agent is *really* possible—that is, that any could actually appear in nature. Rather, we have synthetic knowledge that this is not a real possibility, founded on our knowledge of the character of the law we find in ourselves. From the judgement that I ought to treat *all reasoning animal agents*—that is, *all Kantian 'humanity'-havers*—thus and so, I will conclude the existence of a law of reason-in-general, a law I will judge present wherever in nature reasoning agency is found, even if consciousness of it has not yet been awakened or developed. The moral law drives me to respect all reasoning agents in practice, but what I properly respect is in a way 'the law of which they give me an example',<sup>45</sup> a moral law which is waiting to operate in them. This I must judge to be *the same law*, not another law with the same content. And so I must think that it is not an accident that otherwise radically alien practical reasoners should all alike develop this way of thinking, and thus thoughts mirroring my own, even though other ways of thinking are perfectly possible conceptually speaking. I must judge that a principle operates in nature which excludes those abstract conceptual

<sup>44</sup> Kant, *Religion within the Boundaries of Mere Reason and Other Works*, ed. A. Wood and G. Di Giovanni (Cambridge: Cambridge University Press, 1998), 50–1 (*Akademie*, 26).

<sup>45</sup> Kant, *Groundwork of the Metaphysics of Morals*, in *Practical Philosophy*, ed. and trans. McGregor, 56 (*Akademie* 401).

possibilities. If I find some reasoners who are not with the programme, then practical faith, governed by the moral law, will lead me to investigate what is impeding the development of this consciousness, and the associated forms of feeling, in their case. And it will drive me to do what it takes to bring this consciousness out. For the aptness, the tendency, to exhibit these thoughts is certainly there in those space aliens, somewhere, if they are thinking practically at all, even in the most elementary 'instrumental' ways; I know this indirectly by reflecting on my own case, from my knowledge that I live under a hyper-extensive formula of humanity.

Thus, on Kant's view, the recognition of another animal agent as reasoning practically is always at the same time recognition of him as a person in relation to oneself. There is no difficulty in specifying the manifold of persons into which our heroine judges herself to be inserted: it is, after all, just the class of all practically reasoning animals in nature, the class of all bearers of 'humanity'. It is just that I have synthetic knowledge 'from within' of a tendency to pairwise judging which prevails across this thinly defined genus, spread as it may be across the cosmos—a tendency which thus constitutes the genus as a manifold of persons. There is present in me a practical law, the operation of which is alas often impeded, which has all the cosmic scope of the laws of interaction of fundamental particles; its operation, we may suppose, is busily being impeded even in distant galaxies.

I have nothing with which to oppose this orthodox Kantian conception of the matter, apart from a mild naturalism. But that is enough, I think we should grant, to make a serious difficulty, and thus to complete the puzzle I have been attempting to articulate: namely, that each of the received accounts of the content of our heroine's distinctive thought—Humean, Aristotelian, and Kantian—is faced with what can readily be felt as a decisive objection. There is in this material a conflict between metaphysical and moral desiderata, and it is difficult to say in which direction we should turn.

The present section poses a more direct objection, I think, to the neo-Kantian view that we can hold to Kant's moral theory, the formula of (Kantian) humanity for example, while rejecting the strange and wonderful metaphysics of reason which would permit us to make sense of it. The mark of such a theory is that, in its lyrical emphasis on the 'autonomy' of each moral agent in respect of the 'moral law' she is under, it compromises

the real *identity* of the law to which each agent is thus autonomously related. Neo-Kantian views, if I am right, put morally virtuous agents into the position of the many households at our heretical Sinai, and not into relations of right.